SUPREME COURT OF THE UNITED STATES

No. 93–986

JOSEPH McINTYRE, EXECUTOR OF ESTATE OF MARGARET McINTYRE, DECEASED, PETITIONER *v.* OHIO ELECTIONS COMMISSION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

[April 19, 1995]

JUSTICE SCALIA, with whom THE CHIEF JUSTICE joins, dissenting.

At a time when both political branches of Government and both political parties reflect a popular desire to leave more decisionmaking authority to the States, today's decision moves in the opposite direction, adding to the legacy of inflexible central mandates (irrevocable even by Congress) imposed by this Court's constitutional jurisprudence. In an opinion which reads as though it is addressing some peculiar law like the Los Angeles municipal ordinance at issue in *Talley* v. *California*, 362 U. S. 60 (1960), the Court invalidates a species of protection for the election process that exists, in a variety of forms, in every State except California, and that has a pedigree dating back to the end of the 19th century. Preferring the views of the English utilitarian philosopher John Stuart Mill, *ante*, at 23, to the considered judgment of the American people's elected representatives from coast to coast, the Court discovers a hitherto unknown right-to-be-unknown while engaging in electoral politics. I dissent from this imposition of free-speech imperatives that are demonstrably not those of the American people today, and that there is inadequate

reason to believe were those of the society that begat the First Amendment or the Fourteenth.

The question posed by the present case is not the easiest sort to answer for those who adhere to the Court's (and the society's) traditional view that the Constitution bears its original meaning and is unchanging. Under that view, "[o]n every question of construction, [we should] carry ourselves back to the time when the Constitution was adopted; recollect the spirit manifested in the debates; and instead of trying [to find] what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed." T. Jefferson, Letter to William Johnson (June 12, 1823), in 15 Writings of Thomas Jefferson 439, 449 (A. Lipscomb ed. 1904). That technique is simple of application when government conduct that is claimed to violate the Bill of Rights or the Fourteenth Amendment is shown, upon investigation, to have been engaged in without objection at the very time the Bill of Rights or the Fourteenth Amendment was adopted. There is no doubt, for example, that laws against libel and obscenity do not violate "the freedom of speech" to which the First Amendment refers; they existed and were universally approved in 1791. Application of the principle of an unchanging Constitution is also simple enough at the other extreme, where the government conduct at issue was *not* engaged in at the time of adoption, and there is ample evidence that the *reason* it was not engaged in is that it was thought to violate the right embodied in the constitutional guarantee. Racks and thumbscrews, well known instruments for inflicting pain, were not in use because they were regarded as cruel punishments.

The present case lies between those two extremes. Anonymous electioneering was not prohibited by law in 1791 or in 1868. In fact, it was widely practiced at

the earlier date, an understandable legacy of the revolutionary era in which political dissent could produce governmental reprisal. I need not dwell upon the evidence of that, since it is described at length in today's concurrence. See *ante*, at 3–13 (THOMAS, J., concurring in judgment). The practice of anonymous electioneering may have been less general in 1868, when the Fourteenth Amendment was adopted, but at least as late as 1837 it was respectable enough to be engaged in by Abraham Lincoln. See 1 A. Beveridge, Abraham Lincoln 1809–1858, pp. 215–216 (1928); 1 Uncollected Works of Abraham Lincoln 155–161 (R. Wilson ed. 1947).

But to prove that anonymous electioneering was used frequently is not to establish that it is a constitutional right. Quite obviously, not every restriction upon expression that did not exist in 1791 or in 1868 is *ipso facto* unconstitutional, or else modern election laws such as those involved in *Burson* v. *Freeman*, 504 U. S. 191 (1992), and *Buckley* v. *Valeo*, 424 U. S. 1 (1976), would be prohibited, as would (to mention only a few other categories) modern antinoise regulation of the sort involved in *Kovacs* v. *Cooper*, 336 U. S. 77 (1949), and *Ward* v. *Rock Against Racism,* 491 U. S. 781 (1989), and modern parade-permitting regulation of the sort involved in *Cox* v. *New Hampshire*, 312 U. S. 569 (1941).

