



National Institute of Family and Life Advocates v. Becerra (S.Ct.)

Topics Covered: Freedom of Speech

Issue

The issue in this case is whether a California law that requires licensed “crisis pregnancy centers” (CPCs) to post a notice informing women of state aid for health services, including contraceptive counseling and abortions, violates the Freedom of Speech guarantee under the First Amendment of the United States Constitution.

AMA Interest

The AMA supports confidentiality, trust, and honesty in communications between physicians and patients.

Case Summary

The law in question, entitled the California Reproductive FACT Act, was passed due to concerns that CPCs were providing misleading information to patients. In particular, some pro-life CPCs led women to believe that abortions were either wholly unavailable or were unavailable except at a high cost. The Legislature specifically found that CPCs would pose as full-service women’s health clinics and then discourage and prevent women from seeking abortions. It further found that, to accomplish this objective, CPCs would incorrectly exaggerate the medical difficulties associated with abortions or provide other misleading medical advice to their patients.

Under the Reproductive FACT Act, a “licensed covered facility” is required to publish the following notice:

“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 abortions for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number].”

Three religiously-affiliated, “pro-life” entities sued to have the Reproductive FACT Act declared invalid as a violation of Freedom of Speech and Freedom of Religion.

One of them was Pregnancy Care Clinic (PCC), a licensed covered facility. CPC provides, free of charge, such medical services as ultrasounds, medical referrals, and education on family planning. The PCC staff includes two doctors of obstetrics and gynecology, a radiologist, and an anesthesiologist, as well as limited license health care practitioners. PCC neither provides abortions nor referrals for abortions.

The defendants were various public officials, including Xavier Becerra, the California Attorney General.

PCC sought a preliminary injunction from the Southern District of California against enforcement of the Reproductive FACT Act, based on Freedom of Speech and Freedom of Religion. The district court denied PCC's motion. PCC, along with the other plaintiffs, appealed to the Ninth Circuit, which affirmed.

The United States Supreme Court granted *certiorari*, limited to the Free Speech issue.

AMA Involvement

The AMA filed an *amicus* brief in the Supreme Court to support the State of California. The brief argued that the Court should articulate a general rule for laws that impinge upon a physician's speech with patients, when those laws focus on general matters of public debate, like abortion. Thus, the Reproductive FACT Act should be evaluated under "strict scrutiny" as it pertains to PCC. The brief based its argument, in part, on the need for candor between physicians and patients. Ultimately, the brief concluded that the Reproductive FACT Act passes the strict scrutiny standard and should be found constitutional, at least at this preliminary stage of the case.

United States Supreme Court brief