SUPREME COURT OF THE UNITED STATES

No. 98–1856

LEILA JEANNE HILL, AUDREY HIMMELMANN, AND EVERITT W. SIMPSON, JR., PETITIONERS *v.* COLORADO ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

[June 28, 2000]

JUSTICE STEVENS delivered the opinion of the Court.

At issue is the constitutionality of a 1993 Colorado statute that regulates speech-related conduct within 100 feet of the entrance to any health care facility. The specific section of the statute that is challenged, Colo. Rev. Stat. §18–9–122(3) (1999), makes it unlawful within the regulated areas for any person to "knowingly approach" within eight feet of another person, without that person's consent, "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person . . . ."[1] Although the

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[1] The entire §18–9–122 reads as follows:

"(1) The general assembly recognizes that access to health care facilities for the purpose of obtaining medical counseling and treatment is imperative for the citizens of this state; that the exercise of a person's right to protest or counsel against certain medical procedures must be balanced against another person's right to obtain medical counseling and treatment in an unobstructed manner; and that preventing the willful obstruction of a person's access to medical counseling and treatment at a health care facility is a matter of statewide concern. The general assembly therefore declares that it is appropriate to enact

statute prohibits speakers from approaching unwilling listeners, it does not require a standing speaker to move away from anyone passing by. Nor does it place any restriction on the content of any message that anyone may wish to communicate to anyone else, either inside or outside the regulated areas. It does, however, make it more difficult to give unwanted advice, particularly in the form of a handbill or leaflet, to persons entering or leaving medical facilities.

The question is whether the First Amendment rights of the speaker are abridged by the protection the statute provides for the unwilling listener.

I

Five months after the statute was enacted, petitioners filed a complaint in the District Court for Jefferson County, Colorado, praying for a declaration that §18–9–

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legislation that prohibits a person from knowingly obstructing another person's entry to or exit from a health care facility.

"(2) A person commits a class 3 misdemeanor if such person knowingly obstructs, detains, hinders, impedes, or blocks another person's entry to or exit from a health care facility.

"(3) No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility. Any person who violates this subsection (3) commits a class 3 misdemeanor.

"(4) For the purposes of this section, 'health care facility' means any entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment in this state.

"(5) Nothing in this section shall be construed to prohibit a statutory or home rule city or county or city and county from adopting a law for the control of access to health care facilities that is no less restrictive than the provisions of this section.

"(6) In addition to, and not in lieu of, the penalties set forth in this section, a person who violates the provisions of this section shall be subject to civil liability, as provided in section 13–21–106.7, C. R. S."

122(3) was facially invalid and seeking an injunction against its enforcement. They stated that prior to the enactment of the statute, they had engaged in "sidewalk counseling" on the public ways and sidewalks within 100 feet of the entrances to facilities where human abortion is practiced or where medical personnel refer women to other facilities for abortions. "Sidewalk counseling" consists of efforts "to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech, including conversation and/or display of signs and/or distribution of literature."[2] They further alleged that such activities frequently entail being within eight feet of other persons and that their fear of prosecution under the new statute caused them "to be chilled in the exercise of fundamental constitutional rights."[3]

Count 5 of the complaint claimed violations of the right to free speech protected by the First Amendment to the Federal Constitution, and Count 6 alleged that the impairment of the right to distribute written materials was a violation of the right to a free press.[4] The complaint also argued that the statutory consent requirement was invalid as a prior restraint tantamount to a licensing requirement, that the statute was vague and overbroad, and that it was a content-based restriction that was not justified by a compelling state interest. Finally, petitioners contended that §18–9–122(3) was content based for two reasons: The content of the speech must be examined to determine whether it "constitutes oral protest, counseling and educa-

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[2] App. 17.

[3] *Id.*, at 18–19.

[4] Counts 1 through 4 alleged violations of the Colorado Constitution, Count 7 alleged a violation of the right to peaceable assembly, and Counts 8 and 9 alleged violations of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

tion"; and that it is "viewpoint-based" because the statute "makes it likely that prosecution will occur based on displeasure with the position taken by the speaker."[5]

In their answers to the complaint, respondents admitted virtually all of the factual allegations. They filed a motion for summary judgment supported by affidavits, which included a transcript of the hearings that preceded the enactment of the statute. It is apparent from the testimony of both supporters and opponents of the statute that demonstrations in front of abortion clinics impeded access to those clinics and were often confrontational.[6] Indeed, it was a common practice to provide escorts for persons entering and leaving the clinics both to ensure their access and to provide protection from aggressive counselors who sometimes used strong and abusive language in face-to-face encounters.[7] There was also evidence that emotional confrontations may adversely affect a patient's medical care.[8] There was no evidence, however, that the "sidewalk

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[5] *Id.*, at 25–26.

[6] The legislature also heard testimony that other types of protests at medical facilities, such as those involving animal rights, create difficulties for persons attempting to enter the facility. App. to Pet. for Cert. 40a.

[7] A nurse practitioner testified that some antiabortion protesters "'yell, thrust signs in faces, and generally try to upset the patient as much as possible, which makes it much more difficult for us to provide care in a scary situation anyway.'" *Hill* v. *Thomas*, 973 P. 2d 1246, 1250 (Colo. 1999). A volunteer who escorts patients into and out of clinics testified that the protestors "'are flashing their bloody fetus signs. They are yelling, "you are killing your baby." [T]hey are talking about fetuses and babies being dismembered, arms and legs torn off . . . a mother and her daughter . . . were immediately surrounded and yelled at and screamed at . . . .'" *Id.*, at 1250–1251.

