

18-2884

IN THE
United States Court of Appeals
FOR THE THIRD CIRCUIT

COLLEEN REILLY; BECKY BITER; ROSALIE GROSS,
Appellants,

against

CITY OF HARRISBURG; HARRISBURG CITY COUNCIL; MAYOR ERIC PAPPENFUSE,
in his official capacity as Mayor of Harrisburg,
Appellees.

*On Appeal from the United States District Court
for the Middle District of Pennsylvania,
No. 1-16-cv-00510 (Hon. Sylvia H. Rambo)*

**BRIEF FOR *AMICI CURIAE*
WOMEN'S LAW PROJECT, NATIONAL ABORTION
FEDERATION, FEMINIST MAJORITY FOUNDATION,
NATIONAL WOMEN'S LAW CENTER, NEW VOICES
FOR REPRODUCTIVE JUSTICE, SOUTHERN POVERTY
LAW CENTER, AND INTERNATIONAL MUNICIPAL
LAWYERS ASSOCIATION, INC. IN SUPPORT OF
APPELLEES FOR AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and LAR 26.1, *Amici Curiae* make the following disclosure:

1) For non-governmental corporate parties, please list all parent corporations.

None.

2) For non-governmental corporate parties, please list all publicly held companies that hold 10% or more of the party's stock. **None.**

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests. **None.**

4) In all bankruptcy appeals, counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant. **N/A**

WOMEN'S LAW PROJECT

NATIONAL ABORTION FEDERATION

FEMINIST MAJORITY FOUNDATION

NATIONAL WOMEN'S LAW CENTER

NEW VOICES FOR REPRODUCTIVE JUSTICE

SOUTHERN POVERTY LAW CENTER

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INTEREST OF *AMICI CURIAE*

Amici, the Women’s Law Project (“WLP”), the National Abortion Federation (“NAF”), the Feminist Majority Foundation, the National Women’s Law Center, New Voices for Reproductive Justice, the Southern Poverty Law Center, and the International Municipal Lawyers Association, Inc., are national and local organizations dedicated to ensuring women’s safety and access to reproductive healthcare. *Amici* are identified individually in the annexed Addendum.

Amici believe that reasonable and appropriate buffer zones, such as the one Harrisburg enacted, are crucial to protecting the health and safety of those who seek and provide reproductive health care.¹ Such buffer zones protect access to facilities and reduce the risk of violence, without impermissibly interfering with protected speech or assembly. *Amici* submit this brief in support of affirmance to highlight the long history of violence to which reproductive health care facilities and the patients they assist have been subjected, and to urge this Court to uphold Harrisburg Code of Ordinances § 3-371.4 (the “Ordinance” or “Harrisburg’s Ordinance”).²

¹ WLP and NAF served as *amici curiae* in support of appellees in the currently pending case *Bruni v. Pittsburgh*, No. 18-1084 (3d Cir. 2018).

² Pursuant to Fed. R. App. P. 29, undersigned counsel for *amici* certify that no party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money intended to fund preparing or submitting this brief; and no

SUMMARY OF ARGUMENT

For decades, reproductive health care facilities have been targets of violence, harassment, and obstruction. The widespread violence that abortion providers face, in type and in frequency, is alarming and not a historic relic. The violence and vitriol directed at providers and the patients they serve have increased in recent years. Physicians and staff are murdered, maimed, stalked, and subjected to death threats. Patients are assaulted, harassed, and physically blocked from entering clinics. Facilities are destroyed by bombs, arsons, and vandalism, and continue to experience daily acts of violence despite enhanced security measures.

Local governments cannot, and should not, stand by and allow their citizens to live in terror. Commonsense buffer zones of the type at issue here constitute a reasonable response to such violence. Local governments have a significant interest in ensuring public safety and protecting women's access to reproductive health care, and they have responded to the violence through measures that preserve abortion opponents' ability to peaceably express their views. After several instances requiring police interjection in disputes between those seeking medical counseling and treatment and those who would counsel against their actions, the City of Harrisburg, in an effort to prevent violent confrontations and

person or entity, other than *amici*, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. All parties have consented to *amici* filing this brief in this proceeding.

ensure unfettered access to clinics, enacted the Ordinance to promote the health and welfare of Harrisburg residents and visitors to Harrisburg's health care facilities.

Reasonable measures, such as the Ordinance, are appropriate responses to the continuing harm of harassment and violence against abortion providers; without them, governments would be unable to ensure public safety. Such buffer zones have been shown to decrease criminal activity near facilities and improve access without needing law enforcement to continuously be on site. On occasions when law enforcement do need to be involved, the buffer zones provide them a safe zone in which to operate to ensure that individuals can exercise their First Amendment rights, while allowing clinic staff and patients to freely access health care facilities without being subjected to violent attacks.

The Ordinance is a content-neutral, narrowly-tailored regulation that creates a buffer zone extending only 20 feet from a facility's entrance, exit, and driveway, irrespective of the message or viewpoint conveyed. The Ordinance is constitutional and in line with Supreme Court precedent, as it leaves open ample alternative channels of communication, allowing individuals to express their views freely beyond the buffer zone.

In light of the continuing violence, harassment, and obstruction that reproductive health care facilities face, *amici* ask the Court to affirm the District Court’s order upholding the Ordinance.

ARGUMENT

I. Abortion Facilities Have Long Been Targets of Violence

The history of violence, harassment, intimidation, and obstruction aimed at reproductive health care facilities is a key backdrop to the establishment of the Ordinance. Since 1977, when NAF began tracking attacks and threats against abortion providers, anti-abortion extremists have murdered 11 individuals and attempted to murder 26 others, assaulted scores of health care workers, their patients, and law enforcement personnel, caused millions of dollars in property damage, and made countless threats against clinics, their employees, and their patients—all in an effort to intimidate practitioners and patients and suppress abortion care. *National Abortion Federation 2017 Violence and Disruption Statistics*, prochoice.org/wp-content/uploads/2017-NAF-Violence-and-Disruption-Statistics.pdf (hereinafter “NAF 2017 Statistics”).³

³ NAF derives its data from law enforcement and monthly surveys of members. Because not all incidents are reported and not all providers report to NAF, the actual number of incidents is likely significantly higher. NAF statistics prior to 2013 include the United States and Canada, while those from 2013 to 2017 include the United States, Canada, and Colombia.

A. Violence Targeting Reproductive Health Care Facilities is Rampant

1. *Violence Against Reproductive Health Care Facilities From 1977-2005*

Between 1977 and 2005, anti-abortion extremists murdered seven individuals, attempted to murder 17 others, and engaged in no fewer than 41 bombings, 581 bomb threats, 172 arsons, and 88 attempted bombings and arsons of abortion clinics. NAF 2017 Statistics. On Christmas day in 1984, a group of abortion opponents bombed three facilities in Pensacola, Florida calling the bombings “a gift to Jesus on his birthday.” *Abortion Clinic Bombings Meant as ‘Gift to Jesus,’* L.A. TIMES, Jan. 4, 1985. In 1997, an anti-abortion extremist drove his truck filled with gasoline and propane tanks into a California facility in an attempt to blow it up. *Man Sentenced for Attempt to Bomb Abortion Clinic,* L.A. TIMES, Feb. 10, 1998.

In 2000, anti-abortion extremists set fire to a New Hampshire facility; it was the clinic’s second episode of arson. *National News Briefs; Fire at Abortion Clinic is Investigated as Arson,* N.Y. TIMES, May 30, 2000. Later that year, an abortion opponent threw bricks at a Illinois clinic before driving his car through the facility and taking an axe to its walls and windows. *Axe-Wielding Priest Attacks Abortion Clinic,* CNN.com, Sept. 30, 2000.

Abortion opponents tried to disrupt clinics' operations through a number of other methods, including blockading entrances and harassing personnel. Between 1977 and 2005, law enforcement authorities made at least 33,827 arrests for violent and disruptive incidents against facilities. NAF 2017 Statistics. In 1988, opponents blocked the entrance to a Vermont clinic on numerous occasions, once chaining their necks to a park bench that they moved in front of the clinic's door, requiring the fire department to spend over six hours cutting the locks. Alissa J. Rubin, *The 'Other' Abortion Case*, WASH. POST, Mar. 22, 1992.

