

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

EDMUND CORSI,
GEAUGA CONSTITUTIONAL
COUNCIL,

Appellants,

-VS-

OHIO ELECTIONS COMMISSION

Appellee.

)
)
) CASE NO: 11CVF-06-7794
) (O.E.C. Case No. 2010R-275)
)
) JUDGE J. BENDER
)
)
) R.C. 119 Administrative Appeals
) OEC Case No. 2010R-275
)
) MERIT BRIEF OF APPELLANTS
EDMUND CORSI, GEAUGA
CONSTITUTIONAL COUNCIL

CLERK OF COURTS

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FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO

I. INTRODUCTION

Now comes Appellant Edmund Corsi ("Mr. Corsi"), and only to the extent necessary to afford relief, the "Geauga Constitutional Council" ("GCC") and hereby appeals from the June 9, 2011 order of the Ohio Elections Commission ("OEC") – denominated the "Decision and Finding" (the "Order"). concluding as follows:

[T]he Geauga Constitutional Council (GCC) was a Political Action Committee (PAC) as that term is defined in Ohio Revised Code §3517.01(B)(8) and that there had been violations of R.C. 3517.10(A) and §3517.10(D) . . . due to the fact that, as a PAC, the GCC was obligated to file a Designation of Treasurer with the appropriate filing office to establish itself as a PAC and then to subsequently file the campaign finance reports required of a properly registered PAC. neither of which filings were made.¹

The basis for this decision was that Edmund Corsi blogged, pamphleteered, and wrote letters to the editor about political issues, and organized educational events on public policy and constitutional rights in his community, sometimes with the assistance of friends and neighbors.

Because the Order fails to take account of Mr. Corsi's First Amendment rights, it cannot stand:

¹ June 9, 2011 Decision and Finding at 1.

independent political bloggers and pamphleteers cannot be subjected to onerous preregistration, disclosure, and reporting requirements prior to being permitted to express their message.

II. FACTS

In early 2008, Geauga County, Ohio citizen Edmund Corsi, a self-avowed “constitutionalist” and limited government proponent, frustrated by the political process, the candidates it was producing, their public policy stances, and the political philosophy of the day, made a conscious decision to become more civically engaged. It wasn’t long before he ruffled the feathers of those entrusted with official authority, who then used that authority to attempt to silence him. This case is about whether Ohio’s campaign finance laws may be used as a political weapon to silence independent politically-minded bloggers and pamphleteers.

Although the Ohio Elections Commission declined to find Mr. Corsi personally liable for these violations, it did so only on the basis that “that there is good cause present not to impose a fine or refer the matter for further prosecution.”² Meanwhile, it elected to impose registration and reporting requirements on the “Gauga Constitutional Council.” Because GCC is a non-entity with no members, and effectively nothing more than Mr. Corsi’s pseudonym, used when he blogs, pamphleteers, and organizes educational events, the burden of these registration, disclosure, and reporting requirements fall directly on Mr. Corsi, and he is the appropriate party to appeal. GCC is included as an appellant only to the extent necessary to afford relief.

A. Mr. Corsi’s political blogging

Since 2008, Mr. Corsi has been the sole administrator and writer for his weblog (“blog”) www.GaugaConstitutionalCouncil.org.³ He exclusively controls the content of the website.⁴

² June 9, 2011 Decision and Finding at 8.

³ Tr. of April 28, 2011 Proceedings at 44-46 (testimony of Edmund Corsi), Record at E1155-E59-61.

⁴ Tr. of April 28, 2011 Proceedings at 68-69 (testimony of Edmund Corsi), Record at E1155-E83-84; July 27, 2010 Corsi Aff. at ¶ 2, Record at E1155-F95; April 28, 2011 Corsi Aff. at ¶ 2, Record at E1155-G50.

Through his website domain, Mr. Corsi uses the pseudonym www.GeaugaConstitutionalCouncil.org, or "Geauga Constitutional Council" when expressing his political views, rather than his real name, because he feels that anonymity allows him to effectively criticize government officials in his community without fear of reprisal and to give the views expressed more credibility.⁵ Thus, unless he is posting an article that has located and approved of that someone else has written, which will often have their name attached, his "blog posts" are anonymous, coming only from "GCC."

The website contained regular postings of commentaries and information on political candidates and issues. Mr. Corsi is the sole author of the content of the website.⁶ Through his website, Mr. Corsi was critical of Edward Ryder ("Mr. Ryder"),⁷ the chairman of the Geauga County Republican Party and also head of the Geauga County Board of Elections ("BOE"),⁸ and of government officials and political candidates that Mr. Ryder personally and professionally supported.

It was Mr. Ryder who ostensibly used his official role as head of the BOE to ensure that Mr. Corsi was brought up on charges. However, Mr. Corsi's pseudonym proved to be effective: Mr. Ryder testified that it took he and the BOE over two months to determine who was behind the GCC web domain, and how to reach him.

B. Mr. Corsi's pamphleteering

Mr. Corsi has also written, produced and distributed pamphlets and flyers expressing his political views.⁹ He pays for most, if not all, of the printing of the pamphlets and flyers he

⁵ Tr. of April 28, 2011 Proceedings at 65 (testimony of Edmund Corsi), Record at E1155-E80; July 27, 2010 Corsi Aff. at ¶¶ 15, Record at E1155-F96; April 28, 2011 Corsi Aff. at ¶¶ 7, 11, 14, 15, Record at E1155-G50, G51.

⁶ April 28, 2011 Spotts Aff. at ¶¶ 7-8, 34-37, Record at E1155-G45-46, G48; April 28, 2011 Corsi Aff. at ¶ 12, Record at E1155-G51; April 27, 2011 Teare Aff. at ¶¶ 6-7, Record at E1155-G57.

⁷ April 28, 2011 Corsi Aff. at ¶ 9, Record at E1155-G51.

⁸ Tr. of April 28, 2011 Proceedings at 18 (testimony of Edward Ryder), Record at E1155-E33.

⁹ Tr. of April 28, 2011 Proceedings at 44-46 (testimony of Edmund Corsi), Record at E1155-E59-61.

distributes.¹⁰ The only pamphlet distributed to the public contains a "mission statement" of the GCC and a "voter guide" with "most wanted" and "most unwanted" public officials - - notably, this "voter guide" does not appear to be oriented towards influencing elections, despite its name: almost none of the public officials upon which commentary appears were running for office or up for election at the time the pamphlet was distributed.¹¹

C. Mr. Corsi's educational events

Mr. Corsi held events where speakers would address issues of public policy, such as 2nd Amendment rights. No candidate for office paid for these events; any money exchanging hands was an arms-length transaction for seats to an event - - any elected official that attended the event paid the same price of any other person attending.¹²

D. Letters to the Editor

Mr. Corsi and others have written letters to the editor of the local newspaper, but these letters were signed in these persons' individual capacities, not as representatives of an entity.¹³

E. Meetings

Mr. Corsi would also have occasional meetings with others at a local coffee house to discuss political issues.¹⁴

F. Independence from politics

Although Mr. Corsi writes about and discusses political and philosophical issues, he has

¹⁰ Tr. of April 28, 2011 Proceedings at 50 (testimony of Edmund Corsi). Record at E1155-E65; July 27, 2010 Corsi Aff. At ¶ 4, Record at E1155-F95; April 28, 2011 Corsi Aff. at ¶ 3, Record at E1155-G50.

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¹² Tr. of April 28, 2011 Proceedings at 61 (testimony of Edmund Corsi). Record at E1155-E76; July 27, 2010 Corsi Aff. at ¶¶ 11-12, Record at E1155-F96; April 28, 2011 Corsi Aff. at ¶¶ 26-28, Record at E1155-G52-53; April 28, 2011 Grendell Aff. at ¶¶ 6-7, 9, Record at E1155-G54-56.

¹³ Tr. of April 28, 2011 Proceedings at 65 (testimony of Edmund Corsi). Record at E1155-E80; April 20, 2011 Spotts Aff. at ¶ 24, Record at E1155-G47; April 28, 2011 Corsi Aff. at ¶ 30, Record at E1155-G53; April 27, 2011 Teare Aff. at ¶¶ 23-24, Record at E1155-G58.

