SUPREME COURT OF THE UNITED STATES

No. 90–1056

CHARLES W. BURSON, ATTORNEY GENERAL AND REPORTER FOR TENNESSEE, PETITIONER *v.* MARY REBECCA FREEMAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE, MIDDLE DIVISION

[May 26, 1992]

JUSTICE BLACKMUN announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE KENNEDY join.

Twenty-six years ago, this Court, in a majority opinion written by Justice Hugo L. Black, struck down a state law that made it a crime for a newspaper editor to publish an editorial on election day urging readers to vote in a particular way. *Mills* v. *Alabama*, 384 U.S. 214 (1966). While the Court did not hesitate to denounce the statute as an ``obvious and flagrant abridgment'' of First Amendment rights, *id*., at 219, it was quick to point out that its holding ``in no way involve[d] the extent of a State's power to regulate conduct in and around the polls in order to maintain peace, order and decorum there.'' *Id*., at 218.

Today, we confront the issue carefully left open in *Mills*. The question presented is whether a provision of the Tennessee Code, which prohibits the solicitation of votes and the display or distribution of campaign materials within 100 feet of the entrance to a polling place, violates the First and Fourteenth Amendments.

The State of Tennessee has carved out an election-day ``campaign-free zone'' through §2–7–111(b) of its election code. That section reads in pertinent part:

> ``Within the appropriate boundary as established in subsection (a) [100 feet from the entrances], and the building in which the polling place is located, the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person or political party or position on a question are prohibited.'' Tenn. Code Ann. §2–7–111(b) (Supp. 1991).[1]

Violation of §2–7–111(b) is a Class C misdemeanor punishable by a term of imprisonment not greater than 30 days or a fine not to exceed $50, or both. Tenn. Code Ann. §§2–19–119 and 40–35–111(e)(3) (1990).

Respondent Mary Rebecca Freeman has been a candidate for office in Tennessee, has managed local campaigns, and has worked actively in state-wide

[1]Section 2–7–111(a) also provides for boundaries of 300 feet for counties within specified population ranges. Petitioner's predecessor Attorney General (an original defendant) opined that this distinction was unconstitutional under Art. XI, §8, of the Tennessee Constitution. Tenn. Op. Atty. Gen. No. 87–185 (1987). While this issue was raised in the pleadings, the District Court held that respondent did not have standing to challenge the 300-foot boundaries because she was not a resident of any of those counties. The Tennessee Supreme Court did not reach the issue. Accordingly, the constitutionality of the 100-foot boundary is the only restriction before us.

elections. In 1987, she was the treasurer for the campaign of a city-council candidate in Metropolitan Nashville-Davidson County.

Asserting that §§2–7–111(b) and 2–19–119 limited her ability to communicate with voters, respondent brought a facial challenge to these statutes in Davidson County

Chancery Court. She sought a declaratory judgment that the provisions were unconstitutional under both the United States and the Tennessee Constitutions. She also sought a permanent injunction against their enforcement.

The Chancellor ruled that the statutes did not violate the United States or Tennessee Constitutions and dismissed respondent's suit. App. 50. He determined that §2–7–111(b) was a content-neutral and reasonable time, place, and manner restriction; that the 100-foot boundary served a compelling state interest in protecting voters from interference, harassment, and intimidation during the voting process; and that there was an alternative channel for respondent to exercise her free-speech rights outside the 100-foot boundary. App. to Pet. for Cert. 1a.

