

**PROTECTING ABORTION BY PROTECTING SPEECH:  
REVISITING NORTH CAROLINA’S MANDATORY  
ULTRASOUND LAW AFTER *DOBBS AND NIFLA* \***

KATHRYN S. ROWE\*\*

INTRODUCTION.....	134
I. HISTORY OF NORTH CAROLINA’S MANDATORY ULTRASOUND LAW.....	138
II. <i>STUART V. CAMNITZ</i> .....	141
III. DISTINGUISHING <i>CAMNITZ</i> FROM CURRENT CONSTITUTIONAL ABORTION DOCTRINE.....	146
A. <i>Constitutional Abortion Doctrine</i> .....	147
1. Origins of Constitutional Abortion Doctrine: <i>Roe</i> and <i>Casey</i> .....	147
2. <i>Dobbs</i> and Resulting Changes to Abortion Doctrine..	149
B. <i>Re-examining Camnitz and North Carolina’s “Display of Real-Time View Requirement” After Dobbs</i> .....	150
1. <i>Dobbs</i> and <i>Camnitz</i> Implicate Different Constitutional Doctrines.....	151
2. <i>Dobbs</i> Does Not Affect <i>Camnitz’s</i> Rationale for Employing Heightened Scrutiny.....	152
3. <i>Conclusion</i> .....	155
IV. <i>NIFLA</i> ’S IMPLICATIONS FOR THE CONSTITUTIONALITY OF DISPLAY- AND-DESCRIBE LAWS.....	155
A. <i>Overview of NIFLA</i> .....	155
B. <i>NIFLA Indicates the Display of Real-Time View Requirement Should be Subject to at Least Intermediate Scrutiny</i> .....	157
1. <i>NIFLA</i> Supports Classifying the Display of Real-Time View Requirement as a Content-Based Regulation of Speech.....	157

---

\* © 2026 Kathryn S. Rowe.

\*\* J.D. Candidate, University of North Carolina School of Law, Class of 2026.

2.	<i>NIFLA</i> Supports Maintaining Elevated Constitutional Scrutiny for the Display of Real-Time View Requirement.....	158
C.	<i>The Exceptions Permitting Reduced Scrutiny Under NIFLA do not Apply to the Display of Real-Time View Requirement</i> .....	160
1.	Reduced Scrutiny when Regulating Factual, Noncontroversial “Commercial Speech”.....	161
2.	Reduced Scrutiny when Regulating Professional Conduct that Incidentally Burdens Speech.....	163
	CONCLUSION.....	167

#### INTRODUCTION

The fundamental right to abortion has never been fully shielded from legal attacks in the United States.<sup>1</sup> Even after the Supreme Court recognized a constitutional right to abortion in its landmark decision *Roe v. Wade*, 410 U.S. 113 (1973), state legislatures continued to enact burdensome regulations that restricted access as much as the law allowed.<sup>2</sup> When a divided Court overturned the right to abortion in *Dobbs v. Jackson Women’s Health Organization*, erasing fifty years of precedent and revoking an established constitutional right for the first time in American history, the floodgates opened for states to restrict or ban abortion with minimal scrutiny.<sup>3</sup> Shortly after the *Dobbs* decision twenty-nine states passed abortion bans that would have previously been invalidated as

---

1. For the international community’s recognition of abortion as a basic human right, see, e.g., U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, *Your Health, Your Choice, Your Rights: International and Regional Obligations on Sexual and Reproductive Health and Rights* at 3 (2018).

2. *Roe v. Wade*, 410 U.S. 113 (1973). See, e.g., *Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 433–49 (1983); *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582, 591 (2016); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 56 (1976); *Colautti v. Franklin*, 439 U.S. 379, 381–82 (1979).

3. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 221 (2022); see generally Talia Curhan, *State Bans on Abortion Throughout Pregnancy*, GUTTMACHER INST. (July 7, 2025), <https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans>.

violations of our most fundamental rights.<sup>4</sup> North Carolina is one of them.<sup>5</sup>

By eliminating the legal doctrines at the root of constitutional abortion jurisprudence, the *Dobbs* decision injected profound uncertainty into the abortion rights movement and its legal strategies. However, this uncertainty does not mean that *Dobbs* forecloses every constitutional challenge to abortion laws. As many scholars have noted, the fact that the Supreme Court no longer recognizes a constitutional right to abortion does not mean that all state abortion restrictions now satisfy the Constitution's demands.<sup>6</sup> State abortion laws must still comply with constitutional requirements beyond what *Dobbs* erased, and the absence of a right to abortion will not cure every constitutional infirmity.<sup>7</sup> This Comment examines this important caveat in the context of the First Amendment's protections of speech.

This Comment argues that constitutional free speech protections provide a separate basis for invalidating certain abortion restrictions that would otherwise withstand scrutiny after *Dobbs*. Specifically, the Comment examines this argument in the context of mandatory ultrasound laws, which require patients to receive an ultrasound before their abortion.<sup>8</sup> North Carolina is one of six states to impose a "display-and-describe" requirement, the strictest form of

---

4. Kelly Baden, *The State Abortion Policy Landscape One Year Post-Roe*, GUTTMACHER INST. (June 16, 2023), <https://www.guttmacher.org/2023/06/state-abortion-policy-landscape-one-year-post-roe>. See also *State Court Abortion Litigation Tracker*, BRENNAN CTR. FOR JUST. (Jan. 11, 2024), <https://www.brennancenter.org/our-work/research-reports/state-court-abortion-litigation-tracker#iowa> (tracking state laws stayed or repealed by litigation and ballot initiatives).

5. See Care for Women, Children, and Families Act, 2023 N.C. Sess. Laws 14 (codified at N.C. GEN. STAT. § 90-21.93) (describing North Carolina's abortion ban enacted after *Dobbs*, banning abortion after twelve weeks with limited exceptions).

6. See, e.g., Brannon P. Denning, *Privacy and Autonomy Post-Dobbs*, 93 MISS. L.J. 1029, 1031 (2024) (exploring alternate constitutional strategies for invalidating abortion restrictions post-*Dobbs*); Danielle Zoellner, *Criminalizing the Doctor-Patient Relationship: How Abortion Aiding and Abetting Laws Violate a Physician's First Amendment Rights*, 65 B.C. L. REV. 1143, 1143 (2024).

7. Denning, *supra* note 6, at 1031 (2024).

8. See Talia Curhan, *Ultrasound and "Fetal Heartbeat" Test Requirements for Abortion*, GUTTMACHER INST. (Sep. 1, 2023), <https://www.guttmacher.org/state-policy/explore/requirements-ultrasound>.

mandatory ultrasound law.<sup>9</sup> These statutes require abortion providers to perform an ultrasound *and* simultaneously provide a detailed, verbal description of the fetus.<sup>10</sup> The North Carolina “Display of Real-Time View Requirement” imposes these obligations on every patient seeking abortion care except in medical emergencies.<sup>11</sup> Current radiology guidelines require ultrasounds to be conducted transvaginally during the first trimester, the timeframe when 93% of abortions occur.<sup>12</sup> As a result, North Carolina’s statute requires the overwhelming majority of abortion patients to undergo an invasive internal procedure while simultaneously listening to a state-mandated description of their fetus, even in cases of rape, incest, and severe fetal complications, this requirement provides no opportunity for the patient or their physician to decline.

In *Stuart v. Camnitz*, the Fourth Circuit Court of Appeals upheld a permanent injunction on the Display of Real-Time View Requirement as an unconstitutional restriction on speech.<sup>13</sup> However, as a result of the Supreme Court’s decision in *Dobbs*, constitutional abortion jurisprudence now differs substantially from when the Fourth Circuit vacated North Carolina’s statute.<sup>14</sup> When the North Carolina legislature overhauled state abortion regulations post-*Dobbs*, it included a strengthened version of the display-and-describe

---

9. *See id.*

10. *See Requirements for Ultrasound*, GUTTMACHER INST. (Sep. 1, 2023), <https://www.guttmacher.org/state-policy/explore/requirements-ultrasound>; Maia Dunlap, *Challenging Abortion Informed Consent Regulations through the First Amendment: The Case for Protecting Physicians’ Speech*, 2019 U. CHI. LEGAL F. 443, 454 (2019).

11. N.C. GEN. STAT. § 90-21.85 (2023).

12. *See* Katie Albus, *Exam Requirements: Obstetrical Ultrasound (Revised 8-23-2024)*, AM. COLL. OF RADIOLOGY (Aug. 23, 2024), <https://accreditationsupport.acr.org/support/solutions/articles/11000062865-exam-requirements-obstetrical->; Jeff Diamant, Besheet Mohamed, & Rebecca Leppert, *What the Data Says about Abortion in the United States*, PEW RSCH. CTR. (Mar. 25, 2024), <https://www.pewresearch.org/short-reads/2024/03/25/what-the-data-says-about-abortion-in-the-us/>.

13. *Stuart v. Camnitz*, 774 F.3d 238, 242 (4<sup>th</sup> Cir. 2014).

