

Revisiting the bubble zone debate

Why the BCCLA should oppose bubble zone legislation

by sam black, vice president & steven davis, executive member

The BCCLA should categorically oppose the *Access to Abortion Services Act*.

The central civil liberties issue in this case is the right to freedom of expression: should a group that is passionately opposed to the life-style choices of certain individuals and the public policy which protects those choices be permitted to express their opinions in public, even when it targets specific individuals, may be deeply upsetting to those persons, and may have an impact that has important consequences for these individuals' future?

The situation is not without precedent. Other examples of where these conflicting interests may arise are antiwar demonstrators who protest at the offices processing new conscripts and volunteers, animal rights activists who demonstrate at a restaurant that specializes in dishes concocted from intelligent or endangered species, and opponents of genetically engineered foods who demonstrate before supermarket chains which stock products from the responsible firms. In each of these cases we can imagine demonstrators singling out patrons or conscripts and disturbing them with what they say. To disturb is indeed the aim of protest.

Would the Association contemplate bubble zone legislation on these occasions? Definitely not. What then could possibly make the abortion case different?

Legal Limits

Opposing bubble zones does not mean "anything goes" at a

protest. Laws that govern assault, harassment, and freedom of speech apply. If demonstrators become unruly and defy the law, an injunction can be sought against them.

Injunctions are preferable to bubble zones because those who seek an injunction must provide evidence that there is a reasonable risk that protesters

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will break the law. Injunctions provide safety. This acts as a safeguard for ensuring speech will not be suppressed simply

because some find its contents disturbing.

The arguments holding that nothing short of bubble zones are adequate rest on a variety of implausible assumptions.

Protecting Privacy?

The claim that privacy should supersede the right to protest around abortion clinics is wrong for a number of reasons.

First, proponents of bubble zones argue the zones will decrease the likelihood that individuals who use this state service can be identified. This is unlikely because the bubble zone law is not rationally connected to privacy. Inexpensive equipment is available to take reliable photos or videos of staff and patients, even when bubble zones are in place.

It is also objectionable to justify bubble zones on privacy grounds because individuals have no right to remain anonymous in these public spaces. The fact that patients are using a state

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Opposing bubble zones

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service rather than patronizing a supermarket, restaurant or war is equally irrelevant. If there were such a right, the state would have a corresponding duty to shuttle them into clinics and hospitals in unmarked vehicles, which is absurd.

Nor does the state have the right even to prevent members of the public, for example reporters, from determining whether some gangster or athlete is seeking admission to a hospital emergency room.

Second, bubble zone supporters argue that if the Association opposes bubble zones, the Association does not take privacy seriously.

This is simply not true. The Association *should* oppose demonstrations around physicians' homes since they disrupt many aspects of his or her life. Protests at a clinic only impact on one facet of a person's life, and possibly for no more than one hour. They target individuals during the time at which they are involved in the activities which protestors find objectionable. The protests at hospitals and clinics are narrowly rather than broadly targeted, and consequently do not trench on legitimate privacy interests.

Third, proponents argue that there is a special privacy interest implicated in this case: the right to have one's personal airspace respected in public venues. Surely there is no such right. People have the right not to be assaulted or harassed in public, or otherwise have their person violated. But the privacy right being contemplated here goes

well beyond those simple rights, by seeking to provide individuals with a veto over the messages that enter their personal airspace.

If people can claim this oversized privacy right to 'personal airspace', then any street corner orator or street side religious proselytizer could be shut down. The Association would take a dim view of any such prohibition.

The importance of proximity in abortion protest

Zone defenders say they do not restrict the content of the speech but only its place and manner and that none of the content is suppressed. This is not entirely true.

Human beings have a regrettable capacity to ignore the most savage events when those events are merely described in language. In order for certain kinds of expression to have their full impact, it is essential that they be accompanied by images which are as graphic as possible.

