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 STEVENS delivered the opinion of the Court.

The question presented is whether an Ohio statute that prohibits the distribution of anonymous campaign literature is a "law . . . abridging the freedom of speech" within the meaning of the First Amendment.[1]

[1]The term "liberty" in the Fourteenth Amendment to the Constitution makes the First Amendment applicable to the States. The Fourteenth Amendment reads, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U. S. Const., Amdt. 14, §1. Referring to that Clause in his separate opinion in *Whitney* v. *California*, 274 U. S. 357 (1927), Justice Brandeis stated that "all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States. The right of free speech, the right to teach and the right of assembly are, of course, fundamental rights." *Id.*, at 373 (Brandeis, J., concurring). Although the text of the First Amendment provides only that "*Congress* shall make no law . . . abridging the freedom of speech . . . ," Justice Brandeis' view has been embedded in our law ever since. See *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 779–780 (1978); see also Stevens, The Bill of Rights: A Century of Progress, 59 U. Chi. L. Rev. 13, 20, 25–26

On April 27, 1988, Margaret McIntyre distributed leaflets to persons attending a public meeting at the Blendon Middle School in Westerville, Ohio. At this meeting, the superintendent of schools planned to discuss an imminent referendum on a proposed school tax levy. The leaflets expressed Mrs. McIntyre's opposition to the levy.[2] There is no suggestion that the text of her message was false, misleading, or libelous. She had composed and printed it on her home computer and had paid a professional printer to make additional copies. Some of the handbills identified her as the author; others merely purported to express the views of "CONCERNED PARENTS AND TAX PAYERS." Except for the help provided by her son and a friend, who placed some of the leaflets on car windshields in the school parking lot, Mrs. McIntyre acted independently.

While Mrs. McIntyre distributed her handbills, an official of the school district, who supported the tax proposal, advised her that the unsigned leaflets did not conform to the Ohio election laws. Undeterred, Mrs. McIntyre appeared at another meeting on the next evening and handed out more of the handbills.

The proposed school levy was defeated at the next two elections, but it finally passed on its third try in November 1988. Five months later, the same school official filed a complaint with the Ohio Elections Com-

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(1992).

[2]The following is one of Mrs. McIntyre's leaflets, in its original typeface:

mission charging that Mrs. McIntyre's distribution of unsigned leaflets violated §3599.09(A) of the Ohio Code.[3] The Commission agreed and imposed a fine of $100.

The Franklin County Court of Common Pleas reversed. Finding that Mrs. McIntyre did not "mislead the public nor act in a surreptitious manner," the court concluded that the statute was unconstitutional

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[3]Ohio Rev. Code Ann. §3599.09(A) (1988) provides:

"No person shall write, print, post, or distribute, or cause to be written, printed, posted, or distributed, a notice, placard, dodger, advertisement, sample ballot, or any other form of general publication which is designed to promote the nomination or election or defeat of a candidate, or to promote the adoption or defeat of any issue, or to influence the voters in any election, or make an expenditure for the purpose of financing political communications through newspapers, magazines, outdoor advertising facilities, direct mailings, or other similar types of general public political advertising, or through flyers, handbills, or other nonperiodical printed matter, unless there appears on such form of publication in a conspicuous place or is contained within said statement the name and residence or business address of the chairman, treasurer, or secretary of the organization issuing the same, or the person who issues, makes, or is responsible therefor. The disclaimer `paid political advertisement' is not sufficient to meet the requirements of this division. When such publication is issued by the regularly constituted central or executive committee of a political party, organized as provided in Chapter 3517. of the Revised Code, it shall be sufficiently identified if it bears the name of the committee and its chairman or treasurer. No person, firm, or corporation shall print or reproduce any notice, placard, dodger, advertisement, sample ballot, or any other

as applied to her conduct. App. to Pet. for Cert. A—34 to A—35. The Ohio Court of Appeals, by a divided vote, reinstated the fine. Notwithstanding doubts about the continuing validity of a 1922 decision of the Ohio Supreme Court upholding the statutory predecessor of §3599.09(A), the majority considered itself bound by that precedent. *Id.*, at A—20 to A—21, citing *State* v. *Babst*, 104 Ohio St. 167, 135 N. E.

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form of publication in violation of this section. This section does not apply to the transmittal of personal correspondence that is not reproduced by machine for general distribution.

