SUPREME COURT OF THE STATE OF LINCOLN

IN RE: EXECUTIVE ORDER 39

ON PETITION FOR WRIT OF CERTIORARI

NO. 20-02

Syllabus

This case arises from a facial challenge of Executive Order 39, Cutting Ties with Planned Parenthood Sponsored Businesses ("the Order"). The Order directs the Lincoln bureaucracy to "not do business with any of the above entities which have ties to Planned Parenthood, except for necessity, legal requirement or existing contractual obligation." The petitioner argues the Order violates the right to reproductive autonomy guaranteed under Article XII of the Lincoln Constitution, as well as the First Amendment of the U.S. Constitution. The State contends that the Order, by merely re- allocating public funds, cannot materially restrict reproductive freedom nor amount to viewpoint discrimination.

Held: The Order amounts to viewpoint discrimination and is therefore vacated.

CJkhan, CJ., delivered the opinion of the Court, joined by High-Priest-Of-Helix, J. El-Chapotato, J., concurred in the judgement of the Court.

OPINION OF THE COURT

Shortly before the 2020 gubernatorial election, a democratic governor issued the now-overturned Executive Order No. 36, Cutting Ties with NRA Sponsored Businesses. Before us now is a perhaps inspired Republican governor, Cutting Ties with Planned Parenthood Sponsored Businesses. The Order implicates the First Amendment's protection against laws which prohibit speech on the basis of content. Finding the Order content based, we must subject it to strict scrutiny. The petitioner in this case also alleges a reproductive freedom claim. We will consider these in reverse:

A The Order must materially restrict reproductive freedom in order to be an unconstitutional infringement. The petitioner employs examples of material restriction occurring in states where public funding cuts to Planned Parenthood occurred, Jefferson not being one of them. Here, the Order only affects Planned Parenthood's funding in a tangential sense by discouraging government funded

2 businesses from donating. We will not fully evaluate a reproductive rights claim here as the First Amendment is of preeminent concern.

B A law amounts to viewpoint discrimination when it cannot be "'justified without reference to the content of the regulated speech,'" or when it is adopted "because of disagreement with the message [the speech] conveys," Ward v. Rock Against Racism, 491 U. S. 781, 791 (1989). We found exactly this in Executive Order 36, writing: "[t]he fact that the NRA is a well-known Republican analog is not lost on this court" — and neither is Planned Parenthood's status as a democratic analog. Relative to Executive Order 36, No. 39 places upon Planned Parenthood sponsored businesses an almost identical imposition.

The Governor did, to be sure, amend the Order to remove language declaring Planned Parenthood a "domestic terrorist group" that "produces pro-abortion propaganda and ... purposely misleads pregnant mothers into going through [with] abortion procedures". But the order nevertheless remains part of a familiar partisan cycle of political intimidation and retaliation. In the words of the Lieutenant Governor, it is "important for us to recognize the parallels between this order and the one focused on the NRA"— the primary parallel being that the Orders' apply to particular speech because of the messages associated with and expressed by it. Such content-based laws "are presumptively unconstitutional regardless of the government's benign motive" Sable Communications v. FCC, 492 U.S. 115 (1989)

The Order is defended by the doctrine of 'government speech', which allows the State to "[s]electively fund a program to encourage certain activities...without at the same time funding an alternate program which seeks to deal with the problem in another way." Rust v Sullivan,

500 U.S. 173 (1991). But the Order must be distinguished from such a program, in the latter case at issue was a single board of government doctors. The Order instead implicates every business which attempts financial relations with the government and Planned Parenthood. Such a regulation cannot be sufficiently narrowly tailored to qualify as a "program" under *Rust* or as any valid exercise of government speech. For the same reason, the Order cannot overcome the strict scrutiny required of it.

[3] In defending the Order, the Attorney General wrote that "if one form of funding discrimination is legal, then the other should, reasonably be so." The Court is of the inverse opinion.