

## Susan B. Anthony List Wins Challenge to Ohio's 'False Statement' Law

After a four-year legal battle that raised strong First Amendment concerns, a district judge overturned a law designed to police campaign speech.

By JOAN FRAWLEY DESMOND

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WASHINGTON — On Sept. 11, after an expensive and time-consuming legal battle, the Susan B. Anthony List (SBA List), a national pro-life advocacy group, learned it had won its lawsuit against an Ohio law that barred “false statements” in political campaigns.

The law had been used to block a campaign ad sponsored by the group in the 2010 midterm elections.

In papers filed with the court, the Susan B. Anthony List outlined its First Amendment challenge to the Ohio law, stating that it did not argue “for a right to lie. We’re arguing that we have a right not to have the truth of our political statements be judged by the government.”

Ohio district Judge Timothy Black agreed with the pro-life group’s claims. His ruling found that the law violated free-speech rights when it gave the Ohio Elections Commission the power to receive complaints and determine whether statements made by political campaigns were true or false.

“[T]he court finds that Ohio’s laws are more burdensome than necessary to accomplish their alleged objectives and do not satisfy strict scrutiny under the Constitution of the United States,” Judge Black concluded.

The decision cited a recent 8th Circuit [ruling](#) in a legal challenge to a similar Minnesota law, as well as the Supreme Court’s 2012 [decision](#) in *United States v. Alvarez*, which found that the [Stolen Valor Act](#) — a federal law that criminalized false statements about earning a military medal — was unconstitutional.

“[T]he answer to false statements in politics is not to force silence, but to encourage truthful speech in response and to let the voters, not the government, decide what the political truth is,” stated Judge Black’s ruling, which echoed the high court’s finding in *Alvarez*.

SBA List President Marjorie Dannenfelser welcomed the district-court ruling and said it would help her organization remain fully engaged in the 2014 campaign season in Ohio, a bellwether state.

“After four years and a trip to the U.S. Supreme Court, today we finally have a victory for free speech,” Dannenfelser said in a [statement](#) released after the decision.

Marilyn Musgrave, the SBA List’s vice president of government affairs, emphasized that the group was correct to challenge the law, given the fact that members of the Ohio Elections Commission were political appointees.

“When you have a panel that’s politically appointed like this, and they say that they can determine truth, it has a chilling effect on free speech,” Musgrave noted during a [panel discussion](#) on National Public Radio, following the ruling.

## **The SBA List Ad**

[\*Susan B. Anthony v. Driehaus\*](#) pitted a leading pro-life activist group that raises money for national pro-life candidates against an Ohio law that was used to suppress SBA List’s billboard ad campaign that attacked U.S. Rep. Steven Driehaus, D-Ohio.

The SBA List ad framed Driehaus’ critical vote in favor of the Affordable Care Act as a vote for “taxpayer-funded abortion.” The congressman said that claim was false, and he threatened to prosecute the pro-life group under the state’s “false statement” law.

SBA List was then denied access to the billboard, as Driehaus turned to the Ohio Elections Commission for relief. The commission sided with the congressman, but the claim was dropped after Driehaus failed to win re-election.

SBA List sought to proceed with its lawsuit, and its standing was challenged. This June, the U.S. Supreme Court [ruled](#) unanimously that the group had standing to pursue its First Amendment challenge to the law.

At the time that Driehaus brought his complaint to the Ohio Elections Commission, he contended that it was false to equate a vote for Obamacare with support for “taxpayer-funded abortion.” After all, President Obama had issued an [executive order](#) barring federal funding of abortions in plans that would be authorized under the Affordable Care Act.

Four years later, Dannenfelser argues that information about plans authorized under the Affordable Care Act that provide abortion coverage and also receive federal subsidies confirms

the claims made in the campaign ad. On Sept. 15, the non-partisan Government Accountability Office released a [report](#), which found that 1,036 qualified health plans in state exchanges cover elective abortion, with access to federal subsidies.

But Judge Black, in his ruling, emphasized that the actual truth or falsity of the ad campaign did not concern him. Rather, the question before the court was whether a government body should arbitrate such disputes in the rough and tumble of a political campaign.

“Here in Ohio, there is no reason to believe that the OEC [Ohio Elections Commission] is positioned to determine what is true and what is false when it comes to political statements,” stated Judge Black’s ruling.

“In fact, it is entirely possible that a candidate could make a truthful statement, yet the OEC would determine a few days before an election that the statement is false, penalizing the candidate for speaking the truth.”

The best response to false statements in political campaigns, he concluded, quoting Alvarez, was “the simple truth.”

Judge Black then turned to the Capitol Hill television drama *House of Cards* to underscore his point, quoting the Machiavellian congressman Frank Underwood: “There’s no better way to overpower a trickle of doubt than with a flood of naked truth.”

## **Policing Political Speech**

About 15 U.S. states have passed laws that attempt, in a variety of ways, to police political speech. Thus, the SBA List hopes that Judge Black’s ruling, combined with the 8th Circuit decision, will prompt a reassessment of such laws.

A diverse group of organizations, including the Cato Institute, a libertarian think tank, and the American Civil Liberties Union (ACLU), as well as President Obama’s solicitor general, filed amicus briefs opposing the Ohio law.

“This decision has important ramifications and will likely have a ripple effect in other states,” Dannenfelser told the Register.

“Not all ‘false statement’ laws are the same, and some have never been used,” she noted.

“But if you get a Huey Long, who is willing to do anything to consolidate power, then such laws could fuel political corruption,” she said, in a reference to the Louisiana governor and senator who was notorious for his machine politics.

## **Boost for the Pro-Life Election Message**

Moving forward, Dannenfelser says the legal victory will help the pro-life group get its ads targeting candidates who voted for Obamacare out to voters in time for the midterm elections.

“It is beyond dispute that ... Obamacare contains multiple abortion-funding provisions,” she said. “This reality will continue to be a key part of our message to voters in the 2014 midterm elections and beyond.”

*Joan Frawley Desmond is the Register's senior editor.*