The Tennessee Supreme Court, by a 4-to-1 vote, reversed. 802 S. W. 2d 210 (1990). The court first held that §2–7–111(b) was content-based ``because it regulates a specific subject matter, the solicitation of votes and the display or distribution of campaign materials, and a certain category of speakers, campaign workers.'' *Id.*, at 213. The court then held that such a content-based statute could not be upheld unless (i) the burden placed on free-speech rights is justified by a compelling state interest and (ii) the means chosen bear a substantial relation to that interest and are the least intrusive to achieve the State's goals. While the Tennessee Supreme Court found that the State unquestionably had shown a compelling interest in banning solicitation of voters and distribution of campaign materials within the polling place itself, it concluded that the State had not shown a compelling interest in regulating the premises around the polling place. Accordingly, the court held that the 100-foot limit was not narrowly tailored to protect the demonstrated interest. The court also held that the statute was not the least restrictive means to serve the State's interests. The

court found less restrictive the current Tennessee statutes prohibiting interference with an election or the use of violence or intimidation to prevent voting. See Tenn. Code Ann. §§2–19–101 and 2–19–115 (Supp. 1991). Finally, the court noted that if the State were able to show a compelling interest in preventing congestion and disruption at the entrances to polling places, a shorter radius ``might perhaps pass constitutional muster.'' 802 S.W.2d, at 214.

Because of the importance of the issue, we granted certiorari. 498 U.S. ___ (1991). We now reverse the Tennessee Supreme Court's judgment that the statute violates the First Amendment of the United States Constitution.

The First Amendment provides that ``Congress shall make no law . . . abridging the freedom of speech . . . .'' This Court in *Thornhill* v. *Alabama*, 310 U.S. 88, 95 (1940), said: ``The freedom of speech . . . which [is] secured by the First Amendment against abridgment by the United States, [is] among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a State.''

The Tennessee statute implicates three central concerns in our First Amendment jurisprudence: regulation of political speech, regulation of speech in a public forum, and regulation based on the content of the speech. The speech restricted by §2–7–111(b) obviously is political speech. ``Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.'' *Mills* v. *Alabama*, 384 U.S., at 218. ``For speech concerning public affairs is more than self-expression; it is the essence of self-government.'' *Garrison* v. *Louisiana*, 379 U.S. 64, 74–75 (1964). Accordingly, this Court has recognized that ``the First Amendment

`has its fullest and most urgent application' to speech uttered during a campaign for political office.'' *Eu* v. *San Francisco Democratic Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272 (1971)).

The second important feature of §2–7–111(b) is that it bars speech in quintessential public forums. These forums include those places ``which by long tradition or by government fiat have been devoted to assembly and debate,'' such as parks, streets, and sidewalks. *Perry Education Assn.* v. *Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983).[2] ``Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.'' *Hague* v. *CIO*, 307 U.S. 496, 515 (1939) (opinion of Roberts, J.). At the same time, however, expressive activity, even in a quintessential public forum, may interfere with other important activities for which the property is used. Accordingly, this Court has held that the government may regulate the time, place, and manner of the expressive activity, so long as such restrictions are content-neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternatives for communication. *United States* v. *Grace*, 461 U.S. 171, 177 (1983). See also *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989).

The Tennessee restriction under consideration, however, is not a facially content-neutral time, place, or manner restriction. Whether individuals may exercise their free-speech rights near polling places depends entirely on whether their speech is related to

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[2]Testimony at trial established that at some Tennessee polling locations the campaign-free zone included sidewalks and streets adjacent to the polling places. See App. 23–24, 42. See also 802 S.W. 2d, at 213.

a political campaign. The statute does not reach other categories of speech, such as commercial solicitation, distribution, and display. This Court has held that the First Amendment's hostility to content-based regulation extends not only to a restriction on a particular viewpoint, but also to a prohibition of public discussion of an entire topic. See, *e.g.*, *Consolidated Edison Co.* v. *Public Service Comm'n of New York*, 447 U.S. 530, 537 (1980). Accord, *Simon & Schuster, Inc.* v. *New York Crime Victims Bd.*, __ U.S. __, __ (1991) (slip op. 9) (statute restricting speech about crime is content-based).[3]

As a facially content-based restriction on political speech in a public forum, §2–7–111(b) must be subjected to exacting scrutiny: The State must show that the ``regulation is necessary to serve a compelling state interest and that it is narrowly drawn

