

KENNEDY, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 16–1140

NATIONAL INSTITUTE OF FAMILY AND LIFE
ADVOCATES, DBA NIFLA, ET AL., PETITIONERS *v.*
XAVIER BECERRA, ATTORNEY GENERAL OF
CALIFORNIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June 26, 2018]

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE,
JUSTICE ALITO, and JUSTICE GORSUCH join, concurring.

I join the Court’s opinion in all respects.

This separate writing seeks to underscore that the apparent viewpoint discrimination here is a matter of serious constitutional concern. See *ante*, at 6, n. 2. The Court, in my view, is correct not to reach this question. It was not sufficiently developed, and the rationale for the Court’s decision today suffices to resolve the case. And had the Court’s analysis been confined to viewpoint discrimination, some legislators might have inferred that if the law were reenacted with a broader base and broader coverage it then would be upheld.

It does appear that viewpoint discrimination is inherent in the design and structure of this Act. This law is a paradigmatic example of the serious threat presented when government seeks to impose its own message in the place of individual speech, thought, and expression. For here the State requires primarily pro-life pregnancy centers to promote the State’s own preferred message advertising abortions. This compels individuals to contradict their most deeply held beliefs, beliefs grounded in basic philosophical, ethical, or religious precepts, or all of these.

And the history of the Act's passage and its underinclusive application suggest a real possibility that these individuals were targeted because of their beliefs.

The California Legislature included in its official history the congratulatory statement that the Act was part of California's legacy of "forward thinking." App. 38–39. But it is not forward thinking to force individuals to "be an instrument for fostering public adherence to an ideological point of view [they] fin[d] unacceptable." *Wooley v. Maynard*, 430 U. S. 705, 715 (1977). It is forward thinking to begin by reading the First Amendment as ratified in 1791; to understand the history of authoritarian government as the Founders then knew it; to confirm that history since then shows how relentless authoritarian regimes are in their attempts to stifle free speech; and to carry those lessons onward as we seek to preserve and teach the necessity of freedom of speech for the generations to come. Governments must not be allowed to force persons to express a message contrary to their deepest convictions. Freedom of speech secures freedom of thought and belief. This law imperils those liberties.