



Testimony in Opposition to: City of Madison Buffer Zone Ordinance #32827
Board of Health for Madison and Dane County
By Gwen Finnegan, Director of Vigil for Life, Madison

February 13, 2014

Good Evening, my name is Gwen Finnegan. I am the Director of Vigil for Life, Madison and am here to give a brief statement on our opposition to the gag rule proposed in the City of Madison Buffer Zone Ordinance, Number 32827. The Buffer Zone gag rule abandons Madison's traditional respect for the First Amendment by criminalizing peaceful free speech and leafleting around abortion and health care facilities, while ignoring far larger and more disruptive protests on other issues.

I will start out by telling you what we do at Vigil for Life. Our mission is "To pray, fast and peacefully witness for an end to the intentional destruction of all innocent human beings, especially those most in need." We engage in this loving outreach primarily on the public sidewalk outside of Planned Parenthood on Orin Rd. We bring a peaceful and prayerful witness, and some of us invite the people we encounter to engage in conversation where we encourage choosing life. We also are there to offer hope and healing to mothers who have just lost their babies to abortion. Typically if you drive by during the hours we are there you would see two and sometimes only one of us standing peacefully and prayerfully and perhaps speaking calmly with another person.

Our right to speak to people on the public sidewalk is protected by the First Amendment of the United States Constitution. This proposed Buffer Zone violates the First Amendment by creating a gag rule on free speech and leafleting within eight feet of a person near abortion or health care facilities. Until now Madison has always cherished First Amendment rights, so it is troubling that some Council members would attempt to impose a gag rule on free speech because they disagree with pro-life people.

If the City Council was really troubled about the effects of free speech it would be focusing on the numerous protests that actually cause disruption, arrests and other disorderly conduct, but that has nothing to do with abortion or health care facilities. Just three years ago a massive protest movement began against Governor Scott Walker and his positions on collective bargaining. This movement has led to hundreds of arrests and tens or hundreds of thousands of protestors throughout the downtown area. As I document in the written version of these remarks, crowds were estimated at 30,000 on February 16, 2011,¹ 25,000 on February 17,² 70,000 on

¹ http://www.huffingtonpost.com/2011/02/17/wisconsin-protests-scott-walker-police_n_824697.html

February 19,³ and between 70,000 and 100,000 on February 26.⁴ On March 5 “tens of thousands” more came to another speech and rally,⁵ and on March 12 the AFL-CIO estimated that 185,000 people protested.⁶

Reports and photographs show that these crowds sprawled throughout the downtown area, closing and congesting streets and public sidewalks. The crowds spanned all the way to the UW campus, and rallies often involved marches up State Street and closures of nearby streets with disruption of traffic.⁷ By the end of March 2011, these protests had cost taxpayers millions of dollars in police and other expenses.⁸ Thousands more people continued to protest in April, May and June.⁹ Arrests were made throughout the summer of 2011,¹⁰ and opposition to the collective bargaining law included death threats.¹¹ The events also led to medical emergencies among the crowds.¹² The protests continued even through August 2013, where violence erupted,¹³ and the State Journal reported that there had been “nearly 300 arrests” which had occurred “almost daily” for “nearly four weeks” in protest of Governor Walker.¹⁴ And this is all on just one issue. For decades, Madison has been host to thousands of protests on issues unrelated to abortion or health facilities, which have involved significant crowds, arrests and criminal activity, and effects on access to streets and sidewalks.¹⁵

² <http://www.bloomberg.com/news/2011-02-17/public-employee-union-protests-spread-from-wisconsin-to-ohio.html>

³ <http://www.wkow.com/Global/story.asp?S=14062370>

⁴ <http://articles.latimes.com/2011/feb/26/nation/la-na-wisconsin-protests-20110227>

⁵ http://www.huffingtonpost.com/2011/03/05/michael-moore-joins-wisconsin-protests_n_831886.html

⁶ <http://wisafclcio.typepad.com/wisconsin-state-afl-cio-blog/2011/03/united-to-support-wisconsin-workers.html>

⁷ <http://beta.cityofmadison.com/news/mass-demonstrations> ,

⁸ <http://www.jsonline.com/news/statepolitics/118818839.html>

⁹ http://www.nytimes.com/2011/04/17/us/politics/17palin.html?_r=0 ,

<http://www.prwatch.org/news/2011/05/10752/wisconsin-protesters-weather-pessimism-may-14-rally> , <http://www.progressive.org/wx061711.html>