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[3]Content-based restrictions also have been held to raise Fourteenth Amendment equal-protection concerns because, in the course of regulating speech, such restrictions differentiate between types of speech. See *Police Department of Chicago* v. *Mosley*, 408 U.S. 92 (1972) (exemption of labor picketing from ban on picketing near schools violates Fourteenth Amendment right to equal protection). See also *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 789, 816 (1984) (suggesting that exception for political campaign signs from general ordinance prohibiting posting of signs might entail constitutionally forbidden content discrimination). Under either a free-speech or equal-protection theory, a content-based regulation of political speech in a public forum is valid only if it can survive strict scrutiny. *Carey* v. *Brown*, 447 U.S. 456, 461–462 (1980).

to achieve that end.'' *Perry Education Assn.* v. *Perry Local Educators*' *Assn.*, 460 U.S., at 45. Accord, *Board of Airport Comm'rs of Los Angeles* v. *Jews for Jesus, Inc.*, 482 U.S. 569, 573 (1987); *Cornelius* v. *NAACP Legal Defense and Ed. Fund, Inc.*, 473 U.S. 788, 800 (1985); *United States* v. *Grace*, 461 U.S., at 177.

Despite the ritualistic ease with which we state this now-familiar standard, its announcement does not allow us to avoid the truly difficult issues involving the First Amendment. Perhaps foremost among these serious issues are cases that force us to reconcile our commitment to free speech with our commitment to other constitutional rights embodied in government proceedings. See, *e.g.*, *Sheppard* v. *Maxwell*, 384 U.S. 333, 361–363 (1966) (outlining restrictions on speech of trial participants that courts may impose to protect an accused's right to a fair trial). This case presents us with a particularly difficult reconciliation: the accommodation of the right to engage in political discourse with the right to vote—a right at the heart of our democracy.

Tennessee asserts that its campaign-free zone serves two compelling interests. First, the State argues that its regulation serves its compelling interest in protecting the right of its citizens to vote freely for the candidates of their choice.[4] Second, Tennessee argues that its restriction protects the right to vote in an election conducted with integrity and

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[4]See *Piper* v. *Swan*, 319 F. Supp. 908, 911 (ED Tenn. 1970), writ of mandamus denied *sub nom. Piper* v. *United States District Court*, 401 U.S. 971 (1971) (purpose of regulation is to prevent intimidation of voters entering the polling place by political workers).

reliability.[5]

The interests advanced by Tennessee obviously are compelling ones. This Court has recognized that the ``right to vote freely for the candidate of one's choice is of the essence of a democratic society.'' *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964). Indeed,

> "No right is more precious in a free country than that of having a choice in the election of those who make the laws under which, as good citizens, they must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'' *Wesberry* v. *Sanders*, 376 U.S. 1, 17 (1964).

Accordingly, this Court has concluded that a State has a compelling interest in protecting voters from confusion and undue influence. See *Eu*, 489 U.S., at 228–229.

The Court also has recognized that a State ``indisputably has a compelling interest in preserving the integrity of its election process.'' *Id.*, at 231. The Court thus has ``upheld generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself.'' *Anderson* v. *Celebrezze*, 460 U.S. 780, 788, n. 9 (1983) (collecting cases). In other words, it has recognized that a State has a compelling interest in ensuring that an individual's right to vote is not undermined by fraud in the election process.

To survive strict scrutiny, however, a State must do more than assert a compelling state interest—it must

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[5]See Tennessee Law Revision Commission, Special Report of the Law Revision Commission to Eighty-Seventh General Assembly of Tennessee Concerning a Bill to Adopt an Elections Act Containing a Unified and Coherent Treatment of All Elections 13 (1972) (provision is one of numerous safeguards included to preserve ``purity of elections'').

demonstrate that its law is necessary to serve the asserted interest. While we readily acknowledge that a law rarely survives such scrutiny, an examination of the evolution of election reform, both in this country and abroad, demonstrates the necessity of restricted areas in or around polling places.