14. *See Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 361 (2022) (Breyer, J., dissenting); *see also* Denning, *supra* note 6, at 1029; Adrienne R. Ghorashi & DeAnna Baumle, *Legal and Health Risks of Abortion Criminalization: State Policy Responses in the Immediate Aftermath of Dobbs*, 37 J. L. & HEALTH 1, 9 (2023).

requirement.<sup>15</sup> These developments create a worrisome risk that *Camnitz* (and the overall constitutionality of display-and-describe laws) may be relitigated in the future. In addition, *Camnitz* did not completely resolve the First Amendment issues implicated in display-and-describe laws, and other circuits have reached differing conclusions about the applicable standard of review.<sup>16</sup>

This Comment re-examines North Carolina’s “Display of Real-Time View” Requirement in light of the important developments in the Supreme Court’s jurisprudence in the years since the Fourth Circuit decided *Camnitz*. First, this Comment examines the doctrinal aftermath of the 2022 *Dobbs* decision and argues that these changes do not affect the holding in *Camnitz* or its rationale. *Camnitz* did not examine the North Carolina statute as a restriction on abortion. As will be explained, the court invalidated the statute as an unconstitutional restriction on speech for any doctor-patient relationship, regardless of the procedure. The fact that the Supreme Court no longer recognizes additional protections for abortion care does not mean that all constitutional protections in healthcare settings are now obsolete. State laws that encroach upon the right to free speech should, and do, remain subject to heightened scrutiny.

Second, this Comment examines another Supreme Court decision released after *Camnitz*: *National Institute of Family and Life Advocates v. Becerra (NIFLA)*, where the Court affirmed that speech restrictions may trigger constitutional scrutiny even when they take the form of professional regulations (an area typically subject to state control).<sup>17</sup> Although the Court’s decision was directed at state

---

15. See 2023 N.C. Sess. Laws 14, 15 (adding language that an abortion patient “has the right to view a real-time view image of the unborn child under this section and shall not be denied a real-time view of the unborn child due to a clinic policy or rule.”)

16. This Comment focuses on jurisprudence applicable to North Carolina and the Fourth Circuit. For discussion of this circuit split as applied to display-and-describe laws, and for arguments that the Fourth Circuit’s interpretation is superior, see Dunlap, *supra* note 10, at 467; see also Claire O’Brien, Casey, *Camnitz*, and *Compelled Speech: Why the Fourth Circuit’s Interpretation of Casey Sets the Right Standard for Speech-and-Display Provisions*, 94 N.C. L. REV. 1036, 1043–65 (2016); Erika Schutzman, *We Need Professional Help: Advocating for a Consistent Standard of Review When Regulations of Professional Speech Implicate the First Amendment*, 56 B.C. L. REV. 2019, 2019 (2015).

17. *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 762 (2018).

restrictions on anti-abortion “crisis pregnancy centers,” this Comment argues that the Court’s rationale in *NIFLA* also affirms that speech protections exist in larger healthcare settings, including abortion care. As a result, *NIFLA* lends significant support to the Fourth Circuit’s position that display-and-describe laws are subject to heightened scrutiny.

In Parts II and III, this Comment contextualizes its analysis by summarizing the history of the Display of Real-Time View Requirement and the Fourth Circuit’s decision in *Camnitz*. Part IV distinguishes *Camnitz* from the doctrinal aftermath of *Dobbs* by tracing the major decisions shaping constitutional abortion jurisprudence, comparing the holdings of *Camnitz* and *Dobbs*, and arguing that *Dobbs*’ doctrinal changes do not affect *Camnitz*’s holding that the Display of Real-Time View Requirement is unconstitutional. Finally, Part V examines the Supreme Court’s decision in *NIFLA* and argues its rationale affirms *Camnitz*’s holding that display-and-describe laws are an impermissible restriction on speech.

#### I. HISTORY OF NORTH CAROLINA’S MANDATORY ULTRASOUND LAW

Like most states in the American South, North Carolina has had a complex history of abortion regulation, with significant variations as the constitutional landscape changed over time.<sup>18</sup> Abortion access remained heavily restricted until the Supreme Court’s landmark 1973 decision in *Roe v. Wade*, after which the North Carolina legislature modified its abortion laws to accommodate the new constitutional protections and remove restrictions through twenty weeks of pregnancy.<sup>19</sup>

Despite the Supreme Court’s recognition of a constitutional right to abortion in *Roe*, the North Carolina legislature continued to

---

18. See generally LAURENCE H. TRIBE, *ABORTION: THE CLASH OF ABSOLUTES* 28–51 (2d ed. 1992) (surveying history of abortion regulations in the United States).

19. *Roe v. Wade*, 410 U.S. 113, 166 (1973); N.C. GEN. STAT. § 14-45.1 (1973); *Bryant v. Woodall*, 1 F.4<sup>th</sup> 280, 284 (4<sup>th</sup> Cir. 2021) (discussing history of abortion regulation in North Carolina and affirming district court’s interpretation of *Roe* to require abortion access until fetal viability, which occurs after approximately twenty-four weeks of pregnancy).

enact various procedural requirements designed to impede abortion access.<sup>20</sup> This included the North Carolina Woman’s Right to Know Act, which the General Assembly passed in 2011 over a gubernatorial veto.<sup>21</sup> The Woman’s Right to Know Act amended the North Carolina General Statutes to include a new article (“Article 1L”) specifically regulating abortion care.<sup>22</sup> It also established North Carolina’s display-and-describe law (the “Display of Real-Time View Requirement”), which requires a physician to perform and display an ultrasound while simultaneously reciting a detailed description of the fetus to the patient.<sup>23</sup> This requirement is enforced in all cases except medical emergencies,<sup>24</sup> thus obligating the physician to provide this ultrasound and verbal description even when the patient is a victim of rape, experiencing a miscarriage, or if the fetus has a fatal condition.<sup>25</sup>

The original Display of Real-Time View Requirement never took effect, as a federal district court granted a preliminary injunction almost immediately after the bill’s passage.<sup>26</sup> A few years later, in its 2014 *Stuart v. Camnitz* decision, the United States Court of Appeals for the Fourth Circuit formally struck down this provision of the Woman’s Right to Know Act.<sup>27</sup> The Supreme Court denied certiorari in 2015, leaving the Fourth Circuit’s decision intact.<sup>28</sup> Despite the federal judiciary’s decisive rulings against North Carolina’s display-and-describe law, the General Assembly seized the opportunity to

---

20. See *Timeline of Abortion Restrictions in North Carolina*, AM. C.L. UNION OF N.C., <https://www.acluofnorthcarolina.org/en/timeline-abortion-restrictions-north-carolina> (last visited Feb. 8, 2025).

21. 2011 N.C. Sess. Laws 405.

22. *Id.*

23. *Id.* at 5 (Display of Real-Time View Requirement codified at § 90-21.85).

24. N.C. GEN. STAT. § 19-21.81(5) (narrowly defining “medical emergency” to mean “[a] condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions”).

25. See 2011 N.C. Sess. Laws 405; J. Aidan Lang, *The Right to Remain Silent: Abortion and Compelled Physician Speech*, 62 B.C. L. REV. 2091, 2138 (2022).

26. *Stuart v. Huff*, 834 F.Supp.2d 424, 437 (M.D.N.C. 2011); *aff’d*, 706 F.3d 345 (4th Cir. 2013).

27. *Stuart v. Camnitz*, 774 F.3d 238, 250 (4th Cir. 2014).

28. *Walker-McGill v. Stuart*, 576 U.S. 1028 (2015).

revive the legislation in the aftermath of the Supreme Court's 2022 decision in *Dobbs v. Jackson Women's Health Organization*.<sup>29</sup>

*Dobbs* injected substantial uncertainty into the landscape of abortion regulations across the country.<sup>30</sup> By eliminating the constitutional right to abortion that undergirded almost all state abortion jurisprudence, states became free to enact abortion bans that would have been unconstitutional under *Roe* and its progeny.<sup>31</sup> The North Carolina legislature used this opportunity to once again override a gubernatorial veto and enact comprehensive changes to the state's abortion laws, this time prohibiting most abortions after twelve weeks of pregnancy and instituting other stringent requirements.<sup>32</sup> As part of this overhaul of Article 1L regulations, the legislature had clear opportunity to repeal the Display of Real-Time View Requirement given the Fourth Circuit's permanent injunction. Instead, the legislature retained the provision and added a new subsection expressly declaring the patient "has the *right* to view a real-time view image of the unborn child under this section and shall not be denied a real-time view of the unborn child due to a clinic policy or rule."<sup>33</sup>

The enforceability of the renewed display-and-describe provision is unclear. No court has applied *Camnitz* or formally affirmed the constitutionality of display-and-describe laws in a post-*Roe* world, leaving providers uncertain as to where the law currently stands, as well as its long-term prospects.<sup>34</sup> Other circuits have reached opposing conclusions on mandatory ultrasound laws in other states, creating a doctrinal split between the courts of appeals for the Fourth,

---

29. See generally *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

30. See, e.g., David Cohen et al., *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 5 (2023).

31. Ghorashi & Baumle, *supra* note 14, at 3; Curhan, *supra* note 3.

32. Care for Women, Children, and Families Act §90-21.82A; see House Roll Call Vote Transcript for Roll Call #380, N.C. GEN. ASSEMBLY (May 16, 2023, 8:39 PM), <https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2023/H/380>.

33. *Id.* at §90-21.85 (emphasis added).

34. See Rachel Crumpler, *A Clearer Picture is Emerging of the Impact of North Carolina's New Abortion Restrictions*, N.C. HEALTH NEWS (Oct. 11, 2023), <https://www.northcarolinahealthnews.org/2023/10/11/a-clearer-picture-emerging-of-the-impact-of-north-carolinas-new-law-on-abortion-care/>.

Fifth, Sixth, and Eighth Circuits.<sup>35</sup> Further, the legislature’s decision to reinstate a stronger version of the Display of Real-Time View Requirement after *Dobbs* indicates they may attempt to challenge the injunction and resume enforcement of the provision in the future.<sup>36</sup> This Comment argues these challenges carry significant constitutional infirmities and would be unlikely to withstand scrutiny under the First Amendment. However, before expanding on this argument, it is helpful to first review the *Camnitz* decision invalidating the Display of Real-Time View Requirement in 2014.