"The secretary of state may, by rule, exempt, from the requirements of this division, printed matter and certain other kinds of printed communications such as campaign buttons, balloons, pencils, or like items, the size or nature of which makes it unreasonable to add an identification or disclaimer. The disclaimer or identification, when paid for by a campaign committee, shall be identified by the words `paid for by' followed by the name and address of the campaign committee and the appropriate officer of the committee, identified by name and title."

Section 3599.09(B) contains a comparable prohibition against unidentified communications uttered over the broadcasting facilities of any radio or television station. No question concerning that provision is raised in this case. Our opinion, therefore, discusses only written communications and, particularly, leaflets of the kind Mrs. McIntyre distributed. Cf. *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. ___, ___ — ___ (1994) (slip op., at ___ - ___) (discussing application of First Amendment principles to regulation of television and radio).

The complaint against Mrs. McIntyre also alleged violations of two other provisions of the Ohio Code, but those charges were dismissed and are not before

525 (1922). The dissenting judge thought that our intervening decision in *Talley* v. *California*, 362 U. S. 60 (1960), in which we invalidated a city ordinance prohibiting all anonymous leafletting, compelled the Ohio court to adopt a narrowing construction of the statute to save its constitutionality. App. to Pet. for Cert. A—30 to A—31.

The Ohio Supreme Court affirmed by a divided vote. The majority distinguished Mrs. McIntyre's case from *Talley* on the ground that §3599.09(A) "has as its purpose the identification of persons who distribute materials containing false statements." 67 Ohio St. 3d 391, 394, 618 N. E. 2d 152, 154 (1993). The Ohio court believed that such a law should be upheld if the burdens imposed on the First Amendment rights of voters are "*reasonable*" and "*nondiscriminatory*." *Id.*, at 396, 618 N. E. 2d, at 155, quoting *Anderson* v. *Celebrezze*, 460 U. S. 780, 788 (1983). Under that standard, the majority concluded that the statute was plainly valid:

> "The minor requirement imposed by R.C. 3599.09 that those persons producing campaign literature identify themselves as the source thereof neither impacts the content of their message nor significantly burdens their ability to have it disseminated. This burden is more than counterbalanced by the state interest in providing the voters to whom the message is directed with a mechanism by which they may better evaluate its validity. Moreover, the law serves to identify those who engage in fraud, libel or false advertising. Not only are such interests sufficient to overcome the minor burden placed upon such persons, these interests were specifically acknowledged in [*First National Bank of Boston* v.] *Bellotti*[, 435 U. S. 765 (1978),] to be regulations of the sort which would survive constitutional

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this Court.

scrutiny." 67 Ohio St. 3d, at 396, 618 N. E. 2d, at 155–156.

In dissent, Justice Wright argued that the statute should be tested under a more severe standard because of its significant effect "on the ability of individual citizens to freely express their views in writing on political issues." *Id.*, at 398, 618 N. E. 2d, at 156–157. He concluded that §3599.09(A) "is not narrowly tailored to serve a compelling state interest and is, therefore, unconstitutional as applied to McIntyre." *Id.*, at 401, 618 N. E. 2d, at 159.

Mrs. McIntyre passed away during the pendency of this litigation. Even though the amount in controversy is only $100, petitioner, as the executor of her estate, has pursued her claim in this Court. Our grant of certiorari, 510 U. S. ___ (1994), reflects our agreement with his appraisal of the importance of the question presented.

Ohio maintains that the statute under review is a reasonable regulation of the electoral process. The State does not suggest that all anonymous publications are pernicious or that a statute totally excluding them from the marketplace of ideas would be valid. This is a wise (albeit implicit) concession, for the anonymity of an author is not ordinarily a sufficient reason to exclude her work product from the protections of the First Amendment.

"Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind." *Talley* v. *California*, 362 U. S. 60, 64 (1960). Great works of literature have frequently been produced by authors writing under assumed names.[4] Despite readers' curiosity and the

[4]American names such as Mark Twain (Samuel Langhorne Clemens) and O. Henry (William Sydney Porter) come readily to mind. Benjamin Franklin

public's interest in identifying the creator of a work of art, an author generally is free to decide whether or not to disclose her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry.[5] Accordingly, an author's