During the colonial period, many government officials were elected by the *viva voce* method or by the showing of hands, as was the custom in most parts of Europe. That voting scheme was not a private affair, but an open, public decision, witnessed by all and improperly influenced by some. The opportunities that the *viva voce* system gave for bribery and intimidation gradually led to its repeal. See generally, E. Evans, A History of the Australian Ballot System in the United States 1–6 (1917) (Evans); J. Harris, Election Administration in the United States 15–16 (1934) (Harris); J. Rusk, The Effect of the Australian Ballot Reform on Split Ticket Voting, 1876–1888, 8–11 (1968) (Rusk).

Within 20 years of the formation of the Union, most States had incorporated the paper ballot into their electoral system. Initially, this paper ballot was a vast improvement. Individual voters made their own handwritten ballots, marked them in the privacy of their homes, and then brought them to the polls for counting. But the effort of making out such a ballot became increasingly more complex and cumbersome. See generally, S. Albright, The American Ballot 14–19 (1942) (Albright); Evans 5; Rusk 9–14.

Wishing to gain influence, political parties began to produce their own ballots for voters. These ballots were often printed with flamboyant colors, distinctive designs, and emblems so that they could be recognized at a distance. State attempts to standardize the ballots were easily thwarted—the vote-buyer could simply place a ballot in the hands of the bribed voter and watch until he placed it in the polling box. Thus, the evils associated with the earlier *viva voce*

system reinfected the election process; the failure of the law to secure secrecy opened the door to bribery[6] and intimidation.[7] See generally, Albright 19–20; Evans 7, 11; Harris 17, 151–152; V. Key, Politics, Parties, and Pressure Groups 649 (1952); J. Reynolds, Testing Democracy: Electoral Behavior and Progressive Reform in New Jersey, 1880–1920, 36 (1988); Rusk 14–23.

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[6]One writer described the conditions as follows:

> ``This sounds like exaggeration, but it is truth; and these are facts so notorious that no one acquainted with the conduct of recent elections now attempts a denial—that the raising of colossal sums for the purpose of bribery had been rewarded by promotion to the highest offices in the government; that systematic organization for the purchase of votes, individually and in blocks, at the polls has become a recognized factor in the machinery of parties; that the number of voters who demand money compensation for their ballots has grown greater with each recurring election.'' J. Gordon, The Protection of Suffrage 13 (quoted in Evans 11).

Evans reports that the bribery of voters in Indiana in 1880 and 1888 was sufficient to determine the results of the election and that ``[m]any electors, aware that the corrupt element was large enough to be able to turn the election, held aloof altogether.'' Evans 11.

[7]According to a report of a committee of the Forty-Sixth Congress, men were frequently marched or carried to the polls in their employers' carriages. They were then furnished with ballots and compelled to hold their hands up

Approaching the polling place under this system was akin to entering an open auction place. As the elector started his journey to the polls, he was met by various party ticket peddlers ``who were only too anxious to supply him with their party tickets.'' Evans 9. Often the competition became heated when several such peddlers found an uncommitted or wavering voter. See L. Fredman, The Australian Ballot: The Story of an American Reform 24 (1968) (Fredman); Rusk 17. Sham battles were frequently engaged in to keep away elderly and timid voters of the opposition. See Fredman 24, 26–27; 115 North American Review 628–629 (cited in Evans 16). In

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with their ballots in them so they could easily be watched until the ballots were dropped into the box. S. Rep. No. 497, 46th Cong., 2d Sess., 9–10 (1880).

Evans recounted that intimidation, particularly by employers, was ``extensively practiced'':

> ``Many labor men were afraid to vote and remained away from the polls. Others who voted against their employers' wishes frequently lost their jobs. If the employee lived in a factory town, he probably lived in a tenement owned by the company, and possibly his wife and children worked in the mill. If he voted against the wishes of the mill-owners, he and his family were thrown out of the mill, out of the tenement, and out of the means of earning a livelihood. Frequently the owner and the manager of the mill stood at the entrance of the polling-place and closely observed the employees while they voted. In this condition, it cannot be said that the workingmen exercised any real choice.'' Evans 12–13 (footnote omitted).

short, these early elections ``were not a very pleasant spectacle for those who believed in democratic government.'' Evans 10.

