NEWSLETTER

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JULY 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4 INDEPENDENCE DAY	5	6	7
8	9 MEETING ROCKDALE	10	11	12	13	14
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NEWS

Effective immediately, Somerville will no longer be in the rotation for our monthly meetings.

Our next meeting is in Rockdale on July 9. This is our annual Installation of Officers, so the dress will be Tuxedo with the Social Baldric. Your wife or other guest is also invited, so be sure to bring them along. The Rockdale Council will be preparing the meal, which starts at 7:00 PM. The installation will follow immediately after the meal.

A NOTE FROM THE EDITOR

Big news on the Religious Freedom and Pro-Life front this month. First, the Supreme Court decided in favor of a Colorado baker who objected to making a cake for a gay couple's wedding due to his religious opposition to gay marriage. Then, just this week, they decided against the California law that attempted to force pro-life pregnancy centers to provide abortion alternatives to their patients. The article on the back page of this newsletter underscores just how far along our justice system has gone, in some cases, in completely misinterpreting our Constitution. The 9th District Court in California has long been the most liberal court in the US, but in this case, has been called out for their total disregard of the Constitution in their attempt to force abortion as an alternative to pregnancy. If you take the time to read the article and absorb it, especially the opinion of Justice Kennedy, you will see how far some of these courts go in completely ignoring the Constitution in their rulings. That is why it is so important that the right people are placed on the Supreme Court, and that when we elect a President, we make sure we elect one that will nominate someone who will use the Constitution in making their decisions, rather than what their personal beliefs happen to be.
We need to add the selection of our next Justice to our prayer list, because we know without a doubt that whoever is nominated, they will be thrown to the wolves, and everything you can think of will be done to try to keep them from being confirmed. We also need to be thankful, on this Independence Day, for the progress made in restoring Religious Freedom, and real freedom of choice when we choose life over abortion.

Let Freedom Ring

Why The Supreme Court's Ruling Will Protect All Pregnancy Centers From Forcibly Promoting Abortion

By Margot Cleveland June 27, 2018

The majority opinion in NIFLA provides crisis pregnancy centers a nearly impenetrable protection from government interference with their pro-life message. Yesterday, in a 5-4 decision the Supreme Court ruled in *NIFLA v. Becerra* that a California law that requires crisis pregnancy centers to disseminate information on how to obtain abortions likely violates the First Amendment.

Pro-lifers immediately celebrated the ruling, and rightly so, because the Supreme Court's analysis made clear that its holding was not limited to the unique facts and narrow law at issue. Instead, the victory the National Institute of Family and Life Advocates (NIFLA) and other California-based crisis pregnancy centers won will protect all pregnancy resource centers that seek to promote a pro-life message without government interference.

How This Case Arose in the First Place-In *NIFLA v. Becerra,* the government interference came in the form of the California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (FACT Act). The FACT Act regulated both "licensed" and "unlicensed" crisis pregnancy centers. The FACT Act required "licensed primary care or specialty clinics" to "disseminate a government-drafted notice," which, among other things, states that "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."

The state required this notice to be posted in English and in as many as 13 different languages. Crisis pregnancy centers were also required to distribute the notice to their clients with a telephone number at which women could obtain more details about these "services."

"Unlicensed" centers—centers that provide pregnancy-related services but without licensed medical professionals—were instead required to provide a government-drafted notice announcing that "[t]his facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provisions of services." California required this notice to be provided "on site and in all advertising materials," and be "in the same size or larger font than the surrounding text."

What the Supreme Court Said-NIFLA and several crisis pregnancy centers sued California's attorney general, Xavier Becerra, arguing the FACT Act violates the First Amendment. They also sought a preliminary injunction barring Becerra from enforcing the law. A federal district court, then the Ninth Circuit Court of Appeals, denied the request for a preliminary injunction, holding the plaintiffs were unlikely to succeed on the merits of their First Amendment claim. In a split decision authored by Justice Clarence Thomas, the Supreme Court reversed, holding that the plaintiffs had established a likelihood of success on the merits, which is required to obtain preliminary relief. Although the Supreme Court did not permanently enjoin the statute, the Supreme Court's analysis leaves little doubt that on remand a permanent injunction will issue.

Beyond the likelihood of receiving a permanent injunction, the Supreme Court majority's analysis provides some assurance that future state attempts to compel crisis pregnancy centers to promote abortion will likewise fail. Here's why.

The Supreme Court could have taken a narrow tack and found the FACT Act was likely unconstitutional because California had targeted crisis pregnancy centers due to their anti-abortion viewpoint. The evidence of viewpoint discrimination was substantial and included a statement from the author of the FACT Act that "*unfortunately,* there are nearly 200 licensed and unlicensed" crisis pregnancy centers in California.