Evidence that anonymous electioneering was regarded as a constitutional right is sparse, and as far as I am aware evidence that it was *generally* regarded as such is nonexistent. The concurrence points to "freedom of the press" objections that were made against the refusal of some Federalist newspapers to publish unsigned essays opposing the proposed constitution (on the ground that they might be the work of foreign agents). See *ante*, at 7–9 (THOMAS, J., concurring in judgment). But of course if every partisan cry of "freedom of the press" were accepted as valid, our Constitution would be

unrecognizable; and if one were to generalize from these particular cries, the First Amendment would be not only a protection *for* newspapers but a restriction *upon* them. Leaving aside, however, the fact that no governmental action was involved, the Anti-Federalists had a point, inasmuch as the editorial proscription of anonymity applied only to *them*, and thus had the vice of viewpoint discrimination. (Hence the comment by Philadelphiensis, quoted in the concurrence: "`Here we see pretty plainly through [the Federalists'] excellent regulation of the press, how things are to be carried on after the adoption of the new constitution.'" *Ante*, at 8 (quoting Philadelphiensis, Essay I, Independent Gazetteer, Nov. 7, 1787, in 3 Complete Anti-Federalist 103 (H. Storing ed. 1981)).)

The concurrence recounts other pre- and post-Revolution examples of defense of anonymity in the name of "freedom of the press," but not a single one involves the context of restrictions imposed in connection with a free, democratic election, which is all that is at issue here. For many of them, moreover, such as the 1735 Zenger trial, *ante*, at 3–4, the 1779 "Leonidas" controversy in the Continental Congress, *ante*, at 4, and the 1779 action by the New Jersey Legislative Council against Isaac Collins, *ante*, at 5, the issue of anonymity was incidental to the (unquestionably free-speech) issue of whether criticism of the government could be *punished* by the state.

Thus, the sum total of the historical evidence marshalled by the concurrence for the principle of *constitutional entitlement* to anonymous electioneering is partisan claims in the debate on ratification (which was *almost* like an election) that a viewpoint-based restriction on anonymity by newspaper editors violates freedom of speech. This absence of historical testimony concerning the point before us is hardly remarkable. The issue of a

governmental prohibition upon anonymous electioneering in particular (as opposed to a government prohibition upon anonymous publication in general) simply never arose. Indeed, there probably never arose even the abstract question of whether electoral openness and regularity was worth such a governmental restriction upon the normal right to anonymous speech. The idea of close government regulation of the electoral process is a more modern phenomenon, arriving in this country in the late 1800's. See *Burson* v. *Freeman*, *supra*, at 203–205.

What we have, then, is the most difficult case for determining the meaning of the Constitution. No accepted existence of governmental restrictions of the sort at issue here demonstrates their constitutionality, but neither can their nonexistence clearly be attributed to constitutional objections. In such a case, constitutional adjudication necessarily involves not just history but judgment: judgment as to whether the government action under challenge is consonant with the concept of the protected freedom (in this case, the freedom of speech and of the press) that existed when the constitutional protection was accorded. In the present case, *absent other indication* I would be inclined to agree with the concurrence that a society which used anonymous political debate so regularly would not regard as constitutional even moderate restrictions made to improve the election process. (I would, however, want further evidence of common practice in 1868, since I doubt that the Fourteenth Amendment time-warped the post-Civil War States back to the Revolution.)

But there *is* other indication, of the most weighty sort: the widespread and longstanding traditions of our people. Principles of liberty fundamental enough to have been embodied within constitutional guarantees are not readily erased from the Nation's consciousness. A governmental practice that has

become general throughout the United States, and particularly one that has the validation of long, accepted usage, bears a strong presumption of constitutionality. And that is what we have before us here. Section 3599.09(A) was enacted by the General Assembly of the State of Ohio almost 80 years ago. See Act of May 27, 1915, 1915 Ohio Leg. Acts 350. Even at the time of its adoption, there was nothing unique or extraordinary about it. The earliest statute of this sort was adopted by Massachusetts in 1890, little more than 20 years after the Fourteenth Amendment was ratified. No less than 24 States had similar laws by the end of World War I,[1] and today

