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Buffers, Bubbles, and Abortion Speech

In my recent book, *[Speech Out of Doors: Preserving First Amendment Liberties in Public Places](#)*, I examine various restrictions on public assembly and expression including the phenomenon of expressive zoning. Although not a new tactic (the first speech zones appear to have been used against the Wobblies in the early twentieth century), carving public space into zones in an effort to regulate public speech and assembly has become increasingly common. The tactic is now used, for example, at every national party convention and mass protest. Expressive zoning can have substantial negative effects on the ability of speakers to contest particular places and to engage in protected forms of speech such as leafletting.

Responding to incidents of violence at or near abortion clinics, judges (through injunctions) and legislatures have imposed spatial restrictions on speech and assembly. These restrictions take two common forms -- the "buffer zone," which typically regulates congregating and demonstrating within some specified distance of clinic entrances, and the "bubble," which restricts the ability of sidewalk counselors and other speakers to approach within some specified distance of unwilling audiences at certain distances from clinic entrances. The Supreme Court has upheld both [fixed buffer zones](#) and [bubbles](#) as valid time, place, and manner restrictions. But none of the Court's abortion clinic zoning cases upheld the use of *both* measures at the same time.

In [Brown v. City of Pittsburgh](#), the Third Circuit recently invalidated a Pittsburgh ordinance that combined a 15-foot buffer zone with an 8-foot bubble applicable within 100 feet of the entrance to hospitals, medical offices, and clinics. In an opinion by Chief Judge Scirica, the court held the ordinance facially invalid on the ground that, in combination, the zones severely curtailed (if not precluded) the plaintiff, a sidewalk counselor, and others from leafletting near abortion clinics. The panel held that either measure, operating by itself, would be adequate to serve the City's interests in protecting access to the clinic and preventing harassment of clinic patrons.

As I argue in the book, efforts to defuse tensions surrounding the abortion debate through expressive zoning have resulted in some questionable limits on public speech and assembly. *Brown* is an important decision concerning the validity of spatial restrictions at or near abortion clinics. By carefully examining the terms and effects of the spatial restrictions, the court was able to demonstrate that Pittsburgh's layered zones burdened more speech than necessary to serve its legitimate interests. While speakers have no right to harass or threaten anyone at or near the clinics, their right to offer or distribute literature on public ways must be preserved.

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