

DRAWING THE LINE AGAINST ANTI-ABORTION VIOLENCE AND HARASSMENT

**NOW LEGAL DEFENSE AND EDUCATION FUND
395 Hudson Street, New York, NY 10014
Phone: 212.925.6635; Fax: 212.226.1066**

**THE FEMINIST MAJORITY FOUNDATION
National Clinic Access Project
1600 Wilson Blvd. Suite 801
Arlington, VA 22209
Phone: 703.522.2214
www.feminist.org**

or

**433 S Beverly Drive
Beverly Hills, CA 90212
Telephone: 310.556.2500**

PREFACE

With a resurgence in anti-abortion violence and intimidation, providing protection to clinics, health care providers, and patients and maintaining access to abortion services is more important than ever. The right to abortion is meaningless without safe access to health care services. In order to further clinics' and communities' ability to provide safe abortion access, the Feminist Majority Foundation and NOW Legal Defense and Education Fund have updated this booklet, first published in 1996

The Feminist Majority Foundation would like to thank Deborah Dos Santos and the law firm of Hill and Barlow for the extensive research, writing, and work they have provided to this project.

PLEASE NOTE: The materials contained in this publication will provide general information and are designed for informational purposes only. This publication does not constitute legal services or representation and is not to be used in place of consultation with an attorney.

Distributed by:

The Feminist Majority Foundation
1600 Wilson Blvd. Suite 801
Arlington, VA 22209
Telephone: 703.522.2214
www.feminist.org

or

433 S Beverly Drive
Beverly Hills, CA 90212
Telephone: 310.556.2500

Drawing the Line Against Anti-Abortion Violence and Harassment

Anti-abortion extremists have thus far been unsuccessful in making abortion illegal, so they resort to violence and intimidation in an attempt to make abortion services unavailable. According to the Feminist Majority Foundation's National Clinic Violence Survey, 23% of all clinics report they were victims of severe violence in 2002 (including blockades, invasions, bombings, arsons, gunfire, and physical assaults). Reversing a pattern of decline over the past several years, the level of severe violence increased from 20% in 2000, and the number of clinics experiencing three or more incidents of violence increased dramatically from 8% in 2000 to 14% in 2002. In other words, **almost one in four clinics throughout the country is targeted with the most severe forms of anti-abortion violence.**¹

Moreover, 67% percent of clinics surveyed experienced anti-abortion intimidation tactics such as approaching/blocking cars of patients, videotaping/photographing patients, posting pictures of patients on the Internet, recording license plate numbers of patients, filing frivolous lawsuits, harassing phone calls, harassing emails, pamphlets and leaflets targeting staff and physicians, personal information or pictures of staff on the Internet, and "WANTED" or "UNWANTED" posters of physicians or staff.² In the face of these tactics and the adverse Supreme Court decision in *NOW v. Scheidler*³ in which the Court struck down the nationwide injunction after finding that the Hobbs Act and the Racketeer Influenced and Corrupt Organization Act (RICO) did not apply to those who use force and violence against clinics, clinics and advocates will have to redouble their efforts in order to keep access to abortion rights a reality.

The interference by extremists with the provision of reproductive health services has serious health consequences. First and foremost, it limits the number of doctors and clinics offering abortions. For those patients who do make it to the clinic, extremist activities take a severe toll. A Florida clinic doctor testified that as a result of passing a gauntlet of protest and harassment to enter the clinic, patients "manifested a higher level of anxiety and hypertension causing those patients to need more sedation to undergo the surgical procedures, thereby increasing the risk associated with such procedures."⁴ The Supreme Court of the United States has recognized the special nature of health care facilities noting:

Hospitals, after all, are not factories or mines or assembly plants. They are hospitals, where human ailments are treated, where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and her family...need a restful, uncluttered, relaxing and helpful atmosphere.⁵

Based in part on the effect on patients, courts have been willing to create protected zones around clinics, finding that "the First Amendment does not demand that patients at a medical facility undertake Herculean efforts to escape the cacophony of political protests."⁶

Doctors and clinic staff have become the most visible targets of extreme acts of violence. Anti-abortion extremists have placed doctors' names on "hit lists" and have made physicians who perform abortions the subjects of "justifiable homicide" petitions.⁷ And they have expanded their tactics beyond clinic premises to target abortion providers' homes. The invasive nature of protests directed at individual residences -- picketers blocking driveways, shouting outside doors and windows, and harassing providers' children -- deprives clinic staff of their right to privacy in their homes.

Pro-choice advocates, attorneys, clinics and lawmakers have employed multiple strategies for countering anti-abortion violence -- both nationally and locally. Abortion rights supporters have mobilized thousands of individuals to protect clinics and clinic workers and worked to improve how law enforcement responds to acts of violence and intimidation. In 1994 national abortion rights advocates fought for and won passage of the Freedom of Access to Clinic Entrances Act (FACE), the law that creates federal civil and criminal penalties for anyone who intentionally uses force or the threat of force to injure, intimidate or interfere with access to reproductive health services. FACE has been found to be constitutional by every appellate court that has examined it.⁸

The federal protections of FACE are not always enough to fully protect clinics and health care providers. Because FACE applies only when force or threats of force are used, local laws remain a critical tool in safeguarding clinics. This booklet explores additional local strategies for addressing the crisis resulting from anti-abortion violence and harassment. In particular, it:

- provides an overview of the difference between passing ordinances and seeking court injunctions;
- reviews what courts have said about buffer zones, bubble zones, residential picketing ordinances, and injunctions;
- offers guidelines for drafting legally sound ordinances and injunctions;
- contains appendices with existing ordinances, as well as references to recent court challenges; and
- offers resources to work within communities to pass municipal ordinances that establish protective zones around clinics and that prohibit targeted picketing around providers homes.

This booklet explains legal issues but it is not intended to replace consultation with an attorney and is not legal advice. If you decide to pursue legal protection for a clinic or residence or legislation to protect a clinic or residence, you should consult your own attorney first.

BUFFER ZONES

Q: WHAT ARE “BUFFER ZONES”?

A: **Buffer zones** are specifically defined public areas surrounding health care facilities where demonstrations or access are restricted or sharply limited. These zones often cover the vicinity of public entrances, so that doorways and driveways may not be blocked. Buffer zones can create a variety of limits including prohibiting certain people from “congregating, picketing, patrolling, demonstrating, or entering” a specific area around a clinic;⁹ limiting activities such as “singing, chanting, whistling, shouting, yelling, use of bullhorns, auto horns, or sound amplification equipment” in a certain area;¹⁰ or creating a zone where only law enforcement and those entering and leaving the clinic may enter.¹¹ Buffer zones can be created through ordinances or injunctions.

Q: WHAT ARE “NO APPROACH ZONES”?

A: Some buffer zone ordinances create “**no approach zones**” (or “**bubble zones**”), which protect the **person** seeking entrance to a health care facility by prohibiting or limiting demonstrations or attempts to speak with that person within a certain distance of that person when she is within a certain distance from a reproductive health care facility. No approach zones require the assent of the person to come closer than the no approach zone permits.¹² Two examples of no approach zones are:

(1) *Colorado*: prohibits “knowing[ly] approaching” within 8 feet of another person without consent for “the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling” within 100 feet of a reproductive health care center. The Supreme Court found this law constitutional.¹³

(2) *Massachusetts*: prohibits “knowingly approach[ing] another person or motor vehicle within six feet . . . unless such other person or occupant of the vehicle consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling. . . within a radius of 18 feet from any entrance door or driveway to a reproductive health care facility [or within a six foot rectangle around the entrance or driveway of the clinic].” The Massachusetts law has an exemption for clinic escorts. The First Circuit Court of Appeals found this law constitutional.¹⁴

* * * * *

ORDINANCES AND INJUNCTIONS

Q: WHY IS IT NECESSARY TO CREATE BUFFER ZONES OR PROHIBIT RESIDENTIAL PICKETING?

A: Buffer zones help ensure that those giving and seeking reproductive health care can safely enter and leave medical facilities, keep entrances open, prevent traffic problems, maintain distance between individuals, minimize physical contact, and reduce harassment and

intimidation. Prohibiting targeted residential picketing is necessary to protect persons from intrusive or harassing picketing that is directly focused on their residence so that they may enjoy peace and privacy in their home.

Q: HOW CAN BUFFER ZONES BE CREATED OR RESIDENTIAL PICKETING BE PROHIBITED?

A: There are two ways to create buffer zones or prohibit residential picketing. The first is by enacting a state statute or local ordinance. For simplicity, this booklet refers to all state or local laws as ordinances. Pro-choice groups, working together with other local advocates and city and state governments, can play an instrumental role in enacting these ordinances. The second method is to go to court to obtain a court order called an injunction. An injunction prohibits certain types of activity or orders certain conduct to take place. A court may order targeted residential picketing to stop or may prevent a threatened campaign of targeted picketing from ever taking place.

Q: WHAT ARE THE DIFFERENCES BETWEEN AN ORDINANCE AND AN INJUNCTION?

A: There are several important differences between ordinances and court injunctions, although they sometimes accomplish the same result.

An ordinance:

- Is enacted by the lawmaking body of the state, county or city.
- Applies to anyone who engages in activity prohibited by the ordinance.
- Applies to all qualifying facilities in the locality.

An injunction:

- Is issued by a court.
- Applies to certain individuals or organizations who are involved in a dispute brought to court.
- Applies to the facilities or areas named in the injunction; injunctions can cover specific clinics, geographical areas¹⁵, or be national in scope.¹⁶
- Person asking for the injunction must prove it is necessary because of prior or threatened acts (for example, threat of targeted residential picketing, prior violation of trespass law).

