

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 1625, repealing the prohibition on entering or remaining on a public way or sidewalk adjacent to a reproductive health care facility.

Hearing Date: April 19, 2022

Time Opened: 3:30 p.m.

Time Closed: 4:45 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill repeals the prohibition on entering or remaining on a public way or sidewalk adjacent to a reproductive health care facility.

Sponsors:

Rep. Kelsey
Rep. Gould
Rep. Notter
Sen. Ricciardi

Rep. Nunez
Rep. Stapleton
Rep. M. Pearson
Sen. Daniels

Rep. Baxter
Rep. Mooney
Rep. Sheehan
Sen. Avard

Who supports the bill: 123 people signed up in support to the bill. Full sign in sheet available upon request.

Who opposes the bill: 493 people signed up in opposition to the bill. Full sign in sheet available upon request.

Who is neutral on the bill: 1 person signed up neutrally on the bill. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Kelsey

- This is the Sidewalk Free Speech Act.
- Freedom of speech is protected not only by the US Constitution, but also by NH's Bill of Rights,
- Free speech continues to face growing threats at the federal and the state levels, by opponents who fear losing an open contest of ideas.

- Supreme Court Justice William O'Douglas once said that freedom of speech may indeed best serve its highest purpose when it induces a condition of unrest or even stirs people in anger.
- Speech is often provocative and challenging, and that is why freedom of speech is protected against censorship or punishment.
- Abortion is one issue where there is unrest on both sides.
- NH's buffer zone law represents an attempt to stifle the contentious debate surrounding abortion rather than allowing for freedom of speech to serve its purpose.
- The buffer zone law allows abortion clinics to demarcate a 25-foot zone around clinics in which no one may counsel against or protest against abortions.
- Supporters of the law may claim it functions to protect women who are seeking an abortion from being assaulted or harassed but the truth is that assault, criminal threatening, and harassment are already illegal.
- The actual effect of the law is to privilege pro-abortion speech and marginalize speech critical of abortion.
- This bill would repeal the buffer zone law.
- This bill deserves to be supported not only by anti-abortion and pro-free speech individuals, but also by all who value responsible government.
- In 2014, the Massachusetts buffer zone law was ruled unconstitutional by the US Supreme Court.
- The NH buffer zone law is identical in all relevant aspects to the MA one.
- If our law is legally challenged, it will be repealed, and NH will have wasted tax-payer money to defend a law that is not only unjust but is unconstitutional and futile.
- Senator Gannon asked if in McCullen v. Coakley it ruled that people are allowed in that space as long as they are not impeding traffic.
 - Yes. The law already protects women going into these clinics with harassment being illegal.
- Senator Kahn asked if the current law has been in effect since 2014.
 - Yes, but the zone has never been demarcated so it has never been used.
- Senator Whitley asked if it is true that there are other buffer zones the State implements that are balancing certain interests like at polling places.
 - There are.
- Senator Gannon asked if NH has had problems with protesters at any abortion clinics.
 - Cannot answer that. They have not demarcated the zone though and it is already against the law to harass people.

Zephan Wood

- Is against all government-imposed restrictions.
- It has been a long-hailed American tradition to engage in freedom of speech and expression.
- This bill seems to legalize the exercise of the First Amendment on sidewalks.

- There is no logical reason as to why someone should be barred from freedom of speech on public sidewalks.
- The current law sets a dangerous precedent.
- What's to stop restrictions on speech of other things?
- *Brandenburg v. Ohio* held that government cannot punish the abstract advocacy of force or law violation. Most speech is constitutionally protected as long as it doesn't incite imminent lawless action.
- John Stewart Mill stated "He who knows only his own side of the case knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side, if he does not so much as know what they are, he has no ground for preferring either opinion"
- To reach an informed decision on anything, we need to be allowed to talk to each other and to use these public places as they were intended for.
- Senator Gannon asked why we are discussing this when Coakley has already been decided.
 - The Supreme Court generally talks about the issue of chilling speech. Even if the federal law currently says nothing is stopping someone from protesting in front of an abortion clinic, thinks there are a lot of people out there who think NH law says they can't and therefore they are not engaging in their right of freedom of speech.
- Senator Whitley asked if he believes all buffer zones should be eliminated, including ones for funerals and polling places.
 - On a personal level, yes. Is a free speech absolutist. Even under the Supreme Court's 'time, place and manner' decisions, still thinks if the Supreme Court reviewed this legislation, it would be very clear that this form of freedom of speech is constitutionally protected. The Supreme Court would apply strict scrutiny and therefore there has to be a really, really good reason for restricting speech. Given that fact that if anyone is inciting lawless things that is already illegal, this is just restricting law abiding people who want to peacefully demonstrate on publicly funded walkways, which is morally abhorrent.

