



July 13, 2017

Mr. Steven Steel
President, Toledo City Council
One Government Center, Suite 2120
Toledo, Ohio 43604
VIA email

Dear Council President Steel,

It has been brought to my attention that you may be using [guidance](#) from Greater Columbus Right to Life, where I serve as the executive director, to assure local members of the pro-life faithful that they need not be concerned about your recently introduced “Impeding Access to Health Care” proposed city ordinance, which establishes new criminal penalties for certain behaviors within a 20-foot “bubble” around abortion clinics or other “reproductive healthcare facilities.”

While I am delighted that you have found the resources provided by Greater Columbus Right to Life to be useful to you in your role as an elected official, I would express some concern if you think that a guidance document to our volunteers in light of the Columbus City Council’s adoption of a similar proposal somehow suggests that we do not object to this local ordinance or that we have not expressed concerns that the ordinance violates the First Amendment of the US Constitution or Article 1, Sections 3 and 7 of the Ohio Constitution. In fact, we have repeatedly affirmed that we find the as-amended ordinance enshrines an unjustly pejorative opinion of pro-life activity in the City Code and seeks to stifle pro-life activities related to speech, assembly, and religious expression.

First: the circumstances in which we offered the guidance were quite different than the climate in Toledo. The Columbus City Council’s legislation was amended before being enacted. As-introduced, the proposal contained provisions that were on their face unconstitutional, going so far as to criminalize behavior which was deemed to be “annoying or inconvenient” as well as behavior which “might be” annoying or inconvenient. These elements of the ordinance were widely discussed by both supporters and opponents of the ordinance when it was introduced. Even when they were removed from the ordinance, proponents of the bill, local lawmakers, and some sources in the media continued to speak in public forums as though those elements were still present, and the effect was undoubtedly and markedly chilling on pro-life freedom of speech.

Because our focus is on education rather than legislation or litigation, our first response to hearing from pro-life voices that they were afraid that activities as peaceful as praying in front of the clinic would result in their being charged with a crime was to document those concerns. Our second was to consult with several prominent legal minds to develop a forward-thinking response that included guidance to our volunteers and continued observation and documentation.

This guidance not only serves to clarify and explain the language of the ordinance, but also to illustrate the ridiculous nature of the City's actions, to provide supporting arguments for our claim that the ordinance served no useful public policy or public safety purpose interest, and to be used as an educational tool for our volunteers and the community at large. We argued then, as we do now, that absent any legitimate public purpose, the law was a thinly veiled tool to curry political favor from pro-abortion activists and scare pro-life activists into stifling the expression of protected free speech. Some also hypothesized that it provided an avenue for rebuked and embarrassed members of Columbus City Council to save face on a hastily introduced and rushed-to-enactment ordinance. Knowing that litigation on this issue would be costly and prolonged, we have not made a determination to file a lawsuit at this time, but that does not mean we had no grounds under which we could, and it should not be interpreted to mean that we would not join with other groups around the state in joint legal defense in the future.

That we have not pursued legal action against this ordinance is also a credit to the unity, cohesion, and professionalism of the pro-life movement in central Ohio. Together, we have refused to be cowed into inaction by the bullying political efforts of Columbus City Council, and our day-to-day actions have shown that the newly enacted ordinance was a paper tiger: unnecessary and redundant. While our activities have not altered, nor to my knowledge have any of the activities of other local pro-life groups altered, there have been no known instances of pro-life activists being charged under the new ordinance. If anything, the last year has anecdotally seen increased aggressive behavior on the part of pro-choice activists and several documented police reports by pro-life individuals against the aggressive behavior. Although abortion industry activists and members of City Council argued that the ordinance was necessary because the existing laws regarding disorderly conduct, assault, and related criminal codes were insufficient to stop alleged bad actors in the pro-life community, the enacted ordinance simply re-codified these same violations but with a higher burden of proof – which ironically would make it more difficult to prosecute hypothetical bad actors or actions. Like Columbus, assault, disorderly conduct, unlawful restraint, and traffic violations are already current ordinances with similar or the same penalties as the newly proposed penalty in Toledo, but in almost every instance the existing local ordinance has a lesser burden of proof. Like Columbus, your proposed law might make it harder to prosecute (alleged) bad actors than the existing law. This is absurd. If there is a legitimate public safety problem that Council must address, existing city codes give public safety officers the ability to address the problems, and there are legitimately steep penalties under parallel state laws and the federal FACE Act, a law enacted in the 90's to protect abortion clinics, abortion providers, and abortion clinic staff and patients. Pursuing any of these would be a far more fruitful use of Council's time and taxpayer dollars.

