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**The Space Between: A Rhetorical Analysis of Space and how it Functions within
Buffer Zone Discourse Concerning Reproductive Healthcare**

An Honors Thesis submitted in partial fulfillment of the requirements of Honors Studies in
Communication

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V for Violence

Since 1977, a campaign of violence, vandalism, and intimidation targeting abortion providers and women's health clinics has endangered the lives of patients, doctors, and clinic escorts, while severely curtailing access to reproductive services. Eight murders, including the highly publicized murder of Dr. George Tiller at his church in Kansas in 2009, and 17 attempted murders have claimed the lives of doctors, security guards, clinic escorts, and receptionists. Since 1977, there have been 6,800 reported acts of violence, and 188,000 acts of disruption against health clinics offering abortion services in the United States (NARAL 1). The violence has included 42 bombings, 99 attempted bombings, 181 arsons, 661 bomb threats since 1977 in addition to 663 reported incidents of chemical vandalism involving exposure to noxious chemicals such as iodine, butyric acid, and anthrax since 1993 (NARAL 6) These incidents have created an incredibly hostile climate for doctors entering the field of obstetrics and gynecology, employees working at abortion clinics, and patients receiving access to healthcare. It is because of anti-abortion commination that 89% of United States counties have no abortion provider and many clinics have been forced to implement costly regimes in the name of safety including bulletproof glass, armed guards, surveillance cameras, metal detectors, armored vehicles, bulletproof vests, and arming of doctors (NARAL 13).

Communicating consensus is therefore challenging in culture war debates surrounding abortion care as the personal and the political clash over ethics and policy, making abortion one of the most heavily regulated medical procedures in the United States (Hill 2). Intense conflict and violence in and around abortion clinic space prompted legislation and judicial intervention to create buffer zones for clinics. Buffer zones are

defined as neutral areas around clinics meant to ensure safe passage into an abortion or reproductive healthcare facility, limiting patients' exposure to unwanted harassment and obstruction upon entering or exiting such facility. These zones create a perimeter within which anti-abortion protestors cannot physically inhabit in order to promote equality of access for all patients and prevent patient deterrence from healthcare because of fears of violence. Depending on the state, zones can be fixed, a marked perimeter around a given facility, or floating, an invisible perimeter around people within a larger fixed zone. Buffer zones are an extremely important implementation in protecting patients' rights to safely access healthcare without falling victim to as much physical or social violence, hatred, or harassment.

Three main cases, the 1994 Freedom of Access to Clinic Entrances Act (FACE), *Hill v. Colorado* (2000), and most notably, *McCullen v. Coakley* (2014), exemplify the interrelationships between legislative rhetoric, judicial rhetoric, spatial hermeneutics, and gender formation as political discourses compete to frame safety at abortion clinics. This project analyzes the three major discourses pertaining to buffer zones to understand the rhetorical history and politics of identification and location around abortion clinics. Because the most recent case pertaining to the constitutionality of abortion clinic buffer zones was only issued in June 2014, scholars need to investigate how this new ruling is part of a much larger discursive history. Using historical methods, this project provides groundbreaking analysis concerning the power of legislative and judicial rhetoric to shape access to healthcare, interpretations of space, and the formation of publics.

Research Questions

This study asks the following questions to understand how buffer zone discourses demarcated space, memory, public health, safety, and political identity: *What is the relationship between physical space and rhetorical space and the consequences of such an association, both politically and publically? How is the construction and interpretation of space affecting public perception of reality and cultural narratives? What is the relationship between public space and private space? Does women's increased presence in public space create cultural amnesia about their political space? Is the physical space of the city/clinic more important than the physical space of women's bodies? How do buffer zones promote or discourage participatory political culture?*

In attempting to answer these questions, this study advances a critical legal analysis using Kenneth Burke's pentad to provide a rhetorical history and political assessment of abortion clinic buffer zones. Using the Freedom of Access to Clinic Entrances Act (1994), *Hill v. Colorado* (2000), and *McCullen v. Coakley* (2014), I offer an assessment of the politics of identification and location at play in both the majority opinion and dissent in each case. Although some communication scholarship, most notably Celeste Condit's book *Decoding Abortion Rhetoric* (1990), has examined the political rhetoric of the abortion debates particularly in the 1980s, this groundbreaking study departs from the extant literature by moving from the executive analyses of buffer zones and towards an understanding of how judicial language has framed debate over clinic access, space, and emerging publics that are agitating around reproductive healthcare.

I argue that abortion debates and public safety can only be fully understood in terms of symbolic drama which incorporates developing communities and traditions to instigate social change and motives for actions. As law functions as a branch of rhetoric, legal communication uses language to construct perceptions, define motives and values, and generate methods of reasoning (White 692). Therefore, the formation of a social universe with established expectations and roles is dependent upon Burke's dramatism and how people structure a linguistic reality. Using the pentad to unmask uncertainty of motives is necessary in buffer zone discourse to spotlight judicial and legislative predilections that cultivate publics. Moreover, Burke's pentad accentuates the motivations behind each party in the abortion debates and their end goals. Comparing ratios within each prominent buffer zone case reveals the rhetorical biases that shape public perception of safety, abortion, and the status of women in society. Because of their strategic rhetoric, opponents of buffer zones were able to portray themselves as victims of legislation to gain public support for their policy decisions and justify violence towards the true victims, women and clinic employees. Investigation into symbolic action highlights how persuasive legal rhetoric has the ability to structure reality and constitute publics that work to limit women's physical and rhetorical presence, perpetuating their subordination and dehumanization.

Using the three groundbreaking buffer zone cases from 1994-2014, this essay argues that judicial discourses continue promoting the dehumanization and subordinate status of women by placing their physical and rhetorical agency second to congressional and judicial power. Inequality of access continues to hurt women, generally, but mothers particularly, suggesting that these bodies are the targets for both regulation and

punishment. Even discourses that appear to advocate for women's rights on the surface and express a commitment to feminism inevitably stifle women's agency and political prowess upon strict examination of the text. Furthermore, women are subjected to intense amounts of social and physical violence for attempting to access their constitutional right to an abortion by certain states' refusal to supply them with adequate buffer zone protections outside of clinics.

The Texts: Investigating Legal Rhetoric

Law is arguably best understood as a branch of rhetoric that establishes reality, community, and a culture of argument that is perpetually remade according to linguistic interpretation (White 684). Therefore, rhetoric manipulates and determines the laws at a given time, structuring a fortified reality. When interpreting abortion laws, language functions as a social process with the distinct ability to ignite social change and dictate the formation of publics. This claim is fortified in Celeste Condit's argument that interpretations of abortion rhetoric are central to "the reproduction of the human species, to our understandings of gender, and to our life ethics" (Condit 1). Since decoding abortion rhetoric is an active, transformative process that interprets symbols of power, it is crucial in buffer zone debates concerning the highly gendered struggle for control over public spaces. By determining the political and economic power of women, and regulating the number of children they have, the abortion debates hereby function as "just the tip of a much larger ideological iceberg about women's place in the world" (Marty & Pieklo 11). Unyielding conflict over abortion and women's bodily autonomy employs language as a tool for shaping public opinion and gaining support for policy decisions. In

the case of buffer zone discourse and abortion rhetoric, rhetorical performances influence cultural capital by reinforcing an unequal, gendered distribution of power (Johnson 1). The denouncement of buffer zones indicates that women are prohibited from inhabiting public and rhetorical space and are perpetually understood as a second-class Other, undeserving of protection against violence.

In order to solidify these unequal distributions of power, legal discourses exercise constitutive rhetoric to argumentatively construct community, culture, and individual identity in the formation of publics. The domain of constitutive rhetoric “includes all language activity that goes into the constitution of actual human cultures and communities” to classify law as a rhetorical, social, and cultural activity that constantly remakes communal identity by testing the boundaries and limitations of culturally-specific language (White 695). Therefore, law is an art of persuasion that creates the objects of its persuasion, community and culture. Analyzing law in this manner highlights the fluidity of meaning-making and offers new understandings of legal terms. For instance, James Boyd White describes statutes not as a set of directions or orders, but rather as a set of topics with general directions as to how the statute is to be applied (White 697).

Similarly, judicial opinion can be more richly understood as a statement of a group of minds determining what language means for a culture as opposed to a supreme form of legal expression (White 697). While judiciaries must fuse a plethora of actions and interpretations into a palatable decision, legal communication becomes abstracted and conceptualized, largely blind to what it excludes. Therefore, there is no end-all expression of rationality in constitutive rhetoric as all outcomes can only be

comprehended according to culturally-specific language (White 686). This study seeks to unmask such exclusion and culturally-created language that structures women's reality as a lesser political experience.

Legal Discourses and the Pentad

The importance of judicial discourse and rhetoric, particularly in the case of buffer zones, is best understood by applying Kenneth Burke's pentad to legislative and judicial texts to understand how space and violence are depicted in ways that influence participatory culture. Burke's dramatism uncovers the intentions or motives of social actors, called agents, through their actions and discourse (*A Grammar of Motives* xv). He summarizes dramatism as "If action, then drama; if drama, then conflict; if conflict, then victimage" to illustrate the vast array of consequences and societal effects that stem from rhetoric including victimization and controversy (*Language as Symbolic Action* 54). As a method, dramatism provides insight into the power of rhetorical action as a social process that frames conflict through the assessment of terministic screens. Terministic screens are the different lenses or filters through which one perceives and understands the world. Through these screens, the same object can take on a litany of different meanings and appearances based on one's language, ideology, and reality construction (*Language as Symbolic Action* 44). The persuasive nature of language therefore expresses "an *attitude* embodied in a *method*" that parallels the power of judicial discourse to generate evaluative meanings, argumentation, and persuasion (*Grammar of Motives* 441). This method explains society's divide on abortion-related issues based on how different publics interpret language according to their ideologies.

As meaning is embedded in language, Burkean rhetorical analysis exposes human motivations based on their understanding of reality. Motivation is explained in terms of symbolic action and perception through terministic screens, acting as a type of semiotic process that accentuates the relationship between cultural and ideological standards (*Language as Symbolic Action* 16). The motives of a person are judged according to morality, especially in polarizing abortion discourses which highlight various elements of the pentad in order to gain public and congressional support for policy positions. Moral dilemmas then range from personal judgments and evaluations to public policies based on the motivated actions of agents (Tonn et al. 165). Here, language reveals how the personal and the political conflict. Moreover, the dramatistic technique systematically explores my essay's research questions in order to examine and evaluate the power of discourse in shaping one's values, motivated actions, and construction of reality.

In discussing the role of motive in contemporary political drama, Burke developed the pentad to help excavate action and intentions through five key terms:

1. **Act:** What happened, what was done, what took place in thought or deed
2. **Scene:** The background of the act, the situation in which an action occurred including where or when
3. **Agent:** What person or kind of person performed an action; can be an individual identity or a collective entity such as nation, church, race, or cultural movements
4. **Agency:** The means or instruments an agent uses when performing an action
5. **Purpose:** Why an action was performed (*Grammar of Motives* xv).

