



Supreme Court Will Hear Challenge To Ohio Ban On Campaign Lies

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The U.S. Supreme Court hears arguments Tuesday testing whether states can make it a crime to lie about candidates during an election campaign.

At issue is an Ohio law that imposes potential jail time or a fine for the first offense, and possibly loss of the right to vote for anyone convicted twice. The case before the court, however, involves not a person, but an organization.

During the 2010 midterm elections, the anti-abortion Susan B. Anthony List wanted to put up a billboard ad targeting then-Rep. Steven Driehaus, D-Ohio, for his vote on the Affordable Care Act.

The ad said, "Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion."

In fact, Driehaus and other anti-abortion Democrats supported the health care bill only after President Obama agreed to issue an executive order that specified insurance plans in the health care exchanges would not use tax dollars for abortion, except in cases of rape, incest or when the life of the woman would be endangered.

Driehaus filed a complaint with the Ohio Elections Commission, and the commission found probable cause of a violation. The ad never went up because the advertising company that owned the billboard space refused to allow it.

Driehaus subsequently lost his re-election bid, and his complaint to the state Elections Commission was withdrawn. The Susan B. Anthony List, however, continued its legal challenge to the Ohio election law, contending it would chill similar speech in future election campaigns.

The lower courts dismissed the suit, concluding that the anti-abortion group could not show it had suffered any actual harm. Because the group had not been prosecuted, the lower courts said, any claimed harm is purely "speculative."

The Susan B. Anthony List appealed that ruling to the U.S. Supreme Court, contending that its free speech rights had been violated. The group argues that under the U.S. Constitution, the government cannot decide what is false speech in the context of a political campaign.

First, though, those challenging the Ohio law have to jump an important procedural hurdle.

The Supreme Court's five most conservative members have, in the past, been very strict about requiring a showing of actual harm to justify getting in the courtroom door. But the same justices have also been aggressive in protecting the First Amendment right of free speech.

Just two years ago, the high court struck down a federal law that made it a crime to lie about having been awarded military medals. And earlier this month, the conservative majority invalidated a cap on the overall amount of money donors can give, in the aggregate, to political candidates and parties. That decision, too, was in the name of free speech.

In the Ohio case being argued Tuesday, civil libertarians on the right and left have filed briefs opposing the law against lying, and by extension similar laws in about one-third of the states.

The Cato Institute and satirist P.J. O'Rourke contend in their brief that falsehoods "are cornerstones of American democracy."

To make the point, the brief opens with statements or messages from five past presidents:

"I am not a crook." (Richard Nixon)

"Read my lips: No new taxes!" (George H.W. Bush)

"I did not have sexual relations with that woman." (Bill Clinton)

"Mission accomplished." (George W. Bush)

"If you like your health care plan, you can keep it." (Barack Obama)

Whether each of these statements was made *knowing* it was false is at least debatable. But just listing them makes the point that falsity in politics may be hard to define.

A decision in the case is expected by June.