Ian Huyett (Cornerstone)

- The unconstitutionality of the buffer zone statute at this point is just an academic issue.
- There have been numerous attempts to repeal this law, and every time clinics and clinic escorts have said this law is necessary because of alleged crimes that are being committed against women seeking abortions and that the buffer zone is going to be demarcated any day now.
- No buffer zone has been demarcated in the State, so no one has been able to challenge it in court.
- The law is so unconstitutional that it can't be enforced and will never be enforced.

- The only purpose the law is serving on the books is to chill constitutionally protected speech.
- Sometimes in NH bills have been created without legal expertise which has led to avoidable errors.
- That is what happened with this law.
- Section 38(b) has an explicit carve out for ‘patient escort services only’
- That language is not in the MA law, which was the template for the NH law, and no constitutional lawyer would have put that language into in the law.
- The only purpose that language serves is to make it easier for a lawyer to argue that this statute is content discriminatory and therefore should be subject to strict scrutiny.
- The MA law was unanimously overturned by the Court, even though it was determined to be content neutral and therefore only subject to intermediate scrutiny.
- Therefore, the NH law is as much or more unconstitutional than the MA law.
- Senator Gannon asked if the sidewalk was so narrow there is no room to stand then someone might argue there is no less burdensome alternative, but if there is room for the protestor and room for the person walking then it is fine.
 - As we know from Coakley this fails intermediate scrutiny. The NH law would be faced with strict scrutiny due to the content-based restriction. The intermediate scrutiny simply looked at if it burden substantially more speech than is necessary to achieve the government’s interests. In that case there are laws that don’t always fail and can pass a test of that kind. Buffer zone laws do not pass that test because the proffered interest is preventing harassment or obstruction of entrances. Those things can be prohibited directly, and the Supreme Court has said if you don’t have laws on the books that effectively prohibit those things, they the body should pass new laws. The Court even suggested some possible laws to MA. Even if NH did not have sufficient laws to address harassment, the legal answer would be pass new ones, not enable buffer zones.

Gabe Holden

- Is pro-choice but that is not what this is about.
- This is about targeting for political purposes.
- Not every political position has a geographical area that is directly associated with it.
- In the circumstances where you do have a specific area that is the place where these conversations can best take place, to target those is complete favoritism to one side or another.
- Trusts individuals’ judgment to make sure they are not violating these basic social norms when they go to express their opinion.
- The bad thing this does is it opens a possibility he does not want to see where it can be used in the future.

Karen Monasky (provided written testimony)

- These clinics have fought to not repeal the law, but they have never enforced, which is an admission that they know it would never hold up in court if challenged.
- Shared her personal experience of going to an abortion clinic and her grief over the loss of her first child. Would have welcomed an opportunity to pause and speak to someone that cared enough to be there.
- Has stood on the sidewalk outside of facilities in NH; does not gather there to be disruptive or interfere but to be a caring and loving presence for women and their partners at a very difficult time.
- Whether those people choose to engage with protesters is entirely up to them.
- Not every conversation is even about abortion.