[8] A witness representing the Colorado Coalition of Persons with Disabilities, who had had 35 separate surgeries in the preceding eight years testified: "Each and every one is tough. And the night before and the morning of any medical procedure that's invasive is the toughest part of all. You don't need additional stressors placed on you while

counseling" conducted by petitioners in this case was ever abusive or confrontational.

The District Judge granted respondents' motion and dismissed the complaint. Because the statute had not actually been enforced against petitioners, he found that they only raised a facial challenge.[9] He agreed with petitioners that their sidewalk counseling was conducted in a "quintessential" public forum, but held that the statute permissibly imposed content-neutral "time, place, and manner restrictions" that were narrowly tailored to serve a significant government interest, and left open ample alternative channels of communication.[10] Relying on *Ward* v. *Rock Against Racism*, 491 U. S. 781, 785 (1989), he noted that "'the principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.'" He found that the text of the statute "applies to all viewpoints, rather than certain viewpoints," and that the legislative history made it clear that the State had not favored one viewpoint over another.[11] He concluded that the "free zone" created by the statute was narrowly tailored under the test announced in *Ward*, and that it left open ample alternative means of communication because signs and leaflets may be seen, and speech may be heard, at a distance of eight feet. Noting that the petitioners had stated in their affidavits that they intended to "continue with their protected First Amendment activities," he rejected their overbreadth challenge because he

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you're trying to do it. . . . We all know about our own personal faith. You don't need somebody standing in your face screaming at you when you are going in for what may be one of the most traumatic experiences of your life anyway. Why make it more traumatic?" App. 108.

[9] App. to Pet. for Cert. 31a.

[10] *Id.*, at 32a.

[11] *Id.*, at 32a–33a.

believed "the statute will do little to deter protected speech."[12] Finally, he concluded that the statute was not vague and that the prior restraint doctrine was inapplicable because the "statute requires no license or permit scheme prior to speaking."[13]

The Colorado Court of Appeals affirmed for reasons similar to those given by the District Judge. It noted that even though only seven percent of the patients receiving services at one of the clinics were there to obtain abortion services, all 60,000 of that clinic's patients "were subjected to the same treatment by protesters."[14] It also reviewed our then-recent decision in *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753 (1994), and concluded that *Madsen*'s reasoning supported the conclusion that the statute was content neutral.[15]

In 1996, the Supreme Court of Colorado denied review,[16] and petitioners sought a writ of certiorari from our Court. While their petition was pending, we decided *Schenck* v. *Pro-Choice Network of Western N. Y.*, 519 U. S. 357 (1997). Because we held in that case that an injunctive provision creating a speech-free "floating buffer zone" with a 15-foot radius violates the First Amendment, we granted certiorari, vacated the judgment of the Colorado Court of Appeals, and remanded the case to that court for further consideration in light of *Schenck*. 519 U. S. 1145 (1997).

On remand the Court of Appeals reinstated its judgment upholding the statute. It noted that in *Schenck* we had "expressly declined to hold that a valid governmental interest in ensuring ingress and egress to a medical clinic may never be sufficient to justify a zone of separation

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[12] *Id.*, at 35a.
[13] *Id.*, at 36a.
[14] *Hill* v. *Lakewood*, 911 P. 2d 670, 672 (1995).
[15] *Id.*, at 673–674.
[16] App. to Pet. for Cert. 46a.

between individuals entering and leaving the premises and protesters" and that our opinion in *Ward* provided the standard for assessing the validity of a content-neutral, generally applicable statute. Under that standard, even though a 15-foot floating buffer might preclude protesters from expressing their views from a normal conversational distance, a lesser distance of eight feet was sufficient to protect such speech on a public sidewalk.[17]

The Colorado Supreme Court granted certiorari and affirmed the judgment of the Court of Appeals. In a thorough opinion, the court began by commenting on certain matters that were not in dispute. It reviewed the history of the statute in detail and concluded that it was intended to protect both the "citizen's 'right to protest' or counsel against certain medical procedures" and also to ensure "that government protects 'a person's right to obtain medical counseling and treatment.'"[18] It noted that both the trial court and the Court of Appeals had concluded that the statute was content neutral, that petitioners no longer contended otherwise, and that they agreed that the question for decision was whether the statute was a valid time, place, and manner restriction under the test announced in *Ward*.[19]

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[17] *Hill* v. *Lakewood*, 949 P. 2d 107, 109 (1997).

[18] 973 P. 2d, at 1249 (quoting §18–9–122(1)).

[19] "[P]etitioners concede that the test for a time, place, and manner restriction is the appropriate measure of this statute's constitutionality. *See* Tape Recording of Oral Argument, Oct. 19, 1998, statement of James M. Henderson, Esq. Petitioners argue that pursuant to the test announced in *Ward*, the 'floating buffer zone' created by section 18–9–122(3) is not narrowly tailored to serve a significant government interest and that section 18–9–122(3) does not provide for ample alternative channels of communication. We disagree." *Id.*, at 1251.

"We note that both the trial court and the court of appeals found that section 18–9–122(3) is content-neutral, and that petitioners do not contend otherwise in this appeal." *Id.*, at 1256.