While attacks were primarily focused on destroying or disrupting clinic operations and the buildings themselves, the attacks later evolved into violence targeted at individuals. During 1977 to 2005, abortion opponents engaged in at least 655 anthrax and bioterrorism threats. NAF 2017 Statistics. Abortion opponents began using anthrax hoax letters as a tactic to terrorize abortion providers and, in 2001, NAF placed its member facilities and doctors on heightened alert after more than 80 abortion clinics received such letters with powder and accompanying messages including "anthrax" and "Have a Nice Death." Rachel Zimmerman, *Suspicious Mail Floods Abortion Clinics, Where Staff Knows the Drill*, WALL ST. J., Oct. 16, 2001; FEMINIST MAJORITY FOUNDATION, *2000 National Clinic Violence Survey Report* (Jan. 22, 2001).

During the same period, 1977 to 2005, abortion opponents also engaged in at least 5,043 incidents of violence against abortion providers, including 469 stalking incidents and 100 butyric acid attacks. Abortion providers also received at least 364 threats of death or physical harm. NAF 2017 Statistics. In the first seven months of 1994 alone, staff members at nearly one in four abortion clinics were subjected to death threats. FEMINIST MAJORITY FOUNDATION, *1994 National Clinic Violence Survey*.

These were not empty threats, and in some cases anti-abortion extremists followed through. In 1993, Michael Griffin murdered Dr. David Gunn during an abortion protest outside of Dr. Gunn's Pensacola, Florida clinic. Liam Stack, *A Brief History of Deadly Attacks on Abortion Providers*, N.Y. TIMES, Nov. 29, 2015. The following year, Paul Hill murdered Dr. John Britton and his volunteer security escort and wounded his other escort outside a Pensacola clinic that had been the target of multiple bombings dating to 1984. *Id.*; CNN Wire Staff, *Arrest Made in Florida Clinic Fire*, CNN.com, Jan. 5, 2012.

These violent extremists often consulted with and encouraged one another. After corresponding with Griffin in jail, Shelley Shannon attempted to murder Dr. George Tiller, an abortion provider in Kansas. Dahlia Lithwick, *The Murderer Who Started a Movement*, SLATE, Oct. 31, 2017; Judy L. Thomas, *Woman Who Shot Wichita Abortion Doctor, Bombed Clinics in 1990s Released From Prison*,

KANSAS CITY STAR, May 22, 2018. Shannon, who was sentenced to 11 years' incarceration for attempted murder, also received a 20-year sentence for a string of arsons, bombings, and vandalism of clinics in California, Nevada, and Oregon. *Id.*

In December 1994, John Salvi murdered two receptionists after opening fire at two Massachusetts clinics. Stack, *A Brief History of Deadly Attacks on Abortion Providers*. Salvi was arrested days later, moments after opening fire again at another facility in Virginia. *Id.*

Eric Rudolph detonated a nail bomb planted outside an Alabama clinic, killing an off-duty police officer working as the facility's security guard, and partially-blinding a nurse. *Id.* He also injured seven people with two bombs that he planted at a clinic in Georgia; the first targeted abortion providers and patients, while the second targeted first responders arriving at the scene. *See Terror From the Right – Plots, Conspiracies and Racist Rampages Since Oklahoma City*, SOUTHERN POVERTY LAW CENTER, 2012. Rudolph also bombed a gay club in Atlanta, injuring five, and bombed the 1996 Atlanta Olympics, killing a woman and causing over 100 injuries, in an effort to anger and embarrass the United States for legalizing abortion care. Shaila Dewan, *Olympics Bomber Apologizes and is Sentenced to Life Terms*, N.Y. TIMES, Aug. 23, 2005.

In 1998, James Kopp murdered Dr. Barnett Slepian, an abortion provider in New York, by shooting him through his kitchen window after he returned home

from his father's memorial service. Stack, *A Brief History of Deadly Attacks on Abortion Providers*. Kopp is also a suspect in shooting several other abortion providers. *Id.*

While some protesters are peaceful, many of the more violent extremists start as protesters and then escalate their conduct. Shelley Shannon started as an avid protester before she later participated in bombings and arson attacks against reproductive health care facilities and attempted to murder Dr. Tiller. Dahlia Lithwick, *The Murderer Who Started a Movement*, SLATE, Oct. 31, 2017. Paul Hill regularly protested and advocated for the murder of physicians at the reproductive health care center where he later murdered Dr. Britton and his volunteer escort. Kathy Sawyer, *Turning From 'Weapon of the Spirit' to the Shotgun*, WASH. POST, Aug. 7, 1994.

By 2005, almost one-fifth of facilities nationwide were targets of severe anti-abortion violence, including deadly attacks, assaults, bombings, invasions, blockades, chemical attacks, arsons, stalking, gunfire, and bomb and arson threats. FEMINIST MAJORITY FOUNDATION, *2005 National Clinic Violence Survey* (May 2006). Of those facilities, 20% experienced at least one physician or other staff member resigning from fear of violence in 2005 alone. *Id.*

2. *Continued Violence Against Reproductive Health Care Facilities From 2006-2014*

This violence has continued unabated in more recent years. Between 2006 and 2014, extremists murdered another abortion provider, and clinic employees and their patients were subjected to 53 assaults and batteries and 54 threats of death or harm. NAF 2017 Statistics. During this period, there were also 5,173 incidents of hate mail and harassing calls, 1,213 incidents of trespassing, and 726 incidents of obstruction targeted at abortion facilities. *Id.*

In 2006, an anti-abortion extremist set fire to a women's health facility in Iowa, mistakenly believing that the facility provided abortion care. *Sentencing Set in Arson at Davenport Women's Clinic*, DISPATCH-ARGUS, May 25, 2007. In 2007, an extremist constructed and left a nail bomb, a propane tank, and a mechanism "akin to a rocket" in a Texas clinic's parking lot. *Man Arrested for Bomb at Texas Abortion Clinic*, REUTERS, Apr. 27, 2007. Later that year, arsonists in New Mexico destroyed a clinic and, shortly thereafter, extremists set fire to another nearby clinic and smashed the windows of a nearby facility. Dan Frosch, *Albuquerque Has Renewal of Attacks on Abortion*, N.Y. TIMES, Dec. 28, 2007.

In 2009, Dr. Tiller, who survived an attempted murder by Shelley Shannon, was murdered execution style by Scott Roeder while standing in his church's foyer. Stack, *A Brief History of Deadly Attacks on Abortion Providers*.

In 2011, police arrested Ralph Lang the day before he planned to “lay out abortionists” at a Wisconsin clinic. John Rony, *Wisconsin Man Charged with Plan to Attack Abortion Clinic*, REUTERS, May 27, 2011. As with so many other anti-abortion extremists, Lang was a regular protester outside the clinic that he planned to attack. *See id.* He was seen at the clinic just one week prior to his arrest and had been arrested outside the clinic years earlier, telling police that the “Bible states that anyone involved in abortion should be executed.” *Id.*

As with the preceding decades, abortion opponents did not limit their attacks to clinics, but also targeted practitioners and patients. The percentage of facilities experiencing severe violence increased from 20% in 2008 to 23.5% in 2010, the highest level of violence recorded in 13 years. FEMINIST MAJORITY FOUNDATION, *2010 National Clinic Violence Survey* (Sept. 2010). Stalking incidents also increased from 4% in 2008 to 6.4% in 2010. *Id.* In 2014, 51.9% of facilities experienced threats and intimidation—almost double the amount reported just four years prior. FEMINIST MAJORITY FOUNDATION, *2014 National Clinic Violence Survey* (Jan. 2015) (hereinafter “2014 FMF Survey”).

Abortion opponents also employed tactics during this period to intimidate abortion practitioners in their personal lives. For example, opponents increased the use of “wanted” style posters and fliers displaying physicians’ names, pictures, and home addresses. FEMINIST MAJORITY FOUNDATION, *2016 National Clinic Violence*

Survey (Feb. 2017) (hereinafter “2016 FMF Survey”); 2014 FMF Survey. Drs. Gunn, Britton, Tiller, and Slepian, who were all murdered because they provided abortion care, were each featured on “wanted” posters prior to their murders. 2016 FMF Survey. In 2012, anti-abortion extremists advanced their intimidation tactics by launching AbortionDocs.org, a website providing easy access to physicians’ personal information, including their photographs, addresses, and telephone numbers. *See AbortionDocs.org Tops 5,000 Document Uploads, Becoming the Largest Online Depository of Abortion Records*, CHRISTIAN NEWS WIRE, May 27, 2014.