Q: WHAT ARE THE REQUIREMENTS FOR OBTAINING A COURT INJUNCTION?

A: Courts issue three types of injunctions: temporary restraining orders, preliminary injunctions, and permanent injunctions; they vary by duration and each has slightly different requirements.

- Temporary Restraining Order (TRO)

- Issued in special circumstances where the threat of harm is high.
 - No notice to the opposing party or little advance notice of a court hearing.
 - Usually expires with 10 days, but can be replaced by a preliminary injunction.
 - Plaintiff must show: (1) irreparable harm (for example: the clinic will be forced to close, clinic will be blockaded, patient's privacy will be violated, patient will be harassed); (2) the legal claims are likely to be successful (for example: there is a good case for trespass, violation of privacy, a FACE violation); (3) the plaintiff will suffer more harm if the injunction is not granted than the defendant will if the injunction is granted; (4) the public will not be harmed by the injunction.
- Preliminary Injunction
 - Requires advance notice to the court and to the opposing party.
 - Often expires after a set period of time, to be determined by the court.
 - Plaintiff must show: (1) irreparable harm (for example: the clinic will be forced to close, clinic will be blockaded, patient's privacy will be violated, patient will be harassed); (2) the legal claims are likely to be successful (for example: there is a good case for trespass, violation of privacy, a FACE violation); (3) the plaintiff will suffer more harm if the injunction is not granted than the defendant will if the injunction is granted; (4) the public will not be harmed by the injunction.
 - Permanent Injunction
 - Awarded by court after ruling on the merits of the plaintiff's legal claim.
 - Has no pre-determined expiration date.
 - Scope of the injunction determined by the court based on the particular facts of the case.

Q: SHOULD COMMUNITY ADVOCATES USE AN ORDINANCE OR AN INJUNCTION TO CREATE BUFFER ZONES OR PREVENT TARGETED RESIDENTIAL PICKETING?

A: The route you take depends on your objective. If your goal is to stop an immediate threat of a targeted picket, or prevent a specific blockade at a clinic, an injunction is the best course of action. When seeking an injunction, you will need to retain a lawyer and demonstrate to the court that, based on the specific circumstances in your case, you meet the legal requirements for an injunction. An injunction can be obtained much faster than a law can be passed. A law requires coalition building and may be derailed by anti-abortion legislators or groups; an injunction depends upon the impartiality of a judge, which may be easier to ensure.

An ordinance has some advantages over an injunction. First, the party seeking relief (the target of the picketing) does not need to go to court or hire a lawyer because the prosecutor or city attorney handles enforcement. Second, injunctions are limited to those who are involved in the lawsuit, while ordinances cover everyone. Third, injunctions require an alleged violation of a

law like FACE, trespass, or the right to privacy; prior violations may help to get an ordinance passed, but they are not necessary.

Q: DO BUFFER ZONE ORDINANCES OR INJUNCTIONS VIOLATE THE RIGHT TO FREE SPEECH?

A: No. Many injunctions and statutes have successfully passed First Amendment challenges; both the Colorado and Massachusetts buffer/no-approach zone ordinances have been found to be constitutional. Appendix A contains the Massachusetts and Colorado statutes. Appendix B is a chart listing injunctions created to protect clinics, workers, and patients. Cases continue to be litigated, and decisions are being appealed, which may further shape and refine these principles. Before making a judgment as to whether your proposed ordinance or injunction is First Amendment “friendly,” it is recommended to have an attorney review the latest judicial determinations.

Q: WHAT QUALITIES MAKE A BUFFER ZONE ORDINANCE OR AN INJUNCTION CONSTITUTIONAL?

A: Any ordinance or injunction that restricts speech that takes place on public property (such as sidewalks or city streets) should be:

- (1) **content-neutral**
- (2) **“narrowly tailored”**
- (3) **to serve “a significant government interest.”**¹⁷

In addition, it must be written in clear language without vague terms, and any criminal penalty provisions must be sufficiently explicit to give individuals fair notice of the type of conduct that is prohibited.

Q: WHAT IS A “CONTENT-NEUTRAL” BUFFER ZONE ORDINANCE OR INJUNCTION?

A: To be “content-neutral,” restrictions imposed by a buffer zone ordinance or injunction must apply to any person engaging in the restricted activity (for example, picketing, blockading, crossing the buffer zone) regardless of her view on an issue. The ordinance should focus on permitted and prohibited *conduct* -- such as obstructing entrances, physical contact, entering and exiting the clinic, approaching, passing leaflets -- rather than the message’s *content*.

It is important not to create exceptions for particular groups or messages; such an exemption may remove the content-neutrality of the statute.¹⁸ However, it may be acceptable to allow clinic escorts to approach a patient even while keeping anti-abortion protesters beyond a certain distance.¹⁹

Restricting certain types of expressive activity within a buffer zone may be permitted, provided that the restrictions are limited and can be justified. For example, a restriction on

loudspeakers in the area immediately adjacent to the clinic may be appropriate to reduce stress on patients undergoing medical procedures.²⁰

Q: WHAT IS A “NARROWLY TAILORED” BUFFER ZONE ORDINANCE OR INJUNCTION?

A: A narrowly tailored ordinance or injunction is one that is specifically designed to protect health and safety and one that limits no more speech than necessary. The size, location, and character of the zone created by the injunction or ordinance should reflect the specific problems encountered by your community or clinic.

The zone should also leave open alternative channels of communication. For example, a thirty-six foot buffer zone around clinic entrances still permits protesters to broadcast their message in areas outside the zone, or to communicate to persons inside the zone by holding signs outside the zone.

Q: WHAT KINDS OF GOVERNMENT INTERESTS CAN SUPPORT A BUFFER ZONE OR AN INJUNCTION?

A: Government interests must be significant to justify limits on demonstration activity. The interests may include: promoting public safety and order (including traffic safety), protecting a woman’s right to reproductive health care services, safeguarding property rights, and protecting medical privacy.²¹

Q: CAN A BUFFER ZONE ORDINANCE OR INJUNCTION BE CONTENT-NEUTRAL IF IT WAS PASSED IN RESPONSE TO ANTI-ABORTION VIOLENCE?

A: Yes. Courts have found buffer zone ordinances and injunctions to be content-neutral even if they were put in place to remedy the problem of clinic violence.²²

Q: HOW SHOULD WE CHOOSE A PARTICULAR TYPE OF BUFFER ZONE OR INJUNCTION REQUIREMENTS?

A: First, analyze the situation of clinics in your area or your specific clinic to see what would increase the safety and comfort of your staff and patients. The ordinance or injunction should fit the physical layout of the structures needing protection. Consider the location of entrances, driveways, and parking lots, the width of public sidewalks, and the degree of traffic congestion. Second, look at what other jurisdictions have done and whether courts have approved of those actions. If what has worked for other places does not work for your situation, be creative. For example, the Massachusetts no approach law contains provisions (clinics marking the protected area, escorts allowed to go into the protected area) that other legislation did not attempt.²³

The type of ordinance or buffer zone you seek should fit the violations clinics are facing. Fitting the claimed infringement to the remedy is especially necessary for an injunction. Courts have refused to grant buffer zones to clinics claiming FACE violations for blockades; rather the courts have simply order anti-abortion protestors to stay off of clinic property and stop obstructing access.²⁴

Q: WHAT TYPES OF FACILITIES SHOULD THE BUFFER ZONE ORDINANCE OR INJUNCTION COVER?

- A:** Statutes and injunctions have used various formulations. For example:
- Reproductive health care facilities (FACE);
 - Health care facilities (Colorado);
 - Free-standing clinics that provide abortion (Massachusetts);
 - Any facility where abortions are performed with a special definition for office buildings (District of Columbia Metro Region).²⁵
 - Zones around other facilities. A number of ordinances have included provisions protecting both medical and religious facilities. For example, FACE addresses threats to houses of worship.²⁶ If the legislative history supports a need to include religious or other facilities, an ordinance that also addresses the need to protect these institutions -- in addition to reproductive health care facilities -- may be helpful to demonstrate a greater local need. What is more, working with a diverse array of local advocates who support your need for a buffer zone ordinance may be helpful in monitoring its enforcement or defending the ordinance from constitutional challenges in the future.

Q: HOW LARGE SHOULD THE BUFFER ZONE CREATED BY THE LEGISLATION OR INJUNCTION BE?

A: The size of the zone should be determined by what you need and informed by what has been approved of in other cases. Remember that one prong of the test of the zone's constitutionality is that it burden no more speech than necessary and that it leave open other avenues for protest and expression; therefore, courts may favor smaller zones. For examples of sizes of zones that have been approved, see Appendix B.

Q: HOW LARGE SHOULD THE NO APPROACH ZONE CREATED BY THE LEGISLATION OR THE INJUNCTION BE?

A: Where a buffer zone also contains a no approach zone provision, the Supreme Court has upheld a 100 foot zone with an 8 foot no approach area²⁷ and the federal First Circuit Court of Appeals has upheld an 18 foot zone with a 6 foot no approach area.²⁸ Expert research on personal space suggests that interactions with strangers who intrude too closely in a public place are perceived as hostile and threatening.²⁹ Encounters at a distance of 8 feet or more reduce the threatening nature of a communication from a stranger.³⁰

Q: WHAT KIND OF PENALTIES SHOULD THE INJUNCTION OR ORDINANCE CONTAIN?

A: There are two types of penalties an ordinance or injunction can create: civil penalties (damages awarded to the injured party) and criminal (jail time or fines). Ideally, your ordinance can and should have both. Injunctions can have civil penalties³¹, and a court may sentence a violator of an injunction to jail time. Actions for criminal penalties must be brought by the government (local/state/federal). Actions for civil penalties (money damages) can be brought by a private individual harmed by the behavior.