Beth Scaer (provided written testimony)

- The buffer zones around polling places are nothing like this law because at polling places you can sit and have a snack and talk to a friend, but none of that is allowed in a posted buffer zone.
- Buffer zones don't protect people or staff because they don't provide any security and there are no fences.
- Someone could make an appointment and be inside the building committing a violent act and the buffer zone would have done nothing to prevent that.
- It is a myth that clinics need buffer zones to give their clients space to enter and leave their facilities.
- Lovering Health Center admitted in their volunteer sign-up form that they don't worry about people congregating outside their facility and they don't have escorts ever since they moved to a large piece of land in Greenland.
- All these abortion businesses claim that they want what Lovering has, but they want to take public space to create that buffer.
- Lovering made the effort to create a set up where they have a buffer built in.
- It is a myth that clients are physically blocked from entering facilities.
- If that is happening there is already federal law prohibiting that, Freedom of Access to Clinic Entrances Act.
- Planned Parenthood had claimed that there was a recent incident where the driveway to a Planned Parenthood in Manchester was blocked, but they could not cite a police report to the incident and there are a lot of cameras in that area.
- If there are bad actions happening, then people should just prosecute those actions.
- It is a myth that buffer zones are protecting people.
- There are no buffer zones and there never will be.
- This law helps no one, protects no one, and only serves to restrict free speech.

Jason Hennessey (NH Right to Life)

- This has little to do with abortion and more to do with how our government treats peaceful protesting.
- Free speech and the right to gather peacefully are core values to our county.

- People are welcome to go buy property where they think they can conduct their business.
- Why should private abortion providers be allowed to tell members of the public what they can and cannot say on public property.
- What's next, banning protesters from City Hall or the State House?
- If there were issues with protesters behaving poorly, you would expect providers to come and testify about the convictions they have gotten.
- Does NH want to be like Russia suppressing dissent about the war or China suppressing discussion about the violence committed against the Uyghurs?
- Or do we want to allow opposing viewpoints to be peacefully spoken in the public square?

Norman Tibault (40 Days for Life-Manchester) (provided written testimony)

- They have a campaign take place twice a year outside of Planned Parenthood that is peaceful, respectful, and prayerful that in no way impedes a person from entering or exiting the facility.
- They ask anyone participating to agree to stay on the public sidewalk, to not impede anyone, and to always behave in a lawful and respectful manner.
- It is a First Amendment right to be present on that public right of way.
- The buffer zone law is particularly egregious because it only applies to one specific type of place.
- The government has singled out a certain activity as deserving special protection from speech under the guise of protecting the clients of the facility from harassment, but it is really free speech suppression.
- Where is his buffer zone protections when someone approaches him and chews him out for praying?
- Someone stopped their car, made a sign with an obscene message about him and followed him for half an hour.
- Does not want a buffer zone protection because that person who followed him has just as much right to do what they did, as he does to do what he does.
- The First Amendment is not about picking sides.
- If there is ever a cause that deserves bipartisan support, it is freedom of speech.
- What if the law applied to an activity you opposed?
- This pendulum can swing both ways depending on who is in power.
- When speaking on any matter, how would you feel if fellow legislators were able to invoke a law that required you to be moved to a location from which you couldn't be heard? This is essentially what the buffer law says to those peacefully praying on the sidewalk.

Cindy Hennessey

- Planned Parenthood engages in over 300,000 abortions a year and they get maybe \$1,000 for each abortion. They want their business to grow and therefore they want their critics to be silent.
- There are a lot of successful sidewalk counseling stories, and these protesters want to help women.

- What is worse, a disgusting image of an act or that disgusting act?
- If these centers just stopped doing abortions the protests would stop.
- During the civil rights movement in the 1960s people went into diners and sat in booths to protest. If there was a buffer zone for those places, they would not have been able to do that.
- You won't hear from people harmed by abortion centers because they were silenced and killed in the womb.
- Peaceful presence or sidewalk prayer is not a bad thing, there can be good that comes out of it.
- If something bad is happening inside a building, shouldn't we expose what is evil?

Summary of testimony presented in opposition:

Jess Eskeland on behalf of Senator Soucy (provided written testimony)

- Senator Soucy introduced the buffer zone law in 2014 at the request of Manchester residents who had alarming and threatening interactions with protesters when trying to access services at reproductive healthcare facilities.
- These interactions went far beyond praying or counseling.
- Senator Soucy also had concerns about health care professionals going to and from work.
- The current law walks a fine line between public safety, private rights, and free speech.
- The statute is directed at problematic behavior, not at speech.
- 25-feet is about the distance of one and a half city parking spaces, and it is a narrowly tailored corridor that ensures the entrance and the area immediately surrounding it will be clear for both vehicles and pedestrian traffic.
- Outside of the buffer zone, current statute places no limits on what can be said or how it can be said.
- Protesters can still be heard and signs can still be easily read.
- The current statute does not favor one side over the other, it simply establishes a safe corridor for passage.
- There is plenty of precedent in NH for balancing competing state interests.
- NH law has a 10-foot buffer around the entrance to polling places and prohibits picketing or protesting within 150 feet of funerals and memorial services.
- The Supreme Court itself has enacted a 250-buffer zone on the plaza outside its building.
- It is critical that NH maintains the statutory protections in place for our constituents who access reproductive health care facilities.