The court identified two important distinctions between this case and *Schenck*. First, *Schenck* involved a judicial decree and therefore, as explained in *Madsen*, posed "greater risks of censorship and discriminatory application than do general ordinances."[20] Second, unlike the floating buffer zone in *Schenck*, which would require a protester either to stop talking or to get off the sidewalk whenever a patient came within 15 feet, the "knowingly approaches" requirement in the Colorado statute allows a protester to stand still while a person moving towards or away from a health care facility walks past her.[21] Applying the test in *Ward*, the court concluded that the statute was narrowly drawn to further a significant government interest. It rejected petitioners' contention that it was not narrow enough because it applied to all health care facilities in the State. In the court's view, the comprehensive coverage of the statute was a factor that supported its content neutrality. Moreover, the fact that the statute was enacted, in part, because the General Assembly "was concerned with the safety of individuals seeking wide-ranging health care services, not merely abortion counseling and procedures," added to the substantiality of the government interest that it served.[22] Finally, it concluded that ample alternative channels remain open because petitioners, and

> "indeed, everyone, are still able to protest, counsel, shout, implore, dissuade, persuade, educate, inform, and distribute literature regarding abortion. They just cannot knowingly approach within eight feet of an individual who is within 100 feet of a health care

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[20] *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753, 764 (1994).

[21] 973 P. 2d, at 1257–1258 ("What renders this statute less restrictive than . . . the injunction in *Schenck* . . . is that under section 18–9–122(3), there is no duty to withdraw placed upon petitioners even within the eight-foot limited floating buffer zone").

[22] *Id.*, at 1258.

> facility entrance without that individual's consent. As articulated so well . . . in *Ward*, ['the fact that §18–9–122(3)] may reduce to some degree the potential audience for [petitioners'] speech is of no consequence, for there has been no showing that the remaining avenues of communication are inadequate.'"[23]

Because of the importance of the case, we granted certiorari. 527 U. S. 1068 (1999). We now affirm.

II

Before confronting the question whether the Colorado statute reflects an acceptable balance between the constitutionally protected rights of law-abiding speakers and the interests of unwilling listeners, it is appropriate to examine the competing interests at stake. A brief review of both sides of the dispute reveals that each has legitimate and important concerns.

The First Amendment interests of petitioners are clear and undisputed. As a preface to their legal challenge, petitioners emphasize three propositions. First, they accurately explain that the areas protected by the statute encompass all the public ways within 100 feet of every entrance to every health care facility everywhere in the State of Colorado. There is no disagreement on this point, even though the legislative history makes it clear that its enactment was primarily motivated by activities in the vicinity of abortion clinics. Second, they correctly state that their leafletting, sign displays, and oral communications are protected by the First Amendment. The fact that the messages conveyed by those communications may be offensive to their recipients does not deprive them of constitutional protection. Third, the public sidewalks, streets,

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[23] *Ibid.* (quoting *Ward* v. *Rock Against Racism*, 491 U. S. 781, 802 (1989)).

and ways affected by the statute are "quintessential" public forums for free speech. Finally, although there is debate about the magnitude of the statutory impediment to their ability to communicate effectively with persons in the regulated zones, that ability, particularly the ability to distribute leaflets, is unquestionably lessened by this statute.

On the other hand, petitioners do not challenge the legitimacy of the state interests that the statute is intended to serve. It is a traditional exercise of the States' "police powers to protect the health and safety of their citizens." *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 475 (1996). That interest may justify a special focus on unimpeded access to health care facilities and the avoidance of potential trauma to patients associated with confrontational protests. See *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753 (1994); *NLRB* v. *Baptist Hospital, Inc.*, 442 U. S. 773 (1979). Moreover, as with every exercise of a State's police powers, rules that provide specific guidance to enforcement authorities serve the interest in even-handed application of the law. Whether or not those interests justify the particular regulation at issue, they are unquestionably legitimate.

It is also important when conducting this interest analysis to recognize the significant difference between state restrictions on a speaker's right to address a willing audience and those that protect listeners from unwanted communication. This statute deals only with the latter.

The right to free speech, of course, includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker's message may be offensive to his audience. But the protection afforded to offensive messages does not always embrace offensive speech that is so intrusive that the unwilling audience cannot avoid it. *Frisby* v. *Schultz*, 487 U. S. 474, 487 (1988). Indeed, "[i]t may not be the content of the

speech, as much as the deliberate 'verbal or visual assault,' that justifies proscription." *Erznoznik* v. *Jacksonville,* 422 U. S. 205, 210–211, n. 6 (1975) (citation and brackets omitted). Even in a public forum, one of the reasons we tolerate a protester's right to wear a jacket expressing his opposition to government policy in vulgar language is because offended viewers can "effectively avoid further bombardment of their sensibilities simply by averting their eyes." *Cohen* v. *California,* 403 U. S. 15, 21 (1971).

The recognizable privacy interest in avoiding unwanted communication varies widely in different settings. It is far less important when "strolling through Central Park" than when "in the confines of one's own home," or when persons are "powerless to avoid" it. *Id.,* at 21–22. But even the interest in preserving tranquility in "the Sheep Meadow" portion of Central Park may at times justify official restraints on offensive musical expression. *Ward,* 491 U. S., at 784, 792. More specific to the facts of this case, we have recognized that "[t]he First Amendment does not demand that patients at a medical facility undertake Herculean efforts to escape the cacophony of political protests." *Madsen,* 512 U. S., at 772–773.

The unwilling listener's interest in avoiding unwanted communication has been repeatedly identified in our cases. It is an aspect of the broader "right to be let alone" that one of our wisest Justices characterized as "the most comprehensive of rights and the right most valued by civilized men." *Olmstead* v. *United States,* 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).[24] The right to avoid unwelcome speech has special force in the privacy of the home, *Rowan* v. *Post Office Dept.,* 397 U. S. 728, 738

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[24] This common-law "right" is more accurately characterized as an "interest" that States can choose to protect in certain situations. See *Katz* v. *United States,* 389 U. S. 347, 350–351 (1967).