The pentad critically dissects human motivations down to their most fundamental discursive level in order to decode persuasive messages and interpret the dialectical tensions that dictate behavior. Burke argues that the pentad is a tool used to guide questions one would ask in order to uncover an agent's reason for action ("Questions and Answers" 332). An understanding of human motivations and behavior discloses how people confront and cope with interpersonal conflict, structuring their relationships and sense of belonging.

This particular analysis examines the judicial texts as published by the United States Supreme Court for three prominent buffer zone rulings—*FACE* (1994), *Hill v. Colorado* (2000), and *McCullen v. Coakley* (2014)—by coding the discourse according to the five elements of Burke's pentad. I thoroughly labelled the text of each of the three cases to determine which elements of the pentad are dominant in each narrative and why. After each sentence was labelled according to the element it exemplifies, I compared the frequency of each element to the larger purpose of the legislation to reveal gender discrepancies. Such gender inequalities manifest through linguistic framing techniques, discourses about power, and the glorification of hegemonic voices that belittle women's humanity. In constructing the ratio, Burke argues that first element "'determines' or is 'necessary' for the second element to function" (qtd. in Dickinson 127). Therefore, the first term represents the dominant element in a given discourse that structures the importance of the second term. For instance, an *act-purpose* ratio would mean that *actions* dominate the narrative and that each *action* determines and shapes the *purpose*. This says that a *purpose* cannot be understood independently from the *action*. A given *purpose*, like to persuade patients not to have an abortion, would be dependent upon and

molded by a given *action*, such as providing patients with pamphlets or brochures that describe abortion as murder.

Furthermore, comparing pentadic ratios discloses how enemy construction and pursuit of a common goal function as motivators for the creation of publics. Rhetorically interpreting how publics eschew responsibility and collective guilt exposes the ways that these groups gain support for policy. For the abortion debates specifically, investigation of pentadic elements reveal motivation as each side typically identifies with a particular dramatic aspect in order to constitute these publics. For instance, Elizabeth Kuechenmeister argues that the majority of pro-choice rhetoric focuses on the element of *purpose*, an idea mirrored in the name “pro-choice” which highlights a woman’s right to choose if she wants to obtain an abortion. Correspondingly, *purpose* declares that reproductive justice is every woman’s right, abrogating the oppressive injustices behind a liberal social system that deprives women of agency (Kuechenmeister 1-3). Exemplifying *purpose* helps pro-choice groups achieve their goal of keeping abortion legal and ensuring that all patients have the right to access the healthcare they desire or require.

In opposition, pro-life rhetoric emphasizes the element of *action* almost exclusively. To anti-abortion proponents, Burkean interpretation places *act* central to all other elements and therefore can only exist through the spotlight of action. Pro-life publics underscore fetal images and the moral implications of the abortion procedure, accentuating *action* rhetoric to perpetuate victim blaming (Kuechenmeister 1-3). It is necessary to unmask the motivational properties of agents and publics to understand the propensity for victim blaming and dehumanization practices in polarizing discourses that concern safeguarded privileges (Tonn et al. 167).

A fresh look at the politics of abortion through buffer zone discourse reveals the power of physical and rhetorical spaces to create a gender reality based on inequality. The rhetoric of space and emerging publics are affected by gendered jurisprudence that excludes women from power structures and an active political voice. It is significant to study gender and its relationship to space to chart how spatial inequalities discourage participatory culture. In terms of healthcare, abortion becomes a public health issue by determining women's access to clinics, regulating their political, personal, and economic power in society. Ability to access reproductive services furthermore influences abortion legislation, especially interpretation of undue burden and the creation of additional procedural obstacles. Various ranges of clinic accessibility for women justify class and race warfare against a female identity that has already been disadvantaged politically and economically. Therefore, women are continually disenfranchised from a system that deters their access to healthcare and has recently refused to provide them with safeguarded protections outside of clinics to ensure their safety.

Studying the blurred distinction between moral and political realms in abortion discourse uncovers the strategic inability of women to penetrate typically male-dominated areas of power. While this positively fuses the public and private spheres, each with its highly gendered inhabitants, this distortion negatively subjects moral issues like abortion to hierarchies of power and privilege. It is evident that American rhetorical spaces are strikingly textured, closed, and barely permeable depending on who, where, and why one is addressing the public (Code x). Lorraine Code argues that this lack of territorial integrity constructs a powerless, nameless female identity by "suppressing the attributes and experiences commonly associated with femaleness and underclass social

status” (Code 31). Feminist concern over this oppressive identity formation seeks to expose mystified facts and values present in hegemonic discourses in order to reclaim a cultural amnesia about women’s political agency.

The fact that it is extremely difficult to measure the adequacy of buffer zone protections is a major locus of debate in abortion discourse. Because FACE proved challenging to enforce, states such as Colorado, Montana, and Massachusetts fashioned their own forms of protection to deter clinic violence. While Colorado expressed a need for a combination of fixed zones surrounding clinics and floating buffer zones around people, Massachusetts desired only a fixed buffer zone that covered a much larger radius than Colorado’s statute. Responding to a 1994 shooting at a Brookline clinic that killed two employees and wounded five others, Massachusetts recognized a need to implement stricter buffer zone protections (NARAL 5). Buffer zone variation in *Hill* and *McCullen* is cited as the determining factor in constitutionality between the two cases as *McCullen* was struck down for burdening more speech than necessary to serve a significant government interest. Therefore, each state’s definition of adequate protection is tested by Supreme Court interpretation of this linguistic definition. It is because of this emphasis on language that White argues that judicial opinion is merely a group of individuals’ understanding of what language means for the culture (White 697). As language has the power to determine adequate safety precautions, it literally has life or death consequences that must be uncovered and analyzed.

Abortion Access and Rhetorics of Space: A Burkean Analysis

Application of Kenneth Burke's dramatistic pentad to the judicial discourse of the Freedom of Access to Clinic Entrances Act (1994), *Hill v. Colorado* (2000), and *McCullen v. Coakley* (2014), utilizes the grammar of motives as a platform for interpreting gender expectations and performance in a society ambivalent about abortion rhetoric. Rhetorical analysis of these three cases concerning abortion and reproductive healthcare access expose disproportionate ratios of pentadic elements that justify gender discrimination through the language of space. Charting discursive spaces that stimulate responsible inquiry illuminates the often implicit constraints of knowledge and subjectivity that victimizes women as a political category (Code 19). This critical, legal investigation shows how women are immobilized in society, unable to effectively inhabit and control rhetorical and physical spaces. Disruption of gender equality through the rhetoric of space undoubtedly constructs a subordinate reality of female identity shaped by hierarchies of power and privilege. Stigmatization of the female Other strips women of all forms of power while stifling evolving, self-critical feminism. Therefore, this analysis unmaskes the issues that have been commonly obscured and fortifies a compelling need for the elimination of cultural and linguistic cognitive distortion that benefits privilege.

Freedom of Access to Clinic Entrances Act (1994)

As the first major artifact of judicial discourse to regulate the physical movement of bodies in public spaces outside reproductive facilities, the Freedom of Access to Clinic Entrances Act certainly shaped the abortion debate in terms of legislation, judicial

regulation to access, and future violence. After the 1993 political assassination of Dr. David Gunn outside of a Florida abortion clinic and the attempted murder of Dr. Tiller outside of a Kansas clinic that same year, Congress responded to the increasingly violent terror hawking reproductive facilities (National Abortion Federation 1). Senator Edward Kennedy (D-MA) sponsored FACE to protect those providing and receiving abortion services. The bill overwhelmingly passed through Congress and was signed into law by President Clinton in May 1994. Although the Act does not specify buffer zones themselves, this legislation sets a crucial precedent for buffer zone discourse by addressing the widespread violence outside of clinics.

This law makes it illegal to intentionally commit a litany of violent or obstructive behaviors toward healthcare providers, their patients, and reproductive facilities by establishing federal and civil penalties for “violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate, and interfere with persons seeking to obtain or provide reproductive health services” (FACE 1). It is important to note that this Act empowers the federal government to file criminal charges, but civil suits can be addressed if delivered to Congress by federal or state governments or any person or facility that is victimized by these prohibited behaviors (Erickson 2). Thus, FACE has been extremely effective in reducing criminal activities such as harassment, vandalism, and murder aimed at clinics, healthcare providers, patients, and volunteers (Erickson 2). Additionally, this legislation is key to understanding the debate over clinic access, space, and emerging publics as it was the first of its kind to address the pervasive violence surrounding healthcare facilities that created a necessity for buffer zones and protected space in years to follow.

The Pentadic Elements of FACE

Before divulging into the prominent pentadic ratios present in FACE, each element of the pentad must be analyzed separately. First, *agent* must be understood in order to decipher who is committing the action in question and whether it promotes or discourages safety. Governing bodies are not subjected to action but rather dictate and enforce acceptable behaviors outside of clinics. Burke's analysis spotlights the two broad types of motivational concerns surrounding judicial bodies: "if they are to reason correctly and argue prudently, courts must be diligent in interpreting the motives of those writing constitutions, statutes, and judicial opinions" but "if they are to be persuasive, courts must be careful in the way they justify their decisions, making certain that their motives appear legitimate in light of the judicial role" (Rountree 3). It is for these reasons that White cautions citizens by arguing that judicial opinion is best understood as a determination of what language means for a given culture, rather than an as expression of supreme authority (White 697).

In order to mask the heightening of hegemonic power structures, *agent* appears to benefit proponents of safe access by thoroughly detailing the punishments and offenses that should be inflicted upon violators of FACE. *Agent* therefore encompasses the broad category of those in need of protection, referring to individual patients, doctors, employees, volunteers, and law officials, and the facilities themselves that provide "medical, surgical, counselling or referral services relating to the human reproductive system" (FACE 3). *Agent* also regulates the punishments of FACE violators who are subjected to hefty fines or imprisonment based on the number of offenses committed.

Through Burkean analysis, it is clear that *agent* obscures the true *acts* and *purposes* of this legislation in order to avert public scrutiny of this narrative of unequal power.

It is important to distinguish the different types of *agents* functioning within FACE as there is a rigid divide between publics in abortion discourse. As different *agents* are allowed to perform different *acts*, this type of legal discourse has been deemed hypocritical, unfair, and openly biased by the dissent. To justify their rulings, Congress and judicial bodies emphasize intent and purpose behind *acts*, the most prominent element in FACE.

