



SJC to hear case challenging 1946 law limiting political speech

By Andy Metzger

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A state representative attempting to hold one of his political detractors criminally responsible for an election-season pamphlet has set the stage for arguments Thursday over the constitutionality of a 1946 state law limiting political speech.

At issue before the Supreme Judicial Court is the constitutionality of a law that punishes deliberate attempts to make false statements to boost or hinder an electoral candidate. The court has also been asked to decide whether a woman accused of making the mailers can be arraigned in Falmouth District Court.

Last fall in the midst of his first re-election campaign, Rep. Brian Mannal, D-Barnstable, made high-profile accusations, accompanied by an application for criminal complaint, against the treasurer of the Jobs First Independent Expenditure PAC.

Mannal's application for criminal charges against Jobs First Treasurer Melissa Lucas, of Melrose, occurred about two weeks before his narrow, 207-vote win over Barnstable Republican Adam Chaprales.

The group had sent out a mailer implying a link between Mannal's law practice and legislation he filed to provide more rights to sex offenders in reclassification proceedings before the Sex Offender Registry Board — even though Mannal said he has never handled a sex offender case.

"Brian Mannal is putting criminals and his own interest above our families," the flyer said, asking, "Why does Brian Mannal want to put our families at risk?"

Lucas's lawyer disputes that she had "any involvement in the drafting or distribution of the brochures."

Mannal asserts the pamphlets deliberately mischaracterized his actions to the point of criminality.

"The statement is quite clearly an attempt by Jobs First to paint me as a corrupt legislator who is unfit for office," Mannal told the News Service. "The injury is very similar to being assaulted, but in my case it came in the form of tens of thousands of these lies being spread out in the community that I love."

Chaprales, who is in the financial industry, told the News Service public officials need to put their "big boy pants on," and said Mannal's prosecutorial response was one of several "reckless" actions Mannal took during the campaign, including showing up at Chaprales' door for a contentious visit.

"I think it's a monumental waste of taxpayer's money and Brian needs to get his priorities straight," Chaprales said of the ongoing litigation. Chaprales, who declined to comment on the flyer itself, said, "People didn't care about that. That was called campaign trash."

Mannal's pursuit of charges has prompted free speech advocates, including news media companies, the American Civil Liberties Union of Massachusetts, and the Cato Institute to call for a repeal of the law in friend-of-the-court briefs.

A coalition of media companies wrote that banning false political speech "puts the government in the inappropriate position of adjudicating political and social truths, empowers partisan interests to abuse criminal law for partisan ends, and unlike counterspeech, fails to even address errors in speech until long after elections end."

The law bans false statements for or against a candidate and carries a punishment of up to six months imprisonment for those who knowingly violate the ban. In 1967, the Legislature amended the law to ban the publication of false statements about ballot questions.

"I've never thought that this would result in Melissa Lucas going to jail," said Mannal, who said he supports the law and didn't know whether the Cape and Islands prosecutors would pursue the charges. "I think that it's important to have some level of fair dealing and have some way of protecting our democracy."

According to Lucas's brief filed by attorney Peter Charles Horstmann, Mannal issued a press release right after applying for charges, where he claimed the alleged crime "could put her behind bars."

The office of Attorney General Maura Healey argued in an April brief that the state's highest court should uphold the statute, because it "regulates only fraudulent and defamatory speech," while also recommending an order for the District Court to dismiss the specific case. Assistant Attorney General Amy Spector wrote that the pamphlet contained opinion rather than facts that could be proved or disproved.

The Cato Institute, a Libertarian think tank, said it can be "incredibly difficult to assess the truth of a politician's claims, especially in the chaos of an election campaign."

Cato's lawyers mused whether they would run afoul of the law by loudly calling Mannal a "fool" around election-time.

Lucas's attorney Horstmann wrote in the brief that Mannal "successfully chilled" the freedom of speech rights of Lucas and said Jobs First has presented evidence that it declined to air a radio ad and decided to refrain from political activity after Mannal's legal action. Horstmann, who declined to comment to the News Service, also argued that First Amendment rights have grown stronger in the United States since 1946 and political speech is afforded the strongest protection.

Mannal questioned whether Jobs First filed the appropriate campaign finance documentation for production of the radio ad that never ran.

The law bans not only negative false statements, but also positive false statements aimed at boosting a candidate. While he noted his case focuses on negative false statements, Mannal said a supporter falsely claiming he had won a Nobel Prize, for example, "wouldn't be right."

Jobs First is a super PAC that received \$190,000, a bulk of its \$219,500 in contributions last year, from Christopher Egan, a Boston resident, president of the development firm Carruth Capital and former President George W. Bush's representative to the Organization for Economic Cooperation and Development in Paris.

Organized last June, the group targeted Democrats and backed non-incumbent Republicans in last year's election.

As is the case with all 200 members of the Legislature, Mannal is afforded particular protection for anything he says in the House — similar to the protections given arguments in courtrooms.

"The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever," reads Article 21 of the state constitution.

Mannal said he plans to attend the arguments, which will be held Thursday at the John Adams Courthouse.