# McCullen v. Coakley

573 U.S. __ (2014)

**Country**: United States
**Region:** Americas
**Year:** 2014
**Court:** Supreme Court
**Health Topics**: Health care and health services, Health information, Hospitals, Sexual and reproductive health
**Human Rights:** Freedom from discrimination, Freedom of expression

**Facts**

The Commonwealth of Massachusetts amended its Reproductive Health Care Facilities Act (the â€œActâ€•), makingÂ it a crime to knowingly stand on a â€œpublic way or sidewalkâ€• within 35 feet of an entrance or driveway t any abortion clinic.Â The Act exempted from this prohibition certain individuals, including â€œemployees or agents of such facility acting within the scope of their employment.â€• Another provision of the Act proscribed the knowing obstruction of access to an abortion clinic.

Petitioners were individuals who â€œ[attempted] to engage women approaching Massachusetts abortion clinics in 'sidewalk counseling,' which involves offering information about alternatives to abortion and help pursuing those options. They [claimed] that the 35-foot buffer zones have displaced them from their previous positions outside the clinics, considerably hampering their counseling efforts.â€•

Petitioners sought to enjoin the Actâ€™s enforcement on the ground that it violated the First and Fourteenth Amendments. The District Court denied the challenges, and the First Circuit affirmed.

**Decision and Reasoning**

The Court held that the Act violated the First Amendment.

The Court determined that, although the Act restricted access to public fora and the governmentâ€™s ability to regulate speech in such locations is limited, the government can impose reasonable restrictions on such protected speech provided such restrictions are â€œjustified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the informationâ€• (citing Ward v. Rock against Racism, 491 U.S. 781, 791).

The Court confirmed that because the Act was neither content nor viewpoint based it did not need to be analyzed withÂ theÂ strict-scrutiny standard. However, although the Act was â€œcontent neutral, it [was] not â€˜narrowly tailoredâ€™ because it â€œ[burdened] substantially more speech than is necessary to further the governmentâ€™s legitimate interests.â€• The buffer zones both imposed serious burdens on the petitionerâ€™s spe by depriving them of their primary methods of communicating with patients and â€œ[burdened] substantially more speech then necessary to achieve the Commonwealthâ€™s asserted interests.â€• The Court also found that the Commonwealth did not show that it hadÂ undertaken to address its asserted interests with the less restrictive measures available to it and considering "the vital First Amendment interests at stake, it is not enough for Massachusetts simply to say that other approaches have not worked.â€•

Justice Scalia, joined by Justice Kennedy and Justice Thomas, concurred with the majority, noting his disagreement with the majorityâ€™s finding that the Act was â€œnot specifically directed at speech opposing (or eve concerning) abortion and hence need not meet the strict-scrutiny standard applicable to content-based speech regulations.â€•

Justice Alito also concurred with the majority, noting that he believed the Act was unconstitutional because it permitted employees to enter within the buffer zone and engage in conduct which fell within the scope of their employment (which could include speech in support of the clinic and its work). Thus, Justice Alito considered that the Act unconstitutionallyÂ discriminated on the basis of view-point.

**Decision Excerpts**

â€œIn short, traditional public fora are areas that have historically been open to the public for speech activities. Thus, even though the Act says nothing about speech on its face, there is no doubtâ€”and respondents do not disputeâ€”that it restricts access to traditional public fora and is therefore subject to First Amendment scrutiny. See Brief for Respondents 26 (although â€œ[b]y its terms, the Act regulates only conduct,â€• it â€œincidentally regu the place and time of protected speechâ€•). Â Â Consistent with the traditionally open character of public streets and sidewalks, we have held that the governmentâ€™s ability to restrict speech in such locations is â€œvery limited. Grace, supra, at 177.â€• Page 9.

â€œWe have, however, afforded the government somewhat wider leeway to regulate features of speech unrelated to its content. â€œ[E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions â€˜are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.â€™â€• Ward, 491 U. S., at 791 (quoting Clark v. Community for Creative Non-Violence, 468 U. S. 288, 293 (1984))â€• Pages 9-10.

â€œThe Act applies only at a â€œreproductive health care facility,â€• defined as â€œa place, other than within or up grounds of a hospital, where abortions are offered or performed.â€• Mass. Gen. Laws, ch. 266, Â§120EÂ½(a). Given this definition, petitioners argue, â€œvirtually all speech affected by the Act is speech concerning abortion,â€• thus rendering the Act content based. Brief for Petitioners 23.

We disagree. To begin, the Act does not draw content based distinctions on its face. . . . The Act would be content based if it required â€œenforcement authoritiesâ€• to â€œexamine the content of the message that is conve to determine whetherâ€• a violation has occurred. League of Women Voters of Cal., supra, at 383. But it does not. Whether petitioners violate the Act â€œdependsâ€• not â€œon what they say,â€• Humanitarian Law Project, su 27, but simply on where they say it. Indeed, petitioners can violate the Act merely by standing in a buffer zone, without displaying a sign or uttering a word.â€• Page 11-12.

â€œEven though the Act is content neutral, it still must be â€œnarrowly tailored to serve a significant governmental interest.â€• Ward, 491 U. S., at 796 (internal quotation marks omitted). The tailoring requirement does not simply guard against an impermissible desire to censor. The government may attempt to suppress speech not only because it disagrees with the message being expressed, but also for mere convenience. Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance. But by demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily â€œsacrific[ing] speech for efficiency.â€• Riley v. National Federation of Blind of N. C., Inc., 487 U. S. 781, 795 (1988).â€• Pages 18-19.

â€œFor a content-neutral time, place, or manner regulation to be narrowly tailored, it must not â€œburden substantially more speech than is necessary to further the governmentâ€™s legitimate interests.â€• Ward, 491 U. S. at 799. Such a regulation, unlike a content-based restriction of speech, â€œneed not be the least restrictive or least intrusive means of Â â€œserving the governmentâ€™s interests. Id., at 798. But the government still â€œmay regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.â€• Id., at 799.â€• Page 19.

â€œThe buffer zones burden substantially more speech than necessary to achieve the Commonwealthâ€™s asserte interests. At the outset, we note that the Act is truly exceptional: Respondents and their amici identify no other State with a law that creates fixed buffer zones around abortion clinics.6 That of course does not mean that the law is invalid. It does, however, raise concern that the Commonwealth has too readily forgone options that could serve its interests just as well, without substantially burdening the kind of speech in which petitioners wish to engage.

That is the case here. The Commonwealthâ€™s interests include ensuring public safety outside abortion clinics, preventing harassment and intimidation of patients and clinic staff, and combating deliberate obstruction of clinic entrances. The Act itself contains a separate provision, subsection (e)â€”unchallenged by petitionersâ€”that prohibits much of this conduct.â€• Pages 23-24

â€œThe point is not that Massachusetts must enact all or even any of the proposed measures discussed above. The point is instead that the Commonwealth has available to it a variety of approaches that appear capable of serving its interests, without excluding individuals from areas historically open for speech and debate.â€• Pages 26-27.

â€œPetitioners wish to converse with their fellow citizens about an important subject on the public streets and sidewalksâ€”sites that have hosted discussions about the issues of the day throughout history. Respondents assert undeniably significant interests in maintaining public safety on those same streets and sidewalks, as well as in preserving access to adjacent healthcare facilities. But here the Commonwealth has pursued those interests by the extreme step of closing a substantial portion of a traditional public forum to all speakers. It has done so without seriously addressing the problem through alternatives that leave the forum open for its time-honored purposes. The Commonwealth may not do that consistent with the First Amendment.â€• Page 30.