

Why Ohio political candidates can now lie while campaigning

A recent appellate court decision overturned Ohio laws prohibiting the use of lies in campaign ads, citing First Amendment protections of candidates' speech.

Candidates for political office in Ohio can no longer count on the state to correct lies on the campaign trail, following a court ruling that allows lying in political advertising in the Buckeye State.

Whereas complaints of candidate dishonesty in ads were previously brought before the Ohio Elections Commission for a determination of their falsity, well ahead of voting, outright lies are now acceptable under Ohio law regardless of the Commission's opinion.

"Most of my clients want to tell the truth," attorney Donald Brey told The Columbus Dispatch. Mr. Brey has previously represented Republican candidates appearing before the state Commission.

He explained that, after the court decision, "if a client says, 'I want to lie through my teeth, and as long as I don't defame anybody, can I get away with it?' The answer is, unless you're running for judge, yes."

An initial court ruling on the matter was released in 2014 in United States District Court by Justice Timothy Black. Mr. Black's decision centered around the concept that, while lies "have no place in the political arena and serve no purpose other than to undermine the integrity of the democratic process," political groups and figures "have a right not to have the truth of [their] political statements be judged by the Government."

Judge Black found that Ohio laws banning lies in politics were unconstitutional, based on First Amendment protections of political speech. And last month, the US Court of Appeals for the Sixth Circuit upheld Black's ruling, effectively legalizing lying in Ohio campaigns by letting voters, rather than government, judge the truth of candidates' speech.

The Sixth Circuit ruling cited a 2012 U.S. Supreme Court precedent that toppled the Stolen Valor Act, a federal law that banned false claims about winning the Congressional Medal of Honor.

"Political speech is at the core of First Amendment protections," according to the decision authored by Chief Judge R. Guy Cole Jr. "Even false speech receives some constitutional protection."

The Ohio decision matches a Massachusetts Supreme Judicial Court ruling made against a similar state law last August.

Now, without the previous protections offered by the now-defunct legislation, Ohio candidates' only course of action to fight an opponent's falsehood would be through a defamation lawsuit – an expensive legal process that could extend past an election, and with a very high burden of proof.

The removal of the law, while constitutional in the eyes of the courts, has some worried about the outcome of allowing lying could have on this election.

“Not having the administrative reviews and being able to go to the elections board to file complaints, that is a great disservice to our residents because the amount of falsity that is going to come is only going to rise,” said Rep. Nicholas Celebrezze, a Democratic candidate recruiter, to the Dispatch.

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- **By Ben Thompson Staff**