[1]See Act of June 19, 1915, No. 171, §9, 1915 Ala. Acts 250, 254–255; Act of Mar. 12, 1917, ch. 47, §1, 1917 Ariz. Sess. Laws 62, 62–63; Act of Apr. 2, 1913, No. 308, §6, 1913 Ark. Gen. Acts 1252, 1255; Act of Mar. 15, 1901, ch. 138, §1, 1901 Cal. Stats. 297; Act of June 6, 1913, ch. 6470, §9, 1913 Fla. Laws 268, 272–273; Act of June 26, 1917, §1, 1917 Ill. Laws 456, 456–457; Act of Mar. 14, 1911, ch. 137, §1, 1911 Kan. Sess. Laws 221; Act of July 11, 1912, No. 213, §14, 1912 La. Acts 447, 454; Act of June 3, 1890, ch. 381, 1890 Mass. Laws 342; Act of June 20, 1912, Ex. Sess. ch. 3, §7, 1912 Minn. Laws 23, 26; Act of Apr. 21, 1906, S. B. No. 191, 1906 Miss. Gen. Laws 295 (enacting Miss. Code §3728 (1906)); Act of Apr. 9, 1917, §1, 1917 Mo. Laws 272, 273; Act of Nov. 1912, §35, 1912 Mont. Laws 593, 608; Act of Mar. 31, 1913, ch. 282, §34, 1913 Nev. Stats. 476, 486–487; Act of Apr. 21, 1915, ch. 169, §7, 1915 N. H. Laws 234, 236; Act of Apr. 20, 1911, ch. 188, §9, 1911 N. J. Laws 329, 334; Act of Mar. 12, 1913, ch. 164, §1(k), 1913 N. C. Sess. Laws 259, 261; Act of May 27, 1915, 1915 Ohio Leg. Acts 350; Act of June 23, 1908, ch. 3, §35, 1909 Ore. Laws 15, 30; Act of June 26, 1895, No. 275, 1895 Pa. Laws 389; Act of Mar. 13, 1917, ch. 92, §23, 1917 Utah Laws 258, 267; Act of Mar. 12, 1909, ch. 82, §8,

every State of the Union except California has one,[2] as does the District of Columbia, see D. C. Code Ann. §1–1420 (1992), and as does the Federal Government where advertising relating to candidates for federal office is concerned, see 2 U. S. C. §441d(a). Such a universal[3] and long established American legislative practice must be given precedence, I think, over historical and academic speculation regarding a

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1909 Wash. Laws 169, 177–178; Act of Feb. 20, 1915, ch. 27, §13, 1915 W. Va. Acts 246, 255; Act of July 11, 1911, ch. 650, §§94–14 to 94–16, 1911 Wis. Laws 883, 890.

[2]See Ala. Code §17–22A–13 (Supp. 1994); Alaska Stat. Ann. §15.56.010 (1988); Ariz. Rev. Stat. Ann. §16–912 (Supp. 1994); Ark. Code Ann. §7–1–103 (1993); Colo. Rev. Stat. §1–13–108 (Supp. 1994); Conn. Gen. Stat. §9–333w (Supp. 1994); Del. Code Ann., Tit. 15, §§8021, 8023 (1993); Fla. Stat. §§106.143 and 106.1437 (1992); Ga. Code Ann. §21–2–415 (1993); Haw. Rev. Stat. §11–215 (1988); Idaho Code §67–6614A (Supp. 1994); Ill. Comp. Stat. §5/29–14 (1993); Ind. Code §3–14–1–4 (Supp. 1994); Iowa Code §56.14 (1991); Kan. Stat. Ann. §§25–2407 and 25–4156 (Supp. 1991); Ky. Rev. Stat. Ann. §121.190 (Baldwin Supp. 1994); La. Rev. Stat. Ann. §18:1463 (West Supp. 1994); Me. Rev. Stat. Ann., Tit. 21–A, §1014 (1993); Md. Ann. Code, Art. 33, §26–17 (1993); Mass. Gen. Laws §41 (1990); Mich. Comp. Laws Ann. §169.247 (West 1989); Minn. Stat. §211B.04 (1994); Miss. Code Ann. §23–15–899 (1990); Mo. Rev. Stat. §130.031 (Supp. 1994); Mont. Code Ann. §13–35–225 (1993); Neb. Rev. Stat. §49–1474.01 (1993); Nev. Rev. Stat. §294A.320 (Supp. 1993); N. H. Rev. Stat. Ann. §664:14 (Supp. 1992); N. J. Stat. Ann. §19:34–38.1 (1989); N. M. Stat. Ann. §§1–19–16 and 1–19–17 (1991); N. Y. Elec. Law §14–106 (McKinney 1978); N. C. Gen. Stat. §163–274 (Supp. 1994); N. D. Cent. Code §16.1–10–04.1 (1981); Ohio Rev. Code Ann. §3599.09(A) (1988);

