

Your News, Your Way.

Tyler Morning Telegraph

Supremes correct in ruling on 'lies'

Editorial

June 19, 2014

Let us be very, very clear: Agreeing with the U.S. Supreme Court's decision in the *Susan B. Anthony List v. Driehaus* is not the same thing as agreeing that lying is OK. The real crux of the case is whether the government should be allowed to determine just what the "truth" is.

We have written about this case before. It's a challenge to an Ohio law that "criminalizes the spreading of false information about a political candidate during a campaign," according to the *Washington Post*.

The facts in this particular case provide a good example of how tough it is to determine "truth." The *Susan B. Anthony List*, a pro-life group, claimed that a political candidate supported taxpayer-funded abortion — based on his vote in favor of the Affordable Care Act.

The important question here isn't whether that statement is true (the question was unclear enough that President Obama later signed an executive order preventing the ACA from paying for abortions). The real question is who decides whether it's true.

In Ohio, the law created an Orwellian "truth commission."

As *The Atlantic* magazine explains, "The Ohio statute permits 'any person' to bring an action for 'falsity' to the Ohio Elections Commission, which must then determine whether there is 'probable cause' (meaning 'reasonable suspicion') that the statement was knowingly or recklessly false. If so, a full hearing will be held within 10 days, and if the panel at the hearing agrees, the case is referred for criminal prosecution."

The real and tangible result of such a law is the chilling of speech.

Because it takes just one angry person to bring an action, the law can (and has been) used to harass political opponents.

The Sixth Circuit Court of Appeals sent the case to the Supreme Court when it ruled that the *Susan B. Anthony List* hadn't been "injured" by the law — since the candidate who brought the complaint lost the election anyway.

“The Sixth Circuit misses the point,” wrote Justice Clarence Thomas for the majority. “SBA’s insistence that the allegations in its press release were true did not prevent the Commission panel from finding probable cause to believe that SBA had violated the law the first time around. And, there is every reason to think that similar speech in the future will result in similar proceedings, notwithstanding SBA’s belief in the truth of its allegations.”

In other words, the point isn’t whether the Susan B. Anthony List had suffered, it was that the First Amendment inevitably would suffer.

The Cato Institute’s P.J. O’Rourke (the political humorist who delivered a well-received UT Tyler Cowan Center lecture in 2012) filed a brief in the case.

“When political barbs become legal disputes, the public is denied an important part of political speech, namely, responses to those allegations,” O’Rourke pointed out.

He added that the remedy to false or objectionable speech is more speech — not silence.

Lying is bad. We all agree on that. But what’s worse is relying on the government to decide what is a lie and what isn’t.