3. *Reproductive Health Care Facilities
Continue to be Targets of Violence*

The violence aimed at abortion providers has continued in recent years. By the end of 2016, almost half of all abortion providers experienced some type of severe violence, threats of violence, or harassment; the most common types included death and bomb threats, stalking, blocking clinic access, and clinic invasions. 2016 FMF Survey. This trend has continued. In 2017, threats of death or harm nearly doubled and, in the first half of 2018, nearly half of all clinics experienced one or more incidents of severe violence, threat of violence, or severe harassment. 2018 FEMINIST MAJORITY FOUNDATION, *National Clinic Violence Survey* (Jan. 2019) (hereinafter “2018 FMF Survey”); NAF 2017 Statistics.

In 2015, Robert Dear Jr. opened fire at a Colorado Springs Planned Parenthood, killing two civilians and a police officer, and injuring nine. Trevor Hughes, *Planned Parenthood Shooter Happy with His Attack*, USA TODAY, Apr. 11, 2016. In early 2018, a man deliberately crashed a truck into a New Jersey clinic, injuring a pregnant woman and two others. *Police: Man Crashes Truck Into Planned Parenthood Clinic*, AP NEWS, Feb. 16, 2018. In March 2018, authorities announced that men suspected of bombing a Minnesota mosque in August 2017 may have also attempted to bomb an Illinois clinic. Michael Tarm & Amy Forliti, *3 Illinois Men, Including One Who Drafted a Border Wall Plan For Trump, Charged with Minnesota Mosque Bombing*, CHICAGO TRIBUNE, Mar. 14, 2018. As recently as March 2019, a Missouri Planned Parenthood suffered an arson attack caused by a “Molotov cocktail-type incendiary device” and gasoline-filled buckets. Mihir Zaveri, *Man Charged in Arson at Planned Parenthood Clinic in Missouri*, N.Y. TIMES, Mar. 4, 2019.

Throughout 2017 and 2018, there was also a significant increase in activities aimed at disrupting facility services, intimidating patients and providers, and preventing women from obtaining abortion access, such as blockading of clinic entrances. FMF 2018 Survey; NAF 2017 Statistics. Incidents of obstruction rose drastically in 2017 to 1,704, nearly tripling from the prior year, as well as

trespassing incidents, which more than tripled in 2017 from the previous year.

NAF 2017 Statistics.

In May 2017, about a dozen anti-abortion extremists were arrested for violating the Freedom of Access to Clinic Entrances Act after sitting with locked arms in front of a Kentucky clinic's entrance. Sofia Resnick, *Abortion Clinic Trespassing Tripled in 2017. Trump May Have Emboldened It*, REWIRE NEWS, May 7, 2018. At another clinic, an individual threatened to "shoot up" the clinic with an assault rifle. NAF 2017 Statistics. In November 2018, Luke Wiersma, a member of the extremist anti-abortion group "Army of God," pled guilty and admitted to sending threatening messages to two abortion clinics in Chicago and Indiana in 2017. Becky Jacobs, *Dyer Man Pleads Guilty in Threats to Chicago, Hammond Abortion Clinics*, POST-TRIBUNE, Nov. 9, 2018.

In February 2019, 17 year-old Garison Riggs Pate posted online that he was going to "commit jihad" on a Texas reproductive health care facility and included a photo of a male holding a handgun and wearing a cloth covering his face. Aristos Georgiou, *Texas Teen Reportedly Vowed 'To Commit Jihad on Abortion Clinic,' Police Seize Firearms from His Home During Arrest*, NEWSWEEK, Feb. 29, 2019. Police arrested Pates, as well as seized several firearms and other evidence from his home. *Id.*

For the Planned Parenthood in Fort Wayne, Indiana, the increased harassment and intimidation faced by patients, supporters, and providers became so intolerable that it was forced to close its doors in July 2018. Niki Kelly, *Local Planned Parenthood Center Closes*, THE JOURNAL GAZETTE, July 10, 2018. In one instance, anti-abortion activists distributed a flyer with one of the facility's nurse practitioner's name, picture, home address, and a statement saying the woman enabled "child killing by coordinating abortions." *Id.* This same nurse practitioner also received a threatening letter stating a campaign had been launched against her to expose her "role" in abortions. *Id.*

B. Harrisburg's Buffer Zone Ordinance is Essential to Protect Access to Facilities

1. *Violence Against Pennsylvania Reproductive Health Care Facilities*

The violence, harassment, and intimidation targeting Pennsylvania reproductive health care facilities mirror that of the country as a whole. The decades of violence have taken on many forms, from bombings and arsons to fake anthrax attacks.

In 1989, the Allegheny Reproductive Health Center ("ARHC"), located in Pittsburgh, Pennsylvania, suffered vandalism, sabotage, and violence by abortion opponents, including an arson attack, the intentional flooding of its facilities due to drilled holes in its roof, and having the facility's locks repeatedly glued. Decl. of

ARHC Clinical Director, *Crocco v. Pa. Dept. of Health*, No. AP 2018-0778, 2018 PA O.O.R.D. LEXIS 839, *13 (July 13, 2018); *see also Abortion Clinic Fire. Fire Caused \$3,000 to \$5,000 Damage*, ORLANDO SENTINEL, Sept. 7, 1989.

A few years later, a Lancaster facility was fire-bombed in 1993 after its plans to start providing abortion care became publicly known, forcing the facility to close. Alan Sverdlik, *Blasts Rock Atlanta Abortion Clinic*, WASH. POST, Jan. 17, 1997.

In 2001, Clayton Lee Waagner, a self-described anti-abortion “warrior” and prison escapee, terrorized facilities nationwide by mailing letters containing white powder and a note stating, “You’ve ignored our warnings, so now you pay. Enclosed you’ll find the real thing -- Anthrax, very high grade.” Hal Marcovitz, *Man Indicted in Anthrax Scare; Prosecutor: Crusader Sent Letters to Clinics with Threats, Powder*, MORNING CALL, Sept. 20, 2002. Dozens of Pennsylvania facilities received these letters, forcing seven to evacuate and placing others on heightened security. Amy Worden, *Arrest Brings Relief to Pa. Clinic Operators*, PHILADELPHIA INQUIRER, Dec. 6, 2001. Waagner also posted death threats targeting abortion providers, including that he would “escalate the war on abortionists” and “kill as many of them” as he could, on an “Army of God” website. Marcovitz, *Man Indicted in Anthrax Scare*.

Recently, ARHC's Clinical Director stated that she learned that a man with an assault weapon was traveling to the Planned Parenthood of Western Pennsylvania to find and kill the doctor who provided the assailant's girlfriend with abortion care. Decl. of ARHC Clinical Director, *Crocco v. Pa. Dept. of Health*, No. AP 2018-0778, 2018 PA O.O.R.D. LEXIS 839, *13-14 (July 13, 2018).

2. *Harassment of Pennsylvania Reproductive Health Care Facilities*

For decades, Pennsylvania clinics have also been the focus of protests that have disrupted clinic access and threaten provider and patient safety. Between 2013 and 2017 alone, there were no fewer than 6,868 incidents of picketing at Pennsylvania facilities. *National Abortion Federation 2013-2017 Pennsylvania Violence and Statistics Report* (May 22, 2018).

ARHC's Clinical Director stated that protesters follow patients down the sidewalk, insult them, and prey on their anxieties. Decl. of ARHC Clinical Director, *Crocco v. Pa. Dept. of Health*, No. AP 2018-0778, 2018 PA O.O.R.D. LEXIS 839, *13 (July 13, 2018). On Fridays when abortion services are performed at a facility run by Planned Parenthood Keystone, patients entering the facility are victimized by protesters shouting discriminatory and hateful remarks, such as anti-Semitic slurs, jokes about disabilities, and racial epithets. Opinion,

ABORTION: Violence and Hate Speech Not the Answer, YORK DISPATCH, June 23, 2009.

It is not uncommon for protests outside of Pennsylvania clinics to turn violent. In 1985, a group of abortion opponents stormed into a facility during a protest and damaged medical instruments, threw equipment out of a third floor window, and covered the facility's doors, walls, and ceilings with anti-choice propaganda. *Commonwealth v. Markum*, 373 Pa. Super. 341, 348 (1988).

Abortion opponents in Pennsylvania also do not limit these protests to the clinics themselves. Many try to intimidate doctors and staff by protesting outside their homes and in their neighborhoods. John Dunkle, an avid protester outside Pennsylvania reproductive health care facilities, posted death threats against a clinic's physician on his blog, listing the physician's name, photograph, and home address, the fact that she likely wore a bulletproof vest, and detailed instructions about where to shoot her and how to escape detection. Complaint at 6, *Gonzales v. Dunkle*, No. 07-3577 (E.D. Pa. 2007). This physician fled Pennsylvania and abandoned practicing medicine out of fear for her safety. *Id.* at 5. While a federal judge issued an injunction ordering Dunkle to remove the threats and personal information from his website, the Director of Allentown Women's Center ("AWC") has said that Dunkle nonetheless continues to protest outside of the clinic and doctors' homes. Order at 1-2, *Gonzales v. Dunkle*, No. 07-3577 (E.D.

