



Anti-Choice Clinic Protests and Violence— First Amendment

History of Clinic Violence

Since the Supreme Court recognized the constitutional right to abortion in *Roe v. Wade*, extremists have used violence against women's healthcare providers to demonstrate their opposition to abortion. Peaceful protests outside abortion clinics were soon replaced with aggressive protestors harassing clinic staff and patients and blockading clinic entrances.

- The first reported clinic arson in 1976 set a tone of violence for many more years. In 1978, a series of clinics was bombed. Clinic arsons and bombings continue today, though incidents of violence have declined since the mid-90s.
- In 1991, anti-abortion extremists started using butyric acid (a clear, colorless liquid with a vomit-like odor) as a way to disrupt services at abortion clinics. When butyric acid is introduced at a clinic, expensive clean-up procedures are required. Approximately 100 butyric acid attacks in the U.S. and Canada have caused over \$1 million worth of damage.
- Extremist abortion opponents have murdered seven providers since the first in 1993 and have attempted to murder many more clinic workers and doctors.¹

Federal and State Laws

Freedom of Access to Clinic Entrances (FACE) Act

- The FACE Act makes it a federal crime to use force, the threat of force, or physical obstruction to prevent individuals from obtaining or providing reproductive healthcare services.²
 - FACE also authorizes reproductive healthcare providers, the state attorney general, and/or the federal government to bring civil lawsuits to get injunctions against these activities, or to get monetary damages.³
 - Civil remedies include a right of action, action by the Attorney General of the United States, and actions by State Attorneys General.⁴

Targeted Regulation of Abortion Providers (TRAP) laws

- TRAP laws target the medical practices of doctors who provide abortions, and impose on them burdensome requirements which are more stringent than the requirements of other medical practices.
- These excessive and unnecessary government regulations increase the cost and scarcity of abortion services, harming women's health and inhibiting their reproductive choices.

Types of Regulations

Health Facility Licensing Schemes

- 22 states impose on abortion providers health facility licensing requirements that are not imposed on other providers of comparable medical procedures.
- These requirements vary considerably in terms of their breadth and burdens, and may include physical plant specifications, warrantless searches, personnel requirements, onerous administrative policies, and expensive licensing fees.
- Additionally, while some such schemes apply to all abortion providers, including providers of only medication abortions, other schemes: (1) exempt abortion providers who perform

¹ National Abortion Federation, *Violence and Disruption Statistics*, http://www.prochoice.org/about_abortion/violence/ (last visited Aug. 17, 2008).

² 18 U.S.C. § 248.

³ *Id.*

⁴ Bill Lockyer, Attorney General, California Department of Justice, *Special Report to the Legislature on Senate Bill 780*, at <http://ag.ca.gov/cjsc/publications/misc/net780/rpt.pdf?PHPSESSID=12d060105918432e4ceb7506aced3ed> (last visited Aug. 17, 2008).



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less than a specified number of abortions in a given time period; (2) apply only to providers of abortions after the first trimester; (3) exempt private physicians' offices; or (4) apply only to providers of surgical abortions.⁵

Ambulatory Surgical Center Requirements

- Ambulatory surgical center (ASC) requirements mandate that abortion providers become licensed as ASCs and meet all requirements imposed on ASCs.
- ASC regulations usually include all of the types of burdensome requirements imposed by health facility licensing schemes but also impose stringent physical plant requirements, which generally cannot be met by doctors' offices or outpatient clinics, and which go far beyond the recommendations of recognized medical guidelines.
- 10 states have these requirements in place.⁶

Hospitalization Requirements

- Hospitalization requirements mandate that abortions after a specified gestational age (generally some point in the second trimester) be performed in a hospital.
- 4 states have some type of hospitalization requirement on the books; 12 states have hospitalization requirements that have been declared unconstitutional by a court ruling or state official, or have been invalidated by another law.⁷
- 44 states prohibit certain qualified healthcare professionals from performing abortions. In 2007, 14 states considered 24 measures that would subject abortion providers to burdensome restrictions not applied to other medical professionals.⁸

Supreme Court Cases on Clinic Violence

Clinic patients and anti-choice protesters both have important constitutional concerns. The First Amendment right to protest is clear; however, the state police power allows it to protect the health and safety of its citizens. This may justify a special focus on access to healthcare facilities and abortion clinics.

In *Madsen v. Women's Health Center*, the Court upheld a broadened injunction against anti-abortion protesters that were impeding clients' access to a health clinic.

- Finding that the 36-foot "buffer zone" around the clinic entrances did not violate the protesters' First Amendment free speech rights, the court held that the injunction was not content-based even though it restricted the speech of only the protesters because the injunction did not burden more speech than necessary to serve significant government interests.⁹

Restrictions on abortion protesters' speech serve a significant government interest. The state has a strong interest in protecting women's constitutional rights to seek lawful medical or counseling services in connection with pregnancy, in ensuring public safety and order, in promoting free flow of traffic on public streets and sidewalks, in protecting property rights of all citizens, and in ensuring medical privacy.¹⁰

⁵ Center for Reproductive Rights, Targeted Regulation of Abortion Providers: Avoiding the TRAP, http://www.reproductiverights.org/pub_fac_trap.html (last visited Aug. 17, 2008).

⁶ Id.

⁷ Id.

⁸ Id.

⁹ 512 US 753 (1994).

¹⁰ 42 Am. Jur. 2d Injunctions § 59.



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In *Schenck v. Pro-Choice Network of Western New York*, the Supreme Court upheld a preliminary injunction against abortion protestors outside a clinic who were engaged in large-scale blockades, providing “sidewalk counselors” who crowded, jostled, yelled, and spit at women who entered the clinic and their escorts.

- While the Court struck down the “floating buffer zones” as overly burdensome on free speech, they upheld the allowances of a “fixed buffer zone” of 15 feet surrounding the entrances to and exits from the clinic.¹¹

The Supreme Court in *Hill v. Colorado* extended the ruling in *Schenck* to a Colorado law requiring clinic protestors to request permission before knowingly coming within eight feet of individuals seeking access to a healthcare facility.

- Given the governmental interests in protecting the free speech of the protestors, as well as the health and safety of the patients, the court found that the Colorado statute was a valid “time, place, and manner” regulation that would not adversely affect the protestors’ First Amendment rights.¹²

¹¹ 519 U.S. 357 (1997).

¹² 530 U.S. 703 (2000).