It is critical to have civil penalties and the right for an injured party to seek those penalties so that clinics and clinic workers can bring lawsuits if the local government officials refuse or are hostile to abortion rights. FACE, Massachusetts' No Approach Statute, and Colorado's No Approach Statute all contain such provisions.³² Penalties should escalate with the number of violations.

You should also consider including a statutory damages provision. This provision creates an automatic fine for a civil case rather than forcing the clinic or the individual to prove damages. FACE contains this type of provision.³³

Q: THE CLINIC ALREADY HAS AN INJUNCTION OR AN ORDINANCE PROTECTING IT BUT IS IT IS NOT ENFORCED.

A: Especially after all of the work that goes into getting an injunction or getting an ordinance passed, it is very frustrating to see it being violated without consequences. Some suggestions to increase law enforcement's response are:

? Educate local law enforcement. Ask for a meeting with leaders of local law enforcement and explain what the problems are and what you would like them to do. The Feminist Majority Foundation has experience in working with local law enforcement to teach them about clinic violence and can work with you on this project.

You can contact the Feminist Majority Foundation at:

Feminist Majority Foundation
1600 Wilson Blvd. Suite 801
Arlington, VA 22209
Telephone: 703.522.2214
www.feminist.org

Or: Feminist Majority Foundation
433 S Beverly Drive
Beverly Hills, CA 90212
Telephone: 310.556.2500
www.feminist.org

It may be that local law enforcement officers do not understand the law or injunction or are afraid to enforce it because they have been threatened with lawsuits.

? Educate local prosecutors and elected officials. Meet with prosecutors (the city, county or state attorney) and explain what the problem is and what you would like them to do.

- Keep a journal of violations including photographs and videotapes if possible.
- If the current injunction is not keeping you safe, consider returning to the court to have the terms changed.

Q: THE CLINIC ALREADY HAS AN INJUNCTION AGAINST ONE GROUP OF ANTI-ABORTION ACTIVISTS. NOW ANOTHER GROUP, LED BY SOMEONE ELSE, IS THE PROBLEM. DOES THE OLD INJUNCTION APPLY TO THE NEW GROUP?

A: One of the reasons an ordinance is preferable to an injunction is that an ordinance covers everyone at all times; injunctions cover only those that the injunction mentions. In order to insure that the injunction covers the necessary individuals, they have been written to cover the people named in the lawsuit and “anyone acting in concert with them” or “anyone participating with them” or their agents or employees. Using an injunction that prohibited blockading by the named defendant group or anyone acting in concert or participation with that group, one court found that the provisions of the injunction applied to individuals who were not members of the defendant group but who did the same type of activities as the defendant group, were aware of the defendant group, and had actual notice of the injunction.³⁴ One court has recognized that the fluidity of anti-abortion organizations makes enjoining them difficult; this court found that superficial changes in the make-up of a group or its name insufficient to evade the requirements of an injunction.³⁵

Q: ARE THERE ANY LIMITS ON THE SIZE OF SIGNS THAT ANTI-ABORTION PROTESTERS CAN CARRY?

A: Limitations on the size of signs can be legally defended if they are: (1) applied to all types of protests and (2) are related to safety. A three-foot limit has been found constitutional based on a city’s interest in traffic safety,³⁶ and some statutes limit the type and size of material that can be used to support a sign.³⁷

RESIDENTIAL PICKETING

Q: WHY ARE RESIDENTIAL PICKETING ORDINANCES OR INJUNCTIONS NECESSARY?

A: Anti-abortion protesters use targeted residential picketing to intimidate and harass reproductive health service providers outside their homes. Many doctors and clinic employees across the country have suffered an invasion of privacy due to intrusive and harassing residential picketing. Some providers have found their driveways blocked by protesters standing in front of their cars, often while shouting slogans or chanting messages through

bullhorns.³⁸ In other cases, doctors have endured continuous picketing conducted by a handful to more than forty anti-abortion protesters.³⁹ Some pickets have persisted for weeks and even years.⁴⁰ Although local law enforcement officials may minimize the dangers of this type of picketing, historically, several doctors have been targets of such picketing prior to violent and sometimes fatal attacks. Such picketing also often represents an escalation in the level of threat.

Q: HOW HAVE COURTS RULED ON RESIDENTIAL PICKETING ORDINANCES OR INJUNCTIONS?

A: The Supreme Court has ruled, in a number of contexts, that some limitation on residential picketing is permissible because privacy in one's home is valuable to society. This protection is limited to **targeted** residential picketing which is defined as picketing focused on one residence because it is staged only at that residence or only very close to the residence.⁴¹ Appendix C contains a list of residential picketing ordinances and the outcomes of cases involving those regulations.

Q: WHAT CHARACTERISTICS ARE LIKELY TO MAKE A RESIDENTIAL PICKETING ORDINANCE OR INJUNCTION CONSTITUTIONAL?

A: When reviewing the constitutionality of a residential picketing ordinance or injunction, a court must assess whether it is:

- (1) **content-neutral**
- (2) **“narrowly tailored”**
- (3) **to serve a “significant government interest.”**⁴²

Q: WHAT IS A “CONTENT-NEUTRAL” RESIDENTIAL PICKETING ORDINANCE OR INJUNCTION?

A: An ordinance or injunction is content-neutral if it regulates any type of targeted picketing activity, regardless of the message being conveyed or of the picketers’ point of view.

Q: WHAT KIND OF GOVERNMENT INTERESTS CAN SUPPORT A RESIDENTIAL PICKETING ORDINANCE OR INJUNCTION?

A: It is well established that an individual has an interest in having her home be a place of peace and tranquility. As stated by the Supreme Court in *Frisby*, “[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.”⁴³

Another aspect of residential privacy that the *Frisby* Court -- as well as other courts reviewing residential picketing ordinances -- have found compelling, is a person’s inability to escape the targeted message. Unlike other locations where a person can simply avoid speech that he or she does not want to hear, a targeted resident becomes an “unwilling listener,” sometimes referred to as a “captive audience,” inside her home.

Q: WHAT IS A “NARROWLY TAILORED” RESIDENTIAL PICKETING ORDINANCE OR INJUNCTION?

A: A narrowly tailored residential picketing ordinance or injunction allows protesters to communicate their message by means other than targeting a particular home. The Supreme Court in *Frisby* emphasized that it would be unconstitutional for an ordinance to prohibit marching through entire neighborhoods or picketing in front of an entire block of houses because society's interest in protecting residential privacy is limited to individual homes.⁴⁴ In fact, the Court acknowledged that the anti-abortion protesters could communicate their ideas through other means, including distributing literature door-to-door or by mail or by contacting residents by telephone so long as the calls are not harassing.⁴⁵

Q: HOW SHOULD A RESIDENTIAL PICKETING ORDINANCE OR INJUNCTION DEFINE THE PROTECTED AREA AROUND A HOME?

A: Generally, ordinances that have protected the targeted home and an area including two more adjacent homes have been upheld. Appendix C contains examples of residential picketing ordinances and litigation considering the constitutionality of those ordinances. Appendix D contains examples of residential picketing ordinances.

GUIDELINES

Q: HOW CAN WE ENACT AN ORDINANCE IN OUR COMMUNITY?

A: Before you consider enacting a buffer zone or residential picketing ordinance, you should evaluate both the existing and potential support and opposition. Identify community leaders and analyze the local political trends. Seek support and guidance from as many sources as possible. By working with a large number of groups and individuals while the legislation is still in the drafting stage -- and preferably when you are still deciding whether to pursue legislation at all -- you will be able to incorporate the concerns of others at the outset and avoid public criticism later on. Research the problems clinics and doctors are facing so that you can document the issues and demonstrate how the proposed legislation will respond to those issues.

Other Resources:

- The Feminist Majority Foundation conducts and publishes a bi-annual report on clinic violence and tracks reports of violence against clinics throughout the country; we may be able to help you research issues in your area. You can contact the Feminist Majority Foundation at:

1600 Wilson Blvd. Suite 801
Arlington, VA 22209
Telephone: 703.522.2214
www.feminist.org

Or: 433 S. Beverly Drive
Beverly Hills, CA 90212
Telephone: 310.556.2500
www.feminist.org

- After the successful Massachusetts campaign to have a buffer zone passed, Planned Parenthood League of Massachusetts published “A Dozen Steps to Safety”: A Practical Guide to Passing Buffer Zone Legislation in Your State.” This booklet gives a detailed explanation of the campaign PPLM and its allies conducted, including sample letters, flyers, press materials, and organizational strategies. “A Dozen Steps to Safety” is available by contacting the Planned Parenthood League of Massachusetts (1055 Commonwealth Avenue, Boston, MA 02215-1001/Telephone 617.616.1689/email publicinfo@pplm.org/ website pplm.org).

Coalition-Building

Collaborating with the broadest possible coalition of interested and trustworthy groups and individuals will ensure that your efforts will be well-informed and well-designed. In addition to the abortion rights and women’s rights groups you usually work with, consider less traditional allies including:

- civil rights/civil liberties groups
(the American Civil Liberties Union (ACLU) in particular may raise important First Amendment issues)
- organized labor (unions may raise picketing concerns)
- the medical community, including physicians, nurses, psychologists, social workers, public health experts, and associations of medical and mental health professionals
- senior citizens’ groups, disability groups and other organizations concerned about access to health care
- members of the local law enforcement community
- members of the office of the city attorney or attorney general.

In addition to your coalition allies, enlist the support of experienced pro-choice members of your local government and learn about who controls power in the legislative and executive bodies.

It is important to evaluate the strength and potential strategies of the opposition. Failing to pass a proposed ordinance could demoralize pro-choice forces, embolden anti-abortion extremists, and send the wrong message to police, prosecutors and judges -- that harassing patients and providers may go unpunished.

