

Clinic Buffer Zones at Risk

In 1994 in Brookline, Massachusetts, a gunman opened fire at two abortion clinics, killing two receptionists and wounding at least five other people. In March of 1993, Dr. David Gunn was murdered outside an abortion clinic in Pensacola, Florida. In 1991, a women's health clinic receptionist was shot and paralyzed from the waist down. According to the Feminist Majority Foundation, since 1991, at least ten people – 5 doctors, 2 receptionists, an escort and a security guard — have been murdered and 17 people wounded, including 8 doctors. On May 31, 2009, Dr. George Tiller was murdered at his church in Wichita, Kansas.

Anyone who claims that anti-abortion zealots are only engaging in “speech” are either sadly misinformed or deliberately misstating the facts.

The U.S. Supreme Court on Wednesday heard arguments in *McCullen v. Coakley* (Docket No. 12-1168) challenging a 2007 Massachusetts law that makes it a crime for speakers to enter or remain on a public way or sidewalk within 35 feet of an entrance, exit, or driveway of a reproductive health care facility. The law applies only at abortion clinics and exempts patients, clinic employees or agents acting within the scope of their employment and was adopted as a result of decades of harassment, obstruction and violent acts including two murders at clinics by abortion opponents in Massachusetts.

Thirty Years of Violence

Briefs submitted by the Planned Parenthood League of Massachusetts (PPLM), Planned Parenthood Federation of America, the National Abortion Federation and 31 other organizations, including NOW Foundation, detail thirty years of harassment, intimidation and obstruction directed at patients, clinic staff and volunteers at Boston, Worcester and Springfield facilities. Blockades and invasions of facilities were conducted by Operation Rescue, an extremist group determined to stop abortions, despite a permanent injunction and the arrests of hundreds of protesters. In 1991, John Salvi shot and killed a Brookline PPLM employee, 25 year old Shannon Lowney, an employee of another abortion provider, and injured five other persons.

Terrorism towards a Goal

There can be no other way to describe in a single word what antiabortion protesters have engaged in for four decades and that is terrorism. Their goals were – and remain to this day – to terrorize health care providers, women who seek reproductive health care services and their allies to achieve their ideological and political goals. To that end, tens of millions of dollars have been raised from Catholic men's organizations, right wing billionaires and extremist antiabortion organizations. *McCullen v. Coakley* is just one in a long and continuing line of legal challenges that abortion rights opponents hope that one day will lead a more conservative U.S. Supreme Court to undo *Roe v. Wade*.

Close observers of the Supreme Court believe that this case, among many important cases before the Court this term, speculate that the precedent established in *Hill v. Colorado* ((98-1856) 530 U.S. U.S. 703) may well be overturned. If that happens, other states' buffer zone laws and, in fact, the 1994 landmark Freedom of Access to Clinic Entrances (FACE) federal law are at risk.

Buffer Zones Enhance Safety

A 2013 survey conducted by the National Abortion Federation of their U.S. membership found that 51 percent of the facilities with buffer zones reported a decrease in criminal activity near the facility after the buffer zone was in place, and 75 percent of the responding facilities with buffer zones said that the zones improved patient and staff access. At the same time, 90 percent of the facilities report that they are concerned about the safety of their patients and employees in the areas approaching the facility and over 80 percent have called law enforcement because of safety, access or criminal activity concerns.

FACE Also Promotes Clinic Safety

As most advocates for women's reproductive rights know, FACE has been very effective in reducing harassment, violent confrontation, vandalism, arson, murder and other criminal activities aimed at clinics, health care providers, patients and volunteers. The federal law makes it illegal to intentionally commit a range of violent, obstructive and threatening activities toward reproductive health care providers and their patients. FACE also punishes anyone who intentionally damages or destroys a facility that provides reproductive health care services. Only the federal government can file criminal charges under FACE, but civil causes of action can be brought by federal and state governments and/or any person or facility that has been the victim of a prohibited action under FACE. FACE does not specify buffer zones rather those have been adopted by various states and some local governments.