While *agents* withhold the decisive power in this discourse, they must then express their authority through an array of regulatory *actions*. It is not surprising that *act* dominates the narrative of FACE as it was implemented to regulate the movements and behaviors of bodies outside of abortion clinics. Such prohibited activities include “by force or threat of force or physical obstruction, intentionally injur[ing], intimidat[ing], or interfer[ing] with” a person obtaining or providing reproductive health services, “intentionally damag[ing] or destroy[ing] the property of a facility, or attempts to do so,” because such facilities provide reproductive health services (FACE 1). The text continues by empowering the Attorney General to commence civil actions against FACE violators in the form of fines or incarceration based on the level and number of offenses committed. Additionally, state Attorneys General also hold the power to “award appropriate relief, including temporary, preliminary, or permanent injunctive relief, compensatory damages, and civil penalties” (FACE 3). It is necessary for this type of regulatory discourse to emphasize *action*, but this element can only fully be understood in relation to its corresponding element of *purpose* in order to properly determine intent.

Therefore, the majority of *act* discourse refers to the prohibited activities of violators in accordance with the intent or *purpose* guiding their actions.

Moreover, the element of *purpose* dominates abortion discourse as a defense against the continuous attacks on women's rights. Not only does intent determine civil and criminal penalties for violators, it also distinguishes between patients seeking adequate healthcare and protestors instigating violent and unwanted harassment. Similarly, *purpose* justifies the passage of the Act as it is meant to "assure freedom of access to reproductive services" and "protect and promote the public safety and health and activities affecting interstate commerce" (FACE 1). The actions of authoritative agents against perpetrators are defended and warranted in the name of vindicating the public interest and protecting the right to safely access medical care and counseling services. These *purposes* satisfy constitutional standards as burdens on free speech are instrumental in protecting citizens from social and physical violence. Therefore, an examination of *purpose* thwarts the dissent's claims of biased judicial diction. How people interpret the mutually influencing relationship between *purpose* and *act* determines their association with certain publics and their tendency to connect with or disassociate from legalized constitutive rhetoric.

Because of FACE's emphasis on *purpose*, the element of *agency* is almost entirely absent in FACE discourse. *Agency* is not as important to discuss as the intention behind an action or the person committing a certain act. In fact, the only instances of *agency* in FACE correspond with the actions of each state's Attorney General who commence civil action "in the name if such state" (FACE 3). This solidifies the claim that judicial bodies are more concerned with the intent behind violent actions rather than

the means to execute such actions, exemplifying the *act-purpose* ratio. Instead of accentuating *agency*, the *act-purpose* ratio dominates the narrative in order to absolve judiciaries and legislators of responsibility for violence and to protect them from displeased anti-abortion publics.

Surprisingly, although *scene* references location which is one of the key features of buffer zone discourse, it is not at the forefront of FACE because of the text's emphasis on the *act-purpose* ratio. Instead of specifically regulating the spatial limitations outside of clinics, FACE focuses on prohibited activities and criminal and civil consequences of violating the legislation. In this case, *scene* does not reference location or time, but functions to accommodate and uphold First Amendment freedoms. *Scene* highlights the conditions within which actions can occur, abiding by "First Amendment right of religious freedom," "free speech or free exercise clauses," and "State or local laws" (FACE 3). Here, *scene* favors the dissent who protest against the unconstitutionality of FACE and impositions on their rights of free speech, freedom of assembly, and freedom to protest. Although not prominently accentuated in FACE, *scene* plays a more significant role in contemporary buffer zone discourses as the specific size and type of zones determine constitutionality.

The *Act-Purpose* Ratio of FACE

A detailed and thoroughly investigative comparison of Burke's pentadic ratios in the judicial discourse of FACE undoubtedly emphasizes the *act-purpose* ratio to fortify the *action* as a signifier of motive, highlighting the larger intentions of the Act itself.

This is not completely surprising since Burke argues that *act* is crucial in discourses of space to determine permissible and appropriate behaviors and who is granted power and access (*Grammar of Motives* xxii). Repeated actions carry their own justification and directly lead to the fulfillment of an end goal or purpose. This key relationship between *action* and *purpose* is significant as FACE is the first legislation of its kind to regulate movement in the name of safety. Safety motivates not only the specific restrictions of action within FACE but also warrants the passage of the Act itself. It is significant that all three branches of government responded to the widespread political violence targeting women outside of clinics.

The *act-purpose* ratio here functions to absolve judiciaries and legislators of responsibility for clinic violence and protect them from displeased anti-abortion publics. Accordingly, the *act-purpose* ratio is exemplified in this discourse as every *action* is accompanied by its intention. *Act* therefore serves as the dominant term in the *act-purpose* ratio as *actions* are weighed more heavily according to penalties, are the most frequently mentioned term in the discourse, and symbolize the behaviors that are under regulation. As *acts* are understood as behaviors with intentions, not just behaviors themselves, the *purpose* in turn is only understood in terms of deeply-regulated *actions*. For instance, the phrase convicting one who “intentionally injures, intimidates, or interferes with” the movement of another, signifies an *act* that is followed by a statement of intent, which in this case is to prevent persons from “obtaining or providing reproductive health services” (FACE 1). This discourse includes the actual term “intent” while cementing the *purpose* in relation to the described *action*. Thus, judiciaries and legislators are protected from displeased anti-abortion publics as the end *purposes* can

only be understood in terms of the *action*. They are therefore absolved of responsibility and guilt and cannot be targets of pro-life disfavor.

The *act-purpose* ratio similarly accentuates congressional power over female agency by overflowing the diction with *actions* that strengthen the authority of judicial bodies. Women's safety and protecting the victims of clinic violence is situated second to the regulatory actions implemented through congressional power. As rhetorical framing constructs reality, it is salient to examine how these practices shape public opinion.

Condit argues that the possibility of social change must stem from the social processes of rhetoric, but warns against government adoption of rationalized argumentation to constitute their own interests in the name of serving the greater public good (Condit 5-6). While the judicial branch is granted power to "enact this legislation," "award appropriate relief," and implement a litany of regulations that comprise the rigid rules of construction that protect constitutional freedoms such as freedom of speech and the right to assembly, the violated are only permitted to commence a civil action after aggression has occurred (FACE 3). There are no specific spatial regulations that prevent violence from occurring which led to future buffer zone legislation. Without buffer zones, there is only prosecution after violence has occurred, which is an unacceptable standard that treats women as less than human and undeserving of preventative protections.

Furthermore, the *act-purpose* ratio maintains an important relationship to space as both regulate interference with clinic workers, patients, and facilities. The *action*, "to interfere" is understood in relation with the *purpose*, "regulating the performance of abortions" as the *act* of interfering means to "restrict a person's freedom of movement" (FACE 3). This phrase is moreover crucial to note as interference is defined as preventing

something from being executed properly, which alludes to the relationship between the physical and the social. Both physical and social violence outside of reproductive facilities often deter women from bodily entry into the clinics and from seeking healthcare services. Even the mere presence of protestors outside of abortion clinics ignites enough social violence to deter women from accessing care. As space is attributed with the capacity to hide consequences from the public, restriction of movement alludes to these much larger structural implications involving the power of women and the political shape of their bodies such as the lack of access mentioned above.

The Space of FACE

As rhetorical, political, and physical space all affect women's ability to be and act as agents in the world, there is an extensive relationship between Burke's rhetorical analysis of motive and action and spatial hermeneutics. Spatial analysis of FACE underscores the tangled links between space and power or knowledge while examining the supremacy of human geographies to shape identity and reality. For instance, the rhetorical phrase "interfere with" that inhibits the literal freedom of bodily movement outside of abortion clinics mirrors Henri Lefebvre's discussion of interference through spatial analysis (FACE 3). To him, interference is a force that collides with and destroys major movements such as immense waves and vast rhythms. In this case, freedom of movement is metaphorically equated with the enormous might of ocean waves to highlight the great power associated with inhabiting and controlling space. Annihilating one's capacity to move freely not only restricts choice but infects social relationships,

accentuating the negative consequences underscored by regulating bodily movement (Lefebvre 87).

While the ability to take up space and move freely within a given area is a sign of power, the restriction of space for women constitutes the female body as an Other in need of eradication with no place in the public sphere. Not only does labelling women as Other ensure that they will continually be deduced to their bodies, but it also subordinates women by defining them as an enemy. Furthermore, the power of spatial studies to construct identity and reality is solidified in an understanding of the female body as this type of metaphoric dangerous terrain. B. Jessie Hill argues that spatial rhetoric works to “construct the female body as a sort of geographical space, a dangerous terrain that not only permits but also requires regulation” (Hill 2). Regulation of women’s ability to inhabit and control space justifies treating women as objects in need of similar regulation. Thus, through a rhetorical frame this narrow, women are not active citizens but spaces to be regulated, thereby warranting treatment of their bodies as public property germane for state and federal interference. Such discourses tout the assertion that “law, not the woman herself, controls [the body’s] very borders” (Hill 20). Moreover, body politics promote women’s disembodied status by reducing their citizenship based on strict markers of sex, a notion that explains why abortion is one of the most heavily regulated procedures in the United States (Hill 2).

Discipline and punishment for sexuality function as the apposite discourse for regulating the female body to perpetuate hegemonic power structures as exemplified through FACE. Michel Foucault discusses how punishment is a complex social function that determines relationships of power by disciplining female bodies because of their sex.

Power regulation takes the form of law, demanding obedience to uniform repression of sex through juridico-discursive texts (*History of Sexuality* 82). As male-dominated power suppresses and prohibits sex to the point of extinction, women's natural bodies are manipulated and classified by authority and continually subjected to discipline and control (*Discipline and Punish* 109). This guarantees that female bodies become a backdrop for police scrutiny and state regulation, summoning panoptic surveillance and labelling the female body as the site of criminal action (Hill 20). Furthermore, the gendered jurisprudence of FACE uses this male-dominated power to regulate spaces inhabited by women. Heightened surveillance guarantees that women are seen but cannot communicate as their permanent visibility emphasizes a lack of power (*Discipline and Punish* 201). Panoptic emphasis on self-surveillance encourages women to obediently serve hegemonic power structures, obsequious to their stigmatized sex. Congressional hegemony in FACE therefore emphasizes regulation of the female body through its capitalization of male-dominated power.

These expressions of typically hegemonic male power accentuate how body politics use the rhetoric of space to unmask social processes that make it vulnerable to "territorial structures of exploitation and domination" (Soja 92). Therefore, the political production of spatiality determines representation according to a patriarchal social order that regulates issues according to its gendered group of occupants. As space is imbedded with ideological conflicts, Edward W. Soja argues that space adopts an illusion of transparency which "dematerializes space into pure ideation and presentation" (Soja 103). This illusion prevents publics "from seeing the social construction of affective geographies," teaching them not to question dominant structures of power (Soja 103).

Such blind acceptance ensures that hegemonic forces remain in power while discouraging publics to think critically about their constructed representation in society.

