



Lying in politics not a crime?

04/22/14

By [Adam Serwer](#)

Despite what you may have heard, the Supreme Court will not consider whether lying in politics violates the First Amendment.

That's certainly a juicy question, but the one before the high court Tuesday is a far more technical one: whether the anti-abortion rights group Susan B. Anthony List can challenge an Ohio law criminalizing knowingly false speech in political campaigns even though the group is not in danger of impending prosecution. Experts say the Supreme Court is more likely to agree that Susan B. Anthony List has reason to challenge the law and send it back to the lower courts than strike it down themselves.

"I think what they will do is make it very easy when they send it down to the lower court for that court to strike it down, and I think that's the way it'll stay," says Ilya Shapiro, an attorney with the libertarian Cato Institute. "We have laws against slander, we have laws against defamation, but anything that doesn't rise that high should be fair game for the court of public opinion."

Though it never actually went up, In 2010, Susan B. Anthony List bought a billboard attacking Ohio Democratic Rep. Steven Driehaus' vote for the Affordable Care Act as a "vote for taxpayer funded abortion." Susan B. Anthony List's definition of "taxpayer funded abortion" is misleading.

Public funds for abortion have been barred since the 1970s [thanks to Illinois Republican Rep. Henry Hyde](#), who helped lead a moral crusade against Bill Clinton over his affair with Monica Lewinsky despite his own marital indiscretions. President Barack Obama had to sign an executive order to [further reassure former Michigan Democratic Rep. Bart Stupak](#) and his anti-abortion cadre that the health care reform bill wouldn't fund abortion just to secure their votes. Susan B. Anthony List would no doubt argue that subsidies to help Americans purchase health insurance constitute funding for abortion, but by the "money is fungible" definition any

politician who ever voted for a tax break of any kind has potentially sent taxpayer funds to an abortion piggy bank.

Driehaus wasn't happy with the billboard, so he filed a complaint with the Ohio Elections Commission, which found probable cause that Susan B. Anthony List's billboard had run afoul of the law. Like many other Democrats, Driehaus got walloped in the 2010 election and so the complaint was ultimately withdrawn, since it no longer mattered.

Susan B. Anthony List though, has every intention of funding more misleading ads against Democrats, and argues that even though there's no longer a pending case against them, since they fully intend to engage in the kind of campaigning they did in 2010, the Ohio law infringes on their First Amendment rights.

"We agree that it chills their speech because their speech has been already subject to an administrative complaint," says Steven Shapiro of the American Civil Liberties Union. "They have reason to be worried about the next election, if they do what they say they're going to do, which is engage in similar speech again."

When it comes to abortion, the ACLU is against everything Susan B. Anthony List stands for. The group actively fights restrictions on abortion as infringements on women's rights – yet filed a brief agreeing with Susan B. Anthony List.

This isn't too surprising, though; the ACLU regularly defends the right of individuals to express views they find abhorrent. They're not alone in their skepticism of the Ohio law – while dozens of briefs have been filed in the case, not a [single amicus brief appears to have been filed on Ohio's side](#). Ohio's Republican Attorney General Mike DeWine [even filed two briefs](#): one defending the law in his government capacity, and another suggesting the law is unconstitutional.

As incensed as liberals might be about the Supreme Court's quest to facilitate total billionaire capture of American politics, the idea of a state-run Politifact that has the power to fine you or throw you in jail should give everyone pause.

Lies in politics can frustrate voters, but the last thing the system needs is for the state to arbitrate heated political arguments. Disagreements can't always be settled by facts, sometimes the truth really does come down to interpretation, and two contradictory views can both be defensible. Imagine a Democrat running against Paul Ryan's health care plan being prosecuted for [saying the Ryan plan "ends Medicare."](#)

For the pessimistic, the court of public opinion may resemble [Bane's takeover of Gotham City](#). But for what it's worth, politicians probably pay a steeper price for lying now than ever before. The Internet helps spread lies, but it also helps correct them.

The minds of political partisans are notoriously resistant to the truth – one study found that partisans can [grow more attached to their incorrect views](#) when confronted with reality – but politicians tend to be more sensitive. According to political scientists Brendan Nyhan of

Dartmouth College and Jason Reifler of the University of Exeter, [politicians were](#) “less likely to make inaccurate statements” when warned about the risk of being caught making stuff up.

As [Justice Louis Brandeis put it](#), “the fitting remedy for evil counsels is good ones.”