



Equality / Health



Eleanor McCullen, of Boston, left, stands at the painted edge of a buffer zone outside a Planned Parenthood location in Boston on Dec. 17, 2013. **Steven Senne/AP**

Abortion clinic buffer zones go before the Supreme Court

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By **Irin Carmon**

The face of the anti-abortion protester before the Supreme Court this week is Eleanor McCullen, a 77-year-old, self-described “plump” grandmother who stations herself outside a Planned Parenthood in Boston. She says that in her quest to prevent women from having abortions, she has spent \$50,000 of her own money to pay for baby showers and utilities.

But hers is not the only face. At the same facility where McCullen protests twice a week, according to Planned Parenthood, protesters “wore Boston Police Department hats and shirts and stationed themselves, carrying clipboards, at the garage entrance. They demanded contact information from people trying to get into the building. These protesters persisted in this intimidating and deceptive conduct despite several arrests.” Then there were the “umbrella wars,” which involved protesters using umbrellas as cudgels to displace clinic volunteers. And there were the spitters.

That was all before the state’s 2007 buffer zone law, which imposes a 35-foot barrier around clinics, and is now being challenged on First Amendment grounds. The Supreme Court will hear oral arguments in the case on Wednesday, and will have to weigh the speech rights of the protesters against the safety of patients and providers.

“This is the only law that’s ever worked to allow law enforcement to maintain public safety at our health centers,” said Marty Walz, the CEO of Planned Parenthood League of Massachusetts. “We feel strongly that the Court should uphold it.” Oral arguments will be heard in the case Wednesday morning.

McCullen and her fellow protesters lost at the two lower courts, which cited a 2000 Supreme Court decision, *Hill v. Colorado*, upholding a buffer zone in Colorado. By agreeing to hear McCullen’s case, the Court, which has become more conservative since the Hill case, may be signaling that it is ready to revisit the larger issue of buffer zones. Depending on how broadly it is written, its decision could have an impact on abortion access around the country.

Abortion clinics don’t have the only buffer zones – polling places often have them, and so does the Supreme Court. But the protesters argue that placing them around abortion clinics specifically undermines their protest. “In order to be effective, their messages must be conveyed in a friendly, gentle manner, with eye contact, from a conversational distance,” McCullen and the other protesters wrote in their brief to the Court. “In particular, shouting from a distance is ineffective or counterproductive.” But by McCullen’s own count, she still managed to persuade 80 people not to have abortions in the first three years of the law’s enforcement.

The protesters also argue that their viewpoint is being specifically discriminated against because clinic workers are exempt from the buffer zone, though the state of Massachusetts, which is defending the law, points out that they brought no evidence of clinic workers abusing the privilege by using the buffer to advocate for abortion.

Massachusetts has seen worse than spitting protesters. In 1994, a gunman killed two people and wounded five at a Planned Parenthood facility just outside Boston.

Such activity is, of course, already illegal. But Walz said that before the most recent Massachusetts statute, which she co-sponsored while she was in the legislature, clinic staff had to seek individual injunctions against protesters for breaking the rules, but then new protesters would emerge. When Massachusetts passed a law saying protesters couldn’t approach patients unless invited, “they just stood still in the doorway so the patients had to approach the protesters in order to get in the door,” Walz said.

According to a survey of members of the National Abortion Federation, 51% of facilities with a buffer zone said they saw criminal activity drop after it was put in place. Three quarters said it had “improved patient and staff access to the facilities.” In the same survey, 92% of facilities said they are concerned about their patients’ safety approaching the facility, said the group’s president, Vicki Saporta.

“We run a toll-free hotline, and when we make referrals, we hear from women all the time: Are there going to be protesters, should they bring their boyfriend or husband or brother, any big guy to basically help them get care safely,” Saporta said. “It’s a major concern of patients.”

During the trial of convicted murderer Kermit Gosnell, one former patient told the AP that she went to his abusive clinic because she was told it lacked the protesters she saw outside Planned Parenthood. “The picketers out there,” she said, referring to Planned Parenthood, “they just scared me half to death.”

Pennsylvania has no state-wide buffer zone, though the city of Pittsburgh enacted a 15-foot buffer zone. Christy Boraas, an abortion provider in Pittsburgh, told msnbc that even though protesters shout her name as she comes to work and talk about murder and going to hell, “the buffer zone is a constant reminder to all the people on the sidewalk that despite strong disagreement about abortion, nobody has the right to prevent a woman from accessing her safe and legal medical care.”

In the Massachusetts case, the First Circuit Court of Appeals concluded, “The law does not require that a patient run a public-sidewalk gauntlet before entering an abortion clinic,” adding that patients might choose to avoid protesters for their own reason: “First Amendment rights do not guarantee to the plaintiffs (or anyone else, for that matter) an interested, attentive, and receptive audience, available at close-range.”

The ACLU has broken with some of its fellow-travelers for free speech by urging the Supreme Court to uphold the law, arguing that it strikes a balance and provides for the free exercise of speech. “If you’re standing 36 feet outside the clinic, there’s nothing that stops you from saying, ‘Do you mind if I talk to you?’” said Steven Shapiro, the ACLU’s legal director. The case, he admitted, “does not lend itself to an easy yes or no answer.”

The group wrote in its brief, “This would be a different case if there were not competing constitutional rights on the other side of the scale” – meaning the repeatedly-reaffirmed constitutional right of a woman to end her pregnancy before viability – “but there are.”

The court could rule that buffer zones outside abortion clinics are First Amendment infringements that are never permissible; on the other end of the spectrum, it could concede that the state has a special interest in protecting access to abortion clinics given the history of violence outside them. “The more likely thing,” said Shapiro, “is that the Court tries to thread the needle and decide something in the middle.”

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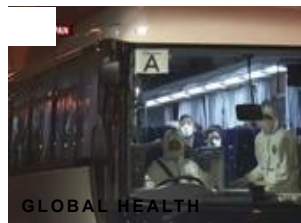
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