



Written by [Jack Kenny](#) on June 16, 2014

High Court Rules Pro-Life Group May Sue Over “False Speech” Law

The anti-abortion Susan B. Anthony List may proceed with its First Amendment suit against Ohio over the state’s enforcement of a ban on “false” political speech, the U.S. Supreme Court ruled in a 9-0 decision issued Monday. The SBA List, which supports pro-life candidates and opposes those who support legalized abortion, filed suit in federal court after the Ohio Elections Commission in 2010 ruled against the group’s ad campaign against Rep. Steve Driehaus, a first-term Democrat representing the state’s First District.



The SBA had announced a radio and billboard campaign against members of Congress the group charged had voted for taxpayer funding of abortion by voting for the Patient Protection and Affordable Care Act of 2010 (ObamaCare). The billboard ad planned for the district of Driehaus would have declared: “Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion.” Driehaus filed a complaint with the Elections Commission, claiming the SBA List was spreading lies about him. The advertising company that controlled the billboard space refused to run the ad after receiving a letter from the attorney of Driehaus threatening legal action.

The SBA List charged its First Amendment rights had been violated, but the U.S. Court of Appeals for the 6th Circuit ruled against the group’s appeal. Driehaus had withdrawn the complaint after losing the election and the SBA List had continued to advertise its message after the complaint had been filed. The court also ruled that the group lacked standing to sue because it could not demonstrate “an imminent threat of future prosecution.” The Supreme Court disagreed in a unanimous opinion written by Associate Justice Clarence Thomas.

“The threat of future enforcement of the false statement statute is substantial,” Thomas wrote, noting that “the specter of enforcement is so substantial that the owner of the billboard refused to display SBA’s message after receiving a letter threatening Commission proceedings. On these facts, the prospect of future enforcement is far from ‘imaginary or speculative.’” The case, *SBA List v. Driehaus*, is remanded for further proceedings.

When the Affordable Care Act was before the U.S. House in 2010, the representatives passed an amendment sponsored by Bart Stupak (D-Mich.) and Joseph R. Pitts (R-Pa.), prohibiting the use of federal funds to “to pay for any abortion or to cover any part of the costs of any health plan that includes coverage of abortion” except in cases of rape, incest, or danger to the life of the mother. The Senate refused to adopt the measure, however, and the House dropped it after President Obama threatened to impose the ban by executive order.

SBA List argues that the law nonetheless includes taxpayer-supported subsidies for the purchase of health insurance policies that cover elective (not medically necessary) abortions. Though 24 states



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forbid coverage of elective abortions in policies sold through the insurance exchanges established under the ObamaCare law, the other 26 permit such coverage.

Driehaus, who had previously served in the Peace Corps, enlisted for another two-year term following his defeat. He later lost a libel suit he brought against the SBA List, claiming the group caused his “loss of livelihood” by “defaming” him with its charge that he had voted for taxpayer funding of abortion.

The SBA List has continued to run its billboard campaign against those who voted for ObamaCare. The group’s website features a “Shame on Mary Landrieu!” ad against Sen. Mary Landrieu (D-La.) with the same message it used against Driehaus. In a curious statement, the Sixth Circuit Court of Appeals, in dismissing the SBA List suit, noted the group had not alleged it “plans to lie or recklessly disregard the veracity of its speech” in the future and therefore is not in imminent danger of prosecution under the Ohio law.

The issue, however, is not whether an organization plans to deliberately lie, but whether a state may create an agency empowered by law to determine which political statements are true and which are false. Court rulings, most notably the 1964 Supreme Court decision in *New York Times v. Sullivan*, have held that the freedom of speech protection under the First Amendment raises high the barriers against judicial findings of libel or slander in statements made against public figures, including elected officials. By empowering an elections commission to determine the veracity of statements made about a candidate in the midst of an election campaign, the state of Ohio has created something eerily similar to the Ministry of Truth in the George Orwell novel 1984.

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