Moot Court Two: *NIFLA v Becerra*

Haylie Lackey

In October of 2015, California passed the Freedom, Accountability, Comprehensive Care and Transparency Act (FACT Act), which requires pregnancy facilities to inform their clients that “California has public programs that provide immediate free or low-cost access to comprehensive family planning services, prenatal care and abortion for eligible women,” and for unlicensed, non-medical facilities to inform their clients that they are not licensed. The people opposed to this law believe that the FACT Act, which requires anti-abortion pregnancy centers to promote abortion services, is a violation of their freedom of speech. California put this law in place in order to help educate the thousands of women that are unaware of the public programs available to them through the state of California. Legislators also argue that it is imperative for pregnant women to know whether or not the pregnancy centers they go to are licensed medical providers, so that they are easily able to locate and access the type of prenatal care they need. Around 135 pregnancy centers in California belong to the National Institute of Family and Life Advocates (NIFLA), who challenged the constitutionality of the FACT Act with regards to the freedom of speech aspect of the First Amendment. The Supreme Court should rule the FACT Act as constitutional because California has a genuine interest for the public health issue of women’s health, and the primary intention of the act is to provide women with critical information, such as the services that California provides and whether or not a pregnancy center is licensed.
California Attorney General Xavier Becerra stated that “information is power, and all women should have access to the information they need when making personal health care decisions,” and that the FACT Act gives women that critical information and protects women’s health care rights given to them by the state of California. The FACT Act should be ruled as constitutional because California has a genuine interest in providing pregnant women with access to low-cost prenatal care and access to complete information about the all of the options they have. Every woman deserves to have the knowledge of what services the state of California provides that they may be eligible for, and in this day and age, many women may not have direct and easy access to this information. California has a very large land area and population, and many women, especially those from low-income households, are unaware of the public programs available to them. It is in California’s best interest to inform its residents of these programs so that women can receive the proper care they need throughout their pregnancy; it is also very important for women to know whether or not they are receiving medical care from a licensed pregnancy center, so that they can seek and find the care they feel is best for them. By requiring all pregnancy facilities in California to inform clients of the public programs available, and whether or not the facilities are licensed medical providers, California ensures that women who are seeking prenatal care are given complete and accurate information about the services they may qualify for, which is an important right that citizens of the United States and the residents of California have. The Freedom of Information Act (FOIA) gives Americans the right to information, access and equal protection, and the state of California is trying to give its residents accurate information by requiring pregnancy centers to distribute accurate and complete information when asked by its clients. The FACT Act does not require religious pregnancy
centers to directly give this information out to its clients, as it only requires these centers to inform the people coming in that they are an unlicensed, non-medical facility. Along with California’s genuine interest to provide pregnant women with access to low-cost prenatal care and access to complete information about the all of the options they have, the FACT Act does not coerce speech because it requires facilities to provide accurate information if asked, when often times they provide semi-truthful, incomplete and misleading information.

Many religious pregnancy centers’ main goal is to deter women from having abortions, and the way they achieve their goal is by providing misleading information, making their center resemble a health clinic, and completely leaving out abortion as a viable option for women in California. The FACT Act was established to prevent women from not knowing all of their options and making sure that they are not being given deceptive, partial information. Since Americans have a right to accurate and complete information, this law helps women receive this information, and allows them to make informed decisions about their personal health. Once again, this law requires licensed, medical facilities to notify their clients that they may be able to receive access to free or low-cost family planning services through California’s Medi-Cali and Family PACT programs, which includes abortions, and unlicensed, non-medical facilities to notify clients that they are not licensed medical providers. These religious pregnancy centers are not licensed medical providers, therefore they are only required to disclose that information to their clients, as opposed to being deceptive about the mission and nature of the centers; they are in no way being forced to promote things that go against their religion, including abortions. *Roe v. Wade* was a very important case that declared the unconstitutionality of laws that restricted access to information about abortions, and abortions themselves, and the California FACT Act
coincides with this law because it makes it illegal for facilities to misinform, or completely not inform, women of their constitutional rights, if asked. In the case of a woman’s public health, especially related to pregnancy, it is imperative to provide full and truthful information about her options so that she can make the best decision for herself. While religious facilities may feel as though they cannot provide this information because it is against their religion, it is their moral and respective duty and obligation to not mislead women with inaccurate information when asked. The FACT Act was not put in place to intentionally deny people their right to freedom of religion, but rather to provide people with their right to freedom of information of the laws of California and of the United States.

Many opponents to the FACT Act feel as though this law oppresses a person’s freedom of religion by requiring many religious and pro-life facilities to advertise for abortion, which goes against many of the pregnancy centers’ views and beliefs; they also believe that it is unconstitutional for the government to force these anti-abortion centers to promote something that they do not agree with, on the basis of religion, and to fine them if they do not comply with the law. In this case, the government must reconcile its duty to the residents of California and its duty to protect the First Amendment; the government’s putative duty/interest to ensure that women receive accurate information about their medical choices outweighs their duty to protect freedom of speech and freedom of religion. Additionally, the FACT Act complies with the famous Lemon test, which is a test that assesses whether or not a law violates the Establishment Clause. In order to pass the Lemon test, the law must have a strict secular purpose, the primary effect cannot promote or discourage religion, and must not encourage excessive government entanglement with religion. The FACT Act passed all three of these criteria. First, the purpose of
this law is completely secular, as it is intended to provide women with complete and accurate information in order for them to make completely informed decisions. Next, the primary effect of this law is women receiving accurate medical information, which is a secular purpose and does not directly promote or discourage religion. Finally, this law does not encourage government entanglement with religion, because California has legitimate interest in women’s public health, which does not directly correlate with religion. The basis of the argument against the FACT Act is based on freedom of speech and freedom of religion, however, the law’s intention and purpose does not directly interfere with an individual’s right to practice their own religion.

The Supreme Court of the United States should rule the FACT Act as constitutional, because California has a genuine interest in women’s public health and the law does not directly inhibit a person’s freedom of religion, nor is the law’s primary effect to promote or restrict certain religions over another. First, every woman in California has a right to know about the services that the state provides in relation to pregnancies, in order for the woman to be able to evaluate her options and figure out the best plan for her life and family. Many women in California are not able to easily access these services, so it is important for medical facilities to inform women of these choices; additionally, a woman deserves to know whether or not the center they are requesting services from are licensed, medical facilities. Finally, the government’s putative duty/interest to ensure that women receive accurate information about their medical choices outweighs their duty to protect freedom of speech and freedom of religion. At the bottom of this law is a desire to help women receive access to free or low-cost family planning services so that they can evaluate their choices and make decisions based off of
complete and accurate information. This is not unconstitutional, however, restricting access to this information is constitutionally and morally unjust.