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employed numerous different pseudonyms. See 2 W. C. Bruce, Benjamin Franklin Self-Revealed: A Biographical and Critical Study Based Mainly on His Own Writings, ch. 5 (2d ed. 1923). Distinguished French authors such as Voltaire (Francois Marie Arouet) and George Sand (Amandine Aurore Lucie Dupin), and British authors such as George Eliot (Mary Ann Evans), Charles Lamb (sometimes wrote as "Elia"), and Charles Dickens (sometimes wrote as "Boz"), also published under assumed names. Indeed, some believe the works of Shakespeare were actually written by the Earl of Oxford rather than by William Shaksper of Stratford-on-Avon. See C. Ogburn, The Mysterious William Shakespeare: The Myth & the Reality (2d ed. 1992); but see S. Schoenbaum, Shakespeare's Lives (2d ed. 1991) (adhering to the traditional view that Shaksper was in fact the author). See also Stevens, The Shakespeare Canon of Statutory Construction, 140 U. Pa. L. Rev. 1373 (1992) (commenting on the competing theories).

[5]Though such a requirement might provide assistance to critics in evaluating the quality and significance of the writing, it is not indispensable. To draw an analogy from a nonliterary context, the now-pervasive practice of grading law school examination

decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.

The freedom to publish anonymously extends beyond the literary realm. In *Talley*, the Court held that the First Amendment protects the distribution of unsigned handbills urging readers to boycott certain Los Angeles merchants who were allegedly engaging in discriminatory employment practices. 362 U. S. 60. Writing for the Court, Justice Black noted 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." *Id.*, at 64. Justice Black recalled England's abusive press licensing laws and seditious libel prosecutions, and he reminded us that even the arguments favoring the ratification of the Constitution advanced in the Federalist Papers were published under fictitious names. *Id.*, at 64–65. On occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent. Thus, even in the field of political rhetoric, where "the identity of the speaker is an important component of many attempts to persuade," *City of Ladue* v. *Gilleo*, 512 U. S. ___, ___ (1994) (slip op., at 13), the most effective advocates have sometimes opted for anonymity. The specific holding in *Talley* related to advocacy of an economic

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papers "blindly" (*i.e.,* under a system in which the professor does not know whose paper she is grading) indicates that such evaluations are possible—indeed, perhaps more reliable—when any bias associated with the author's identity is prescinded.

boycott, but the Court's reasoning embraced a respected tradition of anonymity in the advocacy of political causes.[6] This tradition is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation.

California had defended the Los Angeles ordinance at issue in *Talley* as a law "aimed at providing a way to identify those responsible for fraud, false advertising and libel." 362 U. S., at 64. We rejected that argument because nothing in the text or legislative history of the ordinance limited its

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[6]That tradition is most famously embodied in the Federalist Papers, authored by James Madison, Alexander Hamilton, and John Jay, but signed "Publius." Publius's opponents, the Anti-Federalists, also tended to publish under pseudonyms: prominent among them were "Cato," believed to be New York Governor George Clinton; "Centinel," probably Samuel Bryan or his father, Pennsylvania judge and legislator George Bryan; "The Federal Farmer," who may have been Richard Henry Lee, a Virginia member of the Continental Congress and a signer of the Declaration of Independence; and "Brutus," who may have been Robert Yates, a New York Supreme Court justice who walked out on the Constitutional Convention. 2 H. Storing, ed., The Complete Anti-Federalist (1981). A forerunner of all of these writers was the pre-Revolutionary War English pamphleteer "Junius," whose true identity remains a mystery. See J. M. Faragher, ed., The Encyclopedia of Colonial and Revolutionary America 220 (1990) (positing that "Junius" may have been Sir Phillip Francis). The "Letters of Junius" were "widely reprinted in colonial newspapers and lent considerable support to the revolutionary cause." *Powell* v. *McCormack*, 395 U. S. 486, 531, n. 60 (1969).

application to those evils.[7] *Ibid.* We then made clear that we did "not pass on the validity of an ordinance limited to prevent these or any

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[7]In his concurring opinion, Justice Harlan added these words:

"Here the State says that this ordinance is aimed at the prevention of `fraud, deceit, false advertising, negligent use of words, obscenity, and libel,' in that it will aid in the detection of those responsible for spreading material of that character. But the ordinance is not so limited, and I think it will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character. In the absence of a more substantial showing as to Los Angeles' actual experience with the distribution of obnoxious handbills, such a generality is for me too remote to furnish a constitutionally acceptable justification for the deterrent effect on free speech which this all-embracing ordinance is likely to have." *Talley* v. *California*, 362 U. S. 60, 66–67 (1960) (footnote omitted).

other supposed evils." *Ibid.* The Ohio statute likewise contains no language limiting its application to fraudulent, false, or libelous statements; to the extent, therefore, that Ohio seeks to justify §3599.09(A) as a means to prevent the dissemination of untruths, its defense must fail for the same reason given in *Talley*. As the facts of this case demonstrate, the ordinance plainly applies even when there is no hint of falsity or libel.

