

# The Economist

## Is it wise to criminalise lies?

### Challenging the Buckeye State's ban on political mudslinging

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POLITICIANS never lie. So you should not be allowed to lie about them. That seems to be the logic behind an Ohio election law that makes it a crime, punishable by six months in prison and a \$5,000 fine, to disseminate a falsehood about a candidate if it is “designed to promote” his election or defeat. Mudslingers are outraged. A brief filed to the Supreme Court on February 28th by P.J. O'Rourke, a satirist, and the Cato Institute, a think-tank, says the law “blatantly violates the First Amendment.”

The case, which will be heard on April 22nd, was brought by the Susan B. Anthony List (SBA), an anti-abortion group, against the Ohio Elections Commission and Steve Driehaus, a former congressman from Ohio. In 2010 Mr Driehaus, a Democrat, voted for Obamacare. During the next election campaign, SBA planned to erect billboards in his district reading: “Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion!”

Mr Driehaus believes that accusation to be false: although Obamacare subsidises the purchase of health insurance that may cover abortions, it forbids insurers from paying for abortions with federal funds. SBA scoffs that this is an accounting gimmick. Before the billboards went up, Mr Driehaus filed a complaint with the Ohio Elections Commission. The complaint was eventually dropped, but the law's chilling effect remains. The billboards never went up, and another group that wanted to oppose Mr Driehaus was scared off.

Mr O'Rourke argues that “disparaging statements about one's opponent (whether true, mostly true, mostly not true, or entirely fantastic) are cornerstones of American democracy.” After all, he asks, “where would we be without the knowledge that Democrats are pinko-communist flag-burners... who will steal all the guns and invite the UN to take over America”, while “Republicans [are] assault-weapon-wielding maniacs who believe that George Washington and Jesus Christ incorporated the nation.”

More seriously, government is ill-suited to judge when a statement crosses the line into falsehood. (“Two Pinocchios out of five is OK, but three is illegal?” asks Mr O'Rourke, alluding

to a scoring system used by the *Washington Post*'s Fact Checker—which sometimes disagrees with other media fact-checkers.) Forbidding “lies” will not produce political discourse filled with accuracy and brilliance; it will produce silence.