GRANTED

No. 98-1856

Supreme Court, U.S.
FILED
DEC 13 1999
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LEILA JEANNE HILL, *et al.*,

Petitioners,

—v.—

THE STATE OF COLORADO, BILL OWENS, GOVERNOR, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
COLORADO SUPREME COURT

BRIEF AMICI CURIAE THE STATE OF NEW YORK, ET AL., IN SUPPORT OF RESPONDENTS

ELIOT SPITZER
Attorney General of the
State of New York
Preeta D. Bansal
Solicitor General
Counsel of Record
Carol Fischer
Assistant Solicitor General
120 Broadway
New York, New York 10271
(212) 416-8020

Attorneys for The State of New York

Of Counsel:

Jennifer K. Brown
Assistant Attorney General

(Counsel continued on inside cover)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 1

ARGUMENT 4

I. States Must Retain Their Flexibility to Enact Appropriate Legislation That Responds To Public Health And Safety Concerns 4

A. Preserving Access to Health Care Facilities Is An Appropriate Subject Of The Traditional Police Power of The States . . . 4

B. In Appropriate Circumstances, Exercises of the State Police Powers Justify Some Restrictions on First Amendment Rights . . . 7

II. Buffer Zones And Zones Of Separation Are Constitutionally Appropriate Time, Place And Manner Regulations 9

A. The Correct Standard For Evaluating A Content-Neutral Statute That Affects Speech Is To Assess Whether It Is Reasonable As To Time, Place and Manner 9

B. Zones Of Separation Are Constitutionally Valid Means Of Protecting State Interests Without Unreasonably Burdening Speech . 11

III. Actual Law Enforcement Experience Confirms That Establishing State-Wide Guidelines For Expressive Activity Near Health Care Facilities Offers Significant Benefits To All Parties 14

CONCLUSION 19

APPENDIX 20

TABLE OF AUTHORITIES

PAGE

Cases

Boos v. Barry, 485 U.S. 312 (1988) 2, 13

Burson v. Freeman, 504 U.S. 191 (1992) 2, 12-14

Cox v. Louisiana, 379 U.S. 559 (1965) 2, 13

Grayned v. City of Rockford, 408 U.S. 104 (1972) 13

Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640 (1981) 13

Kelley v. Johnson, 425 U.S. 238 (1976) 6

Lovell v. Griffin, 303 U.S. 444 (1938) 8

Madsen v. Women's Health Center, 512 U.S. 753 (1994) 9-10

Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996) 6

Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789 (1984) 7-8

Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981) 7

Nollan v. California Coastal Com., 483 U.S. 825 (1987) . . 6

Queenside Hills Realty Co. v. Saxl, 328 U.S. 80 (1946) . . 6-7

United States v. Albertini, 472 U.S. 675 (1985) 11

United States v. Lopez, 514 U.S. 549 (1995) 4

Ward v. Rock Against Racism,
491 U.S. 781 (1989) 10-11, 14

Statutes

Cal. Civ. Ann. § 3447 (West 1999)
(Historical and Statutory Notes) 5

Col. Rev. Stat. § 18-9-122(3) (1999) . . . . . passim

Other Authorities

Chronology of Violence and Harassment at Medical Facilities, Major Unlawful Incidents Occurring in the Twin Cities 1977-1993 5

Hearing on H.B. 2518 Before the Subcommittee on Crime and Corrections of the House Judiciary Comm., 67th Legis., 1993 Reg. Sess. (Or., Apr. 22, 1993) 6

New York State Assembly, 1999-2000 Sess., Memo on Bill A09036 (1999) 5

Police Executive Research Forum,
A Conflict of Rights: Public Safety and Abortion Clinic Conflict and Violence (1999) 14-17

"Unblocking the Clinic Doors", The Boston Globe, June 1, 1993, p. 10 New York State Assembly, 1999-2000 Sess., Memo on Bill A09036 (1999) 5

STATEMENT OF INTEREST

The amici curiae States respectfully submit this brief in support of Respondents.

The interest of the amici States lies in preserving the power of state legislators to deal with serious public safety issues by appropriate means. Zones of separation and buffer zones, such as the ones employed in Colorado, have been important legislative tools for ensuring access to public places and preventing violence, intimidation and other threats to the public peace and safety in a variety of contexts.

