

High court's arbitrary line drawing

The Supreme Court's decision June 26 struck down a Massachusetts law that created a buffer zone around reproductive health care facilities. The decision did not do enough to protect women patients.

The court rightly made it clear that there can be such buffer zones, but it said that they must be "narrowly tailored."

Unfortunately, the justices gave little guidance as to how to determine which buffer zones meet this requirement. The result will be constant challenges to buffer zones used in many contexts to balance speech interests and other concerns, such as privacy.

Across the country, including in Massachusetts, women patients and health care providers have been targeted at reproductive health care facilities. Sometimes there have been violent assaults. Often there are verbal assaults. Patients going for medical treatment, which may or may not include abortions, and health care professionals should not have to run a gauntlet of harassment in order to access the facilities and exercise their constitutional rights.

Many state and local governments have adopted buffer zones as a way to protect patients and those who work in clinics, while still protecting the speech rights of protestors. The Massachusetts law created a 35-foot buffer zone around reproductive health care facilities. The only individuals allowed in this area are patients using the facilities, employees who work there, law enforcement personnel and those needing to go across the area to get to an adjacent property. Protestors, whatever their views, can express them outside of this area.

This is not the first Supreme Court case to deal with buffer zones. In 2000, the court upheld a Colorado law that created a 100-foot buffer zone around medical care facilities. In this area, a person cannot go within eight feet of another for purposes of "counseling" or "protest." Opponents of buffer zones urged the Supreme Court to overrule this earlier decision.

The Supreme Court did not do so, although four justices – Scalia, Kennedy, Thomas and Alito – were clear they believe that the earlier case should be overruled. Instead, the court's majority said that the flaw in the Massachusetts law was that it was not sufficiently "narrowly tailored." The court said that restrictions of speech on public sidewalks and other traditional public forums must be narrowly tailored and the court concluded that the Massachusetts law went too far in its restriction of speech in these places.

But this is an open invitation to arbitrary line drawing. If 35 feet is too much, would a buffer zone of 30 or 20 or 10 feet be constitutional? The court offered no criteria for determining which buffer zones will be allowed as being sufficiently narrowly tailored and which will be deemed to violate the First Amendment.

Also, the court gave insufficient weight to the rights of those who are using or working at the facilities and want to be free from verbal and physical assaults by anti-abortion groups. Those going into such facilities should not have to be yelled at, shown graphic photographs, called names and made to fear for their safety. Women exercising their constitutional rights should be protected from harassment.

Although the decision did not go far enough in protecting the rights of women and their health care providers, it thankfully made clear that buffer zones are allowed. It is now just a question of how they can be drawn.

The significance of allowing buffer zones has importance outside of the reproductive health care context. In recent years, after the court found a right to protest at military funerals, governments created buffer zones around cemeteries and funeral homes. For example, a federal law creates a 300-foot buffer zone around military funerals. Other laws create buffer zones around places of worship, such as synagogues, churches and mosques.

In all of these instances, peaceful protests are permitted, but privacy is protected by being sure that the speech does not disrupt activities or intrude on those present.

Now, however, the constitutionality of such buffer zones is in doubt. They can, and will be, challenged on the grounds that they are not sufficiently narrowly tailored.

The only safe prediction is that the Supreme Court's lack of clarity ensures that this will not be its last ruling about buffer zones and freedom of speech. Hopefully, in the future the court will do more to protect women and their doctors.

Erwin Chemerinsky is the dean of the UCI School of Law.



ERWIN CHEMERINSKY
STAFF COLUMNIST

A million-dollar water taxi idea

Operating such a service is not a core function of government.

As talks continue over a proposal to create a water taxi system in Newport Beach, the conversation seems to be turning to how much the taxpayer should expect to pay for it.

The concept for a water taxi system has been floating around for a couple of months. It would operate more like a bus on a loop, ferrying passengers around to several points in the harbor. Newport Beach Mayor Rush Hill asked the Harbor Commission to look into the feasibility of such a system back in March.

Now the Harbor Commission has suggested a model, mirrored on the Marina del Rey WaterBus system, which costs the County of Los Angeles more than \$400,000 annually to operate. According to the Register, Harbor Commissioner Doug West recently told the City Council that just getting the system up and running, along with building the associated infrastructure, could cost millions.

Fortunately, some of the council members are hesitant about those costs, despite Mr. Hill's insistence on a pilot program. He recently told his fellow council members they shouldn't "overanalyze this thing."

We believe they should continue to analyze – perhaps even overanalyze – this project or any project that could potentially cost the taxpayers nearly half a million dollars a year.