Pa. 2007); Decl. of AWC Executive Director, *Crocco v. Pa. Dept. of Health*, No. AP 2018-0778, 2018 PA O.O.R.D. LEXIS 839, *3 (May 18, 2018).

3. *Harassment of Harrisburg Reproductive Health Care Facilities*

Harrisburg abortion clinics have not been spared the confrontational protesting tactics utilized by abortion opponents elsewhere in the nation that threaten safety and clinic access. Harrisburg Medical Center (“HMC”), a reproductive health center operated by Planned Parenthood, has seen a consistent increase in the number of anti-abortion protesters, an increase it attributes to its December 2011 decision to provide medical abortion. JA131-32 (Tr. of Dep. of Brad Koplinski).

The protesting outside HMC has run the gamut, including trespassing; blocking driveways; photographing and videotaping staff at close range and on private property, as well as creating videos of local supporters and police officers and putting them on the internet; documenting staff members’ and patients’ license plate numbers; yelling harassing and offensive words at staff members and patients; threatening staff members’ family; and pounding on the front window of clinic entrances to harass volunteers and patients. JA132 (Tr. of Dep. of Brad Koplinski). Protesters have also resorted to yelling in patients’ faces and insulting their character and intelligence, including accusing them of being murderers. *Id.*

Ed Snell, a regular protester outside Harrisburg abortion clinics, stood on a platform attached to the roof of his car to circumvent Hillcrest Medical Center's ("Hillcrest") eight-foot fence, which the facility installed to help protect people entering the clinic, to display a large sign reading, "Abortion Causes Breast Cancer." *Attack at Center*, PATRIOT NEWS, Feb. 29, 2008. As Snell was displaying his sign, a patient and her boyfriend were entering Hillcrest when Snell called out, "Real men don't take their girlfriends to abortion clinics," leading to a physical altercation between Snell and the boyfriend. *For Some, Abortion is Still a Consuming Cause*, PATRIOT NEWS (Jan. 13, 2008). Snell has on other occasions displayed similar large signs from his car roof, including an enlarged photo of one of Hillcrest's doctors, her name, and the words "Harrisburg Killer" and "Murderer of Children." ASA 3 (Decl. of Lindsay Mauldin).

Other anti-abortion protesters outside HMC have displayed signs with racist language, like "the N word," in reference to public officials, such as former President Obama, who support access to legal abortion. JA430 (Tr. of Prelim Inj. Hearing (Day 2)).

Rosalie Gross, another regular protester and previous plaintiff in this case, filed a Right-to-Know Request with the Pennsylvania Department of Health, seeking records identifying employees and doctors at HMC. *See Gross v. Pa. Dept. of Health*, No. AP 2013-1595, 2013 PA O.O.R.D. LEXIS 921 at *1, (Oct. 2,

2013). While this request was denied on the grounds that the release of the information would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of the employees and doctors, protesters have not and are not deterred from acquiring such information on their own. *Id.* at *11. In fact, Gross admitted to taking photographs of employees and their license plate numbers at HMC, as well as giving a physician's license plate number to anti-choice individuals in Maryland where the doctor resided. ASA 8, 10-11, 13 (Tr. of Dep. of Rosalie Gross).

Protesters have also distributed personal and sensitive information about HMC doctors. A flier found on a parked car a short distance from HMC contained an HMC doctor's name, her photograph, her husband's name and his photograph, a photograph of their house with its street address, and other personal information about her and her husband, including the college they attended and the medical facilities where they worked. ASA 4 (Decl. of Lindsay Mauldin). While on its face this conduct may not appear to be violent, a person does not need "to be struck to feel under duress and violently intimidated." JA441 (Tr. of Prelim Inj. Hearing (Day 2)). This type of targeting conveys the very clear message that providers have to be constantly vigilant about the safety and privacy of themselves and their loved ones.

II. Buffer Zone Laws Appropriately Protect Women's Health and Safety

The type of harassment and harm discussed above discourages abortion access and acts as a barrier to women seeking to receive reproductive health care. American College of Obstetricians and Gynecologists, Committee Opinion No. 613, *Committee on Health Care for Underserved Women*, (Nov. 2014). This in turn is a direct threat to women's health and may lead to delayed care and increased health risks. *Id.*

To protect health care providers and their patients, abortion facilities must implement extraordinary and costly security measures not required by other health care facilities, including bulletproof glass, 24-hour armed guards, and locked doors with buzzer entry. Jack Healy & Erik Eckholm, *Siege Highlights Security Used in Abortion Clinics*, N.Y. TIMES, Nov. 28, 2015; *National Abortion Federation 2013 Anti-Abortion Violence and Disruption Survey Results* (hereinafter "NAF 2013 Survey"). But these methods do not control violent encounters outside of clinics, and too often are insufficient to protect against attacks. The Planned Parenthood where Robert Dear Jr. murdered three people had a supply of bulletproof vests, a safe room, and an advanced security camera system. Healy & Eckholm, *Siege Highlights Security Used in Abortion Clinics*. Dr. Tiller had armed security at his clinic and a rigorous security protocol at home, and Dr. Britton was wearing a bulletproof vest when he was murdered. *Doctor Who Performed Abortions Shot to*

Death, CNN.com, June 2, 2009; Smothers, *Death of a Doctor: The Overview – Abortion Doctor and Bodyguard Slain in Florida*.

While the violence that abortion opponents have directed toward abortion facilities, their employees, and their patients cannot be completely prevented by any security system or protocol, some basic measures, such as buffer zones, have been shown to be effective. In a 2013 survey, since the establishment of buffer zones, 51% of responding facilities reported decreased criminal activity near the facility and 75% had experienced an ease in access to the facility. NAF 2013 Survey. Over half of facilities with buffer zones reported that the zones ameliorated their safety concerns and over 75% of responding clinics without buffer zones believed their facilities would benefit from them. *Id.*

The buffer zones in place outside of abortion facilities in Harrisburg have experienced the same positive effect with respect to safety and access since the zones were established over six years ago. *See* JA416 (Tr. of Prelim Inj. Hearing (Day 1)) (“[P]rotesters know that they’re not supposed to go into the buffer zone, so they typically do not.”); JA426 (Tr. of Prelim Inj. Hearing (Day 2)) (“[Buffer zones] absolutely changed the behavior of the protests.”).

III. Harrisburg’s Buffer Zone Ordinance is Constitutionally Permissible

A. The Ordinance is Content-Neutral

The Ordinance is a content-neutral restriction that should be subject to intermediate scrutiny. The Ordinance does not apply to any particular topic or viewpoint, nor does it impose different restrictions based on the ideas expressed, its function, or its purpose. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015). As the Supreme Court noted in *Reed*, such content restrictions “are distinctions drawn based on the message a speaker conveys.” *Id.*

By contrast, the Ordinance prohibits congregating, picketing, patrolling, or demonstrating within 20 feet of a facility’s entrance, exit, or driveway regardless of whether the speaker is in favor of or in opposition to abortion—making no distinction based on the message conveyed. *See March v. Mills*, 867 F.3d 46, 58 (1st Cir. 2017) (noise ordinance that “d[id] not ‘depend entirely’ for its application on the ‘communicative content’ of noise” was not a content-based restriction) (quoting *Reed*, 135 S. Ct. at 2227), *cert denied*, 138 S. Ct. 1545 (2018). The Ordinance is not transformed into a content-based restriction even if law enforcement must conduct a cursory examination to determine if speech violated the Ordinance. *See Hill v. Colorado*, 530 U.S. 703, 722 (2000).

Additionally, the Ordinance can be justified without reference to the content of the regulated speech. *See Reed*, 135 S. Ct. at 2227. Its purpose is to promote

the health and welfare of facility visitors and provide unobstructed access to facilities. JA163-64 (Harrisburg Ordinance, Chapter 3-371). The Ordinance does not fall within any of the categories of content-specific speech that warrant strict scrutiny.

B. The Ordinance is Narrowly Tailored to Serve a Significant Governmental Interest

The Ordinance is subject to intermediate scrutiny and therefore must be “narrowly tailored to serve a significant governmental interest.” *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989)). The Ordinance satisfies both requirements.