## II. *STUART V. CAMNITZ*

Almost immediately after the North Carolina legislature enacted the 2011 Women’s Right to Know Act, litigation commenced challenging the display-and-describe provision of the statute.<sup>37</sup> Three years later, these challenges culminated in the Fourth Circuit’s 2014 *Stuart v. Camnitz* decision.<sup>38</sup> In a unanimous opinion from a three-judge panel including two judges appointed by Republican presidents, the court in *Camnitz* deemed the Display of Real-Time View Requirement unconstitutional and affirmed the lower court’s permanent injunction.<sup>39</sup>

*Camnitz*’s primary inquiry was to determine the appropriate standard of constitutional scrutiny for the Display of Real-Time View Requirement.<sup>40</sup> As a preliminary matter, the court applied the Supreme Court’s test from *Texas v. Johnson* and determined the statute “possesses sufficient communicative elements” to invoke the First

---

35. See *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570 (5th Cir. 2012); *Planned Parenthood of Minn., N.D., S.D. v. Rounds*, 686 F.3d 889 (8th Cir. 2012); *EMW Women’s Surgical Ctr., P.S.C. v. Beshar*, 920 F.3d 421 (6th Cir. 2019). For further discussion of the circuit split and arguments that the Fourth Circuit’s interpretation is superior, see sources *supra* note 17.

36. See *generally* Women’s Right to Know Act, 2011 N.C. Sess. Laws 405 §90-21.80-92.

37. See *Stuart v. Huff*, 706 F.3d 345, 346.

38. See *Stuart v. Camnitz*, 774 F.3d 238, 240.

39. *Id.* at 242 (affirming *Stuart v. Loomis*, 992 F.Supp.2d 585, 588 (M.D.N.C. 2014)).

40. See *id.* at 244; *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, No. CV MJG-10-760, 2016 WL 10893970, at \*11 (D. Md. Oct. 4, 2016), *aff’d*, 879 F.3d 101 (4th Cir. 2018).

Amendment.<sup>41</sup> The court held the statute “convey[s] a particularized message” on the state’s behalf by discouraging patients from choosing abortion.<sup>42</sup> In fact, the state’s own brief to the Fourth Circuit openly admits the intention and anticipated effect of the statute is to “persuad[e] pregnant women to opt for childbirth over abortion.”<sup>43</sup> Further, the context in which the message is communicated (while the provider verbally describes the sonogram and the patient “is partially disrobed on an examination table”) makes it likely the patient will understand the state’s intended message, satisfying the second prong of *Johnson*’s test.<sup>44</sup>

Having concluded the Display of Real-Time View Requirement is subject to constitutional speech protections, the Fourth Circuit then determined the proper speech classification for the statute in order to discern the appropriate standard of constitutional review.<sup>45</sup> This is a difficult inquiry because speech regulations in the context of the medical profession invoke two conflicting presumptions. First, a statute is presumptively invalid and subject to strict scrutiny whenever it regulates the content of speech.<sup>46</sup> However, if a state statute regulates a licensed profession like medicine, the statute is presumptively constitutional as an exercise of the state’s power to protect the public by regulating professional practice.<sup>47</sup> To balance these competing principles, the classification of professional regulations that restrict speech “slides along a continuum” between regulations of speech (subject to greater scrutiny) and regulations of conduct that incidentally burden speech (subject to lesser scrutiny).<sup>48</sup>

---

41. *Camnitz*, 774 F.3d at 245 (quoting *Texas v. Johnson*, 491 U.S. 397, 404 (2014) (a regulation is subject to the First Amendment if “[1] an intent to convey a particularized message was present and . . . [2] the likelihood was great that the message would be understood by those who viewed it.”)).

42. *Id.*

43. *See* Br. of Defs.-Appellants at 29, *Camnitz*, 774 F.3d 238 (2014) (No. 14-1150).

44. *Camnitz*, 774 F.3d at 245.

45. *See id.* at 244.

46. *Id.* (quoting *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994)).

47. *Id.* at 248. For further discussion of professional regulations, *see, e.g.*, *Hawker v. New York*, 170 U.S. 189, 191 (1898) (“a state may prescribe the qualifications of one engaged in any business so directly affecting the lives and health of the people as the practice of medicine”); *see also* O’Brien, *supra* note 16, at 1050–51.

48. *Camnitz*, 774 F.3d at 248 (internal quotations omitted).

In other words, the Display of Real-Time View Requirement will be subject to either (1) strict scrutiny as a content-based restriction on professional speech (*i.e.*, speech uttered by professionals while acting in that capacity), (2) rational basis review as a regulation of professional conduct, or (3) an intermediate level of scrutiny in between these standards.

The Fourth Circuit affirmed the district court's characterization of the Display of Real-Time View Requirement as "a content-based regulation of a medical professional's speech which must satisfy *at least* intermediate scrutiny to survive."<sup>49</sup> The court held the statute mandates "compelled speech," a form of content-based restriction entitled to heightened scrutiny under the First Amendment, because it "forces physicians to say things they otherwise would not say."<sup>50</sup> The speech is also "ideological," in that the state's admitted purpose for the statute is "to convince women seeking abortions to change their minds or reassess their decisions, which further supports classification as a content-based restriction."<sup>51</sup> Significantly, the court distinguished the medical profession from other areas of professional regulation, holding that because the profession is largely self-regulating, the state's interest in enacting further regulation is less compelling.<sup>52</sup>

Given the significant speech restrictions and comparatively weak state interests involved in the display-and-describe law support constitutional review under, *at minimum*, a "heightened intermediate scrutiny standard."<sup>53</sup> To survive heightened intermediate scrutiny, a regulation must "directly advance an important state interest in a manner that is drawn to that interest and proportional to the burden placed on the speech."<sup>54</sup> The Fourth Circuit acknowledged the Display

---

49. *Id.* at 245 (emphasis added).

50. *Id.* at 246.

51. *Id.* (citing Br. of Defs.-Appellants, *supra* note 43, at 29).

52. *See id.* at 248 (citing Moore-King v. Cnty. of Chesterfield, 703 F.3d 560, 570 (4<sup>th</sup> Cir. 2013)).

53. *See Camnitz*, 774 F.3d at 248; *see also* Timothy Zick, *Professional Speech Rights*, 47 ARIZ. ST. L. J. 1289, 1312 (2015) (explaining *Camnitz*'s rationale for imposing heightened scrutiny). Note that the Fourth Circuit never reached the question of whether the regulation must satisfy strict scrutiny, given that it fails the lower standard of intermediate scrutiny.

54. *Camnitz*, 774 F.3d at 251 (citing Sorrell v. IMS Health, Inc., 131 S.Ct. 2653, 2667–68 (2011)).

of Real-Time View Requirement implicates important state interests in protecting fetal life, ensuring the wellbeing of those seeking abortions, and maintaining the integrity of the medical profession.<sup>55</sup> However, the statute achieves those interests in a way that encroaches too far into constitutional speech protections.<sup>56</sup> It “interferes with the physician’s right to free speech beyond the extent permitted for reasonable regulation of the medical profession,” while compromising the state interests the requirement ostensibly promotes.<sup>57</sup>

Although proponents of the Display of Real-Time View Requirement characterized the statute as an informed consent requirement, *Camnitz* noted the statute deviates significantly from traditional informed consent principles and standard medical practice in three ways, and is therefore unable to achieve the interests it intended to serve.<sup>58</sup> As a result, the statute also differs substantially from North Carolina’s general informed consent statute, which applies to all other medical procedures in the state.<sup>59</sup> First, the display-and-describe law requires physicians to perform and describe an ultrasound even when the patient has refused to listen.<sup>60</sup> The statute thus compels speech even when no listener will receive the message and the speech is incapable of promoting any state interests.<sup>61</sup> Second, by forcing the physician to directly convey a message that promotes the state’s desired viewpoint (as opposed to written materials or other, more detached methods), the statute “render[s] the physician the mouthpiece of the state’s message.”<sup>62</sup> This undermines the trust necessary in a doctor-patient relationship, which directly contradicts the purpose of informed consent.<sup>63</sup> Third, the statute lacks any therapeutic exception that would allow the physician to decline or

---

55. *See id.* at 250–51.

56. *See Zoellner, supra* note 6, at 1182 n. 261.

57. *Camnitz*, 774 F.3d at 250.

58. *See id.* at 254; *see Br. of Defs.-Appellants, supra* note 43, at 22–25.

59. *Camnitz*, 774 F.3d at 244.

60. *Id.* at 252.

61. *Id.*

62. *Id.* at 254.

63. *Id.* at 252–53; *see also Mayor of Balt. v. Azar*, 973 F.3d 258, 288 (4<sup>th</sup> Cir. 2020) (affirming *Camnitz*’s holding that interference with doctor-patient communications to promote the state’s desired viewpoint “undermines the trust that is necessary for facilitating healthy doctor-patient relationships and, through them, successful treatment outcomes”).

delay the ultrasound process when it may cause the patient serious psychological or physical harm.<sup>64</sup> The statute thus obligates the physician to convey the required information even when doing so deviates from the physicians' medical judgment.<sup>65</sup>

While these three factors were most dispositive to the Fourth Circuit's conclusion, the court addressed other significant abnormalities in the statute that are worth reiterating. For instance, the court noted the informed consent process "typically involves a conversation between the patient, fully clothed, and the physician in an office or similar room before the procedure begins."<sup>66</sup> By contrast, display-and-describe laws impose informed consent requirements while the patient is "half-naked or disrobed on her back on an examination table, with an ultrasound probe either on her belly or inserted into her vagina."<sup>67</sup> In this vulnerable setting, a patient's "personal judgment may be altered or impaired," which hinders, rather than promotes, their ability to make an informed decision.<sup>68</sup> These provisions demonstrate that the Display of Real-Time View Requirement does not respect the patient autonomy and wellbeing that informed consent principles seek to uphold.

