

This spring the United States Supreme Court will review the constitutionality, under the First Amendment guarantee of free speech, of an injunction, issued by a federal court in Buffalo, New York, directed at anti-abortion protestors conducting demonstrations at abortion clinics. The injunction allows protestors to approach a person heading for the clinic, but requires them to step back fifteen feet if the person indicates that she or he doesn't want to talk to the protestor. The anti-abortion protestors argue that the injunction violates their right of free speech. The abortion clinics contend that the injunction doesn't violate the protestor's rights, especially in light of, what the abortion clinics term, "the unrelenting campaign of harassment and intimidation" waged by the protestors.

Does the injunction violate the anti-abortion protestors' right to freedom of speech? If so, why? If not, why not?

MODERATOR'S ANSWER: The right of free speech, although enormously important, is not absolute. At times society must limit this right to accommodate concerns of great moral significance. The problem in such cases always is how to accommodate the concern at issue with the least limitation upon the right of free speech. From this standpoint the judge's order in regard to the demonstrations at the abortion clinic in Buffalo, New York seems reasonable. The requirement that anti-abortion demonstrators back off fifteen feet if a person entering the clinic indicates she or he doesn't wish to speak with them limits the demonstrator's right of free speech in the circumstances, but nowhere near eliminating that right. At the same time, the judge's order appears to address the morally significant concern of protecting women who enter the clinic to have an abortion from near certain severe psychological pain inflicted upon them by the demonstrators under, what is probably, the most emotionally stressful situation in their lives.

Case from the March 6, 1997 Intercollegiate Ethics Bowl. Copyright Robert Ladenson, Center for the Study of Ethics at the Illinois Institute of Technology, 1997.