Ohio's statute does, however, contain a different limitation: It applies only to unsigned documents designed to influence voters in an election. In contrast, the Los Angeles ordinance prohibited all anonymous handbilling "in any place under any circumstances." *Id.*, at 60–61. For that reason, Ohio correctly argues that *Talley* does not necessarily control the disposition of this case. We must, therefore, decide whether and to what extent the First Amendment's protection of anonymity encompasses documents intended to influence the electoral process.

Ohio places its principal reliance on cases such as *Anderson* v. *Celebrezze*, 460 U. S. 780 (1983); *Storer* v. *Brown*, 415 U. S. 724 (1974); and *Burdick* v. *Takushi*, 504 U. S. ___ (1992), in which we reviewed election code provisions governing the voting process itself. See *Anderson*, *supra* (filing deadlines); *Storer*, *supra* (ballot access); *Burdick*, *supra* (write-in voting); see also *Tashjian* v. *Republican Party of Connecticut*, 479 U. S. 208 (1986) (eligibility of independent voters to vote in party primaries). In those cases we refused to adopt "any `litmus-paper test' that will separate valid from invalid restrictions." *Anderson*, 460 U. S., at 789, quoting *Storer*, 415 U. S., at 730. Instead, we pursued an analytical process comparable to that used by courts "in ordinary litigation": we considered the relative interests of the State and the injured voters, and we evaluated the extent to which the State's interests necessitated the contested

restrictions. *Anderson*, 460 U. S., at 789. Applying similar reasoning in this case, the Ohio Supreme Court upheld §3599.09(A) as a "*reasonable*" and "*nondiscriminatory*" burden on the rights of voters. 67 Ohio St. 3d 391, 396, 618 N. E. 2d 152, 155 (1993), quoting *Anderson*, 460 U. S., at 788.

The "ordinary litigation" test does not apply here. Unlike the statutory provisions challenged in *Storer* and *Anderson*, §3599.09(A) of the Ohio Code does not control the mechanics of the electoral process. It is a regulation of pure speech. Moreover, even though this provision applies evenhandedly to advocates of differing viewpoints,[8] it is a direct regulation of the content of speech. Every written document covered by the statute must contain "the name and residence or business address of the chairman, treasurer, or secretary of the organization issuing the same, or the person who issues, makes, or is responsible therefor." Ohio Rev. Code Ann. §3599.09(A) (1988). Furthermore, the category of covered documents is defined by their content—only those publications containing speech designed to influence the voters in an election need bear the required markings.[9] *Ibid.* Consequently, we are not faced with an ordinary election restriction; this case "involves a limitation on political expression subject to exacting scrutiny."

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[8]Arguably, the disclosure requirement places a more significant burden on advocates of unpopular causes than on defenders of the status quo. For purposes of our analysis, however, we assume the statute evenhandedly burdens all speakers who have a legitimate interest in remaining anonymous.

[9]Covered documents are those "designed to promote the nomination or election or defeat of a candidate, or to promote the adoption or defeat of any issue, or to influence the voters in any election . . . ." Ohio Rev. Code Ann. §3599.09(A) (1988).

Meyer v. *Grant*, 486 U. S. 414, 420 (1988).[10]

Indeed, as we have explained on many prior occasions, the category of speech regulated by the Ohio statute occupies the core of the protection afforded by the First Amendment:

> "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order `to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *Roth* v. *United States*, 354 U. S. 476, 484 (1957). Although First Amendment protections are not confined to `the exposition of ideas,' *Winters* v. *New York*, 333 U. S. 507, 510 (1948), `there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates . . . .' *Mills* v. *Alabama*, 384 U. S. 214, 218 (1966). This no more than reflects our `pro-

[10]In *Meyer*, we unanimously applied strict scrutiny to invalidate an election-related law making it illegal to pay petition circulators for obtaining signatures to place an initiative on the state ballot. 486 U. S. 414. Similarly, in *Burson* v. *Freeman*, 504 U. S. ___ (1992), although the law at issue—forbidding campaign-related speech within 100 feet of the entrance to a polling place—was an election-related restriction, both the plurality and dissent applied strict scrutiny because the law was "a facially content-based restriction on political speech in a public forum." *Id.*, at ___ (slip op., at 6); see also *id.*, at ___ (slip op., at 3) (KENNEDY, J., concurring); *id.*, at ___ (slip op., at 1) (STEVENS, J., dissenting).