restriction that assuredly does not go to the heart of free speech.

Okla. Stat., Tit. 21, §1840 (Supp. 1995); Ore. Rev. Stat. §260.522 (1991); 25 Pa. Cons. Stat. §3258 (1994); R. I. Gen. Laws §17–23–2 (1988); S. C. Code Ann. §8–13–1354 (Supp. 1993); S. D. Comp. Laws Ann. §12–25–4.1 (Supp. 1994); Tenn. Code Ann. §2–19–120 (Supp. 1994); Tex. Elec. Code Ann. §255.001 (Supp. 1995); Utah Code Ann. §20–14–24 (Supp. 1994); Vt. Stat. Ann., Tit. 17, §2022 (1982); Va. Code Ann. §24.2–1014 (1993); Wash. Rev. Code §42.17.510 (Supp. 1994); W. Va. Code §3–8–12 (1994); Wis. Stat. §11.30 (Supp. 1994); Wyo. Stat. §22–25–110 (1992).

Courts have declared some of these laws unconstitutional in recent years, relying upon our decision in *Talley* v. *California,* 362 U. S. 60 (1960). See, *e.g.*, *State* v. *Burgess*, 543 So. 2d 1332 (La. 1989); *State* v. *North Dakota Ed. Assn.*, 262 N. W. 2d 731 (N. D. 1978); *People* v. *Duryea*, 76 Misc. 2d 948, 351 N. Y. S. 2d 978 (Sup.), aff'd, 44 App. Div. 2d 663, 354 N. Y. S. 2d 129 (1974). Other decisions, including all pre-*Talley* decisions I am aware of, have upheld the laws. See, *e.g.*, *Commonwealth* v. *Evans*, 156 Pa. Super. 321, 40 A. 2d 137 (1944); *State* v. *Freeman*, 143 Kan. 315, 55 P. 2d 362 (1936); *State* v. *Babst*, 104 Ohio St. 167, 135 N. E. 525 (1922).

[3]It might be accurate to say that, insofar as the judicially unconstrained judgment of American legislatures is concerned, approval of the law before us here is universal. California, although it had enacted an election disclosure requirement as early as 1901, see Act of Mar. 15, 1901, ch. 138, §1, 1901

It can be said that we ignored a tradition as old, and almost as widespread, in *Texas* v. *Johnson*, 491 U. S. 397 (1989), where we held unconstitutional a state law prohibiting desecration of the United States flag. See also *United States* v. *Eichman*, 496 U. S. 310 (1990). But those cases merely stand for the proposition that post-adoption tradition cannot alter the core meaning of a constitutional guarantee. As we said in *Johnson*, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." 491 U. S., at 414. Prohibition of expression of contempt for the flag, whether by contemptuous words, see *Street* v. *New York*, 394 U. S. 576 (1969), or by burning the flag, came, we said, within that "bedrock principle." The law at issue here, by contrast, forbids the expression of no idea, but merely requires identification of the speaker when the idea is uttered in the electoral context. It is at the periphery of the First Amendment, like the law at issue in *Burson*, where we took guidance from tradition in upholding against constitutional attack restrictions upon electioneering in the vicinity of polling places, see 504 U. S., at 204–206 (plurality opinion); *id.*, at 214–216 (SCALIA, J., concurring in judgment).

