



# Should it be legal for politicians to lie?

By Ilya Shapiro

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## STORY HIGHLIGHTS

- Ilya Shapiro says that political speech should not be regulated by states
- The U.S. Supreme Court will rule on an Ohio case that outlaws political lies
- Shapiro: Idea that a censor would vet speeches, ads against Truth-o-meter is a joke
- Ohio's ban of lies and damn lies, he argues, is inconsistent with the First Amendment

(CNN) -- Imagine that a state creates a "ministry of truth" whose job it is to referee elections to make sure that candidates and activists didn't insinuate, exaggerate or otherwise spin their messaging. Any political speech the truth-o-crats determined to be insufficiently candid would carry criminal penalties.

Sounds like a parable about the dangers of taking "clean elections" too far, right? Or a short story by George Orwell or Kurt Vonnegut?

In the American tradition of political free-for-all, the idea that an omnipotent censor would vet stump speeches and ads against some government-designed Truth-o-meter is a joke.

Unfortunately, this is no dystopia. By [one count](#), about 20 states outlaw campaign distortions. Most notoriously, [Ohio has a statute](#) that prohibits making "false statements" about a candidate or ballot initiative.

In one instance, former Rep. Steven Driehaus, D-Ohio, used it against an anti-abortion group that had attacked him in the 2010 election. That's the basis of a case now in front of the U.S. Supreme Court.

[A hearing last week](#) in the case began with the claim that "Driehaus voted for taxpayer-funded abortion." That's good fodder for dinner-party conversation or TV talking heads, but it was surreal in that it ended up before the highest court in the land.

There's no question that Driehaus voted for the bill at issue -- the Affordable Care Act -- so the only dispute is whether statutory text actually provides federal funding for abortions (a question of legal, economic and even theological interpretation).

Alas, the Ohio law extends even past matters of interpretation. Its broad language also criminalizes rhetorical hyperbole. Legally speaking, Ohio's ban of lies and damn lies is inconsistent with the First Amendment.

Indeed, disparaging political statements -- whether true, mostly true, mostly untrue or wholly fantastic -- are cornerstones of American democracy. Mocking and satire are as old as the republic.

Just ask Thomas Jefferson, ["the son of a half-breed squaw, sired by a Virginia mulatto father."](#) [Jefferson's 1800 campaign against John Adams](#) would make a modern spin doctor blush -- and that's before [James Callender](#), noted pamphleteer and "scandalmonger," alleged that Jefferson had fathered children with his slave Sally Hemings (a charge largely confirmed nearly 200 years later).

In the fierce election of 1828, supporters of John Quincy Adams called Andrew Jackson a ["slave-trading, gambling, brawling murderer."](#) Jacksonian partisans [responded](#) by accusing Adams of securing a prostitute for Czar Alexander I.

Later that century, Grover Cleveland was asked at every campaign stop, ["Ma, ma, where's my pa?"](#) (Answer: Gone to the White House, ha ha ha!)

More recently, we've debated draft dodging, Swift Boats and birth certificates, not to mention the assorted infidelities that are a political staple. Any of these allegations could generate a complaint to the Ohio Elections Commission and thus turn commonplace jibber-jabber into a protracted legal dispute.

Yet "truthiness" -- a "truth" asserted "from the gut" or because it "feels right" -- is a key part of political discourse.

After all, where would we be without the knowledge that Democrats are pinko-communist flag burners who want to tax churches and use the money to fund abortions so they can use the fetal stem cells to create pot-smoking lesbian ATF agents who will steal all the guns and invite the United Nations to take over America?

Would we be better off electing Republicans, those assault-weapon-wielding maniacs who believe that George Washington and Jesus Christ incorporated the nation after a Gettysburg reenactment and that the only thing wrong with the death penalty is that it isn't administered quickly enough to secular-humanist professors of Chicano studies?

Laws that criminalize "false" speech don't replace smears and snark with "just the facts." Instead, they chill speech such that spin becomes silence.

Supporters of Ohio's law believe that it somehow stops lies and insults, raising the level of discourse to that of an [Oxford Union](#) debate (which itself isn't that high, but that's another story). Not only does this hope stand in the face of political history, it disregards the fact that, in politics, truths are felt as much as they're known.

When a red-meat Republican hears "Obama is a socialist," or a bleeding-heart Democrat hears, "Romney wants to throw granny off a cliff," he feels a truth more than thinking one. No state agency can change this fact, and any attempt to do so stifles vital political speech.

Laws such as Ohio's are so absurd as to be laughable -- except that criminalizing political speech isn't funny. The Supreme Court should close the truth ministries once and for all.

*Editor's note: [Ilya Shapiro](#) is a senior fellow in constitutional studies at the [Cato Institute](#). He filed a brief supporting the plaintiffs in *Susan B. Anthony List v. Driehaus*, currently before the U.S. Supreme Court. The opinions expressed in this commentary are solely those of the author.*