AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS

211 Congress Street
Boston, MA 02110
(617) 482-3170
Fax: 617-451-0009
www.aclum.org

May 16, 2007

STATEMENT OF THE ACLU OF MASSACHUSETTS

Re: SB 1353: An Act Relative to Public Safety (the "buffer zone" bill)

The American Civil Liberties Union of Massachusetts (ACLUM) is a nonpartisan membership organization with approximately 22,000 members. Since its founding in 1920, ACLUM has vigorously defended the right to free speech on the public streets, and has frequently appeared in the courts of the Commonwealth to defend that right. At the same time, ACLUM has long been committed to preserving a woman's right to reproductive choice. ACLUM has participated in nearly every major reproductive health care case in Massachusetts over the course of the past thirty-five years including Moe v. Secretary of Administration and Finance, 382 Mass. 629 (1981). We have also consistently argued, in this context and in others, that constitutional rights can quickly become meaningless if they cannot be exercised without running a gauntlet of violence, intimidation and harassment. Accordingly, ACLUM, as *amicus curiae* in Planned Parenthood League of Massachusetts v. Blake, 417 Mass. 467 (1994) and Planned Parenthood League of Massachusetts v. Operation Rescue, 406 Mass. 701 (1990), supported the position that clinic protestors who had engaged in prior unlawful conduct could be subject to a narrowly crafted injunction imposing reasonable time, place, and manner restrictions on their demonstration activity.

ACLUM deeply believes that the volatile issue of abortion clinic protest must not be resolved by sacrificing either the right to reproductive choice or the right to engage in peaceful protest. Rather, the burden in each case is to arrive at a solution that accommodates both rights, and that does so in a principled way that is consistent with our constitutional tradition. ACLUM has opposed the enactment of various "buffer zone" proposals on the grounds that they are unnecessarily restrictive of freedom of speech and, perhaps more importantly, establish a dangerous precedent for the restriction of protest in other areas.

The activities which are the target of this legislation take place in areas which are "quintessential public forums," Benefit v. City of Cambridge, 424 Mass.

918, 926-927 (1997), areas which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hague v. CIO, 307 U.S. at 515. "[I]n a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.'" Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989, quoting Clark v. Community for Creative Non-Violence, 469 U.S. 293 (1984).

The difficulty with this legislation, as well as its predecessor, is that it based on the insupportable premise that any expressive activity within a certain distance of the entrance of a reproductive health facility will interfere with the right of access to the clinic, and that it is therefore necessary to prohibit all such activity. Within the buffer zone, the statute would prohibit not only aggressive harassment and physical obstruction, but it would also ban silent witness, and even respectful efforts to distribute information and activities which are supportive of reproductive choice. The reasoning behind this bill is the same reasoning which is all too often used to justify broad restrictions on political protest – such as confining those with dissenting viewpoints to a "protest zone" – out of concern that it *could* interfere with the target of the protest. This is not a restriction which is "narrowly tailored" in any meaningful sense and, as a result, could provide a legal justification for future restrictions on the speech and assembly rights of groups such as trade unions, anti-war and environmental activists, and others.

The overbreadth of the buffer zone legislation underscores the difficulty of formulating general rules affecting freedom of expression. It is precisely for this reason that the ACLU of Massachusetts has taken the position that protection of the right of access to reproductive health care from harassment and intimidation from the opponents of reproductive choice is more appropriately addressed in the courts, where, on the basis of a showing of actual interference by specific individuals or groups, a more narrowly tailored remedy can be crafted and enforced without encroaching on the rights of those whose activities are wholly lawful.