¹⁴ Tr. of April 28, 2011 Proceedings at 67 (testimony of Edmund Corsi). Record at E1155-I:82.

never, either in his own name or under the pseudonym GCC, coordinated his activities with the campaign of any candidate for elected office.¹⁵ Mr. Corsi has not raised money for or contributed money to any candidate for elective office via the GCC.¹⁶ There appears to be no dispute otherwise.

G. GCC

GCC is simply a pseudonym that Mr. Corsi, and occasionally others, whether correctly or not, have used when blogging, pamphleteering, and/or holding educational events. It is not a legal entity¹⁷ – it is not a corporation, registered partnership, or and LLC, and has no organizational documents, by-laws, regulations, or membership, and does not file tax forms. GCC has no treasurer, secretary, or chairman.¹⁸ It has no employer identification number or bank account.¹⁹ No individual has any vote on any acts undertaken by GCC. No individual holds share in or has any claim on any property of GCC. Indeed, GCC owns no property, holds no assets and has no liabilities. It does not have any separate existence from Mr. Corsi.

H. Collaboration with others.

Mr. Corsi did utilize the services of several other people to help promulgate his views, including a webhosting service and a person allowing her residence to be the repository of mail sent to GCC,²⁰ and several persons volunteered at various times to hand out the flyers he personally authored and printed.²¹

¹⁵ Tr. of April 28, 2011 Proceedings at 65 (testimony of Edmund Corsi). Record at E1155-E80; April 28, 2011 Corsi Aff. at ¶ 31, Record at E1155-G53; April 27, 2011 Teare Aff. at ¶ 25, Record at E1155-G58.

¹⁶ July 29, 2010 Corsi Aff. at ¶ 8, Record at E1155-F96.

¹⁷ Tr. of April 28, 2011 Proceedings at 67 (testimony of Edmund Corsi). Record at E1155-E82; July 27, 2010 Corsi Aff. at ¶ 5; April 28, 2011 Corsi Aff. at ¶ 19, Record at E1155-G52.

¹⁸ July 27, 2010 Corsi Aff. at ¶ 6, Record at E1155-F95; April 28, 2011 Corsi Aff. at ¶ 20, Record at G52.

¹⁹ July 27, 2010 Corsi Aff. at ¶ 8, Record at E1155-F96; April 28, 2011 Corsi Aff. at ¶ 22, Record at E1155-G52.

²⁰ Tr. of April 28, 2011 Proceedings at 57 (testimony of Edmund Corsi). Record at E1155-E72.

²¹ April 27, 2011 Teare Aff. at ¶ 8, Record at E1155-G57; April 28, 2011 Spotts Aff. at ¶ 9, Record at E1155-G46.

III. STATEMENT OF THE CASE

On April 30, 2010, the BOE lodged a formal Complaint with the OEC. It alleged that Mr. Corsi and the GCC violated Ohio's campaign finance laws. Specifically, it alleged that (1) "Mr. Corsi is the leading voice behind a local group called the 'Geauga Constitutional Council' in Geauga County;" (2) "the Board has reason to believe that the [GCC] falls under the definition of a Political Action Committee pursuant to R.C. 3517.01(B)(8);" (3) "the [GCC] has not filed a designation of treasurer pursuant to R.C. 3517.10(D)(1) with the Geauga County Board of Elections;" (4) "the [GCC] has failed to file a statement setting forth in detail, contributions and expenditures;" (5) "the board has evidence that the [GCC] has and operates a website supporting and opposing candidates, has received funds from candidates and produces a pamphlet supporting and opposing candidates which is distributed throughout Geauga County."²²

In support of these allegations, the BOE attached documentation to its Complaint to the OEC, including pages from www.GeaugaConstitutionalCouncil.org articulating GCC's "Mission Statement" and praising and criticizing the positions and qualifications of various elected government officials, letters to the editor from Mr. Corsi criticizing Mr. Ryder and praising and urging voters to vote for Judge Eugene Lucci, a letter to the editor from Thomas Teare ("Mr. Teare") criticizing Mr. Ryder and defending the GCC, and evidence that state senator Tim Grendell purchased several tickets at face value for two separate GCC events.²³

The OEC received the BOE's Complaint on May 3, 2010 and reformulated the allegations that BOE had set forth. The OEC explained that it had "received a Complaint alleging violations of elections law pursuant to the Ohio Revised Code: 3517.20(A)(2) (Improper

²² April 30, 2010 Letter of the Geauga County Board of Elections to Ohio Elections Commission, Record at E1155-F73.

²³ See Affidavit of Ed Corsi.

Disclaimer).²⁴

On August 4, 2010, Mr. Corsi filed an Answer and a Motion for Judgment on the Pleading, based on Mr. Corsi's First Amendment rights. Therein, Mr. Corsi properly preserved the constitutional challenges to R.C. 3517 articulated herein.

However, OEC lost this Motion, and did not review it prior to Mr. Corsi's October of 2010 preliminary review hearing. During that hearing, after prompting from Mr. Corsi's counsel, OEC staff found the Motion and distributed it to commission members, who then summarily denied it without reading it, discussing its contents, or discussing Mr. Corsi's First Amendment rights in any other capacity. Instead, Mr. Corsi's case was set for a full hearing.

OEC conducted this hearing on April 28, 2011, receiving affidavits, exhibits and testimony into evidence. Thereafter, OEC concluded that GCC was a Political Action Committee and was therefore required to file a Designation of Treasurer and the required reports on its contributions and expenditures.

On June 9, 2011, the OEC confirmed this ruling and issued a written opinion setting forth its reasoning.

IV. STANDARD OF REVIEW

"R.C. 119.12 provides the standard of review [of an agency adjudication] for the common pleas court in that the court may affirm the order if it is supported by reliable, substantial, and probative evidence, and is in accordance with law."²⁵ Ohio's Courts of Common Pleas must conduct a *de novo* review of questions of law, exercising its independent judgment in determining whether the administrative order is "in accordance with law."²⁶

²⁴ Correspondence from Ohio Elections Commission.

²⁵ *Flannery v. Ohio Elections Comm'n* (10th Dist. Ct. App. 2004), 156 Ohio App. 3d 134, 139.

²⁶ *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St.3d 466, 471, 1993 Ohio 182, 613 N.E.2d 591.

V. ISSUES PRESENTED

The ultimate issue before this Court is whether onerous preregistration, disclosure, and reporting requirements can be imposed on independent political bloggers and pamphleteers before they may engage in, and commensurate with their engagement in, protected political speech. In making this determination, this Court must first determine whether rights enshrined by the First and Fourteenth Amendments of the United States Constitution and Section 11, Article I of the Ohio Constitution protect Mr. Corsi's speech, in his capacity as an independent blogger and pamphleteer.

Upon so determining, this Court must consider whether Mr. Corsi's occasional interaction with others, in the course of his blogging, pamphleteering, and other educational projects, strips him of the aforesaid protections, relegating him (along with unidentified citizens who may assist him) subject to characterization as a Political Action Committee, and imposition of the disclosure and reporting requirement that accompany that characterization. Answering this question in the negative then requires the Order of the Ohio Elections Commission be overturned, and relevant portions of R.C. 3517 stricken, deemed unconstitutional as-applied to Mr. Corsi through GCC, or construed in a manner so as to render them constitutional.

VI. LAW AND ARGUMENT

Imposing preregistration, disclosure, and reporting requirements on Mr. Corsi, through their imposition on GCC, in his capacity as an independent political bloggers and pamphleteers transgresses multiple constitutional boundaries, and must be prohibited.

