

## Syllabus

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## SUPREME COURT OF THE UNITED STATES

## Syllabus

SUSAN B. ANTHONY LIST ET AL. *v.* DRIEHAUS ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SIXTH CIRCUIT

No. 13–193. Argued April 22, 2014—Decided June 16, 2014

Respondent Driehaus, a former Congressman, filed a complaint with the Ohio Elections Commission alleging that petitioner Susan B. Anthony List (SBA) violated an Ohio law that criminalizes certain false statements made during the course of a political campaign. Specifically, Driehaus alleged that SBA violated the law when it stated that his vote for the Patient Protection and Affordable Care Act (ACA) was a vote in favor of “taxpayer funded abortion.” After Driehaus lost his re-election bid, the complaint was dismissed, but SBA continued to pursue a separate suit in Federal District Court challenging the law on First Amendment grounds. Petitioner Coalition Opposed to Additional Spending and Taxes (COAST) also filed a First Amendment challenge to the Ohio law, alleging that it had planned to disseminate materials presenting a similar message but refrained due to the proceedings against SBA. The District Court consolidated the two lawsuits and dismissed them as nonjusticiable, concluding that neither suit presented a sufficiently concrete injury for purposes of standing or ripeness. The Sixth Circuit affirmed on ripeness grounds.

*Held:* Petitioners have alleged a sufficiently imminent injury for Article III purposes. Pp. 7–18.

(a) To establish Article III standing, a plaintiff must show, *inter alia*, an “injury in fact,” which must be “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560. When challenging a law prior to its enforcement, a plaintiff satisfies the injury-in-fact requirement where he alleges “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution

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thereunder.” *Babbitt v. Farm Workers*, 442 U. S. 289, 298. Pp. 7–11.

(b) Petitioners have alleged a credible threat of enforcement of the Ohio law. Pp. 11–17.

(1) Petitioners have alleged “an intention to engage in a course of conduct arguably affected with a constitutional interest” by pleading specific statements they intend to make in future election cycles. Pp. 11–12.

(2) Petitioners’ intended future conduct is also “arguably . . . proscribed by [the] statute.” The Ohio false statement statute sweeps broadly, and a panel of the Ohio Elections Commission already found probable cause to believe that SBA violated the law when it made statements similar to those petitioners plan to make in the future. *Golden v. Zwickler*, 394 U. S. 103, is distinguishable; the threat of prosecution under an electoral leafletting ban in that case was wholly conjectural because the plaintiff’s “sole concern” related to a former Congressman who was unlikely to run for office again. Here, by contrast, petitioners’ speech focuses on the broader issue of support for the ACA, not on the voting record of a single candidate. Nor does SBA’s insistence that its previous statements were true render its fears of enforcement misplaced. After all, that insistence did not prevent the Commission from finding probable cause for a violation the first time. Pp. 12–13.

(3) Finally, the threat of future enforcement is substantial. There is a history of past enforcement against petitioners. Past enforcement against the same conduct is good evidence that the threat of enforcement is not “chimerical.” *Steffel v. Thompson*, 415 U. S. 452, 459. The credibility of that threat is bolstered by the fact that a complaint may be filed with the State Commission by “any person,” Ohio Rev. Code Ann. §3517.153(A), not just a prosecutor or agency.

The threatened Commission proceedings are of particular concern because of the burden they impose on electoral speech. Moreover, the target of a complaint may be forced to divert significant time and resources to hire legal counsel and respond to discovery requests in the crucial days before an election. But this Court need not decide whether the threat of Commission proceedings standing alone is sufficient; here, those proceedings are backed by the additional threat of criminal prosecution. Pp. 14–17.

(c) The Sixth Circuit separately considered two other “prudential factors”: “fitness” and “hardship.” This Court need not resolve the continuing vitality of the prudential ripeness doctrine in this case because those factors are easily satisfied here. See *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U. S. \_\_\_\_\_. Pp. 17–18.