Dalia Vidunas (Equality Health Center)

- The current law protects patients and provider safety, and privacy at these centers.
- The law is intentionally designed to strike a balance between a patient's safety and an individual's First Amendment rights.

- After the law passed, they worked diligently with the City of Concord to come up with various ways to protect patients from protesters, while protecting the protesters' right to free speech.
- It was a very uneasy compromise that semi-worked.
- At that point, they did not have so many protesters and they were not particularly aggressive.
- Spoke to how they worked together with the protesters at that time to come to a compromised agreement.
- Just before the COVID a group of protesters started showing up who refused to work with them.
- They were blocking entry way, violating noise ordinances, and using disgusting bloody signs that can be seen from the children's bookstore across the street.
- Since COVID it has gotten worse and worse.
- Spoke to their efforts to try to address ways to stop the protesters from being in front of the building.
- Has called the police well over a dozen times to help settle different disputes.
- A protestor was arrested when an escort brought forward a complaint.
- The patients who are the victims of this are too afraid to bring forward complaints.
- Has been advised by people within the City that they need to get their own attorney to enforce the buffer zone.
- Spoke to the increased number of protesters and their belligerent behavior.
- On April 8th, there were 22 protesters in that small area in front of the building.
- The facility was seeing abortion patients, birth control patients, patients getting tested for HIVs, and patients getting pap smears, but every single person that came by was accused of being a murderer.
- That day a patient was suffering from very severe hyperemesis, and she went across the street to get something to drink at the café. While there, she threw up and passed out; with the help of clinic staff, they helped her and took her back to the clinic. During that walk across the street the protesters came up and tried to block her from getting to her medical appointment; had to push them aside to get into the facility.
- These protesters were encroaching on a patient's right to seek medical care.
- The laws on the books regarding harassment and such are insufficient because they require the victim to file a complaint.
- Patients seeking medical care do not want to face their protesters again and tell the world what medical procedures they were receiving.
- They did file a formal complaint with the FBI, and the FBI sent someone in to speak with her about it.
- The patient safety zone allows for the establishment of an up to 25-foot zone to determine what is in the best interest of the community.
- Concord has been talking about a 10-foot safety zone because the entrance is so small.

- Feels that would be adequate for patients to get to their routine medical care without feeling persecuted.
- Two weeks ago, had protesters screaming at a behavioral health client.
- Protesters have honed in on states where abortion care is still legal and they are escalating the violence.
- A Planned Parenthood in TN was recently burn to the ground.
- Their facility has seen an increase in damage to their property, with trash being strewn over the grass and parking lot, and they find hundreds of nails in the parking lot.
- After a recent Executive Council meeting their building was egged.
- Because it has become so horrible and violent, they have installed an electronic surveillance system and an updated alarm system.
- Several centers have been shot at, and therefore they are looking at grants to replace windows with bulletproof glass.
- Senator Gannon asked how the State can ignore the Coakley ruling.
 - Is not an attorney, so does not want to answer that legally, but the NH law is not exactly the same as the MA law. Thinks the differences in the NH law have addressed the issues brought forward by Coakley and therefore it would not be unconstitutional.
- Senator Whitley asked if she has concerns about repealing the law when Roe v. Wade may be overturned this summer and protesters have already become more aggressive.
 - Very much so. If the law is not repealed, they will be getting their own attorney to force Concord to allow them to do the buffer zone. Patients are scared to death of these horrible protesters who are so aggressive and screaming at them non-stop. Their facility does a lot of miscarriage management, which falls under abortion type services. To have someone suffering from a miscarriage from a wanted pregnancy being screamed at that they are Satan's span and a murderer, is so psychologically damaging to those women. Patients are emotionally distraught over what the protesters have said to them.
- Senator Kahn asked what the appropriate response in terms of staff harassment is.
 - The facility took out a loan to put in security cameras for the staff safety, and they are looking to get bulletproof glass. Staff is not allowed to wear scrubs in and out of the building. Has been followed home on numerous occasions. Her staff cares so much about their patients that they are willing to defy those protesters to come in and support their patients. Doesn't know any doctors' offices' staff that would put up with what her staff puts up with. Wishes she knew what more she could do.