A. Constitutional Background: Political speech is highly protected.

The Supreme Court of the United States observes that "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of

government established by our Constitution.”²⁷ 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.”²⁸ Although First Amendment protections are not confined to “the exposition of ideas,”²⁹ “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”³⁰ This no more than reflects our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”³¹ 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.³² As the Court observed in *Monitor Patriot Co. v. Roy*,³³ “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. Consequently, when a statutory provision burdens First Amendment rights, it must be justified by a compelling state interest.”³⁴

B. Ohio regulations imposed on Mr. Corsi through GCC inhibit his political speech.

Against the backdrop of these principles, the Ohio campaign finance applied to Mr. Corsi,

²⁷ *Buckley v. Valeo* (1976), 424 U.S. 1, 96 S.Ct. 612.

²⁸ *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498 (1957).

²⁹ *Winters v. New York*, 333 U.S. 507, 510, 68 S.Ct. 665, 667, 92 L.Ed. 840 (1948).

³⁰ *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437, 16 L.Ed.2d 484 (1966).

³¹ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964).

³² *Buckley v. Valeo* (1976), 424 U.S. 1, 96 S.Ct. 612.

³³ *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed.2d 35 (1971).

³⁴ *Williams v. Rhodes*, 393 U.S., at 31, 89 S.Ct., at 10; *NAACP v. Button*, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963).

through application to GCC, first define "Political Action Committee," and then proscribe the affirmative disclosure, registration, and reporting duties to which a PAC must adhere.

Specifically, R.C. 3517.01(B)(8) defines a PAC as follows:

"Political action committee" means a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, a political contributing entity, or a legislative campaign fund.

Thus, when (1) two or more Ohio citizens combine, (2) to engage in express advocacy, (3) with the primary or major purpose of, (4) influencing an election or supporting or opposing a candidate, they constitute a Political Action Committee under Ohio law. Once two or more citizens are deemed a PAC, their political speech is silenced until they engage register with the state; and their capacity to continue to speak is predicated on their adherence to further disclosure and reporting requirements. Specifically, R.C. 3517.10(D)(1) mandates:

Prior to receiving a contribution or making an expenditure, every campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity shall appoint a treasurer and shall file, on a form prescribed by the secretary of state, a designation of that appointment, including the full name and address of the treasurer and of the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity. (Emphasis added).

Further, R.C. 3517.10(D)(4) mandates that any expenditure by a PAC "in excess of twenty five dollars shall be vouched for by a receipted bill, stating the purpose of the expenditure, that shall be filed with the statement of expenditures."

Finally, unregistered and unapproved speech is prohibited, chilled, and punished by stringent criminal penalties: OAC 3517-1-14(B) authorizes fines of up to \$500 per day for violations such as those alleged of Mr. Corsi through GCC.

C. Mr. Corsi is an *independent* political blogger and pamphleteer.

Mr. Corsi acts independently, both in the plain and technical meaning of that term, when he blogs and pamphleteers. In *ACLU of Nevada v. Heller*, the U.S. Court of Appeals for the Ninth Circuit addressed and emphasized the importance of independent action, for First Amendment analysis, relying in part, on *McIntyre v. Ohio* (discussed more fully below). The *Heller* court explained how the *McIntyre* Court had used the word “independently”:

“Independence,” in this context of campaign regulation, usually refers to the absence of ties between someone like McIntyre (or ten allied McIntyres) and a political campaign. *See, e.g.* 2 U.S.C. § 431(17) (“The term ‘independent expenditure’ means an expenditure by a person - (A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.”).³⁵

Thus, one acts independently, when he is not acting in concert or cooperation with a political candidate. Moreover, as *ACLU v. Heller* explained, one need not act alone, as a “lone wolf,” to be considered independent for First Amendment purposes: “although the Court in *McIntyre* referred to ‘individuals acting independently and using only their own modest resources,’ 514 U.S. at 351, we think it doubtful that the court used ‘independently’ to mean ‘individually.’ That would have been redundant.”³⁶

There was no allegation by the Geauga County BOE that Mr. Corsi coordinated with any candidate’s political campaign; nor does the OEC make that finding or rest its decision on that basis. Consequently, it is a settled fact that Mr. Corsi blogged and pamphleteered independently. This independent blogging and pamphleteering constitutes the class of activities against which the application of R.C. 3517 must stand.

³⁵ *Heller* at 990.

³⁶ *Id.*

D. Imposition of the PAC label and disclosure requirements upon independent political bloggers and pamphleteers renders R.C. 3517.01(A)(8) and R.C. 3517.10(A), (D)(1), and (D)(4), in tandem, unconstitutionally overbroad.

The overbreadth doctrine provides protection to First Amendment freedoms because those freedoms are “delicate and vulnerable.”³⁷ The showing that a law punishes a “substantial” amount of protected free speech, “judged in relation to the statute’s plainly legitimate sweep,”³⁸ suffices to invalidate all enforcement of that law, “until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression.”³⁹

This remedy exists out of concern that the threat of enforcement of an overbroad law may deter or “chill” constitutionally protected speech—especially when the overbroad statute imposes criminal sanctions.⁴⁰ For “many persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech, harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas.”⁴¹

The Ohio Elections Commission is the agency charged with developing expertise in and interpreting and applying Ohio’s elections laws. In imposing those laws on independent Ohio political bloggers and pamphleteers, so as to prohibit their speech absent registration, disclosure,

³⁷ *N.A.A.C.P. v. Button* (1963), 371 U.S. 415, 433, 9 L.Ed.2d 405, 418. See *Akron v. Rowland* (1993), 67 Ohio St.3d 374, 387.

³⁸ *Broadrick v. Oklahoma*, 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

³⁹ *Id.*, at 613, 93 S.Ct. 2908. See also *Virginia v. Black*, 538 U.S. 343, 367, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003); *New York v. Ferber*, 458 U.S. 747, 769, n. 24, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982); *Dombrowski v. Pfister*, 380 U.S. 479, 491, and n. 7, 497, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965).

⁴⁰ See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 634, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980); *Bates v. State Bar of Ariz.*, 433 U.S. 350, 380, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977); *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

⁴¹ *Dombrowski*, *supra*, at 486-487, 85 S.Ct. 1116.

and reporting. Ohio, through the OEC, has punished a substantial amount of innocent speech. Indeed, any Ohioan who posts positive or negative opinions regarding an elected official on his or her Facebook or Twitter account, or hands out flyers, perhaps with others, advocating for the passage or failure of a local school levy, could be considered a PAC subject to regulation.

In *Federal Election Commission v. National Conservative Political Action Committee*, a political committee challenged a federal law making it a criminal offense for independent political committees to spend more than \$1,000 to promote for election a presidential candidate who has accepted public financing.⁴² The government argued that the limitation was constitutional because political committees, who can pool financial resources, present a greater danger of corruption than individuals.⁴³ The Court stated that this legislation “is a fatally overbroad response to that evil. It is not limited to multimillion dollar war chests: its terms apply equally to informal discussion groups that solicit neighborhood contributions to publicize their views about a particular presidential candidate.”⁴⁴

Likewise, in *North Carolina Right to Life, Inc. v. Bartlett*, the Fourth Circuit rejected a state statute imposing reporting requirements on “political committees.” The statute defined a political committee as “a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election.”⁴⁵ The court held the statute was vague and overbroad because it covered groups engaged only in issue advocacy, “compel[ling] the speaker to hedge and trim.”⁴⁶

⁴² 470 U.S. 480 (1985).

⁴³ *Id.*, at 497,498.

⁴⁴ *Id.*

⁴⁵ *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), at 712.

⁴⁶ *Id.* at 713 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)).

In *Citizens United*, the Supreme Court of the United States foreshadowed this possibility, remarked on the extreme impropriety of such an infringement (“Soon, however, it may be that Internet sources, such as blogs and social networking Web sites, will provide citizens with significant information about political candidates and issues. Yet, § 441b would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds.”).⁴⁷ R.C. 3517.01(A)(8) must be rendered inoperative until it is redrafted or otherwise constructed or interpreted so as to not preclude the basic and clearly-protected political speech of independent bloggers and pamphleteers.

E. Imposition of registration, disclosure, and reporting requirements violates Mr. Corsi’s right to anonymous political speech.

