

Talking Points

Media Coalition Amicus Brief, *Susan B. Anthony List v. Driehaus*

The Media Coalition brief does not address the merits of the plaintiff's case.

Susan B. Anthony List (SBAL) is an anti-abortion group that is suing to invalidate an Ohio law that it believes will be used to punish it for campaign advertisements attacking pro-choice candidates. It has filed a pre-enforcement challenge to the law alleging that it violates the First Amendment. The Media Coalition brief does not address the merits of this claim. There will be many amicus briefs that will address those legal questions. The Media Coalition brief is exclusively focused on a procedural issue that is critically important to protecting the First Amendment.

Pre-enforcement challenges are a critical tool for protecting free speech.

A pre-enforcement challenge is a critical tool for protecting free speech because the passage of an unconstitutional law can have a chilling effect, making people afraid to exercise their rights. A bookseller or librarian may pull a book from the shelf if they fear that they may be prosecuted. A pre-enforcement challenge eliminates the danger of the chilling effect because the court issues a temporary injunction that suspends the law while the case is being litigated.

We are urging the Supreme Court to preserve our right to challenge unconstitutional laws.

SBAL's pre-enforcement challenge was dismissed for lack of "standing." Without standing, there is no right to sue. In the Sixth Circuit, which includes Ohio, a plaintiff must show that a prosecution would be "certain and successful" before it can challenge a law prior to a prosecution. This requirement is much harder to satisfy than the one approved by the Supreme Court, which requires only a showing of "actual or threatened injury" to establish standing. Our brief asks the Supreme Court to reaffirm its decision in *Virginia v. American Booksellers Assn.*, the 1988 Media Coalition case that established the current Supreme Court standard.

We have used pre-enforcement challenges to overturn 23 unconstitutional laws.

Media Coalition has filed 23 successful pre-enforcement challenges over the last 35 years. These challenges would have been much harder and more expensive to bring under the Sixth Circuit's rule.