To the extent that Petitioners argue that laws authorizing such zones are never lawful even though their effect on expressive speech is limited, or that they should be subject to strict scrutiny even if they are content-neutral, Petitioners are attempting to place unreasonable limitations on the States' police powers.

SUMMARY OF ARGUMENT

Colorado's experience with obstruction, intimidation and threats of violence at the sites of medical facilities, as documented in the hearings conducted by the State legislature, is not unique. A number of States have enacted laws meant specifically to ensure access to medical care, or to prohibit attacks on medical care facilities, and have done so using a broad array of means, ranging from expanding trespass laws to prohibiting particular forms of harassment (such as making harassing telephone calls to health care facilities).

None of these laws has been passed to discourage lawful speech. They are designed, instead, to address problems that arise from the States' fundamental obligation to protect the health and well-being of their citizens: the protection of access to health care services, prevention of threats to individual and public safety, and preservation of the peace. Such laws are, therefore, the product of the legitimate exercise of each State's police power. As this Court has long recognized, the significance of a State's health and safety concerns justifies the enactment of laws that may impose some limitations on speech, so long as such limitations are reasonable as to time, place and manner. Petitioners in this case have not justified a departure from this long-established standard.

In this case, the zone of separation created by Colorado's statute is amply justified under the Court's prior First Amendment jurisprudence and by the practical realities of law enforcement, and should be upheld. Buffer zones and zones of separation have long proven to be reasonable methods for preserving public health and safety, even when the conduct affected includes lawful speech. Their use has been affirmed by this Court to ensure access to polling places (Burson v. Freeman, 504 U.S. 191 (1992)), to prevent attempts to influence court proceedings (Cox v. Louisiana, 379 U.S. 559 (1965)), and to prevent disruptions of foreign embassies (Boos v. Barry, 485 U.S. 312 (1988)), among other situations. Because the problems raised by health care facility conflicts are as serious as the concerns at issue in those cases, States should retain the ability to use buffer zones and zones of separation as a means of ensuring access to health care.

States' use of zones of separation and buffer zones is also supported by the recommendations prescribed by the Police Executive Research Forum (PERF), which recently studied law enforcement responses to conflicts at health care clinics. In that study, the result of extensive work with police departments across the country, PERF concluded that the best way to prevent clinic confrontations from escalating to violence while preserving the rights of all parties involved was to establish straightforward, objective rules of conduct that could be communicated in advance to the entire community and to law enforcement personnel. Having such guidelines would help prevent the erratic enforcement of the law and related problems, such as the speech-chilling use of excessive force by police against protesters.

A law such as Colorado's statute offers such a prospective rule: it is communicated in advance to all persons involved in protests and is designed to be applied consistently by law enforcement personnel to all health care facilities within the State. Such a statute, therefore, offers an important way to prevent health clinic conflicts from becoming a drain on local law enforcement and judicial resources, and removes much of the danger of selective or erratic enforcement that can be the result of reliance on trespass and harassment laws.

ARGUMENT

I. STATES MUST RETAIN THEIR FLEXIBILITY TO ENACT APPROPRIATE LEGISLATION THAT RESPONDS TO PUBLIC HEALTH AND SAFETY CONCERNS

A. Preserving Access to Health Care Facilities Is An Appropriate Subject Of The Traditional Police Power of The States

Promoting access to health care by protecting patients, health care employees and the general public while protecting the rights of others to register vigorous public opposition to certain health care services is a problem that has taxed the ingenuity of legislatures around the country, as well as Congress. As Justice Kennedy recognized a few terms ago, where "considerable disagreement exists about how best to accomplish [a] goal. . . . the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear." United States v. Lopez, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring).

A survey of the relevant laws (a summary of which is attached as an appendix) confirms that States have, indeed, been laboratories for experimentation on how to balance public safety, health care access, and the free speech rights of protesters. They may be divided, with a slight degree of

overlap, into two categories: those designed to ensure public peace by preventing interference with the operations of medical facilities, and those designed to ensure access to medical facilities. (Colorado's statute, Col. Rev. Stat. § 18-9-122(3) (1999), belongs to this second category). The laws neither target particular medical facilities nor particular viewpoints. Instead, they apply to conduct occurring at a range of medical facilities, including single-service facilities such as abortion clinics or in vitro fertilization clinics.