On their face, and particularly when applied to independent bloggers and pamphleteers such as Mr. Corsi, R.C. 3517.01(A)(8) and R.C.3517.10 violates the right to speak anonymously, i.e. without disclosure. “[C]ompelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.”⁴⁸ The Supreme Court of the United States has “recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest: putative “interests of the State must survive exacting scrutiny.”⁴⁹ The Court has also “insisted that there be a ‘relevant correlation’ or ‘substantial relation’ between the

⁴⁷ See *Citizens United* at 913.

⁴⁸ E. g., *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 83 S.Ct. 889, 9 L.Ed.2d 929 (1963); *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); *Shelton v. Tucker*, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); *Bates v. Little Rock*, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); *NAACP v. Alabama*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958).

⁴⁹ *NAACP v. Alabama*, 357 U.S., at 463, 78 S.Ct., at 1172. See also *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 546, 83 S.Ct. 889, 893, 9 L.Ed.2d 929 (1963); *NAACP v. Button*, 371 U.S., at 438, 83 S.Ct., at 340; *Bates v. Little Rock*, 361 U.S., at 524, 80 S.Ct., at 417.

governmental interest and the information required to be disclosed.⁵⁰ This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure.⁵¹

In *McIntyre*, a case where an Ohioan sought to distribute pamphlets opposed to a levy tax increase without disclosures on the pamphlets, the Supreme Court of the United States considered the question of 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."⁵² The Court invalidated the Ohio statute, acknowledging that (1) "[t]he freedom to publish anonymously is protected by the First Amendment, and . . . extends beyond the literary realm to the advocacy of political cause;" and "the prohibition of anonymous campaign literature abridges the freedom of speech in violation of the First Amendment."⁵³

The Court reasoned that "the ordinance plainly applies even when there is no hint of falsity or libel."⁵⁴ "the name and the author add little, if anything to the reader's ability to evaluate the document's message;"⁵⁵ and moreover, "the category of documents covered is defined by their content-only, those publications containing speech designed to influence the voters in an election need bear the required markings."⁵⁶ Finally, the Court offered the following

⁵⁰ See *Pollard v. Roberts*, 283 F.Supp. 248, 257 (ED Ark.) (three-judge court), aff'd, 393 U.S. 14, 89 S.Ct. 47, 21 L.Ed.2d 14 (1968) per curiam).

⁵¹ *NAACP v. Alabama*, supra, 357 U.S., at 461, 78 S.Ct., at 1171. Cf. *Kusper v. Pontikes*, 414 U.S., at 57-58, 94 S.Ct., at 307-308.

⁵² *McIntyre v. Ohio Elections Commission* (1995), 514 U.S. 334, at 336.

⁵³ *Id.*, at Syllabus.

⁵⁴ *Id.*, at 344.

⁵⁵ *Id.*, at 348, 349.

⁵⁶ *Id.*, at 345.

reasoning:

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.⁵⁷

Similarly here, GCC does not coordinate with any candidate's campaign.⁵⁸ Mr. Corsi's name cannot be found on the website www.geaugaconstitutionalcouncil.org or on any pamphlets circulated on behalf of GCC; and in fact, Mr. Corsi uses GCC as a pseudonym to effectively criticize his government and avoid retaliation.⁵⁹ Mr. Corsi's pamphlets and posts on www.geaugaconstitutionalcouncil.org are clearly political in nature, and they are clearly "personally crafted statements of a political viewpoint" that reveal "the content of his thoughts on controversial issues."⁶⁰ Through them, Mr. Corsi expresses controversial political viewpoints, and is highly critical of local officials that have some level of authority over his liberty. This much is confirmed by the Complaint in this case - - once Mr. Corsi was determined to be the "leading voice behind a local group," politicians who he has criticized took action to ensure that the imposition of financial penalties upon him.

Further, if Mr. Corsi is forced to register the vehicle for the expression of his own political views with the state, his loss of his anonymity is irrevocable. As the Supreme Court has

⁵⁷ Id., at 355.

⁵⁸ July 29, 2010 Affidavit of Edmund Corsi, Paragraph 20.

⁵⁹ July 29, 2010 Affidavit of Edmund Corsi, Paragraph 15.

⁶⁰ July 29, 2010 Affidavit of Edmund Corsi, Paragraphs 4, 7, 24.

explained in a critical case involving a requirement that speakers first register with government. “[t]he requirement that a canvasser must be identified in a permit application filed in the mayor’s office and available for public inspection necessarily results in a surrender of that anonymity.”⁶¹

Moreover, just as the statute in *McIntyre*, once Mr. Corsi’s work with others is determined to constitute a PAC, R.C. 3517.10 disclosure, registration, and reporting requirements apply “even when there is no hint of falsity or libel.” Indeed, no such allegation is even made here. Instead, the statute broadly attacks speech on the basis of its content only: “political publication.”

Finally, there are two predominant reasons why anonymity is sometimes advantageous. First, “[t]he decision to favor 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.”⁶² Second, “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.”⁶³ Mr. Corsi has articulated both of these concerns for his own anonymity. He has explained that he “use[s] the GCC web domain as a pseudonym to expose and criticize local government officials without fear of reprisal.”⁶⁴ and that he “use[s] the suffix “.org” and the term “council” to give [his] views more credence and credibility.”⁶⁵

Accordingly, application of the statute to Mr. Corsi or GCC would flagrantly violate the First Amendment principles articulated in *McIntyre*. As against the right of anonymous political speech, R.C. 3517.01(A)(8) and R.C. 3517.10(D) are unconstitutional, either on their face, or as

⁶¹ *Watchtower* at 166.

⁶² *McIntyre* at 341-42.

⁶³ *McIntyre* at 342.

⁶⁴ Corsi Aff. ¶11.

⁶⁵ Corsi Aff. ¶6.

applied to independent political bloggers and pamphleteers such as Mr. Corsi.

F. The right to anonymous political speech cannot be deprived simply because an Ohioan briefly and informally unites with others to convey his message.

The OEC interprets and applies R.C. 3517 to strip the right to anonymous speech where Ohioans informally cooperate, even where that cooperation is not targeted toward express advocacy, relying on the facts that Mr. Corsi (1) acted “in conjunction with others:” and (2) would occasionally meet with others and “throw around ideas and information on political issues or people who held office.”⁶⁶ More specifically, the OEC’s opinion relies almost exclusively on instances that it believes indicate that the GCC was a group of persons acting in concert rather than the mere alter ego of one individual, Mr. Corsi. “The [OEC] determined that the GCC was comprised of more persons than just Edward Corsi, and was actually a combination of two or more persons as required by [R.C. 3517.01(B)(8)].”⁶⁷

Meanwhile, the Order relies on the fact that “the Mission Statement of the GCC that is contained on the pamphlet that was circulated at the Geauga County Fair” used the plural possessive “our” when referring to its mission rather than “my.”⁶⁸ It also cited the fact that “other statements in the pamphlet alluded to multiple persons sharing responsibility for the flyer,” referencing other uses of the word “we” and no use of “I” or “me.”⁶⁹ Finally, the Order also noted that Mr. Corsi himself “often used plural terms when describing the GCC” in his testimony before the OEC.⁷⁰

The OEC also maintains that if an individual ever acts in concert or utilizes the services of another human being, his speech is therefore unprotected. The Order relies on the fact that

⁶⁶ OEC June 9, 2011 Decision and Finding, p. 1.
⁶⁷ June 9, 2011 Decision and Finding at 3.
⁶⁸ June 9, 2011 Decision and Finding at 3.
⁶⁹ June 9, 2011 Decision and Finding at 3.
⁷⁰ June 9, 2011 Decision and Finding at 4.

