US Supreme Court sides with anti-abortion fanatics who operate fake health centers

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The US Supreme Court yesterday ruled in favor of the "free speech" rights of anti-abortion advocates who operate misleading "crisis pregnancy centers." The justices, by a vote of 5 to 4, struck down a California law that would require these fake clinics to inform women of the availability of public programs that provide contraception and abortion services for free or at a low cost.

This decision is yet another victory for Christian fundamentalists and the campaign to use "freedom of religion" to undermine the separation of church and state, legalize discrimination, and obstruct access to health care.

On the same day that the Supreme Court bowed low to the supposed deeply held religious beliefs of Christian fundamentalists, it upheld the Trump administration's flagrantly discriminatory "Muslim ban."

The case of *NIFLA v. Becerra* arose in relation to the phenomenon of so-called "crisis pregnancy centers" in the United States. These centers appear from the exterior to be ordinary health clinics, despite the fact that many are unlicensed. Inside, the staff members may wear hospital-style scrubs, take medical histories, and in some cases even perform ultrasounds. However, these centers are owned and operated by anti-abortion fanatics, and they do not actually provide any contraception or abortion services.

These fake health clinics prey on working class women in particular, who are often unaware of what services are provided through public programs. The unsuspecting women who attend these clinics may believe that they are getting objective medical advice. Instead, women are shamed, misinformed, and pressured against having an abortion by Christian fundamentalists. There are an estimated 2,700 such fake health clinics operating in the US, significantly outnumbering the number of actual abortion clinics.

For example, a survey in 2012 by the NARAL Pro-Choice Minnesota Foundation determined that around 95 percent of counties in Minnesota did not have any abortion provider at all, while the "crisis pregnancy centers" outnumbered the abortion clinics by a ratio of 15 to 1.

There are approximately 200 such "crisis pregnancy centers," licensed and otherwise, in the state of California. In 2015, the California legislature passed a modest measure, titled the Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (the "FACT Act"), which required these "crisis pregnancy centers" to post 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 abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number]."

Christian fundamentalists challenged the FACT Act on the grounds that it supposedly infringed their right to free speech.

As a preliminary matter, the required notice is not substantially different from numerous other disclosure requirements relating to the medical profession that are already on the books. A 2014 California law, for example, requires hospitals to tell parents about child seat belts. From property owners and elevator operators to advertisers and professionals of all kinds, disclosure and notice-posting requirements are relatively common throughout the United States. Provided that the requirement is factual and relates in some way to the services in question, these requirements have generally been uncontroversial from the standpoint of free speech.

One of the more outrageous aspects of yesterday's decision is that the Supreme Court reached the exact opposite result in 1992 when the tables were turned. The case of *Planned Parenthood v. Casey* involved a challenge to a Pennsylvania law that required doctors to tell patients considering abortion about the availability of adoption services. In that case, the Supreme Court decided that the state's requirements amounted to a "reasonable measure to ensure an informed choice, one which might cause the woman to choose childbirth over abortion."

Dissenting from yesterday's decision, Stephen Breyer, Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan observed that the Supreme Court was applying a clear double standard. "If a State can lawfully require a doctor to tell a woman seeking an abortion about adoption services, why should it not be able, as here, to require a medical counselor to tell a woman seeking prenatal care or other reproductive healthcare about childbirth and abortion services?" As Breyer observed, writing for the dissenters, "What is sauce for the goose is normally sauce for the gander."

The official "Opinion of the Court," authored by Clarence Thomas and joined by Anthony Kennedy, Samuel Alito, Trump appointee Neil Gorsuch, and Chief Justice John Roberts, is less of an explanation of legal reasoning than a wild rant. The California legislature, which passed the FACT Act, is variously compared to Nazi Germany, the Soviet Union, Romania under Nicolae Ceausescu, and China during the Cultural Revolution.

