



## **SJC to weigh constitutionality of state political speech law**

**By C. Ryan Barber**

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In the eyes of the New England First Amendment Coalition, it presents "grave concerns" to press freedoms.

It could have a "chilling effect" on political speech when that speech matters most — "on the eve of an election" — according to the New England Legal Foundation. And it should be ruled unconstitutional on First Amendment grounds, argued the Cato Institute, a libertarian think tank, in an amicus brief filed last week in Supreme Judicial Court.

But next week, Attorney General Maura Healey's office will defend the constitutionality of a Massachusetts law that criminalizes false statements made in hopes of defeating a political candidate, even as it disagrees with state Rep. Brian Mannel's belief that the Jobs First Independent Expenditure PAC violated that law with a negative mailer last year.

In a 52-page amicus brief filed April 21, Assistant Attorney General Amy Spector wrote that the state law is narrowly tailored to apply only to "fraudulent and defamatory speech, which the Supreme Court has repeatedly recognized are categories of speech enjoying no First Amendment protection."

The amicus brief marked the first indication of the attorney general's stance on the statute, setting the stage for an argument May 7 in the state's Supreme Judicial Court on the law's constitutionality.

A week before he won re-election by a mere 207 votes, Mannel accused Jobs First of crossing the line between a political attack and violation of state law with a mailer claiming that he filed sex offender legislation with the aim of representing more court-appointed clients. Mannel's bill, which never made it out of committee in the 2013-14 legislative session, called for notifying indigent sex offenders of their right to a public defender at a review hearing before the Sex Offender Registry Board.

In its mailer, Jobs First accused Mannel of filing the bill in hopes of benefiting his legal practice, "helping himself," "helping sex offenders" and "putting criminals and his own interest above our families."

"Is this the kind of person we want representing us?" the brochure asked, above a photograph of Mannel smiling.

As the Boston Herald reported in an article that Jobs First referenced in the brochure, Mannel, a Centerville Democrat, said he has never represented a sex offender before the Sex Offender Registry Board, nor is he certified to do so. Mannel has argued, based on the use of the Boston Herald headline in the mailer, that Jobs First made the "helping himself" claim with knowledge that he lacked the certification to handle a sex offender case.

An assistant clerk magistrate in Falmouth District Court found probable cause to issue a criminal complaint against Melissa Lucas, the chairwoman and treasurer of Jobs First, who, if convicted, would face up to six months in jail or a \$1,000 fine. But last week, Spector wrote that Jobs First's statements "may be interpreted in multiple ways and cannot be proven false, are not fact statements but rather are opinions, to which the statute does not apply."

The statements at issue, she added, "are not statements of fact but of opinion and thus cannot be 'false.'"

If it considers the merits of the case, the Supreme Judicial Court should order dismissal of the criminal complaint against Lucas, Spector continued. If the court reaches the constitutional issue, she argued it should uphold the statute.

Mannel said he had suspected that the attorney general's office would not defend the statute's constitutionality because, until filing the amicus brief, it had declined to take a position while reserving the right to defend the law. In an interview Monday, Mannel said the clerk magistrate's finding of probable cause "seemed like vindication," adding that his case against Jobs First "highlights a problem in our political system."

"My feeling is these tactics are unconscionable," he said.

Lucas' defense attorney, Peter Horstmann, declined to comment.