While FACE did effectively reduce large amounts of violence outside of reproductive facilities, it problematically describes obstruction and aggressive violence as actions of a few antagonists rather than a wide-scale structural problem of societal hostility actively cultivated by other legal doctrines (the Hyde Amendment, for example). Such flaws exemplify the powerful, hidden consequences of buffer zone spatial rhetoric by problematically masking the perpetuation of wide-scale structural and institutional prejudices (Ott & Aoki 492). Penetration of state power into everyday life frames truth as something to discover, instead of something that is continuing, to discourage critical thinking and investigation into the hegemonic power systems that keep oppression and privilege secure (Code 34). Thus, ignoring the larger, structural implications invoked in judicial discourse and spatial relations generates a myopic view of a macroscopic problem.

While FACE discourse greatly deters large levels of clinic violence, it is not a panacea for every state. The Act proved difficult to enforce and did not adequately protect numerous states, propelling them to pass legislation of their own. Instead, the *act-purpose* ratio dominated the narrative to absolve judiciaries of responsibility for violence. It is because of this displacement of responsibility that it became easier to blame women for the acts of violence visited upon them. Judicial and legislative bodies absolved of guilt could therefore deny the need to pass greater protections outside of women's clinics.

Before the 1994 passage of FACE, the Colorado General Assembly addressed the arduous problem of increased clinic violence outside of reproductive facilities by

enacting their own protective statute in 1993. Known as the “bubble bill,” this statute was the first in the nation to establish a protective radius around abortion clinics themselves and the people wishing to enter or exit them. Balancing the right to safely access medical counseling and treatment with the rights to free speech and to protest, Colorado’s statute has withstood two high-court challenges (NARAL 2). While both FACE and *Hill* were ridiculed for their supposed imposition on free speech, FACE satisfied constitutional requirements by regulating conduct as opposed to actual speech, and *Hill* regulates places where language can occur rather than speech itself.

Hill v. Colorado (2000)

The second case subject in this analysis, *Hill v. Colorado*, is salient to dissect as it addresses both fixed and floating buffer zones around abortion clinics in 2000. Colorado found that the federal protections outlined in the 1994 FACE Act were not strict enough to protect their state from clinic violence. State police powers supported the Reproductive Health Care Facilities Act in order to protect citizens’ health and safety and prevent patients from experiencing the trauma associated with hate speech, harassment, and unwanted communication. Colorado established a “no-approach law” which made it unlawful for any person within 100 feet of any healthcare facility to “knowingly approach” within 8 feet of another without their consent. The combination of a floating buffer zone within a fixed buffer zone was implemented to ensure maximum safety for all patients, doctors, employees, and volunteers. Within the established radius, approaching another without consent is prohibited in the hopes of limiting harassment including oral protests, counseling, and the distribution of pamphlets, or leaflets, or signs. Prevention of

unwanted harassment and encroachment of personal space justified regulations on free speech in order to promote public safety and ensure women receive access to reproductive healthcare services.

The dissent, who described anti-abortion activists as “sidewalk counselors” instead of protestors or a threat to safety, argued that *Hill* was an unconstitutional and unnecessary restriction of First Amendment freedoms and an open declaration of favoritism towards buffer zone supporters. By framing themselves as sidewalk counselors, the opposition employs terministic screens to construct a reality that they are peaceful counselors on a mission to educate and care for abortion patients. This linguistic frame clouds the fact that their “peaceful protests” actually generate large levels of social and physical violence that deter patients from accessing constitutionally protected healthcare. Furthermore, the dissent argued that they were the targets of a biased judicial system that permitted the free-flowing movement of certain bodies within the buffer zone, namely clinic employees, instead of all types of people, including protestors. While the court agreed that they had “legitimate and important concerns” and their “First Amendment interests [were] clear and undisputed,” the law withstood scrutiny because of *Ward v. Rock Against Racism’s* (1989) constitutional free speech restrictions (*Hill* 1).

The Colorado law was upheld because it fulfills the time, place, and manner restrictions established in *Ward v. Rock Against Racism* (1989) which states that the government can impose regulations on free speech as long as ample, alternative communication channels are left open, the discourse is narrowly tailored to serve a specific government interest, and the content is neutral (*Hill* 5). The statute is narrowly-tailored to promote the state’s “significant and legitimate governmental interests” of

supporting public health through access to healthcare facilities and by saving patients from the potential trauma associated with exposure to confrontational protests.

Additionally, other alternative channels of communication remained open so as not to unnecessarily violate petitioners' right to free speech and accommodate time, place, and manner restrictions (*Hill* 2).

Similarly, Colorado law satisfies content-neutrality established in *Ward v. Rock Against Racism* (1989) which granted state police forces the authority to implement speech-related restrictions in the name of protecting citizens' health and safety. The Court declared that *Hill* passes the Ward content-neutrality test for three reasons—"It is a regulation of places where some speech may occur, not a 'regulation of speech'; it was not adopted because of disagreement with the message of any speech" and that these "restrictions apply to all demonstrators, regardless of viewpoint"; and because the "State's interests are unrelated to the content of the demonstrators' speech" (*Hill* 2). Therefore, the constitutionality of *Hill* was indisputable considering its observation of *Ward's* content-neutrality and time, place, and manner restrictions.

The 6-3 decision in *Hill* withstood two high-level challenges—in 2000, the United States Supreme Court declared the Colorado law constitutional as mentioned above, and in 2014, the Court declined to hear another challenge (NARAL 2). Not only did this case set a noteworthy precedent through the combination of floating and fixed buffer zones, but it established a landmark standard of review, "avoiding strict scrutiny of measures restricting abortion protestors' activities" (Russell 1). This standard is challenged in the final case of this analysis *McCullen v. Coakley* (2014) which meticulously dissects the impositions placed on protestors outside of Massachusetts' abortion clinics.

The Pentadic Elements of *Hill*

Examination of each of the pentadic elements reveals the dominance of the *scene-act* ratio which interprets each action according to the circumstance. In this case, *scene* functions to defend judicial opinion while ensuring safe access to clinic entrances. *Hill* satisfied constitutionality for its strict adherence to *scene* as it accommodates First Amendment interests, time, place, and manner restrictions, and passes the test of content-neutrality. Furthermore, it is because of *Hill*'s attention to *scene* that this case became a landmark precedent for future buffer zone legislation. The combination of fixed and floating buffer zones generates a *scene* that places safety above all other freedoms. This serves as a political gain for women by inserting their physical and rhetorical presence into the dominant narrative.

Alternatively, the *agents* in *Hill* are more important to examine for the ways in which they are linguistically framed rather than for their specific actions. The *agents* in this discourse are government bodies, those accessing or performing abortion procedures, and those restricting safe access to clinic entrances. However, each *agent* is strategically and rhetorically framed in order to incite an emotional reaction. For instance, those accessing or performing abortion procedures are referred to as "patients" and "unwanted listeners" to arouse sympathy and public support for the social and physical violence they encounter and emphasize their desire to obtain healthcare (*Hill* 2). It is significant to note that both terms used to describe people who receive an abortion avoid gender entirely. Instead of "women," they are "patients" or "listeners," exemplifying the stigmatization that accompanies the female body by erasing the female identity (*Hill* 2). While gender neutrality does greatly aid in the satisfaction of content-neutrality, such depletion further

generates a cultural amnesia about women's place in the public sphere and discourages their role in participatory culture. Similarly, those restricting safe access frame themselves as "sidewalk counselors" to belittle their violence and terror by focusing on mystified claims of educational and emotional support (*Hill* 3). Both sides of the debate employ constitutive rhetoric and linguistic framing in order to arouse support for their positions. This strategy highlights the ability of rhetoric to construct a reality that influences legislation and judicial discourse.

Although *purpose* is important to all buffer zone discourse, it is overshadowed in the Colorado case because of the *scene-act* ratio which determines constitutionality. *Purpose* accentuates the motives behind the linguistic frames and constitutive rhetoric that each side utilizes to constitute publics and gain support for their end goals. The sidewalk counselors state their *purpose* as "engaging in oral protest, education or counseling" while the dissent interprets their motives as "confrontational protests" yielding "unwanted communication" (*Hill* 2). Unending debate over rhetorical frames and *purpose* highlights why interpretation of abortion-related discourse is crucial in configuring reality. Additionally, the restrictive *scenic* details of the discourse satisfy constitutional scrutiny as they are adapted to "serve the State's significant and legitimate governmental interests" (*Hill* 2). This statement alludes to the greater *purpose* of the legislation which is to protect and promote safe access to reproductive healthcare facilities. While *purpose* is salient to examine in interpreting motives, it is second to the *scene-act* ratio which has allowed *Hill* to withstand two high-court challenges.

The prevalence and power of *act* similarly justifies constitutionality as this discourse is a regulation of places where actions can occur, rather than regulations of

speech. The *actions* of protestors are prohibited as they are not permitted to “‘knowingly approach’ within 8 feet of another person, without their consent” in attempts to “pass a ‘leaflet or handbill to, displa[y] a sign to, or engag[e] in oral protest, education, or counseling” with said person (*Hill* 1). The text expresses an ambivalent disregard to the actual (con)text of protestors’ speech, stating that there would be “no need to know exactly what words were spoken” in order to regulate the places where speech can occur (*Hill* 2). This exemplifies the claim that social violence emerges from the mere presence of bodies that interfere with abortion access regardless of the content of speech.

Therefore, the ability to inhabit a physical presence within space generates adequate amounts of social violence and discomfort to deter women from accessing healthcare.

Similar to FACE, *agency* takes a backseat to the other elements as the means behind a given action do not incentivize agents to act. The specific actions within the discourse are not explained through *agency* because of the way *scene* dominates the restrictive means through which *Hill* satisfies constitutionality. Thus, the only mention of *agency* in *Hill* is in terms of the regulatory agencies, congressional and judicial entities that emphasize the element of *agent*, through which the legislation itself was enacted.

The *Scene-Act* Ratio of *Hill*

Utilizing Burke’s pentad of motives to assess the legal diction of *Hill*, it is undeniable that emphasis on the *scene-act* ratio comprises a larger narrative about power and the ways in which private spaces have incited conflict. *Scene* is essential to symbolic action in the buffer zone debates as it refers to the physical *scene* outside of clinics and the metaphysical *scenic* perspective of symbolic territory (Tonn et al. 170). In this case,

the two kinds of *scenic* perspectives that flood buffer zone narratives highlight *scene* as the dominant element that constructs and dictates the functioning of the remaining pentadic elements. *Scene* functions to define the *act* as it is assigned to the *agent* who is against the *scene* and in violation of the social order, referring to the petitioners infringing upon designated protected space. Similarly, motion is reserved to the natives who are submerged within the *scene*, applying to the patients, doctors, and employees of abortion clinics because they are a victim of circumstances (Tonn et al. 175). When capitalizing on the *scene-act* ratio, Burke articulates that “*scene* is to *act* as implicit is to explicit,” to confirm that the details of the action cannot be deduced from the setting (*Grammar of Motives* 7). This mirrors the aforementioned time, place, and manner restrictions including the availability of alternative channels of communication, content-neutrality, and narrowly-tailored government interests. Therefore, regulations on *action* are justified by the *scene* as they cannot be deduced from the details of the setting. Evidence of the *scene-act* ratio widely manifests in two ways—“deterministically in statements that a certain policy *had* to be adopted in a certain situation, or it may be applied in hortatory statements to the effect that a certain policy *should be* adopted in conformity with the situation” (*Grammar of Motives* 13). It is argued that *Hill v. Colorado* accentuates the former motive by proving the undeniable need for action because of a certain situation, which in this case meant a need for more effective protections outside of clinics. The *scene-act* ratio furthermore defends the stance that there are “certain ‘democratic situations’ and certain ‘situations favorable to dictatorship or requiring dictatorship’” to justify legislative and judicial regulation of citizen behaviors (*Grammar of Motives* 17). Correspondingly, Burke argues that people will

employ the *scene-act* ratio within rhetoric in order to warrant abandonment of certain situations that can no longer be adequately defined as democratic. In *Hill*, unwanted harassment and communication forced upon patients was no longer considered a democratic situation therefore justifying government intervention and restriction of freedoms to ensure safety.

