



Challenge to ban campaign lies weighed

Ohio case stirs up debate concerning free speech

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WASHINGTON — As political campaigns begin to heat up, the Supreme Court is deciding whether false accusations and mudslinging made during an election can be punished as a crime.

Addressing an issue of negative campaigning that now may be a fact of life in American politics, justices will consider a challenge to an Ohio law that bars false statements about political candidates. The case being heard next week has attracted national attention, with at least 15 other states having similar laws.

Groups across the political spectrum are criticizing the law as a restriction on the First Amendment right to free speech.

Even Ohio's attorney general, Republican Mike DeWine, says he has serious concerns about the law. His office filed two briefs in the case, one from staff lawyers obligated to defend the state and another expressing DeWine's personal view that the law "may chill constitutionally protected political speech."

"The thing we see time and time again in political campaigns is that candidates use the law to game the system by filing a complaint," DeWine said in an interview with The Associated Press.

The Ohio law makes it illegal to knowingly or recklessly make false statements about a candidate during an election. The high court is not expected to rule directly on the constitutional issue, instead focusing on the narrower question of whether the law can be challenged before it is actually enforced.

The case began during the 2010 election, when the Susan B. Anthony List, an anti-abortion group, planned to launch a billboard campaign accusing then-Democratic Rep. Steven Driehaus of supporting taxpayer-funded abortion because he backed President Barack Obama's health care overhaul.

Driehaus urged the Ohio Elections Commission to block the ads, arguing that the proposed billboard was false under Ohio law. Given the threat of legal action, the billboard owner declined to run the ad.

Driehaus eventually lost his re-election bid and withdrew his complaint before it could be fully heard. The Susan B. Anthony List then challenged the state law as unconstitutional, but a federal judge ruled against the group, saying it hadn't suffered any harm in the case and thus didn't have standing to sue. The 6th U.S. Circuit Court of Appeals in Cincinnati agreed.

The Susan B. Anthony List argues that it continues to face the threat of prosecution under the law, creating a chilling effect on speech that gives the groups a right to challenge the law without waiting for a ruling from the election commission.

This election season, the anti-abortion group says it's moving ahead with plans to purchase billboards in opposition to Democratic U.S. senators in Arkansas, Louisiana and North Carolina; those states have similar laws banning false campaign speech. But the Susan B. Anthony List is declining to run billboard ads in Ohio until the case is resolved. "The risks quite frankly are too high," said the group's president, Marjorie Dannenfelser.

The Obama administration backs that argument, even though White House officials have steadfastly denied the proposition that the health care law allows abortions funded by taxpayer dollars. The administration says a "credible threat of prosecution" will chill the Susan B. Anthony List from engaging in "the very type of speech to which the First Amendment has its fullest and most urgent application."

In a telephone interview, Driehaus said the work of the Ohio elections commission is needed "to call people into account when spreading malicious lies."

"Not every candidate has millions of dollars to spend on TV ads, and it's difficult to get the truth out, especially when constituents are bombarded with messages," Driehaus said from Swaziland, where he is a Peace Corps director.