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Public Safety Buffer Zone at Issue in Supreme Court Case.

How local governments can provide for the public's safety may be decided in a U.S. Supreme Court case limiting how close protesters can get to abortion clinics in Massachusetts.

The Supreme Court will decide in *McCullen v. Coakley* whether a Massachusetts statute prohibiting speech within 35-feet of a reproductive health care facility violates the First Amendment. The State and Local Legal Center (SLLC) has filed an amicus brief in the case.

While only two other states regulate speech within a specific distance of reproductive health care facilities — Colorado and Montana — many local governments use buffer zones in numerous contexts. The SLLC's brief points out that how the court rules in this case could affect state and local government's ability to regulate speech to protect public safety in many situations.

For example, a Kansas City, Mo. ordinance prohibits panhandling within 20 feet of an ATM, and a law in Nashua, N.H. provides specific, limited location restrictions on handbill distribution, based on the "unique layout" and heavy public use of City Hall.

Lower courts have upheld buffer zones to prevent congestion at special events (like circuses), places that regularly draw crowds (like the Washington D.C. metro), and in the face of large-scale protests (like the World Trade Organization conference). Lower courts have also upheld restrictions on protests near funerals to protect vulnerable mourners, who are similarly situated to those seeking a variety of medical care at reproductive health care facilities. These buffer zones and many others may be in jeopardy if the court rules against Massachusetts.

Massachusetts had a long history of protesters outside reproductive health care facilities, including, in the 1980s, people chaining themselves to clinic doors and property. In 2000, the Massachusetts Legislature adopted a law allowing protesters to come within six feet of those entering a clinic within an 18-foot buffer zone around the clinic. Massachusetts' law was modeled around a similar law that the Supreme Court approved in *Hill v. Colorado*.

The 2000 law did not work very well in Massachusetts. Protesters would crowd six feet from a clinic door making entry into the clinic difficult. So in 2007, Massachusetts adopted a 35-foot fixed buffer zone around clinics.

The 1st U.S. Circuit Court held that the Massachusetts statute is a constitutional regulation of speech because numerous communication channels remain available to protesters.

The Supreme Court will decide in this case whether Massachusetts' fixed buffer zone violates the First Amendment. It has also accepted the question of whether it should overturn *Hill v. Colorado*.

The SLLC's brief was joined by NACo, the National League of Cities, the International City/County Management Association, the U.S. Conference of Mayors and the International Municipal Lawyers Association.

Oral argument has been scheduled for Jan. 15, 2014. The Supreme Court will issue an opinion in

this case by June 30, 2014.

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