

Pro-Life Advocates Explain Reasoning Behind Gruesome Images

The Thomas More Society has petitioned the U.S. Supreme Court to review and overturn a Colorado state court decree barring Denver **pro-life** advocates from “displaying large posters or similar displays, depicting gruesome images of mutilated fetuses or dead bodies in a manner reasonably likely to be viewed by children under 12 years of age attending worship services...”

Pro-life advocates Ken Scott, Clifton Powell, and others led a pro-life witness outside Denver’s Saint John’s Church in the Wilderness (aka Saint John’s Cathedral). The annual event took place concurrently with the church’s outdoor Palm Sunday procession several years ago.

The “gruesome images” ban was entered in a lawsuit for private nuisance and civil conspiracy filed by the church against Scott and Powell after they displayed graphic signs featuring photos of aborted children on a public sidewalk across the street from the outdoor procession. Some parishioners left the event, taking their children with them because they did not want them exposed to the graphic images.

Scott and Powell had given the cathedral prior notice of their planned protest. They did not enter the church, go onto church property, or disturb the services inside the church, from where their activity was not audible. No violence, trespass, physical obstruction, or criminal conduct occurred. Police were present, and neither Scott, Powell, or any other protester was cited for noise or other law violations.

Despite recognizing that the “gruesome images” ban was a content-based restriction on speech, the Colorado Appellate

Court upheld it as “narrowly tailored” to serve a “compelling government interest,” namely, “protecting children from exposure to certain images of aborted fetuses and dead bodies.” Colorado’s Supreme Court denied review, but Chief Justice Michael Bender and Associate Justice Allison Eid dissented.

The Thomas More Society retained Professor Eugene Volokh of UCLA Law School, a widely acclaimed, prolific First Amendment legal scholar and author, to take the lead on appeal. Volokh, who famously blogs at the Volokh Conspiracy, drafted the petition for review, which was filed on Monday with the U.S. Supreme Court (Docket No. 12-1077). Rebecca Messall, CEO of the pro-life National Lawyers Association, and Tom Brejcha, Peter Breen, and Jocelyn Floyd, staff counsel of the Thomas More Society, assisted.

The petition for review argues that the “gruesome images” ban silences speech that is critical to the pro-life message, as “messages in ways that words cannot equal.” Indeed, even **pro-abortion** Professor Lawrence Tribe of Harvard Law School recognized that too often “the life of the fetus becomes an ... invisible abstraction.” Indeed, “fetuses are invisible while ... developing in the womb, and they are generally disposed of quickly after an **abortion**, so they remain unseen even then,” even though the “brutality and inhumanity of abortion” requires “show[ing] exactly what the abortion produces.” Similarly, photos of lynching victims made “visceral what one dares not imagine.”

Here’s the reasoning behind the graphic images of abortion: When Chicago teenager Emmett Till was killed in the summer of 1955 in the South, his mother insisted on displaying his mutilated body in an open coffin, photos of which were widely circulated and said to have prompted **Rosa Parks** not to give up her seat on a Montgomery, Ala. bus—the event that sparked the famous bus boycott, brought Dr. King to national prominence, and instigated the **civil rights** movement. Snapshots of

Holocaust victims “similarly helped show the evil of Nazism in ways words could not easily convey.” Iconic and often publicized photographs from the Vietnam conflict impacted national policy on the war. And a recent *Time* magazine cover photo graphically depicted an Afghan woman’s brutal disfigurement.

Yet, the petition argues, lower courts have been sharply divided on whether, and to what extent, images in public places may be banned in order to shield children’s sensibilities. If an exception to free speech protection were carved out for churches, or wherever children might be present, it would be clearly subjective and likely unenforceable.

“We are hopeful that the Supreme Court will hear our appeal and put an end to such persistent efforts by government officials to wield the censor’s scissors to suppress vital **pro-life** speech,” says Tom Brejcha, president and chief counsel of the Thomas More Society. “Photos are anathema to **pro-abortion** advocates because they expose the grim truth that abortion is both repulsive and gruesome. If America insists on abortion rights, it must face up to these ugly results.”

It is anticipated that the Supreme Court will decide whether to hear the appeal by late June of this year, so that the case may be argued and decided during the next October Term.