“Mr. Corsi admitted that he used Ms. Spotts as the mail location for checks to be paid for those public speaking events, explaining it as a desire to maintain his anonymity and not to publish his address.”⁷¹ This was treated as “evidence of Ms. Spotts’ participation with the GCC.”⁷² The Order also relies on affidavits of Mr. Teare and Ms. Spotts admitting that they had “produced and handed out pamphlets and flyers containing political content on behalf of ‘Geauga Constitutional Council,’ had “helped to organize events promoted as put on by the Geauga Constitutional Council, and stated that “[w]hen Ed Corsi, I and others invite a speaker into town and hold an event, we use the name ‘Gauga Constitutional Council’ to describe ourselves.”⁷³ However, this circumvention of the right to anonymous speech is improper, illogical, and inconsistent with governing precedent.

i. First, *McIntyre* itself illustrates that this application of law is erroneous, and cannot stand. The leaflet at issue in *McIntyre* – held to be protected anonymous speech that could not be forced to have a disclaimer – itself used plural terms: it was signed as expressing the views of “Concerned Parents and Taxpayers”:

VOTE NO ISSUE 19 SCHOOL TAX LEVY

PLEASE VOTE NO
ISSUE 19
THANK YOU.

**CONCERNED PARENTS
AND
TAXPAYERS⁷⁴**

Despite the repeated use of plural terms to describe the author of the views expressed, the Court

⁷¹ June 9, 2011 Decision and Finding at 4.

⁷² June 9, 2011 Decision and Finding at 4.

⁷³ June 9, 2011 Decision and Finding at 4.

⁷⁴ *McIntyre v. Ohio Elections Comm'n* (1995), 514 U.S. 334, 337 n.2 (emphases added).

described “Mrs. McIntyre [as] act[ing] independently.”⁷⁵ Under the OEC’s view, Mrs. McIntyre’s usage of those terms should have stripped her anonymous speech advocating the defeat of a referendum of First Amendment protection (Remarkably, the Order actually relies on the fact that Mr. Corsi suggested the defeat of tax levies as a factor to show his speech is subject to registration, disclosure, and reporting. Yet this was the exact type of speech held protected in *McIntyre*).

Similarly, the Court in *McIntyre* referenced the publication of the Federalist Papers as supporting the long history of anonymous political speech not subject to forced disclosure by government, noting that these anonymous arguments for delegates to support ratification of the proposed Constitution were drafted by multiple persons acting in concert; they were all signed by the pseudonym “Publius,” even though there were three different authors – James Madison, Alexander Hamilton, and John Jay.⁷⁶ The OEC Order, by contrast, submits that multiple individuals used the pseudonym “GCC,” a questionable factual finding, and uses this finding as grounds for prohibiting the political speech at issue, and defeating the right to anonymity.⁷⁷

Also, in *McIntyre*, the Court noted that, although “Mrs. McIntyre had composed and printed [the leaflet at issue] on her computer,”⁷⁸ she had also acted in concert with other individuals because she “had paid a professional printer to make additional copies.” and had worked with “her son and a friend, who placed some of the leaflets on car windshields in the school parking lot.”⁷⁹ Thus, the fact that that Ms. Spotts and Mr. Teare volunteered to help Mr. Corsi hand out pamphlets, does not serve to make his anonymous speech unprotected.

⁷⁵ *McIntyre v. Ohio Elections Comm’n* (1995), 514 U.S. 334, 337.

⁷⁶ *McIntyre v. Ohio Elections Comm’n* (1995), 514 U.S. 334, 343 n.6.

⁷⁷ June 9, 2011 Decision and Finding at 4 (using as evidence the statement of Mr. Teare that “[w]hen Ed Corsi, I and others invite a speaker into town and hold an event, we use the name ‘Geauga Constitutional Council’ to describe ourselves . . .”).

⁷⁸ *McIntyre v. Ohio Elections Comm’n* (1995), 514 U.S. 334, 337.

⁷⁹ *McIntyre v. Ohio Elections Comm’n* (1995), 514 U.S. 334, 337.

This principle that citizens may informally unite without sacrificing their right to anonymous speech is affirmed elsewhere. In *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*,⁸⁰ the Supreme Court held that anonymous speech – including political speech⁸¹ – engaged in by an association of individuals trumped the disclosure ordinance of an Ohio village. In *Watchtower*, the Court invalidated a requirement that canvassers first obtain a permit from the mayor's office by completing and signing a registration form. This was despite the fact that the successful party in the case was a corporation which "supervises the activities of approximately 59 members in a part of Ohio that includes the Village of Stratton."⁸² If OEC's contention that anonymous political speech loses its protection when multiple individuals act together was correct, the *Watchtower* Court could not have held the association's anonymous speech to be protected.

Finally, in *ACLU of Nevada v. Heller*, the U.S. Court of Appeals for the Ninth Circuit addressed the applicability of *McIntyre*'s protection for anonymous political speech to expression by multiple persons or groups.⁸³ Nevada had a statute that required certain groups or entities publishing "any material or information relating to an election, candidate or any question on a ballot" to reveal on the publication the names and address of the publications financial sponsors. In response to the Supreme Court's *McIntyre* ruling, Nevada had added an exception to this statute for "a natural person who acts independently and *not in cooperation with or pursuant to any direction from a business or social organization, nongovernmental legal entity or governmental entity.*"

⁸⁰ 536 U.S. 150, 153 L. Ed. 2d 205, 122 S. Ct. 2080 (2002).

⁸¹ *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton* (2002), 536 U.S. 150, 153, 153 L. Ed. 2d 205, 122 S. Ct. 2080 ("Through this facial challenge, we consider the door-to-door canvassing regulation not only as it applies to religious proselytizing, *but also to anonymous political speech and the distribution of handbills.*") (emphasis added).

⁸² *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton* (2002), 536 U.S. 150, 153, 153 L. Ed. 2d 205, 122 S. Ct. 2080.

⁸³ 378 F.3d 979.

Upon challenge of this limitation, the court rejected Nevada's argument that *McIntyre* only protected anonymous speech when it was expressed by a lone individual, noting that "nothing in the decision indicates that if she had been allied with other individuals, or with a 'business or social organization,' the result would have been different. The anonymity protected by *McIntyre* is not that of a single cloak."⁸⁴ The court determined that "[t]he reasons given by *McIntyre* for protecting anonymous speech apply regardless of whether an individual, a group of individuals, or an informal 'business or social organization' is speaking."⁸⁵ The *Heller* court explained how the *McIntyre* Court had used the word "independently" in describing Mrs. McIntyre's actions: "although the Court in *McIntyre* referred to 'individuals acting independently and using only their own modest resources,' 514 U.S. at 351, we think it doubtful that the court used 'independently' to mean 'individually.' That would have been redundant."⁸⁶ The *Heller* court therefore rejected "Nevada's proposed limitation of the holding in *McIntyre* to communications for which an individual working entirely alone is responsible."⁸⁷ Thus, Supreme Court precedent affirms that one need not act alone to be entitled to the First Amendment right to speak anonymously on political matters.

ii. Secondly, these precedents are a necessary result of First Amendment Freedom of Association guarantees. "The right to speak is often exercised most effectively by combining one's voice with the voices of others."⁸⁸ Further, "freedom of expression embraces more than the right of an individual to speak his mind. It includes also his right to advocate and his right to

⁸⁴ *Heller*, at 989.

⁸⁵ *Heller*, at 989.

⁸⁶ *Heller*, at 990.

⁸⁷ *Heller*, at 990-91.

