

**Session :** Janvier 2019

**Année d'étude :** Troisième année de Licence Droit

**Discipline :** *Anglais juridique*

**Examen :** Premier semestre (UEC1 7296)

**Durée :** 1h30

**Titulaires du cours :** Ms. Cingal, Mr. Huet, Mr. Jendoubi, Mrs. John-Richards

**Les documents et les appareils électroniques ne sont pas autorisés.**

**I. Complete the following sentences, adding between 15 and 30 words. Do not start a new sentence. (20 points)**

1. Unlike selective incorporation...
2. In the *Matal v. Tam* decision, ...
3. Because of the exclusionary rule, ...
4. Four years after the Constitution was adopted, ...
5. The Cruel and Unusual Punishment Clause...

**II. Read the following document and answer each of the questions below. (approximately ten lines/100 words for each question). Use your own words. DO NOT QUOTE DIRECTLY FROM THE TEXT. (30 points)**

**Supreme Court Backs Anti-Abortion Pregnancy Centers in Free Speech Case**

By Adam Liptak, *The New York Times*, June 26, 2018.

Ruling for opponents of abortion on free speech grounds, the Supreme Court said on Tuesday that the State of California may not require religiously oriented “crisis pregnancy centers” to supply women with information about how to end their pregnancies.

The case was a clash between state efforts to provide women with facts about their medical options and First Amendment rulings that place limits on the government’s ability to compel people to say things at odds with their beliefs.

Justice Clarence Thomas, writing for the five-justice conservative majority, accepted the free-speech argument, ruling that the First Amendment prohibits California from forcing the centers, which oppose abortion on

religious grounds, to post notices about how to obtain the procedure. The centers seek to persuade women to choose parenting or adoption.

“Licensed clinics must provide a government-drafted script about the availability of state-sponsored services, as well as contact information for how to obtain them,” Justice Thomas wrote. “One of those services is abortion — the very practice that petitioners are devoted to opposing.”

California, he wrote, can use other means to tell women about the availability of abortion, including advertising. But “California cannot co-opt the licensed facilities to deliver its message for it,” he wrote.

The case was the first touching on abortion since Justice Neil M. Gorsuch, who sided with the majority, joined the court. While the decision’s legal analysis turned on the First Amendment, it was lost on no one that the justices most committed to defending abortion rights were all in dissent.

The court returned the case to the lower courts for another look, but it seemed unlikely that California would be able to present new evidence or arguments to save the law.

In a dissent that he summarized from the bench, Justice Stephen G. Breyer accused the majority of acting inconsistently. In 1992, he noted, the Supreme Court upheld a Pennsylvania law that required doctors who performed abortions to provide some kinds of information to their patients.

“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 health care about childbirth and abortion services?” he asked.

“As the question suggests,” Justice Breyer wrote, “there is no convincing reason to distinguish between information about adoption and information about abortion in this context. After all, the rule of law embodies evenhandedness, and ‘what is sauce for the goose is normally sauce for the gander.’”

Justice Thomas responded that the 1992 decision was different because it concerned a medical procedure. Justice Breyer was unpersuaded.

“Really?” he asked. “No one doubts that choosing an abortion is a medical procedure that involves certain health risks. But the same is true of carrying a child to term and giving birth.”

Chief Justice John G. Roberts Jr. and Justices Gorsuch, Anthony M. Kennedy and Samuel A. Alito Jr. joined the majority opinion.

In a concurring opinion, Justice Kennedy said the First Amendment bars compelling people to betray their beliefs.

“Governments must not be allowed to force persons to express a message contrary to their deepest convictions,” he wrote. “Freedom of speech secures freedom of thought and belief. This law imperils those liberties.”

Michael P. Farris, a lawyer with Alliance Defending Freedom, which represented the centers, said he welcomed the ruling.

“No one should be forced by the government to express a message that violates their convictions, especially on deeply divisive subjects such as abortion,” he said. “In this case, the government used its power to force pro-life pregnancy centers to provide free advertising for abortion. The Supreme Court said that the government can’t do that, and that it must respect pro-life beliefs.”

California’s attorney general, Xavier Becerra, said the ruling would place needless barriers between women and access to medical care.

“When it comes to making their health decisions, all California women — regardless of their economic background or ZIP code — deserve access to critical and nonbiased information to make their own informed decisions,” he said.

The case, *National Institute of Family and Life Advocates v. Becerra*, No. 16-1140, concerned a California law that requires centers operated by opponents of abortion to provide women with information about the availability of the procedure.

The state requires the centers to post notices that free or low-cost abortion, contraception and prenatal care are available to low-income women through public programs, and to provide the phone number for more information.

The centers argued that the law violated their right to free speech by forcing them to convey messages at odds with their beliefs. The law’s defenders said the notices combat incomplete or misleading information provided by the clinics.

1. Summarize the facts of the case. What legal and constitutional issue is at stake here?
2. What was the Supreme Court’s decision? How did the Court justify it?
3. Using your knowledge of the American Constitution (and more particularly the First Amendment), say whether you agree or disagree with the Court’s decision.

**III. Choose ONE of the following topics and write an essay in approximately 250 words (+/- 10%). (50 points)**

1. Does the US have a real separation between Church and State?
2. In a 2003 interview with Wolf Blitzer for CNN, Alan Dershowitz said that “If torture is going to be administered as a last resort in the ticking-bomb case, to save enormous numbers of lives, it ought to be done openly, with accountability, with approval by the president of the United States or by a Supreme Court justice.” What is your opinion? (Justify it using your knowledge of US laws.)?