

Political Lying: It's Legal. Obama's First-Amendment Defense of Political Liars

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President Obama, through his U.S. Solicitor General, arguing before the U.S. Supreme Court, has now stated that lying in political campaigns isn't merely protected by the First Amendment's guarantee of free speech, but that it is an especially protected form of speech, which must not be hindered by any state government, such as by the state of Ohio. Ohio has outlawed such intentional deception of voters, and has established heavy criminal penalties against it, when it can be proven. The idea behind this law is that any democracy in which lying in political campaigns isn't penalized by severe penalties, won't remain a democracy much longer, but will instead descend into a kleptocracy: theft of elections themselves (via lies), so that they become just nominal "elections," which are controlled by whatever aristocrats can put up the most money, to lie the most effectively, to the biggest number of voters: lying-contests.

It's an important Supreme Court case. As Constitutional lawyer Lyle Denniston has noted, in his "[Argument preview: Attack ads and the First Amendment](#)": "In all of the history of the First Amendment, the Court has never ruled that false statements are totally without protection under the Constitution." However, this Supreme Court will have an opportunity to do that here, in the case [SBA List v. Dreihaus](#); or else, to do the exact opposite — to open wide (even wider than they now are) the floodgates to political lies.

Public opinion (e.g., [this](#)), and the President of the United States (via his Solicitor General, to be discussed here below), seem to favor opening the floodgates. If that were to happen, then the recently unleashed outpouring of sheer corporate and billionaire cash (via the *Citizens United* decision, and the more recent *McCutcheon* decision) into political contests, will become even more unrestrained by (and disconnected from) any consideration of the truthfulness (or not) of this "free speech," so that the U.S. public will naturally be inundated by torrents, not only of aristocratic money pouring over public opinions, but of outright and provable lies financed by the richest aristocrats, polluting and poisoning those torrents, which will drench voters' minds, and will thus poison political outcomes (which is why that money is spent — to do precisely this).

U.S. Solicitor General Donald B. Verilli Jr., in this case, *SBA List v. Dreihaus*, [wrote to the U.S. Supreme Court](#), defending political liars' rights:

This case does not require the Court to determine precisely when an alleged chilling of speech [by the threat of being prosecuted for lying in a political campaign] constitutes hardship [being suffered by that liar], because it presents that issue in a unique election-related context that makes the hardship to petitioners [the liars] particularly clear. Petitioners [the liars] have

sufficiently alleged that a credible threat of prosecution will chill them from engaging in [deceptive] speech relating to elections for public office, the very type of speech to which the First Amendment ‘has its fullest and most urgent application.’ *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)). As petitioners explain (Br. 40), under Ohio law, candidates who are the subject of such [lying] speech can try to silence it by complaining to the [Electoral] Commission and thereby tying up the speaker [the liar] in administrative litigation during the short window of time in which the electoral speech [that person’s lie] would be most effective [at deceiving voters].⁴

The court of appeals largely disregarded these considerations in favor of focusing on evidence suggesting that the Commission proceedings [the investigation into the lie] did not actually deter [the liar] SBA List from disseminating its message [its lie]. Pet. App. 17a-18a. The court correctly recognized that evidence of how agency action [the investigation into that alleged lie] has affected a plaintiff’s conduct is an important factor in the hardship analysis. In this case, however, SBA List’s particular reaction to the Commission proceedings during the 2010 election cycle does not eliminate the objectively credible threat of prosecution that petitioners [SBA List] face if they engage in similar [lying] speech in future election cycles.

When Obama’s mouthpiece there, Verilli, quoted the phrase that’s quoted in “*the First Amendment ‘has its fullest and most urgent application’*,” in relation to this particular case and context, he was actually quoting from [a case in which the court was saying](#) in regard to “California’s prohibition on primary [party] endorsements by the official governing bodies of political parties,” that (as that ruling said), “Indeed, the First Amendment ‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.” That statement didn’t refer at all to lying in political campaigns. However, this is the type of cheap shot that the President’s lawyer must take, in order to argue that lying is “*the very type of speech to which the First Amendment ‘has its fullest and most urgent application.’*” He must lie in order to defend political lying as being protected by the U.S. Constitution.

I have [earlier argued that President Obama lied with exceptional skill in order to win the White House](#) — and I say this as a Democrat who is opposed to conservatives (supporters of lies) of all parties, including the Democratic Party. So: Obama is really defending here his own practices, which won him the White House. This conservative “Democrat” is so gifted a politician that he could probably have won it with no lies at all, but he took the easy path, and now he is defending it as a matter of alleged Constitutional principle.

He’s on the same side in this as the overt Republicans are. For example, the [friend-of-court brief on behalf of the Koch brothers’ Cato Institute and their comedian P.J. O’Rourke](#), argued in this case that, “No one should be concerned that false political statements won’t be subjected to careful examination” (perhaps by historians, after the liar has been elected and long-since collected his reward, and the honest politician has sunk into obscurity). It’s a race to the bottom they want, and conservative Democrats want it just as much as Republicans do. Cato/O’Rourke then went on to say: “A prohibition on lying devalues the truth. ‘How can you develop a reputation as a straight shooter if lying is not an option?’” In other words: We must allow deception of voters, because otherwise all politics would be honest — and that would be bad (for crooks like them, because politics then wouldn’t continue to be a lying-contest: the type where any *real* ‘straight shooter’ can’t have even any realistic chance at all of winning). Champion liars want to continue maintaining their advantage, not to yield it; and any law that’s enforced against political liars will remove their existing huge political

advantage. Conservatives would still have most aristocratic money on their side, but no longer an unrestrained freedom to spread lies financed by that cash-advantage that they naturally enjoy.

With Obama arguing on the Republican side, and the Republicans arguing on the Republican side, how will the Republican U.S. Supreme Court rule on this matter? Let's guess.

It could be the final nail in the coffin of democracy in America: the official full implementation of aristocracy, plutocracy, oligarchy, crony capitalism, or whatever else one would call it. Maybe "fake democracy"? Oh, I forgot: we're already there. But this would take us much farther there.

If the reader wants to know how deeply the public has already been duped, just check out, for starters (besides that piece where I [earlier argued that President Obama lied with exceptional skill in order to win the White House](#)), these:

["Ukraine: Is Obama Channeling Cheney?"](#)

["The Nazis Even Hitler Was Afraid Of"](#)

["Ukrainian Neo-Nazis Declare that Power Comes Out of the Barrels of their Guns"](#)

["Privatization Is A Ramp For Corruption, and Insouciance Is a Ramp for War"](#)

And the Ukraine matter is just the tip of the lying iceberg here, several other portions of which I've covered extensively at [Huffington Post](#) and elsewhere.

Lying in politics is toxic to democracy. It's destroying not only this country, but the entire world. Obama wants to protect it, [just like he protected](#) the banksters [from prosecution](#).

Investigative historian **Eric Zuesse** is the author, most recently, of [They're Not Even Close: The Democratic vs. Republican Economic Records, 1910-2010](#), and of [CHRIST'S VENTRILOQUISTS: The Event that Created Christianity](#).

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