Although, the few previous private attempts at a water taxi system in Newport Harbor seem telling enough of the feasibility, perhaps without further study.

According to a report in the Register, a water taxi system ran in the harbor in the 1950s and early 1960s. The system operated during peak seasons, but shuttered in the offseason.

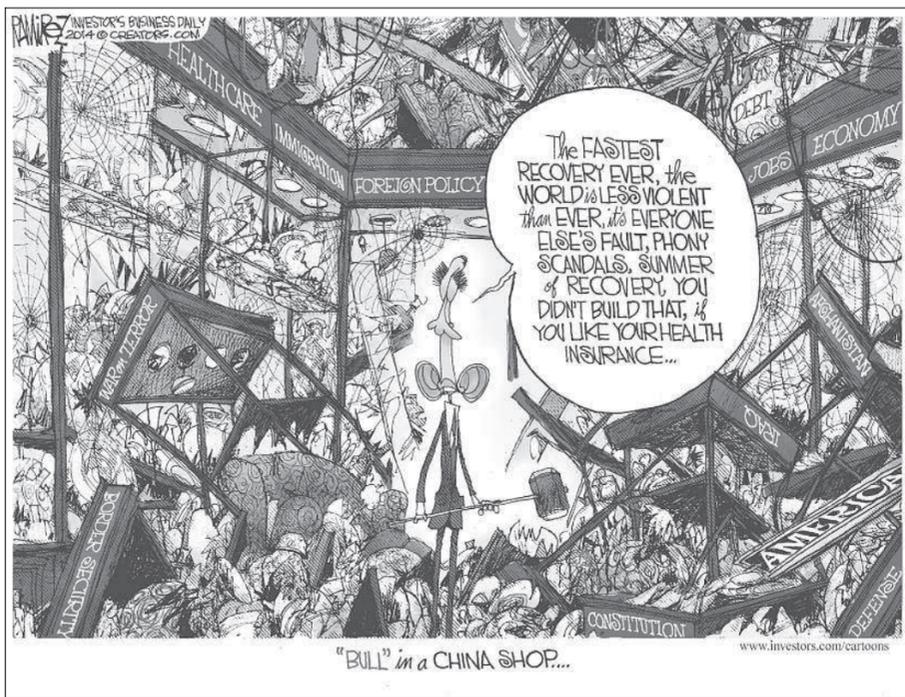
David Beek, whose grandfather operated that system, told the Register, "I think he did it more as a public service to the community than actually making money on it."

Another attempt in the 1990s only lasted one season.

The justification for the council to subsidize a system, proven not to possess the market to be sustainable, is dubious. A water taxi service doesn't seem to be one of those core functions of governance that local governments should take on at taxpayer's expense in the first place. "If we are going to subsidize something, which we seem to be getting into the business of more and more, we ought to subsidize the right thing for the city," Councilwoman Nancy Gardner said.

Or not choose to subsidize anything at all. If the city suffers from an embarrassment of riches burning a hole in the pockets of the council, perhaps residents are being taxed too much.

MICHAEL RAMIREZ / CREATORS.COM



LETTERS TO THE EDITOR

A summer of Supreme Court rulings

The Supreme Court was correct in its free speech interpretation on June 26 ["Safety should trump speech at abortion clinics," Letters, June 30].

Those praying outside of abortion clinics are not hooligans.

In the dozens of times I have joined them, I have never witnessed any interference with those trying to enter.

For one thing, the clinics are usually in business parks and you wouldn't even know the purpose of those driving into the parking lot.

Letter-writer Barry Wasserman just cannot bring himself to call a fetus a baby, even for the third trimester, although its DNA never becomes anything else but human and with a beating heart by nine weeks.

Of course, we all have a right of autonomy over our own bodies, but the baby is an entirely separate being and in a few days develops to much more than merely staying a sperm and egg – no matter what the proabortion people would like us to believe.

It is worth noting that couples want ultrasound procedures done in order to see with their own eyes what is happening.

This is not an issue of prejudice but science and human rights to which we are all entitled.

Abortions, which were rare in the past when they were not "constitutional," now number over a million a year and over 54 million in this country alone over the past

40 years. History will not judge us kindly in this.

The decision is one small step in the right direction.

Phyllis Ross
Fountain Valley

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It is an interesting paradox that, in this country, people of religious belief, through extra consideration for their convictions, do not need to adhere to the same requirements of those absent of religious belief.

Nonbelievers have convictions as moral and upstanding as believers, but their views do not carry enough weight to gain them the same considerations as the views of the religious.

This is certainly a double standard.

It's also a miscarriage of justice in a country that is supposed to be secular.

