



Written by [Jack Kenny](#) on April 23, 2014

State Ban On “False” Campaign Ads Challenged In High Court

Should a government body decide what is true and what is false in political campaign ads? That was the question before the justices of the U.S. Supreme Court Tuesday in a hearing on the constitutionality of an Ohio law that gives that power to the Ohio Elections Commission. The controversy grew out of a 2010 congressional election campaign in which the Susan B. Anthony List, a pro-life organization, announced plans to run billboard ads against Rep. Steven Driehaus (D-Ohio) in his district, declaring that Driehaus had voted for abortion by voting to pass the Patient Protection and Affordable Care Act, informally referred to as “ObamaCare.” Driehaus filed a complaint with the Elections Commission, claiming the ads would violate the state law that makes it a crime to make a knowingly false statement. A commission panel voted 2-1 to find “probable cause” for a full commission hearing. The Susan B. Anthony List then filed suit in federal court, challenging the constitutionality of the law. The groups says it never ran the billboard ads because the company hired to put them up was fearful of potential action by the commission.



The commission took no other action and Driehaus, a Democrat, lost his reelection bid. He is now the Peace Corps country director in Swaziland in Africa. In a telephone interview Monday, [he told Reuters](#) “I’m a pro-life Democrat. They were suggesting that I completely changed my character.... I fully support free speech but I think politics is going too far.”

The ads the group planned to place on billboards said: “Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion.” Marjorie Dannenfelser, president of the Susan B. Anthony List, told Reuters the ObamaCare legislation enables more women to obtain insurance for abortion through new premium subsidies and expansion of the joint state-federal Medicaid program.

Justices who are often on opposite sides of a frequently divided court seemed in agreement during Tuesday’s hearing that the Ohio law treads on First Amendment free speech grounds. Chief Justice John Roberts, appointed by President George W. Bush, said what happened to the Susan B. Anthony List could have an intimidating effect on other advocacy groups. Justice Anthony Kennedy, a Reagan



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appointee, said the commission's calling in of a group's leaders to justify what they're going to say could impinge on free speech rights. Democratic appointees Ruth Bader Ginsburg (Clinton) and Elena Kagan (Obama) also expressed concern over free speech implications. Ginsburg said the law could make it expensive to defend an ad and could diminish speech in an election campaign. Kagan said a commission finding of probable cause for a hearing could lead people to conclude the group sponsoring the ad "probably lied."

Lawyers for Ohio claimed in a filing with the Court that any harm from a commission action is speculative. Washington, D.C., lawyer Michael Carvin claimed the law has a chilling effect on free speech even if no prosecution is under way. He compared the situation to the *United States v. Alvarez* case in 2012, when the Court rejected as unconstitutional a law that made it a crime to lie about military honors. About one-third of the 50 U.S. states have laws similar to Ohio's, he said.

"These laws do exactly what *Alvarez* warned against, inserting state bureaucrats and judges into political debates and charging them with separating truth from oft-alleged campaign 'lies'" Carvin stated.

The Susan B. Anthony List has begun a new billboard campaign against three Democratic U.S. senators who voted for the Obama healthcare law: Kay Hagan of North Carolina, Mary Landrieu of Louisiana, and Mark Pryor of Arkansas.

After the hearing, Dannenfelser addressed reporters gathered outside and expressed confidence that the high court would uphold the group's right to criticize candidates and publicize their actions. "We have full confidence in the veracity of our claims and hope to see our First Amendment rights affirmed by the Court," she said. "In 2014 and beyond, we must be permitted to expose the truth about ObamaCare and those who support it."



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