

# Video Gaming the Supreme Court Justices

## Online clips personalize cases, but do they work?

*Marcia Coyle, The National Law Journal*



**FOR THE CAMERA:** The nuns of Little Sisters of the Poor are suing over the ACA. *The Becket Fund for Religious Liberty* via YouTube.

One week after actress Elizabeth Banks [told one woman's abortion story](#) on YouTube, the video garnered nearly 300,000 views. When Little Sisters of the Poor went on YouTube under the title "Government forces Little Sisters of the Poor to violate faith or pay IRS fines," [the video](#) captured almost 74,000 views.

In the contest for the hearts and minds of Americans—and, indirectly, of U.S. Supreme Court justices—videos increasingly have become public tools in high-stakes cases.

"Legal briefs can be dense and boring and only law nerds like me actually read them," said Mark Rienzi, senior counsel at the Becket Fund for Religious Liberty, which represents Little Sisters of the Poor in a pending Supreme Court challenge to contraceptive health insurance. "Most people aren't going to read the 80-page brief we filed in Little Sisters, but they might watch a three-minute video about Little Sisters."

The Becket Fund has its own YouTube [channel](#) showing videos of a number of the organization's Supreme Court cases over the years, including the prisoner religious freedom case, [Holt v. Hobbs](#), and the Affordable Care Act challenge, [Burwell v. Hobby Lobby](#).

Rienzi said he doesn't think of video as an attempt to influence the justices. The videos, he said, help Becket tell an important story to the public about how real people are affected by its legal cases and why Americans ought to care.

"They also help give the client a voice," he said. "In some Supreme Court cases, a client can't even get into the arguments. The videos give the client a day in the court of public opinion, if not a day inside court."

Banks was one of eight actresses recruited by the Center for Reproductive Rights to tell the different experiences of women who had abortions. The latest videos are part of the center's "Draw the Line" campaign and appear as the Supreme Court [prepares to hear arguments](#) March 2 in *Whole Woman's Health v. Hellerstedt*.



**ADVOCATE:** The Center for Reproductive Rights, led by Nancy Northup, above, is producing videos that challenge restrictions on access to abortion clinics. "Our target is the public," Northup said. *Ilya S. Savenok/Getty Images for the Center for Reproductive Rights*

The center has been using video as an advocacy tool since 2009, said Nancy Northup, the center's president and chief executive officer. The "Draw the Line" campaign began in 2012, she said, "because we knew back then that we were heading toward a very different fight on the right to access abortion" in which states were adopting highly restrictive laws.

"We know a majority of people support access, but we need to bring them into the policy debate," she said. "We're not going to turn this around until the one in three women who had an abortion become a part of the debate."

Some of the eight videos relate to the pending Supreme Court case in which the center challenges restrictions on clinic operations imposed by Texas. "We wanted to make real to people so much of the bullying and silencing of women who have had abortions as well as what it means to be forced to drive 300 miles when making a personal decision about their lives," Northup said.

The videos, she added, should spark public discussion. "And I think the court will be aware of what the public is discussing," she said. "Again, our target is the public. Our amicus brief authors' target was the court. That is where the story telling is highest. The court decides cases in the context of their own understanding of social reality, and that comes from public discussion."

## PIONEERS OF VIDEO

The libertarian Institute for Justice was an [early proponent of the use of videos](#) and broadcast media to humanize Supreme Court parties. "Our model was the NAACP and the ACLU, both of which were good at picking plaintiffs who were willing to talk about their stories," said Scott Bullock, the institute's president and general counsel. "We added the video."

In the 2005 case [Granholm v. Heald](#), the libertarian group highlighted Juanita Swedenburg, a Virginia vintner who was challenging restrictive laws that barred interstate shipment of wines to consumers.

But the pinnacle of video campaigning came in another 2005 case litigated by the institute: [Kelo v. City of New London](#), a challenge to government eminent-domain powers. Suzette Kelo, whose house was about to be taken to make way for a large pharmaceutical company facility in Connecticut, became a familiar public figure in the run-up to oral argument. A 60 Minutes episode highlighted what the institute described as nationwide "eminent domain abuse."

Kelo narrowly lost, but the massive publicity gave strong momentum to a successful postdecision campaign to modify eminent-domain laws at the state level. To this day, Bullock said, people congratulate him for winning *Kelo* when in fact he did not.

"We wanted to highlight their stories, not just for the court but for the court of public opinion as well, in case we lost," Bullock said.

And telling stories is the key, said Susanna Dokupil, a lawyer and chief executive officer of Paladin Strategies. Dokupil [created](#) "Laura and Marvin Horne's Story," a video about the raisin farmers in the [high court case](#) *Horne v. U.S. Dept. of Agriculture*.

"The video project was originally conceived as a way to reach out to people who don't consider themselves to hold conservative values and try to persuade them to change," she said. "Watching a story about the raisin farmers can join emotion and data without confrontation."

Edward Blum, head of the Center for Fair Representation, said he never planned to do [a video of Abigail Fisher](#), whom he recruited for the race challenge to the admissions policy at the University of Texas [now before the high court](#).

"The marching orders to Abby and others like her were if you hear from the press, send them to me," he recalled, explaining that lawyers generally don't want their clients talking to the press. "That worked pretty well until we were marching towards the Supreme Court and the pressure and interest from the press became such that we needed to make Abby available in some form to the electronic media."

The lawyers in the case had no objections to a video as long as Fisher only addressed the most common questions being asked by the press, he said. "I think it was very effective. It was widely viewed."

Blum said former clerks told him it was "highly unlikely" that any justice would watch videos from advocates. "It just doesn't seem like something Justice [Samuel] Alito would do—surf around and find a video of Abby," Blum said.

Could the use of visual media in Supreme Court litigation be off-putting for justices who care more about written briefs? Bullock of the Institute for Justice said he doesn't think so.

"I'm not concerned about offending the court if we have solid legal arguments to go along with it," Bullock said. "You can't win just by talking about the parties."

*Tony Mauro contributed reporting.*

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