Prior to the FACE Act nearly 10,000 incidents had been reported since 1977, including five murders, 585 acts of vandalism, 547 invasions, 124 arsons. Since 1994, the number of incidents has declined dramatically, especially murders, attempted murders and death threats, but vandalism, trespassing, burglaries, stalking, hate mail and harassing calls and picketing remain problematic. The National Abortion Federation which conducts the survey of incidents in the U.S. and Canada notes that the actual incident numbers are likely much higher.

Precedent set in Colorado Case

In *Hill*, the Supreme Court in 2000 upheld (6-3) a Colorado law restricting anti-abortion activists within a 100-foot radius of any health care facility, and specifically prohibited them from coming within eight feet of another person without their consent to pass out leaflets, display signs, or to engage in oral protest or education or counseling with that person. Prior to *Hill*, noisy abortion rights opponents gathered daily at women's health

clinics, holding graphic signs and shouting through bullhorns to intimidate women and deter them from entering the health care facility.

The Court ruled:

The State's police powers allow it to protect its' citizens health and safety, and may justify a specific focus on access to health care facilities and the avoidance of potential trauma to patients associated with confrontational protests.

Other states have enacted versions of FACE, allowing them to pursue criminal charges under state law and providing clinics with more options for enforcement. California, New York, Washington, Connecticut, District of Columbia, Kansas, Maine, Maryland, Minnesota, Nevada, North Carolina, Oregon and Wisconsin have statutes that deal with harassment at health care facilities. Buffer zone laws have been adopted by Colorado, Massachusetts, and Montana.

Court's Conservative Majority Worrisome

Whether a new conservative majority on the Supreme Court will value the effectiveness of buffer zones remains a question. In the 2000 Colorado case, the majority of six justices upholding the buffer zone included Republican appointees Chief Justice William Rehnquist, and Justices Sandra J. O'Connor and David Souter. They were joined by the three Democratic appointees. But Supreme Court membership has become much more partisan since then with Chief Justice John G. Roberts Jr., Justice Samuel Alito Jr., both conservatives appointed by President George W. Bush, joining conservative Justices Antonin Scalia, Clarence Thomas and Anthony M. Kennedy. That leaves just four possible supporters of the buffer zone law: Justices Ruth Bader Ginsberg, Stephen J. Breyer, Sonia Sotomayer and Elena Kagan. Whether the sometimes swing voter, Justice Kennedy, will side with them is a serious question. Kennedy was one of three dissenters in the Colorado case.

What Happened to Precedent, Justice Roberts?

At his confirmation hearing in the Senate in 2005, Chief Justice nominee John Roberts vowed that he would respect precedent (settled law) in his tenure on the Court. But Roberts already has taken steps to overturn long-standing precedents such as in the *Shelby County v. Holder* (gutting the Voting Rights Act) and *Citizen's United v. Federal Elections Commission* (opening the floodgates to corporate political contributions). Some Court observers believe Roberts is one of the most politically activist Chief Justices in the Supreme Court's history.

O'Neill Says No Buffer Zone Means Violence

NOW Foundation president Terry O'Neill says, "I fear that the Roberts court will scale back buffer zones in a way that permits abortion rights opponents to again physically block access, harangue and demean patients and threaten clinic personnel. As we have

seen many times in the past, this kind of activity incites extremists to carry out violent acts that result in damaged clinics, injuries and death to patients, providers, and escorts.”

McCullen Case Challenges Review Standard

The Massachusetts buffer zone lawsuit was brought by eight named individuals, Eleanor McCullen, Jean Blackburn Zarrella, Gregory Smith, Carmel Farrel, Eric Cadin, Cyril Shea, Mark Bashour and Nancy Clark, and represented by Americans United for Life. The petitioners claim that the Massachusetts law constitutes both content-based and viewpoint-based discrimination that should require a strict scrutiny analysis. Under current standards only intermediate analysis, or less rigorous, is required by the courts in equal protection reviews.