The problems with voter intimidation and election fraud that the United States was experiencing were not unique. Several other countries were attempting to work out satisfactory solutions to these same problems. Some Australian provinces adopted a series of reforms intended to secure the secrecy of an elector's vote. The most famous feature of the Australian system was its provision for an official ballot, encompassing all candidates of all parties on the same ticket. But this was not the only measure adopted to preserve the secrecy of the ballot. The Australian system also provided for the erection of polling booths (containing several voting compartments) open only to election officials, two ``scrutinees'' for each candidate, and electors about to vote. See J. Wigmore, The Australian Ballot System as Embodied in the Legislation of Various Countries 69, 71, 78, 79 (1889) (Wigmore) (excerpting provisions adopted by South Australia and Queensland). See generally, Albright 23; Evans 17; Rusk 23–24.

The Australian system was enacted in England in 1872 after a study by the committee of election practices identified Australia's ballot as the best possible remedy for the existing situation. See Wigmore 14–16. Belgium followed England's example in 1877. Like the Australian provinces, both England and Belgium excluded the general public from the entire polling room. See Wigmore 94, 105. See generally, Albright 23–24; Evans 17–18; Rusk 24–25.

One of the earliest indications of the reform movement in this country came in 1882 when the Philadelphia Civil Service Reform Association urged its adoption in a pamphlet entitled ``English Elections.'' Many articles were written praising its usefulness in preventing bribery, intimidation, disorder, and

inefficiency at the polls. Commentators argued that it would diminish the growing evil of bribery by removing the knowledge of whether it had been successful. Another argument strongly urged in favor of the reform was that it would protect the weak and dependent against intimidation and coercion by employers and creditors. The inability to determine the effectiveness of bribery and intimidation accordingly would create order and decency at the polls. See generally, Albright 24–26; Evans 21–23; Rusk 25–29, 42–43.

After several failed attempts to adopt the Australian system in Michigan and Wisconsin, the Louisville, Kentucky, municipal government, the Commonwealth of Massachusetts and the State of New York adopted the Australian system in 1888. The Louisville law prohibited all but voters, candidates or their agents, and electors from coming within 50 feet of the voting room inclosure. The Louisville law also provided that candidates' agents within the restricted area ``were not allowed to persuade, influence, or intimidate any one in the choice of his candidate, or to attempt doing so . . . .'' Wigmore 120. The Massachusetts and New York laws differed somewhat from the previous acts in that they excluded the general public only from the area encompassed within a guard rail constructed six feet from the voting compartments. See *id.*, at 47, 128. This modification was considered an improvement because it provided additional monitoring by members of the general public and independent candidates, who in most States were not allowed to be represented by separate inspectors. Otherwise, ``in order to perpetrate almost every election fraud it would only be necessary to buy up the election officers of the other party.'' *Id.*, at 52. Finally, New York also prohibited any person from ``electioneering on election day within any polling-place, or within one hundred feet of any polling place.'' *Id.*, at 131. See generally, Evans 18–21; Rusk

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The success achieved through these reforms was immediately noticed and widely praised. See generally, Evans 21–24; Rusk 26–31, 42–43. One commentator remarked of the New York law of 1888:

> ``We have secured secrecy; and intimidation by employers, party bosses, police officers, saloonkeepers and others has come to an end.
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> "In earlier times our polling places were frequently, to quote the litany, `scenes of battle, murder, and sudden death.' This also has come to an end, and until nightfall, when the jubilation begins, our election days are now as peaceful as our Sabbaths.
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> ``The new legislation has also rendered impossible the old methods of frank, hardy, straightforward and shameless bribery of voters at the polls.'' W. Ivins, The Electoral System of the State of New York, Proceedings of the 29th Annual Meetin.g of the New York State Bar Association 316 (1906).[8]

The triumphs of 1888 set off a rapid and widespread adoption of the Australian system in the United States. By 1896, almost 90 percent of the

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[8]Similar results were achieved with the Massachusetts law:

"Quiet, order, and cleanliness reign in and about the polling-places. I have visited precincts where, under the old system, coats were torn off the backs of voters, where ballots of one kind have been snatched from voters' hands and others put in their places, with threats against using any but the substituted ballots; and under the new system all was orderly and peaceable.'' 2 Annals of the American Academy of Political and Social Science 738 (1892).