To be very clear, Greater Columbus Right to Life does not tolerate any activities which would constitute assault, vandalism, trespass, extortion or other threatening behavior, or the violation of any other laws. Moreover, we treat all people – even those with whom we disagree – with respect and love. Volunteers who will not abide by our standards are given one warning and then invited to leave our program. We have as much or more of an interest in the prayerful, peaceful, and law-abiding expression of free speech as do our local government leaders. I suspect that this is also true in Toledo.

While I do not claim to be an expert on Toledo or its municipal code, and I am hesitant to weigh in on the politics or policies of a local government beyond our region, it appears as though in being encouraged to model your code after the Columbus ordinance, you may have been misled into introducing a solution in search of a problem – one that will serve no real purpose in Toledo beyond an effort to intimidate pro-life voices from exercising their free speech in public and private places near abortion clinics. Moreover, you may not have considered the unintended consequences, such as potentially restricting union activity in front of a hospital with a maternity ward or a health care office that offers other OBGYN services during labor negotiations or a strike. Indeed, this policy could also impact abortion activists from protesting a local hospital's decision not to enter into a transfer agreement. These groups have the same right to exercise free speech as pro-life voices, and the result would be either a chilling of their rights too or a selective and likely unconstitutional focus on pro-life groups for enforcement.

While I appreciate your consideration of our perspective, I would also ask you to consider one other element to this discussion. While you and I may have very different perspectives on the humanity of the unborn child and the justness of laws which allow for his or her intentional destruction, it is obvious that the purpose of this bill is to quell protests at the one remaining abortion clinic in Toledo – Capital Care Network of Toledo. If this is the intent, then it is only fair to place in the record some particulars of the business that the Council is taking such extraordinary measures to protect.

Just this week, it came to light that one of the men who has long provided abortion services at Capital Care Network of Toledo (CCNT), David Burkons, has lost his medical license. The decision was made by the Ohio Medical Board after an investigation that lasted over a year. The charges against him were numerous, but they generally conclude that he was operating a pill mill out of the offices of Capital Care Network of Cuyahoga Falls, a facility that was [shut down by state regulators and the DEA](#) after a routine inspection yielded violations that ranged from the prescribing practices of then-Dr. Burkons to the theft of patient blood and generally filthy conditions.

Capital Care Network of Toledo, like the now closed Cuyahoga Falls facility is owned by T & S Management, which also operates one of Columbus' infamous clinics: Founder's.

Capital Care Network, like Founder's, now has a record of TWO of their recent abortion providers losing medical licenses. In today's environment where local communities grapple with skyrocketing rates of overdose and addiction, running a pill mill would seem to be at the top of despicable actions by a physician. However, this is paled by the actions of another Capital Care Network physician who lost his license after being [indicted by the federal government for child pornography](#). This could not have come to a complete surprise to the owner and operator of Capital Care Network, because he was hired despite a previous medical license suspension and revocation after pleading guilty to several counts of sexual imposition of minors. This means that Capital Care Network knowingly hired a child sex offender to perform gynecological care on women – including minor girls, and he was later found to be part of a child pornography ring. This serious lack of discretion is not limited to these two providers hired by Capital Care Network. T&S Management, who is identified as the owner and operator of CCNT and Founder's, respectively, was shown to owe nearly a million dollars to the City of Columbus, the

State of Ohio, and the IRS because of unpaid taxes. Our investigation last fall yielded more than \$600,000 owed to the IRS, more than \$200,000 owed to the State of Ohio, and about \$50,000 owed to the City of Columbus. A recent update by the Ohio Department of Taxation suggests it is likely to take additional action on about \$27,000 in tax liability. It would be strange, indeed, if Capital Care Network paid its taxes to Toledo but not Columbus, Ohio, or the US Government.

It is undeniable that abortion industry activists have come to you with tales of woe that they are being persecuted by pro-life voices outside of their clinic. Even if your political and policy sympathies lie with the abortion clinic, I would strongly encourage you and the other members of Council to defer any action on this proposed ordinance. It is unnecessary; it will be ineffective; it is likely unconstitutional; and it bears the appearance of shielding a business with a history of tax evasion, and hiring pill mill operators and child sex offenders from the public eye. This is unconscionable.

While we at Greater Columbus Right to Life recognize and appreciate the compliment you have given us by appealing to our authority and credibility on matters related to abortion in Ohio by pointing to and sharing our guidance memo, I would respectfully ask that you do not use it to vouch for the legal status of or lend political cover to your proposed ordinance. Throughout the history of our nation, good leaders have understood that freedom and peace are not reached by silencing speech with which they disagree, but that the cause of liberty is best advanced through sound education, the formation of just citizens, the adoption of good laws serving legitimate public purposes, and the safeguarding and promotion of the rights to freedom of speech and assembly and religious conscience.

Sincerely,

Beth A. Vanderkooi
Executive Director
Greater Columbus Right to Life
via beth@gctrl.org

CC: Toledo City Council Members
Toledo City Mayor
Greater Toledo Right to Life