



## **Booksellers, Librarians and Publishers Urge Supreme Court to Uphold Right to Bring First Amendment Challenges**

**Groups That Helped to Establish Three Decades of Free Speech Case Law Say Change to Legal Standard Could Shut Courthouse Door**

**[Interactive Map](#) Illustrates Impact and Scope of Free Speech Cases**

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March 3, 2014 WASHINGTON –A broad range of media organizations, booksellers, librarians, and publishers, submitted a friend-of-the-court brief in *Susan B. Anthony List v. Driehaus* (No. 13-193), urging the United States Supreme Court to reaffirm the principle that persons who have a well-founded fear of prosecution under a law that infringes First Amendment rights should have standing to bring a “pre-enforcement” challenge to the law, and need not face a choice between engaging in self-censorship and risking criminal prosecution.

The brief asks the Court to adhere to the standard set forth by the Supreme Court in 1988 in *Virginia v. American Booksellers Association*, a milestone case brought by members of Media Coalition, Inc., a trade organization that defends the First Amendment rights of mainstream media, many of whose members also joined in today’s brief. The organizations and their members represented in today’s brief have all brought challenges to censorship laws under the standard affirmed in *Virginia v. A.B.A.*

“This case threatens the ability of any group, association or individual to challenge a law that violates free speech rights,” said Media Coalition Executive Director David Horowitz. “If booksellers, publishers and librarians can only vindicate their First Amendment rights through a criminal trial, this will cause a profound chilling effect on free speech.”

In *Driehaus*, a U.S. District Court in Ohio dismissed a challenge by Susan B. Anthony List (SBAL) to a state law regulating speech in campaign advertising. The Court found that SBAL lacked standing to file a “pre-enforcement” challenge because it couldn’t demonstrate that

prosecution was likely or imminent. The United States Court of Appeals for the Sixth Circuit affirmed the decision, and SBAL then sought review by the Supreme Court. Oral argument in the case is set for April 22, 2014.

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. Such challenges, brought either before or soon after a law becomes effective, can eliminate the danger of the chilling effect by obtaining a prompt judicial decision on the law's constitutionality and, if necessary a preliminary injunction that suspends the law while the case is being litigated.

The friend-of-the-court brief addresses a legal question of especial importance to bookstores and libraries, one that does not hinge directly on the merits of the case.

The brief in *Driehaus* was filed on behalf of: **American Booksellers Association; American Booksellers Foundation for Free Expression; American Library Association; Association of American Publishers, Inc.; Comic Book Legal Defense Fund; Freedom to Read Foundation; Great Lakes Independent Booksellers Association; Mountain & Plains Independent Booksellers Association; Pacific Northwest Booksellers Association; Southern Independent Booksellers Alliance; Annie Bloom's Books, Changing Hands Bookstore, Inc.; Harvard Book Store, Inc.; Paulina Springs Books; Powell's Bookstore, Inc.; Schuler Books, Inc.; Tattered Cover, Inc.; The King's English, Inc.; Weller Book Works; Village Books; and Dark Horse Comics.**

The groups' brief demonstrates the importance of allowing challenges to censorship laws prior to prosecution. The brief cites 23 such challenges over the last 35 years, many of which were brought by members of Media Coalition and others who signed the brief. These cases could have been dismissed under the Sixth Circuit's definition of standing. In all of those challenges, the statutes were enjoined or narrowed to comply with the First Amendment.

According to the brief, the cases filed by Media Coalition and its members "have protected First Amendment rights from a broad range of threats—statutes which would have criminalized, among other things, non-obscene speech on websites and in adult-to-adult emails and other electronic communications, descriptions or depictions of violence or criminal conduct, posting non-obscene art and literature on websites, access to information about healthcare, and the physical display of non-obscene publications in bookstores and retail stores."

To illustrate the breadth and scope of rulings confirming the importance of bringing so-called pre-enforcement challenges to speech-suppressive laws, Media Coalition has created an interactive map of the cases cited in its brief, available online at: <http://mediacoalition.org/wp-content/uploads/2014/03/court-cases.swf>.

Media Coalition's brief was filed by Michael Bamberger and Richard Zuckerman of Dentons US LLP, general counsel to Media Coalition. It is available online at:  
<http://mediacoalition..org/sbal-v-driehaus/>.

*Media Coalition, Inc., founded in 1973, is an association that defends the First Amendment rights of producers and distributors of books, movies, magazines, recordings, home video, and video games, and defends the American public's First Amendment right to have access to the broadest possible range of information, opinion and entertainment.*

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