> found national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,' *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964). In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in *Monitor Patriot Co.* v. *Roy*, 401 U. S. 265, 272 (1971), `it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" *Buckley* v. *Valeo*, 424 U. S. 1, 14–15 (1976).

Of course, core political speech need not center on a candidate for office. The principles enunciated in *Buckley* extend equally to issue-based elections such as the school-tax referendum that Mrs. McIntyre sought to influence through her handbills. See *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 776–777 (1978) (speech on income-tax referendum "is at the heart of the First Amendment's protection"). Indeed, the speech in which Mrs. McIntyre engaged—handing out leaflets in the advocacy of a politically controversial viewpoint—is the essence of First Amendment expression. See *International Society for Krishna Consciousness* v. *Lee*, 505 U. S. ___ (1992); *Lovell v. Griffin*, 303 U. S. 444 (1938). That this advocacy occurred in the heat of a controversial referendum vote only strengthens the protection afforded to Ms. McIntyre's expression: urgent, important, and effective speech can be no less protected than impotent speech, lest the right to speak be relegated to those instances when it is least needed. See *Terminiello* v. *Chicago*, 337 U. S. 1, 4 (1949). No form of speech is entitled to greater constitutional protection than Mrs. McIntyre's.

When a law burdens core political speech, we apply

"exacting scrutiny," and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest. See, *e.g.*, *Bellotti*, 435 U. S., at 786. Our precedents thus make abundantly clear that the Ohio Supreme Court applied a significantly more lenient

standard than is appropriate in a case of this kind.

Nevertheless, the State argues that even under the strictest standard of review, the disclosure requirement in §3599.09(A) is justified by two important and legitimate state interests. Ohio judges its interest in preventing fraudulent and libelous statements and its interest in providing the electorate with relevant information to be sufficiently compelling to justify the anonymous speech ban. These two interests necessarily overlap to some extent, but it is useful to discuss them separately.

Insofar as the interest in informing the electorate means nothing more than the provision of additional information that may either buttress or undermine the argument in a document, we think the identity of the speaker is no different from other components of the document's content that the author is free to include or exclude.[11] We have already held that the

[11]"Of course, the identity of the source is helpful in evaluating ideas. But `the best test of truth is the power of the thought to get itself accepted in the competition of the market' (*Abrams* v. *United States*, [250 U. S. 616, 630 (1919) (Holmes, J., dissenting)]). Don't underestimate the common man. People are intelligent enough to evaluate the source of an anonymous writing. They can see it is anonymous. They know it is anonymous. They can evaluate its anonymity along with its message, as long as they are permitted, as they must be, to read that

State may not compel a newspaper that prints editorials critical of a particular candidate to provide space for a reply by the candidate. *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974). The simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit. Moreover, in the case of a handbill written by a private citizen who is not known to the recipient, the name and address of the author adds little, if anything, to the reader's ability to evaluate the document's message. Thus, Ohio's informational interest is plainly insufficient to support the constitutionality of its disclosure requirement.

The state interest in preventing fraud and libel stands on a different footing. We agree with Ohio's submission that this interest carries special weight during election campaigns when false statements, if credited, may have serious adverse consequences for the public at large. Ohio does not, however, rely solely on §3599.09(A) to protect that interest. Its Election Code includes detailed and specific prohibitions against making or disseminating false statements during political campaigns. Ohio Rev. Code Ann. §§3599.09.1(B), 3599.09.2(B) (1988). These regulations apply both to candidate elections and to issue-driven ballot measures.[12] Thus, Ohio's

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message. And then, once they have done so, it is for them to decide what is `responsible', what is valuable, and what is truth." *New York* v. *Duryea*, 76 Misc. 2d 948, 966–967, 351 N. Y. S. 2d 978, 996 (1974) (striking down similar New York statute as overbroad).

