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Danielle Baldassarre

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## COURT WATCH

### ***WOMEN'S' RIGHT TO ABORTION PROTECTED IN NOW v. SCHEIDLER***

Danielle Baldassarre

On October 2, 2001, the United States Court of Appeals for the Seventh Circuit upheld the first-ever permanent nationwide injunction prohibiting interference with the rights of clinics to provide abortion services in the class action lawsuit *National Organization for Women, Inc. v. Scheidler*.<sup>1</sup> Protecting and supporting the right of every woman to have an abortion, granted by the United States Supreme Court in *Roe v. Wade*,<sup>2</sup> this judgment will have a dramatic impact on decreasing the anti-abortion violence across the country.

The lawsuit was filed in 1985 on behalf of the National Organization for

Women (NOW) and two named clinics, as representatives of all clinics in the United States and all women who might seek to use their services. The purpose of the lawsuit was to stop anti-abortion activists from denying women access to reproductive health services by establishing a permanent, nationwide injunction and charging them triple damages for orchestrating anti-abortion terrorism.

The defendants in the case, including Joe Scheidler of the Pro-Life Action League, were all among the organizers of the Pro-Life Action Network (PLAN), which is a loose national organization of groups that engage in anti-abortion tactics such as protest missions.<sup>3</sup> Schiedler and other anti-abortion protestors have physically attacked patients and clinic personnel, preventing them from entering the clinic and causing injury to their persons. The protestors have invaded clinics, chained their bodies to operating tables

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<sup>1</sup> *National Org. for Women, Inc., v. Scheidler*, 267 F.3d 687, 2001 U.S. App. LEXIS 21295 (2001), *rehearing denied*, 2001 U.S. App. LEXIS 23758 (2001).

<sup>2</sup> *Roe v. Wade* 410 U.S. 113, 35 L.Ed.2d 147, 93 S.Ct. 705 (1973), *rehearing denied*, 410 U.S. 959, 35 L.Ed.2d 694, 93 S.Ct. 1409 (1973).

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<sup>3</sup> *National Org. for Women, Inc., v. Scheidler*, 267 F.3d 687, 693, 2001 U.S. App. LEXIS 21295 (2001), *rehearing denied*, 2001 U.S. App. LEXIS 23758 (2001).

to prevent the tables from being used, and destroyed medical equipment.<sup>4</sup> They have issued letters and statements to clinics threatening to stage missions at those clinics unless they voluntarily stop performing abortions.<sup>5</sup>

One woman testified at trial that when she arrived at one of the clinics for a post-operative procedure for ovarian surgery, totally unrelated to abortion, the anti-abortionists attacked her when she tried to enter the building. As a result of the attack, her incisions reopened and she needed to be rushed to a local hospital.<sup>6</sup>

An administrator at another clinic, testified that anti-abortion extremists chained and locked themselves to vehicles which they parked blocking the entrance to the clinic. No one could enter the building including staff and medical personnel until the police cut the locks and towed the vehicles away.

At another protest mission, protestors pressed four clinic members up against

a glass entranceway, refusing to let them go until the glass wall actually shattered and injured them.<sup>7</sup>

The lawsuit was brought under the Racketeer Influenced and Corrupt Organizations Act (RICO).<sup>8</sup> RICO provides a legal cause of action against individuals who conspire to use an organization to engage in patterns of racketeering, including acts of extortion - the use of force threats, or other illegal means to deprive someone of a property interest and income as is the case with these types of actions against abortion clinics which deprive staff of income.<sup>9</sup> This federal law allows victims of anti-abortion terrorism to sue not only those who actually pull the trigger or light the match but also those who promote and coordinate the violence.<sup>10</sup> RICO also allows plaintiffs to obtain injunctions

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<sup>7</sup> *See id.*

<sup>8</sup> Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (RICO).

<sup>9</sup> Marilyn Steingesser, *Court Applies RICO to Abortion Terrorists*, <http://www.wcla.org/98-summer/su98-03.html>.

<sup>10</sup> National Org. for Women Foundation, Annual Report 1994, <http://www.nowfoundation.org/board94.html>.

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<sup>4</sup> *See id.*

<sup>5</sup> *See id.*

<sup>6</sup> *See id.* at 694.

against further violations of the statute.<sup>11</sup>

In a landmark decision on April 21, 1998, a U.S. District Court jury found that the anti-abortion leaders, Joseph Scheidler, Timothy Murphy, and Andrew Scholberg, had violated federal racketeering laws by conducting a national campaign of intimidation and harassment at abortion clinics. These anti-abortionists were convicted of 21 counts of intimidation under RICO.

