

DR. JOANNE SWEENEY

May 13, 2021

Louisville Metro Council
601 W. Jefferson Street
Louisville, KY 40202

Re: Constitutionality of proposed ordinance creating 10-foot buffer zone

Dear Members of the Louisville Metro Council:

I am writing this letter in support of the proposed ordinance that would create a 10-foot buffer zone outside of healthcare facilities in Louisville. I am a law professor who lives just outside of Louisville and my scholarly work includes a substantial focus on freedom of expression issues. This letter constitutes my individual opinion as a legal scholar. In my professional opinion, this proposed ordinance constitutes a lawful time, place, or manner restriction of freedom of speech and expression because it (1) is content-neutral, (2) serves a significant government interest, (3) is narrowly tailored, (4) and offers ample alternative channels of communication.

First, the proposed 10-foot buffer zone is content-neutral because it does not restrict speech based on the subject matter of the speech or the viewpoint expressed; it restricts all speech within a particular place regardless of what the speech is about. Even though the ordinance is likely to affect anti-abortion protestors more than other groups, the law is still content neutral because the intent of the ordinance is not to restrict what protestors can say and instead is intended to prevent physical harassment of patients and staff.

Second, the ordinance serves a significant government interest: patient safety and access to healthcare facilities. In a prior 15-foot buffer-zone case, the Supreme Court noted that there is a significant government interest 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.” *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 361 (1997). In addition, as the documents attached to the proposed ordinance show, the government’s interests here are not imaginary; patients have been repeatedly harassed by protestors, necessitating multiple calls to the police.

Third, the proposed ordinance is narrowly tailored because it creates a very small buffer zone that allows protestors to still speak and be heard by the people entering or exiting healthcare

1724 E. Oak St.
New Albany, IN
47150

EMAIL joannemsweeney@gmail.com
SSRN https://privpapers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1277827

facilities. In addition to the 15-foot buffer zone case mentioned above, the Supreme Court has previously upheld a 36-foot buffer zone around an abortion clinic and explicitly found such a buffer zone to be narrowly tailored to the government's interest in "protecting access to the clinic and facilitating an orderly traffic flow on the street." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 757 (1994).

Further, this buffer zone is necessary here. As noted in the proposed ordinance, several healthcare facilities have indicated their support for the buffer zone. More importantly, existing efforts to curtail the excessive tactics used by protestors have been insufficient. The police have frequently been called to intervene when conflicts arise between protestors and clinic patients and they have had difficulty doing so without a clear demarcation of where protestors are permitted to be outside the clinic. The creation of a 10-foot buffer zone would directly address this issue and make it easier for the police to do their work and protect patients while respecting the rights of protestors.

Finally, the proposed ordinance does provide ample alternative channels of communication for protestors. A 10-foot buffer zone will still allow protestors to speak to the public and individuals who pass by as well as hold signs to indicate their views. Accordingly, these protestors will be able to be seen and heard by their target audience, which, according to the Supreme Court in *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 757 (1994), is all that is required. The only thing the protestors will no longer be able to do is physically block or touch patients, which is not protected by the First Amendment.

In all, based on existing Supreme Court cases, the proposed buffer zone is an extremely modest and, more importantly, constitutional, restriction on protestors' freedom of expression. The Supreme Court has previously, and repeatedly, permitted much larger buffer zones around abortion clinics in cases that presented less evidence of a need for patient protection. In my opinion, the proposed ordinance is well within the parameters of a valid time, place, or manner restriction on speech.

Sincerely,



Dr. JoAnne Sweeny

1724 E. Oak St.
New Albany, IN
47150

EMAIL joannemsweeny@gmail.com
SSRN https://privpapers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1277827