The foregoing analysis suffices to decide this case for me. Where the meaning of a constitutional text

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Cal. Stats. 297, abandoned its law (then similar to Ohio's) in 1983, see Act of Sept. 11, 1983, ch. 668, 1983 Cal. Stats. 2621, after a California Court of Appeal, relying primarily on our decision in *Talley*, had declared the provision unconstitutional, see *Schuster* v. *Imperial County Municipal Court*, 109 Cal. App. 3d 887, 167 Cal. Rptr. 447 (1980), cert. denied, 450 U. S. 1042 (1981).

(such as "the freedom of speech") is unclear, the widespread and long-accepted practices of the American people are the best indication of what fundamental beliefs it was intended to enshrine. Even if I were to close my eyes to practice, however, and were to be guided exclusively by deductive analysis from our case law, I would reach the same result.

Three basic questions must be answered to decide this case. Two of them are readily answered by our precedents; the third is readily answered by common sense and by a decent regard for the practical judgment of those more familiar with elections than we are. The first question is whether protection of the election process justifies limitations upon speech that cannot constitutionally be imposed generally. (If not, *Talley* v. *California*, which invalidated a flat ban on *all* anonymous leafletting, controls the decision here.) Our cases plainly answer that question in the affirmative—indeed, they suggest that no justification for regulation is more compelling than protection of the electoral process. "Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry* v. *Sanders*, 376 U. S. 1, 17 (1964). The State has a "compelling interest in preserving the integrity of its election process." *Eu* v. *San Francisco Cty. Democratic Central Comm.*, 489 U. S. 214, 231 (1989). So significant have we found the interest in protecting the electoral process to be that we have approved the prohibition of political speech *entirely* in areas that would impede that process. *Burson*, *supra*, at 204–206 (plurality opinion).

The second question relevant to our decision is whether a "right to anonymity" is such a prominent value in our constitutional system that even protection of the electoral process cannot be purchased at its expense. The answer, again, is clear: no. Several of our cases have held that *in peculiar circumstances* the compelled disclosure of a

person's identity would unconstitutionally deter the exercise of First Amendment associational rights. See, *e.g.*, *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U. S. 87 (1982); *Bates* v. *Little Rock*, 361 U. S. 516 (1960); *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S. 449 (1958). But those cases did not acknowledge any general right to anonymity, or even any right on the part of *all* citizens to ignore the particular laws under challenge. Rather, they recognized a right to an *exemption* from otherwise valid disclosure requirements on the part of someone who could show a "reasonable probability" that the compelled disclosure would result in "threats, harassment, or reprisals from either Government officials or private parties." This last quotation is from *Buckley* v. *Valeo*, 424 U. S. 1, 74 (1976) *(per curiam)*, which prescribed the safety-valve of a similar exemption in upholding the disclosure requirements of the Federal Election Campaign Act. That is the answer our case law provides to the Court's fear about the "tyranny of the majority," *ante*, at 23, and to its concern that "`[p]ersecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all,'" *ante*, at 8 (quoting *Talley*, 362 U. S., at 64). Anonymity can still be enjoyed by those who require it, without utterly destroying useful disclosure laws. The record in this case contains not even a hint that Mrs. McIntyre feared "threats, harassment, or reprisals"; indeed, she placed her name on some of her fliers and meant to place it on all of them. See App. 12, 36–40.

The existence of a generalized right of anonymity in speech was rejected by this Court in *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288 (1913), which held that newspapers desiring the privilege of second class postage could be required to provide to the Postmaster General, and to publish, a statement of the names and addresses of their editors, publishers, business managers and owners. We rejected the argument that the First Amendment forbade the requirement of such disclosure. *Id.*, at 299. The provision that gave rise to that case still exists, see 39 U. S. C. §3685, and is still enforced by the Postal Service. It is one of several federal laws seemingly invalidated by today's opinion.