(1970), and its immediate surroundings, *Frisby* v. *Schultz,* 487 U. S., at 485, but can also be protected in confrontational settings. Thus, this comment on the right to free passage in going to and from work applies equally– or perhaps with greater force– to access to a medical facility:

> "How far may men go in persuasion and communication, and still not violate the right of those whom they would influence? In going to and from work, men have a right to as free a passage without obstruction as the streets afford, consistent with the right of others to enjoy the same privilege. We are a social people, and the accosting by one of another in an inoffensive way and an offer by one to communicate and discuss information with a view to influencing the other's action, are not regarded as aggression or a violation of that other's rights. If, however, the offer is declined, as it may rightfully be, then persistence, importunity, following and dogging, become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation. From all of this the person sought to be influenced has a right to be free, and his employer has a right to have him free." *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 204 (1921).

We have since recognized that the "right to persuade" discussed in that case is protected by the First Amendment, *Thornhill* v. *Alabama,* 310 U. S. 88 (1940), as well as by federal statutes. Yet we have continued to maintain that "no one has a right to press even 'good' ideas on an unwilling recipient." *Rowan,* 397 U. S., at 738. None of our decisions has minimized the enduring importance of "the right to be free" from persistent "importunity, following and dogging" after an offer to communicate has been declined. While the freedom to communicate is substantial, "the right of every person 'to be let alone'

must be placed in the scales with the right of others to communicate." *Id.*, at 736. It is that right, as well as the right of "passage without obstruction," that the Colorado statute legitimately seeks to protect. The restrictions imposed by the Colorado statute only apply to communications that interfere with these rights rather than those that involve willing listeners.

The dissenters argue that we depart from precedent by recognizing a "right to avoid unpopular speech in a public forum," *post*, at 7 (opinion of KENNEDY, J.); see also *post*, at 10–14 (opinion of SCALIA, J.). We, of course, are not addressing whether there is such a "right." Rather, we are merely noting that our cases have repeatedly recognized the interests of unwilling listeners in situations where "the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure. See *Lehman* v. [*Shaker Heights*, 418 U. S. 298 (1974)]." *Erznoznik*, 422 U. S., at 209. We explained in *Erznoznik* that "[t]his Court has considered analogous issues– pitting the First Amendment rights of speakers against the privacy rights of those who may be unwilling viewers or auditors– in a variety of contexts. Such cases demand delicate balancing." *Id.*, at 208 (citations omitted). The dissenters, however, appear to consider recognizing any of the interests of unwilling listeners– let alone balancing those interests against the rights of speakers– to be unconstitutional. Our cases do not support this view.[25]

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[25] Furthermore, whether there is a "right" to avoid unwelcome expression is not before us in this case. The purpose of the Colorado statute is not to protect a potential listener from hearing a particular message. It is to protect those who seek medical treatment from the potential physical and emotional harm suffered when an unwelcome individual delivers a message (whatever its content) by physically approaching an individual at close range, *i.e.*, within eight feet. In offering protection from that harm, while maintaining free access to heath clinics, the State pursues interests constitutionally distinct from

III

All four of the state court opinions upholding the validity of this statute concluded that it is a content-neutral time, place, and manner regulation. Moreover, they all found support for their analysis in *Ward* v. *Rock Against Racism*, 491 U. S. 781 (1989).[26] It is therefore appropriate to comment on the "content neutrality" of the statute. As we explained in *Ward:*

> "The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id.*, at 791.

The Colorado statute passes that test for three independent reasons. First, it is not a "regulation of speech." Rather, it is a regulation of the places where some speech may occur. Second, it was not adopted "because of disagreement with the message it conveys." This conclusion is supported not just by the Colorado courts' interpretation of legislative history, but more importantly by the State Supreme Court's unequivocal holding that the statute's "restrictions apply equally to all demonstrators, regardless of viewpoint, and the statutory language makes no reference to the content of the speech."[27] Third, the State's interests in protecting access and privacy, and providing

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the freedom from unpopular speech to which JUSTICE KENNEDY refers.

[26] See App. to Pet. for Cert. 32a (Colo. Dist. Ct.); 911 P. 2d, at 673–674 (Colo. Ct. App.); 949 P. 2d, at 109 (Colo. Ct. App.), 973 P. 2d, at 1256 (Colo. Sup. Ct.).

[27] *Ibid.* This observation in *Madsen* is equally applicable here: "There is no suggestion in this record that Florida law would not equally restrain similar conduct directed at a target having nothing to do with abortion; none of the restrictions imposed by the court were directed at the contents of petitioner's message." 512 U. S., at 762–763.

the police with clear guidelines, are unrelated to the content of the demonstrators' speech. As we have repeatedly explained, government regulation of expressive activity is "content neutral" if it is justified without reference to the content of regulated speech. See *ibid.* and cases cited.

Petitioners nevertheless argue that the statute is not content neutral insofar as it applies to some oral communication. The statute applies to all persons who "knowingly approach" within eight feet of another for the purpose of leafletting or displaying signs; for such persons, the content of their oral statements is irrelevant. With respect to persons who are neither leafletters nor sign carriers, however, the statute does not apply unless their approach is "for the purpose of . . . engaging in oral protest, education, or counseling." Petitioners contend that an individual near a health care facility who knowingly approaches a pedestrian to say "good morning" or to randomly recite lines from a novel would not be subject to the statute's restrictions.[28] Because the content of the oral statements made by an approaching speaker must sometimes be examined to determine whether the knowing approach is covered by the statute, petitioners argue that the law is "content-based" under our reasoning in *Carey* v. *Brown*, 447 U. S. 455, 462 (1980).