Further, the patient herself is prohibited from declining to receive this information.<sup>69</sup> The ultrasound and fetal description are required "irrespective of the needs or wants of the patient," which "interferes with the decision of a patient not to receive information that would make an indescribably difficult decision even more traumatic."<sup>70</sup> This not only risks harming the patient rather than informing them, but it also further erodes the doctor-patient relationship by forcing physicians to disregard the patient's wellbeing in order to promote the state's intended message.<sup>71</sup>

As a result of these contradictions, the Fourth Circuit concluded the Display of Real-Time View Requirement is ineffective at achieving the interests it claims to promote, and in many cases,

---

64. *Camnitz*, 774 F.3d at 254.

65. *See id.*

66. *Camnitz*, 774 F.3d at 252.

67. *Id.* at 255.

68. *Id.*

69. *See id.*

70. *Id.*

71. *See id.*



A. *Constitutional Abortion Doctrine*1. Origins of constitutional abortion doctrine: *Roe* and *Casey*

For the first fifty years of constitutional abortion jurisprudence, the Supreme Court recognized a right to choose abortion derived from the Fourteenth Amendment Due Process Clause.<sup>77</sup> Although the Court acknowledged abortion implicates important state interests which may justify certain restrictions, its precedent continually affirmed that abortion is entitled to the same due process protections as any other constitutional right.<sup>78</sup> At the time of the Fourth Circuit's decision in *Camnitz*, the Supreme Court's abortion doctrine derived primarily from two landmark decisions: *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992).<sup>79</sup> These cases established and refined the framework that governed federal abortion rights and maintained constitutional protections for abortion access nationwide.<sup>80</sup>

In *Roe*, the Supreme Court recognized that a person's constitutional right to privacy extends to their decision to have an abortion.<sup>81</sup> The Court held that although the Constitution does not expressly mention a right to privacy, the right is implicit in other constitutional provisions, including the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.<sup>82</sup> To ensure abortion restrictions do not impermissibly encroach on this constitutional protection, the Court ruled that states could not ban abortions before fetal viability.<sup>83</sup> The

---

77. *See id.*; *see also* Denning, *supra* note 6, at 1031 (describing the “constitutional fabric” encompassing *Roe* and subsequent decisions that “protect[ed] autonomous decision making over the most personal of life decisions”).

78. Rachel K. Jones, Elizabeth Witwer, and Jenna Jerman, *Abortion Incidence and Service Availability in the United States, 2017*, GUTTMACHER (Sept. 2019), <https://www.guttmacher.org/report/abortion-incidence-service-availability-us-2017>.

79. *See Roe v. Wade*, 410 U.S. 113, 113-15 (1973); *see also* *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 833-34 (1992) (retaining the essential holding of *Roe* and reaffirming “a recognition of a woman’s right to choose to have an abortion before fetal viability and to obtain it without undue interference from the State”).

80. Jones, *supra* note 78.

81. *Roe*, 410 U.S. at 153; *see* Lang, *supra* note 25, at 2106.

82. *Roe*, 410 U.S. at 152.

83. *See id.* at 163.

decision established a trimester framework that balanced the right to choose abortion with the state's interests in protecting maternal health and potential life.<sup>84</sup> Accordingly, states could not restrict abortion during the first trimester (through twelve weeks of pregnancy).<sup>85</sup> In the second trimester (from thirteen weeks of pregnancy through fetal viability), the state has a compelling interest in protecting maternal health and can enact regulations reasonably related to that end.<sup>86</sup> During the third trimester (from the point of fetal viability onward), the state has a compelling interest in protecting potential life and can prohibit abortion in all cases except those necessary to protect the life or health of the mother.<sup>87</sup>

Almost twenty years later, *Casey* reaffirmed the principles of *Roe* but modified its holding in important ways.<sup>88</sup> In *Casey*, the Court examined a Pennsylvania statute imposing various procedural restrictions on abortion, including a requirement that providers disclose certain information about the risks of abortion and childbirth.<sup>89</sup> While the Court upheld *Roe*'s central holding that the Due Process Clause guarantees a constitutional right to choose abortion, *Casey* relied on protected liberty interests rather than a right to privacy.<sup>90</sup> The Court also discarded *Roe*'s trimester framework, ruling that states could regulate abortion even before viability, as long as pre-viability restrictions did not impose an "undue burden" on the right to choose abortion.<sup>91</sup> While the Court continued to allow states to enact abortion regulations after *Casey*, the core principles of constitutional abortion doctrine remained intact, particularly the foundational principle that the Fourteenth Amendment Due Process Clause protects the right to choose an abortion before fetal viability.<sup>92</sup>

---

84. *See id.* at 164–65; Lang, *supra* note 25, at 2106.

85. *Roe*, 410 U.S. at 164.

86. *Id.*

87. *Id.* at 164-65.

88. *See* Lang, *supra* note 25, at 2108; Planned Parenthood of Southeastern Pennsylvania v. *Casey*, 505 U.S. 833, 845-46 (1992).

89. *See Casey*, 505 U.S. at 844.

90. *See id.* at 839-40; Comment, *Constitutional Challenges to Compelled Speech—Particular Situations or Circumstances*, 73 A.L.R. 6th 281, Art. III § 9, Cumulative Supplement.

91. *Casey*, 505 U.S. at 839; Lang, *supra* note 25, at 2108.

92. *See* Dunlap, *supra* note 10, at 448; *See, e.g., Mazurek v. Armstrong*, 520 U.S. 968, 971 (1997).

2. *Dobbs* and resulting changes to abortion doctrine

*Stuart v. Camnitz* was decided in a much different world than exists today. In the decades after *Roe* and *Casey*, the Supreme Court became increasingly willing to reconsider constitutional abortion doctrine, culminating in its 2022 decision in *Dobbs v. Jackson Whole Women’s Health Organization*.<sup>93</sup> *Dobbs* expressly overturned the holdings of *Roe* and *Casey*, eliminating the constitutional right to abortion and reinstating a rational basis standard of review for abortion restrictions throughout pregnancy.<sup>94</sup> In doing so, the Supreme Court erased the foundation of nearly all abortion jurisprudence over the last fifty years.<sup>95</sup>

*Dobbs* rejected *Roe*’s central holding (as reaffirmed in *Casey*) that the Constitution establishes a right to choose abortion. First, the Court noted that abortion is not expressly mentioned anywhere in the Constitution.<sup>96</sup> More significantly, the Court held that a right to choose abortion cannot be derived from any existing protections in the Constitution, including the Fourteenth Amendment Due Process Clause.<sup>97</sup> Under the Supreme Court’s post-*Dobbs* interpretation, the Due Process Clause protects two categories of substantive rights: (1) those expressly guaranteed by the first eight amendments in the Bill of Rights and (2) “a select list of fundamental rights that are not mentioned anywhere in the Constitution.”<sup>98</sup> Rights within the latter category are those “deeply rooted in the Nation’s history and traditions” and “implicit in the concept of ordered liberty.”<sup>99</sup> *Dobbs* held the right to choose abortion does not fall under either category of Due Process protection.<sup>100</sup>

After a lengthy discussion of legal history and Due Process Clause jurisprudence, the Court concluded the right to abortion is not

---

93. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 350 (2022) (Roberts, C.J., concurring in part).

94. *See id.* at 301; Thomas J. Molony, *Immoderate Moderation: Chief Justice Roberts’s Concurrence in Dobbs*, 31 WM. & MARY BILL RTS. J. 1111, 1119 (2024).

95. Molony, *supra* note 94, at 1112; *see also* Denning, *supra* note 6, at 1029.

96. *Dobbs*, 597 U.S. at 235.

97. *Id.* at 260.

98. *Id.* at 237.

99. *Id.* at 237–38 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

100. *See id.* at 262.

sufficiently entrenched in American tradition to warrant due process protection.<sup>101</sup> The Court declared abortion is “fundamentally different” from other rights found in the Due Process Clause because it involves the state’s interest in the preservation of “fetal life.”<sup>102</sup> Thus, the Constitution does not establish a fundamental right to abortion, and regulations that restrict abortion receive no heightened constitutional scrutiny.<sup>103</sup> In the absence of any heightened scrutiny applicable to abortion restrictions, states do not need to show that a restriction is narrowly drawn to serve compelling interests—as long as there is a rational basis for the legislation, it will pass constitutional muster.<sup>104</sup> However, as the next sections will explore, this shift does not mean all abortion restrictions now withstand constitutional scrutiny.

B. *Re-examining Camnitz and North Carolina’s “Display of Real-Time View Requirement” after Dobbs*

With the avenues for challenging abortion restrictions severely limited after *Dobbs*, many state legislatures have felt emboldened to reenact laws previously deemed unconstitutional under *Roe* and its progeny.<sup>105</sup> However, while those seeking to revive legislation may believe *Dobbs* eliminated the full scope of constitutional abortion protections, many cases vacating abortion restrictions on constitutional grounds will survive in a post-*Roe* world. The Fourth Circuit’s *Stuart v. Camnitz* decision was decided when *Roe* and *Casey* remained intact, and it incorporated many of those cases’ holdings into its analysis.<sup>106</sup> However, this Comment argues overturning *Roe* and *Casey* does not invalidate *Camnitz*’s injunction—in other words, *Camnitz* is *not* a case whose underpinnings were washed away by *Dobbs*.

---

101. *See id.* at 260.

102. *Id.* at 231.

103. *See id.* at 237; Darren Lenard Hutchinson, *Thinly Rooted: Dobbs, Tradition, and Reproductive Justice*, 65 ARIZ. L. REV. 385, 389–90 (2023) (summarizing the holding in *Dobbs*).

