SUPREME COURT OF THE UNITED STATES

No. 00–1737

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL., PETITIONERS *v.* VILLAGE OF STRATTON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 17, 2002]

JUSTICE BREYER, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, concurring.

While joining the Court's opinion, I write separately to note that the dissent's "crime prevention" justification for this ordinance is not a strong one. Cf. *post*, at 6–10 (REHNQUIST, C. J.). For one thing, there is no indication that the legislative body that passed the ordinance considered this justification. Stratton did not rely on the rationale in the courts below, see 61 F. Supp. 2d 734, 736 (SD Ohio 1999) (opinion of the District Court describing the ordinance as "constructed to protect the Village residents from 'flim flam' con artists"); 240 F. 3d 553, 565 (CA6 2001) (opinion of the Court of Appeals describing interests as "protecting [the Village's] residents from fraud and undue annoyance"), and its general references to "deter[ing] crime" in its brief to this Court cannot fairly be construed to include anything other than the fraud it discusses specifically. Brief for Respondents 14–18.

In the intermediate scrutiny context, the Court ordinarily does not supply reasons the legislative body has not given. Cf. *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 816 (2000) ("When the Government restricts speech, *the Government bears the burden* of proving the constitutionality of its actions" (emphasis added)). That

does not mean, as THE CHIEF JUSTICE suggests, that only a government with a "battery of constitutional lawyers," *post*, at 1, could satisfy this burden. It does mean that we expect a government to give its real reasons for passing an ordinance. Legislators, in even the smallest town, are perfectly able to do so—sometimes better on their own than with too many lawyers, *e.g.*, a "battery," trying to offer their advice. I can only conclude that if the village of Stratton thought preventing burglaries and violent crimes was an important justification for this ordinance, it would have said so.

But it is not just that. It is also intuitively implausible to think that Stratton's ordinance serves any governmental interest in preventing such crimes. As the Court notes, several categories of potential criminals will remain entirely untouched by the ordinance. *Ante*, at 17, 2, n. 1. And as to those who might be affected by it, "[w]e have never accepted mere conjecture as adequate to carry a First Amendment burden," *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S. 377, 392 (2000). Even less readily should we accept such implausible conjecture offered not by the party itself but only by an *amicus*, see Brief for Ohio et al. as *Amici Curiae* 5–6.

Because Stratton did not rely on the crime prevention justification, because Stratton has not now "present[ed] more than anecdote and supposition," *Playboy Entertainment Group*, *supra*, at 822, and because the relationship between the interest and the ordinance is doubtful, I am unwilling to assume that these conjectured benefits outweigh the cost of abridging the speech covered by the ordinance.