



May 30, 2012

VIA FIRST CLASS AND ELECTRONIC MAIL

Senator Thomas O'Mara
Legislative Office Building
Room 812
Albany, NY 12247

Dear Senator O'Mara:

I am writing on behalf of the Center for Competitive Politics, a 501(c)(3) organization dedicated to promoting and defending all Americans' First Amendment political rights of speech, assembly, and petition. Our individual and collective rights to political speech have been described by the U.S. Supreme Court as lying at the very heart of the First Amendment.

Specifically, I write concerning your sponsorship of S. 6779, the "Internet Protection Act." This legislation would essentially forbid anonymous or pseudonymous Internet speech on New York-based Web sites. Upon the request of *one* offended reader, posters would be required to turn over their full names, home addresses, and IP addresses to the Web site administrator of any blog, social network, message board, forum, "or any other discussion site" for public posting – or else have their contributions deleted.

Upon the passage of the Fourteenth Amendment in 1868, the First Amendment, which reads in part "Congress shall make no law respecting the freedom of speech..." was incorporated against the states. For over 140 years, it has been presumptively unconstitutional for any state or local government to infringe upon the freedom of any citizen to speak about political topics.

This protection also applies to anonymous political speech. This should come as no surprise to a member of the New York Senate; Alexander Hamilton, John Jay, and James Madison wrote the *Federalist Papers*, which were targeted at New Yorkers under the pseudonyms "A Citizen in New York" and "Publius." Later, Hamilton – himself a New Yorker – engaged in a pseudonymous discussion of the Washington administration's foreign policy with Thomas Jefferson. Hamilton wrote under the name "Pacifcus," Jefferson under the name "Helveticus."

The protection of anonymous speech is not merely an honored American tradition: it is the law. Less than twenty years ago, in *McIntyre v. Ohio Elections Commission*, the U.S. Supreme Court invalidated an Ohio statute that required all individuals posting messages, airing ads, or printing handbills to put their real name and address on their campaign materials. The Court noted that

"[u]nder 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." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995). Your proposed law would go further, subjecting anonymous or pseudonymous speakers to the tyranny of a single, angered Internet user.

I, too, have been on message boards and discussion forums on the Internet, and many anonymous or pseudonymous postings are bigoted, stupid, or puerile. "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." *McIntyre*, 514 U.S. 334, 357 (1995) (internal citations omitted).

Furthermore, although the Center for Competitive Politics only focuses on the political speech rights under the First Amendment, I feel compelled to point out that your law applies to *all* anonymous or pseudonymous speech. Under your law, should a single person object to an anonymous or pseudonymous novel being self-published on a blog that permits comments, the novel's author would have to unmask himself and *provide a home address*. Your law would, in fact, have prohibited George Orwell from posting chapters of *Nineteen Eighty-Four* on a New York blog, lest he offend a single Soviet fellow traveler and be forced, by the State, to reveal himself as Eric Blair.

Practical concerns also motivate our opposition to S. 6779. As no website could possibly deal with the avalanche of complaints enabled by this bill, such a law would certainly cause comment-enabled Web sites to flee New York. Moreover, it is likely that federal regulations preempt any attempt by a single state to unilaterally regulate the Internet.

In sum, should this legislation pass, it will inevitably draw a court challenge that, after costing the already burdened taxpayers of New York a good deal of money, will very likely be successful.

In light of the above, the Center for Competitive Politics respectfully requests that you and this bill's co-sponsors withdraw S. 6779 from consideration.

Respectfully yours,



Allen Dickerson
Legal Director