The *scene-act* ratio here determines constitutionality because of the statute's dominant emphasis on the situation and how the setting constitutes action. Protestor restrictions on speech-related conduct, including their ability to inhabit certain spaces, are evidenced in *Hill*'s judicial diction. *Hill* unequivocally demonstrates that space and speech are inevitable linked in buffer zone discourses. For instance, the statute states that the "burden on the distribution of handbills is more serious" than "whether the 8-foot interval is the best possible accommodation of the competing interests" (*Hill* 3). The *action*, distribution of handbills, is only understood within the *scene*, the 8-foot floating buffer zone, to illustrate the key function of the *scene-act* ratio in allowing certain circumstances to regulate behavior. For Congress, they are motivated by this ratio to promote judicial claims to impartiality while enhancing their credibility and power as law-making entities. Additionally, the *scene-act* relationship places "the burden of proof on the challenger rather than the fact-finder" so that petitioners must combat for judiciary approval in order to reverse the defensive procedures (Code 39). Although *Hill* is framed as a victory for patients, doctors, and employees entering healthcare facilities, Burke's *scene-act* ratio illustrates that judicial diction here is more concerned with enhancing their power.

A symbolic transformation of the literal *scene* reveals that the judicial discourse of *Hill* continues to place patients' needs secondary to the build-up of congressional power. While it is a significant step for women's rights that this case satisfied constitutional scrutiny, the language still deduces pro-choice women's place to the background of action by emphasizing male-dominated, government power. Strategic and explicit framing of diction as objective and value-neutral discourages strict scrutiny and critical interpretation of the actual motives behind the legislation. Mari Boor Tonn et al. warn of the dangers of the *scene-act* ratio as it often downplays the other elements in order to promote the execution of certain acts. This potential limitation of the ratio is present here as women accessing abortion care are reduced to organisms responding to external stimuli rather than moral, thinking agents (Tonn et al. 173). For instance, the terms "woman" or "women" are never mentioned in the artifact and their protection is only vocalized once as the *purpose* behind the statute is the avoidance of potential trauma to gender neutral "patients" (*Hill* 10). The disappearance of women from the *scene* renders their bodies mere backdrops to conflict and fortifies a lack of corporeality (Hill 19).

While it is promising that women's needs are being addressed, pro-choice women are still marginalized legally as the discourse completely overshadows them with instances of congressional authority. By manipulating the system itself, legislators are similarly void of any responsibility concerning violence that occurs in buffered spaces and instead are defined as acting with moral stoicism (Tonn et al. 177). The dominant narrative concerns power and continues to define women as objects and as a type of space in need of regulation and control. Transformation of female *agents* into *scene* by

regulating them in the same manner that space is regulated is “dehumanizing, taking attention away from qualities of individual action and decision,” while underscoring the possibility of negative action or conspiracy (Rountree 21). Lack of female agency thus fortifies the argument that women have been historically defined by “their place” that dictates appropriate action and presence in the public sphere. Women’s actions therefore are traditionally configured based on their *scene* as a regulation of admissible behavior (Tonn et al. 177). As stated, the statute is positive in terms of its added protections to women’s safety upon accessing abortion healthcare, but they are still being shoved into the background of public dialogue on their own needs.

Understanding Space in *Hill*

Furthermore, as symbolic territory impacts social processes and community development through territorial claims, *Hill* requires a thorough inquiry into spatial studies in order to unmask the dehumanization of women that accompanies inaccessibility to healthcare. As space simultaneously shapes social life and is a product of such relations, it is necessary to discuss space in terms of defined and limitless in the creation of discursive realities (Soja 7). The concretization process of space in this case is overflowing with incongruity and conflict between petitioners and patients, healthcare professionals, and facilities that are combatting for claims to the rhetorical and physical battleground of power. This quest is exemplified as the diction in *Hill* explicitly states a function of regulating places, not speech, implying that spatial control is harmless compared to regulation of voice (*Hill* 2). However, these insinuations fail to recognize the political nature of space and how it deeply structures power and knowledge as actual

human geography is territorially designed according to a configuration of exploitation and dictatorship. These harsh demands of space not only possess the ability to define power, but they also dictate human identity and determine all forms of communal life and urban products (Soja 19). The social and political implications undoubtedly disprove the implicit claim that spatial control is insignificant.

For Colorado, the state articulated their overwhelmingly need for extra protection in order to prevent unwanted communication and harassment while constructing a more accurate narrative about consent, power, and responsibility. The combination of a floating, 8-foot personal zone coupled with a fixed, 100-foot facility zone accentuates the widespread social and physical violence outside of clinics against women as they are in need of dual layers of protection. The dual approach properly addresses issues of accountability by displacing the “universal propensity to blame women for acts of violence visited upon them” (Tonn et al. 177). This case generates a significant conversation about consent by highlighting women’s rights to privacy, to access reproductive healthcare, and to safely inhabit public space. Due to the fact that women are often excluded from epistemic authority, consent is a generative rhetorical space that can provide women with necessary instruments to combat systematic exclusion (Code 174). Knowledge and power cannot continue to be constructed according to male privilege, especially in the realms that directly dictate women’s ability to access their constitutional right to reproductive services and their right to escape violence.

As space is characterized with the ability to conceal consequences from the public, an analysis of spatial rhetoric according to *Hill* exposes the broader implications associated with the spatialization of power according to conventional narratives. Space is

a deceptive space that simultaneously dominates while being dominated by (Soja 1). Dissecting and scrutinizing the production of space through rhetoric strips space of its omnipotent and omnipresent power by exploiting its relationship to ideology and representation (Soja 7). The dissent in *Hill* argues that they are acting as sidewalk counselors that uphold the First Amendment freedom of speech to engage in “education or counseling” in order to help women with their decision to abort (*Hill* 2). Framing themselves as nonviolent publics on a mission to educate and support women ignores and mystifies the undeniable fact that their sheer presence is a form of social violence. This frame also deeply discounts the statistical data reported about the rampant aggression and physical violence pertaining to abortion facilities, therefore exemplifying Soja’s argument of the deceptive nature of space with its ability to conceal consequences (Soja 1). Spatial analysis hereby incorporates data and understandings of symbolic territory to expose weak arguments and unpalatable framing techniques. Women’s public presence snowballs into rhetorical agency that strips illusions of socio-political power from hegemonic parties. Exposing the illusory and disingenuous discourse of space demystifies the personal and political consequences of social stigmatization at the expense of marginalized groups. Moreover, women need to control spatial rhetoric in order to heighten social criticism and emancipatory potential by forming strong, collaborative publics that expose this marginalization.

As the victim of a clinic shooting in Brookline in 1994 that killed two employees and wounded five others, Massachusetts recognized a need to fashion clinic protections stronger than those outlined in FACE. Similar to Colorado, Massachusetts responded to the assassinations and a “record of crowding, obstruction, and violence” outside abortion

clinics by amending its 2000 Reproductive Health Care Facilities Act in 2007 (*McCullen v. Coakley* 2, syllabus). The amended version of the Act cultivated great controversy as petitioners argued that this legislation not only violated their First Amendment rights like in *FACE* and *Hill*, but also infringed upon the Fourteenth Amendment. Attorney General of Massachusetts Martha Coakley defended the buffer zone implementation as a necessary burden to safeguard public safety and preserve patient access to healthcare. According to the Commonwealth, the amendment regulated place where speech can occur, not speech itself, and therefore satisfied constitutional scrutiny. After applying *Ward v. Rock Against Racism's* (1989) time place and manner restrictions, the Court struck down the amendment by declaring that buffer zones here burden more speech than necessary to further the government's legitimate interests.

McCullen v. Coakley (2014)

Conflict over territorial integrity most notably manifested in the recent Supreme Court ruling over the legality of buffer zones, *McCullen v. Coakley*. The case, ruled on June 26, 2014, is the focal point of this critical analysis because of the ways in which its salient and highly publicized rhetoric highlight a broader struggle for political supremacy through the ownership and embodiment of publics. The 2007 Massachusetts statute that made “it a crime to knowingly stand on a ‘public way or sidewalk’ within 35 feet of an entrance or driveway to any place, other than a hospital, where abortions are performed” was modeled after the high court’s decision in *Hill v. Colorado* (2000). Although the statutes have similar purposes and standards, Colorado’s law differs from Massachusetts’ in size and type of facility regulated. Colorado’s law established buffer zones outside of

all types of healthcare facilities while Massachusetts law is formatted for abortion clinics specifically (Lithwick 3).

The dissent, led by Eleanor McCullen, claimed that the 2007 statute violated their First Amendment rights to free speech, ignoring the fact that National Abortion Federation members overwhelmingly report that buffer zones prevent violence and make staff and patients feel safer (Klabusich 4). The Attorney General of Massachusetts, Martha Coakley, defended the fixed buffer zone as the former floating zones implemented in the Reproductive Health Care Facilities Act of 2000 were in her words, “unenforceable” and infringed “on a routine basis” (*McCullen v. Coakley* 2-3). Fixed zones were necessary to promote “patient and clinic worker safety while attempting to balance the free speech rights of anti-abortion protesters” (Marty 1). However, McCullen and her anti-abortion allies took the case to the United States Supreme Court arguing that it is unconstitutional to create censorship zones where the First Amendment is not applicable. Their argument continues by changing the issue at hand to the alleged consequences of abortion being that it “destroys lives – physically and emotionally” and that they “simply want to hand out pamphlets and have conversations with patients” about their alternatives (Marty 1). Rhetoric therefore exposes the fallacies of these frames as they are not truly concerned with buffer zones or guaranteeing safety, but are instead seeking the abolishment and criminalization of abortion.

