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## Prosecute political liars? Column

**Supreme Court takes up issue. Yet our history is full of mudslinging and half truths.**

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This will come as no surprise: A lot of untruths are tossed around during political campaigns.

Here is something that really will shock you. In [Ohio](#), and to varying degrees in at least [15 other states](#), people who lie during campaigns can be prosecuted and put in jail.

This might conjure up pleasing images of the halls of legislatures being emptied as lying politicians are hauled off to prison. But do we really want government putting people in jail for what they say on the campaign trail?

That question will loom over the Supreme Court on Tuesday when the justices hear arguments about the Ohio law, which makes it a crime to disseminate a knowingly false statement about a candidate or ballot initiative.

In 2010, the [Susan B. Anthony List](#), which supports anti-abortion candidates, accused then-Rep. Steven Driehaus, an Ohio Democrat, of voting "for [taxpayer-funded abortion](#)" when he voted for the health care reform law known as Obamacare. The truth of that statement is debatable, but when Driehaus filed a complaint with the state under the law, billboards making the charge were canceled. Political speech during a campaign was stifled.

As the case comes to the high court, the precise issue to be decided has more to do with how serious the threat of prosecution has to be before Ohio's law can be challenged. But the constitutionality of the law itself will also be on the minds of justices, in part because of a [brief filed by the Cato Institute and satirist P.J. O'Rourke](#).

A rich history

They survey the rich history of lies and half-truths by candidates and presidents. In the modern era, examples range from Richard Nixon's "I am not a crook" to Barack Obama's "if you like your health care plan, you can keep it."

Back in the early days of the republic, John Quincy Adams' supporters taunted Andrew Jackson as a "[slave-trading, gambling, brawling murderer](#)." Before that, Thomas Jefferson's nemesis James Callender accused Jefferson of fathering children with his slave Sally Hemings — a charge that proved true nearly two centuries later.

The list goes on. And of course, modern-day campaigns at all levels seem to be more vicious than ever. But the essential question, implicit in the [First Amendment](#), is whether government should intervene to referee the truth of campaign barbs.

The current Supreme Court, more so than any group of justices before it, has said no to government interference with speech during campaigns, the period when the value of debate in our democracy is at its peak.

Some liberals say the court has gone too far, especially when campaign money is defined as a form of speech and limits on campaign contributions by corporations have been struck down.

Court has spoken

On the question of lies, however, the court has already spoken. In *New York Times v. Sullivan*, the landmark ruling decided [50 years ago March 9](#), the court recognized that "erroneous statement is inevitable in free debate" and must be tolerated to give "[breathing space](#)" to the robust exchange of ideas.

Two years ago in [United States v. Alvarez](#), the court struck down the Stolen Valor Act, which made it a crime to falsely claim having won a military honor. Allowing the law to stand, the court said, would give government "broad censorial power." The antidote for lying about a military honor, the court agreed, is more speech. "The dynamics of free speech, of counterspeech, of refutation, can overcome the lie."

Similarly, a lie uttered during a campaign can be countered by the target of the misstatement. How candidates react to slings and arrows on the campaign trail can be a telling test of character.

Would political discourse really be improved by having a government "ministry of truth" sanitizing what partisans say? Even Ohio Attorney General Michael DeWine has candidly told the Supreme Court that he has "[serious concerns](#)" about the constitutionality of his state's law, especially in light of the *Alvarez* ruling. The Supreme Court is likely to agree.

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