States had adopted the Australian system. This accounted for 92 percent of the national electorate. See Rusk 30–31. See also Albright 26–28; Evans 27; JUSTICE SCALIA, Concurring in Judgment, *post*, at 2, n. 1 (citations to statutes passed before 1900).

The roots of Tennessee's regulation can be traced back to two provisions passed during this period of rapid reform. Tennessee passed the first relevant provision in 1890 as part of its switch to an Australian system. In its effort to ``secur[e] the purity of elections,'' Tennessee provided that only voters and certain election officials were permitted within the room where the election was held or within 50 feet of the entrance. The act did not provide any penalty for violation and applied only in the more highly populated counties and cities. 1890 Tenn. Pub. Acts, ch. 24, §§12 and 13.

The second relevant provision was passed in 1901 as an amendment to Tennessee's ``Act to preserve the purity of elections, and define and punish offenses against the elective franchise.'' The original act, passed in 1897, made it a misdemeanor to commit various election offenses, including the use of bribery, violence or intimidation in order to induce a person to vote or refrain from voting for any particular person or measure. 1897 Tenn. Pub. Acts, ch. 14. The 1901 amendment made it a misdemeanor for any person, except the officers holding the elections, to approach nearer than 30 feet to any voter or ballot box. This provision applied to all Tennessee elections. 1901 Tenn. Pub. Acts, ch. 142.

These two laws remained relatively unchanged until 1967, when Tennessee added yet another proscription to its secret ballot law. This amendment prohibited the distribution of campaign literature ``on the same floor of a building, or within one hundred (100) feet thereof, where an election is in progress.'' 1967 Tenn. Pub. Acts, ch. 85.

In 1972, the State enacted a comprehensive code to regulate the conduct of elections. The code included a section that proscribed the display and the distribution of campaign material and the solicitation of votes within 100 feet of the entrance to a polling place. The 1972 ``campaign-free zone'' is the direct precursor of the restriction challenged in the present litigation.

Today, all 50 States limit access to the areas in or around polling places. See App. to Pet. for Cert 26a-50a; Note, Defoliating the Grassroots: Election Day Restrictions on Political Speech, 77 Geo. L.J. 2137 (1989) (summarizing statutes as of 1989). The National Labor Relations Board also limits activities at or near polling places in union-representation elections.[9]

In sum, an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this wide-spread and time-tested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interest in preventing voter intimidation and election fraud.

Respondent and the dissent advance three principal challenges to this conclusion. First, respondent

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[9]See, *e.g.*, *Season-All Industries, Inc.* v. *NLRB*, 654 F.2d 932 (CA3 1981); *NLRB* v. *Carroll Contracting & Ready Mix, Inc.* v. *NLRB*, 636 F.2d 111 (CA5 1981); *Midwest Stock Exchange, Inc.* v. *NLRB*, 620 F.2d 629 (CA7), cert. denied, 449 U.S. 873 (1980); *Michem, Inc.*, 170 N.L.R.B. 362 (1968); *Claussen Baking Co.*, 134 N.L.R.B. 111 (1961).

argues that restricted zones are overinclusive because States could secure these same compelling interests with statutes that make it a misdemeanor to interfere with an election or to use violence or intimidation to prevent voting. See, *e.g.*, Tenn. Code Ann. §§2–19–101 and 2–19–115 (Supp. 1991). We are not persuaded. Intimidation and interference laws fall short of serving a State's compelling interests because they ``deal with only the most blatant and specific attempts'' to impede elections. Cf. *Buckley* v. *Valeo*, 424 U.S. 1, 28 (1976) (existence of bribery statute does not preclude need for limits on contributions to political campaigns). Moreover, because law enforcement officers generally are barred from the vicinity of the polls to avoid any appearance of coercion in the electoral process, see Tenn. Code Ann. §2–7–103 (1985), many acts of interference would go undetected. These undetected or less than blatant acts may nonetheless drive the voter away before remedial action can be taken.

