Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 16–1140. Argued March 20, 2018—Decided June 26, 2018

The California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (FACT Act) was enacted to regulate crisis pregnancy centers—pro-life centers that offer pregnancy-related services. The FACT Act requires clinics that primarily serve pregnant women to provide certain notices. Clinics that are licensed must notify women that California provides free or low-cost services, including abortions, and give them a phone number to call. Its stated purpose is to make sure that state residents know their rights and what health care services are available to them. Unlicensed clinics must notify women that California has not licensed the clinics to provide medical services. Its stated purpose is to ensure that pregnant women know when they are receiving health care from licensed professionals. Petitioners—two crisis pregnancy centers, one licensed and one unlicensed, and an organization of crisis pregnancy centers—filed suit. They alleged that both the licensed and the unlicensed notices abridge the freedom of speech protected by the First Amendment. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed. Holding that petitioners could not show a likelihood of success on the merits, the court concluded that the licensed notice survived a lower level of scrutiny applicable to regulations of "professional speech," and that the unlicensed notice satisfied any level of scrutiny.

Held:

1. The licensed notice likely violates the First Amendment. Pp. 6–17.

(a) Content-based laws "target speech based on its communica-

tive content" and "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed* v. *Town of Gilbert*, 576 U. S. ___, ___. The licensed notice is a content-based regulation. By compelling petitioners to speak a particular message, it "alters the content of [their] speech." *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 795. For example, one of the state-sponsored services that the licensed notice requires petitioners to advertise is abortion—the very practice that petitioners are devoted to opposing. Pp. 6–7.

(b) Although the licensed notice is content-based, the Ninth Circuit did not apply strict scrutiny because it concluded that the notice regulates "professional speech." But this Court has never recognized "professional speech" as a separate category of speech subject to different rules. Speech is not unprotected merely because it is uttered by professionals. The Court has afforded less protection for professional speech in two circumstances—where a law requires professionals to disclose factual, noncontroversial information in their "commercial speech," see, *e.g., Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, 651, and where States regulate professional conduct that incidentally involves speech, see, *e.g.*, *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 456. Neither line of precedents is implicated here. Pp. 7–14.

(1) Unlike the rule in *Zauderer,* the licensed notice is not limited to "purely factual and uncontroversial information about the terms under which . . . services will be available," 471 U. S., at 651. California's notice requires covered clinics to disclose information about *state*-sponsored services—including abortion, hardly an "uncontroversial" topic. Accordingly, *Zauderer* has no application here. P. 9.

(2) Nor is the licensed notice a regulation of professional conduct that incidentally burdens speech. The Court's precedents have long drawn a line between speech and conduct. In *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, for example, the joint opinion rejected a free-speech challenge to an informed-consent law requiring physicians to "give a woman certain information as part of obtaining her consent to an abortion," *id.,* at 884. But the licensed notice is neither an informed-consent requirement nor any other regulation of professional conduct. It applies to all interactions between a covered facility and its clients, regardless of whether a medical procedure is ever sought, offered, or performed. And many other facilities providing the exact same services, such as general practice clinics, are not subject to the requirement. Pp. 10–11.

(3) Outside of these two contexts, the Court's precedents have long protected the First Amendment rights of professionals. The Court

has applied strict scrutiny to content-based laws regulating the noncommercial speech of lawyers, see *Reed*, *supra,* at ___, professional fundraisers, see *Riley*, *supra*, at 798, and organizations providing specialized advice on international law, see *Holder* v. *Humanitarian Law Project*, 561 U. S. 1, 27–28. And it has stressed the danger of content-based regulations "in the fields of medicine and public health, where information can save lives." *Sorrell* v. *IMS Health Inc.*, 564 U. S. 552, 566. Such dangers are also present in the context of professional speech, where content-based regulation poses the same "risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information," *Turner Broadcasting Systems, Inc.* v. *FCC*, 512 U. S. 622, 641. When the government polices the content of professional speech, it can fail to " 'preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.' " *McCullen* v. *Coakley*, 573 U. S. ___, ___–___. Professional speech is also a difficult category to define with precision. See *Brown* v. *Entertainment Merchants Assn.*, 564 U. S. 786, 791. If States could choose the protection that speech receives simply by requiring a license, they would have a powerful tool to impose "invidious discrimination of disfavored subjects." *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410, 423, n. 19. Pp. 11–14.

(c) Although neither California nor the Ninth Circuit have advanced a persuasive reason to apply different rules to professional speech, the Court need not foreclose the possibility that some such reason exists because the licensed notice cannot survive even intermediate scrutiny. Assuming that California's interest in providing low-income women with information about state-sponsored service is substantial, the licensed notice is not sufficiently drawn to promote it. The notice is "wildly underinclusive," *Entertainment Merchants Assn.*, *supra,* at 802, because it applies only to clinics that have a "primary purpose" of "providing family planning or pregnancy-related services" while excluding several other types of clinics that also serve low-income women and could educate them about the State's services. California could also inform the women about its services "without burdening a speaker with unwanted speech," *Riley*, *supra*, at 800, most obviously through a public-information campaign. Petitioners are thus likely to succeed on the merits of their challenge. Pp. 14–17.

2. The unlicensed notice unduly burdens protected speech. It is unnecessary to decide whether *Zauderer*'s standard applies here, for even under *Zauderer,* a disclosure requirement cannot be "unjustified or unduly burdensome." 471 U. S., at 651. Disclosures must remedy a harm that is "potentially real not purely hypothetical," *Ibanez* v. *Florida Dept. of Business and Professional Regulation, Bd. of Ac-*

countancy, 512 U. S. 136, 146, and can extend "no broader than reasonably necessary," *In re R. M. J.*, 455 U. S. 191, 203. California has not demonstrated any justification for the unlicensed notice that is more than "purely hypothetical." The only justification put forward by the state legislature was ensuring that pregnant women know when they are receiving medical care from licensed professionals, but California denied that the justification for the law was that women did not know what kind of facility they are entering when they go to a crisis pregnancy center. Even if the State had presented a nonhypothetical justification, the FACT Act unduly burdens protected speech. It imposes a government-scripted, speaker-based disclosure requirement that is wholly disconnected from the State's informational interest. It requires covered facilities to post California's precise notice, no matter what the facilities say on site or in their advertisements. And it covers a curiously narrow subset of speakers: those that primarily provide pregnancy-related services, but not those that provide, *e.g.,* nonprescription birth control. Such speaker-based laws run the risk that "the State has left unburdened those speakers whose messages are in accord with its own views." *Sorrell, supra,* at 580. For these reasons, the unlicensed notice does not satisfy *Zauderer*, assuming that standard applies. Pp. 17–20.

839 F. 3d 823, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, ALITO, and GORSUCH, JJ., joined. KENNEDY, J., filed a concurring opinion, in which ROBERTS, C. J., and ALITO and GORSUCH, JJ., joined. BREYER, J., filed dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined.

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 THOMAS delivered the opinion of the Court.

The California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (FACT Act) requires clinics that primarily serve pregnant women to provide certain notices. Cal. Health & Safety Code Ann. §123470 *et seq.* (West 2018). Licensed clinics must notify women that California provides free or low-cost services, including abortions, and give them a phone number to call. Unlicensed clinics must notify women that California has not licensed the clinics to provide medical services. The question in this case is whether these notice requirements violate the First Amendment.

I

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The California State Legislature enacted the FACT Act to regulate crisis pregnancy centers. Crisis pregnancy centers—according to a report commissioned by the California State Assembly, App. 86—are "pro-life (largely Christian belief-based) organizations that offer a limited

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