***Madsen v. Women’s Health Center, Inc.***

**(1994)**

**WHAT WAS THIS CASE ABOUT?**

**The story.** In September 1992, after antiabortion protesters continued to picket and demonstrate outside the Women’ Health Center, a Melbourne, Florida, abortion clinic, a Florida state court issued an injunction to prevent the protesters from blocking or interfering with public access to the facility and from abusing persons leaving or entering the clinic. Six months later, when protesters continued to impede access to the clinic, distribute antiabortion literature, chant using bullhorns and loudspeakers, and harass clinic workers at their homes, the clinic’s operators sought to broaden the injunction. A doctor testified that the protesters’ actions endangered the health of patients by causing added stress or by causing patients to delay clinic appointments.

The Florida Circuit Court amended the injunction, creating a 36-foot buffer zone around the clinic’s entrances and driveway and around private property to the north and west of the building. It placed restrictions on excessive noise and the use of “observable images,” such as offensive photographs. It also created a 300-foot buffer zone around clinic workers’ residences.

The protesters claimed that the amended injunction violated their First Amendment right to freedom of speech. The Florida Supreme Court upheld the Circuit Court’s decision. Before the state’s Supreme Court decision was announced, however, the Florida Court of Appeals heard a separate challenge to the same injunction. The Appeals Court struck down the injunction, ruling that the concerns for public safety and order were protected under already established laws and that there was no need to infringe upon the First Amendment rights of others. To resolve the dispute between the Florida Supreme Court and the state’s Court of Appeals regarding the constitutionality of the Circuit Court’s amended injunction, the U.S. Supreme Court agreed to hear the case.

**The question.** Did a Florida Circuit Court’s amended injunction against antiabortion protesters outside a central Florida abortion clinic violate the protesters’ First Amendment right of freedom of speech?

**The issues.** In resolving the dispute the U.S. Supreme Court had to examine the arguments presented by both courts. For example, in upholding the amended injunction, the Florida Supreme Court had found it to be a “content neutral” restriction on free speech rather than the “content-based” restriction asserted by the Court of Appeals. According to the Florida Supreme Court, the restrictions were not directed at the protesters’ antiabortion message but at their actions. The U.S. Supreme Court also had to determine whether the injunction “burdens no more speech than necessary to serve a government interest.” The Court analyzed each provision of the amended injunction to determine its constitutionality.

**HOW WAS THE CASE DECIDED?**

In an opinion written by Chief Justice William Rehnquist, the Supreme Court ruled that the establishment of a 36-foot buffer zone from which demonstrators are excluded “passes

muster under the First Amendment, but several other provisions of the injunction do not.” In other words, the Court upheld parts of the amended injunction and struck down other parts.

**WHAT DID THE COURT SAY ABOUT CONSTITUTIONAL RIGHTS?**

In its decision, the U.S. Supreme Court:

* upheld the 36-foot buffer zone around the clinic’s entrances and driveway, ruling that it did not burden more speech than necessary to protect access to the clinic, but struck down the buffer zone around the private property to the clinic’s north and west;
* upheld the injunction’s noise restrictions, noting that “The First Amendment does not demand that patients undertake Herculean efforts to escape the cacophony of political protests”;
* struck down the ban on “images observable” as an unreasonable restriction, pointing out that the clinic could “pull its curtains”;
* struck down a 300-foot buffer zone around staff residences, ruling that it “sweep[s] more broadly than necessary.”

The Court agreed with the Florida Supreme Court that the injunction was “content neutral,” ruling that “none of the restrictions imposed by the court were directed at the…. message.” In short, the Court’s majority opinion stated that while antiabortion protesters have a right to free speech, that right cannot infringe upon the well-being of others and, in the context of the injunction, must be limited. According to the Court, “The combination of the government interests identified by the Florida Supreme Court—protecting a pregnant woman’s freedom to seek lawful medical or counseling services, ensuring public safety and order, promoting the free flow of traffic….protecting….property rights, and assuring residential privacy—is quite sufficient to justify an appropriately tailored injunction.”

**WHAT IMPLICATIONS DOES THIS CASE HAVE FOR THE FUTURE?**

In striking down the amended injunction, the Florida Appeals Court called the dispute “a clash between an actual prohibition of speech and a potential hindrance to the free exercise of abortion rights.” The Supreme Court’s 1973 ruling in *Roe v. Wade* gave women the legal right to abortion. The questions to consider to cases like *Madsen* include: Is a woman’s right to an abortion impeded by protesters who block entrances to abortion clinics, harass physicians and other medical personnel, and threaten the health of women by causing added stress? Do such actions not interfere with a woman’s constitutional right to privacy expressly mentioned in *Roe v. Wade*? As you have learned, efforts to overturn the Court’s decision in *Roe v. Wade* are ongoing. These efforts likely will result in more cases like *Madsen*.

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| **BRAIN TEASERS** |

1. Write two brief paragraphs. In one paragraph, express the view of a doctor working at the clinic. In another, express the view of an antiabortion protester who supports demonstrations near entrances to abortion clinics.
2. The Court found that the injunction was “content neutral.” In other words, the injunction did not attack the antiabortion message voiced by the protesters but the methods used to voice the message. Do you agree with this finding?