There is no dispute that the Ordinance serves a “significant governmental interest.” As the Supreme Court has held, governments have a legitimate interest in maintaining public safety and access to health care facilities. *Id.* at 2535. (“The buffer zones clearly serve these interests.”). And, as Plaintiffs concede, access to Harrisburg’s reproductive facilities would be significantly hindered with even three or four protesters standing near the entrance alone of these facilities. JA537-38 (Tr. of Prelim Inj. Hearing (Day 2)).

To satisfy intermediate scrutiny, the Ordinance need not be the least restrictive or least intrusive means of serving the governmental interest. *Hill*, 530 U.S. at 726. Rather, a substantial portion of the Ordinance’s burden on speech must advance the government’s objectives, and the Ordinance “must not ‘burden

substantially more speech than is necessary to further the government's legitimate interests.'" *McCullen*, 134 S. Ct. at 2535 (quoting *Ward*, 491 U.S. at 799).

The Ordinance has a limited impact on speech, if any. Protesters and sidewalk counselors, like Plaintiffs, are still able to effectively convey their message to health care providers and their patients. This is true even if the Ordinance is upheld without adopting the narrow construction articulated by the District Court, which allows sidewalk counseling and leafletting within the buffer zone.⁴ With the buffer zone in place, patients have safe and unobstructed access to facilities, and law enforcement has a zone in which to safely operate.

Any minimal burden the Ordinance arguably creates is substantially outweighed by the government's strong interest in maintaining public safety. The threat to public safety is best illustrated by the magnitude of, and increase in, violence and harassment targeting reproductive health clinics, providers, and patients in Harrisburg, as well as the United States as a whole.

Indeed, the Supreme Court previously has upheld fixed buffer zones around facilities that are far more restrictive than the Ordinance. *See Madsen v. Women's*

⁴ This Court can uphold the District Court's order without adopting its narrow construction of the terms of the Ordinance. Permitting protestors to sidewalk counsel and leaflet within the buffer zone would result in congestion and obstructed access to clinic entrances and exits, the exact conditions the Ordinance seeks to ameliorate. The Ordinance should not be interpreted in a manner that would eviscerate its effectiveness and fail to serve significant underlying governmental interests, especially when the Ordinance has only a minimal, if any, burden on Plaintiffs' preferred method of communication.

Health Ctr., 512 U.S. 753, 770, 776 (1994) (upholding 36-foot fixed buffer zone around clinic’s entrances and driveway); *Hill v. Colorado*, 530 U.S. 703, 703, 735 (2000) (upholding a buffer zone that regulated speech-related conduct within 100 feet of entrances to any health care facility).

Additionally, courts routinely uphold buffer zones and protective cordons in many other contexts in which competing social, political, or other factions are expected to confront each other, generating substantial risk of violent or abusive encounters. *See, e.g., Burson v. Freeman*, 504 U.S. 191, 198-99 (1992) (upholding content-based state prohibition on electioneering within 100 feet of polling place entrance); *Boos v. Barry*, 485 U.S. 312, 331-32 (1988) (upholding statute prohibiting congregations within 500 feet of a foreign embassy); *Phelps-Roper v. Ricketts*, 867 F.3d 883, 893, 900 (8th Cir. 2017) (upholding time, place, and manner restriction of picketing a funeral); *ACLU of Colorado v. City of Denver*, 569 F. Supp. 2d 1142, 1184 (D. Colo. 2008) (“Public/Demonstration Zone” presented adequate alternative channel of communication during national political convention); *Citizens For Peace in Space v. City of Colorado Springs*, 477 F.3d 1212, 1226 (10th Cir. 2007) (upholding multi-block security zone surrounding NATO meeting site); *see also Snyder v. Phelps*, 562 U.S. 443, 456 (2011) (“[E]ven protected speech is not equally permissible in all places and at all times. Westboro’s choice of where and when to conduct its [peaceful funeral] picketing is

not beyond the Government’s regulatory reach—it is subject to reasonable time, place, or manner restrictions.”) (internal quotation marks and citations omitted).

C. The Ordinance Leaves Open Ample Alternative Channels of Communication

The Ordinance leaves open ample alternative channels of communication. It does not prevent Plaintiffs from delivering their messages through sidewalk counseling or leafletting. Plaintiffs can and, indeed, do approach and speak to individuals, including patients walking up to a facility, notwithstanding the buffer zone. In fact, despite the buffer zone, Plaintiff Biter has counselled and distributed literature outside HMC about once a week since late 2015 and at Hillcrest regularly once per week from approximately 2014 to June 2017, as well as going three times a week during her last year there. JA072 (Verified Complaint); ASA 15-16 (Tr. of Prelim Inj. Hearing (Day 2)). Plaintiff Biter testified that the buffer zone had little to no impact on where she stood 98% of the time at Hillcrest and that she was able to communicate her message to patients walking inside, albeit in a raised voice on occasion. ASA 17-19 (Tr. of Prelim Inj. Hearing (Day 2)).

Plaintiffs also concede that they can facilitate conversations with patients walking into the facility by simply asking them to talk outside the buffer zone, which, as Plaintiff Reilly said, having an intimate conversation “*away from . . . the abortion facility* where she can sit down and rethink her decision and be in a safe

place” is one of the best ways for Reilly to get her message across. JA480-81, 502 (Tr. of Prelim Inj. Hearing (Day 2)) (emphasis added).

The fact that sidewalk counselors can effectively communicate their message with people as they approach the buffer zone and even after they enter the buffer zone, illustrates the Ordinance’s *de minimis* impact on speech.⁵

IV. Courts Should Defer to Local Governments in Enacting Safety Measures to Protect Health Care Facilities

Courts should defer to the judgment of local governments to enact buffer zone laws in their respective jurisdictions. *See Hill v. Colorado*, 530 U.S. 703, 727 (2000) (“[W]hether or not the [buffer zone] is the best possible accommodation of the competing interests at stake, we must accord a measure of deference to the judgment of the [State] Legislature.”) (citation omitted). These governments are keenly aware of the threats their citizens face on a daily basis, and are ultimately responsible for their protection.

The Ordinance was enacted after careful consideration by the Harrisburg City Council, which is intimately familiar with the violence, harassment, and obstruction that its community’s reproductive health care facilities, along with their staff and patients, regularly face. While abortion facilities across the rest of the

⁵ This case is thus distinguishable from *McCullen*, in which the Supreme Court held that the “burdens” arising from the law at issue had “clearly taken their toll” on the plaintiffs. *McCullen*, 134 S. Ct. at 2535. Specifically, the Court found compelling testimony in that case that the plaintiffs were able to reach “far fewer people” after the law was enacted. *See id.*

nation may have faced more serious physical violence, Harrisburg's City Council should not have to wait until someone dies to justify implementing protective measures. Harrisburg is in the best position to evaluate and implement an appropriate legislative response.

CONCLUSION

For the foregoing reasons, *amici curiae* ask the Court to affirm the District Court's order.

Dated: March 18, 2019

s/ Janice Mac Avoy
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Association, Inc.*

ADDENDUM A

FURTHER STATEMENTS OF INTEREST OF THE *AMICI CURIAE*

The Women’s Law Project (“WLP”) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, WLP is dedicated to creating a more just and equitable society by advancing the rights and status of all women through high-impact litigation, advocacy, and education. Throughout its history, WLP has played a leading role in protecting and advancing reproductive rights in Pennsylvania. We provide legal representation to all of the free-standing abortion providers in Pennsylvania. We also represented plaintiffs in the landmark U.S. Supreme Court decision affirming the constitutional right to abortion, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). WLP believes that all people should have access to abortion care without fear, intimidation, or harassment.

* * *

The National Abortion Federation (“NAF”) is the professional association of abortion providers. Its mission is to ensure safe, legal, and accessible abortion care, which promotes health and justice for women. NAF’s members include nearly 400 private and non-profit clinics, Planned Parenthood affiliates, women’s health centers, physicians’ offices, and hospitals. Together they care for half the women who choose abortion in the U.S. and Canada each year. NAF is the leading organization offering accredited continuing medical education to health care professionals in all aspects of abortion care. Its member providers adhere to NAF’s evidence-based *Clinical Policy Guidelines*, which set the standards for quality abortion care.

* * *

The Feminist Majority Foundation (“FMF”), founded in 1987, is the largest feminist research and action organization dedicated to women’s equality and reproductive health. FMF’s programs focus on advancing the legal, social and political equality of women. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing projects, and leadership training and development programs. FMF leads the National Clinic Access Project to reduce anti-abortion violence, keep reproductive health care providers safe and clinics open, and bring violent anti-abortion extremists to justice. Since 1993, FMF has conducted periodic National Clinic

Violence Surveys, which measure anti-abortion violence and harassment. The most recent survey was released in early 2019.

