



## Buffer Zones and *McCullen v. Coakley*

### What is a buffer zone?

A buffer zone regulates certain types of expressive activity within a designated distance from the entrance of a health care facility. Buffer zones vary in size and type. Buffer zone laws limit how close demonstrators are allowed to be to a facility by requiring that protests occur at a specific distance from the facility. Individuals are free to continue their expressive activity outside the buffer zone. Bubble zone laws create floating areas around particular people (usually clinic staff and patients) or vehicles, and prohibit protesters from coming within a certain distance of the specified person or vehicle. Bubble zones are sometimes referred to as floating buffer zones.

The Supreme Court decision in *Hill v. Colorado* in 2000 established the constitutional standard for these types of ordinances. The *Hill* decision upheld a Colorado ordinance that created an eight-foot no-approach bubble zone around any person within a buffer zone stretching 100 feet from a health care facility, and made it a misdemeanor to obstruct entry to or exit from a health care facility. This has successfully served as a model for similar ordinances across the country. There are buffer zones in many locations including Chicago, IL; Sacramento, CA; Portland, Maine; and Pittsburgh, PA.

### Why are buffer zones important?

Since *Roe v. Wade* was decided in 1973, abortion providers have been the target of violence and other criminal activities by anti-abortion extremists who sometimes choose to take the law into their own hands. Anti-abortion violence and disruption ranges from aggressive protesting to arson, acid attacks, and even murder. Abortion providers have pursued legal remedies including buffer zones to ensure the safety of facility staff and patients. People seeking constitutionally-protected health care should be able to do so without fear of violence or intimidation. Buffer zones help promote public safety and reduce the physical obstruction to which providers and patients are often subject.

Reproductive health care facilities regularly encounter violence and obstructed access. Ninety-two percent of recently surveyed NAF member facilities report that they are concerned about the safety of their patients in the areas approaching the facility. At 71% of surveyed facilities, patients have reported difficulty in the past two years entering the facility due to people blocking their access.

Buffer zones are critical to the continued safety of reproductive health care facilities, patients and staff because they ensure a safe area for providers to access their workplace and for patients to

obtain reproductive health care. Buffer zones have been shown to decrease violence, obstruction and intimidation outside of reproductive health care facilities. In a 2013 NAF survey, fifty-one percent of facilities with buffer zones reported a decrease in criminal activity near the facility after the buffer zone was instituted. Moreover, 75% of responding facilities with buffer zones stated that the zones improved patients and staff access to the facilities. Buffer zones are crucial to protecting patient and provider access, particularly given the violence and other criminal activities regularly occurring at reproductive health care facilities.

### **The Case: *McCullen v. Coakley***

The Supreme Court granted certiorari in *McCullen v. Coakley* on June 24, 2013. It will hear oral arguments on January 15, 2014. The petitioners in the case are challenging a Massachusetts buffer zone law that makes it a crime for speakers to remain on a public way within 35 feet of an entrance to a reproductive health care facility. Employees or agents of the clinic acting within the scope of their employment are exempt. Petitioners argue that this law is viewpoint-based and thus unconstitutional both on its face and as applied to petitioners. Petitioners also argue that if *Hill v. Colorado* permits enforcement of the law then the scope of that decision should either be limited or overruled. The 1<sup>st</sup> Circuit upheld the law in two previous decisions, both on its face and as-applied.

### **Is the Massachusetts buffer zone constitutional?**

Yes. The buffer zone is a valid content- and viewpoint-neutral time, place and manner regulation. It was passed to ensure safe access to facilities that have been incessantly targeted for obstruction, not to suppress any content, and the statute does not distinguish based on content of speech. It furthers the state's substantial interest in ensuring safe access to reproductive health care facilities, especially given the unrelenting violence targeting such locations.

The 1<sup>st</sup> Circuit Court of Appeals found that the Massachusetts buffer zone law was constitutional and did not violate the First Amendment. It held that the buffer zone is a limited regulation on where speech may occur, but that it does not favor one type of speech or opinion over another. Because the buffer zone protects clinic entrances where there was a history of public safety problems, it furthers a significant government interest and does not burden substantially more speech than necessary.

The 1<sup>st</sup> Circuit's decisions are consistent with the Supreme Court's previous decisions, including its buffer zone jurisprudence in *Madsen v. Women's Health Center, Inc.*, *Schenck v. Pro-Choice Network of Western New York*, and *Hill v. Colorado*. The 1<sup>st</sup> Circuit correctly applied the intermediate scrutiny standard: the statute is viewpoint neutral, narrowly tailored to serve a significant government interest, and leaves open ample alternative channels for communication. The exemption for clinic employees acting in the scope of their employment furthers the legislative goal of ensuring patient safety. The Supreme Court should uphold the 1<sup>st</sup> Circuit's decision and find the law constitutional, both on its face and as applied.