Mobilizing Support to Defeat Potential Obstacles

Once the ordinance is under consideration, use your coalition to ensure its passage. Ask groups who helped develop the ordinance to write letters of support, testify in front of the legislative body, generate evidence to show the need for the ordinance, call legislators and local government officials, and publicize the issue to your membership and the general public. Your coalition can help gather information to develop legislative history to support the ordinance, a vital element of ensuring its constitutionality.

Working with the Media

When the strategy is well underway use of the local media can be a key to generating support. Talk to local newspaper, radio, and television reporters about your proposal. Help identify

patients, medical personnel, and their families who can talk about their stories of harassment, intimidation, or even violence.

EXISTING LAWS

Q: DOES THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT ("FACE") PROHIBIT RESIDENTIAL PICKETING OR PROVIDE FOR BUFFER ZONES?

A: No. FACE prohibits the use of force, threat of force, or any physical obstruction that intentionally injures, interferes with, or intimidates any person because that person is seeking or providing reproductive health services.⁴⁶ FACE does not prohibit conduct that does not meet these criteria. However, FACE violations such as blocking access to clinic doors or targeted residential picketing that involves obstruction, force, or threat of force can be the underlying violation of law that leads to an injunction creating a buffer zone or zone protecting a provider's residential privacy.

Q: DOES MY CITY OR STATE ALREADY HAVE LAWS THAT STOP ANTI-ABORTION PROTESTERS FROM HARASSING PERSONS ENTERING OR LEAVING CLINICS, OR FROM HARASSING DOCTORS AND CLINIC EMPLOYEES IN THEIR HOMES?

A: Some cities and states have passed laws that can be used to protect doctors and clinic workers from harassment at their homes and clinics. Some states have passed their own FACE statutes.⁴⁷

State and local laws against trespass, nuisance, and stalking can also be used to protect the homes and safety of doctors and clinic employees. These laws alone have often not been enough to protect clinic workers and clinics, which is why abortion rights advocates have worked to pass buffer zone, no approach zone, and FACE laws. Violations of trespass, nuisance, and stalking laws, like violations of FACE, can be used as the underlying claim when asking a court for an injunction that creates a buffer zone. Appendix B lists the legal claims used to obtain various injunctions. Violations of these laws can also be used as evidence of the need for buffer zone or residential picketing legislation.

Existing laws that protect reproductive health care providers include:

- **Trespass:** Trespass may be either civil or criminal. Although trespass laws vary widely, they generally include common basic elements. A typical trespass statute prohibits a knowing entry onto the property of another without permission, or remaining on the premises after being asked to leave by someone in charge of the property. Any activity by anti-abortion protesters that takes place on a provider's private property likely will constitute a trespass violation. Some court injunctions prohibiting clinic blockades have included trespass as

one of the prohibited activities. Most trespass statutes contain minimal penalties.

- **Nuisance:** Residential picketing or harassment at a clinic may rise to the level of a “nuisance” which is generally defined as interference with the enjoyment of another’s property. Nuisances can be either private, in which case the clinic or staff would have to take action, or certain behavior can be declared a public nuisance and the local government can act against it.⁴⁸
- **Stalking laws:** Generally, stalking behavior is characterized as willful, malicious, and repeated following and/or harassment coupled with a threat of violence. Because stalking can be extremely intimidating even in the absence of an overt threat, several states have adopted stalking laws that focus on the victim’s reaction to the conduct. These states have defined stalking as repeated following or harassment with the intent to place the victim in reasonable fear.

Q: WHERE CAN I GET MORE INFORMATION?

A: For more information, you may contact:

**The Feminist Majority Foundation
National Clinic Access Project
1600 Wilson Blvd. Suite 801
Arlington, VA 22209
Phone: 703.522.2214
www.feminist.org**

or

**The Feminist Majority Foundation
433 S Beverly Drive
Beverly Hills, CA 90212
Telephone: 310.556.2500
www.feminist.org**

**Eleanor Smeal, President
Katherine Spillar, Executive Vice President
Sharyn Tejani, Legal Director
Margaret Moore, Director of Law Enforcement Operations

**NOW Legal Defense and Education Fund
395 Hudson Street, New York, NY 10014
Phone: 212.925.6635; Fax: 212.226.1066
Jennifer K. Brown, Legal Director**

ENDNOTES

-
- ¹ Feminist Majority Foundation, 2002 National Clinic Violence Survey Report, 5.
- ² *Id.* at 10-11.
- ³ *NOW v. Scheidler*, 123 S.Ct. 1057 (2003) (finding that forcible blockades of clinics were not violations of the Hobbs Act and reversing a nationwide injunction prohibiting forcible blockading of clinics.)
- ⁴ *Madsen v. Women’s Health Center*, 512 U.S. 753, 758 (1994); *see also U.S. v. Scott*, 958 F. Supp. 761, 767 (D.Conn. 1997) (“pushing, blocking, and otherwise interfering with a patient’s access can increase the patient’s stress level, and thereby increase the risks of a subsequent abortion procedure”); *Operation Rescue v. Planned Parenthood*, 975 S.W. 2d 546, 551 (Tex. 1998) (patients entered “visibly shaken, crying, nervous. Physicians reported increased respiration, heart rate, and blood pressure”).
- ⁵ *Hill v. Colorado*, 530 U.S. 703, 728 (2000).
- ⁶ *Madsen*, 512 U.S. at 772-773.
- ⁷ *Planned Parenthood of the Columbia/Willamette, Inc., v. American Coalition for Life Activists*, 41 F. Supp. 2d 1130 (D. Or. 1999), *aff’d in part*, 290 F.3d 1058 (9th Cir. 2002) (*en banc*).
- ⁹ *See, e.g., U.S. v. Gregg*, 226 F.3d 253 (3rd Cir. 2000), *cert. denied*, 532 U.S. 971 (2001); *U.S. v. Bird*, 124 F.3d 667 (5th Cir. 1997), *cert. denied*, 532 U.S. 1006 (1998); *U.S. v. Weslin*, 156 F.3d 292 (2nd 1998), *cert. denied*, 525 U.S. 1071 (1999); *Terry v. Reno*, 101 F.3d 1412 (D.C. Cir. 1996), *cert. denied*, 520 U.S. 1264 (1997); *U.S. v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996), *cert. denied*, 519 U.S. 1043 (1996); *U.S. v. Wilson*, 73 F.3d 675 (7th Cir. 1995), *cert. denied*, 519 U.S. 806 (1996); *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1995); *American Life League, Inc. v. Reno*, 47 F.3d 642 (4th Cir.), *cert. denied*, 516 U.S. 809 (1995).
- ⁹ *Madsen*, 512 U.S. at 768.
- ¹⁰ *Id.* at 772.
- ¹¹ Pensacola City Code § 8-1-19 (1995).
- ¹² The Supreme Court has struck down a no approach zone that forced the anti-abortion protester to back away from a person approaching a clinic *Schenck v. Pro-Choice Network*, 519 U.S. 357, 377 (1997). However, the Second Circuit Court of Appeals approved such a zone after the decision in *Schenck* where the zone parameters were smaller than those in *Schenck* and when the protester who was the subject of the zone ruling had repeatedly violated court orders. *U.S. v. Scott*, 187 F.3d 282, 288-289 (2d Cir. 1999).
- ¹³ Colorado 18-8-122 (2002); *Hill v. Colorado*, 530 U.S. 703 (2000).
- ¹⁴ Massachusetts Ch. 266 § 120 E ½; *McGuire v. Reilly*, 260 F. 3d 36 (1st Cir. 2001).
- ¹⁵ *See U.S. v. ALAW*, 180 F. Supp. 2d 197, 201 (D.D.C. 2002) (covering all clinics in the D.C. Metro area).
- ¹⁶ *United States v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996), *cert. denied*, 519 U.S. 1043 (1996).
- ¹⁷ *Madsen*, 512 U.S. at 763-766; *Hill*, 530 U.S. at 732-725, 729-730.

-
18. *Carey v. Brown*, 447 U.S. 455 (1980).
- ¹⁹ *McGuire v. Reilly*, 260 F. 3d 36 (1st Cir. 2001).
20. *See, e.g., Medlin v. Palmer*, 874 F.2d 1085 (5th Cir. 1989) (upholding a Dallas, Texas ordinance banning loudspeakers within 150 feet of a school or hospital).
22. *Madsen*, 512 U.S. at 753; *Hill*, 530 U.S. at 715.
22. *Hill*, 530 U.S. at 719 (2000); *Madsen*, 512 U.S. at 762-763.
- ²³ Massachusetts Ch. 266 § 120 E ½.
- ²⁴ *See, e.g., United States v. Gregg*, 32 F. Supp 2d 151, 159-160 (D.N.J. 1998), *aff'd* 226 F.2d 253 (3d Cir. 2000), *cert. denied*, 532 U.S. 971 (2001).
- ²⁵ *United States v. Alaw*, 180 F. Supp. 2d 197, 201 (D.D.C. 2002).
26. 18 U.S.C. § 248(a).
- ²⁷ *Hill v. Colorado*, 530 U.S. 703 (2000)
- ²⁸ *McGuire v. Reilly*, 260 F. 3d 36 (1st Cir. 2001).
29. Note, *Too Close for Comfort: Protesting Outside Medical Facilities*, 101 Harv. L. Rev. 1856, 1866, n.65 (1988).
30. Warren M. Hern, *Proxemics*, 12 Population and Environment 379, 383-84 (Summer 1991).
- ³¹ *NOW v. Operation Rescue*, 747 F. Supp 760, 771 (D.D.C 1990) (creating a \$5,000 penalty payable to the clinic for each violation of the injunction and doubling the fine for subsequent violations).
- ³² FACE (18 U.S.C. § 248 (c) (1)(A)); Massachusetts (Ch. 266 § 120E ½ (4)(f)); Colorado (18-8-122 (6)).
- ³³ 18 U.S.C. § 248 (c) (1)(B).
- ³⁴ *Horizon Health Center v. Anthony J. Felicissimo*, 722 A.2d 611, 613 (Superior Ct. N.J. App. Div. 1999)
- ³⁵ *New York v. Operation Rescue National*, 80 F.3d 64, 71 (2d Cir. 1996).
- ³⁶ *Foti v. City of Menlo Park*, 146 F.3d 629 (9th Cir. 1998).
- ³⁷ *See* Los Angeles County Municipal Code § 55.07 (all sign supports required to be ¼ inch or less in thickness and 2 inches or less in width); Charlotte, N.C. Code § 15-26(a)(3) (sign supports not to exceed 40 inches in length, must be made of wood, shall not exceed ¾ inch in diameter, and must be blunt at each end).
38. *See, e.g., Arizona v. Baldwin*, 908 P.2d 483 (Ariz. App. Div.1 1995) (as corrected Jan. 10, 1996).