The Court's unprecedented protection for anonymous speech does not even have the virtue of establishing a clear (albeit erroneous) rule of law. For after having announced that this statute, because it "burdens core political speech," requires "exacting scrutiny" and must be "narrowly tailored to serve an overriding state interest," *ante*, at 13 (ordinarily the kiss of death), the opinion goes on to proclaim soothingly (and unhelpfully) that "a State's enforcement interest might justify a more limited identification requirement." *Ante*, at 19. See also *ante*, at 2 (GINSBURG, J., concurring) ("We do not . . . hold that the State may not in other, larger circumstances, require the speaker to disclose its interest by disclosing its identity.") Perhaps, then, not *all* the State statutes I have alluded to are invalid, but just *some* of them; or indeed maybe *all* of them remain valid in "larger circumstances"! It may take decades to work out the shape of this newly expanded right-to-speak-incognito, even in the elections field. And in other areas, of course, a whole new boutique of wonderful First Amendment litigation opens its doors. Must a parade permit, for example, be issued to a group that refuses to provide its identity, or that agrees to do so only under assurance that the

identity will not be made public? Must a municipally owned theater that is leased for private productions book anonymously sponsored presentations? Must a government periodical that has a "letters to the editor" column disavow the policy that most newspapers have against the publication of anonymous letters? Must a public university that makes its facilities available for a speech by Louis Farrakhan or David Duke refuse to disclose the on-campus or off-campus group that has sponsored or paid for the speech? Must a municipal "public-access" cable channel permit anonymous (and masked) performers? The silliness that follows upon a generalized right to anonymous speech has no end.

The third and last question relevant to our decision is whether the prohibition of anonymous campaigning is effective in protecting and enhancing democratic elections. In answering this question no, the Justices of the majority set their own views—on a practical matter that bears closely upon the real-life experience of elected politicians and *not* upon that of unelected judges—up against the views of 49 (and perhaps all 50, see n. 4, *supra*) state legislatures and the federal Congress. We might also add to the list on the other side the legislatures of foreign democracies: Australia, Canada, and England, for example, all have prohibitions upon anonymous campaigning. See, *e.g.*, Commonwealth Electoral Act 1918, §328 (Australia); Canada Elections Act, R.S.C., ch. E–2, §261 (1985); Representation of the People Act, 1983, §110 (England). How is it, one must wonder, that all of these elected legislators, from around the country and around the world, could not see what six Justices of this Court see so clearly that they are willing to require the entire Nation to act upon it: that requiring identification of the source of campaign literature does not improve the quality of the campaign?

The Court says that the State has not explained

"why it can more easily enforce the direct bans on disseminating false documents against anonymous authors and distributors than against wrongdoers who might use false names and addresses in an attempt to avoid detection." *Ante*, at 19. I am not sure what this complicated comparison means. I am sure, however, that (1) a person who is required to put his name to a document is much less likely to lie than one who can lie anonymously, and (2) the distributor of a leaflet which is unlawful because it is anonymous runs much more risk of immediate detection and punishment than the distributor of a leaflet which is unlawful because it is false. Thus, people will be more likely to observe a signing requirement than a naked "no falsity" requirement; and, having observed that requirement, will then be significantly less likely to lie in what they have signed.

But the usefulness of a signing requirement lies not only in promoting observance of the law against campaign falsehoods (though that alone is enough to sustain it). It lies also in promoting a civil and dignified level of campaign debate—which the State has no power to command, but ample power to encourage by such undemanding measures as a signature requirement. Observers of the past few national elections have expressed concern about the increase of character assassination—"mudslinging" is the colloquial term—engaged in by political candidates and their supporters to the detriment of the democratic process. Not all of this, in fact not much of it, consists of actionable untruth; most is innuendo, or demeaning characterization, or mere disclosure of items of personal life that have no bearing upon suitability for office. Imagine how much all of this would increase if it could be done anonymously. The principal impediment against it is the reluctance of most individuals and organizations to be publicly associated with uncharitable and