104. *See Dobbs*, 597 U.S. at 301.

105. *See* Curham, *supra* note 3; Ghorashi & Baumle, *supra* note 14, at 10–11.

106. *See* *Stuart v. Camnitz*, 774 F.3d 238, 250 (4<sup>th</sup> Cir. 2014); Schutzman, *supra* note 16, at 2036 n. 104.

1. *Dobbs* and *Camnitz* implicate different constitutional doctrines.

The primary distinction that shields *Camnitz* from the doctrinal impact of *Dobbs* is substantive. In *Dobbs*, the Supreme Court examined the constitutional implications of a statute's restrictions on abortion access.<sup>107</sup> By contrast, *Camnitz* looked to the implications of a statute's restrictions on speech.<sup>108</sup> *Camnitz* properly interpreted the Display of Real-Time View Requirement as a speech restriction even though it is codified among the abortion regulations in Article 1L.<sup>109</sup> A single piece of legislation may implicate multiple constitutional doctrines, and changes to one doctrine do not affect a statute's constitutionality under a separate doctrine.<sup>110</sup> In other words, if the same state law provision violates both the constitutional right to abortion and the constitutional right to free speech, the doctrinal changes from *Dobbs* would only cure the former issue, and the provision remains unenforceable under the latter.

Justice Alito's majority opinion in *Dobbs* makes this point clear. In response to allegations from the Solicitor General and other justices that *Dobbs* would eliminate constitutional freedoms beyond abortion, Alito emphasized the majority's decision "concerns the constitutional right to abortion and no other right," and that "[n]othing in this opinion should be understood to be cast doubt on precedents that do not concern abortion."<sup>111</sup> *Dobbs* is explicit that it confines its constitutional analysis to a statute's effects on abortion and does not disrupt decisions that rely on other doctrines.<sup>112</sup>

In *Camnitz*, the Fourth Circuit similarly emphasized the limited scope of its analysis, which only addressed First Amendment issues rather than constitutional abortion rights. Although *Roe* and

---

107. *Dobbs*, 597 U.S. at 290 ("we emphasize that our decision concerns the right to abortion and no other right.")

108. *Camnitz*, 774 F.3d at 249 (considering "the level of scrutiny courts should apply when reviewing a claim that a regulation . . . violates physicians' First Amendment free speech rights.")

109. *See id.*

110. *See Dunlap, supra* note 10, at 444.

111. *Dobbs*, 597 U.S. at 290; Br. for United States at 25-26, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392).

112. Denning, *supra* note 6, at 1029-30.

*Casey* were still in effect, the intermediate scrutiny *Camnitz* applied to the North Carolina statute was stricter than *Casey*'s undue burden standard.<sup>113</sup> *Camnitz* therefore needed to distance its analysis from the Supreme Court's abortion precedent for largely the same reasons that now arise after *Dobbs*—to justify a higher standard of review than would otherwise apply to an abortion statute.<sup>114</sup> In the process, *Camnitz* helpfully explained why its subject matter is independent from constitutional abortion doctrine, stating: “[t]he fact that a regulation does not impose an undue burden on a woman under the due process clause does not answer the question of whether it imposes an impermissible burden on the physician under the First Amendment.”<sup>115</sup> While *Dobbs* eliminated the undue burden standard, *Camnitz*'s underlying point remains intact: the constitutionality of the statute as an abortion restriction is independent from its constitutionality as a speech restriction.<sup>116</sup> Thus, because *Camnitz* confronts a different constitutional subject than *Dobbs*, *Camnitz*'s conclusions about the Display of Real-Time View Requirement avoids the significant doctrinal shifts in the aftermath of *Dobbs*.

2. *Dobbs* does not affect *Camnitz*'s rationale for employing heightened scrutiny.

Because *Dobbs* and *Camnitz* address different constitutional subjects, their rationales about the applicable level of scrutiny also rest on different grounds. Although the Display of Real-Time View Requirement raises concurrent constitutional questions about abortion and free speech, *Dobbs*' influence on the former does not disrupt *Camnitz*'s analysis of the latter. Because the Fourth Circuit framed its analysis exclusively in terms of the statute's restrictions on speech, *Camnitz*'s reasoning stands independent of constitutional abortion doctrine and is unaffected by *Dobbs*' changes to this area of law.<sup>117</sup>

---

113. See Dunlap, *supra* note 10, at 455.

114. *Id.* at 444 n.15.

115. *Stuart v. Camnitz*, 774 F.3d 238, 249 (4th Cir. 2014).

116. Dunlap, *supra* note 10, at 457–58 (using this principle to distinguish an undue burden analysis from a free speech analysis).

117. *Camnitz*, 774 F.3d at 251 (applying elevated scrutiny because “[a]ny state regulation that limits the *free speech* rights of professionals must pass the requisite constitutional test” (emphasis added)); *Id.* at 245 (holding the Display

This analytical separation would be blurred if *Camnitz* relied on the statute’s speech and abortion protections to justify elevated scrutiny.<sup>118</sup> However, the court did not cite the statute’s restrictions on the right to abortion when discerning the applicable standard of review.<sup>119</sup> *Camnitz* held only that the statute must “directly advance an important state interest in a manner that is drawn to that interest and proportional to the burden *placed on the speech*.”<sup>120</sup> Even if the Fourth Circuit can no longer consider the statute’s burden on abortion access after *Dobbs*, this doctrinal shift does not affect the court’s ability to consider the statute’s burden on speech. *Camnitz* employs First Amendment principles that apply to state regulations throughout the medical profession, not just abortion care.<sup>121</sup> Thus, the test in *Camnitz* and its supporting rationale are not affected by *Dobbs*’ new standard of review.

Further, the mere fact that a statute regulates abortion is insufficient to disrupt *Camnitz*’s standard of review in a post-*Roe* world. Nothing in *Dobbs* suggests that all professional regulations receive reduced scrutiny whenever the physician is performing an abortion—it only holds that the constitutional right to abortion is no longer a recognized basis for applying heightened scrutiny.<sup>122</sup> *Dobbs* removed one justification for applying heightened scrutiny to an abortion regulation; it did not eliminate all possible justifications.<sup>123</sup> This analytical concept is familiar to the Supreme Court, as it is common practice to apply elevated scrutiny to a statute based on one constitutional inquiry while holding another inquiry only warrants rational basis review.<sup>124</sup> Thus, *Dobbs* does not affect how compelling

---

of Real-Time View Requirement is a “plainly an expressive act entitled to First Amendment protection.”). See Dunlap, *supra* note 10, at 444.

118. See Dunlap, *supra* note 10, at 444.

119. *Id.* at 455.

120. *Camnitz*, 774 F.3d at 251 (emphasis added).

121. See *id.*; see, e.g., *Canterbury v. Spence*, 464 F.2d 772, 782 (D.C.Cir. 1972) (explaining the state’s authority to enact and enforce professional regulations through informed consent requirements).

122. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 301 (2022).

123. See, e.g., Denning, *supra* note 6, at 1031–32.

124. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 884 (1992) (applying elevated scrutiny due to the statute’s restrictions on the right to abortion while declining elevated scrutiny on the First Amendment question).

state interests must be in order to restrict speech, even in the context of an abortion regulation.<sup>125</sup> *Camnitz*'s application of heightened scrutiny to the Display of Real-Time View Requirement therefore withstands *Dobbs*' declaration that abortion restrictions are entitled only to rational basis review.<sup>126</sup>

Finally, *Dobbs*' holding that abortion restrictions implicate important state interests does not alter *Camnitz*'s conclusion that these interests are insufficient to satisfy the standard of review it employs.<sup>127</sup> *Camnitz* itself acknowledged the Display of Real-Time View Requirement involves legitimate state interests, particularly in (1) "preserving, promoting, and protecting fetal life," in (2) "promoting the psychological health of women seeking abortions," and in (3) maintaining "the integrity and ethics of the medical profession."<sup>128</sup> Yet the Fourth Circuit still found these interests insufficient to outweigh the statute's restrictions on speech under a heightened intermediate standard of review.<sup>129</sup> While physicians may sometimes be subject to speech restrictions during the course of their professional activities, the court insisted that "professionals do not leave their speech rights at the office door."<sup>130</sup> In other words, the state cannot use its interests in abortion restrictions to justify regulations that violate providers' First Amendment protections.<sup>131</sup> *Camnitz*'s ultimate conclusion that a regulation is unconstitutional if it "interferes with the physician's right to free speech beyond the extent permitted for reasonable regulation of the medical profession," remains true regardless of the type of medical care being regulated, abortion or otherwise.<sup>132</sup> The interests *Dobbs* identified thus do not interfere with *Camnitz*'s analysis of the standard of review for restrictions on professional speech even in the context of abortion care.

---

125. *See Dobbs*, 597 U.S. at 290; *See Camnitz*, 774 F.3d at 249.

126. *See Dobbs*, 597 U.S. at 301.

127. *See Camnitz*, 774 F.3d at 251.

128. *Id.* at 250–51.

129. *Id.* at 255; Dunlap, *supra* note 10, at 455.

130. *Camnitz*, 774 F.3d at 251; *see* *Lowe v. SEC*, 472 U.S. 181, 229–30 (1985) (White, J., concurring in judgment).

131. Lang, *supra* note 25, at 2112.

132. *Camnitz*, 774 F.3d at 250.

