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## Will the Supreme Court uphold our right to truthiness?

By Niraj Chokshi  
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Lying about someone running for office is condemnable, but should it be illegal?

That's a question the Supreme Court may answer this year in a case, *Susan B. Anthony List v. Driehaus*, over whether Ohio has the right to ban making knowingly false charges against a political candidate. About a third of the states have these laws, according to [our own Robert Barnes](#). But defenders of the First Amendment say it stifles necessary free speech. And, on Friday, the libertarian Cato Institute joined forces with political satirist P.J. O'Rourke to file a brief—with its fair share of intentionally outrageous lies—asking the court to overturn the law. First, here's Barnes explaining the case at hand:

The dispute in the political speech case arises from the campaign of former congressman Steve Driehaus (D-Ohio) for reelection in 2010 and his vote in favor of the Affordable Care Act. The Susan B. Anthony List wanted to erect a billboard stating: "Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion."

Driehaus filed a complaint with the Ohio Elections Commission, saying such a claim would violate state law making it a crime to "post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard for whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate."

Driehaus contended that the group's statement was false because the health-care law required that abortion be paid for by a separate account funded solely by enrollees, even though insurers of low-income families would be subsidized with federal dollars.

Cato's amicus brief argues that the Ohio ban is an overreach and should be stricken. (Also, that they, "their counsel, family members, and pets have all won the Congressional Medal of Honor.") Assertions based on belief rather than logic—i.e. "truthiness"—are a key part of political discourse, they argue.

Everybody knows that the economy is better off under [Republican/Democratic] presidents—who control it directly with big levers in the Oval Office— and that:

President Obama is a Muslim.  
President Obama is a Communist.  
President Obama was born in Kenya.  
Nearly half of Americans pay no taxes.  
One percent of Americans control 99 percent of the world's wealth.  
Obamacare will create death panels.  
Republicans oppose immigration reform because they're racists.  
The Supreme Court is a purely political body that is evangelically [liberal/conservative].

All of the above statements could be considered "truthy," yet all contribute to our political discourse.

Outlandish assertions, they argue, can force honest answers: "Inflammatory, insulting, and satirical speech is more likely to produce a response." And existing laws governing defamation should suffice and judging the veracity of a claim can be tricky, they say.

"We shouldn't have the election regulation authorities doing something else and at the end of the day anything that's short of defamation should be fair game," says Cato senior fellow Ilya Shapiro.

Deceit can serve its own purpose—it draws attention both to the truth and the character of the liar.

"The impeachment of President Clinton was not based on any sexual activities he might have engaged in with Monica Lewinsky, but over the attempt to cover it up. Similarly, President Nixon's resignation was prompted by his obfuscations rather than his orchestration of a third-rate burglary," they write.

The brief is short, engaging and unusual. It's not often that Supreme Court briefs call Democrats "pinko-communist flag-burners" or Republicans "hateful, assault-weapon-wielding maniacs."