Although this theory was identified in the complaint, it is not mentioned in any of the four Colorado opinions, all of which concluded that the statute was content neutral. For that reason, it is likely that the argument has been waived. Additionally, the Colorado Attorney General argues that we should assume that the state courts tacitly construed the terms "protest, education, or counseling" to encompass "all communication."[29] Instead of relying on

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[28] See Brief for Petitioners 32, n. 23.

[29] "The Colorado Supreme Court's ruling confirms that the statutory

those arguments, however, we shall explain why petitioners' contention is without merit and why their reliance on *Carey* v. *Brown* is misplaced.

It is common in the law to examine the content of a communication to determine the speaker's purpose. Whether a particular statement constitutes a threat, blackmail, an agreement to fix prices, a copyright violation, a public offering of securities, or an offer to sell goods often depends on the precise content of the statement. We have never held, or suggested, that it is improper to look at the content of an oral or written statement in order to determine whether a rule of law applies to a course of conduct. With respect to the conduct that is the focus of the Colorado statute, it is unlikely that there would often be any need to know exactly what words were spoken in order to determine whether "sidewalk counselors" are engaging in "oral protest, education, or counseling" rather than pure social or random conversation.

Theoretically, of course, cases may arise in which it is necessary to review the content of the statements made by a person approaching within eight feet of an unwilling listener to determine whether the approach is covered by the statute. But that review need be no more extensive than a determination of whether a general prohibition of "picketing" or "demonstrating" applies to innocuous speech. The regulation of such expressive activities, by definition, does not cover social, random, or other everyday communications. See Webster's Third New International Dictionary 600, 1710 (1993) (defining "demonstrate" as "to make a public display of sentiment for or against a person or cause" and "picket" as an effort "to persuade or other-

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language should be interpreted to refer to approaches for all communication, as Colorado has argued since the beginning of this case." Brief for Respondents 21.

wise influence"). Nevertheless, we have never suggested that the kind of cursory examination that might be required to exclude casual conversation from the coverage of a regulation of picketing would be problematic.[30]

In *Carey* v. *Brown* we examined a general prohibition of peaceful picketing that contained an exemption for picketing of a place of employment involved in a labor dispute. We concluded that this statute violated the Equal Protection Clause of the Fourteenth Amendment, because it discriminated between lawful and unlawful conduct based on the content of the picketers' messages. That discrimination was impermissible because it accorded preferential treatment to expression concerning one particular subject matter– labor disputes– while prohibiting discussion of all other issues. Although our opinion stressed that "it is the content of the speech that determines whether it is within or without the statute's blunt prohibition," we appended a footnote to that sentence explaining that it was the fact that the statute placed a prohibition on discussion of particular topics, while others were allowed, that was constitutionally repugnant.[31] Regulation of the

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[30] In *United States* v. *Grace*, 461 U. S. 171 (1983), after examining a federal statute that was "interpreted and applied" as "prohibit[ing] picketing and leafletting, but not other expressive conduct" within the Supreme Court building and grounds, we concluded that "it is clear that the prohibition is facially content-neutral." *Id.*, at 181, n. 10. Similarly, we have recognized that statutes can equally restrict all "picketing." See, *e.g., Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92, 98 (1972) ("This is not to say that all picketing must always be allowed. We have continually recognized that reasonable 'time, place, and manner' regulations of picketing may be necessary to further significant governmental interests"), and cases cited. See also *Frisby* v. *Schultz*, 487 U. S. 474 (1988) (upholding a general ban on residential picketing). And our decisions in *Schenck* and *Madsen* both upheld injunctions that also prohibited "demonstrating." *Schenck* v. *Pro-Choice Network of Western N. Y.*, 519 U. S. 357, 366, n. 3 (1997); *Madsen*, 512 U. S., at 759.

[31] "It is, of course, no answer to assert that the Illinois statute does

subject matter of messages, though not as obnoxious as viewpoint-based regulation, is also an objectionable form of content-based regulation. *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 538 (1980).

The Colorado statute's regulation of the location of protests, education, and counseling is easily distinguishable from *Carey*. It places no restrictions on– and clearly does not prohibit– either a particular viewpoint or any subject matter that may be discussed by a speaker. Rather, it simply establishes a minor place restriction on an extremely broad category of communications with unwilling listeners. Instead of drawing distinctions based on the subject that the approaching speaker may wish to address, the statute applies equally to used car salesmen, animal rights activists, fundraisers, environmentalists, and missionaries. Each can attempt to educate unwilling listeners on any subject, but without consent may not approach within eight feet to do so.

The dissenters, nonetheless, contend that the statute is not "content neutral." As JUSTICE SCALIA points out, the vice of content-based legislation in this context is that "it lends itself" to being "used for invidious thought-control purposes." *Post*, at 3. But a statute that restricts certain categories of speech only lends itself to invidious use if there is a significant number of communications, raising the same problem that the statute was enacted to solve, that fall outside the statute's scope, while others fall in-

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not discriminate on the basis of the speaker's viewpoint, but only on the basis of the subject matter of his message. The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.'" *Carey*, 447 U. S., at 462, n. 6 (quoting *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537 (1980)).

side. *E.g.*, *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92 (1972). Here, the statute's restriction seeks to protect those who enter a health care facility from the harassment, the nuisance, the persistent importuning, the following, the dogging, and the implied threat of physical touching that can accompany an unwelcome approach within eight feet of a patient by a person wishing to argue vociferously face-to-face and perhaps thrust an undesired handbill upon her. The statutory phrases, "oral protest, education, or counseling," distinguish speech activities likely to have those consequences from speech activities (such as JUSTICE SCALIA's "happy speech," *post*, at 3) that are most unlikely to have those consequences. The statute does not distinguish among speech instances that are similarly likely to raise the legitimate concerns to which it responds. Hence, the statute cannot be struck down for failure to maintain "content neutrality," or for "underbreadth."

