



June 12, 2017

Louisville Metro Council - Public Safety Committee
c/o Councilman David James, Chair
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Via electronic mail

RE: Access to Abortion Facilities

Chairman James and Members of the Public Safety Committee,

On behalf of the ACLU OF KENTUCKY, we write to express our support for meaningful and targeted efforts to improve women's safe and unimpeded access to lawful, and constitutionally protected, abortion services in Louisville.¹ Recent events have illustrated that certain individuals are determined to engage in unlawful acts to hamper women's ability to access those services,² even going so far as to indicate that any future laws designed to address the problem will likewise be ignored.³ But while those individuals have a right to express their views, they are not entitled to do so in a way that impairs the rights of women to seek out

¹ Louisville is the site of Kentucky's sole remaining abortion provider, EMW Women's Surgical Center. Although the ACLU OF KENTUCKY represents EMW in two pending federal civil rights lawsuits, this letter is not submitted on EMW's behalf. Rather, the views expressed in this letter are solely those of the ACLU OF KENTUCKY.

² Madeleine Winer and Darla Carter, *10 Arrests Made in Protest at Louisville Abortion Clinic Saturday*, Courier-Journal (May 13, 2017), <http://www.courier-journal.com/story/news/local/2017/05/13/arrests-made-protest-louisville-abortion-clinic-saturday/321109001/>.

³ Phillip M. Bailey and Tessa Weinberg, *Louisville Metro Council Members Consider Buffer Zone Outside Kentucky's Last Abortion Clinic*, Courier-Journal (June 2, 2017), <http://www.courier-journal.com/story/news/politics/metro-government/2017/06/02/democrats-mull-buffer-zone-ky-s-last-abortion-clinic/354275001/> (stating that Rev. Joseph Spurgeon has indicated that "he and others would disobey a buffer zone law" if enacted.).

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abortion services.⁴ As in other contexts, narrowly targeted limits on individuals' free speech rights may be imposed when doing so is necessary to protect the rights of others.⁵

But in considering the enactment of a speech restriction such as a "buffer zone" around the entrance to an abortion provider, the Committee must be mindful that any such restriction (particularly to the extent it applies in areas traditionally reserved for public expression, such as public streets and sidewalks), must be unrelated to the suppression of ideas and must proscribe *no more speech than is necessary*.

With these considerations in mind, the ACLU OF KENTUCKY proposes the following to protect women's access to current and/or future abortion providers in Louisville Metro while ensuring that individuals' right to engage in constitutionally protected expression is protected and that any restrictions on that right, if necessary, are narrowly tailored. Specifically, the ACLU OF KENTUCKY recommends that the Louisville Metro Council:

- Allocate resources to the Louisville Metro Police Department (LMPD) for specific training on the prevention of (and response to) harassment, intimidation, and violence against reproductive healthcare providers, facilities, and patients under existing federal, state, and local laws; and
- Allocate resources to LMPD for increased enforcement of existing laws at current and/or future abortion providers.

To the extent the Louisville Metro Council's Public Safety Committee concludes that the foregoing recommendations are insufficient to adequately protect women seeking abortion services in Jefferson County, the ACLU OF KENTUCKY further recommends:

⁴ *McCullen v. Coakley*, 134 S.Ct. 2518, 2535 (2014) ("We have, moreover, previously recognized the legitimacy of the government's interests in 'ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services.'" (quoting *Schenck v. Pro-Choice Network of Western N.Y.*, 519 U.S. 357, 376 (1997))). *See also* Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248, which creates a civil right of action for "any person aggrieved" by the enumerated conduct and grants authority to both the Attorney General of the United States and the state's Attorney General to commence a civil action if there is "reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation" of the Act.

⁵ *See, e.g., Burson v. Freeman*, 504 U.S. 191 (1992) (upholding law banning electioneering within 100 feet of the entrance to a polling place, in part, because the law protected the right to vote freely and in ensuring the integrity and reliability of elections); *Frisby v. Schultz*, 487 U.S. 474 (1988) (upholding restriction on "focused picketing taking place solely in front of a particular residence" because it served the state's interests in "[p]reserving the sanctity of the home" and "residential privacy.").

- Creating a fixed, 8-foot wide rectangular buffer zone from the street to the clinic entrance that would ensure unimpeded access for patients yet allows individuals desiring to engage in protected expression to convey their message.⁶

Thank you in advance for your consideration of this very important public safety issue, and please feel free to contact us if we can be of service to the Committee.

Sincerely,



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⁶ See *McCullen*, 134 S.Ct. at 2536 (invalidating 35-foot buffer zone, in part, because it lacked narrow tailoring given that it prevented individuals from engaging in “normal conversation and leafletting on a public sidewalk”). See also *Hill v. Colorado*, 530 U.S. 703 (2000) (upholding an 8-foot “floating” buffer zone ordinance barring individuals, within 100 feet of a health care facility, from “knowingly” approaching another without consent to pass “a leaflet or handbill to, display a sign to, or engage in oral protest, education, or counseling with” that person); *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357 (1997) (invalidating an injunctive provision creating a “floating” 15-foot buffer zone).