Second, respondent and the dissent argue that Tennessee's statute is underinclusive because it does not restrict other types of speech, such as charitable and commercial solicitation or exit polling, within the 100–foot zone. We agree that distinguishing among types of speech requires that the statute be subjected to strict scrutiny. We do not, however, agree that the failure to regulate all speech renders the statute fatally underinclusive. In fact, as one early commentator pointed out, allowing members of the general public access to the polling place makes it more difficult for political machines to buy off all the monitors. See Wigmore 52. But regardless of the need for such additional monitoring, there is, as summarized above, ample evidence that political candidates have used campaign workers to commit voter intimidation or electoral fraud. In contrast, there is simply no evidence that political candidates have used other forms of solicitation or exit polling to

commit such electoral abuses. States adopt laws to address the problems that confront them. The First Amendment does not require States to regulate for problems that do not exist.

Finally, the dissent argues that we confuse history with necessity. Yet the dissent concedes that a secret ballot was necessary to cure electoral abuses. Contrary to the dissent's contention, the link between ballot secrecy and some restricted zone surrounding the voting area is not merely timing—it is common sense. The only way to preserve the secrecy of the ballot is to limit access to the area around the voter.[10] Accordingly, we hold that *some* restricted zone around the voting area is necessary to secure the State's compelling interest.

The real question then is *how large* a restricted zone is permissible or sufficiently tailored. Respondent and the dissent argue that Tennessee's 100-foot boundary is not narrowly drawn to achieve the State's compelling interest in protecting the right to vote. We disagree.

As a preliminary matter, the long, uninterrupted and prevalent use of these statutes makes it difficult for States to come forward with the sort of proof the dissent wishes to require. The majority of these laws were adopted originally in the 1890s, long before States engaged in extensive legislative hearings on

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[10]The logical connection between ballot secrecy and restricted zones distinguishes this case from those cited by the dissent in which the Court struck down long-standing election regulations. In those cases, there was no rational connection between the asserted interest and the regulation. See, *e.g.*, *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 666 (1966) (“[v]oter qualifications have no relation to wealth nor to paying or not paying this or any other tax'').

election regulations. The prevalence of these laws, both here and abroad, then encouraged their reenactment without much comment. The fact that these laws have been in effect for a long period of time also makes it difficult for the States to put on witnesses who can testify as to what would happen without them. Finally, it is difficult to isolate the exact effect of these laws on voter intimidation and election fraud. Successful voter intimidation and election fraud is successful precisely because it is difficult to detect.

Furthermore, because a government has such a compelling interest in securing the right to vote freely and effectively, this Court never has held a State ``to the burden of demonstrating empirically the objective effects on political stability that [are] produced'' by the voting regulation in question. *Munro* v. *Socialist Workers Party*, 479 U.S. 189, 195 (1986).[11] Elections vary from year to year, and place to place. It is therefore difficult to make specific findings about the effects of a voting regulation. Moreover, the remedy for a tainted election is an imperfect one. Rerunning an election would have a negative impact on voter

[11]This modified ``burden of proof'' does not apply to all cases in which there is a conflict between First Amendment rights and a State's election process—instead, it applies only when the First Amendment right threatens to interfere with the act of voting itself, *i.e.*, cases involving voter confusion from overcrowded ballots, like *Munro*, or cases such as this one, in which the challenged activity physically interferes with electors attempting to cast their ballots. Thus, for example, States must come forward with more specific findings to support regulations directed at intangible ``influence,'' such as the ban on election-day editorials struck down in *Mills* v. *Alabama*, 384 U.S. 214 (1966).

turnout.[12] Thus, requiring proof that a 100-foot boundary is perfectly tailored to deal with voter intimidation and election fraud

> ``would necessitate that a State's political system sustain some level of damage before the legislature could take corrective action. Legislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not *significantly impinge* on constitutionally protected rights.'' *Id.*, at 195–196 (emphasis added).