⁸⁸ *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.* (2006), 547 U.S. 47, 68, 126 S. Ct. 1297, 164 L. Ed. 2d 156) (citing *Roberts v. United States Jaycees* (1984), 468 U.S. 609, 622, 104 S. Ct. 3244, 82 L. Ed. 2d 462); see also *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 459 ("[the NAACP] and its members are in every practical sense identical. The Association, which provides in its constitution that 'any person who is in accordance with [its] principles and policies . . .' may become a member, is but the medium through which its individual members seek to make more effective the expression of their own views.").

join with others in an effort to make that advocacy effective.⁸⁹ Thus, even if Mr. Corsi's occasional informal uniting with others while communicating his message was not protected by the right to speak anonymously, it is protected by his Freedom to Associate: the OEC's attempt to designate it as a political action committee and subject it to the heavy regulation that entails violates the First Amendment's freedom of association.⁹⁰

Further, in as-applied challenges, courts have generally held that small entities may not be forced to comply with onerous regulatory requirements before engaging in political speech. The Supreme Court has spelled out why Freedom of Associate protects small entities from subjection to political committee reporting requirements ("political committee" requirements in that case were substantially similar to PAC reporting and registration requirements here):

Detailed record-keeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear. Furthermore, such duties require a far more complex and formalized organization than many small groups could manage. Restriction of solicitation of contributions to "members" vastly reduces the sources of funding for organizations with either few or no formal members, directly limiting the ability of such organizations to engage in core political speech. It is not unreasonable to suppose that, as in this case, an incorporated group of like-minded persons might seek donations to support the dissemination of their political ideas and their occasional endorsement of political candidates, by means of garage sales, bake sales, and raffles. Such persons might well be turned away by the prospect of complying with all the requirements imposed by the Act. Faced with the need to assume a more sophisticated organizational form, to adopt specific accounting procedures, to file periodic detailed reports, and to monitor garage sales lest nonmembers take a fancy to the merchandise on display, it would not be surprising if at least some groups decided that the contemplated political activity was simply not worth it.⁹¹

Here, R.C. 3517.10(A) provides that "every . . . political action committee" receiving contributions of or spending \$1000 or more "shall file, on a form prescribed under this section or

⁸⁹ *Thomas v. Collins*, 323 U.S. 516; *NAACP v. Alabama*, 357 U.S. 449; *Bates v. Little Rock*, 361 U.S. 516.

⁹⁰ *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) ("[W]e have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.").

⁹¹ *MCFL*, at 255.

by electronic means of transmission as provided in this section and section 3517.106 of the Revised Code, a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures, not later than four p.m. of the following dates: * * *.”

As to such requirements, as against freedom of association, in *Sampson v. Buescher*.⁹² the U.S. Court of Appeals for the Tenth Circuit examined a state campaign finance law requiring any group of two or more persons that has accepted or made contributions or expenditures exceeding \$200 to support or oppose a ballot issue must register as an issue committee and report the names and addresses of anyone who contributes \$20 or more. The court held the law violated the First Amendment’s freedom of association as applied to a group which received \$1426 in monetary and in-kind contributions for its opposition to a referendum, reasoning that there was “virtually no proper governmental purpose in imposing disclosure requirements on ballot-initiative committees that raise and expend so little money, and that limited interest cannot justify the burden that those requirements impose on such a committee.”⁹³ Interestingly, at the proceedings in this case, the members of the OEC emphasized the fact that Mr. Corsi/ GCC spent over \$1000 as sufficient to apply Ohio campaign finance laws to this case, though this is not mentioned in the Order.⁹⁴

The *Sampson* court explained the burdens of forcing such compliance:

The average citizen cannot be expected to master on his or her own the many campaign financial disclosure requirements set forth in Colorado’s constitution, the Campaign Act, and the Secretary of State’s Rules Concerning Campaign and Political Finance. Even if those rules that apply to issue committees may be few, one would have to sift through them all to determine which apply.⁹⁵

⁹² 625 F.3d 1247 (10th Cir. 2010).

⁹³ *Sampson* at 1249.

⁹⁴ See Tr.

⁹⁵ *Sampson* at 1259-60.

This view is consistent with that taken recently in *Citizens United*: “Prolix laws chill speech for the same reason that vague laws chill speech: people of common intelligence must necessarily guess at the law’s meaning and differ as to its application.”⁹⁶

Moreover, *Sampson* articulates a series of useful guideposts for this Court to employ in this case. Specifically, the 10th Circuit explains that there are truly only three plausible justifications for the type of reporting requirements at issue both there and here: (1) gathering data necessary to detect violations of contribution limitations; (2) deterring actual corruption and avoiding the appearance of corruption; and (3) allowing voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.⁹⁷ There has been no argument thus far that imposing disclosure independent bloggers and pamphleteers such as Mr. Corsi contributes to any of these. Indeed, it is difficult to imagine how it could, given that the essence of that independence is an abstention from coordinating with any candidate or candidate’s campaign. Moreover, the dollar amount spent is too minimal to compellingly serve any of these government interests.

Finally, in *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*,⁹⁸ the U.S. Court of Appeals for the Ninth Circuit held unconstitutional the application of campaign reporting and disclosure requirements to a church which assisted in gathering signatures for the support of a state constitutional amendment via referendum and held a showing of a film advocating such amendments, reasoning that “the burden of reporting remains constant even

⁹⁶ *Citizens United* at 889. *Id.* at __ (“The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day.”).

⁹⁷ *Sampson*, *supra*.

⁹⁸ 556 F.3d 1021 (9th Cir. 2009).

though the size of the in-kind expenditure decreases to a negligible level.”⁹⁹ Similarly, GCC’s minimal expenses in hosting a website and printing, on a home printer, pamphlets for public distribution cannot be used to subject GCC to the onerous regulations applicable to a political action committee.

The OEC’s application of R.C. 3517.01(A)(8) and R.C. 3517.10 is unconstitutionally overbroad, and unconstitutional as applied to the anonymous speech and freedom of association rights of independent political bloggers and pamphleteers who may occasionally informally unite with others to advance their mission.

G. Application of R.C. 3517.10(D) to independent political blogger and pamphleteers constitutes an impermissible prior restraint on speech.

Application of R.C. 3517.20(A)(2) to Mr. Corsi, through GCC, is also an unconstitutional prior restraint on his core political speech. In *Watchtower Bible v. Village of Stratton* (2002), the Supreme Court of the United States held that the requirement of preregistration, and thus, implicit permission, prior to speech violates the First Amendment as it applies to religious proselytizing, anonymous political speech, and the distribution of handbills.¹⁰⁰

The rationale underlying against such laws is utilitarian: “[Registration and reporting requirements] may create a disincentive for such organizations to engage in political speech. Detailed recordkeeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear. * * * Such persons might well be turned away by the prospect of complying with all the requirements imposed* * *.”¹⁰¹ Further, “while the effect of additional reporting and disclosure

⁹⁹ *Canyon* at 1034.

¹⁰⁰ *Watchtower Bible v. Village of Stratton* (2002), 536 U.S. 150, 122 S.Ct. 2080, pp. 2086-2091.

¹⁰¹ *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 261, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986).

obligations on an organization's *contributors* may not necessarily constitute an additional burden on speech, the administrative costs of complying with such increased responsibilities may create a disincentive for the organization itself to speak."¹⁰²

Here, as articulated above, Mr. Corsi and/or GCC is engaged in core political speech. The statute, if applied, requires GCC, as an "other entity" to (1) register; (2) designate a secretary, treasurer, or chairperson; and (3) disclose this aforesaid person prior to speaking out on the political issues of the day. This is clearly a prior restraint on speech, and has the effect of dissuading a person or informal group from speaking out on issues upon which more speech, rather than less, is preferable.¹⁰³ Since it is of the type protected in *Watchtower*, anonymous political speech, the prohibition on speech without prior registration and disclosure, mandated by R.C. 3517.10(D) and elsewhere, is unconstitutional as applied to Mr. Corsi.

Moreover, Mr. Corsi may not speak *at all*, and is thus entirely deprived of his First Amendment rights, up until the point at which he properly registers. If OEC's Order is allowed to stand, political speech will be completely prohibited for the period of time it takes for any individual acting in concert with others to hire an attorney to navigate Ohio's campaign finance laws and file the requisite paperwork. "The loss of First Amendment freedoms for even minimal periods of time, unquestionably constitutes irreparable injury."¹⁰⁴ The Supreme Court held that such a temporary delay was unacceptable in *Watchtower*:

There is a significant amount of spontaneous speech that is effectively banned by the ordinance. A person who makes a decision on a holiday or a weekend to take an active part in a political campaign could not begin to pass out handbills until after he or she obtained the required permit. Even a spontaneous decision to go

¹⁰² *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 261, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986).

