Abortion 'bubble bill' going before U.S. Supreme Court

Law has origins to buffer zone rule enacted by Boulder City Council

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This month, the U.S. Supreme Court will decide two cases concerning abortion, one of them from Colorado and the other from Nebraska. Of the two, the Nebraska casse, Stenberg VS. Carhart, has the most constitutional significance but the Colorado case, Hill vs. Colorado, had its origins in Boulder.

In 1986, the Boulder City Council passed a "Buffer Zone Ordinance" to protect women entering abortion clinics and doctor's offices from harassment by anti-abortion protesters. The basic concept of the ordinances is that, within a distance of 100 feet from the clinic entrance, a demonstrator may not come closer than eight feet to a patient or other person entering the clinic without their explicit permission.

When this ordinance was passed, the anti-abortion protesters, led by Jeannie Hill, requested an injunction against its enforcement. The enjunction was denied by a federal district court in Denver. Soon after this Denver adopted thesame ordinance, and later, the Colorado legislature passed the "Bubble Bill," which contained effectively the same restrictions.

The bill was signed into law by Gov. roy romer. It was immediately challenged by Hill with the help ofPat Robertson's legal organization, the American Center for Law and Justice. I was an expert witness for the State of Colorado as it defended this law.

The Colorado "Bubble Law" withstood court challenges through the Colorado Supreme court. It has been accepted for review by the U.S. Supreme Court because it is similar in concept to other laws and ordinances that attempt to maintain distance between anti-abortion demonstrators and those entering the clinics.

In Boulder, it appears that both the state law and the "buffer Zone" ordinance, which has been given full support by the city government and law enforcement authorities, hav had some effect in discouraging some demonstrators. In Denver and other places, the effect has not been so clear.

For one thing, the law requires that the person targeted by the demonstrators invoke the law and then request enforcement if the demonstrators continue their harassment at close range. The problem with this arrangement is that patients are terrified when approached by anti-abortion demonstrators and have no effective way of invoking the law. The police cannot be instantly present to witness the

violation, and even then, they must issue a warning. By this time, the frightened patient is inside the building. The demonstrators have accomplished their purpose of terror and harassment.

The Supreme Court must decide if the "Bubble Law" unconstitutionally limits the free speech rights of the demonstrators or whether it merely makes a reasonable limitation that protects the rights of the women to be left alone.

In my opinion, the Colorado law has only symbolic value in the expression of community sentiment. It provides no real protection for women subjected to anti-abortion harassment. The law assumes that those involved are reasonable people who respect the law, the Constitution, and the rights of others. This is not the case with anti-abortion demonstrators.

A truly effective law would invoke the same constitutional compromise used in keeping political activity 100 feet or more from a polling place. But, in 1986, the American Civil Liberties Union would only agree to requiring that demonstrators observe a "buffer zone" of eight feet from patients entering clinics in Boulder. At that distance, anti-abortion terror reigns, and that is exactly the point of anti-abortion demonstrations.

In the Supreme Court hearings earlier this year, the ACLU argued against the Colorado law. Go figure.

In the Nebraska case before the Supreme Court, the state is appealing a decision by a federal appeals court that struck down the law. Although it was presented by its sponsors as a law prohibiting "Partial Birth Abortion," a non-medical term supposedly referring to some late abortions, the law is written to cover almost all abortions.

Dr. Lee Carhart, the Nebraska surgeon who challenged the law, states that the law is so vague that it could be used to make any abortion illegal. Lawyers for the Center for Reproductive Law and Policy, who argued the case for Dr. Carhart before the Court, contend that the Nebraska law threatens the two remaining principles of the 1973 Roe vs. Wade decision, which made abortion legal in the U.S. Those principles are: that the woman's right to life and health prevails over the life of the fetus at any stage of pregnancy, and that viability will be the dividing point in acceptable legislation. In Stenberg vs. Carhart, a decision to uphold the Nebraska law would strike down Roe vs. Wade.

Warren M. Hern, a physician, is Director of the Boulder Abortion Clinic. He testified as an expert witness for the State of Colorado in one of the cases discussed here, Hill vs. Colorado