



FEMINIST MAJORITY FOUNDATION

Working for Women's Equality

May 19, 2021

Louisville Metro Council
601 West Jefferson Ave
Louisville, Kentucky 40202

Dear Councilwoman Cassie Armstrong, Council President David James, Councilman Jacorey Arthur and Councilman Bill Hollander:

I write today in support of Ordinance No. O-179-21, An Ordinance Amending The Louisville Metro Code Of Ordinances To Ensure Safe, Unobstructed Entry To And Exit From A Healthcare Facility (the "Safety Zone Ordinance"). For more than thirty years, the Feminist Majority Foundation's National Clinic Access Project, which I direct, has worked with reproductive health care providers, local, state and federal elected officials, community organizations, and law enforcement to protect clinics, providers, staff, and patients from anti-abortion harassment and violence, while respecting the rights of those who lawfully choose to protest against abortion. We also periodically publish national clinic violence surveys. I have traveled to and worked in communities across the country, including many cities in the South. In my opinion, EMW Women's Surgical Center ("EMW") patients, staff, volunteers and Louisville's downtown community experience some of the most egregious anti-abortion harassment, intimidation, and interference in the country.

During the past several years, Louisville has experienced a significant and sustained increase in the type of anti-abortion harassment that has led to tragic outcomes in other cities. We respectfully submit that the Safety Zone Ordinance is both necessary and appropriate, given the indisputable evidence of escalating harassment in Louisville, the fact that such a buffer zone has proven effective in maintaining safe access to medical care and in preventing confrontations that may lead to violence, and that the Ordinance is narrowly-tailored and constitutional.

First, there can be no serious question that anti-abortion harassment and physical confrontations are on the rise in Louisville, creating an increasingly volatile situation. EMW is a primary target of these activities. Because of the dangerous and sustained actions targeting EMW, we worked with a local volunteer to help them establish a legal monitoring program at the clinic to document anti-abortion harassment. In the past 17 months—since the beginning of 2020—that volunteer legal monitoring program together with other volunteers and observers recorded:

- 284 incidents in which individuals were involved in battery, assault, or physical contact at or around the entrance of EMW;
- 218 patients and companions who were followed and harassed by anti-abortion demonstrators;
- 379 instances in which anti-abortion demonstrators trespassed onto clinic property; and
- 550 occasions on which anti-abortion demonstrators obstructed or interfered with access to EMW.

These startling numbers reflect the reality on the ground at EMW: anti-abortion harassment and violence is essentially an everyday occurrence in Louisville.

Second, experience in Louisville and with similar ordinances in other cities around the country shows unequivocally that a “safety zone” is smart public policy in these circumstances, helping to lower the temperature around reproductive health care clinics, aiding the police in doing their job, and protecting the public, patients, providers, and demonstrators themselves by reducing conflict and the likelihood of escalating violence. The Safety Zone Ordinance would create a bright line for law enforcement that would make it easier for officers to ensure public safety while protecting the rights of anti-abortion demonstrators. Drawing that line can be challenging. When Louisville Metro Police Department (“LMPD”) officers are stationed across the street from the clinic, it is often difficult to see the physical contact and jostling that occurs at the door of the clinic. The Safety Zone Ordinance would remove gray areas and create a clear, marked path to allow safe entrance and exit from reproductive health care clinics, which would reduce conflict around the entrances to clinics without impeding the First Amendment rights of demonstrators.

We need look no further than Louisville itself to see that the Safety Zone Ordinance will be effective in deescalating tension around reproductive health care clinics. In May 2017, anti-abortion demonstrators affiliated with Operation Save America, a national organization with more extreme anti-abortion views, descended on Louisville. Early in the morning, as a patient approached the entrance to EMW, eleven individuals—including one minor and only one of whom was a resident of Kentucky—rushed EMW’s only public entrance and sat down with their backs against the door and refused to move, rendering the clinic inaccessible. The demonstrators refused orders from LMPD officers to vacate the premises and were eventually arrested and charged with trespassing.