"In the 1930s, the Soviet government expedited completion of a construction project on the Siberian railroad by ordering doctors to

both reject requests for medical leave from work and conceal this government order from their patients," writes Thomas, citing a 1994 law review article. "In Nazi Germany, the Third Reich systematically violated the separation between state ideology and medical discourse." These regimes, according to Thomas, are guilty of having "manipulated the content of doctor-patient discourse."

Unable to reconcile its decision yesterday with its own precedents, the Supreme Court's official decision amounts to a tangle of crude sophistry and amalgams. Like many decisions emanating from the Court's far-right bloc, the jurists arrive at the conclusion first and then work backwards to try to glue together a rationale. As the dissenters observed, the opinion makes no logical sense from a legal standpoint and will be next to impossible for lower courts to apply as precedent.

The so-called "swing" justice, Anthony Kennedy—who joined the 1992 decision in *Casey* that reached the opposite result—filed a concurring opinion yesterday, joined by all the justices save Thomas, to sermonize on the evils of the supposedly "authoritarian" behavior of the California legislature. "Governments must not be allowed to force persons to express a message contrary to their deepest convictions," Kennedy wrote.

The writings of the supposedly liberal wing yesterday were timid and conciliatory in inverse proportion to the obnoxious raving of the far-right wing. In contrast, the liberals prayed for "evenhandedness" in language that resonates with the appeals for "civility" that have dominated the editorial pages of America's major newspapers over the past several days.

The "need for evenhandedness," the four dissenters wrote, "should prove particularly weighty in a case involving abortion rights. That is because Americans hold strong, and differing, views about the matter. Some Americans believe that abortion involves the death of a live and innocent human being. Others believe that the ability to choose an abortion is central to personal dignity and autonomy … and note that the failure to allow women to choose an abortion involves the deaths of innocent women. We have previously noted that we cannot try to adjudicate who is right and who is wrong in this moral debate. But we can do our best to interpret American constitutional law so that it applies fairly within a Nation whose citizens strongly hold these different points of view."

This supposed "even-handedness" of the Supreme Court's liberal wing when it comes to abortion is cowardly and contemptible. According to this approach, the act of interfering with someone else's right to health care is placed on equal footing with a person's right to obtain that care. Each are treated as though they are the fruit of respectable but different "deeply held beliefs"—while the Supreme Court liberals maintain a respectful civility towards both sides and refuse to take a position either way.

California's FACT Act itself makes reference to the underlying social reality: "Millions of California women are in need of publicly funded family planning services, contraception services and education, abortion services, and prenatal care and delivery. In 2012, more than 2.6 million California women were in need of publicly funded family planning services. More than 700,000 California women become pregnant every year and one-half of these pregnancies are unintended. In 2010, 64.3 percent of unplanned births in California were publicly funded. Yet, at the moment they learn that they are pregnant, thousands of women remain unaware of the public programs available to provide them with contraception, health education and counseling, family planning, prenatal care, abortion, or delivery."

There is no equivalence between providing health care and the act of interfering with it on religious grounds—not from any moral, legal, or political standpoint. No woman is being forced to have an abortion against her will. It is striking that none of the supposedly liberal justices have the courage to unequivocally oppose the Christian fundamentalists on principled democratic grounds—the absolute right to health care, a woman's right to privacy, or for that matter the separation of church and state—especially under conditions where the Democratic Party presents itself as a champion of "women's issues."

Earlier this month, the Supreme Court ruled 7 to 2 in favor of the "right" of a Colorado baker to refuse to bake a cake for a gay couple's wedding, echoing rationales that had been invoked during the Jim Crow period to justify a restaurant owner's refusal to admit customers based on skin color. A section of the American political establishment, led by Trump and supported by the far-right bloc on the Supreme Court, is making a deliberate effort to whip up and embolden a popular base for fascistic policies.

Yesterday's anti-abortion decision, deeply reactionary in its own right, was overshadowed by the Supreme Court's decision the same day upholding the Trump administration's "Muslim ban." Both cases, taken together, once again demonstrate that no section of the political establishment can be relied upon to reverse the accelerating slide towards repression and reaction. The defense and expansion of democratic rights requires the independent mobilization of the working class on a socialist program.