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REMEMBER THE “PINOCCHIO” FLIER: ANONYMOUS POLITICAL SPEECH



In 2003, the Texas Court of Criminal Appeals held that a Texas statute regulating political speech was unconstitutional. The statute requires anyone who pays to publish or broadcast political advertisements to include identifying information about themselves or who they represent within the ad. While the

requirement was meant to curb abuse or corruption in campaign financing, it also had the effect of curbing constitutionally protected political speech. Everyone, including public officials, has a right to anonymous political speech.

Doe v. State concerned an anonymously published political flier that circulated via a mass mailing during the 2001 Dallas municipal elections. The flier lambasted one of the candidates as “Pinocchio,” a “puppet who can’t tell the truth.” This “Pinocchio flier” had been created and paid for by an opposing candidate in the local election. By publishing anonymously, the

See *Doe v. State*, 112 S.W.3d 532 (Tex. Crim. App. 2003).

candidate violated Texas Elections Code § 255.001, which requires any person who “enters into a contract or other agreement for the printing, publication, or broadcasting of a political advertisement” to identify within the advertisement the person who is paying for the message.

The flier led to a criminal indictment followed by a legal battle that found its way to the Court of Criminal Appeals. The State argued that the “Pinocchio flier” was a clear violation of the Elections Code. The candidate, on the other hand, insisted he had a constitutional right to anonymous political speech. In *Doe*, the Court sided with “John Doe.” The disclosure requirement in Texas election law was unconstitutional.

Regulations that require disclosure of one’s identity in relation to political speech are subject to exacting scrutiny by the courts, meaning they must be “narrowly tailored” to meet a compelling state interest. The State did have a compelling state interest served by TEC § 255.001: preventing corruption in campaign finance. However, the regulation was unconstitutionally broad. It made virtually all anonymous political speech unlawful. If the statute had applied only to fraudulent or false political statements, the Court speculated, it might be narrow enough to pass constitutional muster. Any disclosure requirements associated with political speech must be designed to apply to as narrow a category of speech, or as narrow a set of circumstances, as possible. Any broad requirement for “political speech” generally is unlawful.

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