



## High Court Rules Anti-Abortion Group Can Sue Over Election ‘Truth-Telling’ Law

By Julie Rovner

June 16th, 2014

A group challenging an Ohio election law that makes it a crime to make “false statements” about a candidate’s record during a campaign has standing to challenge the constitutionality of that law, according to today’s unanimous Supreme Court decision.

The opinion, written by Justice Clarence Thomas, did NOT strike down Ohio’s false statement law. But it did hold that the Susan B. Anthony List demonstrated “a sufficiently imminent injury” from potential prosecution under the law that it can challenge it in federal court.

Michael Carvin, the attorney who argued the case before the court for the Susan B. Anthony List, told reporters in a conference call that he anticipates as a result of the ruling, however, Ohio’s measure and similar “truth-telling commissions” in more than a dozen other states “will be struck down” as a violation of free speech rights.

The case arose during the 2010 mid-term elections, when the group, which describes itself as “dedicated to electing candidates and pursuing policies that will reduce and ultimately end abortion,” targeted a number of anti-abortion Democrats who voted for the Affordable Care Act. The SBA List contends that the health law “supports taxpayer-funded abortion,” despite promises to the contrary and an executive order issued by President Barack Obama.

In an attempt to stop billboards accusing him of voting for taxpayer-funded abortions from being erected by the group, then-Rep. Steve Driehaus filed a complaint — at the height of the campaign season — with the Ohio Election Commission, which found “probable cause” that the statements were false.

Driehaus lost the election, and withdrew his complaint, but the SBA list and another group, the Coalition Opposed to Additional Spending and Taxes, sued the election commission anyway. They argued that the law violates the Constitution’s guarantee of free speech, and that it “chilled” them from making assertions about candidates due to fear of prosecution.

The Supreme Court agreed, as far as allowing them to pursue their claim. “The burdens that Commission proceedings can impose on electoral speech are of particular concern here,” said the opinion. “Moreover, the target of a false statement complaint may be forced to divert significant time and resources to hire legal counsel and respond to discovery requests in the crucial days leading up to an election.”

Marjorie Dannenfelser, president of the Susan B. Anthony List, told reporters the victory would likely free the group to pursue its agenda not just in Ohio, but in other states with similar laws.

“Voters ought to retain the ultimate right to determine the truth or falsity of claims,” she said. “The threat of jail time or fines that put you out of business; that is a chill.”

But the implications of the “false statement” laws on free speech led to a wide range of organizations supporting the SBA List’s right to sue. Among the most notable “friend-of-the-court” briefs was one filed by of the Cato Institute co-written by humorist P.J. O’Rourke that riffed on the idea of “truthiness” as coined by comedian Stephen Colbert.

“Driehaus voted for the Obamacare, which the Susan B. Anthony List said was the equivalent of voting for taxpayer-funded abortion,” said the brief in a footnote. “Amici are unsure how true the allegation is given that the health care law seems to change daily, but it certainly isn’t as truthy as calling a mandate a tax.”