The approaches chosen reflect each State's particular experiences with serious public safety problems. Minnesota, for example, responded to its experience of dozens of incidents of arson, attempted arson or attempted bombing, assault, bomb threats, vandalism and trespass outside a variety of medical facilities. See Chronology of Violence and Harassment at Medical Facilities, Major Unlawful Incidents Occurring in the Twin Cities 1977-1993 (undated, on file with New York State Attorney General's Office). The Massachusetts clinic access statute was preceded by toxic chemical and bomb assaults on clinics, see "Unblocking the Clinic Doors," The Boston Globe, June 1, 1993, p. 10, while New York's law was enacted after abortion clinic bombings and shootings in Massachusetts, Florida and Alabama and the murder of a Buffalo, New York doctor. (New York State Assembly, 1999-2000 Sess., Memo on Bill A09036 (1999)).

In California, protesters had used butyric acid on the walls of abortion clinics and tied up physicians' telephone and facsimile lines, see Historical and Statutory Notes Cal. Civ. Ann. § 3447 (West 1999)). Oregon had been urged by the State

Medical Association to expand its statutory protection of health clinics after, among other events, a break-in by animal rights activists at the University of Oregon and an arson attack on a health care facility that performed abortions. See Hearing on H.B. 2518 Before the Subcommittee on Crime and Corrections of the House Judiciary Comm., 67th Legis., 1993 Reg. Sess. (Or., Apr. 22, 1993) (statement of Dr. James Cross, President, Oregon Medical Association) . In Colorado, abortion clinics had been vandalized (JA-63, 67), clinic staff, patients and protesters had been physically assaulted (JA-57, 59, 67, 93-94) and neighbors had regularly been bombarded with nuisance-level noise. (JA-107).

Ensuring access to health care facilities and preventing medical clinics from being the sites of harassment, obstruction and violence raises serious, inter-related concerns: preventing violence against persons; preventing trespass on, or destruction of, private property; ensuring access to health care; and preserving the public peace. Each of these concerns lies squarely within the realm of the police powers of the State. "States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." Medtronic, Inc. v. Lohr, 518 U.S. 470, 475 (1996) (citation omitted). See also Nollan v. California Coastal Com., 483 U.S. 825, 837 (1987) (protection of public safety is "a core exercise of the State's police power"); Kelley v. Johnson, 425 U.S. 238, 247 (1976) ("The promotion of safety of persons and property is unquestionably at the core of the State's police power"); Queenside Hills Realty Co. v. Saxl, 328 U.S. 80, 82-83 (1946) ("[p]rotection of the safety of persons" is "one of the traditional

uses of the police power of the States," and "one of the least limitable of governmental powers").

B. In Appropriate Circumstances, Exercises of the State Police Powers Justify Some Restrictions on First Amendment Rights

The importance of a State's ability to protect the health and safety of its citizens has meant that some burden on First Amendment rights will be upheld. "'[T]o say the [statute] presents a First Amendment issue is not necessarily to say that it constitutes a First Amendment violation.'" Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 803-04 (1984) (emphasis in original, quoting Metromedia, Inc. v. San Diego, 453 U.S. 490, 561 (1981) (Burger, C.J., dissenting)). "It has been clear since this Court's earliest decision concerning the freedom of speech that the State may sometimes curtail speech when necessary to advance a significant and legitimate State interest." Taxpayers for Vincent, 466 U.S. at 804.