* * *

The National Women’s Law Center is a nonprofit legal advocacy organization that has worked since 1972 to advance and protect women’s legal rights and opportunities. The fundamental right to abortion recognized in *Roe v. Wade* is of profound importance to the health, equality, and economic security of women throughout the country. Because of the tremendous significance of the freedom to decide whether to bear children, the National Women’s Law Center seeks to preserve the right to a safe, legal abortion without harassment, violence, or other interference, and has filed or participated in numerous amicus briefs in cases that affect this right.

* * *

New Voices for Reproductive Justice is a Human Rights and Reproductive Justice advocacy organization with a mission to build a social change movement dedicated to the full health and well-being of Black women, femmes, and girls in Pennsylvania and Ohio. Since 2004, the organization has reached over 75,000 women of color, including LGBTQ+ people, through community organizing, grassroots activism, civic engagement, youth mentorship, leadership development, culture change, public policy advocacy and political education. New Voices strives to build a future where people have full agency in decision-making about their bodies, gender and sexuality, labor, reproduction, and family formation, which includes the human right to access comprehensive reproductive healthcare services free from violence, harassment, coercion, or interference of any kind.

* * *

Founded in 1971, the Southern Poverty Law Center (“SPLC”) is one of the nation’s leading civil rights organizations and is dedicated to fighting hate and bigotry and to seeking justice for vulnerable members of our society. SPLC is internationally known for its work tracking the activities of hate groups and other domestic extremists throughout the United States and for exposing their activities to the public, the media, and law enforcement. SPLC has produced reports as part of Hate Watch and the Intelligence Report about anti-abortion extremism and has litigated cases against associates of anti-abortion assassins.

* * *

The International Municipal Lawyers Association (“IMLA”) is a non-profit organization dedicated to advancing the interests and education of local government lawyers. IMLA has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as a clearinghouse of legal information and cooperation on municipal legal matters. As an entity that helps local governmental officials prepare for litigation and develop new local laws, IMLA is vitally interested in defending the rights of localities to pass laws promoting public health.

ADDENDUM B

UNITED STATES COURT OF APPEALS
for the

THIRD CIRCUIT

Case No. 18-2884

COLLEEN REILLY; BECKY BITER; ROSALIE GROSS,

Appellants,

v.

CITY OF HARRISBURG; HARRISBURG CITY COUNCIL; MAYOR ERIC
PAPENFUSE, in his official capacity as Mayor of Harrisburg,

Appellees.

On Appeal from the United States District Court for the
Middle District of Pennsylvania,
No. 1-16-cv-00510 (Hon. Sylvia H. Rambo)

***AMICI CURIAE* WOMEN'S LAW PROJECT, NATIONAL ABORTION
FEDERATION, FEMINIST MAJORITY FOUNDATION, NATIONAL
WOMEN'S LAW CENTER, NEW VOICES FOR REPRODUCTIVE
JUSTICE, SOUTHERN POVERTY LAW CENTER, AND
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, INC.
SUPPLEMENTAL APPENDIX**

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AMICI SUPPLEMENTAL APPENDIX

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Case No. 1:16-cv-00510 (SHR)

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

COLLEEN REILLY, BECKY BITER, and ROSALIE GROSS,

Plaintiffs,

v.

CITY OF HARRISBURG; HARRISBURG CITY COUNCIL; and
ERIC PAPENFUSE, in his official capacity as Mayor of Harrisburg,

Defendants.

DECLARATION OF LINDSEY MAULDIN

I, Lindsey Mauldin, do hereby declare as follows:

1. Since 2011, I have worked as a Grassroots Organizer and subsequently a Field Director at Planned Parenthood Pennsylvania Advocates, located at 1514 North Second Street in Harrisburg, Pennsylvania.
2. I have talked to each of the three plaintiffs in this litigation on many occasions while they have been protesting and advocating against abortion outside Planned Parenthood. Becky Biter and Colleen Reilly have been cordial to me, but Rosalie Gross is confrontational and yells at me. For example, she has said to me, "You need to get a new job. Stop killing babies."
3. On many Thursdays, I have observed Rosalie Gross as I am going to or coming from work. She often carries leaflets and a camera. She approaches people who are attempting to enter the Planned Parenthood building and tries to get them to talk to

her. Often, when they ignore her, she screams at them and takes photos of them. I would characterize her demeanor as loud, aggressive, confrontational, and angry.

4. I have heard Rosalie Gross call people who are approaching Planned Parenthood “murderers.” She frequently yells at people coming into our health center and insults and taunts the women as they pass her.
5. Rosalie Gross also tries to scare patients by taking their pictures as they come to the health center. I have seen her hide behind cars or a large dumpster a few feet from Planned Parenthood’s property line behind our health center and jump out when a Planned Parenthood staff member or patient gets out of their car in the rear parking lot.
6. The buffer zone helps to keep Rosalie Gross and others at least 20 feet away from the windows of our facility and in this respect helps protect patients’ and staff members’ privacy.
7. Prior to the adoption of the buffer zone ordinance, Rosalie Gross would stand close to the door to the Planned Parenthood health center. Although we have had a “no trespassing” sign on our property the entire time I have worked at Planned Parenthood, she would often disregard it and come onto our property to follow patients up to the door.
8. Some of our patients complained to me about Rosalie Gross’s behavior. Some patients were visibly upset and fearful after they were confronted by her and would ask me and other staff whether there was any way they could avoid her on their way out of the building. Sometimes patients would use the administrative entrance on the side of the building instead of the front door solely for the purpose of avoiding Rosalie Gross.

9. Before the buffer zone was adopted, Rosalie Gross would sometimes stand in our driveway. She stood in the path of patients and other visitors who were trying to park in our parking lot at the back of our health center, forcing them to stop their cars to avoid hitting her. She would then try to make them talk to her.
10. Since the buffer zone ordinance has been in effect, Rosalie Gross generally stays away from the front door area. She is still very close to our health center, close enough to be easily seen and clearly heard by people approaching the health center entrance, even when she is not screaming. She still has ample opportunity to leaflet approaching patients and invite them to speak with her.
11. Since the buffer zone ordinance has been in effect, Rosalie Gross will sometimes take up a position in front of our health center in the driveway or in the parking spot closest to our driveway. This parking spot is marked with a “no parking” sign and is within the buffer zone. If she sees me or another health center staff person approaching her, however, she will often move out of the buffer zone of her own accord.
12. Rosalie Gross will sometimes stand outside Planned Parenthood and converse with another protester named Ed Snell. Snell has at times appeared outside the health center with an enormous billboard on top of his vehicle displaying an enlarged photo of our health center doctor. The billboard contains her name and the words “Harrisburg Killer” and “Murderer of Children.”
13. I make it a practice to park away from the health center because I do not want the protesters to be able to identify my car. Once in the fall of 2012, as I was getting out of my car on my way into work, Rosalie Gross saw me as I was parking and

recognized me from over a block away. She ran up to me and started yelling at me. I told her to shut up.

14. In the summer of 2015, I found a flier shoved into the door of my car which was parked a short distance away from the health center. The flier contained Planned Parenthood's doctor's name and photograph, a photo of her husband with his name, a photo of their house with its street address, as well as other personal information about her and her husband, including the college they attended and the medical facilities where they work.
15. The flier states in part that our doctor "is a CIRCUIT-RIDER ABORTIONIST WITH PLANNED PARENTHOOD. She travels from city to city (Annapolis, Baltimore, York, PA, Harrisburg, PA) wantonly and callously killing preborn babies, thus increasing the mortality rate of infants. In other words, she works to END the lives of infants. DESPICABLE!" The flier asks people to write to her at her home address and tell her to stop providing abortions. It also asks that people write to her husband and "beg him to ask his wife . . . to stop killing babies."
16. I am concerned when I see Rosalie Gross photographing me or our staff or doctors that one of us will be next in line for this kind of targeted, threatening, and very personal harassment.
17. I took the flier home and showed my husband. We were afraid that Rosalie Gross and the other protesters knew which car was mine, and would be able to follow me home or vandalize my car. At that point, my husband and I decided to install an alarm system in our home.
18. Last year on Thursday, October 29, 2015, Rosalie Gross started yelling at me as I was walking up to the health center. She was very loud and shrill. She was accusing me of

killing babies. I kept walking and did not respond. The neighbor across the street heard her and crossed the street toward the health center. He said to Rosalie Gross, “She is just trying to go to work.” Ed Snell, who had been sitting in his van, got out of his van when the neighbor crossed the street. At that point, I was approaching the side door of the health center and was trying to find my keys. I heard yelling between the neighbor and Snell, and looked up to see Snell brandishing what looked like jumper cables at the neighbor’s head. Snell yelled at him and started chasing him. The neighbor ran back across the street out of range of the jumper cables, and said, “You’re crazy, man, you’re crazy.” I heard Snell tell the neighbor to “get out of our neighborhood.” I called the Harrisburg police to report this fight.