Viewpoint Discrimination Is Already Illegal-The bill's author also stressed that these centers "aim to discourse and prevent women from seeking abortions" and "are commonly affiliated with, or run by organizations whose stated goal" is to oppose abortion. The Supreme Court also stressed that the statute is "wildly underinclusive," because it exempts clinics that serve more than 5.6 million patients. That "underinclusiveness," its said, "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint."

Viewpoint-based discrimination is constitutionally verboten, so the court could have easily resolved the case that way. (In fact, that is *just* what the court did in the *Masterpiece Cakeshop* case handed down earlier this month.) But instead, after noting that the crisis pregnancy centers "raise serious concerns that both the licensed and unlicensed notices discriminate based on viewpoint," the majority held that "[b]ecause the notices are unconstitutional either way, as explained below, we need not reach that issue." After sidestepping the easier resolution, the court discussed the appropriate standard of review to apply. Normally, courts stringently review laws that regulate the content of speech, under a standard called "strict scrutiny." To pass constitutional muster under this standard, a law must be necessary to achieve a compelling governmental purpose. However, in upholding the FACT Act, the Ninth Circuit had refused to apply strict scrutiny, concluding instead that a category of speech called "professional speech" received less protection under the First Amendment. Thus, the federal appellate court upheld the FACT Act.

On appeal, after discussing the issue and analyzing the relevant precedent, the Supreme Court held that it did not need to resolve the question of the controlling standard because "the licensed notice cannot survive even intermediate scrutiny." The Supreme Court reasoned that the FACT Act failed this lower standard because it was "not sufficiently drawn to achieve" California's stated interest of providing low-income women with information about state-sponsored services. Additionally, it concluded that "California could inform low-income women about its services 'without burdening a speaker with unwanted speech.'"

This Law Is Obviously Ridiculous and Biased-Similarly, the Supreme Court ruled that "California, has not demonstrated any justification for the unlicensed notice that is more than 'purely hypothetical.'" And *"even* if California had presented a nonhypothetical justification for the unlicensed notice, the FACT Act unduly burdens protected speech." To illustrate, the court pointed to a simple "Choose Life" billboard. "As California conceded at oral argument," under the FACT Act those putting up the billboard "would have to surround that two-word statement with a 29-word statement from the government in as many as 13 different languages." Under these circumstances, the court concluded that the unlicensed notice is unjustified and unduly burdensome. By ignoring the question of viewpoint discrimination and instead analyzing the FACT Act on its face—and holding that the law cannot withstand even mid-level scrutiny—the majority opinion in *NIFLA* provides crisis pregnancy centers a nearly impenetrable protection from government interference with their pro-life message.

It's 'Authoritarian Regimes' that Stifle Speech-Perennial swing vote Justice Anthony Kennedy, who joined the majority opinion in full, made this point explicit in his concurrence, writing that he "seeks to underscore that the apparent viewpoint discrimination here is a matter of serious constitutional concern," then added that "had the Court's analysis been confined to viewpoint discrimination, some legislators might have inferred that if the law were reenacted with a broader base and broader coverage it then would be upheld." 'Governments must not be allowed to force persons to express a message contrary to their deepest convictions.' In other words, the problem with the FACT Act was not its "underinclusiveness" or the obvious intent to discriminate against the pro-life viewpoint. The problem was the state's attempt to control the message.

Kennedy chastised these attempts, noting with irony that "[t]he California Legislature included in its official history the congratulatory statement that the Act was part of California's legacy of 'forward thinking'" "But it is not forward thinking to force individuals to 'be an instrument for fostering public adherence to an ideological point of view [they] fin[d] unacceptable,'" Kennedy wrote.

Rather "[i]t is forward thinking to begin by reading the First Amendment as ratified in 1791; to understand the history of authoritarian government as the Founders then knew it; to confirm that history since then shows how relentless authoritarian regimes are in their attempts to stifle free speech; and to carry those lessons onward as we seek to preserve and teach the necessity of freedom of speech for the generations to come. Governments must not be allowed to force persons to express a message contrary to their deepest convictions. Freedom of speech secures freedom of thought and belief. This law imperils those liberties." If only that Justice Kennedy had drafted the *Masterpiece Cakeshop* decision.

Margot Cleveland is a senior contributor to The Federalist. Cleveland served nearly 25 years as a permanent law clerk to a federal appellate judge and is a former full-time faculty member and current adjunct instructor at the college of business at the University of Notre Dame.

Abortion Becerra v NIFLA compelled speech crisis pregnancy center crisis pregnancy centers FACT Act First Amendment free speech National Institute of Family and Life Advocates pregnancy centers pro-life SCOTUS Supreme Court viewpoint discrimination