39. *See, e.g., Frisby v. Schultz*, 487 U.S. 474, 476 (1988).

40. *See, e.g., Vittitow v. City of Upper Arlington*, 43 F.3d 1100, 1101-02 (6th Cir. 1995), *cert denied*, 515 U.S. 1121 (1995).

41. *Frisby*, 487 U.S. 474 (1988).

42. *Madsen*, 512 U.S. at 767-68.

⁴³ *Frisby*, 487 U.S. 484 (citations omitted).

44. *Id.* at 483.

45. *Id.* at 484.

46. 18 U.S.C. § 248(a)(1).

⁴⁷ The states are: California (Cal. Penal. Code §§ 423-423.6), Colorado (Colo. Rev. Stat. Ann. § 18-9-122), Connecticut (Conn. Gen. Stat. Ann. §§ 53-37b, 52-271a), the District of Columbia (D.C. Code Ann. §§ 22-1314.01-1314.02), Kansas (Kan. Stat. Ann. § 21-3721), Maine (ME Rev. Stat. Ann. tit. 5, §§ 4684, 4684-A, 4684-B), Maryland (MD Ann. Code, Crim. § 10-204), Massachusetts (Mass. Gen. Laws Ann. ch. 266 §§ 120E, 120E ½), Michigan (Mich. Comp. Laws. Ann. § 333.20198), Minnesota (Minn. Stat. Ann. § 609.7495), Nevada (Nev. Rev. Stat. Ann. § 449.760), New York (NY Penal Law § 240.70, .71; NY Civil Rights Law § 79-m), North Carolina (N.C. Gen. Stat. Ann. §§ 14-277.2, .4), Oregon (OR Rev. Stat. § 164.365), Washington (Wash. Rev. Code Ann. §§ 9A.50.005 to .902), and Wisconsin (Wis. Stat. Ann. § 943.145). NARAL Pro-Choice America, *Who Decides? A State by State Review of Abortion and Reproductive Rights*, 12th Edition (2003) at xx.

⁴⁸ *Hirsh v. City of Atlanta*, 261 Ga. 22 (Sup. Ct. 1991), *cert. denied*. 501 U.S. 1221 (1991) (City of Atlanta declared the actions of Operation Rescue a public nuisance and obtained an injunction against Operation Rescue).

Appendix A

Colorado

"(1) The general assembly recognizes that access to health care facilities for the purpose of obtaining medical counseling and treatment is imperative for the citizens of this state; that the exercise of a person's right to protest or counsel against certain medical procedures must be balanced against another person's right to obtain medical counseling and treatment in an unobstructed manner; and that preventing the willful obstruction of a person's access to medical counseling and treatment at a health care facility is a matter of statewide concern. The general assembly therefore declares that it is appropriate to enact legislation that prohibits a person from knowingly obstructing another person's entry to or exit from a health care facility.

"(2) A person commits a class 3 misdemeanor if such person knowingly obstructs, detains, hinders, impedes, or blocks another person's entry to or exit from a health care facility.

"(3) No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility. Any person who violates this subsection (3) commits a class 3 misdemeanor.

"(4) For the purposes of this section, 'health care facility' means any entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment in this state.

"(5) Nothing in this section shall be construed to prohibit a statutory or home rule city or county or city and county from adopting a law for the control of access to health care facilities that is no less restrictive than the provisions of this section.

"(6) In addition to, and not in lieu of, the penalties set forth in this section, a person who violates the provisions of this section shall be subject to civil liability, as provided in section 13-21-106.7, C. R. S."

Massachusetts

Reproductive Health Care Facilities

(a) For the purposes of this section, "reproductive health care facility" means a place, other than within a hospital, where abortions are offered or performed.

(b) No person **[*42]** shall knowingly approach another person or occupied motor vehicle within six feet of such person or vehicle, unless such other person or occupant of the vehicle consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of 18 feet from any entrance door or driveway to a reproductive health care facility or within the area within a rectangle not greater than six feet in width created by extending the outside boundaries of any entrance door or driveway to a reproductive health care facility at a right angle and in straight lines to the point where such lines intersect the sideline of the street in front of such entrance door or driveway.

This subsection shall not apply to the following: --

- (1) persons entering or leaving such facility;
 - (2) employees or agents of such facility acting within the scope of their employment;
 - (3) law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment; and
 - (4) persons using the public sidewalk **【**43】** or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such facility.
- (c) The provisions of subsection (b) shall only take effect during a facility's business hours and if the area contained within the radius and rectangle described in said subsection (b) is clearly marked and posted. **【*52】**
- (d) Whoever knowingly violates this section shall be punished, for the first offense, by a fine of not more than \$ 500 or not more than three months in a jail or house of correction, or by both such fine and imprisonment, and for each subsequent offense, by a fine of not less than \$ 500 and not more than \$ 5,000 or not more than two and one-half years in a jail or house of correction, or both such fine and imprisonment. A person who knowingly violates this section may be arrested without a warrant by a sheriff, deputy sheriff or police officer if that sheriff, deputy sheriff, or police officer observes that person violating this section.
- (e) Any person who knowingly obstructs, detains, hinders, impedes or blocks another person's entry to or exit from a reproductive health care facility shall be punished, for the first offense, by a fine **【**44】** of not more than \$ 500 or not more than three months in a jail or house of correction, or by both such fine and imprisonment, and for each subsequent offense, by a fine of not less than \$ 500 and not more than \$ 5,000 or not more than two and one-half years in a jail or house of correction, or both such fine and imprisonment. A person who knowingly violates this section may be arrested without a warrant by a sheriff, deputy sheriff or police officer.
- (f) A reproductive health care facility or a person whose rights to provide or obtain reproductive health care services have been violated or interfered with by a violation of this section or any person whose rights to express their views, assemble or pray near a reproductive health care facility have been violated or interfered with may commence a civil action for equitable relief. The civil action shall be commenced either in the superior court for the county in which the conduct complained of occurred, or in the superior court for the county in which any person or entity complained of resides or has a principal place of business.

Injunctions Protecting Reproductive Health Clinics

Key Yes=activity prohibited; Remanded—sent back to lower court for further findings; N/A -- aspect not addressed by court

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
U.S.	<u>Madsen v. Women's Health Ctr.</u> , 512 U.S. 753 (1994)	Protecting property, Invasion of privacy; Violation of prior state court injunction	36 feet	Rejected-300 foot no approach zone	N/A	No singing, whistling, shouting, yelling, use of auto horns, or other sound amplification within earshot of patients inside clinic between 7:30 am-12:00pm, Monday-Saturday	Rejected -- 300 feet	Yes	N/A	N/A

¹ Several of these cases were based on 42 U.S.C. § 1985(3) or extortion under the Hobbs Act (18 U.S.C. § 1951). In *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) the Supreme Court ruled that § 1985(3) could not be used against those who blockade and invade clinics. In *NOW v. Scheidler*, 123 S.Ct. 1057 (2003), the Supreme Court ruled that the Hobbs Act could not be used against those who blockade and invade clinics. The federal Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248, can be used against those who invade and blockade clinics.

**NOW Legal Defense and Education Fund
Feminist Majority Foundation
Injunctions Protecting Women’s Health Care Clinics
Page 2 of 2
Appendix B**

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
U.S.	<u>Schenck v. Pro-Choice Network</u> , 519 U.S. 357 (1997)	NY State Civil Rts. Law § 40-c; NY State Exec. Law § 296; Tortuous interference with business; Tortuous harassment; Intentional infliction of emotional distress	15 feet 2 “counselors” allowed in	Rejected 15 feet floating	15 feet at driveway Rejected 15 feet floating	Yes	N/A	Yes	Physical abuse, grabbing, pushing, touching, pushing, shoving	N/A
AL	<u>Lucero v. Trosch</u> , 121 F.3d 591 (11 th Cir. 1997)	Alabama Nuisance law § 6-5-20	25 feet	N/A	N/A	Same limits as <u>Madsen</u> .	Blanket 200 foot zone rejected; remanded for individualized determinations.	Yes at both clinic and staff homes.	Yes	N/A
CA	<u>Planned Parenthood Ass’n of San Mateo County v. Operation Rescue</u> , 50 Cal. App. 4 th 290 (1 st App. Dist. 1996)	Violation of prior injunction.	15 feet	Rejected -no approach zone	N/A	Shouting and screaming heard in clinic	Remanded	Yes	Threatening, telephoning, or blocking Dr.’s movements.	Photos of Dr. Following Dr. Stay 30 feet away from Dr.