¹⁰ http://host.madison.com/wsj/news/local/crime_and_courts/article_94a2b5fa-a0bc-5d69-9097-55ff3de76569.html , <http://www.jsonline.com/news/statepolitics/124049524.html> ,

<http://www.jsonline.com/newswatch/128423073.html>

¹¹ <http://talkingpointsmemo.com/dc/26-year-old-woman-charged-with-sending-death-threats-to-gop-senators-in-wisconsin> , <http://www.jsonline.com/news/statepolitics/121721234.html> ,

<http://www.thenorthwestern.com/article/20120330/OSH0104/203300450/Man-charged-disorderly-conduct-changes-from-not-guilty-no-contest?odyssey=tab%7Ctopnews%7Ctext%7CFRONTPAGE>

¹² <http://beta.cityofmadison.com/news/downtown-demonstration>

¹³ http://www.huffingtonpost.com/2013/08/26/wisconsin-capitol-arrest-video_n_3818935.html

¹⁴ http://host.madison.com/news/local/crime_and_courts/despite-nearly-arrests-capitol-protest-grows/article_34a452e5-08a9-5388-94bc-40af1875650e.html

¹⁵ See, for example,

[https://www.facebook.com/media/set/?set=a.631980830160764.1073741825.206009666091218](https://www.facebook.com/media/set/?set=a.631980830160764.1073741825.206009666091218&type=3)

<http://progressive.org/crackdown-in-madison-capitol.html> (gay marriage protest 2013),

The City of Madison's response to the massive demonstrations since 2011 has been to praise people who are "peacefully assembled to exercise democracy and First Amendment rights."¹⁶ It is therefore deeply troubling that the City would impose a gag rule on those same free speech rights when they are peacefully conducted by one or two pro-life people on a sidewalk outside Planned Parenthood, which has never seen 10,000 people, millions of dollars in law enforcement costs due to demonstrations, medical emergencies among demonstrating crowds, or a reduction in access to the facility due to free speech activity. The Buffer Zone gag rule is clearly discriminatory against pro-life people because it ignores the upheaval from protests concerning political causes that are more sympathetic to some council members. Imposing the gag rule outside abortion and health facilities would prove that the City is not really concerned about the effects of protests, nor is it willing to legislate against those effects unless it is targeting pro-life speakers.

If none of what I have already said gives you pause in your consideration of the proposed Buffer Zone gag rule ordinance, please consider that the Supreme Court is actually reconsidering the constitutionality of gag rules on speech outside abortion facilities. The Court heard oral argument on such a law last month in the case *McCullen v. Coakley*, No. 12-1168. The case raised the prospect of reconsidering past Supreme Court cases in this area, and most media reports show that the arguments went very well for the pro-life challengers. The Court will issue its final decision no later than the end of June 2014, and since it was argued in the middle of the year, the decision will probably come out in April or May. It would be unwise for the Common Council to pass this ordinance before the *McCullen* decision is released, when the Supreme Court could issue a decision that is decisively against the passage of gag rules outside abortion or health facilities.

If the City of Madison enacts the Buffer Zone gag rule, it will almost certainly face a federal lawsuit to protect the freedom of speech of ourselves and other people, and the case could result in significant legal costs for the City. We are working with the civil rights law firm Alliance Defending Freedom, which recently obtained almost \$500,000 in attorneys fees from the University of Wisconsin-Madison for its violations of the freedom of speech.¹⁷ Alliance Defending Freedom attorneys won a lawsuit against a buffer zone gag rule in Pittsburgh¹⁸ and have been instrumental in fighting the similar law in the *McCullen* case.¹⁹ Thank you so much for your time and kind consideration.

(sidewalk chalk arrest 2012), <https://www.youtube.com/watch?v=bp9zpyWoGIA> (anti-war march 2012), <http://www.isthmus.com/daily/article.php?article=34950> (occupy Madison), <http://iso-madison.blogspot.com/> (ongoing socialist protests)

¹⁶ <http://www.cityofmadison.com/node/5437>

¹⁷ <http://www.adfmedia.org/News/PRDetail/4328>

¹⁸ <http://www.adfmedia.org/News/PRDetail/3333>

¹⁹ <http://www.adfmedia.org/News/PRDetail/8272>