Also flawed is JUSTICE KENNEDY's theory that a statute restricting speech becomes unconstitutionally content based because of its application "to the specific locations where that discourse occurs," *post*, at 3. A statute prohibiting solicitation in airports that was motivated by the aggressive approaches of Hari-Krishnas does not become content based solely because its application is confined to airports– "the specific location where that discourse occurs." A statute making it a misdemeanor to sit at a lunch counter for an hour without ordering any food would also not be "content based" even if it were enacted by a racist legislature that hated civil rights protesters (although it might raise separate questions about the State's legitimate interest at issue). See *post*, at 3–4.

Similarly, the contention that a statute is "viewpoint based" simply because its enactment was motivated by the conduct of the partisans on one side of a debate is without support. *Post*, at 4–5 (KENNEDY, J., dissenting). The anti-picketing ordinance upheld in *Frisby* v. *Schultz*, 487 U. S.

474 (1988), a decision in which both of today's dissenters joined, was obviously enacted in response to the activities of antiabortion protesters who wanted to protest at the home of a particular doctor to persuade him and others that they viewed his practice of performing abortions to be murder. We nonetheless summarily concluded that the statute was content neutral. *Id.*, at 482.

JUSTICE KENNEDY further suggests that a speaker who approaches a patient and "chants in praise of the Supreme Court and its abortion decisions, or hands out a simple leaflet saying, 'We are for abortion rights,'" would not be subject to the statute. *Post*, at 5. But what reason is there to believe the statute would not apply to that individual? She would be engaged in "oral protest" and "education," just as the abortion opponent who expresses her view that the Supreme Court decisions were incorrect would be "protest[ing]" the decisions and "educat[ing]" the patient on the issue. The close approach of the latter, more hostile, demonstrator may be more likely to risk being perceived as a form of physical harassment; but the relevant First Amendment point is that the statute would prevent both speakers, unless welcome, from entering the 8-foot zone. The statute is not limited to those who oppose abortion. It applies to the demonstrator in JUSTICE KENNEDY's example. It applies to all "protest," to all "counseling," and to all demonstrators whether or not the demonstration concerns abortion, and whether they oppose or support the woman who has made an abortion decision. That is the level of neutrality that the Constitution demands.

The Colorado courts correctly concluded that §18–9–122(3) is content neutral.

IV

We also agree with the state courts' conclusion that §18–9–122(3) is a valid time, place, and manner regulation under the test applied in *Ward* because it is "narrowly

tailored." We already have noted that the statute serves governmental interests that are significant and legitimate and that the restrictions are content neutral. We are likewise persuaded that the statute is "narrowly tailored" to serve those interests and that it leaves open ample alternative channels for communication. As we have emphasized on more than one occasion, when a content-neutral regulation does not entirely foreclose any means of communication, it may satisfy the tailoring requirement even though it is not the least restrictive or least intrusive means of serving the statutory goal.[32]

The three types of communication regulated by §18–9–122(3) are the display of signs, leafletting, and oral speech. The 8-foot separation between the speaker and the audience should not have any adverse impact on the readers' ability to read signs displayed by demonstrators. In fact, the separation might actually aid the pedestrians' ability to see the signs by preventing others from surrounding them and impeding their view. Furthermore, the statute places no limitations on the number, size, text, or images of the placards. And, as with all of the restrictions, the 8-foot zone does not affect demonstrators with signs who remain in place.

With respect to oral statements, the distance certainly can make it more difficult for a speaker to be heard, particularly if the level of background noise is high and other speakers are competing for the pedestrian's attention. Notably, the statute places no limitation on the number of speakers or the noise level, including the use of amplification equipment, although we have upheld such restrictions

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[32] "Lest any confusion on the point remain, we reaffirm today that a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of doing so." *Ward* v. *Rock Against Racism*, 491 U. S., at 798.

in past cases. See, *e.g.*, *Madsen*, 512 U. S., at 772–773. More significantly, this statute does not suffer from the failings that compelled us to reject the "floating buffer zone" in *Schenck*, 519 U. S., at 377. Unlike the 15-foot zone in *Schenck*, this 8-foot zone allows the speaker to communicate at a "normal conversational distance." *Ibid.* Additionally, the statute allows the speaker to remain in one place, and other individuals can pass within eight feet of the protester without causing the protester to violate the statute. Finally, here there is a "knowing" requirement that protects speakers "who thought they were keeping pace with the targeted individual" at the proscribed distance from inadvertently violating the statute. *Id.*, at 378, n. 9.

It is also not clear that the statute's restrictions will necessarily impede, rather than assist, the speakers' efforts to communicate their messages. The statute might encourage the most aggressive and vociferous protesters to moderate their confrontational and harassing conduct, and thereby make it easier for thoughtful and law-abiding sidewalk counselors like petitioners to make themselves heard. But whether or not the 8-foot interval is the best possible accommodation of the competing interests at stake, we must accord a measure of deference to the judgment of the Colorado Legislature. See *Madsen*, 512 U. S., at 769–770. Once again, it is worth reiterating that only attempts to address unwilling listeners are affected.