[12]Section 3599.09.1(B) provides:

"No person, during the course of any campaign for nomination or election to public office or office of a political party, by means of campaign materials,

prohibition of anonymous leaflets plainly is not its principal weapon against fraud.[13] Rather, it serves as an aid to enforcement of the specific prohibitions and as a deterrent to the making of false statements by unscrupulous prevaricators. Although these ancillary benefits are assuredly legitimate, we are not persuaded that they justify §3599.09(A)'s extremely broad prohibition.

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including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

"(1) Use the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office or use the term `re-elect' when the candidate has never been elected at a primary, general, or special election to the office for which he is a candidate;

"(2) Make a false statement concerning the formal schooling or training completed or attempted by a candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a candidate; or the period of time during which a candidate attended any school, college, community technical school, or institution;

"(3) Make a false statement concerning the professional, occupational, or vocational licenses held by a candidate, or concerning any position the candidate held for which he received a salary or wages;

"(4) Make a false statement that a candidate or public official has been indicted or convicted of a theft offense, extortion, or other crime involving financial corruption or moral turpitude;

"(5) Make a statement that a candidate has been indicted for any crime or has been the subject of a finding by the Ohio elections commission without

As this case demonstrates, the prohibition encompasses documents that are not even arguably false or misleading. It applies not only to the activities of candidates and their organized supporters, but also to individuals acting independently and using only their own modest resources.[14] It applies not only to elections of public officers, but also to ballot issues that present neither

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disclosing the outcome of any legal proceedings resulting from the indictment or finding;

"(6) Make a false statement that a candidate or official has a record of treatment or confinement for mental disorder;

"(7) Make a false statement that a candidate or official has been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services;

"(8) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate by a person or publication; "(9) Make a false statement concerning the voting record of a candidate or public official;

"(10) Post, publish, circulate, distribute, or otherwise disseminate a false statement, either knowing the same to be false or with reckless disregard of whether it was false or not, concerning a candidate that is designed to promote the election, nomination, or defeat of the candidate. As used in this section, `voting record' means the recorded `yes' or `no' vote on a bill, ordinance, resolution, motion, amendment, or confirmation." Ohio Rev. Code Ann. §3599.09.1(B) (1988).

Section 3599.09.2(B) provides:

"No person, during the course of any campaign in advocacy of or in opposition to the adoption of any ballot proposition or issue, by means of campaign

a substantial risk of libel nor any potential appearance of corrupt advantage.[15] It applies not only to leaflets distributed on the eve of an election, when the opportunity for reply is limited, but also to those distributed months in advance.[16] It applies no matter what the character or strength of the author's interest in anonymity. Moreover, as this case also demonstrates, the absence of the author's name on a

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material, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, a press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

"(1) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a ballot proposition or issue by a person or publication;

"(2) Post, publish, circulate, distribute, or otherwise disseminate, a false statement, either knowing the same to be false or acting with reckless disregard of whether it was false or not, that is designed to promote the adoption or defeat of any ballot proposition or issue." Ohio Rev. Code Ann. §3599.09.2(B) (1988).

We need not, of course, evaluate the constitutionality of these provisions. We quote them merely to emphasize that Ohio has addressed directly the problem of election fraud. To the extent the anonymity ban indirectly seeks to vindicate the same goals, it is merely a supplement to the above provisions.

[13]The same can be said with regard to "libel," as many of the above-quoted election code provisions prohibit false statements about candidates. To the extent those provisions may be underinclusive, Ohio courts also enforce the common-law tort of defamation. See, *e.g.*, *Varanese* v. *Gall*, 35 Ohio St.

document does not necessarily protect either that person or a distributor of a forbidden document from being held responsible for compliance with the election code. Nor has the State 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

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3d 78, 518 N. E. 2d 1177 (1988) (applying the standard of *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), to an Ohio public official's state-law libel claim arising from an election-related advertisement). Like other forms of election fraud, then, Ohio directly attacks the problem of election-related libel; to the extent that the anonymity ban serves the same interest, it is merely a supplement.

[14]We stressed the importance of this distinction in *Buckley* v. *Valeo*, 424 U. S. 1, 37 (1976):

"Treating these expenses [the expenses incurred by campaign volunteers] as contributions when made to the candidate's campaign or at the direction of the candidate or his staff forecloses an avenue of abuse without limiting actions voluntarily undertaken by citizens independently of a candidate's campaign." (Footnote omitted.)