uncivil expression. Consider, moreover, the increased potential for "dirty tricks." It is not unheard-of for campaign operatives to circulate material over the name of their opponents or their opponents' supporters (a violation of election laws) in order to attract or alienate certain interest groups. See, *e.g.*, B. Felknor, Political Mischief: Smear, Sabotage, and Reform in U. S. Elections 111–112 (1992) (fake United Mine Workers' newspaper assembled by the National Republican Congressional Committee); *New York* v. *Duryea*, 76 Misc. 2d 948, 351 N. Y. S. 2d 978 (Sup. 1974) (letters purporting to be from the "Action Committee for the Liberal Party" sent by Republicans). How much easier—and sanction-free!—it would be to circulate anonymous material (for example, a *really* tasteless, though not actionably false, attack upon one's own candidate) with the hope and expectation that it will be attributed to, and held against, the other side.

The Court contends that demanding the disclosure of the pamphleteer's identity is no different from requiring the disclosure of any other information that may reduce the persuasiveness of the pamphlet's message. See *ante*, at 14–15. It cites *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974), which held it unconstitutional to require a newspaper that had published an editorial critical of a particular candidate to furnish space for that candidate to reply. But it is not *usual* for a speaker to put forward the best arguments against himself, and it is a great imposition upon free speech to make him do so. Whereas it is quite usual—it is expected—for a speaker to *identify* himself, and requiring that is (at least when there are no special circumstances present) virtually no imposition at all.

We have approved much more onerous disclosure requirements in the name of fair elections. In *Buckley* v. *Valeo*, 424 U. S. 1 (1976), we upheld provisions of the Federal Election Campaign Act that

required private individuals to report to the Federal Election Commission independent expenditures made for communications advocating the election or defeat of a candidate for federal office. *Id.*, at 80. Our primary rationale for upholding this provision was that it served an "informational interest" by "increas[ing] the fund of information concerning those who support the candidates," *id.*, at 81. The provision before us here serves the same informational interest, as well as more important interests, which I have discussed above. The Court's attempt to distinguish *Buckley*, see *ante*, at 22–23, would be unconvincing, even if it were accurate in its statement that the disclosure requirement there at issue "reveals far less information" than requiring disclosure of the identity of the author of a specific campaign statement. That happens not to be accurate, since the provision there at issue required not merely "[d]isclosure of an expenditure and its use, without more," *ante*, at 22. It required, among other things:

> "the identification of *each person to whom expenditures have been made* . . . within the calendar year in an aggregate amount or value in excess of $100, the amount, date, *and purpose* of each such expenditure and the name and address of, and office sought by, *each candidate on whose behalf* such expenditure was made." 2 U. S. C. §434(b)(9) (1970 ed., Supp. IV) (emphasis added). See also 2 U. S. C. §434(e) (1970 ed., Supp. IV). (Both reproduced in Appendix to *Buckley*, 424 U. S., at 158, 160).

Surely in many if not most cases, this information will readily permit identification of the particular message that the would-be-anonymous campaigner sponsored. Besides which the burden of complying with this provision, which includes the filing of quarterly reports, is infinitely more onerous than Ohio's simple requirement for signature of campaign literature. If

Buckley remains the law, this is an easy case.

* * *

I do not know where the Court derives its perception that "anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent." *Ante*, at 23. I can imagine no reason why an anonymous leaflet is any more honorable, as a general matter, than an anonymous phone call or an anonymous letter. It facilitates wrong by eliminating accountability, which is ordinarily the very purpose of the anonymity. There are of course exceptions, and where anonymity is needed to avoid "threats, harassment, or reprisals" the First Amendment will require an exemption from the Ohio law. Cf. *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S. 449 (1958). But to strike down the Ohio law in its general application—and similar laws of 48 other States and the Federal Government—on the ground that all anonymous communication is in our society traditionally sacrosanct, seems to me a distortion of the past that will lead to a coarsening of the future.

I respectfully dissent.