The burden on the ability to distribute handbills is more serious because it seems possible that an 8-foot interval could hinder the ability of a leafletter to deliver handbills to some unwilling recipients. The statute does not, however, prevent a leafletter from simply standing near the path of oncoming pedestrians and proffering his or her

material, which the pedestrians can easily accept.[33] And, as in all leafletting situations, pedestrians continue to be free to decline the tender. In *Heffron* v. *International Soc. for Krishna Consciousness, Inc.*, 452 U. S. 640 (1981), we upheld a state fair regulation that required a religious organization desiring to distribute literature to conduct that activity only at an assigned location– in that case booths. As in this case, the regulation primarily burdened the distributors' ability to communicate with unwilling readers. We concluded our opinion by emphasizing that the First Amendment protects the right of every citizen to "'reach the minds of willing listeners and to do so there must be opportunity to win their attention.' *Kovacs* v. *Cooper*, 336 U. S. 77, 87 (1949)." *Id.*, at 655. The Colorado statute adequately protects those rights.

Finally, in determining whether a statute is narrowly tailored, we have noted that "[w]e must, of course, take account of the place to which the regulations apply in determining whether these restrictions burden more speech than necessary." *Madsen*, 512 U. S., at 772. States and municipalities plainly have a substantial interest in controlling the activity around certain public and private places. For example, we have recognized the special governmental interests surrounding schools,[34] courthouses,[35] polling places,[36] and private homes.[37] Additionally, we

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[33] JUSTICE KENNEDY states that the statute "forecloses peaceful leafletting," *post*, at 15. This is not correct. All of the cases he cites in support of his argument involve a total ban on a medium of expression to both willing and unwilling recipients, see *post*, at 16–22. Nothing in this statute, however, prevents persons from proffering their literature, they simply cannot approach within eight feet of an unwilling recipient.

[34] See *Grayned* v. *City of Rockford*, 408 U. S. 104, 119 (1972).

[35] See *Cox* v. *Louisiana*, 379 U. S. 559, 562 (1965).

[36] See *Burson* v. *Freeman*, 504 U. S. 191, 206–208 (1992) (plurality opinion); *Id.*, at 214–216 (SCALIA, J., concurring in judgment).

[37] See *Frisby* v. *Schultz*, 487 U. S., at 484–485.

previously have noted the unique concerns that surround health care facilities:

> "'Hospitals, after all, are not factories or mines or assembly plants. They are hospitals, where human ailments are treated, where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and [her] family . . . need a restful, uncluttered, relaxing, and helpful atmosphere.'" *Ibid.* (quoting *NLRB* v. *Baptist Hospital, Inc.*, 442 U. S., at 783–784, n. 12).

Persons who are attempting to enter health care facilities– for any purpose– are often in particularly vulnerable physical and emotional conditions. The State of Colorado has responded to its substantial and legitimate interest in protecting these persons from unwanted encounters, confrontations, and even assaults by enacting an exceedingly modest restriction on the speakers' ability to approach.

JUSTICE KENNEDY, however, argues that the statute leaves petitioners without adequate means of communication. *Post,* at 14–15. This is a considerable overstatement. The statute seeks to protect those who wish to enter health care facilities, many of whom may be under special physical or emotional stress, from close physical approaches by demonstrators. In doing so, the statute takes a prophylactic approach; it forbids all unwelcome demonstrators to come closer than eight feet. We recognize that by doing so, it will sometimes inhibit a demonstrator whose approach in fact would have proved harmless. But the statute's prophylactic aspect is justified by the great difficulty of protecting, say, a pregnant woman from physical harassment with legal rules that focus exclusively on the individual impact of each instance of behavior, demanding in each case an accurate characterization (as harassing or not harassing) of each individual

movement within the 8-foot boundary. Such individualized characterization of each individual movement is often difficult to make accurately. A bright-line prophylactic rule may be the best way to provide protection, and, at the same time, by offering clear guidance and avoiding subjectivity, to protect speech itself.

As we explained above, the 8-foot restriction on an unwanted physical approach leaves ample room to communicate a message through speech. Signs, pictures, and voice itself can cross an 8-foot gap with ease. If the clinics in Colorado resemble those in *Schenck*, demonstrators with leaflets might easily stand on the sidewalk at entrances (without blocking the entrance) and, without physically approaching those who are entering the clinic, peacefully hand them leaflets as they pass by.

Finally, the 8-foot restriction occurs only within 100 feet of a health care facility– the place where the restriction is most needed. The restriction interferes far less with a speaker's ability to communicate than did the total ban on picketing on the sidewalk outside a residence (upheld in *Frisby* v. *Schultz*, 487 U. S. 474 (1988)), the restriction of leafletting at a fairground to a booth (upheld in *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 452 U. S. 640 (1981)), or the "silence" often required outside a hospital. Special problems that may arise where clinics have particularly wide entrances or are situated within multipurpose office buildings may be worked out as the statute is applied.

This restriction is thus reasonable and narrowly tailored.