Moreover, this spurred protestor dissent as they further distinguished *Hill* from *McCullen* by asserting that the Massachusetts law abused *Ward v. Rock Against Racism’s* (1989) time, place, and manner restrictions that permit government regulation of free speech. For instance, Jay Sekulow, Chief Counsel of the American Center for Law and

Justice, argues that judicial discourse construes free speech freedoms by denying the voices of the pro-life movement (qtd. in Marty 2). On the other hand, proponents of buffer zone legislation emphasized that the protective areas do not actually prevent protestors from speaking with patients but rather it prevents them from following them to the clinic doors. Coakley similarly stresses that the zone accommodates both groups by safeguarding the rights of patients to access healthcare safely and the free speech rights of protestors by providing them with ample time and space opportunities to speak with patients. Therefore, buffer zone legislation has a crucial dual purpose of preventing violence while also permitting expression of various viewpoints. Without buffer zones, the only instrument remaining to combat violence is prosecution after the offense has been committed (Marty 2). While potential prosecution and fear of incarceration has statistically shown to not be a significant deterrent for aggression, it does impede and dissuade certain women from obtaining essential healthcare. It is undeniable that lack of buffer zones affects pro-choice women's safety and health and cements their position as recipients of violence. Vilifying these women in the name of motherhood teaches them that their bodies are not their own and that they should be criminalized for intervening with or vandalizing so-called private property.

While the consequences of the 2014 Massachusetts ruling are still unfolding, some cities and states have already been instructed that they cannot enforce buffer zone legislation. The cities of Portland, ME, Burlington, VT, Madison, WI, and San Francisco, CA, have either repealed or expressed that they will not enforce these protective laws, and states such as Colorado, Montana, and New Hampshire face potential invalidation of their current standards (NARAL 2). Moreover, judicial discourse influences future

amendments and sets a precedent for the regulation of space around other public spaces and facilities. Those seeking to inch closer to polling places to advocate for a candidate have been using *McCullen v. Coakley* (2014) to try to gain access. Therefore, this case is monumental in shaping other discourses and judicial rulings concerning the regulation of space and speech freedoms.

The Pentadic Elements of *McCullen*

Analysis of pentadic elements illustrates that *purpose* functions as one of the key elements in this case's controversy as McCullen portrays the dissent as victims of this legislation, articulating that their speech is the only voice under restriction. According to Coakley, the Act serves to protect "public safety, patient access to healthcare, and unobstructed use of public sidewalks and streets" while also making the jobs of law enforcement much easier and allowing employees to safely do their jobs (*McCullen* 2, syllabus). She argues that the statute is violated on a routine basis, subjecting women and clinic staff to unwanted harassment and intimidation. Not only does this Act protect women's freedom to seek pregnancy-related services, but it also promotes the free flow of traffic in public spaces and the protection of property rights. Regardless of location, large crowds undeniably threaten public safety, obstruct sidewalks, and impede access. Therefore, the acumen *purposes* of the Act protect women, clinic staff, and facilities from deliberate obstruction, harassment, and violence occurring outside of Massachusetts reproductive healthcare clinics. On the other hand, McCullen and her supporters interpret this legislation as a content-based restriction on speech that opposes abortion. Arguing that the public safety and health concerns are already addressed and remedied in a

separate provision of the Act, the dissent harangues Coakley for supposedly regulating abortion-opposing speech under the frame of promoting safety and access (*McCullen* 23). Buffer zones impede their greater *purpose* of curtailing access to abortion-related services by “offering information about alternatives to abortion and help pursuing those options” (*McCullen* 1, syllabus). The victimization rhetoric embedded in their statements of *purpose* and intent reveal that McCullen and her supporters see themselves as victims of this legislation, ignoring the violence enacted on patients and clinic staff outside of reproductive facilities. Misappropriating victimage is one of the key motives behind Burke’s pentad as it serves to uncover the linguistic biases that influence policy decisions. Constructing petitioners as victims belittles and even justifies women’s exposure to violence outside of clinics. Therefore, *purpose* drives the narrative by forming publics through victimization rhetoric and displacement of blame.

In correspondence with *purpose*, *act* creates polarized publics by framing petitioners as harmless victims deprived of their First Amendment rights and stripped of their strategic messaging techniques. While the statute itself made it a crime to knowingly enter, remain, or stand on a “public way or sidewalk,” McCullen and supporters claimed that it restricts access to places traditionally open for speech and therefore burdened more free speech than necessary (*McCullen* 1, syllabus). Describing themselves as petitioners instead of protestors, McCullen articulates their *actions* as sidewalk counselors, “which involves offering information about alternatives to abortion and help pursuing those options,” “attempts to communicate with patients,” “expressing opposition of abortion,” and engaging in “personal, caring, consensual conversations with women about various alternatives” (*McCullen* 3, syllabus). These “harmless” *actions* are considerably

hampered by regulating access to public ways and sidewalks, resulting in less frequent and less successful messaging. Moreover, these framing techniques serve to vilify the other side for restricting their freedoms while continuing to portray themselves as victims of legislation, ignoring the social violence they inflict through their presence and speech. Furthermore, *act* attempts to justify this violence by concluding that they were “reduced to raising their voice” because of buffer zone regulations and escorts telling patients “not to ‘pay any attention’ or ‘listen to’ ‘crazy’ petitioners” (*McCullen* 20). *Act* plays a significant role in the strike down of the Massachusetts buffer zone by framing the petitioners as sole victims of legislation who cannot share their “non-confrontational” message with patients.

While McCullen specifically mentions and describes petitioners’ *actions*, Coakley highlights intent and regulation of space instead of speech as methods to determine constitutionality. I argue that the defense lost this case because of its inability to appropriately illustrate the violence and injustices taking place outside of Massachusetts clinics. The Court denounced Coakley’s credibility by claiming that her arguments about petitioner’s deliberate obstruction were ungrounded based on lack of convictions, ignoring the fact that she repeatedly stated that it is difficult to prove intent behind such obstruction which leads to this lack of convictions. Therefore, Coakley’s arguments were not as vivid as the prosecutions’ description of their “caring demeanor,” “calm tone of voice,” “direct eye contact,” and ability to ask compassionate questions such as “Is there anything I can do for you?” (*McCullen* 4-5). The Commonwealth’s argument that the *act* of standing is a violation because it curtails access by causing patients to retreat was also proven unfounded by failing to identify prosecutions brought under these laws (*McCullen*

27). Therefore, the alarming statistics on clinic violence are dismissed without proper evidence of petitioners' actions, resulting in the first unconstitutional buffer zone ruling in the United States.

Similarly, the element of *agent* reveals the biases of judicial rhetoric as women seeking abortion-related services are distinctly categorized and framed in order to influence public opinion and mobilize publics. While McCullen and her supporters label themselves as petitioners, "individuals who approach and talk to women outside such facilities attempting to dissuade them from having abortions," Coakley and buffer zone proponents refer to them as protestors, those "who express their moral or religious opposition to abortion through signs and chants or, in some cases, more aggressive methods such as face-to-face confrontation" (*McCullen* 4). This distinction is crucial to buffer zone discourse as petitioners are described as peaceful, harmless sources of information whereas protestors are confrontational and apparently do not accurately describe McCullen and her supporters. The petitioner frame is much more likely to persuade justices and the public that buffer zones are unnecessary considering the spaces outside of clinics are safely regulated, justifying the erasure of all types of buffer zone protections.

Petitioners also label themselves as "innocent individuals" that have been unnecessarily excluded from the Act's protected speech to fortify the victim frame (*McCullen* 25). Under these types of discourse, the Act appears to be an explicit attack on the pro-life movement by regulating their speech and preventing them from approaching patients. Furthermore, *agent* is important to investigate according to the descriptions of female patients seeking services outside of these facilities. The dissent's diction depicts

them as “women” and “prospective clients,” but it is the latter frame that is extremely problematic for the women obtaining abortive services (*McCullen* 11). Expressing patients as potential clients not only limits their agency but forfeits petitioners’ claims of compassionate treatment. This frame objectifies these women by equating their medical care with a business-like transaction meant to reduce the total number of abortions performed in Massachusetts. On the other hand, Coakley more appropriately refers to this group of women as “prospective patients” therefore accentuating the healthcare aspect of reproductive issues (*McCullen* 2). Coakley and defendants have been criticized by the opposition for not describing specific instances of violence or prosecutions outside of clinics, but they maintain that this is not an individual problem and therefore should not be treated or understood as such.

The *agent* exemptions explicit in *McCullen* triggered a ruling of unconstitutionality as the exempt bodies parallel a lack of content neutrality. The Act permits the free flow of four groups of individuals under the scope of their employment: (1) “persons entering or leaving such facility”; (2) “employees or agents of such facility acting within the scope of their employment”; (3) “law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents”; and (4) “persons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such facility” (*McCullen* 4). To Coakley, these *agent* exemptions allow employees to safely and effectively do their jobs but their opposition views these exclusions as an unfair exception for those in favor of buffer zones. They believe that speech occurs within these zones which limits anti-abortion speech while permitting the speech of employees escorting pro-choice women

into facilities. This distinction negates the Act's claim to content neutrality despite the fact that these immunities are necessary to protect employees, pedestrians passing by, and government entities that may have to enter the zone in case of an emergency.

Furthermore, judicial interpretation and application of *scene* causes a unanimous ruling of buffer zone unconstitutionality in *McCullen*, arguing that the 35-foot radius burdens more free speech than necessary to serve a significant government interest. It is held that any restrictions must satisfy strict scrutiny by employing the least restrictive means possible while upholding *Ward's* time, place, and manner restrictions. According to *Coakley*, the statute maintains content neutrality because there are no explicit speech-related distinctions on its face and is instead a regulation of places where speech can occur rather than of speech itself. On the other hand, *McCullen* and supporters interpret buffer zone exceptions for employees as actions that specifically favor one viewpoint over another, as abortion-related speech is supposedly permitted by employees within the zone but not by protestors. The court upheld content-neutrality as workers are acting within the scope of their employment but struck down the statute for not being narrowly tailored, "because it 'burden[s] substantially more speech than is necessary to further the government's legitimate interests'" (*McCullen* 3). Here, it is the size of the buffer zone that separates the Massachusetts case from other state precedents. Petitioners assert that the Act is not narrowly tailored and deprives them of their two primary methods of "communicating with arriving patients: close, personal conversations and distribution of literature" (*McCullen* 3, syllabus). Framing these *acts* as "forms of expression" and "transmission of ideas," petitioners denounce buffer zones for violating their First and Fourteenth Amendment rights. These persuasive frames render petitioners harmless

victims that have had a “significant portion” of their speech restricted, without ample alternative channels for communication in place (*McCullen* 19). Deemphasizing violence towards women outside of these clinics fuels petitioners’ claims that they are personally victimized by buffer zone legislation.