The U.S. Department of Justice later filed a civil suit against the demonstrators for violating the federal Freedom of Access to Clinic Entrances Act, which prohibits individuals from physically obstructing access to reproductive health clinics. *See* 18 U.S.C. § 248. In that case, the federal court in Louisville granted the Justice Department’s request for an injunction that created a temporary buffer zone around EMW—similar to the one that would be made permanent by the Safety Zone Ordinance. The Department of Justice sought the temporary buffer zone because Operation Save America—the national organization that coordinated the blockade—chose Louisville as the site of its annual event in July 2017.

More than 200 members of Operation Save America descended on Louisville for the event and there were large demonstrations outside EMW. But, U.S. Marshals successfully enforced the buffer zone, preventing what could have been a volatile situation from escalating to confrontation or violence. The Operation Save America demonstrators were still able to speak to patients and distribute literature to them outside the buffer zone.

Unfortunately, as the timeline appended to this letter shows, out-of-state agitators and others targeted EMW after the buffer zone injunction expired, threatening the safety of patients, staff, the public, and demonstrators themselves. Indeed, we have observed an uptick not only in the frequency of anti-abortion activity around EMW, but an escalation in the severity of the threat. Since the expiration of the temporary buffer zone, EMW has faced large crowds of demonstrators, a firebomb threat, and a demonstrator with a concealed weapon that was visible through his clothing who threatened a clinic escort while gesturing at his weapon.

We are also concerned that the local and national demonstrators targeting EMW are engaging in more radical and dangerous conduct. OSA leaders and adherents organized groups of followers to participate in the January 6 Capitol riot. A Michigan OSA member arrested for blockading

EMW who has returned to demonstrate at EMW - led clinic blockades in Arkansas and Michigan this year. Closer to home, on March 6, just two weeks after an LMPD officer parked his squad car in front of EMW and *joined* a protest wearing what appeared to be his uniform and service weapon, a protester brazenly seized a patient with both arms and forcibly moved her 15 or more feet down the sidewalk away from the EMW's entrance.

Finally, the Safety Zone Ordinance is narrowly tailored and constitutional, burdening no more speech than is necessary to advance important governmental interests. In this situation, the zone itself is narrow, allowing patients and others a ten-foot wide walkway into the clinic, without impacting the protestors' ability to be heard at a normal speaking level or to share materials from a few feet away. Moreover, given the depth and breadth of the sidewalk outside of EMW, the protestors are clearly able to share their views with members of the public and with patients throughout the area near the clinic. The Supreme Court has recognized that narrowly tailored buffer zones around reproductive health care clinics that serve a significant government interest do not violate the First Amendment. *See Hill v. Colorado*, 530 U.S. 703, 725 (2000); *see also McCullen v. Coakley*, 573 U.S. 464, 477 (2014) ("Even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."). More recently, the Supreme Court has declined to hear challenges to similar buffer zones in Chicago and Pennsylvania. *See Price v. Chicago*, 915 F.3d 1107 (7th Cir. 2019), cert. denied sub nom. *Price v. City of Chicago, Illinois*, 141 S. Ct. 185 (2020); *Reilly v. City of Harrisburg*, 790 F. App'x 468 (3d Cir. 2019), cert. denied sub nom. *Reilly v. City of Harrisburg, Pennsylvania*, 141 S. Ct. 185 (2020).

The Safety Zone Ordinance is necessary to protect patients, providers, the public, and demonstrators in the face of persistent harassment and violence. Given past experience in Louisville and other cities around the country, there is every reason to believe that it will effectively deescalate tensions at reproductive health care clinics and provide LMPD officers with clearer enforcement options. And, given its narrow tailoring and the important government interests, it is constitutional.

We urge the Metro Council to approve the Safety Zone Ordinance.

Sincerely,

duVergne R. Gaines, JD
Director, National Clinic Access Project
Feminist Majority Foundation