



Could the Supreme Court stop lies in political ads?

By Zoe Clark and Rick Pluta

The political campaign ad season is upon us. We've already seen the first trickle of ads here in Michigan, but we know the spigot is barely open at this point.

And, this brings us to an interesting court case out of Ohio that will be heard by the U.S. Supreme Court in just over a month. At issue is whether a state can preemptively enforce a ban on a supposedly false and misleading political advertisement.

This started when the Republican independent committee the Susan B. Anthony List wanted to put up a billboard that accused an Ohio congressman of supporting taxpayer-funded abortions. The Congressman cried foul under an Ohio law that forbids knowingly or recklessly making false or misleading statements about candidates.

The billboard never went up after the congressman threatened to file a legal complaint. But the Susan B. Anthony List and some other groups challenged the law. That lawsuit was dismissed on a technicality and that was upheld by the U.S Sixth. Circuit Court of Appeals – of which Michigan is a part.

Because there are different rulings from other circuits on this issue, it's now up to the SCOTUS to bring it all together. One of the issues that's before the Supreme Court is whether states can preemptively say an ad or claim is false and bar it from broadcast and publication.

Here in Michigan, state Senator John Pappageorge says, 'heck yeah.' "You should not have to give up your rights, constitutional rights, to run for office. It's that simple," Pappageorge said. He drafted a bill that would subject political liars to criminal penalties but admits it will not likely stop the problem, "but it will make it tougher. Because what the bottom feeders have gotten really good at is using a small truth to tell a bigger lie."

Certainly it's almost impossible to regulate ads and claims made directly by candidates and their campaigns about another candidate. That speech is very, very protected. In fact, it's just about the most protected speech under the First Amendment. That's less true for independent committees, but political speech of any type is still very protected. And things are allowed that would not be if an ad were about soap, toothpaste, or microwave-ready meals.

American humorist PJ O'Rourke and the Libertarian Cato Institute, in what may be the best amicus brief ever, filed a friend of the court brief defending the All-American political mistruth. It included such great lines as, "While George Washington may have been incapable of telling a lie (footnote 2: apocryphal), his successors have not had the same integrity."

We could see a decision this summer on the Ohio case, just in time to have an effect on this year's campaign season.