



Best Amicus Brief Ever

By David Lat
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“Best amicus brief ever” might not be saying much. Parakeets are pretty indifferent to the liners of their cages.

Every now and then, though, we come across amicus briefs that are a little unusual or interesting. Like one with somewhat surprising or high-profile signatories — say, [NFL players](#), or leading Republicans [in favor of gay marriage](#). Or one that takes the form [of a cartoon](#). Or one that’s just [bats**t insane](#).

Today we bring you an amicus brief that will make you laugh out loud — which shouldn’t be surprising, given that it’s being submitted to the U.S. Supreme Court on behalf of a leading humorist....

On Friday, the Cato Institute submitted an amicus brief on behalf of itself and one of its fellows, legendary political satirist [P.J. O’Rourke](#), in the case of [Susan B. Anthony List v. Driehaus](#). The case involves a First Amendment challenge to an Ohio law that makes it a crime to “disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false.”

During the 2010 elections, the SBA List, a pro-life advocacy group, published ads in Ohio claiming that then-Rep. Steven Driehaus supported taxpayer-funded abortions (because he had voted for the Affordable Care Act aka Obamacare). Driehaus filed a complaint with the Ohio Election Commission (OEC) over the ads. The SBA List challenged the constitutionality of the law, which is now before the Supreme Court (although on a ripeness issue rather than on the constitutional merits).

The Cato Institute, the well-known libertarian think tank, has submitted an amicus brief in support of the SBA List. Here’s a good description of the Cato brief from [Ilya Shapiro](#), its author:

Joined by legendary satirist (and Cato’s H.L. Mencken Research Fellow) [P.J. O’Rourke](#), our [brief](#) supports the SBA List and reminds the Court of the important role that “truthiness”—facts you feel you in heart, not in your head—plays in American politics, and the importance of satire and spin more broadly. We ask the Court a simple yet profound question: Doesn’t the First Amendment’s guarantee of free speech protect one man’s truth even if it happens to be another man’s lie? And who’s to judge — and on what scale — when a statement slides “too far” into the realm of falsehood?

That’s all the background you need; let’s now turn to the brief. You know it’s not an ordinary brief as early as footnote 1:

[A]mici and their counsel, family members, and pets have all won the Congressional Medal of Honor.

SCOTUS nerds will recognize the shout-out to [United States v. Alvarez](#), in which the Court struck down the Stolen Valor Act, which criminalized false statements about having a military medal.

A little bit later, on page 3, we encounter this delightful discussion:

[W]here would we be without the knowledge that Democrats are pinko-communist flag-burners who want to tax churches and use the money to fund abortions so they can use the fetal stem cells to create pot-smoking lesbian ATF agents who will steal all the guns and invite the UN to take over America?

Voters have to decide whether we’d be better off electing Republicans, those hateful, assault-weapon-wielding maniacs who believe that George Washington and Jesus Christ incorporated the nation after a Gettysburg reenactment and that the only thing wrong with the death penalty is that it isn’t administered quickly enough to secular-humanist professors of Chicano studies.

(Or Above the Law columnists who [concentrated in Critical Race Studies](#) during law school, for that matter.)

The full brief overflows with comic gems — see, e.g., footnotes 14 and 15 — but it also makes some important points about free speech in the political sphere, supported by rich historical research and citation to relevant precedent. You can, and should, read the brief in its entirety over [here](#) (PDF). Enjoy!