Understanding *scene* is especially crucial in *McCullen* as it belittles wide-scale, structural violence into an isolated, individual problem. The Court denies the Commonwealth’s argument that previous restrictions were ineffective by citing that anti-congestion interests pertained mainly to one place at one time—the Boston Planned Parenthood clinics on Saturday mornings. Minimizing the problem to a once a week problem for one city detrimentally characterizes clinic violence as an isolated problem that does not need to be addressed or regulated (*McCullen* 26). Under this frame, buffer zones, especially 35-foot ones seem extremely unnecessary and a deeply significant burden to law enforcement, patients, and petitioners. Therefore, it is crucial to dissect the *scene* in *McCullen* as the aforementioned data clearly shows that clinic violence is not an isolated problem and should not be treated as such. Ignoring structural violence and injustice ensures a rigid system that continues to victimize the already marginalized, further depleting their resources, voice, and access to basic human rights.

Moreover, the element of *agency* plays an important role in attempting to differentiate abortion clinic buffer zones from those around polling places and the Supreme Court itself. In *Burson v. Freeman* (1992), the Supreme Court upheld a 100-foot buffer zone outside polling places on Election Day within which no one was permitted to display or distribute campaign materials or solicit votes, stating that previous laws were insufficient because it is difficult to detect voter intimidation and election fraud.

However, the Court attempts to differentiate this precedent by stating that “obstruction of abortion clinics and harassment of patients, by contrast, are anything but subtle,” portraying buffer zones as unnecessary implementations (*McCullen* 29). This claim sharply opposes Coakley and police testimony, particularly from Captain Evans of Massachusetts, that “intent is often difficult to prove” and that buffer zones would make law enforcement’s “job so much easier” (*McCullen* 28). Furthermore, the Court fails to address the 100-foot protective buffer zone that they have for their own protection which serves as a clear double standard for who has the right to safety. *Agency* exemplifies this double standard and how pro-choice women are victimized by violence, lack of buffer zone protections that curtail their access to healthcare, and are framed as unworthy of protection.

The *Act-Purpose* Ratio of *McCullen*

Based on in-depth examination of each pentadic element, it is clear that this artifact of judicial discourse exemplifies the *act-purpose* ratio as each public’s *actions* shape either the petitioners’ ultimate goal of persuading women not to have an abortion or the defense’s objective to promote clinic safety. Furthermore, it is unsurprising that *purpose* and *act* function at the forefront of this discourse as Kuechenmeister argues that *purpose* is most commonly emphasized by the pro-choice movement and *act* is highlighted by pro-life organizations (Kuechenmeister 3). I argue that one of the primary factors in a ruling of unconstitutionality is the petitioners’ ability to create vivid mental images of what their actions outside of clinics entail. Harmless *acts* of “sidewalk counseling” and “offering information about alternatives to abortion” mask their

underlying *purpose* of persuading women out of abortion care, or “help pursuing [these] options” (*McCullen* 1, syllabus). Framing their *actions* as calm, peaceful, and educational paints petitioners as the victim and creates a cultural stigma that buffer zones are unnecessary and an extreme burden on citizens. Emphasizing each *action* in this manner ignores the terrorism and abuse occurring in many states, even those with buffer zone laws. This *act*-heavy rhetoric is common of most pro-life diction to accentuate biases and a lack of impartiality in judicial rhetoric. Indeed, accentuation of *act* is detrimental unless interpreted as it can mask pernicious consequences which in this case dangerously manifest in a justification of violence towards women seeking abortion care and an annihilation of basic rights to safety. By displacing who is actually the victim in this situation, the *act-purpose* ratio encroaches upon women’s rights and perpetuates stigma, social and physical violence, and silencing of female voices.

Not only does the *act-purpose* ratio misappropriate victimage, but it also functions to depreciate the Commonwealth’s *purposes* of maintaining public safety, preserving access to reproductive healthcare facilities, allowing employees to safely perform their jobs, and promoting unobstructed use of sidewalks and streets. These irrefutable goals are therefore overshadowed by petitioners’ *actions* because of the *act-purpose* ratio that dominates this narrative. Instead, *act* mutilates these important *purposes* and portrays them as a vendetta against petitioners designed to suppress their anti-abortion speech. With such fundamental and crucial liberties at stake in the buffer zone debates, it is vital that the *act-purpose* ratio be dissected and analyzed based on its propensity to mask dire consequences. This rhetoric therefore has the power to transform buffer zones from a tool used to exemplify and protect the Commonwealth’s legitimate

interests into a weapon inflicted upon petitioners to restrict and impose serious burdens upon their First Amendment freedoms.

Examination of judicial discourse in the Opinion of the Court reveals deep rhetorical biases, denouncing judicial claims to impartiality. In the discussion of petitioner's *actions*, they are framed as "[attempting] to communicate," while escorts and their *actions* are vilified through the descriptions that they "thwart," "block," and "disparage" petitioners (*McCullen* 7). Dawn McCaffrey and Jennifer Keys have defined such rhetorically dichotomous techniques as a "polarization-vilification frame" that creates an us-versus-them discourse that discredits adversaries and justifies depletion of their resources (McCaffrey & Keys 44). This frame is furthermore present as the defense's efforts are described as a "failure," for not adequately looking into less restrictive means of regulating free speech (*McCullen* 25). Such diction vilifies and demonizes Coakley and the Commonwealth in order to defend the Court's ruling. This discourse continues in the last section of the Opinion to completely polarize the two viewpoints. Petitioners are glorified through descriptions that they "wish to converse with their fellow citizens," raise "undeniably significant interests," and have "hosted discussions" about important issues (*McCullen* 30). Contrast this with the rhetorical frames that the Commonwealth is "extreme" and has acted "without seriously addressing the problem," and it is undeniable that judicial rhetoric is not impartial (*McCullen* 30). The polarization-vilification frame here highlights the biases that help support McCullen's argument while demonizing the defense.

It is also interesting to note that *Hill v. Colorado (2000)* upheld that distribution of handbills is more serious than whether an 8-foot interval is the best possible

accommodation, while *McCullen* did not even attempt to address this precedent (*Hill* 3). The question of buffer zone size should therefore not be as important to remedy as the physical and social violence outside of reproductive healthcare facilities. This discrepancy highlights how women's safety is pushed to the background of debate and depicted as an unnecessary problem in no need of a solution.

Spatial Analysis of *McCullen*

Furthermore, the fact that a 35-foot zone was deemed a significant burden while other states' zones have continually satisfied constitutional scrutiny signifies that women are regulated and excluded to a limited, secondary role. While space is said to be inherently neutral, its dialectical power often goes unnoticed although it frequently manifests through societal contradictions such as the violence rampant outside of clinics. The hidden consequences of space perpetuate a divided state through the exertion of violent power in attempts to gain control over the dominant narrative. This ruling tells women that their safety is less important, exemplified through their inability to inhabit and dominate public space. Spatial inequality greatly affects women by silencing their public presence, stifling their rights, severely curtailing their access to basic healthcare, and ensuring their marginalization as second-class citizens.

As Doreen Massey argues that all spaces are socially regulated in some way, it is clear that women's spatial inequality reflects a larger argument that justifies the regulation of women themselves (Massey 152). The power of space to dictate identity and reality highlights Soja's contention that space has a profound ability to hide consequences (Soja 7). Therefore, the construction of human geographies fortifies space

as an expression of the broader structures that interpret the homologous but dialectically inseparable relationship between social and spatial analysis. This relational vision of spatial politics not only shapes the makeup of public space, but it also subjects women to the same strict regulation as buffer zones. Women are only permitted a limited spatial presence in order to keep the patriarchy in control of their bodies and their voices. Lack of buffer zone protections tells women that they are a type of space and that the law, not women themselves, control the borders of their own bodies (Hill 20). The unconstitutionality of the 35-foot zone may be framed as an unnecessary imposition, but in reality it encourages a society that perpetuates women's exclusion by violence. Erasing the physical and rhetorical public presence of women makes it much easier to justify mass violence and blaming against victims. Since space operates as "a product literally filled with ideologies," the survival of capitalism depends on hierarchically structured spaces and discourses that exemplify marginalization and fragmentation (Soja 80). Thus, it is necessary to expose spatial hermeneutics for the ways in which spatial realities maintain hegemonic power through exclusion by violence.

Supreme Hypocrisy

The unanimous vote in *McCullen* has been widely ridiculed by proponents of buffer zone legislation and pro-choice groups for its blatant hypocrisy. There is an explicit double standard as the U.S. Supreme Court is permitted a 100-foot buffer zone to ensure their safety while polling places in Massachusetts maintain a 150-foot buffer zone on Election Day, allowing those advocating for a candidate to distribute literature outside of the established area. Additionally, the ironic and prejudiced legislation fails to protect

the private act of visiting one's doctor, but other state statutes safeguard the public act of voting (Klabusich 4). Churches, funeral services, and even circuses are permitted buffer zone protections but the right to privacy is not applicable for women seeking reproductive healthcare. These double standards emphasize the subordinate status of women in the United States and the hegemonic, male-dominated powers that ensure their servility. As pro-choice women are not even granted protection from violence when accessing a constitutional right, they are completely disparaged from participatory culture and erased as autonomous citizens in contemporary political drama.

Can't Call This Counseling

While protestors outside abortion clinics and facilities that provide abortion services are quick to label their presence as counseling services, graphic pictures, escort and patient testimony, and news reports undeniably prove these acts as extreme violence. Clinic Escort Michelle Kinsey Bruns documents over 40 "snapshots of harassment and hate" from her patient escort volunteer work in 8 states including images of pseudoscience claiming to depict an aborted fetus (Bruns 1). Bloody, disfigured, and injected with scissors, these inaccurate fetal images are one of the main tactics used to demonize women as murderers and deter them from seeking abortion care. These militant protestors have also been found to smear red paint on the walls of facilities, an act that extends beyond mere vandalism and threatens severe violence. Additionally, some clinics such as the Jackson Women's Health Organization, the last abortion clinic in Mississippi, have experienced destruction of outdoor security cameras and the severing of electrical lines (Maddow 1). Although protestors argue that intentional property damage is not a

threat to the lives of individuals, it is clear from the murders of Dr. Tiller in Kansas, Dr. Gunn and Dr. Britton in Florida, and Dr. Slepian in New York, that property vandals have the potential to become active shooters (Feminist Majority Foundation 2).

To clearly depict the increase in violence over the past four years and since *McCullen v. Coakley*, the Feminist Majority Foundation conducted the 2014 National Clinic Violence Survey to find that nearly 1 in 5 clinics experience severe violence, including blockades, clinic invasions, bombing, arson, chemical attacks, stalking, physical violence, gunfire, bomb threats, arson threats, and death threats (Feminist Majority Foundation 2). Even more alarming, clinics surveyed in 2014 reported significantly higher levels of threats and targeted intimidation of doctors, often in the form of WANTED-style posters, an increase from 1.7% of all clinics in 2010 to 7.7% in 2014, and the distribution of “Killers Among Us” leaflets and internet posts featuring doctors’ photographs, personal information, and home addresses. Publicizing personal information has increased from affecting 18.8% of clinics in 2010 to 27.9% in 2014 (Feminist Majority Foundation 2). Similarly, stalking of physicians has increased to 8.7% and tracking of employees’ schedules amplified to 11.1%. These frightening statistics are especially striking considering the fact that Drs. Tiller, Gunn, Britton, and Slepian all appeared on WANTED posters with their home and clinic addresses before their executions (Feminist Majority Foundation 2).