Taxpayers for Vincent concerned Los Angeles's ban on all sign postings on public property. While recognizing that the challenged ordinance "prohibits [persons] from communicating with the public in a certain manner, and presumably diminishes the total quantity of their communication," id. at 803, the Court nonetheless held that the complete ban on that particular means of communication was constitutional. Its previous cases, the Court explained, had "rejected the notion that a city is powerless

to protect its citizens from unwanted exposure to certain methods of expression that may legitimately be deemed a public nuisance," and acknowledged that governments have a weighty interest "in proscribing intrusive and unpleasant formats for expression." Id. at 805-06. The Court did not suggest that the city was limited to banning signs on a case-by-case basis, which, of course, could have raised discrimination claims. To the contrary, "the visual assault on the citizens of Los Angeles presented by an accumulation of signs posted on public property constitutes a significant substantive evil within the City's power to prohibit," id. at 807, and that evil could be addressed by a total ban.

The "substantive evil" addressed by Colorado's statute, and by other laws that prohibit the obstruction of clinic access, includes actual verbal assault and physical intimidation. Colorado's statute is certainly more limited than the ordinance at issue in Taxpayers for Vincent, since the statute curtails communication only in a limited area, and only under certain circumstances. Cf. Lovell v. Griffin, 303 U.S. 444, 451 (1938) (suggesting, in dicta, that a restriction on distributing literature that was "limited to ways that might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, [or] the molestation of the inhabitants" could be consistent with the First Amendment).

II. BUFFER ZONES AND ZONES OF SEPARATION ARE CONSTITUTIONALLY APPROPRIATE TIME, PLACE AND MANNER REGULATIONS

A. The Correct Standard For Evaluating A Content-Neutral Statute That Affects Speech Is To Assess Whether It Is Reasonable As To Time, Place and Manner

Petitioners claim that the Colorado Supreme Court "fundamentally erred when it held, simplistically, that identical restrictions in a statute face less demanding scrutiny than injunctions," and that statutes are somehow more discriminatory than injunctions (Pet. Br. 26 fn. 18). That contention is a misreading of this Court's decisions distinguishing statutes from injunctions, and ignores the reasons for that difference, which are based on fundamental distinctions between the roles of the legislature and the judiciary.

The legislature is composed of elected officials; its laws "represent a legislative choice regarding the promotion of particular societal interests." Madsen v. Women's Health Center, 512 U.S. 753, 764 (1994). It has the power to enact laws of general application because its proceedings are subject to public debate, and its officials to regular elections.

The function of a court is, quintessentially, to determine only the rights of those parties who are actually before it. Its fact-finding abilities are limited to the case at hand, and its

decisions are normally subject only to appellate review. Because courts may proceed only on a case-by-case basis, injunctions create a greater risk of discrimination and uneven enforcement of the law than do general ordinances:

> Injunctions also carry greater risks of censorship and discriminatory application than do general ordinances. "There is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally."

Madsen, 512 U.S. at 764 (citations omitted).

The appropriate standard, therefore, for evaluating a statute or regulation that imposes some restrictions on protected speech but is content-neutral is the one reaffirmed by this Court in Ward v. Rock Against Racism, 491 U.S. 781 (1989) (upholding city regulation requiring sponsors of park bandshell concerts to use sound-amplification equipment and sound technician approved by the city). So long as the law furthers a significant State interest and leaves open ample alternative channels for communication, it need not employ only the "least restrictive alternative." Ward, 491 at 491. To the contrary:

> Lest any confusion on the point remain, we reaffirm today that a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of doing so. Rather, the requirement of narrow tailoring is satisfied "so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation."

Ward, 491 U.S. at 798-99 (quoting United States v. Albertini, 472 U.S. 675, 689 (1985)).

Restrictions as to the time, place and manner of protected speech are therefore not invalid "simply because there is some imaginable alternative that might be less burdensome on speech." Albertini, 472 U.S. at 689. In Ward, the fact that the city already had established noise regulation guidelines (and presumably enacted general nuisance laws as well) did not justify the invalidation of the regulation, since those guidelines had proven to be ineffective in controlling the problem. Ward, 491 U.S. at 785.

B. Zones Of Separation Are Constitutionally Valid Means Of Protecting State Interests Without Unreasonably Burdening Speech

Petitioners and their amici ignore the States' interest in protecting health, safety and property. See Pet. Br. 25

(asserting that Colorado has no "legitimate" interest at stake). Indeed, they appear to argue that States are never entitled to enact laws that contain zones of separation, such as the one contained in the statute at issue. (Pet. Br. 26-27). It is their position that when dealing with problems of health clinic access, the States' police power ought to be limited to general assault and nuisance laws. (Pet. Br. 20-21). Were this true, numerous decisions by this Court that have upheld the use of buffer zones, and other restrictions on expression, would have to be overturned.