**NOW Legal Defense and Education Fund
Feminist Majority Foundation
Injunctions Protecting Women's Health Care Clinics
Page 3 of 3
Appendix B**

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
CA	<u>U.S. v. White</u> , 893 F.Supp 1423 (C.D.Cal 1995)	FACE	N/A	N/A	N/A	N/A	45 feet from doctor's driveway	Yes-Doctor	Telephoning doctor or wife. Placing signs against Dr.'s car. 15 foot buffer for Dr. and wife	No closer than three car lengths when following Dr. in a car
CA	<u>Chico Feminist Women's Health Center v. Scully</u> , 208 Cal. App. 3d 230 (3d App. Dist. 1989)	State right to privacy	10 feet Limit on number who can protest outside of zone.	N/A	N/A	N/A	N/A	Prohibitions included in prior injunction, not reviewed in this decision.	Identifying patients (other than by personal knowledge). Disclosing identity of patients.	Prohibitions included in prior injunction, not reviewed in this decision.
CT	<u>United States v. Scott</u> , 187 F.3d 282 (2d Cir. 1999)	Contempt for violation of injunction issued under FACE.	28 feet	Scott must retreat to 8 feet away if person says does not want to be talked to.	Scott must retreat to 8 feet away if person says does not want to be talked to.	N/A	N/A	N/A	N/A	N/A

**NOW Legal Defense and Education Fund
Feminist Majority Foundation
Injunctions Protecting Women's Health Care Clinics
Page 4 of 4
Appendix B**

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
DC	<u>United States v. Alaw</u> , 180 F. Supp. 2d 197 (D.D.C. 2002)	FACE	20 feet	N/A	N/A	N/A	N/A	Yes. Applies to all clinics in D.C Metropolitan area.	N/A	N/A
DC	<u>NOW v. Operation Rescue</u> , 747 F.Supp 760 (D.D.C. 1990)	42 U.S.C. § 1985(3); Trespass; Public nuisance	N/A	N/A	N/A	N/A	N/A	Yes. \$5,000 sanction for each violation, to be paid to clinic. 2 nd violation doubles fine.	N/A	N/A
GA	<u>Hirsh v. Atlanta</u> , 261 GA 22 (1991), <u>cert. denied</u> , 501 U.S. 1221 (1991)	Public nuisance	50 feet 20 protesters allowed in buffer zone at a time.	Within the 50 feet, 5 feet zone unless consent to approach	N/A	N/A	N/A	Yes	N/A	N/A
IN	<u>Fort Wayne Women's Health Organization v. Brane</u> , 895 F.Supp 1080 (N.D. Ind.)	Tortuous interference with business; Trespass; Public nuisance	25 feet	N/A	N/A	No shouting, screaming, chanting, yelling, or producing sound that substantially interferes with medical services	N/A	Yes	One counselor allowed in buffer zone, patient must be able to walk away from counselor.	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
KS	<u>United States v. Burke</u> , 15 F. Supp. 2d 1090 (D. Kan. 1998)	FACE	N/A	N/A	N/A	N/A	N/A	Yes	Physical abuse, grabbing, touching, or intimidating.	N/A
MA	<u>Planned Parenthood League of Mass. v. Bell</u> , 677 N.E.2d 204 (Mass. 1997), cert. denied, 522 U.S. 819 (1997)	Public nuisance	50 feet	N/A	N/A	Audible in clinic	N/A	Yes	Dressing in a manner similar to clinic escorts.	N/A
MA	<u>Planned Parenthood League of Mass. v. Blake</u> , 417 Mass. 467 (Mass. 1994), cert. denied, 513 U.S. 868 (1994)	State threat law Mass. Ann. Laws ch. 12 § 11	N/A	N/A	N/A	N/A	N/A	Yes. Applies to all clinics in Massachusetts.	Force or violence against those who are leaving, entering, or working at the clinic.	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
MS	<u>United States v. McMillan</u> , 946 F. Supp. 1254 (S.D. Miss. 1999)	FACE	25 feet	N/A	N/A	N/A	N/A	Yes	Threats	N/A
MO	<u>United States v. Dinwiddie</u> , 76 F.3d 913 (8 th Cir. 1996), <u>cert. denied</u> , 519 U.S. 1043 (1996)	FACE	500 feet around any clinic in U.S. if actions while there violate FACE or noise limit.	N/A	N/A	Amplification of threats or violations of noise ordinances	N/A	Yes	Threats or threats of force.	N/A
NC	<u>Kaplin v. ProLife Action League</u> , 431 S.E. 2d 828 (N.C. App. 1993), <u>cert. denied</u> , 512 U.S. 1253 (1994)	Private nuisance	N/A	N/A	N/A	N/A	300 feet of Dr.'s house	N/A	Threatening communications	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:			
			Clinic	Patients	Vehicles		Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
ND	<u>Fargo Women's Health Organization v. Lambs of Christ</u> , 488 N.W.2d 401 (N.D. 1992)	Interference with Contract; Intentional infliction of emotional distress; Private and Public Nuisance	Yes, Remanded for measurement	N/A	N/A		Any noise that substantially interferes with provision of medical services	N/A	Yes	Patient must be left alone if indicates she does not wish to be spoken to. Harassing, intimidating or physically abusive contact.	No photos or videos w/o consent if done persistently and with intent to harass or intimidate.
ND	<u>United States v. Lindgren</u> , 883 F. Supp. 1321 (D.N.D. 1995)	FACE	100 feet	N/A	N/A		N/A	100 feet	Yes	N/A	100 feet away from staff
NJ	<u>Murry v. Lawson</u> , 649 A.2d 1253 (1994), <u>cert. denied</u> , 515 U.S. 1110 (1995)	Invasion of privacy	N/A	N/A	N/A		N/A	100 feet; Only 10 picketers at one time; Pickets allowed for only 1 hour every 2 weeks; Must inform police 24 hours before picket.	N/A	N/A	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
NJ	<u>United States v. Gregg</u> , 32 F. Supp. 2d 151 (D.N.J. 1998), <u>aff'd</u> , 226 F.2d 253 (3d Cir. 2000), <u>cert. denied</u> , 532 U.S. 971 (2001)	FACE	Interior of clinic	N/A	N/A	N/A	N/A	Yes Cannot enter interior of clinic.	Yes	N/A
NV	<u>Southwestern Medical Clinics of Nevada v. Operation Rescue</u> , 744 F. Supp. 230 (D.Nev. 1989)	42 U.S.C. § 1985(3); Trespass; Tortious interference with business	N/A	N/A	N/A	N/A	N/A	Yes	Yes. 2 Sidewalk counselors allowed, cannot harass anyone who does not want to listen to them.	N/A
NY	<u>New York v. Kraeger</u> , 2001 U.S. Dist. LEXIS 12816 (N.D.N.Y. 2001) (injunction)	FACE; State FACE	Yes, set by geographical references for one clinic.	N/A	N/A	Any mechanical sound amplification or making any excessively loud sounds that disturb or endanger the health of patient or employee.	N/A	Yes	Yes	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
NY	<u>New York v. Operation Rescue</u> , 273 F.3d 184 (2d Cir. 2001)	FACE	15 feet, new shape. Larger zones rejected	N/A	N/A	Sounds that injure, disturb, or endanger patients or employees.	N/A	Yes	Removes requirement that "counselor" allowed in buffer zone.	N/A
OH	<u>Planned Parenthood Ass'n of Cincinnati v. Project Jericho</u> , 556 N.E. 2d 157 (Oh. 1990)	Nuisance	Limits number of pickets: 1 to 3 in certain areas	N/A	N/A	Screaming, shouting that is intended to or does reach inside clinic	N/A	Yes	N/A	N/A
OH	<u>Dayton Women's Health Center v. Enix</u> , 548 N.E. 2d 121 (1991)	Tortuous activity that interfered with delivery of medical services; Violation of prior injunction.	Yes, set by geographic references. Limit on sign size and signs that urge others to honk car horns.	N/A	N/A	N/A	No picketing within viewing distance of homes of patients, employees, staff, or Dr.	Yes	N/A	
PA	<u>United States v. Roach</u> , 947 F. Supp. 872 (E.D. Pa. 1996)	FACE	Clinic private property	N/A	N/A	N/A	N/A	Yes	Touching anyone on private clinic property.	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
TX	<u>United States v. Bird</u> , 124 F.3d 667 (5 th Cir. 1997), <u>cert. denied</u> , 523 U.S. 1006 (1998)	FACE; Condition of probation	1000 feet from all clinics.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TX	<u>Operation Rescue v. Planned Parenthood</u> , 975 S.W.2d 546 (Tex. 1998)	Conspiracy to interfere with business; Interference with Dr.’s privacy rights; Interference with Dr.’s property rights; Wrongful interference with clinic’s ability to provide medical care; Civil conspiracy	Zones set for many clinics, vary based on geography. 2 “counselors” allowed in zone.	Only one sidewalk counselor at a time may approach patient.	Cannot block access	No amplification or yelling within 100 feet of Drs. residences	No blocking access to Drs., families, or their guests. No harassing or threatening. Limited to 45 minutes per 24 hour period.	Yes	Patient must be left alone if tells “counselor” she wants to. Patient may only be approached by “counselor” once going in and once going out.	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
TX	<u>Tompkins v. Cyr</u> , 995 F. Supp. 664 (N.D. Tex. 1998), <u>aff'd. in part</u> , 202 F.3d 770 (5 th Cir. 2000)	Intentional infliction of emotional distress; Federal RICO; Invasion of privacy; Civil conspiracy; Tortious Interference with contract	N/A	N/A	N/A	N/A	300 feet zone Protest limited to 20 minutes per day, 2 times a week, never on Sunday, from 9 am to 6 pm. No obstruction of property.	N/A	N/A	One defendant prohibited from lurking near Dr. or Dr. family. Lurking defined as prowling, lying hidden, keeping Dr. under surveillance.
WA	<u>Portland Feminist Health Center v. Advocates for Life</u> , 859 F.2d 681 (9 th Cir. 1988)	42 U.S.C. § 1985 (3); Oregon civil racketeering; Interference with business relations; IIED; Assault; Defamation	Yes, set by geographic markers	N/A	N/A	Shouting, screaming, yelling, or producing noise that substantially interferes with provision of medical services	N/A	Yes	Interfering with clinic's use of public utilities.	N/A

