

CENSORSHIP ZONES

The Hyper-Regulation of Public Spaces¹

What is a Censorship Zone?

A censorship zone sets out a defined area around an abortion facility that prevents citizens from engaging in otherwise legal activities within it. Prohibited activities range from the use of amplification equipment to assembling in a group, or even praying quietly alone. Censorship zones around abortion facilities can range from 100 – 800 meters in circumference and are usually intended to prevent any contact between citizens entering a facility and those engaging in pro-life activities.

Terminology

Censorship zones are sometimes referred to as 'buffer zones', 'bubble zones' or 'access zones' by their proponents. The problem with this terminology is that it suggests that there is a need for society to be 'buffered' from all of the activities included in such measures, many of which are reasonable or even beneficial to others. The terminology of 'access zones' suggests that a positive right to 'private' access to abortion trumps other rights. This affords a primacy to something to which there is no positive right in international law as against other fundamental rights like freedom of expression and association.

Notable Examples

In the United States of America, there are no federal laws that create censorship zones. Federal legislation does exist to prevent the blockading of abortion facility entrances. In the last decade, several states or municipal authorities have created censorship zones, with many being overturned. In *McCullen v. Coakley* (2014), the Supreme Court unanimously ruled that a Massachusetts censorship zone extending ten meters around entrances and exits was unconstitutional.

In Canada, two provinces have created censorship zones: Ontario and British Columbia. There are local injunctions in force in Calgary and Toronto.

In Australia, there are censorship zones in the States of Tasmania and Victoria.

In France, national censorship zones exist through law n° 93-121 of 27 January 1993, preventing any 'hindering' of access to abortion facilities. A conviction can result in a fine of up to €30,000.

At the time of writing, there are no censorship zones in the United Kingdom. Several local councils are looking to introduce censorship zones via controversial powers known as Public Space Protection Orders (PSPOs) designed to combat anti-social behaviour.

¹ Kevin J. Brown, 'The hyper-regulation of public space: the use and abuse of Public Spaces Protection Orders in England and Wales' (2017) 37(3) Legal Studies 543.

Public space orders are yet to be challenged in the courts as they usually affect the homeless or other groups who may not have the financial means to take legal proceedings. At a national level, the Home Secretary has ordered a review into the 'protests' outside abortion facilities in order to assess if national censorship zones are to be introduced. Popular petitions have proved effective at challenging PSPOs in the UK, with several civil liberties organizations opposing their imposition for any reason.

Common Justifications for Censorship Zones

The most commonly used justifications for introducing censorship zones are:

- That there is a positive right to abortion, or that there is a right to access 'healthcare' in private.
- That pro-life groups or individuals might wish to dissuade a woman from having an abortion.
- That pro-life individuals or groups hand out 'misleading' information about abortion.
- That women walking into facilities are being 'harassed'. Such a claim usually involves a novel definition of harassment that would lower the current legal definition.

CENSORSHIP ZONES ARE OFTEN DESIGNED TO PREVENT THE 'WRONG KIND' OF CHARITABLE OUTREACH BY PRO-LIFE GROUP MEMBERS. PREVENTING CHARITY DENIES WOMEN POTENTIALLY LIFESAVING HELP TO KEEP THEIR CHILDREN, HELP THAT EVIDENCE SHOWS SOME WANT TO RECEIVE.

- That the sight of pro-life or religious signage might 'distress' or 'intimidate' facility users or lessen 'quality of life'.
- That individual and group prayer might cause distress due to it being interpreted as 'judgemental'.

Reasons to Favour Free Speech Over Censorship Zones

Censorship zones and human rights

Censorship zones infringe upon several human rights at the same time. In the European context, for example, Article 9 of the European Convention on Human Rights protects freedom of thought, conscience and religion. Many censorship zones prevent group or individual prayer. They also prevent conscience-based activities.

Article 10 protects freedom of expression. Many censorship zones prohibit free oral or written expression on a topic of important public interest and personal consequence.

Article 11 protects freedom of association. Many censorship zones prevent the assembly of individuals regardless of what they are doing.

The protection of activity under Articles 9-11 does not depend upon the palatability of the particular activity to any individual – or to the state. Such a definition would amount to a 'heckler's veto' and the European Court of Human Rights has affirmed that even ideas which are not well received are nonetheless protected.²

Many censorship zones are framed broadly. For example, it would be typical for an order to prevent the reception of any information in the designed area. Such a broad framing makes censorship zones vulnerable to legal challenge under the convention rights noted above.