### C. Conclusion

*Camnitz* is still good law, as it relies on a distinct doctrinal basis from the Supreme Court’s decision in *Dobbs* and thus withstands *Dobbs*’ massive disruptions to substantive due process jurisprudence. *Camnitz* examined the Display of Real-Time View Requirement as a restriction on speech and only employed a heightened standard of review based on the statute’s First Amendment implications. By contrast, *Dobbs* examined the statute in that case as a restriction on abortion and only employed a rational basis standard of review based on the restriction’s implications under the Fourteenth Amendment Due Process Clause. Therefore, the Fourth Circuit’s analysis of the state interests involved in North Carolina’s display-and-describe law, and its conclusion that these interests are insufficient to reduce speech protections under the First Amendment, remain unchanged after *Dobbs*.

## IV. NIFLA’S IMPLICATIONS FOR THE CONSTITUTIONALITY OF DISPLAY-AND-DESCRIBE LAWS

Not only does *Camnitz*’s holding remain intact after *Dobbs*, but a Supreme Court decision rendered in 2018 also strengthens *Camnitz*’s conclusion that restrictions on physician speech are subject to elevated scrutiny. In *National Institute of Family and Life Advocates v. Becerra (NIFLA)*, the Supreme Court struck down a California statute imposing certain notice requirements on facilities providing “pregnancy-related services.”<sup>133</sup> While the ruling specifically addressed the free speech implications of disclosure requirements for anti-abortion crisis pregnancy centers, this section argues that *NIFLA*’s rationale also affirms the First Amendment rights of physicians providing actual healthcare, including abortion.

### A. Overview of NIFLA

In 2015, California enacted the Freedom, Accountability, Comprehensive Care, and Transparency (FACT) Act, which intended to regulate “crisis pregnancy centers” providing anti-abortion

---

133. Nat’l Inst. of Fam. & Life Advoc. v. Becerra, 585 U.S. 755 (2018).

counseling and limited pregnancy-related services.<sup>134</sup> If the center is a licensed healthcare facility, the FACT Act required it to disclose information about state programs offering low-cost family planning care, including abortion care (*NIFLA* refers to this requirement as the “licensed notice”).<sup>135</sup> While the statute imposed separate notice requirements for unlicensed facilities, this section will focus on *NIFLA*’s analysis of the licensed notice, as this is most applicable to North Carolina’s Display of Real-Time View Requirement and regulations of licensed professions.

*NIFLA* characterized the licensed notice requirement as a content-based restriction on speech that fails to satisfy the heightened scrutiny under the First Amendment.<sup>136</sup> Although the statute regulates professional speech in that the required disclosures are “uttered by professionals,” *NIFLA* rejected the Ninth Circuit’s conclusion that the statute falls within a distinct category of “professional speech” subject to reduced First Amendment scrutiny.<sup>137</sup> Instead, the Supreme Court maintained a heightened standard of review for content-based speech restrictions in professional contexts.<sup>138</sup>

As part of its analysis, *NIFLA* confirmed that speech restrictions on licensed professionals do not automatically invoke rational basis review simply because they take the form of a professional regulation.<sup>139</sup> As will be discussed, there are only two narrow circumstances in which the Court’s precedents employ reduced scrutiny for content-based restrictions on speech in professional regulations, neither of which apply to the licensed notice.<sup>140</sup> The Court did not foreclose the possibility that speech restrictions like the licensed notice may receive intermediate review instead of strict scrutiny, but it did not reach the issue because it held the licensed notice would still fail this lower standard of review.<sup>141</sup>

---

134. *Id.* at 761-62.

135. *Id.* at 762-63.

136. *See id.* at 773.

137. *Id.* at 767 (internal quotations omitted); *see* Nat’l Inst. of Fam. & Life Avocs. v. Harris, 839 F.3d 823, 839 (9th Cir. 2016).

138. *NIFLA*, 585 U.S. at 767–68.

139. *Id.*; Rebecca Krumholz Gottesdiener, *Reimagining NIFLA v. Becerra: Abortion-Protective Implications for First Amendment Challenges to Informed Consent Requirements*, 100 B.U. L. REV. 723, 760 (2020).

140. *See NIFLA*, 585 U.S. at 768.

141. *See id.* at 773.

Thus, although the Supreme Court has not directly examined the question at issue in *Camnitz*, *NIFLA* indicates that the Court examines professional speech restrictions with at least the same scrutiny employed in *Camnitz*, and may in fact subject these regulations to full strict scrutiny.<sup>142</sup>

B. *NIFLA indicates the Display of Real-Time View Requirement should be subject to at least intermediate scrutiny.*

1. *NIFLA* supports classifying the Display of Real-Time View Requirement as a content-based regulation of speech.

*NIFLA*'s argument for applying heightened scrutiny to the licensed notice requirement under the First Amendment supports *Camnitz*'s parallel conclusion for display-and-describe laws. First, *NIFLA* classified the licensed notice as a "content-based regulation of speech."<sup>143</sup> Because the objectives of the licensed notice conflict with the objectives of crisis pregnancy centers, providers must change the content of their speech in order to comply with the statute's demands.<sup>144</sup> In other words, the licensed notice requires crisis pregnancy centers to disclose information about state-funded abortion options while those centers simultaneously try to dissuade patients from choosing abortion.<sup>145</sup> The statute therefore "plainly alters the content" of the providers' speech and falls within the class of content-based restrictions that are presumptively unconstitutional unless narrowly drawn to serve compelling state interests.<sup>146</sup>

This argument applies cleanly to the Display of Real-Time View Requirement at issue in *Camnitz*, supporting the Fourth Circuit's

---

142. The 11th Circuit is the first Court of Appeals to apply strict scrutiny to restrictions on professional speech after *NIFLA*. See *Otto v. City of Boca Raton*, 981 F.3d 854, 859, 867-68 (11th Cir. 2020).

143. *NIFLA*, 585 U.S. at 766.

144. *Id.* ("By requiring petitioners to inform women how they can obtain state-subsidized abortions—at the same time petitioners try to dissuade women from choosing that option—the licensed notice plainly alters the content of petitioners' speech,") (internal quotations omitted) (citing *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988)).

145. *Id.*

146. *Id.* (quoting *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988)) (citing *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015)).

conclusion that the North Carolina statute is a content-based restriction on speech.<sup>147</sup> *NIFLA*'s conclusion that the licensed notice requires providers to alter the content of their speech mirrors the Fourth Circuit's holding that the Display of Real-Time View Requirement "forces physicians to say things they otherwise would not say."<sup>148</sup> Like the licensed notice requirement, display-and-describe laws conflict with the objectives of the speakers they bind. Whereas physicians aim to provide care consistent with their reasonable medical judgment and current standards of practice, display-and-describe laws require providers to perform and describe an ultrasound even when it requires them to violate their professional principles.<sup>149</sup> Display-and-describe laws therefore "plainly alter[] the content" of providers' speech, satisfying *NIFLA*'s criteria for a content-based restriction entitled to a heightened standard of review.<sup>150</sup>

2. *NIFLA* supports maintaining elevated constitutional scrutiny for the Display of Real-Time View Requirement.

Second, *NIFLA*'s conclusion that content-based restrictions do not automatically receive reduced scrutiny whenever they occur in the context of a professional regulation further supports a heightened standard of review for the Display of Real-Time View Requirement. In *NIFLA*, the Court rejected the Ninth Circuit's attempt to place the licensed notice in a distinct category of "professional speech" wherein content-based regulations receive reduced constitutional scrutiny.<sup>151</sup> *NIFLA* emphasized that professional speech is "a difficult category to define with precision."<sup>152</sup> The Court stressed that "[t]he dangers associated with content-based regulations of speech are also present in the context of professional speech," and discussed these risks in the

---

147. See *Stuart v. Camnitz*, 774 F.3d 238, 245 (4th Cir. 2014); see Zoellner, *supra* note 6, at 1172–73 (interpreting *Camnitz* and *NIFLA* as upholding the same proposition that "physicians maintain First Amendment rights when government regulations implicate speech.").

148. *Camnitz*, 774 F.3d at 246.

149. See *id.* at 255 (finding that physicians must communicate the information "irrespective of the needs or wants of the patient, in direct contravention of medical ethics and the principle of patient autonomy.").

150. See *NIFLA*, 585 U.S. at 766 (internal quotations omitted).

151. *Id.* at 767.

152. *Id.* at 773.

specific context of the medical profession.<sup>153</sup> The Court cited prior decisions indicating that content-based restrictions in this context “pose the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information,”<sup>154</sup> that “[d]octors help patients make deeply personal decisions, and their candor is crucial”;<sup>155</sup> and that “the people lose when the government is the one deciding which ideas should prevail”<sup>156</sup> in disagreements arising in professional practice.

The display-and-describe law at issue in *Camnitz* confronts the same problems with applying reduced scrutiny to a nebulous category of “professional speech.” For instance, the contradictions in the Display of Real-Time View Requirement invoke *NIFLA*’s concern that speech restrictions may not serve a “legitimate regulatory goal,” but are designed instead to “suppress unpopular ideas or information.”<sup>157</sup> As discussed previously, the state’s own brief in *Camnitz* affirms that requiring the provider to perform and describe an ultrasound is intended to discourage patients from choosing abortion.<sup>158</sup> In other words, the statute alters physician speech in hopes of preventing the listener from engaging in activity the state wants to suppress.<sup>159</sup> While states may express a preference for childbirth over abortion, they cannot enforce this preference by suppressing contrary ideas and policing the contours of how a physician speaks to their patient.<sup>160</sup> In doing so, the Display of Real-Time View requirement also invokes *NIFLA*’s concern about the need for candor in the doctor-patient relationship, particularly in the context of “deeply personal decisions” like abortion.<sup>161</sup>

Finally, *NIFLA* reinforces *Camnitz*’s holding that regulations of licensed professionals are not automatically subject to rational-basis

153. *See id.* at 771; *see* Gottesdiener, *supra* note 139, at 755.