Zones of separation such as those required by Colorado's statute have long proven that they can ensure access to vital services, prevent intimidation and violence, and maintain the public peace while imposing only limited and reasonable restrictions on speech. In Burson v. Freeman, 504 U.S. 191 (1992), this Court upheld a Tennessee statute that prohibited solicitation of votes and distribution of campaign literature within 100 feet of the entrance to a polling place. Even though the speech at issue was political and the ban on solicitation and distribution of leaflets within those zones was absolute, this Court concluded that the necessity of using buffer zones outside of polling places was supported by the long history of intimidation, corruption and violence in connection with voting. See Burson, 504 U.S. at 200-205 (Blackmun, J., plurality op.) (citation omitted) and Burson, 504 U.S. at 214-15 (Scalia, J., concurring).

The Court specifically concluded that alternatives to the buffer zones, such as criminalizing interference with an election or the use of violence or intimidation to deter voting, would not

be sufficient to deter most of the "confusion and undue influence" to which voters might be subject, because those laws would address only "the most blatant and specific attempts" to impede elections. Burson, 504 U.S. at 199, 206-07 (plurality op., citation omitted). The buffer zone, therefore, was approved as a reasonable means for assuring access to polling places.

Laws that have limited protesters' access to certain areas, or to certain distances from the subject of their protests, have been upheld in many situations in which they have been used to prohibit the disruption of a facility or to preserve the peace. In Boos v. Barry, 485 U.S. 312, 330 (1988), the Court held that a District of Columbia statute prohibiting any congregation within 500 feet of an embassy after the police had requested the crowd to disburse, provided that the congregation was directed at the embassy and the police reasonably believed that the embassy's "security or peace" was threatened, was a reasonable, content-neutral time, place and manner regulation. See also Cox v. Louisiana, 379 U.S. 559 (1965) (statute that prohibited picketing near a courthouse with the aim of influencing legal proceedings upheld, although conviction at issue voided because of entrapment); Grayned v. City of Rockford, 408 U.S. 104 (1972) (upholding ordinance that outlawed demonstrations near schools when in session, due to State's legitimate interest in preventing disruptions in education); Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 647 (1981) (upholding rule prohibiting members of religious organization from distributing literature within public fairground, since their activities would create disruptive traffic control problems).

Colorado's statute is less restrictive than any of the preceding statutes. It does not limit anyone's ability to congregate at any distance from a clinic entrance, nor does it prohibit speech or leafleting at all, except under one specific circumstance: within a 100-foot radius of a clinic entrance, a person may not deliberately approach another person within a distance of eight feet if that person does not wish to be approached. The statute, therefore, prohibits only that conduct that the legislature reasonably concluded was most likely to interfere with access to health services, and lead to obstruction and physical conflict. Protesters may engage in any lawful activity outside of the 100-foot area, and may employ any lawful means of communication except the one proscribed within the 100-foot area — regardless of how close they are to a clinic worker, patient, escort or passer-by. By the standards set forth in Ward, Burson and the other buffer zone cases, the statute is a legitimate exercise of the State's police power and a reasonable time, place and manner restriction on speech.

III. ACTUAL LAW ENFORCEMENT EXPERIENCE CONFIRMS THAT ESTABLISHING STATE-WIDE GUIDELINES FOR EXPRESSIVE ACTIVITY NEAR HEALTH CARE FACILITIES OFFERS SIGNIFICANT BENEFITS TO ALL PARTIES

The decisions of this Court that have upheld statutes that have established buffer zones between demonstrators and the objects of their demonstrations are consistent with actual police experiences, which show that having clear, predictable

guidelines understood in advance by all parties (including the police officers themselves) reduces violent confrontations at health care facilities while preserving the First Amendment rights of protesters.