Liz Canada (Planned Parenthood) (provided written testimony)

- The NH law allows for a non-mandatory zone that facilities can tailor in accordance with a facility's local factors and needs.

- Reproductive centers have always experienced protest activity, but in the past few years, the volume and frequency of those protests have increased, particularly since the pandemic began.
- Some of the tactics used by these protesters include obstructing the driveway entrance, invading the privacy of patients who do not want to engage in dialogue, blocking on street parking, verbal assaults, and photographing patients and staff and then posting them online
- The unnecessarily congested driveway has caused patients to become confused and distracted, resulting in minor car accidents.
- To try to mitigate their public safety concerns, they have installed a new fence in Manchester.
- The fence is better for public safety but it changes the issue of privacy making patients very visible to the protesters.
- Currently Planned Parenthood uses on site security on certain days, which totals \$25,000 a year.
- Calls to the police are becoming more frequent.
- The patient safety zone is one tool in the toolkit for health centers and local authorities to use when working together to protect public safety and privacy while balancing First Amendment rights.
- No one should face violence, harassment, or threats when accessing healthcare.
- Having this law does not remove free speech, it just gives local health centers a small area of separation for privacy.
- Senator Kahn asked if there is ambiguity as to where the courts lie on this issue.
 - The NH law is not identical to the MA law. The MA law required every health center have a zone and it had to be 35-feet. NH's law does not have either of those things in it. It is flexible and says a facility can have a zone, but it is not required. It also allows the zone to be up to 25-feet, it is not a fixed amount. There are other buffer zones in places across the country in 14 states plus DC that have these types of allowances when it comes to reproductive healthcare facilities.
- Senator Whitley asked about a recent Supreme Court decision that upheld a buffer zone law in Pennsylvania.
 - Does not know the intricacies of the PA law, but there was a recent decision to uphold that law.
- Senator Gannon asked if because this is a content-based restriction it goes to a level of strict scrutiny, which means there has to be no less burdensome alternative and therefore the 25-foot buffer would be way beyond what the law would allow for on a 6-foot sidewalk.
 - The NH law is up to 25-feet, it is not a fixed distance. The Supreme Court decision said just because it is outside, doesn't mean it is specific to that content. The NH law talks about providing patient escort services as being carved out, but in the definition of that it specifically says that it

does not include counseling or protesting of any sort. Therefore, they are not allowed to have that sort of conversation that would be one sided.

Grace Kindeke (American Friends Service Committee)

- Not long ago was seeking general health care but was undocumented and therefore the only place that would accept her was Planned Parenthood in Manchester.
- For the most part had very little issue but would notice there was a tall fence around the facility.
- One afternoon was leaving with her boyfriend, now husband, and there was a humongous group of people yelling and holding horrific signs.
- Loves kids and has always been excited to have kids when the time is right.
- Had people waiving pamphlets in her face, yelling at them, and blocking their car from being able to take the turn on to the road safely.
- People do experience harassment at these facilities.
- No longer has to go to Planned Parenthood, can go to Dartmouth and there are no protesters there, even though she is seeking the same care.
- Options are limited for individuals who are low income or undocumented.
- When the people in those circumstances go the places they can afford to go they are confronted by individuals exercising their First Amendment right, but they are steamrolling over individuals' rights to access care safely.
- We need laws that protect a very specific area and place that people have a lot of feelings about.
- People are not protesting at Dartmouth-Hitchcock, they are protesting at these facilities where they are harming members of the LGBTQIA community, communities of color, low-income communities, and the undocumented community.
- This is not only about the First Amendment, but also protecting individual's safety when accessing care no matter where they are able to access it.

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Date Hearing Report completed: April 22, 2022