¹⁰³ See *Buckley, Infa.*

¹⁰⁴ *Elrod v. Burns*, 427 U.S. 347, 372, 49 L. Ed. 2d 547, 96 S. Ct. 2673 (1976).

across the street and urge a neighbor to vote against the mayor could not be lawfully implemented without first obtaining the mayor's permission.¹⁰⁵

If Ohioans like Mr. Corsi were forced to consult an attorney to navigate myriad campaign finance laws anytime he were to write a letter to an editor or critique a candidate, much speech would be foregone or delayed. The State has no valid interest, much less a compelling interest, in proactively prohibiting this type of political speech from political bloggers and pamphleteers.

H. The Ohio Constitution's broader protections safeguard the political speech of independent bloggers and pamphleteers.

The United States Supreme Court has repeatedly reminded state courts that they are free to construe their state constitutions so as to provide different, and broader, protections of individual liberties than those offered by the federal Constitution.¹⁰⁶ It has further declared that "state courts' interpretations of state constitutions are to be accepted as final, as long as the state court plainly states that its decision is based on independent and adequate state grounds."¹⁰⁷

Accordingly, Ohio courts are free to interpret the Ohio Constitution without adherence or deference to federal court decisions-- the United States Constitution provides a floor, not a ceiling, for individual rights enjoyed by state citizens.¹⁰⁸ Put another way, "states may not deny individuals or groups the minimum level of protections mandated by the federal Constitution.

¹⁰⁵ *Watchtower* at 167.

¹⁰⁶ *Arnold v. Cleveland*, (1993), 67 Ohio St.3d 35, 616 N.E.2d 163, citing, e.g., *City of Mesquite v. Aladdin's Castle, Inc.* (1982), 455 U.S. 283, 293, 102 S.Ct. 1070, 1077, 71 L.Ed.2d 152, 162 (" * * * [A] state court is entirely free to read its own State's constitution more broadly than this Court reads the Federal Constitution, or to reject the mode of analysis used by this Court in favor of a different analysis of its corresponding constitutional guarantee."); and *California v. Greenwood* (1988), 486 U.S. 35, 43, 108 S.Ct. 1625, 1630, 100 L.Ed.2d 30, 39 ("Individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution."). See, also, *Pruneyard Shopping Ctr. v. Robbins* (1980), 447 U.S. 74, 81, 100 S.Ct. 2035, 2040, 64 L.Ed.2d 741, 752.

¹⁰⁷ *Arnold v. Cleveland*, (1993), 67 Ohio St.3d 35, 616 N.E.2d 163, citing *Michigan v. Long* (1983), 463 U.S. 1032, 1041, 103 S.Ct. 3469, 3476-3477, 77 L.Ed.2d 1201, 1214-1215.

¹⁰⁸ *PruneYard Shopping Ctr. v. Robbins* (1980), 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741; *State v. Brown* (1992), 63 Ohio St.3d 349, 588 N.E.2d 113.

*However, there is no prohibition against granting individuals or groups greater or broader protections.*¹⁰⁹ Ohio courts have not hesitated to recognize this capacity:

[W]e believe that the Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, *state courts are unrestricted in according greater civil liberties and protections to individuals and groups.*¹¹⁰

Meanwhile, Section 11, Article I of the Ohio Constitution preserves the freedom of speech, and of the press, stating “[E]very citizen may freely speak, write, and publish his sentiments on all subjects . . . and no law shall be passed to restrain or abridge the liberty of speech, or of the press.” These broad protections for speech and press encompass the activities of Mr. Corsi and GCC, and demand that they not be made liable for violations of campaign finance laws when disseminating information and opinion on the issues of the day.

Further, this case features a controversy unique to our changing times: As recently acknowledged by the Supreme Court in *Citizens United*, “[w]ith the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to comment on political and social issues becomes far more blurred.”¹¹¹ Indeed, internet bloggers have become a form of new media, and are entitled to the same protections that apply to the main stream press. As Justice Thomas has expressed “[w]hen the framers thought of the press, they did not envision the large, corporate newspaper and television establishments of our

¹⁰⁹ *Arnold, supra.*

¹¹⁰ *Arnold, supra.* After making this paradigmatic statement, the Ohio Supreme Court, recognized an obligation “not to disturb the clear protections provided by the drafters of [the Ohio] Constitution.” As such, in *Arnold*, it interpreted the Ohio Constitution’s protection of the Right to Bear Arms, articulated in Section 4, Article I of the Ohio Constitution, as more protective of that right than the Second Amendment. Emphasis added.

¹¹¹ *Citizens United* at 905-06.

modern world. Instead, they employed the term 'press' to refer to the many independent printers who circulated small newspapers or published writers' pamphlets for a fee."¹¹²

Today's independent printers and pamphleteers are independent bloggers, who undeniably enhance the quantity of core political speech. Application of R.C. 3517.10 disclosure requirements to this class undermines the principles underlying the freedom of the press, alongside Ohio's broad protection of the publishing of sentiments, and accordingly, is patently unconstitutional, as applied to the political speech of independent bloggers and pamphleteers such as Mr. Corsi.

VII. CONCLUSION

The Supreme Court of the United States put it best in *Citizens United*: "the First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient points of our day."¹¹³ Yet this is exactly what the OEC interprets R.C. 3517.01(A)(8) and R.C. 3517.10 as requiring Mr. Corsi and Ohio's other independent political bloggers and pamphleteers to do. In fact, it explicitly said so during the April 28, 2011 hearing.

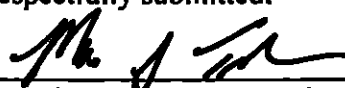
This renders, alongside the reasons articulated herein, these statutes unconstitutionally overbroad. Further, as applied to independent political blogger and pamphleteers such as Mr. Corsi, these statutes impermissibly eviscerate the right of anonymous speech, outright preclude speech, usurp the freedom to associate, and flout the publication rights articulated in the Ohio Constitution. Consequently, this Court must declare R.C. 3517.01(A)(8) and R.C. 3517.10(D) as

¹¹² *McIntyre v. Ohio Elections Commission* (1995), 514 U.S. 334, 115 S.Ct. 1511 (Thomas, concurring), citing B. Bailyn & J. Hench, *The Press & the American Revolution* (1980); I. Levy, *Emergence of a Free Press* (1985); B. Bailyn, *The Ideological Origins of the American Revolution* (1967). "It was in this form-as pamphlets-that much of the most important and characteristic writing of the American Revolution occurred." 1 B. Bailyn, *Pamphlets of the American Revolution* 3 (1965). This practice continued during the struggle for ratification. See, e.g., *Pamphlets on the Constitution of the United States* (P. Ford ed. 1888).

¹¹³ *Citizens United*, at 889.

such, enjoin their enforcement, and overturn the Ohio Elections Commission's April 28, 2011 and June 9, 2011 rulings.

Respectfully submitted.



Maurice A. Thompson (0078548)
Ryan D. Walters (0076724)
1851 Center for Constitutional Law
208 E. State Street
Columbus, Ohio 43215
Tel: (614) 340-9817
Fax: (614) 365-9564
Email: MThompson@OhioConstitution.org
RWalters@OhioConstitution.org

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing APPELLANTS' MERIT BRIEF was served upon counsel specified below this 2nd day of September, 2011.

Erick D. Gale
Assistant Attorney General
Michael J. Schuler
Assistant Attorney General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Counsel for Defendant/ Appellee Ohio Elections Commission



Ryan D. Walters (0076724)
1851 Center for Constitutional Law
208 E. State Street
Columbus, Ohio 43215

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Capital One NA
Plaintiff

vs.

Case No. 11CVE04 4839

Timothy A Brant et al
Defendant

Judge Bessey

LAND APPRAISEMENT

We the undersigned disinterested freeholders and residents of the County of Franklin, State of Ohio, having been duly summoned and sworn by ZACHARY SCOTT, Sheriff of said County, to impartially appraise, upon actual view (when available), the land and tenements as described in the attachment, to wit:

(see attachment)

to be sold pursuant to an Order of Sale issued from the Court of Common Pleas of said County, in the above entitled action, after actual view (when available) of said premises, estimate and affix the real value of the property in money to be \$21,000.00.

Given under oath 8/23/2011.