On July 16, 1999, U.S. Federal District Judge Davis Coar issued the first-ever nationwide injunction against Scheidler and the Pro-Life League from interfering with the rights of the class clinics to provide abortion services or with the rights of the class women to receive those services.<sup>12</sup> The injunction prohibits such acts as interfering with the right of any clinic to conduct its business, blocking, impeding, obstructing, interfering, or

inhibiting ingress and egress from any clinic, trespassing on clinic premises, destroying or damaging any clinic property, or using violence or the threat of violence against any clinic or any of its employees, volunteers, or any women seeking clinic services.<sup>13</sup> The injunction was carefully drafted to prohibit the illegal conduct that the defendants engaged in on past protest missions while not threatening defendants' First Amendment rights.<sup>14</sup> To protect the right to free speech, a specific provision was set forth in the injunction. The injunction does not prohibit peaceful picketing, speeches, or praying on public property, attempts to speak with patients and staff, handing out literature or any other activity protected by the First Amendment.<sup>15</sup>

Scheidler appealed the decision granting an injunction on First Amendment grounds of freedom of speech. After balancing the interest of First Amendment freedom against

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<sup>11</sup> Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (RICO).

<sup>12</sup> See National Org. for Women, Inc. v. Scheidler, 1999 U.S. Dist. LEXIS 11980, RICO Bus. Disp. Guide P9739 (N.D.Ill. July 16, 1999).

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<sup>13</sup> See National Org. for Women, Inc. v. Scheidler, 267 F.3d 687, 706, 2001 U.S. App. LEXIS 21295 (2001), *rehearing denied*, 2001 U.S. App. LEXIS 23758 (2001).

<sup>14</sup> See *id.* at 707.

<sup>15</sup> See *id.* at 705-706.

an individual's right to medical care, the United States Court of Appeals for the Seventh Circuit found that the acts in question provided ample evidence of illegal conduct which may be legitimately regulated given the governmental interest in protecting an individual's right to seek and provide medical care.<sup>16</sup> This right was found to outweigh the defendants' right to freedom of speech under the First Amendment.<sup>17</sup> Circuit Judge Diane Wood held, "...The First Amendment does not protect violent conduct, nor does it protect threats or language used to carry out illegal conduct."<sup>18</sup> The court further stated, "Even when a defendant's conduct involves expressive elements, the government is free to regulate the non-expressive aspects of the conduct if such regulation is necessary to serve important government interests."<sup>19</sup> "The

protection of the plaintiff's right to seek and provide medical care free from violence, intimidation and harassment is such an important government interest."<sup>20</sup> "Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact...are entitled to no constitutional protection."<sup>21</sup> Thus, the U.S. Court of Appeals for Seventh Circuit upheld the injunction as constitutional.

"The Seventh Circuit Court of Appeals ruled in favor of reproductive freedom," said the NOW President Kim Gandy,<sup>22</sup> by upholding the "nationwide injunction that increases women's safe access

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U.S. 367, 377, 20 L.Ed. 2d 672, 88 S.Ct. 1673 (1968).

<sup>20</sup> See National Org. for Women, Inc. v. Scheidler, 267 F.3d 687, 702, citing Hill v. Colorado, 530 U.S.703, 715, 147 L.Ed. 2d 597, 120 S.Ct. 2480 (2000).

<sup>21</sup> See National Org. for Women, Inc. v. Scheidler, 267 F.3d 687, 702, citing Roberts v. United States Jaycees, 468 U.S. 609, 628, 82 L.Ed. 2d 462, 104 S.Ct. 3244 (1984).

<sup>22</sup> Rebecca Farmer, *Abortion Rights Protected by Appellate Decision in NOW v. Scheidler*, Oct. 2, 2002, <http://www.now.org/press/04-01/10-03-01.html>.

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<sup>16</sup> See *id.* at 702.

<sup>17</sup> *Id.*

<sup>18</sup> See National Org. for Women, Inc. v. Schiedler, 267 F.3d 687, 702, citing *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 L.Ed. 834, 69 S.Ct. 684 (1949).

<sup>19</sup> See National Org. for Women, Inc. v. Scheidler, 267 F.3d 687, 702, citing *United States v. O'Brien*, 391

to reproductive health services and protects clinics and health care workers."<sup>23</sup> Gandy further stated, "the Seventh Circuit decision made it clear that 'the protection of the Plaintiff's rights to seek medical care free from violence, intimidation and harassment' is an important obligation of the government."<sup>24</sup> The litigation efforts of NOW and other similar organizations are essential to protecting reproductive health options for women<sup>25</sup> by fighting anti-abortion terrorism and clinic violence. This decision is a huge step in the fight against the growing domestic terrorist network that threatens abortion rights.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> National Organization for Women Foundation, Annual Report 1994, <http://www.nowfoundation.org/board94.html>.