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HEADLINE: Justices Allow Unsigned Political Fliers

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BODY:

Casting doubt on the election laws of nearly every state, the Supreme Court ruled today that the right to distribute anonymous campaign literature is protected by the constitutional guarantee of free speech.

The 7-to-2 decision clearly applied to pamphlets and leaflets of the sort that people distribute to express their own views on candidates or campaign issues. Its application to paid campaign advertising was less certain, and the Court said it was expressing no view on disclosure requirements for radio and television advertising. Nonetheless, the ruling appears likely to prompt a new round of challenges to the disclosure requirements contained in Federal and numerous state election laws.

"Anonymity is a shield from the tyranny of the majority," Justice John Paul Stevens said in a majority opinion that canvassed the history of anonymous speech from Samuel Clemens's use of the pen name Mark Twain to the Federalist papers, a series of essays written anonymously by James Madison, Alexander Hamilton and John Jay and published in 1787 and 1788 to argue the case for ratifying the Constitution.

Today's decision declared unconstitutional an 80-year-old Ohio law that made it a crime to distribute any "political communication," designed to influence voters, without including the name and address of the person responsible. Nearl all states, including Connecticut and New Jersey, have similar laws; a New York law was declared unconstitutional in the state courts in the 1970's.

The Ohio law was challenged by a woman who was convicted and fined $100 for distributing anonymous leaflets in opposition to a local tax proposal, an activity that Justice Stevens called "the essence of First Amendment expression." The Ohio Supreme Court upheld the law and the fine in 1993.

The woman, Margaret McIntyre, of Westerville, Ohio, died last year, and her appeal was carried forward by her husband, Joseph.

"No form of speech is entitled to greater constitutional protection than Mrs McIntyre's," Justice Stevens said in his opinion today.

He said the Court was addressing only written communications and was expressing no view on disclosure laws for political advertising on radio and television. He also said the Court did not mean to cast doubt on the validity

of laws requiring disclosure of the identities of campaign contributors, such as the provisions of the Federal campaign law the Court upheld in a landmark decision, Buckley v. Valeo, in 1976.

Despite his disclaimers, much of Justice Stevens's language was quite broad, leading Justice Antonin Scalia to predict in a dissenting opinion that "it may take decades to work out the shape of this newly expanded right-to-speak-incognito."

"A whole new boutique of wonderful First Amendment litigation opens its door," Justice Scalia said. Chief Justice William H. Rehnquist joined the dissenting opinion.

The majority opinion was joined by Justices Sandra Day O'Connor, Anthony M. Kennedy, David H. Souter, Stephen G. Breyer and Ruth Bader Ginsburg, who also filed a concurring opinion expressing the view that the view that the decision was "hardly sensational" and quite narrow.

Justice Clarence Thomas agreed with the majority but did not join Justice Stevens's opinion. Instead, he offered his own historical analysis and concluded that the framers of the Constitution believed that "anonymous political leafletting" was part of the concept of free speech and a free press.

He said he reached his conclusion "in light of the framers' universal practice of publishing anonymous articles and pamphlets," and the "remarkable extent to which the framers relied on anonymity." A historical inquiry of this sort was the only valid approach to constitutional analysis, Justice Thomas said.

Justice Scalia is also a proponent of that approach, and the two Justices nearly always reach the same outcome in constitutional cases. For that reason, the difference between them today was particularly interesting.

To show that anonymous electioneering was popular was not to prove that it was part of the original understanding of the First Amendment, Justice Scalia wrote, adding that because governments at the time did not try to stop anonymous publications, it was more likely that the issue "simply never arose."

Justice Scalia said that when the historical record is ambiguous, "constitutional adjudication necessarily involves not just history, but judgment." In this case, he added, campaign disclosure laws carry "a strong presumption of constitutionality" because they have been so widely endorsed by the states.

"Such a universal and long established American legislative practice must be given precedence, I think, over historical and academic speculation regarding a restriction that assuredly does not go to the heart of free speech," Justice Scalia continued. He said the decision would increase "mudslinging" in political campaigns by "eliminating accountability."

In the majority opinion, McIntyre v. Ohio Elections Commission, No. 93-986, Justice Stevens said the state's principal justification for the law, the prevention of fraud and libel, was legitimate but insufficient to justify the law's coverage of documents that carried no suggestion of fraud. He said the

Ohio election code contained specific prohibitions against false statements that met the state's needs in that area.

The Court issued a second First Amendment decision today, ruling 9 to 0 that a 1935 Federal law that prohibits beer labels from displaying alcohol content is unconstitutional.

In an opinion for eight Justices, Justice Thomas said the law violated the brewers' commercial speech rights because the Government's justifications for it were insubstantial and the law was not rationally designed to serve those interests. The Government's principal justification, which failed to persuade two lower Federal courts, was that the ban was necessary to prevent brewers from engaging in "strength wars" by offering a higher alcohol content than their competitors. The challenge was brought by the Coors Brewing Company, a subsidiary of the Adolph Coors Company based in Golden, Colo.

Noting numerous inconsistencies in the Federal law, which requires that the alcohol content of some wine be disclosed on the label and does not consistently regulate the advertising of alcohol content, Justice Thomas said that "the irrationality of this unique and puzzling regulatory framework insures that the labeling ban will fail" to achieve the Government's purpose. The decision upheld a 1993 ruling by the United States Court of Appeals for the 10th Circuit, in Denver.

Justice Stevens wrote a separate concurring opinion in the case, Rubin v. Coors Brewing, No. 93-1631. Calling the law "nothing more than an attempt to blindfold the public," he argued that it should be condemned as a restriction on truthful speech rather than evaluated under the relaxed standard the Court applies to advertising and other commercial speech.

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