Censorship zones and the criminal law

Most of the states that have introduced, or are considering censorship zones, have constitutional traditions that look to minimize the criminalization of citizens. Censorship zones violate this minimization principle by criminalizing the otherwise lawful activities of all citizens in the zone.

² *Handyside v. the United Kingdom*, no. 5493/72, 7 December 1976, § 49.

States already have comprehensive public order laws that protect citizens from anti-social behaviour. When censorship zones are introduced, they encourage the use of similar orders as a first response rather than a last response to a real problem.

**CENSORSHIP OF THE
FREEDOMS TO EXPRESS
AN OPINION, SHARE
INFORMATION AND ASSEMBLE
THREATENS THE HEALTH OF
THE LIBERAL DEMOCRATIC
SOCIETIES THAT HAVE
ENACTED THEM.**

Censorship zones and the liberal democratic tradition

Censorship of the freedoms to express an opinion, share information and assemble threatens the health of the liberal democratic societies that have enacted them. The health of a democracy depends not only on the free exchange of fashionable ideas but also on those that might shock, disturb or offend.

Quality of life flourishes under free speech, not censorship

Often censorship zones are legitimized through testimonies stating that the presence of pro-life individuals or groups causes 'distress' or damages the 'quality of life' of others. These criteria are used when there is an absence of proven criminal activity.

Basing laws on such criteria can encourage:

- Allegations or testimony to criminalize particular sections of the population without relying on substantiated evidence.
- Influencer or campaigner classes banning behaviours or groups they find objectionable through 'quality of life' arguments. This sets a 'mob rule' precedent.

- The state dictating what it deems to be quality of life for who and how.
- An adversarial culture where campaign groups fight a zero sum game to exclude behaviours they disagree with entirely.

A democratic society functions best when individuals are able to speak freely without the fear of state censorship.

Where do we draw the line?

The 'distress' criterion creates the following dilemma for states using it to justify censorship: If a woman who is about to have, or has just had, an abortion should not have to 'face' pro-life individuals, groups or messages, why should she have to 'face' anything similar elsewhere in public life? Where there are criminal acts to be sanctioned such as assault, the existing criminal law should deal with those activities accordingly. However, if the state is attempting to regulate potential distress caused then it may seek to go yet further and further. There is no reason to say a woman is less vulnerable outside a facility than on the bus or near the town hall. Banning a whole section of civil society, many of whom are offering charitable aid, because of potential feelings is a draconian and slippery slope.

France provides a concrete example of this problem. Having created censorship zones on the pavement in 1993, an amendment passed in 2017 now bans 'misleading' pro-life websites according to the same reasoning.³

Bans deny help where it is most needed

Preventing charity denies women potentially lifesaving help to keep their children, help that evidence shows some want to receive. Such censorship disregards the experience of those facility users, mothers that want and receive assistance at the gate. Assistance at the gate includes counselling, help with food, baby clothes, rent, housing, and legal advice among many other things. The facility gate is the last possible point of help for women with no alternative and yet censorship zones would shut down help where it is most needed.

³ See 'France to sanction "misleading" anti-abortion websites' (*Politico*, 16 February 2017) available at <<https://www.politico.eu/article/france-to-sanction-misleading-anti-abortion-websites/>>.



ADF INTERNATIONAL

What You Can Do

Raise awareness

Raise awareness in your own country about the illiberal nature and the harmful consequences of censorship zones. Consider starting a campaign highlighting the problems, such as www.behereforme.org.

Build an alliance

Identify a list of political actors, NGOs, academics, and journalists who share a critical view towards censorship zones. Mothers who have kept a child they felt pressurized into aborting have a compelling and underrepresented voice on this issue.

Organize a hearing

Organize a hearing at your national Parliament together with Members of Parliament to inform them about the dangers of censorship zones.

Organize an event

Organize an event or a conference on the topic. Feel free to reach out to ADF International experts for assistance with arguments to be presented or speakers to invite. Use the negative experiences of those in countries affected by censorship zones to highlight the potential dangers.

OFFICES



VIENNA
BRUSSELS
GENEVA
STRASBOURG
LONDON
NEW YORK
WASHINGTON DC
MEXICO CITY

ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.

ADFinternational.org



facebook.com/ADFinternational



@ADFIntl

© May 2019 ADF International.
All rights reserved.