We do not think that the minor geographic limitation prescribed by §2–7–111(b) constitutes such a significant impingement. Thus, we simply do not view the question whether the 100-foot boundary line could be somewhat tighter as a question of ``constitutional dimension.'' *Munro* v. *Socialist*

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[12]The dissent argues that our unwillingness to require more specific findings is in tension with *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), another case in which there was conflict between two constitutional rights. Trials do not, however, present the same evidentiary or remedial problems. Because the judge is concerned only with the trial before him, it is much easier to make specific findings. And while the remedy of rerunning a trial is an onerous one, it does not suffer from the imperfections of a rescheduled election. Nonetheless, even in the fair-trial context, we reaffirmed that, given the importance of the countervailing right, "`our system of law has always endeavored to prevent even the *probability* of prejudice.'" *Sheppard*, 384 U.S., at 352 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)) (emphasis added).

Workers Party, 479 U.S., at 197. Reducing the boundary to 25 feet, as suggested by the Tennessee Supreme Court, 802 S.W.2d, at 214, is a difference only in degree, not a less restrictive alternative in kind. *Buckley* v. *Valeo*, 424 U.S., at 30. As was pointed out in the dissenting opinion in the Tennessee Supreme Court, it ``takes approximately 15 seconds to walk 75 feet.'' 802 S.W.2d, at 215. The State of Tennessee has decided that these last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible. We do not find that this is an unconstitutional choice.[13]

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[13]Respondent also raises two more specific challenges to the tailoring of the Tennessee statute. First, she contends that there may be some polling places so situated that the 100-foot boundary falls in or on the other side of a highway. Second, respondent argues that the inclusion of quintessential public forums in some campaign-free zones could result in the prosecution of an individual for driving by in an automobile with a campaign bumper sticker. At oral argument, petitioner denied that the statute would reach this latter, inadvertent conduct, since this would not constitute ``display'' of campaign material. Tr. of Oral Arg. 33–35. In any event, these arguments are ``as applied'' challenges that should be made by an individual prosecuted for such conduct. If successful, these challenges would call for a limiting construction rather than a facial invalidation. In the absence of any factual record to support respondent's contention that the statute has been applied to reach such

At some measurable distance from the polls, of course, governmental regulation of vote solicitation could effectively become an impermissible burden akin to the statute struck down in *Mills* v. *Alabama*, *supra*. See also *Meyer* v. *Grant*, 486 U.S. 414 (1988) (invalidating absolute bar against the use of paid circulators). In reviewing challenges to specific provisions of a State's election laws, however, this Court has not employed any ```litmus-paper test' that will separate valid from invalid restrictions.'' *Anderson* v. *Celebrezze*, 460 U.S., at 789 (quoting *Storer* v. *Brown*, 415 U.S. 724, 730 (1974)). Accordingly, it is sufficient to say that in establishing a 100-foot boundary, Tennessee is on the constitutional side of the line.

In conclusion, we reaffirm that it is the rare case in which we have held that a law survives strict scrutiny. This, however, is such a rare case. Here, the State, as recognized administrator of elections, has asserted that the exercise of free speech rights conflicts with another fundamental right, the right to cast a ballot in an election free from the taint of intimidation and fraud. A long history, a substantial consensus, and simple common sense show that some restricted zone around polling places is necessary to protect that fundamental right. Given the conflict between these two rights, we hold that requiring solicitors to stand

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circumstances, we do not entertain the challenges in this case.

100 feet from the entrances to polling places does not constitute an unconstitutional compromise.

The judgment of the Tennessee Supreme Court is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS took no part in the consideration or decision of this case.