Again, in striking down the independent expenditure limitations of the Federal Election Campaign Act of 1971, 18 U. S. C. §608(e)(1) (1970 ed., Supp. IV) (repealed 1976), we distinguished another section of the statute (§608(b), which we upheld) that placed a ceiling on contributions to a political campaign.

"By contrast, §608(e)(1) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign. Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of

detection. We recognize that a State's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafletting at issue here.

Finally, Ohio vigorously argues that our opinions in *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765

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an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, §608(e)(1) severely restricts all independent advocacy despite its substantially diminished potential for abuse." 424 U. S., at 47.

[15]"The risk of corruption perceived in cases involving candidate elections, *e. g., United States* v. *Automobile Workers*, [352 U. S. 567 (1957)]; *United States* v. *CIO*, [335 U. S. 106 (1948)], simply is not present in a popular vote on a public issue." *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 790 (1978) (footnote omitted).

[16]As the Illinois Supreme Court explained in *People* v. *White*, 116 Ill. 2d 171, 180, 506 N. E. 2d 1284, 1288 (Ill. 1987), which struck down a similar statute: "Implicit in the State's . . . justification is the concern that the public could be misinformed and an election swayed on the strength of an eleventh-hour anonymous smear campaign to which the candidate could not meaningfully respond. The statute cannot be upheld on this ground, however, because it sweeps within its net a great deal of anonymous speech completely unrelated to this concern. In the first place, the statute has no time limit and applies to literature circulated two months prior to an election as well as that distributed two days before.

(1978), and *Buckley* v. *Valeo*, 424 U. S. 1 (1976), amply support the constitutionality of its disclosure requirement. Neither case is controlling: the former concerned the scope of First Amendment protection afforded to corporations; the relevant portion of the latter concerned mandatory disclosure of campaign-related expenditures. Neither case involved a prohibition of anonymous campaign literature.

In *Bellotti*, we reversed a judgment of the Supreme Judicial Court of Massachusetts sustaining a state law that prohibited corporate expenditures designed to influence the vote on referendum proposals. 435 U. S. 765. The Massachusetts court had held that the First Amendment protects corporate speech only if its message pertains directly to the business interests of the corporation. *Id.*, at 771–772. Consistently with our holding today, we noted that the "inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." *Id.*, at 777. We also made it perfectly

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The statute also prohibits anonymous literature supporting or opposing not only candidates, but also referenda. A public question clearly cannot be the victim of character assassination."

The temporal breadth of the Ohio statute also distinguishes it from the Tennessee law that we upheld in *Burson* v. *Freeman*, 504 U. S. ___ (1992). The Tennessee statute forbade electioneering within 100 feet of the entrance to a polling place. It applied only on election day. The state's interest in preventing voter intimidation and election fraud was therefore enhanced by the need to prevent last-minute misinformation to which there is no time to respond. Moreover, Tennessee geographically confined the reach of its law to a 100–foot no-solicitation zone. By contrast, the Ohio law forbids anonymous campaign speech wherever it occurs.

clear that we were not deciding whether the First Amendment's protection of corporate speech is coextensive with the protection it affords to individuals.[17] Accordingly, although we commented in dicta on the prophylactic effect of requiring identification of the source of corporate advertising,[18] that footnote did not necessarily apply to independent communications by an individual like Mrs. McIntyre.

Our reference in the *Bellotti* footnote to the

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[17]"In deciding whether this novel and restrictive gloss on the First Amendment comports with the Constitution and the precedents of this Court, we need not survey the outer boundaries of the Amendment's protection of corporate speech, or address the abstract question whether corporations have the full measure of rights that individuals enjoy under the First Amendment." *Bellotti*, 435 U. S., at 777–778.

In a footnote to that passage, we continued:

"Nor is there any occasion to consider in this case whether, under different circumstances, a justification for a restriction on speech that would be inadequate as applied to individuals might suffice to sustain the same restriction as applied to corporations, unions, or like entities." *Id.*, at 777–778, n. 13.

[18]"Corporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible. Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected. See *Buckley*, 424 U. S., at 66–67; *United States* v. *Harriss*, 347 U. S. 612, 625–626 (1954). In addition, we emphasized in *Buckley* the prophylactic effect of requiring that the source of communication be disclosed. 424 U. S., at 67." *Bellotti*, 435 U. S., at 792, n. 32.

