

Tyler & Bursch, LLP / Advocates for Faith & Freedom

Desaré Ferraro

951-600-2733

dferraro@tylerbursch.com

Unconstitutional: Court Orders State Attorney General Not to Enforce California's Reproductive FACT Act
The Compelled Speech of the Reproductive FACT Act Infringes on Free Speech

Riverside County, CA: Yesterday, Judge Gloria Trask granted an injunction against the California State Attorney General and he is now prevented from enforcing the Reproductive FACT Act.

The judge issued her ruling in a lawsuit filed in Riverside County Superior Court by The Scharpen Foundation challenging the California statute that requires pro-life pregnancy centers to provide their patients with the contact information for local abortion clinics. In its decision, the Court found that "the Reproductive FACT Act violates Article I, Section 2 of the California Constitution."

Judge Gloria Trask explained, "Here, the State commands clinics to post specific directions for whom to contact to obtain an abortion. It forces the clinic to point the way to the abortion clinic and can leave patients with the belief they were referred to an abortion provider by that clinic.... In Scharpen's case that would be inaccurate, profoundly inaccurate."

Moreover, we argued and Judge Trask agreed, ruling that, "The State can deliver its message without infringing upon anyone's liberty. It may purchase television advertisements as it does to encourage Californians to sign up for Covered California or to conserve water. It may purchase billboard space and post its message directly in front of Scharpen Foundation's clinic...."

"Compelled speech must be subject to reasonable limitation," continued Judge Trask. "The statute compels the clinic to speak words with which it profoundly disagrees when the state has numerous alternative methods of publishing its message.... In this case, however virtuous the State's ends, they do not justify its means."

"We are thrilled with Judge Trask's ruling, which is a huge victory for free speech," said Scott Scharpen, founder and president of The Scharpen Foundation, which operates the Go Mobile For Life pregnancy clinic. He added, "The whole notion of being compelled to share information with our patients about abortion availability, which is contrary to our mission and purpose, is fundamentally wrong. Lives will be saved because of this ruling."

With funding raised by Advocates for Faith & Freedom, a non-profit legal defense organization, Tyler & Bursch's lawyers strategically filed the lawsuit in state court because the California State Constitution provides greater free speech protection than the First Amendment.

Attorney Robert Tyler of [Tyler & Burch, LLP](#), counsel for the Scharpen Foundation, lauded, "It is a great day in California because we know that freedom of speech is still a protected constitutional right. Judge Trask is absolutely correct that the State can't force a pro-life clinic to advertise abortions on behalf of the State and its abortion mills." He continued, "If the State Attorney General appeals, we will continue to defend our client's pro-life speech all the way to the U.S. Supreme Court."

Yesterday's ruling established that "[C]ompelled speech of a political or cultural nature is not the tool of a free government." Essentially, "The legislature may not use the wall of the physician's office as a billboard to advertise the availability of low cost abortions...."

Nada Higuera, the attorney who argued the case, said: "As a young female and defender of speech, I am thrilled to know that our work is not in vein. I've regrettably had an abortion. And I've just recently experienced the incomparable joy of having a baby. I wish I would have had the opportunity to visit a pro-life clinic when I was just 16 years old and contemplating an abortion."

The ruling provides injunctive relief statewide and prevents the law from being enforced effective immediately.

Tyler & Bursch, LLP also represents Livingwell Medical Clinic in a concurrent case in federal court. We are awaiting a decision from the U.S. Supreme Court in November as to whether the High Court will take the case. Our two-front strategy gives us the ability to win in either federal or state court.

About Tyler & Bursch, LLP and Advocates for Faith & Freedom: Tyler & Bursch's attorneys have been serving businesses and individuals throughout Southern California for almost 20 years in federal and state trial courts, courts of appeal and arbitration. Tyler & Bursch provides legal and financial support to their non-profit law firm, Advocates for Faith & Freedom in defense of constitutional and religious liberty.

###