



Supreme Court sides with anti-abortion group on political ads

By Bill Mears, CNN Supreme Court Producer
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(CNN) -- An anti-abortion group may continue challenging a state law that forbids certain false statements about a candidate during an election campaign, after the Supreme Court ruled unanimously in the organization's favor on Monday.

The justices did not directly address whether the Ohio statute was a violation of free speech, but the 18-page ruling from the court suggested it was on shaky constitutional ground.

The Susan B. Anthony List had sought to air political ads during the 2010 congressional races, questioning the votes of some lawmakers on a controversial part of the healthcare reform law known as Obamacare. The group has insisted its commercials were truthful.

The Ohio Elections Commission had issued a pre-election preliminary finding that "probable cause" existed the ads violated the state law.

SBA List then went to federal court for an immediate order allowing it to broadcast, but the election occurred before a final determination was made about the disputed content.

The high court ultimately concluded the advocacy group had established a "sufficiently imminent injury" from not being able to air those ads, allowing it to continue its ongoing lawsuit.

"The burdens that (Election) Commission proceedings can impose on electoral speech are of particular concern here," said Justice Clarence Thomas for the court.

And denying prompt judicial review would impose a substantial hardship on petitioners, forcing them to choose between refraining from core political speech on the one hand, or engaging in that speech and risking costly commission proceedings and criminal prosecution on the other."

Then-Rep. Steve Driehaus, who was running for re-election in 2010, complained after the national, anti-abortion group sought to place a billboard saying, "Shame on Steve Driehaus! Driehaus voted for taxpayer-funded abortion."

He cited 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."

The Democrat, who served only one term before losing the race, claimed the ad from the Susan B. Anthony List was false because the healthcare reform law provided that abortions would be separately funded by the enrollees and insurers through a special series of accounts.

But some anti-abortion activists said under the law, low-income women could have the procedure subsidized through the government.

Driehaus also later sued SBAL for defamation, saying, "A lie is a lie. The First Amendment is not and never has been an invitation to concoct falsehoods aimed at depriving a person of his livelihood."

Although the initial complaint was ultimately dismissed, a federal court separately sided with him and the state on the law's continued enforcement, prompting the high court to get involved.

The justices instructed the lower courts to allow the SBA lawsuit to proceed, where presumably the law's constitutionality will now be addressed.

"The truth or falsity of political speech should be judged by voters, not government bureaucrats," said SBA List President Marjorie Dannenfelser, after the decision was announced.

They and their supporters argued Ohio's law is unconstitutional because it creates a "truth commission," and singles out false or exaggerated statements about politicians for greater legal sanction than those said about other public figures.

"Allegations, insinuations, 'truthiness,' smears, and all that other rigmarole have been part and parcel of American political discourse since time immemorial," said Ilya Shapiro of the libertarian Cato Institute.

But abortion rights organizations backing the Ohio law warned voters to be wary about what is said in future national election races, at least by SBA.

Dannenfelser said in February that SBA List would target vulnerable Democrats in the fall midterm elections, spending up to \$10 million, including on TV ads.