19. On at least one occasion in 2015, Ed Snell set up a poster-sized sandwich-board-style sign right in the middle of our driveway. I told him he was violating the buffer zone law and that he had to remove himself and his sign from the driveway. He complied right away.

20. The buffer zone ordinance is a more useful and effective tool for protecting ourselves and our patients from some types of violent, obstructive, and intrusive behavior than other criminal laws. It reduces the likelihood of violent confrontations outside our door, helps our patients get inside safely, and minimizes certain intrusions on privacy.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATE: 6/22/2016

SIGNED:


Lindsey Mauldin

IN THE COURT OF COMMON PLEAS
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

COLLEEN REILLY; BECKY BITER;
and ROSALIE GROSS,

No. 1:16-cv-510

Plaintiffs

vs.

(Complaint filed
3/24/16)

CITY OF HARRISBURG, HARRISBURG
CITY COUNCIL, and ERIC
PAPENFUS, in his Official
capacity as Mayor of
Harrisburg,

Defendants

Jury Trial Demanded

Deposition of: ROSALIE GROSS
Taken by : Defendants
Date : August 16, 2017, 10:00 a.m.
Place : Lavery Law
225 Market Street, Suite 304
Harrisburg, Pennsylvania
Reporter : Susan L. Henderson
Registered Professional Reporter
Notary Public

APPEARANCES:

LIBERTY COUNSEL

By: HORATIO G. MIHET, ESQ.
ROGER K. GANNAM, ESQ.
Appearing on behalf of the Plaintiffs

LAVERY LAW

By: FRANK J. LAVERY, JR., ESQ.
- and -

CITY OF HARRISBURG

By: NEIL GROVER, CITY SOLICITOR
Appearing on behalf of the Defendants

Henderson Kashmere Wetmore, LLC
(717) 214-1182

Atty. Lavery - Witness Rosalie Gross

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1 Q. Was she in uniform?

2 A. Yes.

3 Q. Other than what you've told me, do you
4 remember any other discussions with any other police
5 officers --

6 A. No.

7 Q. -- while you were up at Planned Parenthood?

8 A. No. No.

9 Q. Did you ever raise your voice at any of the
10 women who were going in for the abortions?

11 A. Well, I'm how many feet away?

12 Q. Um-hum.

13 A. I do have a soft voice. If I talked
14 normally, no one would ever hear me. I had to raise
15 my voice so they could at least hear me. But I don't
16 think I have a very loud voice.

17 Q. Okay. Did you ever take photographs of the
18 women who would go into the clinic?

19 A. Not the clients. I treated them very
20 differently.

21 Q. Okay. The "clients" meaning the people who
22 were going in there for the services --

23 A. The women.

24 Q. -- they offered?

25 A. Yeah.

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Atty. Lavery - Witness Rosalie Gross

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1 Q. Okay. So you never took any photos of those
2 people?

3 A. Not intentionally. Not -- maybe mistakenly,
4 but not intentionally.

5 Q. All right. Did you take photos of the clinic
6 employees?

7 A. Yes, the workers.

8 Q. And why did you do that?

9 A. Well, I felt that if they're proud of working
10 in a place that kills babies, they shouldn't be
11 ashamed to have their picture taken going in.

12 Q. Did you ever do anything with those photos?

13 A. No. Never. Nothing.

14 Q. Did you ever take pictures of the license
15 plates on the cars of any of the clinic employees?

16 A. Yes, I -- yes, of the abortionist especially.

17 Q. Why did you do that?

18 A. Well, even though the 1992 Pennsylvania
19 Abortion Control Act says that a person is allowed to
20 know the name of the doctor treating them, the women
21 going into Planned Parenthood are not allowed to know
22 the name of the doctor treating them, because the
23 Pennsylvania Department of Health has a regulation
24 forbidding that. And to find out who is the doctor,
25 whether there's malpractice suits against that woman,

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Amici Supplemental Appendix

ASA 8

1 that person, I took some pictures. The abortionist
2 was identified.

3 Q. Did you actually take pictures of the doctor
4 who --

5 A. Yes. Sorry.

6 Q. -- performed the... It's okay. It's normal,
7 believe me.

8 Did you ever take pictures of the doctor who
9 performed the procedures at Planned Parenthood?

10 A. Yes, I did.

11 Q. Okay. And, again, why did you do that? You
12 explained why you took the photos of the license
13 plate. Why did you take pictures of the doctor?

14 A. So we could identify her.

15 Q. Who is "we"?

16 A. I and other pro-lifers.

17 Q. Who is the doctor?

18 A. They have different ones, but one of them is
19 Jennifer Coles of Maryland.

20 Q. Jennifer Coles?

21 A. Coles; C-o-l-e-s.

22 Q. Did you ever attempt to contact Jennifer
23 Coles?

24 A. Not personally, no.

25 Q. What do you mean "not personally"?

1 A. Yes. And the police have a record of that.

2 Q. Okay. I'll check. Any other assaults other
3 than the one on Mr. Snell that you can recall --

4 A. Not that I --

5 Q. -- on the pro-life people there?

6 A. Not that I know of. Only that the one lady
7 came out very -- and she was angry, because I'm
8 standing there, and she -- I was standing -- I was
9 standing on the sidewalk, way on the sidewalk. She
10 threw her hot coffee at me, missed, threw her cup at
11 me and missed.

12 Q. About how far away from you was she when she
13 threw that coffee?

14 A. Well, she came -- I was on the sidewalk over
15 there (indicating) where I showed you. And she came
16 up and -- I don't know how -- close enough to throw
17 coffee and throw a cup at me -- and miss. She missed.

18 Q. Okay. Good. I'm glad. It's not good to
19 have coffee thrown on you.

20 Okay. All right. When you would take
21 pictures of the license plates, did you give that
22 information or those photos to anyone?

23 MR. MIHET: Objection; asked and answered.

24 MR. LAVERY: I don't think it was.

25 BY MR. LAVERY:

Atty. Lavery - Witness Rosalie Gross

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1 Q. But, go ahead, you can answer.

2 A. The license plate of the abortionist, that
3 was sent to pro-lifers in Maryland. I don't know what
4 they did with it.

5 Q. Okay.

6 A. They identified it.

7 Q. Did you take -- and that's probably a good
8 clarification. Other than the abortion doctor, whose
9 license plate you took a picture of, did you take a
10 picture of license plates of anybody else up in that
11 area?

12 A. I did, but I never did anything with it.

13 Q. That's what I'm getting at.

14 A. And you can't do anything with it.

15 Q. All right. Who else did you take pictures of
16 license plates of?

17 A. No, no, I don't think anybody else.

18 Q. Just the abortion doctor or were there other
19 people that you took pictures of --

20 A. Well --

21 Q. -- license plates as well?

22 A. People from Maryland or if we suspected it
23 was an abortionist. But, you know, you -- it is not
24 against the law to do that, as you know. It is not
25 against the law to do that.

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Atty. Lavery - Witness Rosalie Gross

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1 A. Well, if you're -- I'm far away. I have to
2 raise my voice. I can't use a normal voice. I
3 wouldn't yell or scream, but I do have to raise my
4 voice.

5 Q. Okay.

6 A. Or they would not be able to hear me.

7 Q. Understood. So you would raise your voice,
8 but you wouldn't yell and scream?

9 A. I wouldn't yell and scream at them, no.

10 Q. Okay.

11 A. I mean, that's what they do in Planned
12 Parenthood. They kill helpless, innocent, babies.

13 MR. MIHET: He hasn't asked you any question,
14 Rosie.

15 THE WITNESS: Okay.

16 MR. MIHET: Wait for the next question.
17 Okay?

18 BY MR. LAVERY:

19 Q. In Paragraph 3 of this Declaration, it
20 indicates that you often carry leaflets and a camera
21 at the Planned Parenthood location. Is that accurate?

