



Supreme Court to Decide if Campaign Lies are Protected Free Speech

By Noel Brinkerhoff

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The U.S. Supreme Court will soon decide whether the First Amendment protects lying in political campaigns.

The case centers on an Ohio law, first adopted in the 1970s, that penalizes candidates or groups that knowingly lie in campaign advertisements.

The Ohio False Statements Law came under attack from the anti-abortion Susan B. Anthony List, which intended to put up a billboard during the 2010 midterm elections targeting Democratic Congressman Steven Driehaus.

Driehaus voted for the Affordable Care Act (pdf), and having done so, had also become a supporter of taxpayer-funded abortions, according to the group.

Never mind the fact that the healthcare reform law states that abortions must be paid for through non-Obamacare accounts, and that other federal laws prohibit taxpayer money from funding abortions.

But the Susan B. Anthony List gave up on their attempt to “shame” Driehaus, fearing they would be penalized under the false-statements statute.

So it teamed up with the conservative Coalition Opposed to Additional Spending and Taxes to file a lawsuit challenging the law’s constitutionality on grounds that it stifles free speech.

The duo lost their first two court battles. A federal judge in Ohio dismissed their complaint in August 2011, and the Sixth Circuit Court of Appeals upheld that decision in 2013 after the groups appealed.

The Supreme Court decided to hear their case, with oral arguments set to begin on April 22. The plaintiffs hope to bolster their position by citing the high court’s 2012 ruling which struck down the 2005 Stolen Valor Act that made it a federal crime to lie about receiving military honors.

The plaintiffs also picked up an unlikely supporter: the American Civil Liberties Union. The ACLU filed a brief supporting the right-wing groups’ contention that the Ohio law violates the First Amendment rights of Americans.

Another oddity about the case involves Ohio's attorney general, Republican Michael DeWine, who has filed briefs supporting both sides.

As the state's top law enforcement official, DeWine was compelled to defend the Ohio False Statements Law. But he also felt compelled to tell the justices that the law could be used "as a club in political campaigns" to discourage free speech, he told *The New York Times*.

Others backing the plaintiffs include the Cato Institute, a libertarian think tank, which teamed up with political humorist P.J. O'Rourke to file a brief arguing that "disparaging statements about one's opponent (whether true, mostly true, mostly not true, or entirely fantastic) are cornerstones of American democracy."

In addition to Ohio, 15 other states have laws that make it a crime to lie in political campaigns, according to briefs filed in case.