Margaret A Hambleton _____ *Margaret A Hambleton*

J Gregory Hart _____ *J Gregory Hart*

Arthur E Lee _____ *Arthur E Lee*

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2011 SEP -2 PM 4:57
CLERK OF COURTS

THE STATE OF OHIO, FRANKLIN COUNTY, ss.

I hereby certify that the above named appraisers are freeholders and residents of Franklin County, Ohio and were duly summoned and sworn by me to impartially appraise, upon actual view, the premises as described on the attachment to this document on 8/23/2011.

ZACHARY SCOTT, FRANKLIN COUNTY SHERIFF

By *Shirley K. Duff*
Deputy
3 4

7 I29

ORDER OF SALE

04

Capital One, N.A.

: Case Number: 11 CV 004839

Plaintiff, : Judge: John P. Bessey

vs.

: Action Code: 6030

Timothy A Brant, et al.

Defendant(s). :

4/18/11

STATE OF OHIO) To the Sheriff of Said County, Greetings
) SS
COUNTY OF FRANKLIN)

RECEIVED OF
2011 AUG 11 AM 9:05
FRANKLIN COUNTY SHERIFF

WHEREAS, at a term of the Court of Common Pleas, held at Columbus, in and for said county on the 27th day of July, 2011, in this cause it was ordered, adjudged, and decreed as follows, to wit:

That an order of sale issued to the Sheriff of said County, directing him to Appraise, Advertise, and Sell as upon execution the following described premises to wit:

TERMS OF SALE:

Purchaser of the Property other than the Plaintiff or Lien Holder Shall be Required to Deposit 10% of the appraised value at the time of sale, the balance of the proceeds to be paid within thirty (30) days of sale confirmation to sheriff.

LEGAL DESCRIPTION

See attached Exhibit "A"

Parcel No.: 010-055434-00

Property Address: 1500 Harvard Avenue, Columbus, OH 43203

WE THEREFORE COMMAND YOU, That you proceed to carry out said order, judgment, and decree into execution agreeable to the tenor thereof, and that you expose to sale the above described Real Estate, under the Statute regulating sale on Execution, and that you apply the proceeds of such sale in satisfaction of said judgment and decree, with cost and interest, as specified therein; and that you make report of your proceedings herein; to our Court of Common Pleas within sixty days from date hereof, and bring this order with you. And I certify under seal of this Court that the description of the property herein is correctly copied from the records on file in this office.

WITNESS my signature as Clerk of our said Court of Common Pleas, and the seal of said Court at Columbus, this 10th day of August, 2011

Maryellen O'Shaughnessy, Clerk, by August G. Galle, Deputy.

Prepared By:

Matthew C. Gladwell (0075591)

Carrie L. Rouse (0083281)

Phone: (513) 322-7000

**EXHIBIT "A"
LEGAL DESCRIPTION**

Situated in the City of Columbus, County of Franklin, State of Ohio, to-wit:

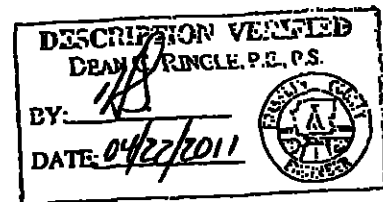
Being a part of Lot Number One (1) of CHARLES G. LORD, MASTER COMMISSIONER'S SUBDIVISION, part of half Section 14, Township 5, Range 22, Refugee Lands as the same is numbered and delineated upon the recorded plat thereof as recorded in Plat Book 3, Page 235, Recorder's Office, Franklin County, Ohio, bounded and described as follows:

Beginning at the Southwest corner of said Lot Number One (1) at the intersection of Harvard and Johnson Street; thence North on the line of Johnson Street 90 feet to a point; thence East and parallel with the North line of said lot to a point in the line starting 35.44 feet East of the Northwest corner of said lot and running South to a point on the South line of said lot, 32.33 feet East of the South side of said lot, 32.33 feet from the Southwest on the line of Harvard Avenue; thence West on the line of Harvard Avenue to the place of beginning.

H-047
ALL OF
(010)
055434

Titleholders: Timothy A Brant
Property Address: 1500 Harvard Avenue, Columbus, OH 43203
Parcel number: 010-055434-00

Prior Deed Reference: Instrument No. 200404140083715
Recorded: 04/14/2004



IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

BAC Home Loans Servicing LP fka Countrywide Home Loans
Servicing LP
Plaintiff

vs.

Carnell Bozeman et al
Defendant

Case No. 11CVE02 1655

Judge Cain

LAND APPRAISEMENT

We the undersigned disinterested freeholders and residents of the County of Franklin, State of Ohio, having been duly summoned and sworn by ZACHARY SCOTT, Sheriff of said County, to impartially appraise, upon actual view (when available), the land and tenements as described in the attachment, to wit:

(see attachment)

to be sold pursuant to an Order of Sale issued from the Court of Common Pleas of said County, in the above entitled action, after actual view (when available) of said premises, estimate and affix the real value of the property in money to be \$87,000.00.

Given under oath 8/23/2011.

John L Clarke

Joellen Wood

Robert D Timmons

John L Clarke
Joellen Wood
Robert D Timmons

CLERK OF COURTS

2011 SEP -2 PM 4:57

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO

THE STATE OF OHIO, FRANKLIN COUNTY, ss.

I hereby certify that the above named appraisers are freeholders and residents of Franklin County, Ohio and were duly summoned and sworn by me to impartially appraise, upon actual view, the premises as described on the attachment to this document on 8/23/2011.

ZACHARY SCOTT, FRANKLIN COUNTY SHERIFF

By *Shirley K. Duff*
Deputy

60

ORDER OF SALE

BAC Home Loans Servicing, L.P.,
fka, Countrywide Home Loans Servicing, L.P.

PLAINTIFF

CASE NO. 11 CVE 02 1655

JUDGE David Cain

-VS-

Carnell Bozeman, et al.,

DEFENDANT

ACTION CODE NO. 6030

COMPLAINT FILED Friday, February 4, 2011

THE STATE OF OHIO,) To the Sheriff of said County, Greetings:
Franklin County, ss)

WHEREAS, at a term of the Court of Common Pleas, held at Columbus, in and for said County on the
day of Aug 2nd, 2011 A.D. in this cause it was ordered, adjudged and decreed as follows, to wit:

That an order of sale issued to the Sheriff of said County, directing him to APPRAISE AND
ADVERTISE and sell as upon execution and following described premises to wit:

SEE LEGAL DESCRIPTION ATTACHED HERE AS EXHIBIT "A"

PARCEL NO. 010-134001-00 ADDRESS 1365 NORTH TIVERTON SQUARE
COLUMBUS, OH 43229

WE THEREFORE COMMAND YOU, That you proceed to carry out said order, judgment and decree into
execution agreeable to the tenor thereof, and that you expose to sale the above described Real Estate, under the
Statute regulating sales on Execution, and that you apply the proceeds of such sale in satisfaction of said
judgment and decree, with cost and interest, as specified therein; and that you make report of your proceedings
herein; to our Court of Common Pleas within sixty days from date hereof, and bring this order with you. And I
certify under seal of this Court that the description of the property is correctly copied from the records on file in
this office.

WITNESS my signature as Clerk of our said Court of Common Pleas, and the seal of said Court

at Columbus, this 4th day of August 20 11 A.D. John O'Grady,

Clerk by J. Tally Deputy.

COC-CV-82 (Rev. 2-2001) Attorney Holly A. Seidel (0055326), 216-360-7200

RECEIVED OF
2011 AUG 12 4:10:17
FRANKLIN COUNTY SHERIFF

DESCRIPTION OF LAND

Situated in the City of Columbus, County of Franklin and State of Ohio:

Being Lot Number Two Hundred Twenty-Two (222) of Devonshire No. 1, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 34, Page 55, Recorder's Office, Franklin County, Ohio. Be the same more or less, but subject to all legal highways.

Premises commonly known as: 1365 North Tiverton Square, Columbus, Ohio 43229

Permanent Parcel No.: 010134001-00

EXHIBIT "A"