The shift in public opinion during the Vietnam war is widely attributed, for example, to the nightly television footage depicting American casualties, along with the terrible suffering inflicted on the Vietnamese people. Someone protesting that war had every right to confront people in public spaces, including those enlisting for military service, with disturbing images of children burned with napalm or blown apart by land mines. Similarly, animal rights activists should have every right to draw our attention to the horrific conditions prevailing on

many commercial farms, even by picketing restaurants.

Given the way peoples' minds process information, it is clear that something is lost when information is conveyed through language alone. Images make an important impact. And it is equally critical that images are seen close up, where it is impossible to avert one's gaze from their disturbing content.

Thus, bubble zones are much more than simply a time and manner restriction. The distance between an image and the viewer often determines whether content is understood. Imagine a state censor ruling that news footage of the Vietnam war could only be lawfully viewed on televisions placed at a distance of 50 meters!

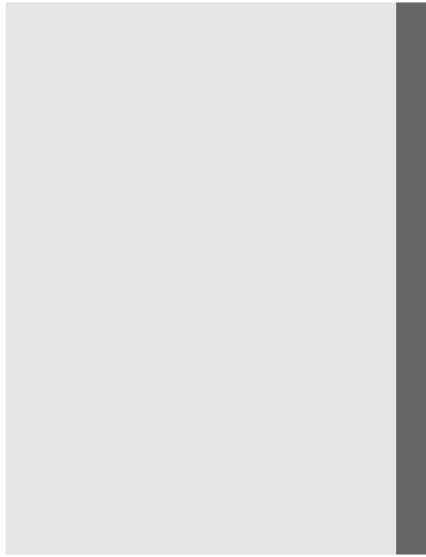
Bubble zone supporters may respond that this case is no different from a pro-child pornography group that advertises its political cause using large billboards. The Association would have no problem with restrictions on such billboards. Why should this case be any different?

In fact, the cases are totally dissimilar.

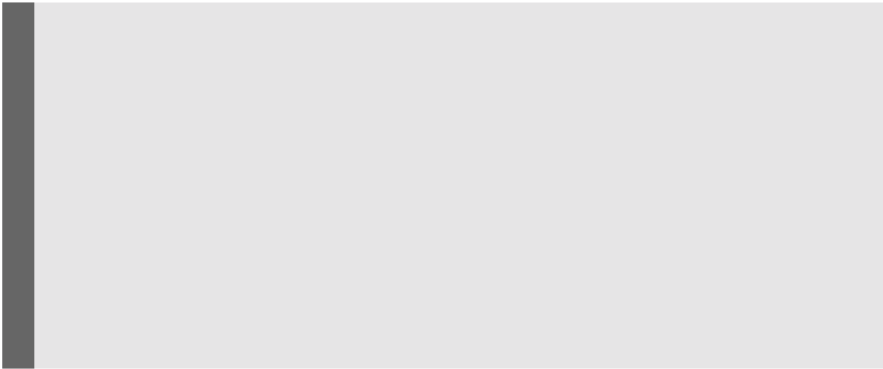
First, anti-abortion protests are directed at individuals who are contemplating the use of a service, just at the time when they are making their decision.

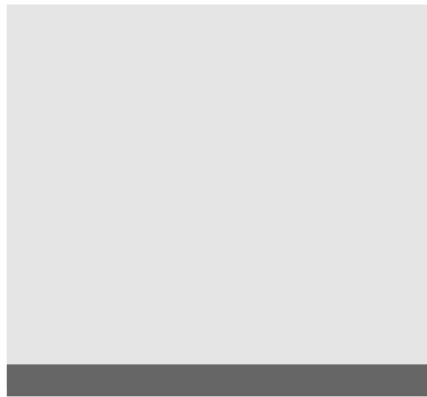
On the other hand, a billboard is not narrowly targeted. It hovers over people continuously. This broad targeting creates a strong presumption against a right to that form of expression.

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