In 1996, the Police Executive Research Forum (PERF) conducted a study of abortion clinic conflict, in order to determine which police department policies and practices were most effective in reducing violence at health care facilities. Its final report, A Conflict of Rights: Public Safety and Abortion Clinic Conflict and Violence, published in January 1999, was based on an in-depth study of nine police departments from all areas of the country that had regularly dealt with abortion-related conflict and violence. In addition to conducting extensive interviews with police officers, PERF also met with local pro-choice and anti-abortion activists, and other people in the community with an interest in clinic protests, such as clinic workers, journalists, and criminal justice officials. See A Conflict of Rights, at 6.

PERF found that the departments who were most successful in minimizing conflict while preserving the rights of both pro-choice and anti-abortion activists to engage in protests at or near abortion clinics were those that had both clear goals and neutral response protocols they could apply on a consistent basis. Id. Police departments, which are obligated to protect the rights of protesters, clinic workers, patients, and uninvolved third parties, were invariably viewed as biased by activists on both sides. Such perceptions of bias often exacerbated community conflicts. The factor most often cited by both sides was inconsistency of law enforcement:

> Across all sites, participants viewed the police as biased toward the opposition. They argued police responses, attitudes, language and behavior are influenced by officers' biases. All participants reported experiencing problems with patrol officers. Patrol responses were often inconsistent, over-aggressive (pain compliance), under-aggressive (allowing protestors to block clinics), slow, uninformed about relevant laws and injunctions, and insensitive to the needs and rights of either the clinics or the Pro-Life protestors.

Id. at 8.

This perception of bias was often based on fact. Erratic and unpredictable police responses to clinic confrontations were often the result of officers' highly subjective responses to the issue of abortion and abortion protests: some treated all disturbances as trivial nuisances, others interpreted even passive resistance by protesters as a deliberate challenge to police authority and reacted with excessive force. Id. at 12-13. The inconsistencies of police responses led all affected parties to see the police as unprofessional and ineffective. Id. at 12.

PERF ultimately concluded that the best way departments could prevent clinic confrontations from escalating to violence while preserving the rights of all parties involved was to establish clear rules of behavior that could be

communicated in advance to the entire community:

> Police departments should establish clear guidelines regarding their responses to both routine calls for service on abortion issues and at planned events such as demonstrations and protests. These guidelines should outline clearly acceptable behavior for participants and explain the police response in instances when violations occur.

Id. at 9.

A statute such as Colorado's, which prospectively establishes an objective yardstick for lawful conduct, is consistent with the requirements of PERF's recommendation. It accomplishes several important goals that could not be met by an injunction tailored to one clinic or a few specific protesters, or by requiring police officers to make ad hoc, on-the-spot decisions as to what behavior constitutes unlawful harassment. These goals are:

- Consistency in enforcement. By offering a consistent standard of conduct to which protesters must adhere, it prevents the uneven application of harassment, access or trespass laws. Responses to clinic confrontations should no longer vary significantly from city to city, or clinic to clinic, within one State.

- Reinforcement of police neutrality. By

providing police officers with clear boundary lines to enforce, it allows the police to act in a neutral manner. This, in turn, helps to remove perceptions of police bias as an exacerbating factor in confrontations.

◆ Protection of rights of expression. A clear guideline for conduct protects the rights of protesters by preventing over-reactions by police officers who are unsure of what conduct is and is not lawful, minimizing the danger that lawful speech will be chilled.

◆ Conservation of limited law enforcement and judicial resources. Witnesses in Colorado have already testified that the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (1994), and the eight-foot zone of limited separation rule already in force in the cities of Boulder and Denver, have reduced confrontations; indeed, very few arrests had been made for violations of either ordinance. (JA-71, 106-07, 127-28). Establishing a State-wide standard that is understood by all parties will reduce the need to involve the police in demonstrations or to turn to courts for injunctive relief.

CONCLUSION

For all the of the reasons stated above, the decision of the Colorado Supreme Court should be affirmed.

Respectfully submitted,

ELIOT SPITZER
Attorney General of the
PREETA D. BANSAL
Solicitor General
Counsel of Record
CAROL FISCHER
Assistant Solicitor General
JENNIFER K. BROWN
Assistant Attorney General
120 Broadway, 25th Floor
New York, New York 10271-0332
(212) 416-8020