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Court Considers Space Restrictions on First Amendment

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Court considers space restrictions on First Amendment

The First Amendment gives you the right to express yourself. But does it give you the right to do so up close and personal? That's the issue the Supreme



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Court will consider when it hears a case on Wednesday. The case concerns a 2007 Massachusetts law that forbids protesters to stand within 35 feet of the entrance or driveway to an abortion clinic.

Massachusetts enacted the law to ensure the safety of patients going into these facilities. The law revised an earlier 2000 law that had created "floating" buffer zones instead of a fixed no-protest zone. This regulation permitted peaceful protests right up to an abortion clinic's door, but provided that, within 18 feet of the entrance, no one could come within six

feet of another to hand out literature or orally protest unless the individual being approached consented.

Massachusetts says it modified the earlier law in 2007 because the floating buffer zone approach failed to protect patients adequately. On the contrary, it made matters worse by concentrating protests into the small area in front of clinics.

Because the 2000 law prohibited only nonconsensual approaches, the police interpreted it to mean that protesters could plant themselves in front of clinic entrances where the patients would approach them. Making matters worse, competing pro-life and pro-choice protesters occasionally vied for the best positions and pushing and shoving ensued.

"Whether they intended to or not," the Massachusetts Attorney General says, "protesters created a wall of sometimes agitated or angry people in front of facility entrances, effectively blocking them."

And sometimes protesters deliberately blocked patients' paths or engaged in harassing behavior like sticking their hands or heads into car windows as the cars approached the clinics.

The Attorney General says the new law with its 35 foot no-protest zone remedied this problem. Patients can now "readily enter the facilities" and protesters still can "proffer their messages outside of the facilities and within the sight, hearing and presence of their target audience."

But that's not how pro-life advocates see it. They say that the new law severely curtails their ability to communicate with the patients.

The advocates say that the women going to these clinics frequently welcome their advice. They contend that women often seek abortions because they are pressured by others or believe they cannot afford a child and that pro-life advocates have successfully counseled many to choose childbirth over abortion.

The advocates complain that the new Massachusetts law prevents them from effectively communicating their message. They say that such a sensitive and private matter can be communicated effectively only if it is "conveyed in a friendly, gentle manner, with eye contact, at a normal volume."

The new Massachusetts law, however, precludes such an approach. Instead, pro-life advocates are forced to yell out their message from 35 feet away which they say undermines the message by robbing it of its "compassionate tone."

And if the advocates encounter a woman outside of the 35-foot zone, they must stop once the woman enters the no-protest zone which they say makes them seem "untrustworthy."

The Court of Appeals found these arguments unconvincing. It acknowledged that the Massachusetts law curtails pro-life advocates' "ability to carry on gentle discussions with prospective patients at a conversa-

tional distance, embellished with eye contact and smiles." But it said the Constitution does not guarantee a speaker can "employ her preferred method of communication." It is enough that the speaker has "an opportunity to reach her intended audience."

So what does this "opportunity" entail? Is it enough that pro-life advocates can buy newspaper ads, hold public rallies and approach women on any sidewalk other than the one in front of an abortion clinic? Or is the only place that matters the 35-foot zone in front of a clinic's entrance?

And what about the rights of the women patients? Don't they have a right to seek medical treatment in peace? Why, at a time that is already fraught with emotion and anxiety, should they have to run a gauntlet of protestors who think they know better than the women themselves what's in their own best interests?

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