"prophylactic effect" of disclosure requirements cited a portion of our earlier opinion in *Buckley*, in which we stressed the importance of providing "the electorate with information `as to where political campaign money comes from and how it is spent by the candidate.'" 424 U. S., at 66. We observed that the "sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office." *Id.*, at 67. Those comments concerned contributions to the candidate or expenditures authorized by the candidate or his responsible agent. They had no reference to the kind of independent activity pursued by Mrs. McIntyre. Required disclosures about the level of financial support a candidate has received from various sources are supported by an interest in avoiding the appearance of corruption that has no application to this case.

True, in another portion of the *Buckley* opinion we expressed approval of a requirement that even "independent expenditures" in excess of a threshold level be reported to the Federal Election Commission. *Id.*, at 75–76. But that requirement entailed nothing more than an identification to the Commission of the amount and use of money expended in support of a candidate. See *id.*, at 157–159, 160 (reproducing relevant portions of the statute[19]). Though such

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[19]One of those provisions, addressing contributions by campaign committees, requires:

"the identification of each person to whom expenditures have been made by such committee or on behalf of such committee 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)

mandatory reporting undeniably impedes protected First Amendment activity, the intrusion is a far cry from compelled self-identification on all election-related writings. A written election-related document —particularly a leaflet—is often a personally crafted statement of a political viewpoint. Mrs. McIntyre's handbills surely fit that description. As such, identification of the author against her will is particularly intrusive; it reveals unmistakably the content of her thoughts on a controversial issue. Disclosure of an expenditure and its use, without more, reveals far less information. It may be information that a person prefers to keep secret, and undoubtedly it often gives away something about the spender's political views. Nonetheless, even though money may "talk," its speech is less specific, less personal, and less provocative than a handbill—and as a result, when money supports an unpopular viewpoint it is less likely to precipitate retaliation.

Not only is the Ohio statute's infringement on speech more intrusive than the *Buckley* disclosure requirement, but it rests on different and less powerful state interests. The Federal Election Campaign Act of 1971, at issue in *Buckley*, regulates only candidate elections, not referenda or other issue-based ballot measures; and we construed "independent expenditures" to mean only those expenditures that "expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80. In candidate elections, the Government can identify a compelling state interest in avoiding the corruption

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(reprinted

in *Buckley*, 424 U. S., at 158).

A separate provision, 2 U. S. C. §434(e) (reprinted in *Buckley*, 424 U. S., at 160), requires individuals making contributions or expenditures to file statements containing the same information.

that might result from campaign expenditures. Disclosure of expenditures lessens the risk that individuals will spend money to support a candidate as a *quid pro quo* for special treatment after the candidate is in office. Curriers of favor will be deterred by the knowledge that all expenditures will be scrutinized by the Federal Election Commission and by the public for just this sort of abuse.[20] Moreover, the federal Act contains numerous legitimate disclosure requirements for campaign organizations; the similar requirements for independent expenditures serve to ensure that a campaign organization will not seek to evade disclosure by routing its expenditures through individual supporters. See *Buckley*, 424 U. S., at 76. In short, although *Buckley* may permit a more narrowly drawn statute, it surely is not authority for upholding Ohio's open-ended provision.[21]

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[20]This interest also serves to distinguish *United States* v. *Harriss*, 347 U. S. 612 (1954), in which we upheld limited disclosure requirements for lobbyists. The activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption.

[21]We note here also that the federal Act, while constitutional on its face, may not be constitutional in all its applications. Cf. *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U. S. 87, 88 (1982) (holding Ohio disclosure requirements unconstitutional as applied to "a minor political party which historically has been the object of harassment by government officials and private parties"); *Buckley*, 424 U. S., at 74 (exempting minor parties from disclosure requirements if they can show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties").

VI

Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. See generally J. S. Mill, On Liberty, in On Liberty and Considerations on Representative Government 1, 3–4 (R. McCallum ed. 1947). It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society. The right to remain anonymous may be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse. See *Abrams* v. *United States*, 250 U. S. 616, 630–31 (1919) (Holmes, J., dissenting). Ohio has not shown that its interest in preventing the misuse of anonymous election-related speech justifies a prohibition of all uses of that speech. The State may, and does, punish fraud directly. But it cannot seek to punish fraud indirectly by indiscriminately outlawing a category of speech, based on its content, with no necessary relationship to the danger sought to be prevented. One would be hard pressed to think of a better example of the pitfalls of Ohio's blunderbuss approach than the facts of the case before us.

The judgment of the Ohio Supreme Court is reversed.

It is so ordered.