The overall percentage of clinics impacted by these types of threats and targeted intimidation has drastically increased, from 26.6% in 2010 to 51.9% in 2014. Furthermore, the survey reports that 25% of clinics experience anti-abortion activity on their premises on a daily basis while 42.8% report this type of activity weekly (Feminist

Majority Foundation 2). It is unacceptable that 67.8% of women's health clinics in the United States experience frequent and regular anti-abortion activity.

Where Are We Now?

Since the 2014 decision, the United States has not only seen a tremendous rollback of buffer zone enforcement and legislation, but it has also increased restrictions on accessing abortion care. Only 13 states and the District of Columbia still have some form of buffer zone legislation. 12 states and D.C. prohibit blocking of clinic entrances, 6 states and D.C. prohibit threatening or intimidating staff, 3 states outlaw damage to facilities, 2 states and D.C. prohibit phone harassment, and 5 states and D.C. have banned other disruptive actions such as excessive noise and trespassing (Guttmacher 1).

Similarly, only 3 states have upheld a personal floating "bubble zone" around persons including Colorado with an 8-foot floating zone within a 100-foot fixed zone, Massachusetts with a 25-foot zone if ordered by police, and Montana with an 8-foot floating zone within a 36-foot fixed zone (Guttmacher 2).

Although protective zones are gravely endangered after *McCullen v. Coakley*, clinics are reporting a greater need for escorts since the decision. The Boston clinic that was the site of controversy in the 2014 case has now hired 20-30 additional escorts to ensure patient safety and requires their services every day of the week instead of just Friday and Saturday as before the decision. Additionally, the clinic reports 20-80 protestors a day that walk up to patients, follow them up to clinic doors, and chant loudly so that patients can hear their hostile message from examination rooms. These forms of social violence have generated a greater need for counseling services than ever before as

highlighted through one clinic escort's testimony that "Protestors are always going to be a scary thing, not matter how much knowledge you have about them" (Pearl 1). While protestors are quick to remind escorts of their legal rights to be outside of these clinics, the Boston clinic reports that quiet prayer often turns into harassment, shouting, and intimidation.

Less than three weeks after *McCullen*, Massachusetts Senator Hariette L. Chandler sponsored the Safe Access Law that granted police the power to diffuse protestors who are "substantially impeding" patient access. Such a police order would require the offenders to remain at least 25 feet away from clinic entrances for 8 hours after an offense has been documented. However, nine months after the law's implementation, no dispersal orders have been issued because police claim that offenders can merely stop their behavior upon request to avoid any ramifications (Pearl 4).

As of March 2015, Pennsylvania was the first state to uphold a buffer zone ordinance since *McCullen*. U.S. District Judge Cathy Bissoon ruled that *McCullen* did not overturn the decisions that form the basis of Pittsburgh's ordinance therefore defending the constitutionality of the state's 15-foot fixed zone outside of clinic entrances (Ove 1). While this is a victory for buffer zone proponents, many states such as New Hampshire and Maine have refused to enforce or have repealed buffer zone legislation. This coupled with the 231 pro-life bills that have been introduced in states since 2010, more than in the three decades prior combined, are severely curtailing women's access to healthcare and continuing to rollback their rights (Thiekling 2).

As six states only have one abortion provider, abortion is on an extremely dangerous path to becoming legal in name only. According to Gloria Feldt, a rigid access

gap has formed a two-tiered system where “women who have the means to travel to get a safe abortion could do so, and the others suffered illegal, unsafe abortions or unplanned pregnancies” (qtd. in Marty & Pieklo 9). In a country where a pregnant woman’s suicide attempt is murder and abortion care is inaccessible for poor women, the rise of state bans and regulations exist to ultimately remove clinics. Women are experiencing an inability to create standards of care and the erosion of personal body autonomy which leads to the widespread criminalization of pro-choice mothers, especially women of color.

Meanwhile, countries other than the United States have passed significantly more extreme protective buffer zone laws in order to protect the safety of women and clinic employees. In Tasmania, Australia, the 2013 Reproductive Health (Access to Terminations) Act created a 150-meter safe access zone around the premises of a facility where abortions are provided. Within the zone, prohibited behaviors include besetting, harassing, intimidating, hindering, threatening, obstructing, or interfering with another person, protesting terminations within the earshot or vision of a person accessing or attempting to access abortion services, obstructing footpath interference in relation to terminations, or intentionally recording a person accessing or attempting to access the facility without that person’s consent (Reproductive Health). Similarly, in Canada, British Columbia implemented the Access to Abortion Services Act in 1995 that created a 10-meter fixed buffer zone outside of a doctor’s office, a 50-meter fixed zone around a hospital or clinic, and a 160-meter fixed radius around an abortion facility or clinic worker’s home (*Pro Choice Action Network*). France and South Africa also prohibit obstruction of clinic entrances and in December 2014, Home Secretary Yvette Cooper of the United Kingdom expressed an urgent need for buffer zone legislation (Watt 1). The

beginning of global adoption of buffer zones has commenced as countries are recognizing the violence outside of clinics and its effect on women's right to safely access healthcare.

Conclusions

After examining buffer zone discourse and its consequences so thoroughly, it is irrefutable that buffer zones are a necessary and significant protection for pro-choice women that not only ensures their safety, but promotes all women's physical and rhetorical presence in participatory culture. Without buffer zones, there are no tools to combat clinic violence—there is only prosecution after the fact. Fear of social and physical violence outside of clinics serves as a significant deterrent for women accessing healthcare, making abortion inaccessible to all. Lack of family planning can literally translate into a death sentence as understanding abortion is central to reproduction of the human species, analysis of gender, and formation of life ethics (Condit 1). Dorothy Roberts further exemplifies the importance of accessing abortion care as “*Reproductive freedom is a matter of social justice, not individual choice*” (Roberts 6). Similarly, examining abortion through buffer zone discourses highlights that fact that safety should not be a divisive issue. Buffer zone protections prevent patients' retreat from clinics based on outside agitators which helps to thwart the criminalization of mothers. Both safety and abortion are public health issues that can be full of common ground. Standards of care, equality of access, bodily autonomy, and a right to safety are irrefutable and cannot be compromised. Robin Marty and Jessica Mason Pieklo argue that “without access, rights are meaningless,” to illustrate the extreme significance of buffer zone legislation on the lives of women (Marty & Pieklo 10).

Furthermore, this study accentuates the power of constitutive rhetoric in forming publics and influencing policy decisions. There is a political battle behind rhetoric where meaning is made through the interplay of competing, often contradictory, discourses. The struggle for control over the relevant narrative results in each side of the debate attempting to present their experience as universal. According to Condit, ideas gain momentum and power through repetition and expression of an audience's world, which partly explains why McCullen was victorious in gaining a ruling of unconstitutionality (Condit 9). Her vivid and emotion-laden diction better aroused public support for her arguments and helped portray petitioners as harmless victims of the abortion debates. The roles of victim and victimizer were therefore already designated even before the act, transforming trespassers into victims and manipulating the system to erase women's autonomy. Therefore, rhetoric highlights a broader struggle for political supremacy through the ownership and embodiment of publics.

Blaming the true victims in these cases, women and clinic employees subjected to violence for accessing abortion care, stresses that there is a "universal propensity to blame women for acts of violence visited upon them" (Tonn et al. 177). Moreover, Massey reveals that blaming the victim originated to absolve local authorities of responsibility and guilt which was demonstrated in judicial discourse as petitioners and ultimately judiciaries eschewed the responsibility for violence (Massey 43). By manipulating the system, refusal to admit responsibility becomes a moral act of stoicism while victim-blaming "is a familiar defense for acts of violence" (Tonn et al. 167). It is through these types of political discourses that women and men are created and taught how to behave in the world. Their reality and identity is shaped by disciplinary discourses

that ensure regulation and surveillance. Therefore, scrutinizing women according to hierarchies of power and privilege problematically justifies female exclusion by violence.

Buffer zone legislation furthermore is extremely crucial in combatting exclusion by generating larger conversations about consent. The combination of fixed and floating buffer zones is arguably the most effective method because it grants women the right to consensual conversations while creating a fixed, safe space to counter violence.

Conversations about consent in public spaces leads to invaluable dialogues about sexual consent and rape culture, both of which have the potential to aggrandize female subjectivity and autonomy.

Furthermore, as influences on and products of space, buffer zones embody a relational vision of spatial politics to determine the larger place of women in society. Erasing women's physical and rhetorical public presence discourages participatory culture and creates a cultural amnesia about women's accomplishments. They are regulated and belittled to a limited space full of state and police power that transforms their intimate, sacred, inviolate bodies into a public Other. Spatial inequality disparages adequate political representation and justifies violence and discipline against the female body. Women are taught that they are spaces to be regulated and that their bodies are the sites of criminal action. Removing buffer zones defines women's existence as recipients of violence and dissipates a cohesive community. Society is defective when relational responsibility is not seen as a significant motivation for the protection of women's humanity. Instead, narcissistic factors such as buildup of power function as more effective motivators for action than ensuring that everyone in society has equal rights. It is for these disadvantageous and damaging consequences that White argues that judicial

opinion must be understood as an interpretation of what language means for a given culture, rather than an expression of supreme authority (White 697).

As previously stated, there is an undeniable double standard in protection as the Supreme Court is permitted a 100-foot zone to safeguard its inhabitants while a 35-foot zone around clinics is seen as excessive. Here, legislation illustrates women as undeserving of safety, dehumanized Others that are unimportant to the functioning of society. Women are victimized by this legislation, stripped of their rights to safety and privacy, and told they are unworthy of equal treatment. Accordingly, buffer zone regulations are crucial to reality construction and dictate control over cultural narratives. Conflict over territorial integrity therefore warrants violence against female bodies by exclusion.

Furthermore, this multifaceted study benefits the field of Communication by using historical research methods to depict why femininity and rhetorical action should never be considered mutually exclusive. Rhetoric has powerful consequences on the daily lives of citizens that must be unmasked in order to ensure that no one is subjected to a lesser political experience. Gendered jurisprudence functions as a discipline that disciplines discursive possibilities, discouraging participation in participatory culture and devaluing the female subject. Additionally, this study incorporates a rhetorical investigation of space to expose the links between space, knowledge, and power and the deeply intimate relationship between physical and rhetorical spaces. The combination of rhetorical scrutiny and spatial hermeneutics provide an acute understanding of the forces that motivate human behavior. These symbolic motivators explain actions, feelings of guilt or victimization, and form the basis for interpersonal relationships. With the ability

to construct reality, generate social capital, and determine control over cultural narratives, communication practices require this type of scrutiny due to the vital human interests at stake.

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