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The Outrageous Reason Stephen Colbert Shouldn't Visit Ohio (And So Can't You!)

By Ilya Shapiro
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“I am not a crook.”

“Read my lips: no new taxes!”

“I did not have sexual relations with that woman.”

“Mission accomplished.”

“If you like your healthcare plan, you can keep it.”

While George Washington may have been incapable of telling a lie, his successors haven't had the same integrity. The campaign promise (and its subsequent violation), as well as disparaging statements about one's opponent—whether true, mostly true, mostly not true, or entirely fantastic—are cornerstones of American democracy.

Indeed, mocking and satire are as old as America, and if you don't believe me, you can ask Thomas Jefferson, “[the son of a half-breed squaw, sired by a Virginia mulatto father.](#)” Or perhaps you should ponder, as Grover Cleveland was forced to, “[Ma, ma, where's my pa?](#)” (Answer: Gone to the White House, ha ha ha!)

In modern times, “[truthiness](#)”—a “truth” asserted “from the gut” or because it “feels right,” without regard to evidence or logic—is also a [key part of political discourse](#). It's difficult to imagine life without it, and our political discourse is weakened by Orwellian laws that try to prohibit it.

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'll steal all the guns and invite the UN to take over America? Voters have to decide whether we'd be better off electing Republicans,

those hateful, machine-gun-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.

Everybody knows that the economy is better off under Republican/Democratic presidents (circle as appropriate)—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 (47 percent to be exact, though it may be higher by now).
- One percent of Americans control 99 percent of the world's health.
- 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 (again, pick your truth).

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

But Ohio has [a statute](#) that prohibits knowingly or recklessly making “false statements” about a political candidate or ballot initiative. And it's not alone; by [one count](#), around 20 states have similar laws.

Laws like that, which criminalize “false” speech, don't replace truthiness, satire, and snark with high-minded ideas and “just the facts.” Instead, they chill speech such that spin becomes silence. More importantly, Ohio's ban of lies and damn lies is inconsistent with the First Amendment. (I'm not sure how much torture statistics can withstand before they too run afoul of the law.)

The Supreme Court has repeatedly held that political speech, including and especially speech about politicians, merits the highest level of protection. As it said in the 1992 election-regulation case of [Burson v. Freeman](#), “the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” Just two years ago, in a case called [United States v. Alvarez](#), the Court struck down the False Valor Act (which criminalized falsely claiming to have won military medals) because the First Amendment protects outright lies with as much force as the truth.

It is thus axiomatic—not merely truthy—that speech may only be restricted or regulated where doing so is necessary to further a compelling state interest. But the government has no compelling interest in eliminating truthiness from electioneering and, even if such an interest existed, such laws are unnecessary because any injury that candidates suffer from false statements is best redressed by pundits and satirists—and if necessary, civil defamation suits.

Nor is the government well-suited for evaluating when a statement crosses the line into falsehood. (Two Pinocchios out of five is OK, but three is illegal?)

Ohio's law criminalizes political speech, which is no laughing matter. The Supreme Court should terminate it with extreme prejudice.

This "essay" is adapted from an [amicus brief](#) I filed on behalf of the Cato Institute and P.J. O'Rourke in [Susan B. Anthony List v. Driehaus](#), which the Supreme Court will hear on April 22, with a ruling expected by the end of June. For more on the case, see [this piece](#) by my colleague and fellow [Forbes.com](#) contributor [Trevor Burrus](#). Trevor also contributed to the brief, as did Cato legal associate Gabriel Latner—and all of us have won the Congressional Medal of Honor.

*While President Obama isn't from Kenya, he is a Keynesian—so you can see where the confusion arises.