

Supreme Court Free Speech Victory Could Produce Bigger Impact

The U.S. Supreme Court ruled 5-4 that crisis pregnancy centers cannot be forced to promote abortions. The opinion was authored by Justice Thomas in favor of *National Institute of Family and Life Advocates* (NIFLA) *v. Becerra*, one of four cases brought by crisis pregnancy centers which challenged a California law as a violation of the First Amendment. Justice Kennedy filed a concurring opinion joined by Roberts, Alito and Gorsuch.

Liberty Counsel's case, *Mountain Right to Life v. Becerra*, is one of four cases before the Supreme Court involving the same law. Liberty Counsel represents three pro-life crisis pregnancy centers in Southern California, all of which offer women pregnancy resources, counseling, advice and alternatives to abortion.

The Supreme Court reviewed the California Reproductive FACT Act, which compels pro-life crisis pregnancy centers to post notices in their physical clinics, printed material, and online regarding the availability of free and low-cost abortions. The Court agreed that the disclosures required by the California Reproductive FACT Act violate the Free Speech Clause of the First Amendment.

All of the centers are faith-based and will not refer women for abortions. Under the California law, Pregnancy and Family Resource Center (San Bernardino), and all other licensed pregnancy counseling centers in the state, were required to post the following government-prescribed message in their facilities in 48-point font in up to 13 languages at the entrance, in the lobby, in print, online and in any

advertisement:

“California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care and abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number].”

Even a billboard with only the words “Choose Life” and the name of the center would be required to post the large font government message in up to 13 languages. The government abortion message overwhelms the private message. Thankfully, this outrageous law was struck down.

“Today we celebrate that the Supreme Court overturned this forced speech law,” said Mat Staver, Founder and Chairman of Liberty Counsel. “California can no longer force crisis pregnancy centers to speak a message that goes directly against their religious beliefs and mission to save lives.

“The First Amendment protects the right to speak and the right not to speak. To be forced to post state-prescribed notices in large font undermining the mission of the pregnancy centers is a shocking violation of the First Amendment. To be forced to post state-prescribed notices in large font undermining the mission of the pregnancy centers is a shocking violation of the First Amendment.”

This case will also have an impact on laws that seek to ban counsel for unwanted same-sex attractions, behavior or identity (SOCE). The opinion explicitly adopts the arguments Liberty Counsel has made all along in SOCE cases, which is that “professional speech” cannot be exempted as some “new category of speech.”

The opinion states: “The dangers associated with content-based regulations of speech are also present in the context of professional speech. As with other kinds of speech, regulating

the content of professionals' speech pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information. ... Take medicine, for example. 'Doctors help patients make deeply personal decisions, and their candor is crucial.' Throughout history, governments have 'manipulat[ed] the content of doctor-patient discourse' to increase state power and suppress minorities." Justice Thomas notes that professional disagreements about the efficacy of professional services cannot be used to suppress speech.

When the government polices the content of professional speech, it can fail to "'preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.' Professionals might have a host of good-faith disagreements, both with each other and with the government, on many topics in their respective fields. Doctors and nurses might disagree about the ethics of assisted suicide or the benefits of medical marijuana; lawyers and marriage counselors might disagree about the prudence of prenuptial agreements or the wisdom of divorce; bankers and accountants might disagree about the amount of money that should be devoted to savings or the benefits of tax reform. '[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market,' and the people lose when the government is the one deciding which ideas should prevail."

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