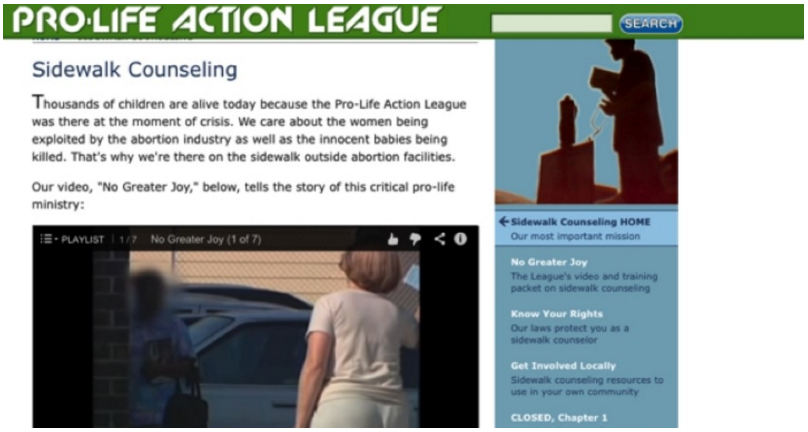
Written by **Warren Mass** on June 27, 2014

Supreme Court Strikes Down Massachusetts Abortion Clinic Buffer Zone Law



The U.S. Supreme Court on June 26 unanimously struck down a Massachusetts law that created 35-foot buffer zones around abortion facilities and prohibited demonstrations, praying, counseling, and other pro-life speech inside those perimeters.

The lead plaintiff in the case — *McCullen v. Coakley* — Eleanor McCullen, said: "The court recognized our First Amendment rights, and now I'll have a chance to speak to people one-on-one." (Martha Coakley is the attorney general of Massachusetts. In May 2007, while she was attorney general, Coakley testified before the Massachusetts State Legislature in support of the passage of the "buffer zone" law, which was an amendment of the commonwealth's Reproductive Health Care Facilities Act.)

McCullen, a 77-year-old grandmother from Newton, Massachusetts, told the *Boston Globe* how she felt about the ruling: "It restores your faith in the country."

McCullen said that many women going to the facility are hesitant about having an abortion and that she and other counselors have persuaded hundreds of women to change their mind. "This is life and death," said McCullen. "This is about a little child."

In reaction to the decision, Cardinal Seán P. O'Malley, the Catholic archbishop of Boston and chairman of the U.S. bishops' Committee on Pro-Life Activities, issued a statement that read:

> This now overturned legislation reflects an ominous trend in our society. Abortion supporters, having long denied that unborn children have a right to life, would deny that their fellow Americans who seek to protect the unborn have the same rights as other Americans — the right to freedom of speech and freedom of association; the right to participate in the public square and serve the vulnerable in accord with our moral convictions. Increasingly we see this trend evidenced at various levels of government. We are encouraged and pleased to know that with regard to this particular issue, our highest court has affirmed the American tradition of basic constitutional rights for all.

Among the organizations that filed an *amicus curiae* (friend of the court) brief in support of McCullen and the other petitioners were the Hispanic Christian Leadership Conference; International Society for Krishna Consciousness; United States Conference of Catholic Bishops; American Bible Society; Christian Medical Association; Ethics & Religious Liberty Commission of the Southern Baptist

Convention; Institutional Religious Freedom Alliance; Intervarsity Christian Fellowship/USA; Lutheran Church — Missouri Synod; National Association of Evangelicals; and the Christian Legal Society.

"Today's ruling is a great vindication of sidewalk counseling," Eric Scheidler, executive director of the Pro-Life Action League, said of the decision. "The justices in the majority recognize that our compassionate pro-life outreach to mothers outside abortion clinics deserves the protection of the First Amendment."

The Pro-Life Action League has promoted sidewalk counseling as "the most direct and essential form of pro-life activism" since its founding in 1980.

Pro-life advocates may have been pleasantly surprised that the ruling was unanimous, with those justices normally regarded as "liberal,"(Elena Kagan, Ruth Bader Ginsburg, Stephen G. Breyer, and Sonia Sotomayor) or middle-of-the road (Anthony Kennedy) concurring with those generally regarded as "conservative" (John G. Roberts, Antonin Scalia, Clarence Thomas, and Samuel A. Alito).

The *New York Times* reported that although members of the High Court were unanimous on the final ruling, they divided on the reasoning behind the ruling. The *Times* noted that the majority opinion, while striking down the Massachusetts law, "was notable for leaving open the door to other efforts to protect abortion clinics, which is probably why the court's liberal members were willing to join it."

Chief Justice Roberts, in his statement, was willing to concede that exceptions to crossing the buffer zone allowed in the law, such as for people entering or leaving the facility, passers-by, and clinic employees, was reasonable and not aimed at allowing people of one viewpoint to have greater freedom of speech rights than others. "There is nothing inherently suspect about providing some kind of exemption to allow individuals who work at the clinics to enter or remain within the buffer zones," he wrote.

However, Justice Alito disagreed with this interpretation, asking the others to envision this scenario:

> Consider this entirely realistic situation. A woman enters a buffer zone and heads haltingly toward the entrance. A sidewalk counselor, such as petitioners, enters the buffer zone, approaches the woman and says, "If you have doubts about an abortion, let me try to answer any questions you may have. The clinic will not give you good information." At the same time, a clinic employee, as instructed by the management, approaches the same woman and says, "Come inside and we will give you honest answers to all your questions." The sidewalk counselor and the clinic employee expressed opposing viewpoints, but only the first violated the statute.

Alito emphasized the point by writing:

> It is clear on the face of the Massachusetts law that it discriminates based on viewpoint. Speech in favor of the clinic and its work by employees and agents is permitted; speech criticizing the clinic and its work is a crime. This is blatant viewpoint discrimination.

Justice Scalia said in his opinion criticizing the Massachusetts law: "Protecting people from speech they do not want to hear is not a function that the First Amendment allows the government to undertake in the public streets and sidewalks."

Advocates of the Massachusetts law had asserted when it was first passed that the law was needed to protect women visiting abortion facilities from violent or aggressive acts. But Mark L. Rienzi, lead counsel for McCullen and an associate professor of constitutional law at the Catholic University of America in Washington, said in a telephone interview with the *Times* that disorderly or threatening

behavior could be stopped without limiting free speech: “It’s a unanimous opinion, and it’s a strong opinion saying: ‘If there’s bad behavior, the state should prosecute the bad behavior. They can’t put peaceful grandmothers like Eleanor McCullen in prison.’”

Most people in the pro-life movement say that their primary strategy to eliminate abortion is to “change hearts.” Every notable pro-life organization has condemned violent, and even uncivil, behavior — opting for prayer or gentle counseling. Those who engage in sidewalk counseling to try to change the hearts of women who have often been pressured into having an abortion, or who are unaware of alternatives to the deadly procedure, now have more freedom to do what their consciences tell them they must do.

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