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COMMENTS ON 14-S 2847, RELATING TO ELECTION OFFENSES April 10, 2014

The ACLU strongly supports passage of this bill. It would remove a clearly unconstitutional statute from the books and save the state a good deal of money in the long run.

Last March, the Smithfield Police Department charged an individual with violating this law, which bans anonymous circulars, flyers or posters “designed or tending to aid, injure, or defeat any candidate for nomination or election to any public office...” That charge was recently dismissed. However, that Department has indicated its intent to continue to enforce the statute, even though the Attorney General’s office has acknowledged its unconstitutionality. The ACLU will soon be filing suit to challenge the law, but passage of this bill would make the suit moot and save the state the attorneys’ fees it will otherwise have to pay for a successful challenge to the law.

In short, the law should be repealed because almost twenty years ago, the U.S. Supreme Court ruled a virtually identical (though wordier) Ohio statute unconstitutionally overbroad in violation of the First Amendment’s guarantee of freedom of speech. *McIntyre v. Ohio Elections Commission*, 514 US. 334 (1995).

The Court’s conclusion summed up the issue well:

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. 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. 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. *Id.* at 357. (citations omitted)

In light of this statute’s clear illegality and its continued inappropriate use by police to arrest individuals, we urge its formal repeal.