525 Fed. Appx. 415, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.

Opinion of the Court

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**SUPREME COURT OF THE UNITED STATES**

No. 13–193

SUSAN B. ANTHONY LIST, ET AL., PETITIONERS *v.*  
STEVEN DRIEHAUS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[June 16, 2014]

JUSTICE THOMAS delivered the opinion of the Court.

Petitioners in this case seek to challenge an Ohio statute that prohibits certain “false statements” during the course of a political campaign. The question in this case is whether their preenforcement challenge to that law is justiciable—and in particular, whether they have alleged a sufficiently imminent injury for the purposes of Article III. We conclude that they have.

I

The Ohio statute at issue prohibits certain “false statement[s]” “during the course of any campaign for nomination or election to public office or office of a political party.” Ohio Rev. Code Ann. §3517.21(B) (Lexis 2013). As relevant here, the statute makes it a crime for any person to “[m]ake a false statement concerning the voting record of a candidate or public official,” §3517.21(B)(9), or to “[p]ost, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether

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it was false or not,” §3517.21(B)(10).<sup>1</sup>

“[A]ny person” acting on personal knowledge may file a complaint with the Ohio Elections Commission (or Commission) alleging a violation of the false statement statute. §3517.153(A) (Lexis Supp. 2014). If filed within 60 days of a primary election or 90 days of a general election, the complaint is referred to a panel of at least three Commission members. §§3517.156(A), (B)(1) (Lexis 2013). The panel must then hold an expedited hearing, generally within two business days, §3517.156(B)(1), to determine whether there is probable cause to believe the alleged violation occurred, §3517.156(C). Upon a finding of probable cause, the full Commission must, within 10 days, hold a hearing on the complaint. §3517.156(C)(2); see also Ohio Admin. Code §3517–1–10(E) (2008).

The statute authorizes the full Commission to subpoena witnesses and compel production of documents. Ohio Rev. Code Ann. §3517.153(B) (Lexis Supp. 2014). At the full hearing, the parties may make opening and closing statements and present evidence. Ohio Admin. Code §§3517–1–11(B)(2)(c), (d), (g). If the Commission determines by “clear and convincing evidence” that a party has violated

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<sup>1</sup>Section 3517.21(B) provides in relevant part:

“No person, during the course of any campaign for nomination or election to public office or office of a political party, by means of campaign materials, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

“(9) Make a false statement concerning the voting record of a candidate or public official;

“(10) Post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate.”

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the false statement law, the Commission “shall” refer the matter to the relevant county prosecutor. Ohio Rev. Code Ann. §§3517.155(D)(1)–(2) (Lexis Supp. 2014). Alternatively, the Commission’s regulations state that it may simply issue a reprimand. See Ohio Admin. Code §3517–1–14(D). Violation of the false statement statute is a first-degree misdemeanor punishable by up to six months of imprisonment, a fine up to \$5,000, or both. Ohio Rev. Code Ann. §§3599.40 (Lexis 2013), 3517.992(V) (Lexis Supp. 2014). A second conviction under the false statement statute is a fourth-degree felony that carries a mandatory penalty of disfranchisement. §3599.39.

## II

Petitioner Susan B. Anthony List (SBA) is a “pro-life advocacy organization.” 525 Fed. Appx. 415, 416 (CA6 2013). During the 2010 election cycle, SBA publicly criticized various Members of Congress who voted for the Patient Protection and Affordable Care Act (ACA). In particular, it issued a press release announcing its plan to “educat[e] voters that their representative voted for a health care bill that includes taxpayer-funded abortion.” App. 49–50. The press release listed then-Congressman Steve Driehaus, a respondent here, who voted for the ACA. SBA also sought to display a billboard in Driehaus’ district condemning that vote. The planned billboard would have read: “Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion.” *Id.*, at 37. The advertising company that owned the billboard space refused to display that message, however, after Driehaus’ counsel threatened legal action.

On October 4, 2010, Driehaus filed a complaint with the Ohio Elections Commission alleging, as relevant here, that SBA had violated §§3517.21(B)(9) and (10) by falsely

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