The Massachusetts law applies equally to all demonstrators, prochoice and anti-choice alike. Nonetheless, the petitioners argue that the law prohibits only “pro-life” speech and that “peaceful speech and prayer outside abortion facilities is essential to their mission” and that the First Amendment protects their right to select what they believe to be the most effective means for communication. They claim that if they have to stay outside the 35-foot zone, women won’t have the opportunity to learn about alternatives to abortion.

A friend-of-the-court brief submitted by 40 Days for Life, identified as a “community-based campaign that draws attention to the harms of abortion,” claims that they can’t reach their target audience if they have to stay 35 feet away from clinics.

Under current jurisprudence, a restriction on an individual’s First Amendment Constitutional right will be upheld if it furthers a legitimate state interest, places no restrictions on particular viewpoints or subject matter and is reasonably and narrowly tailored to limit no more speech than is necessary to achieve the State’s legitimate goal.

Protesters Speech is Not Limited

The respondents, Planned Parenthood and numerous organizations supporting women’s access to reproductive health care, state that no discrimination against pro-life speech exists as clinic staff and volunteers are instructed to not discuss anything related to the patient’s visit to the facility while they escort them to the clinic entrance. Additionally, the respondents point out that abortion rights opponents’ speech is not limited, only the place where they may engage in speech. And they argue that the buffer zones are essential to conduct of the facility and safety of patients, clinic staff and volunteers with ample evidence of the obstruction and violence that existed before the buffer zone was in place. Protecting patients and staff and assuring the provision of health care services are clearly legitimate State interests.

Twice lower courts have turned down the McCullen challenge. In February of 2012, U.S. District Judge Joseph Tauro turned back the antiabortion protesters’ claim that the law violates their freedom of speech and ruled that they have “ample alternative means of

communication” with minimal restrictions. In January, 2013, a three-judge panel of the First U.S. Circuit Court of Appeals affirmed Tauro’s decision.

With the two lower courts finding against antiabortion protestors in McCullen, it is very concerning that the Supreme Court has agreed to this review. Is it because they are intending to trim the size of buffer zones to allow protestors to physically impose themselves between patients and clinic entrances? Do they intend to provide a broader definition of what constitutes free speech that would find buffer zones incompatible?

NOW Foundation president O’Neill says, “We know what the antiabortion protestors in McCullen want – they want to be able to grab patients, get in their faces, scream at them that they are immoral, and that having an abortion is a mortal sin and a risk to their health, among other falsehoods. These individuals are maniacal in their determination to stop abortion and will not respect the privacy and safety of patients, clinic personnel and volunteers.”

Abortion clinics are not the only places with buffer zones. A protective 100-foot buffer zone surrounds the Supreme Court building.

Conservative Justices’ Anti-Woman?

Abortion rights advocates and opponents, both, see 2014 as a possible turning point for abortion access. The New York Times writes that key tests for state abortion restrictions could reshape the limits of *Roe v. Wade* and other legal precedents. According to the article, “More than half of states enacted antiabortion-rights measures in the last three years, prompting clinic closures and creating other barriers to access. Legal fights over several of those measures are now making their way through the courts.”

Standing Together, Fighting Back

NOW believes that women have the inherent, fundamental right to have the children they want, raise the children they have, plan their own families and make their own health care decisions. [You can stand with us by signing NOW’s pledge for reproductive rights and justice.](#)

Produced by the NOW Foundation

Further Information at:

[American Bar Association case documents](#)

[National Clinic Access Project, Feminist Majority Foundation Clinic Violence Survey](#)

[Abortion Facts and Freedom of Access to Clinic Entrances \(FACE\) Act, National Abortion Federation](#)

[Clinic Violence, History of Violence/Extreme Violence – National Abortion Federation](#)

[National Abortion Federation \(NAF\) Violence and Disruption Statistics](#)