

March 22, 2018: Judicial Advocacy Update

Pregnant women deserve to get the whole truth on their options

The U.S. Supreme Court heard oral arguments Tuesday in a controversial case that has drawn attention because it touches on the hot-button questions related to abortion and freedom of speech.

But the real issues at stake in *National Institute of Family and Life Advocates v. Becerra* are medical ethics and a patient's right to informed consent, according to an amicus brief filed by the Litigation Center of the American Medical Association and State Medical Societies. In its brief, the AMA argues that laws seeking to compel or restrict physician speech should be subject to strict constitutional scrutiny and concludes that a California law aimed at ending deceptive pregnancy counseling meets that high bar.

The National Institute of Family and Life Advocates is seeking a preliminary injunction against enforcement of California's Reproductive Freedom, Accountability, Comprehensive Care and Transparency Act, which took effect Jan. 1, 2016. The state law requires licensed pregnancy-related clinics to disseminate information on available, publicly funded family-planning services, including contraception and abortion. It also mandates that unlicensed facilities post a notice stating that they are not licensed by the state of California.

A three-judge panel of the 9th U.S. Circuit Court of Appeals unanimously upheld a lower-court ruling denying the injunction sought by NIFLA, a Virginia-based corporation with—at the time of the decision—73 licensed and 38 unlicensed facilities located in California. Two other parties to the lawsuit against California Attorney General Xavier Becerra are Pregnancy Care Clinic, which is licensed by the state, and the Fallbrook Pregnancy Center, which is not licensed.

The judges rejected the petitioners' arguments that the law violated their rights to free speech.

"The act is a content-based regulation that does not discriminate based on viewpoint," wrote Senior Circuit Judge Dorothy Nelson, explaining how the law applied to all clinics regardless of their stance on abortion or contraception.

Arguing on behalf of the respondents in *NIFLA v. Becerra*, the brief lists three reasons for the AMA's interest in the case. They are to ensure that physicians:

- Can care for patients without government's undue interference.
- Can enjoy the right to speak—or not to speak—without "government constraints arising from partisan objectives."
- Practice ethically without misleading patients to satisfy a personal moral or religious belief.

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