154. *NIFLA*, 585 U.S. at 771 (quoting *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994)).

155. *Id.* (quoting *Wollschlaeger v. Gov. of Fla.*, 760 F.3d 1195, 1217–25 (11th Cir. 2014)).

156. *Id.* at 772.

157. *See id.* at 771.

158. *See* Br. of Defs.-Appellants, *supra* note 43, at 29.

159. *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014); *see* Lang, *supra* note 25, at 2107.

160. *See* Lang, *supra* note 25, at 2143; *Camnitz*, 774 F.3d at 255.

161. *NIFLA*, 585 U.S. at 771 (internal citations omitted).

review.<sup>162</sup> It affirms that the Display of Real-Time View Requirement is not an acceptable content-based regulation simply because it regulates licensed healthcare facilities that satisfy the definition of professional service. As *NIFLA* acknowledged, reducing constitutional scrutiny for all regulations of licensed professions gives states too much freedom to use professional regulations to discriminate against viewpoints protected by the First Amendment.<sup>163</sup> While *NIFLA* examined this danger in the context of a state suppressing speech that discourages abortion, it also arises in the context of a state *compelling* speech that discourages abortion.<sup>164</sup> In both cases, the state is using its regulatory authority to alter the content of a professional's speech in order to promote the state's desired viewpoint over contrary information.<sup>165</sup>

In sum, the central holding of *NIFLA* lends significant support to *Camnitz's* interpretation of the Display of Real-Time View Requirement as a content-based speech restriction entitled to elevated constitutional scrutiny. However, the Court in *NIFLA* also noted two circumstances in which the Court's precedents have permitted reduced scrutiny for speech restrictions in professional contexts.<sup>166</sup> As the next section will explore, none of *NIFLA's* recognized exceptions apply to the North Carolina statute.

C. *The exceptions permitting reduced scrutiny under NIFLA do not apply to the Display of Real-Time View Requirement.*

*NIFLA* recognized two limited categories of "professional speech" where content-based regulation may be permitted under the First Amendment.<sup>167</sup> Examining past precedents, *NIFLA* concluded the Court has "been especially reluctant to 'exemp[t] a category of

162. *See id.* at 768; *Camnitz*, 774 F.3d at 249.

163. *NIFLA*, 585 U.S. at 771.

164. *Camnitz*, 774 F.3d at 245 ("[t]he First Amendment not only protects against prohibitions of speech, but also against regulations that compel speech").

165. *See* Kimberley Harris, *Ultra-Compelled: Abortion Providers' Free Speech Rights after NIFLA*, 35 ALB. L. REV. 95, 162-63 (2021-2022) (discussing *NIFLA's* concern about whether an informed consent statute legitimately serves its stated goal or simply suppresses a particular viewpoint).

166. *NIFLA*, 585 U.S. at 768.

167. *Id.*

speech from the normal prohibition on content-based restrictions.”<sup>168</sup> The Court will only single out a category of speech for lesser scrutiny when supported by “persuasive evidence . . . of a long (if heretofore unrecognized) tradition” of restrictions in that area.<sup>169</sup> *NIFLA* expressly held the Court’s precedents “do not recognize such a tradition for a category called ‘professional speech.’”<sup>170</sup> Content-based restrictions on professional speech have only withstood constitutional scrutiny in two scenarios. This Comment argues that the Display of Real-Time View Requirement does not fall under either of the exceptions *NIFLA* recognizes.

1. Reduced scrutiny when regulating factual, noncontroversial “commercial speech”

First, *NIFLA* found the Court has granted more deferential review of content-based restrictions that require “factual, noncontroversial” disclosures in professional activities.<sup>171</sup> The Court cited numerous decisions affirming this exception, but ultimately relied on the standard it created in *Zauderer v. Disciplinary Counsel*.<sup>172</sup> *Zauderer* specifically addressed required disclosures in attorney advertisements, but the Court held more broadly that states can enact professional regulations compelling certain disclosures of “purely factual and uncontroversial” information.<sup>173</sup> However, *NIFLA* noted two major limitations to the *Zauderer* standard—in upholding the content-based restriction at issue, *Zauderer* relied on the fact that the regulation (1) only applied to “commercial advertising” and (2) only compelled disclosures about the terms by which professional services would be rendered.<sup>174</sup>

Given *Zauderer*’s limitations, *NIFLA* quickly dispensed with the idea of placing the FACT Act within this narrow category of

---

168. *NIFLA*, 585 U.S. at 767 (quoting *U.S. v. Alvarez*, 567 U.S. 709, 722 (2012) (plurality opinion)).

169. *Id.* (quoting *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 792 (2011)).

170. *Id.* at 768.

171. *Id.*

172. 471 U.S. 626 (1985).

173. *Id.* at 651.

174. *Id.*; *NIFLA*, 585 U.S. at 768.

professional speech.<sup>175</sup> The licensed notice requirement compels disclosure of state-sponsored pregnancy services and does not regulate crisis pregnancy centers' terms of service.<sup>176</sup> *NIFLA* also distinguished *Zauderer* because the licensed notice disclosures are not limited to "purely factual and *uncontroversial* information."<sup>177</sup> Rather, the licensed notice compels disclosures about abortion services, which the Court notes is "anything but an 'uncontroversial' topic."<sup>178</sup> The Court thus concluded *Zauderer* does not apply to the licensed notice and cannot be used to subject the statute to reduced scrutiny.<sup>179</sup>

*NIFLA*'s conclusions also apply to the Display of Real-Time View Requirement, indicating that it falls outside the scope of *Zauderer*'s exception. Requiring abortion providers to perform and describe an ultrasound constitutes a much different form of compelled speech than commercial advertising disclosures.<sup>180</sup> First, the context in which the disclosures occur vary significantly. As the Fourth Circuit noted in *Camnitz*, display-and-describe laws compel speech in extremely personal settings, while the provider is actively treating a patient.<sup>181</sup> This is very different from the commercial advertising context contemplated in *Zauderer*.<sup>182</sup> As in *NIFLA*, the disclosures in the Display of Real-Time View Requirement also regulate the substance of the treatment relationship itself, rather than only regulating disclosures about the policies under which abortion care is available.<sup>183</sup> Lastly, because the Display of Real-Time View Requirement is intended to regulate abortion and requires disclosures about the abortion process, it invokes *NIFLA*'s concern that the statute covers "anything but an 'uncontroversial' topic."<sup>184</sup> For all of these reasons North Carolina's Display of Real-Time View Requirement

---

175. *NIFLA*, 585 U.S. at 768-69; Harris, *supra* note 165, at 135.

176. *NIFLA*, 585 U.S. at 769.

177. *Id.* at 768 (emphasis added).

178. *Id.* at 769.

179. *Id.*; see Harris, *supra* note 165, at 135.

180. See Gottesdiener, *supra* note 139, at 753.

181. *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014); see Dunlap, *supra* note 10, at 455.

182. *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985).

183. *Camnitz*, 774 F.3d at 253.

184. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 769 (2018).

cannot receive reduced scrutiny under *Zauderer*'s limited exception as interpreted by *NIFLA*.

2. Reduced scrutiny when regulating professional conduct that incidentally burdens speech

In addition to the *Zauderer* exception, *NIFLA* found the Court's precedents recognize another form of "professional speech" exempt from the general prohibition on content-based restrictions. Recognizing that states have reserved constitutional authority to regulate professional practice to protect public safety and welfare, the Court has upheld state "regulations of professional *conduct* that incidentally burden speech."<sup>185</sup> Applying this exception thus requires courts to distinguish between professional speech and professional conduct.<sup>186</sup>

*NIFLA* concluded the FACT Act does not fall within this exception because it is a regulation of professional speech, not conduct.<sup>187</sup> The Court cited *Casey* as an important decision illuminating this distinction.<sup>188</sup> As discussed in Part IV of this Comment, the statute in *Casey* required abortion providers to give patients information about the nature of the abortion procedure and the health risks of abortion and childbirth.<sup>189</sup> *Casey* held this requirement did not implicate the First Amendment because it should be interpreted as an informed consent requirement that regulates professional conduct, not speech.<sup>190</sup> In other words, requiring providers to share information necessary for a patient's informed consent constitutes a

---

185. *Id.* (emphasis added); see U.S. CONST. amend. X. For further discussion of states' professional regulatory authority, see sources in *supra* note 53.

186. *NIFLA*, 585 U.S. at 769 (noting this task is difficult but "long familiar to the bar").

187. *Id.* at 768; see Gottesdiener, *supra* note 139, at 754.

188. *NIFLA*, 585 U.S. at 769 (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 884 (1992)). Note *Casey*'s First Amendment analysis is extremely brief, comprising just one paragraph of the opinion. Many courts have emphasized it should be interpreted narrowly, given that such scant analysis is difficult to apply to statutes beyond what *Casey* examined directly. See, e.g., *Camnitz*, 774 F.3d at 248–49; Daniel Halberstam, *Commercial Speech, Professional Speech, and the Constitutional Status of Social Institution*, 147 U. PA. L. REV. 771, 774 (1999).

189. *Id.* at 769–70.