State	Case	Legal Claim ¹	Buffer around:			Limits on:		Prohibition on:		
			Clinic	Patients	Vehicles	Sounds	Residential Picketing	Obstructing access	Harassing	Following/ Photographs
WI	<u>Milwaukee Women's Med. Serv. v. Brock</u> , 2 F. Supp. 2d 1172 (E.D. Wis. 1998)	FACE	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
Mountain Brook, Alabama	Mountain Brook Municipal Code §§ 18-32, 18-37, 18-46 (2002)	Prohibits “public assemblies” in areas zoned residential by the city code. “Public assemblies” is defined as “parade, march, formation, procession, group of pickets, picket line, public demonstration, movement, assemblage, gathering or display of persons.”		
Arizona	Arizona Revised Statutes, §§ 13-2909 (2001)	Prohibits “residential picketing” defined as “demonstrating before or about the residence or dwelling place of an individual” “with intent to harass, annoy or alarm another person.”	<u>State v. Baldwin</u> , 908 P.2d 483 (Ariz. Ct. App. 1995)	Ordinance constitutional.
Arkansas	Arkansas Code Annotated § 5-71-225 (2001)	Prohibits “demonstrations of any type or picketing before or about any residence or dwelling place of any individual.”		
Fayetteville, Arkansas	Fayetteville Municipal Code § 13-15 (Ordinance no. 3125)	Prohibits engaging “in demonstrations of any type or to picket before or about the residence or dwelling place of any individual.”	<u>Pursley v. City of Fayetteville</u> , 820 F.2d 951 (8th Cir. 1987)	Ordinance unconstitutional because not sufficiently narrowly tailored.
Davis, California	Davis Municipal Code § 35.06	Prohibits targeted picketing “before or about” a residence or dwelling.		
Glendale, California	Glendale Municipal Code § 9.20.080	Prohibits picketing “solely in front of, or at, the residence or dwelling of any individual without permission from the owner or occupant of said residence.”		

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
Huntingdon Beach, California	Huntingdon Beach Municipal Code § 9.20.030	Prohibits targeted picketing within 300 feet of residence or dwelling of any individual.		
Irvine, California	Irvine Municipal Code §§ 4-14.104, 4-14.107 (2002)	Prohibits picketing, parading, or a procession for the purpose of inducing an employee to quit her employment by means of compulsion, coercion, intimidation, threat, or act of violence or fear.		
Los Angeles, California	Los Angeles Municipal Code, ch. 5, art. 6.1, § 56.45 (e) (5 th ed., 1997)	Prohibits picketing, parades or patrols that 1) focus on a private residence, and 2) take place within 100 feet of the private residence.		
Riverside, California	Riverside Municipal Code §§ 8.54.010, 9.54.030 - 9.54.050 (1999)	Prohibits targeted picketing within 300 feet of residential dwelling.		
San Jose, California	San Jose Municipal Code § 10.09.010	<p>Prohibits picketing activity that is “targeted at and is within 300 feet of a residential dwelling.”</p> <ul style="list-style-type: none"> ▪ “Residential dwelling” means any “permanent building being used by its occupants solely for nontransient residential uses.” ▪ “Targeted” means any “picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of 	<u>City of San Jose v. Thompson</u> , 32 Cal. App. 4 th 330 (Cal. Ct. of Appeals 1995), <u>cert. denied</u> , 516 U.S. 932 (1995)	Ordinance constitutional.

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
		<p>or around that particular residential dwelling.”</p> <ul style="list-style-type: none"> ▪ Enforcement is limited to where picketing proceeds “on a definite course or route in front of a residential dwelling and is directed at that residential dwelling.” 		
Santa Ana, California	Santa Ana Municipal Code § 10-110	Prohibits picketing “before or about” the residence where “such picketing is focused on that particular residence.”		
Solana Beach, California	Solana Beach Municipal Code §§ 7.38.010-7.38.020	Makes targeted residential picketing a misdemeanor. Section should be construed and applied in accordance with <u>Frisby v. Shultz</u> , 487 U.S. 474 (1988).		
Tustin, California	Tustin Municipal Code §§ 6510 - 6520	Prohibits “picketing activity that is targeted at and is within 300 feet of a residential property.” <ul style="list-style-type: none"> ▪ 300 foot zone measured from nearest property line of the targeted property to the picketing activity 		
Arapahoe County, Colorado	Arapahoe County Ordinance No. 2000-1	Prohibits targeted picketing in residential area except when picketer is marching, without stopping in front of any residence, over a route along the entire one-way length of at least one block (660 feet) of a street. <ul style="list-style-type: none"> ▪ Prohibits residential picketers from carrying or displaying signs that are greater than 2 feet and/or larger in total size than 3 square feet. ▪ Each picketer is limited to one sign. 		
Colorado	Colorado Revised Statutes § 8-3-108(2)(a) (2000)	Prohibits all residential picketing arising from labor disputes.	<u>CF&I Steel, L.P. v. USW, Locals 2102 & 3287</u> , 23 P.3d 1197 (Colo. 2001)	Ordinance unconstitutional.
Connecticut	Connecticut	Prohibits picketing “before or about the home or	<u>French v.</u>	Ordinance unconstitutional

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
	General Statutes § 31-120 (2001)	residence of any individual” unless home is adjacent to or in the same building as location where person is employed and which employment is the cause of a labor dispute.	<u>Amalgamated Local Union 376, UAW</u> , 203 Conn. 624 (Conn. 1987).	because contains protection for labor picketing but not other kinds of picketing.
District of Columbia	District of Columbia Code § 22-1314.02 (2001)	Prohibits acting alone or with others “with the intent to prevent a health professional or his or her family from entering or leaving the health professional’s home.”		
Melbourne Beach, Florida	Town of Melbourne Beach Code § 66-2	Prohibits targeted residential picketing.		
Atlanta, Georgia	Atlanta Municipal Code § 106-89 (2002)	Prohibits picketing before or about private residence. <ul style="list-style-type: none"> ▪ Picketing defined as: patrolling or stationing at residence with sign or insignia designed to persuade or protest or to obstruct passage to or from a residence or to promote a strike or boycott at a residence. 		
Hawaii	Hawaii Revised Statutes Annotated § 379A-1 (2001)	Prohibits picketing “before or about” the residence or dwelling place of any individual. Does not prohibit picketing during labor dispute.	<u>Carey v. Brown</u> , 447 U.S. 455, (1980)	Most likely unconstitutional. Very similar to the ordinance struck down in <u>Carey</u> and mentioned in the <u>Carey</u> decision.
Illinois	Illinois Compiled Statutes Annotated, 720 ILCS, ch. 38, 21.1-2	Prohibits picketing “before or about” residence, except when the residence is used as a place of business and the picketing involves a labor dispute.	<u>Carey v. Brown</u> , 447 U.S. 455, (1980).	Ordinance unconstitutional.

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
	(2001)			
Danville, Illinois	Danville Code of Ordinances § 133.02	Prohibits picketing “before or about” residence, except when residence is used as place of business. <ul style="list-style-type: none"> ▪ Section does not apply to 1) person peacefully picketing his own residence, or 2) person peacefully picketing place of employment involved in labor dispute, or 3) place of holding a meeting or assembly on premises used to discuss public interest topics. 		
Lockport, Illinois	Lockport Code of Ordinances § 130.22	Identical to Illinois Compiled Statutes Annotated, 720 ILCS ch. 38, 21.1-2.	<u>Carey v. Brown</u> , 447 U.S. 455 (1980)	Probably unconstitutional under <u>Carey v. Brown</u> .
Palos Heights, Illinois	Palos Heights Code of Ordinances § 133.02	Prohibits picketing “before or about” residence, except when targeted residence is used as place of business.		
Clive, Iowa	Clive Code of Ordinances, ch. 40, § 07 (1996)	Ordinance prohibits “any person to engage in picketing before, about, or immediately adjacent to, the residence or dwelling of any individual in the City.”	<u>Douglas v. Brownell</u> , 88 F.3d 1511 (8 th Cir. 1996)	Residential picketing prohibition upheld as constitutional. <ul style="list-style-type: none"> ▪ 3-house zone was narrowly tailored to serve state interest.
Lenexa, Kansas	Lenexa Municipal Code § 3-9- E-8	Prohibits targeted residential picketing unless the targeted residence is used as a place of business or public assembly.		
Prairie Village, Kansas	Prairie Village Ordinance 1785, art. 9.13	Prohibits picketing before or about the residence or dwelling of any individual in the city, or before or about any church in the city.	<u>City of Prairie Village v. Hogan</u> , 253 Kan. 423, 855 P.2d 949 (1993).	Ordinance constitutional. Construed to cover focused picketing as in <u>Frisby</u> .
Topeka,	Topeka	Prohibits picketing which is “directed, focused or		

