

## Decision on false campaign statement laws has Implications for ballot issue campaigns

September 22, 2014

The U.S. District Court for the Southern District of Ohio recently struck down Ohio's political false statements laws and enjoined the Ohio Elections Commission from enforcing them. *Susan B. Anthony List, et al., v. Ohio Elections Comm'n*, Case No. 1:10-CV-720, 2014 U.S. Dist. LEXIS 127382, focused exclusively on the Ohio laws regulating candidate speech. However, the ruling could have implications for a similar law prohibiting false statements in ballot issue campaigns. Ohio Revised Code Section 3577.22.

Ohio's false statement laws are contained in Ohio Revised Code sections 3517.21(B)(9) and (10) and generally prohibit false statements concerning a candidate.

In the *Susan B. Anthony List* decision, the court applied strict scrutiny of the Ohio law and determined that it was not "narrowly tailored to achieve a compelling government interest," and thus constituted an impermissible restriction on free speech. In addition, because Ohio law contained no mechanism for identifying and immediately dismissing frivolous complaints brought under Ohio's false statements laws, the court found that the burden created was also imposed on truthful speakers, thus was not "narrowly tailored." Because the law could be used against truthful speakers, it had the effect of "chilling" speech and preventing important dialogue in the campaign and election process.

While criticizing governmental regulation of the truth or falsity of political speech, the court in *Susan B. Anthony List* was clear that: "Lies have no place in the political arena and serve no purpose other than to undermine the integrity of the democratic process." *Id.* at p. 2.

Although the decision does not directly involve Ohio's laws related to ballot issue campaigns, the analysis contained in the *Susan B. Anthony List* case seemingly applies with equal force to R.C. 3517.22 and its similar prohibitions against false statements in a ballot issue campaign. As of this writing, it is unknown whether the state of Ohio will appeal the ruling or if the General Assembly will try to amend the laws to respond to Judge Black's decision. Regardless, it is clear that the decision represents a major shift in the enforcement of Ohio's election laws and the strategies that campaigns will need to employ to combat false election communications.

For our public sector clients, two points must be stressed: 1) Nothing in this decision impacts the Ohio laws that prohibit certain political subdivisions from using public funds to support or oppose a ballot issue campaign; and 2) ballot issue committees that support tax levies, bond levies and other ballot issues still must be careful about their statements to the public and will need to find other mechanisms for combatting false statements made by their opponents.