190. *Casey*, 505 U.S. at 884.

regulation of the providers' conduct, even if it incidentally compels speech by requiring providers to communicate specific information.<sup>191</sup> The purpose of the statute is to establish procedural guidelines for "the practice of medicine," not to communicate the state's desired message.<sup>192</sup> Accordingly, the statute's effects on speech do not trigger elevated scrutiny.<sup>193</sup>

*NIFLA* examined *Casey*'s First Amendment analysis and held it does not support characterizing the licensed notice as a regulation of professional conduct exempt from the general prohibition on content-based speech restrictions.<sup>194</sup> First, *NIFLA* held the licensed notice is not an informed consent requirement.<sup>195</sup> Sharing information about state-funded pregnancy services does not facilitate informed consent, as it "provides no information about the risks or benefits" of abortion and childbirth.<sup>196</sup> Second, the licensed note does not exclusively regulate the practice of medicine. The statute compels the disclosure in every interaction between a crisis pregnancy center and a patient, "regardless of whether a medical procedure is ever sought, offered, or performed."<sup>197</sup> These discrepancies indicate the statute is not sufficiently tied to the practice of medicine to constitute a regulation solely of professional conduct; rather, the licensed notice reaches beyond the objectives of professional regulation and intends to "regulate[] speech as speech."<sup>198</sup> *NIFLA* thus concluded the distinction between regulations of professional speech and conduct elicited in *Casey* does not shield the licensed notice from heightened scrutiny.<sup>199</sup>

*NIFLA*'s analysis of *Casey* strengthens *Camnitz*'s conclusion that the Display of Real-Time View Requirement is not merely a regulation of professional conduct subject to reduced scrutiny. *Camnitz* addressed this issue independently and distinguished *Casey*'s First Amendment conclusions when striking down the Display of

---

191. See Gottesdiener, *supra* note 139, at 754.

192. *NIFLA*, 585 U.S. at 770.

193. See *id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*; see Gottesdiener, *supra* note 139, at 753–55.

Real-Time View Requirement.<sup>200</sup> Namely, the Fourth Circuit characterized *Casey*'s free speech discussion as a "particularized finding" specific to the Pennsylvania statute.<sup>201</sup> While those disclosures appropriately fell within the scope of a state's freedom to regulate professional conduct, this does not imply that all informed consent disclosures and speech requirements in the abortion context do the same.<sup>202</sup> As the court helpfully explained, "[t]he single paragraph in *Casey* does not assert that physicians forfeit their First Amendment rights in the procedures surrounding abortions, nor does it announce the proper level of scrutiny to be applied to abortion regulations that compel speech to the extraordinary extent present here."<sup>203</sup> The Display of Real-Time View Requirement's intentional restrictions on physician speech and drastic deviations from traditional principles of informed consent render *Casey*'s First Amendment analysis immaterial for the restrictions at hand.<sup>204</sup>

*NIFLA* adds powerful reinforcements to *Camnitz*'s analysis and supports the Fourth Circuit's conclusion that the Display of Real-Time View Requirement is not a professional regulation subject to rational basis review. First, it is clear the Display of Real-Time View Requirement is not an informed consent statute under *NIFLA*'s interpretation. Like the licensed notice, the statute in *Camnitz* "does not facilitate informed consent to a medical procedure."<sup>205</sup> As discussed in Part III, the statute not only *deviates* from traditional informed consent principles in ways that dramatically increase the burden on physician speech and jeopardize patient wellbeing, but the statute is also *ineffective* at promoting informed consent. By compelling physicians to speak even when the patient is not listening, the statute compels speech even when it is impossible to inform the

---

200. *Stuart v. Camnitz*, 774 F.3d 238, 249 (4<sup>th</sup> Cir. 2014).

201. *Id.*; see *Dunlap*, *supra* note 10, at 456.

202. *Lang*, *supra* note 25, at 2121; see, e.g., *Wollschlaeger v. Gov. of Fla.*, 760 F.3d 1195, 1311 (11<sup>th</sup> Cir. 2014) 1311 (affirming *Camnitz*'s interpretation of *Casey*).

203. *Camnitz*, 774 F.3d at 249.

204. See Part III for a discussion of the uniquely burdensome characteristics of the Display of Real-Time View Requirements.

205. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 770 (2018). See generally, *Camnitz*, 774 F.3d at 252–55 (explaining how *Camnitz* is ineffective as an informed consent requirement).

patient's decision.<sup>206</sup> The state's further admission that the statute aims to discourage patients from choosing abortion conflicts with the nature of informed consent statutes, which aim to give patients sufficient information to make an independent choice rather than directing the patient towards a particular decision.<sup>207</sup>

Like the licensed notice in *NIFLA*, the *content* of the Display of Real-Time View Requirement is also ineffective at promoting informed consent. Namely, the compelled speech in the North Carolina statute "provides no information about the risks or benefits" of abortion and childbirth.<sup>208</sup> An ultrasound does not further the patient's informed consent to an abortion. As *Camnitz* noted, "[i]nformed consent has not generally been thought to require a patient to view images from his or her own body . . . much less in a setting where personal judgment may be altered or impaired."<sup>209</sup> Requiring the physician to explain the ultrasound display also does not inform the patient of the risks or benefits associated with the abortion procedure.<sup>210</sup> Any information about risks specific to the patient's pregnancy and their fetus is already communicated elsewhere in the informed consent process, in a manner far more similar to the disclosure requirements *Casey* affirmed.<sup>211</sup>

Finally, like the licensed notice at issue in *NIFLA*, the Display of Real-Time View Requirement does not merely regulate professional conduct. Applying *NIFLA*'s analysis of the distinction between professional speech and conduct, the North Carolina statute "regulates speech as speech."<sup>212</sup> The purpose of the statute's compelled speech is not simply to give patients information about the procedure and its alternatives, but to communicate a message "to discourage abortion or at the very least cause the woman to reconsider

206. *Camnitz*, 774 F.3d at 252. Note also that during trial in the Middle District of North Carolina, the state's own witness testified that the compelled speech in this context is incapable of achieving the statute's purported goal of informed consent. See *Stuart v. Loomis*, 992 F.Supp.2d 585, 602 (M.D.N.C. 2014).

207. *Camnitz*, 774 F.3d at 252

208. *NIFLA*, 585 U.S. at 770.

209. *Camnitz*, 774 F.3d at 255.

210. See *Harris*, *supra* note 165, at 156–57.

211. See N.C. GEN. STAT. § 90-21.85 (2023); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 901 (1992).

212. *NIFLA*, 585 U.S. at 770.

her decision.”<sup>213</sup> The Display of Real-Time View Requirement thus constitutes compelled speech for the same reasons the Court used in *NIFLA*. Significantly, the regulation in *Camnitz* involves an even more express regulation of physician speech than the statutes examined in *NIFLA* and *Casey*, given that it compels physicians to communicate information directly rather than simply inform patients of written disclosures elsewhere.<sup>214</sup> Thus, if *NIFLA* found the licensed notice to be a sufficient restriction on speech to fall outside *Casey*’s exception for professional regulations, then the statute in *Camnitz*, being an even clearer restriction on physician speech, should similarly fall outside this exception.

In sum, although the Court decided *NIFLA* intending to protect anti-abortion crisis pregnancy centers, its analysis also shields abortion providers from statutes that impermissibly infringe on their First Amendment rights. *NIFLA* affirms *Camnitz*’s conclusion that states cannot restrict speech simply because it occurs in the context of abortion care. *NIFLA* also helpfully clarifies the narrow exceptions in which restrictions on physician speech may be subject to reduced scrutiny, and the Court’s analysis further indicates the Display of Real-Time View Requirement does not fall within either category. Finally, *NIFLA*’s analysis confirms that when examining the free speech implications of a statute that regulates abortion, the only relevant standard of review is that triggered by restrictions on speech, not abortion. This conclusion further shields *Camnitz* from the doctrinal aftermath of *Dobbs*, confirming the Fourth Circuit’s First Amendment analysis remains good law.

#### CONCLUSION

North Carolina’s Display of Real-Time View Requirement remains unconstitutional under the current legal framework, and the Fourth Circuit’s injunction should remain in force. First, the Fourth Circuit’s decision in *Stuart v. Camnitz* is unaffected by the Supreme Court’s decision in *Dobbs*. Although both decisions examine abortion statutes, they concern different constitutional subject matters—

---

213. *Stuart v. Camnitz*, 774 F.3d 238, 245 (4th Cir. 2014); Br. of Defs.-Appellants, *supra* note 43, at 29.

214. *See* 2011 N.C. Sess. Laws 405 § 90-21.85.

*Camnitz* examines a statute's restriction on the right to free speech, whereas *Dobbs* looks to a statute's restriction on right to abortion (or lack thereof). The fact that the courts examine different constitutional doctrines means that *Dobbs*' influence on the constitutional right to abortion does not affect *Camnitz*'s conclusion that the Display of Real-Time View Requirement is unconstitutional as a restriction on speech.

Second, the Supreme Court's 2018 decision in *NIFLA* bolsters *Camnitz*'s holding that restrictions on professional speech remain subject to elevated scrutiny. The Display of Real-Time View Requirement satisfies *NIFLA*'s criteria for a statute subject to the First Amendment as a form of compelled speech. Further, neither of the exceptions *NIFLA* recognized apply to the Display of Real-Time View Requirement, as the statute is not an uncontroversial disclosure requirement akin to *Zauderer* or a regulation of professional conduct akin to *Casey*.

As this Comment demonstrates, the Supreme Court's *Dobbs* decision dealt a significant blow to the abortion rights movement, but its impact was not lethal. Although the Supreme Court no longer recognizes abortion as a constitutional right, laws restricting abortion can still be invalidated on other constitutional grounds. It is imperative that legal advocates remain cognizant of this reality and seek out alternate constitutional arguments beyond what *Dobbs* erased.

These creative legal strategies are only stopgaps—they are not a permanent or comprehensive strategy for protecting abortion in a post-*Roe* world. However, as we continue to fight for a world that gives life to the fundamental right to choose abortion, legal advocates can use their knowledge and institutional access to chip away at obstacles to abortion access wherever possible. This Comment concludes that the First Amendment offers us a promising chisel.