

Dear Friends – I’m delighted to tell you that the Supreme Court ruled this morning 5-4 in favor of NIFLA’s right to speak freely about Life. The Court’s decision, written by Justice Clarence Thomas, ruled unconstitutional both California’s mandatory signage requirement for licensed pregnancy centers and its requirement for unlicensed ones as well.

We’ll be blogging a more in-depth analysis soon, but here’s our initial summary:

- The Supreme Court said the anti-pregnancy center law is not a regulation of “professional speech” because the Court disfavors carving out certain types of speech for lesser protection.
- The Court said the law is unconstitutionally overbroad because it doesn’t cover most kinds of licensed healthcare – instead targeting pregnancy centers.
- The Court held that the anti-pregnancy center law is not “informed consent,” agreeing with AUL’s amicus brief that “A sign on the wall is not informed consent.”

Justice Thomas went into some detail on this last point. From the decision:

The notice in no way relates to the services that licensed clinics provide. Instead, it requires these clinics to disclose information about state-sponsored services— including abortion, anything but an “uncontroversial” topic.

The licensed notice at issue here is not an informed- consent requirement or any other regulation of professional conduct. The notice does not facilitate informed consent to a medical procedure. In fact, it is not tied to a procedure at all.

And while Justice Thomas didn’t cite to our amicus brief, this paragraph could have been a very close summary of our brief, which is the only amicus brief that went into detail on this topic:

The licensed notice at issue here is not an informed-consent requirement or any other regulation of professional conduct. The notice does not facilitate informed consent to a medical procedure. In fact, it is not tied to a procedure at all. It applies to all interactions between a covered facility and its clients, regardless of whether a medical procedure is ever sought, offered, or performed. If a covered facility does provide medical procedures, the notice provides no information about the risks or benefits of those procedures. Tellingly, many facilities that provide the exact same services as covered facilities—such as general practice clinics, see §123471(a)—are not required to provide the licensed notice. The licensed notice regulates speech as speech.

Please join me in congratulating Tom Glessner and his incredible staff at NIFLA, and in giving thanks to God for this victory and for the many lives that will be saved through caring pregnancy centers in California because of it. Thank you once more for the profound privilege of representing AAPLOG, CMDA and ACPeds and your amazing members. We’re extremely grateful for your partnership in the most critical issue of our generation.

For Life,

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