Milt Rouse
Dana Point

A CEMETERY FOR OUR VETERANS

Letter-writer F. Stephen Masek finds the request for a veterans' cemetery "silly" ["Find options for vets' cemetery," Letters, July 1].

Why shouldn't Orange County have a final resting place for our veterans?

The location at the Great Park is not private property and does not belong to FivePoint.

FivePoint is paying to develop a large chunk of the Great Park (public land) in return for deciding how it will be developed.

After the golf course and sports fields go in, the city of Irvine will eventually pay to maintain land that increases the value of the surrounding homes while doing little for the rest of the citizens of Orange County who voted for

El Toro to become a "Great Park."

By the way, sports fields are not places where you can take your kids to kick a soccer ball around.

They are fenced fields available to organized teams who reserve them and pay a fee.

Linda Genis
Santa Ana

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The Irvine subcommittee formed to examine Great Park locations for a veterans cemetery is a fraud on veterans and those who honor veterans.

Irvine Council members Steven Choi and Christina Shea were elected thanks in part to large, secret donations from an out-of-state political action committee. With Jeff Lalloway, they formed the "new majority."

They sold out the "Great Park," ceding control to a property developer.

Yet, Lalloway, up for reelection in a few months, says he wants to consider a veterans cemetery at the Great Park and forms a subcommittee (two council members and the developer, plus two veterans groups and a State Veteran's Affairs official who did not appear at the first meeting).

The developer and Choi both oppose any veterans cemetery. The developer says their development agreement with the city contains no cemetery.

Then they list a bunch of Orange County sites as potential alternatives – most are preposterously inappropriate.

The Register picks up on this but ignores the real game that is afoot.

Jack Fancher
Irvine

Why I am leaving California

By ADRIAN MOORE
CONTRIBUTING WRITER

I have lived in California for 52 years, save a few when the Army stationed me elsewhere.

I could fill pages and pages with lists of things I love about California, including the incredible natural beauty up and down the state, cool history, awesome ethnic enclaves of every type, fun cities and peaceful mountains.

But, on July 1, I am moving out of California, with regrets but without second thoughts. This state is simply no longer a desirable place to live for my family.

Part of the problem is that the state government has run amok. Its high spending has meant ever-increasing taxes and stringent regulations that lead to higher prices on everything from food to gasoline. And I am tired of how state government is negatively impacting my life and my family.

Let's start with the cost of university for my oldest daughter, who will start college in a year. California has some world-class universities, but they are also expensive.

Despite significant increases in state spending on higher education, the total cost to send my oldest daughter to a University in California is much, much higher than it is in, say, Texas, Virginia and Florida, for example. I'm a UC Irvine grad, but the basic tuition and fees to go to UC Irvine (\$14,667 for 2014-15) now more than double the tuition and fees at the University of Florida (\$6,310).

Then there are the taxes. California has the fourth-highest state and local tax burden in nation according to the Tax Foundation.

Yet, my fellow citizens blithely approved 23 of 30 local government tax increases across the state in the June 3 elections. At the same time, they approved 42 of 55 proposed ballot initiatives to raise local government or school debt even though California has the highest total state and local government debt in the nation according to State Budget Solutions.

Maybe that's because they don't have to see parts of the state government that my job takes me to. I have attended countless state legislative hearings in Sacramento. I have also been to numerous legislative hearings in other states. Nothing beats the amateurish politicking, arrogant legislators, gamesmanship and union thuggery of a Sacramento legislative hearing.

In California, with no oversight and no transparency, regulatory agencies pass rules by the thousand and never measure if they actually work or worry about how much they cost.

Government agencies squirrel away money illegally, or violate the law, as the California High Speed Rail Authority has done with its spending of Proposition 1A funds. Or state departments perform so poorly the federal government eventually has to step in during a state of emergency – like our overcrowded prisons.

The frosting on the cake is the constant nanny state meddling in my life. I have to go through ridiculous gyrations to buy the raw milk my family and I enjoy, if I can buy it at all. I can't sell the youth model single-shot shotgun I received for my 12th birthday to a friend so he can give it to his son without going through a third party, paying the government extra costs and filling out a ridiculous amount of paperwork. I have to pay a parcel tax for fire services I don't receive and don't need. I see government workers earning big salaries and getting six-figure pensions and health care for life – lavish benefits my daughters are expected to foot the bill for even as they try to they pay for their own retirements and health care.

So simply put, California: I just can't take it anymore. All the taxing, spending and regulating hasn't led to a better quality of life.

Maybe someday the state will once again value freedom and the entrepreneurial spirit. I hope so. But in the meantime, my family and I, like so many other successful Californians, are outta here.

Adrian Moore is vice president of Reason Foundation.