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
Kansas	Municipal Code § 54-126	targeted at a residence and which takes place before or about that residence.” <ul style="list-style-type: none"> ▪ Defines residential picketing as when a person “with or without a sign, is posted at, before or about a particular residence.” 		
Bangor, Maine	Bangor Municipal Ordinance	Bans all targeted residential picketing within 300 foot radius of residence.	<u>City of Bangor v. Stauble</u> , No. AP-97-14 & 15, 1997 Me. Super. LEXIS 352 (Me. Super. Ct. 1997)	Ordinance unconstitutional.
Montgomery County, Maryland	Montgomery County Code § 32-23	Prohibits picketing “in front of or adjacent to any private residence.” <ul style="list-style-type: none"> ▪ Section does not prohibit: 1) picketers from marching in residential area without stopping at any particular residence; 2) picketing in front of a residence used as the occupant’s sole place of business; 3) picketing a private residence during a public meeting. ▪ “Picketing” means “to post a person or persons at a particular place to convey a message.” 		
Michigan	Michigan Compiled Laws Service § 423.9f (2001)	Prohibits “picketing a private residence by any means or methods whatever.”	<u>Ellsworth v. City of Lansing</u> , 2000 U.S. App. LEXIS 2049 (6th Cir. 2000).	Protesters did not challenge constitutionality of ordinance so Court assumed ordinance was constitutional.
Sterling Heights, Michigan	Sterling Heights, Michigan Code of Ordinances § 35-16A	Prohibits picketing “before, about or immediately adjacent to a targeted residence” <ul style="list-style-type: none"> ▪ “Before, about, or immediately adjacent” means “in front of or within one residence on either side of a targeted residence and on the same side of the street as the targeted residence.” 		
Jordan,	Jordan	Prohibits targeted residential picketing within the city.		

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
Minnesota	Municipal Code § 7.18	<p>But does not otherwise prohibit picketing on public streets and sidewalks that run through a residential area.</p> <ul style="list-style-type: none"> ▪ Picketing for more than 90 minutes, or includes more than 30 individuals requires an application with the Chief of Police at least 24 hours in advance. 		
White Bear Township, Minnesota	White Bear, Minn. Ordinance 63 (May 21, 1990)	Prohibits targeted residential picketing, defined as activity focused on a single residential dwelling without the consent of the dwelling's occupant.	<u>State v. Castellano</u> , 506 N.W.2d 641 (Minn. Ct. App. 1993)	Ordinance constitutional under <u>Frisby</u> .
Nebraska	Revised Statutes of Nebraska Annotated § 28-1317 (1)(a)-(e); 28-1318 (1)-(3)	<p>§ 28-1317 (1)(a)-(e) Prohibits picketing that includes attempting to interfere or interfering with a person's exercise of his or her lawful right to work or right to enter upon any lawful employment. Lists a variety of actions including:</p> <p>(e) or "picketing or patrolling the place of residence of such person, or any street, alley, road, highway, or any other place, where such person may be, or in the vicinity thereof, for such purpose, against the will of such person."</p> <p>§ 28-1318 (1)-(3) prohibits mass picketing.</p>	<u>United Food & Commercial Workers Int'l Union v. IPB, Inc.</u> , 857 F.2d 422 (8th Cir. 1988)	§ 28-1317 (1)(a) unconstitutional. § 28-1317 (1)(e) not reviewed. § 28-1318 (1)-(3) unconstitutional.
Lincoln, Nebraska	Lincoln Municipal Code § 9.40.090 (Supp. 1999)	Prohibits "focused picketing in that portion of any street which abuts on the property upon which the targeted dwelling is located, or which abuts on property within fifty feet (measured from the lot line) of the property upon which the targeted dwelling is located, except the sidewalk space on the opposite side of the street from the targeted dwelling." Focused picketing defined as "marching, congregating, standing, parading, demonstrating, parking, or patrolling by one or more persons, with or without signs," directed at a specific person.	<u>Thorburn v. Austin</u> , 231 F.3d 1114 (8 th Cir. 2000).	Ordinance constitutional.

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
Concord, New Hampshire	Concord Municipal Code § 4-8-3	Prohibits “demonstration activity which is directed, focused, or targeted at a residence located in a nonresidential zoning district and which takes place before or about that residence.” Exception for picketing a residence which is used as place of business or public assembly.		
Albuquerque , New Mexico	Albuquerque Code of Ordinances § 12-2-26	Prohibits picketing “focused on and taking place in front of or next to a particular residence, without the express prior consent of the occupants.”		
Artesia, New Mexico	Artesia, N.M. Ordinance 347 (1973)	Prohibits picketing before or about the residence or dwelling of any individual.	<u>Garcia v. Gray</u> , 507 F.2d 539 (10th Cir. 1974), <u>cert. denied</u> , 421 U.S. 971 (1975)	Ordinance constitutional.
Greensboro, North Carolina	Greensboro Municipal Code § 26- 157	Prohibits picketing “solely in front of, before or about the residence or dwelling of any individual.”		
Fargo, North Dakota	Fargo Municipal Code § 10- 1202 (1985)	Prohibits engaging “in picketing the dwelling of any individual in the City of Fargo.” <ul style="list-style-type: none"> ▪ “Dwelling” includes any structure or building or dwelling unit within a building, which is used as a place of residence. ▪ “Picketing” includes the practice of standing, marching, or patrolling by one or more persons inside of, in front, or about any premises for the purpose of persuading an occupant of such premises or to protest some action, attitude, or belief. 	<u>Veneklase v. City of Fargo</u> , 248 F.3d 738 (8 th Cir), <u>cert. denied</u> , 534 U.S. 815 (2001)	Ordinance constitutional.
Upper Arlington, Ohio	Upper Arlington, OH Codified	Prohibits picketing before or about the residence or dwelling of any individual.	<u>Vittitow v. City of Upper Arlington</u> , 830	Ordinance unconstitutional under <u>Frisby</u> .

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
	Ordinances § 5.17.17 (1992)		F. Supp. 1077 (S.D. Ohio 1993), <u>rev'd</u> , 43 F.3d 1100 (6th Cir. 1995), <u>cert. denied</u> , 515 U.S. 1121 (1995)	
Barrington, Rhode Island	Barrington, RI Ordinance 86-6 (1986)	Prohibits picketing in front of, adjacent to or with respect to any property used for a residential purpose. Exception for when such picketing relates to a use or activity being carried on within such property.	<u>Town of Barrington v. Blake</u> , 568 A.2d 1015 (1990)	Ordinance constitutional.
Providence, Rhode Island	Providence, RI Ordinance 461, ch. 1791-55 § 2	Prohibits picketing before or about the dwelling of an individual. Exempts labor picketing.	<u>People Acting Through Community Effort v. Doorley</u> , 468 F.2d 1143 (1st Cir. 1972)	Ordinance unconstitutional.
Warwick, Rhode Island	Warwick Municipal Code § 40-9	Prohibits picketing “before or about” residence. <ul style="list-style-type: none"> ▪ Nothing in residential picketing ordinance should be deemed to prohibit: 1) picketing in lawful manner during labor dispute, or 2) holding meeting or assembly on any premises commonly used for discussions of public interest. 		
Sioux Falls, South Dakota	Sioux Falls Municipal Code § 38.145	Prohibits “picketing before or about the residence or dwelling of any individual in the city.”		
Dallas, Texas	Dallas City Code § 31-34	Prohibits picketing within 200 feet of the property line of a residence “when the picketing is directed or focused at that particular residence or any of its occupants.”		

State/ Locality	Statute/ Ordinance	Relevant Provisions	Cases	Result of Cases
Virginia	Virginia Code Annotated § 18.2-419 (2001)	Prohibits picketing before or about a person’s residence or assembling “in a manner which disrupts or threatens to disrupt any individual’s right to tranquility in his home,” exempts labor picketing.	<u>Commonwealth v. Hyatt</u> , 37 Va. Cir. 384 (Va. Cir. Ct. 1995).	Ordinance unconstitutional.
Brookfield, Wisconsin	Brookfield, Wis. Gen. Code 9.17(2).	Prohibits picketing “before or about the residence or dwelling of any individual in the Town.”	<u>Frisby v. Schultz</u> , 487 U.S. 474 (1988)	Ordinance constitutional. Narrowed to cover only targeted or focused picketing.
Wisconsin Rapids, Wisconsin	Wisconsin Rapids Municipal Code § 25.27	Prohibits picketing “before or about” the residence of any individual in city of Wisconsin Rapids.		

PQ3R01_DOC (845947 v. 1)

This booklet is intended for informational purposes only. It is not intended to replace consultation with an attorney and is not legal advice. If you decide to pursue legal protection or legislation to protect a clinic or residence, you should consult your own attorney first. Ordinances can be on the books and never challenged, and those that are successfully challenged may remain in statute books. Before relying on the cases or ordinances listed here, be sure to consult your own attorney.

Appendix D

(a) It shall be unlawful for any person to engage in focused picketing in that portion of any street which abuts on the property upon which the targeted dwelling is located, or which abuts on property within fifty feet (measured from the lot **【**2】** line) of the property upon which the targeted dwelling is located, except the sidewalk space on the opposite side of the street from the targeted dwelling.

(b) For the purposes of this section, the following definitions shall apply:

(1) **Focused picketing** shall mean picketing directed toward a specific person or persons including, but not limited to, marching, congregating, standing, parading, demonstrating, parking, or patrolling by one or more persons, with or without signs.

(2) **Sidewalk space** shall mean that portion of a street between the curb line and the adjacent property line.

(3) **Street** shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(4) **Targeted dwelling** shall mean any building or dwelling unit within a building, in which the target or targets of focused picketing reside.

(c) This section shall not apply to any picketing, focused or otherwise, which lawfully occurs before or about any commercial or industrial establishment or business, regardless of where located.

(d) This section shall not be construed to **【**3】** authorize conduct which is otherwise prohibited by law.

Lincoln, Neb., Mun. Code § 9.40.090 (Supp. 1999).