22 A. Yes. I had a camera and I had leaflets, yes.

23 Q. Okay. It goes on to say that you approach
24 people who are attempting to enter the building and
25 tries to get them to talk to her. Often, when they

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Reilly v. City of Harrisburg, No. 18-2884
Amici Supplemental Appendix

ASA 12

1 ignore her, she screams at them and takes photos of
2 them.

3 Is that true?

4 A. I really took photos of the employees, not so
5 much the clients. If I did, it was a mistake. I
6 mistook them for an employee. I really did not -- I
7 treated the clients going in there differently than I
8 treated the employees.

9 Q. Okay. So, you never intentionally took --

10 A. No.

11 Q. -- a photo -- let me just finish -- a photo
12 of a -- I'll call them patrons, someone going in there
13 for services after they ignored you?

14 A. No. I didn't, no.

15 Q. Okay. Paragraph 4 indicates that you have
16 called people who are approaching the Planned
17 Parenthood building as murderers. Have you ever done
18 that?

19 A. Not the clients.

20 Q. Okay.

21 A. I don't recall calling them murderers.
22 That's a legal term.

23 Q. Okay. How do you distinguish between a
24 client and an employee?

25 A. Sometimes it's hard.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

COLLEEN REILLY, ET AL : CASE NO.
: :
v. : :
: :
CITY OF HARRISBURG, ET AL : 1:16-CV-00510

TRANSCRIPT OF PROCEEDINGS
PRELIMINARY INJUNCTION
DAY II OF II

Held before the HONORABLE SYLVIA H. RAMBO
November 1, 2017, commencing at 9:56 a.m.
Courtroom No. 3, Federal Building, Harrisburg, Pennsylvania

APPEARANCES:

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Lavery Faherty
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For the Defendants

Proceedings recorded by machine shorthand; transcript
produced by computer aided transcription.

Wendy C. Yinger, RMR, CRR
Official Court Reporter
wendy_yinger@pamd.uscourts.gov

1 MR. LAVERY: Thank you.

2 MR. AUTRY: I mean, the entire deposition is coming
3 in except for the portions they're objecting to.

4 MR. GANNAM: Understood. May we play it now, Your
5 Honor?

6 MR. LAVERY: No.

7 THE COURT: It's their case.

8 MR. GANNAM: Thank you, Your Honor.

9 MR. LAVERY: Becky Biter.

10 **BECKY BITER, DEFENDANTS' WITNESS, SWORN**

11 COURTROOM DEPUTY: Would you state your name, please?

12 THE WITNESS: Becky J. Biter. B-I-T-E-R.

13 THE COURT: You may proceed.

14 **EXAMINATION**

15 **AS ON CROSS**

16 BY MR. LAVERY:

17 Q. Ms. Biter, do you have what you refer to as a ministry?

18 A. Yes, I do.

19 Q. And just for the record, what is that ministry?

20 A. The ministry's name is Undefeated Courage, and we are a
21 group of sidewalk counselors who peacefully and prayerfully
22 reach out to the abortion-minded woman and man.

23 Q. Now you started going to Hillcrest regularly once per week
24 in approximately 2014 and continued to do that until its
25 closure in June of 2017, is that correct?

1 A. That's correct.

2 THE COURT: May I have those dates again, please?

3 MR. LAVERY: I'm sorry, Your Honor?

4 THE COURT: May I have those dates again, please?

5 MR. LAVERY: Yes. 2014 until June 2017.

6 THE COURT: Thank you.

7 BY MR. LAVERY:

8 Q. You also started going to the Planned Parenthood Clinic in
9 2015 after they started dispensing the RU-486 abortion drug,
10 correct?

11 A. Yes. I started going to Planned Parenthood in, I believe
12 it was late 2015.

13 Q. Now the way Hillcrest is set up, there is obviously an
14 entranceway from Front Street, and there's also an alley that
15 runs in the back; correct?

16 A. Correct.

17 Q. And when you were going to Hillcrest, you would engage in
18 your conduct both in front of Hillcrest and in the back of
19 Hillcrest; correct?

20 MR. GANNAM: Your Honor, I just want to object to the
21 relevance of questions regarding Hillcrest because it's closed
22 and we're not seeking an injunction regarding anything at
23 Hillcrest.

24 THE COURT: They have to have a reason --

25 MR. LAVERY: Yeah.

1 Q. And as I understand it, in order to reach the women who
2 were going into that parking lot and parking, you would attempt
3 to converse with them from that alley; is that correct?

4 A. Yes, that is correct.

5 Q. And I believe you testified previously that the closest
6 you would be able to get to those women in the back would be 10
7 feet, and the furthest you would be would be 50 to 80 feet; is
8 that correct?

9 A. Yes, that is correct.

10 Q. And despite that, you were able to communicate your
11 message to the women at Hillcrest, I believe you testified; is
12 that correct?

13 A. Yes, but, of course, when they're further away, I would
14 have to raise my voice.

15 Q. Okay. And I think you said that most of your time was
16 spent in the back of Hillcrest, is that right?

17 A. That is right, yes.

18 Q. So that would be most of your encounters, correct?

19 A. Correct.

20 Q. And that alley abuts right up directly to Hillcrest's
21 parking lot in the back, correct?

22 A. Yes, that is correct.

23 Q. So at that point, you have the public alley, you have
24 Hillcrest's parking lot, and then you have the entrance into
25 Hillcrest, which is some distance away; is that correct?

1 A. Yes, the entrance was in the front of the building.

2 Q. So where you were 98 percent of the time at Hillcrest, the
3 buffer zone ordinance did not prevent you from communicating
4 with the women that you wanted to communicate with because,
5 again, you're in the alley there, and next to that alley is the
6 private property of Hillcrest; is that correct?

7 MR. GANNAM: Objection, Your Honor. That question is
8 quite compound.

9 THE COURT: Rephrase it.

10 MR. LAVERY: Okay.

11 THE COURT: Shorten it a little bit.

12 MR. LAVERY: I'm just trying to keep my time, Judge.
13 Yes, I will do that.

14 BY MR. LAVERY:

15 Q. If you're in the alley, correct?

16 A. Yes.

17 Q. The parking lot is right next to the alley, correct?

18 A. Yes.

19 Q. The buffer zone runs from the entrance of Hillcrest's
20 facility, correct, as you understood it?

21 A. Yes.

22 Q. That would be some distance away from the alley, correct?

23 A. Correct.

24 Q. And it would have been more than 20 feet from the alley,
25 is that correct?

1 A. Yes.

2 Q. So the buffer zone at that point did not impact on your
3 ability to go right up to the edge of that parking lot and try
4 to talk to women, correct?

5 A. Correct.

6 Q. So essentially, 98 percent of the time when you are at
7 Hillcrest, in the back, when you were at Hillcrest, this buffer
8 zone had no impact on what you were doing; correct?

9 A. Little impact. I wouldn't say no impact.

10 Q. Well, what little impact would it have?

11 A. Well, the rest of the people who were sidewalk counseling,
12 if they were in the front, then it had an impact.

13 Q. I'm talking about the back though?

14 A. No, no impact.

15 Q. We can't talk about what you did in the front because you
16 your counsel has raised the fifth amendment, so we're only
17 talking about the back now?

18 A. Correct.

19 Q. So in the back where you were 98 percent of the time, it
20 had no influence on your activities, you would agree; correct?

21 A. Correct.

22 Q. Okay. Now you were, in fact, at Hillcrest in the winter
23 of 2016 when an accident actually occurred while someone was
24 turning into that parking lot; correct?

25 A. Yes.

COMBINED CERTIFICATIONS

Bar Membership

Under Local Rule 28.3(d), I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Word Count

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 6,499 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f) and Local Rule 29.1.

This brief complies with Local Rule 32.1, the typeface requirements of Fed. R. App. P. 32(a)(5), and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman style, with 14-point font.

Identical Compliance of Briefs

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies.

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This brief complies with the electronic filing requirements of Local Rule 31.1(c) because McAfee Endpoint Security, Version 10.5, has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: March 18, 2019

s/ Janice Mac Avoy

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and International Municipal Lawyers
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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2019, I caused the foregoing Brief of *Amici Curiae* Women's Law Project, National Abortion Federation, Feminist Majority Foundation, National Women's Law Center, New Voices for Reproductive Justice, Southern Law Poverty Center, and International Municipal Lawyers Association, Inc. In Support of Appellees For Affirmance to be electronically filed with the Clerk of the Court for the Third Circuit using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

Dated: March 18, 2019

s/ Janice Mac Avoy

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