V

Petitioners argue that §18–9–122(3) is invalid because it is "overbroad." There are two parts to petitioners' "overbreadth" argument. On the one hand, they argue that the statute is too broad because it protects too many people in too many places, rather than just the patients at the

facilities where confrontational speech had occurred. Similarly, it burdens all speakers, rather than just persons with a history of bad conduct.[38] On the other hand, petitioners also contend that the statute is overbroad because it "bans virtually the universe of protected expression, including displays of signs, distribution of literature, and mere verbal statements."[39]

The first part of the argument does not identify a constitutional defect. The fact that the coverage of a statute is broader than the specific concern that led to its enactment is of no constitutional significance. What is important is that all persons entering or leaving health care facilities share the interests served by the statute. It is precisely because the Colorado Legislature made a general policy choice that the statute is assessed under the constitutional standard set forth in *Ward*, 491 U. S., at 791, rather than a more strict standard. See *Madsen*, 412 U. S., at 764. The cases cited by petitioners are distinguishable from this statute. In those cases, the government attempted to regulate nonprotected activity, yet because the statute was overbroad, protected speech was also implicated. See *Houston* v. *Hill*, 482 U. S. 451 (1987); *Secretary of State of Md.* v. *Joseph H. Munson Co.*, 467 U. S. 947 (1984). In this case, it is not disputed that the regulation affects protected speech activity, the question is thus whether it is a "reasonable restrictio[n] on the time, place, or manner of protected speech." *Ward*, 491 U. S., at 791. Here, the comprehensiveness of the statute is a virtue, not a vice, because it is evidence against there being a discriminatory governmental motive. As we have observed, "there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the prin-

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[38] Brief for Petitioners 22–23.

[39] *Id.*, at 25.

ciples of law which officials would impose upon a minority must be imposed generally." *Railway Express Agency, Inc.* v. *New York*, 336 U. S. 106, 112 (1949) (Jackson, J., concurring).

The second part of the argument is based on a misreading of the statute and an incorrect understanding of the overbreadth doctrine. As we have already noted, §18–9–122(3) simply does not "ban" any messages, and likewise it does not "ban" any signs, literature, or oral statements. It merely regulates the places where communications may occur. As we explained in *Broadrick* v. *Oklahoma*, 413 U. S. 601, 612 (1973), the overbreadth doctrine enables litigants "to challenge a statute, not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." Moreover, "particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Id.*, at 615. Petitioners have not persuaded us that the impact of the statute on the conduct of other speakers will differ from its impact on their own sidewalk counseling. Cf. *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 801 (1984). Like petitioners' own activities, the conduct of other protesters and counselors at all health care facilities are encompassed within the statute's "legitimate sweep." Therefore, the statute is not overly broad.

VI

Petitioners also claim that §18–9–122(3) is unconstitutionally vague. They find a lack of clarity in three parts of the section: the meaning of "protest, education, or counseling"; the "consent" requirement; and the determination of whether one is "approaching" within eight feet

of another.

A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement. *Chicago* v. *Morales*, 527 U. S. 41, 56–57 (1999).

In this case, the first concern is ameliorated by the fact that §18–9–122(3) contains a scienter requirement. The statute only applies to a person who "knowingly" approaches within eight feet of another, without that person's consent, for the purpose of engaging in oral protest, education, or counseling. The likelihood that anyone would not understand any of those common words seems quite remote.

Petitioners proffer hypertechnical theories as to what the statute covers, such as whether an outstretched arm constitutes "approaching."[40] And while "[t]here is little doubt that imagination can conjure up hypothetical cases in which the meaning of these terms will be in nice question," *American Communications Assn.* v. *Douds*, 339 U. S. 382, 412 (1950), because we are "[c]ondemned to the use of words, we can never expect mathematical certainty from our language," *Grayned* v. *City of Rockford*, 408 U. S. 104, 110 (1972). For these reasons, we rejected similar vagueness challenges to the injunctions at issue in *Schenck*, 519 U. S., at 383, and *Madsen*, 512 U. S., at 775–776. We thus conclude that "it is clear what the ordinance as a whole prohibits." *Grayned*, 408 U. S, at 110. More importantly, speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid "in the vast majority of its intended applications," *United States* v.

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[40] Brief for Petitioners 48.

Raines, 362 U. S. 17, 23 (1960).

For the same reason, we are similarly unpersuaded by the suggestion that §18–9–122(3) fails to give adequate guidance to law enforcement authorities. Indeed, it seems to us that one of the section's virtues is the specificity of the definitions of the zones described in the statute. "As always, enforcement requires the exercise of some degree of police judgment," *Grayned*, 408 U. S., at 114, and the degree of judgment involved here is acceptable.

VII

Finally, petitioners argue that §18–9–122(3)'s consent requirement is invalid because it imposes an unconstitutional "prior restraint" on speech. We rejected this argument previously in *Schenck*, 519 U. S., at 374, n. 6, and *Madsen*, 512 U. S., at 764, n. 2. Moreover, the restrictions in this case raise an even lesser prior restraint concern than those at issue in *Schenck* and *Madsen* where particular speakers were at times completely banned within certain zones. Under this statute, absolutely no channel of communication is foreclosed. No speaker is silenced. And no message is prohibited. Petitioners are simply wrong when they assert that "[t]he statute compels speakers to obtain consent to speak and it authorizes private citizens to deny petitioners' requests to engage in expressive activities."[41] To the contrary, this statute does not provide for a "heckler's veto" but rather allows every speaker to engage freely in any expressive activity communicating all messages and viewpoints subject only to the narrow place requirement imbedded within the "approach" restriction.

Furthermore, our concerns about "prior restraints" relate to restrictions imposed by official censorship.[42] The

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[41] *Id.*, at 29.

[42] See *Ward*, 491 U. S., at 795, n. 5 ("[T]he regulations we have found invalid as prior restraints have had this in common: they gave *public*

regulations in this case, however, only apply if the pedestrian does not consent to the approach.[43] Private citizens have always retained the power to decide for themselves what they wish to read, and within limits, what oral messages they want to consider. This statute simply empowers private citizens entering a health care facility with the ability to prevent a speaker, who is within eight feet and advancing, from communicating a message they do not wish to hear. Further, the statute does not authorize the pedestrian to affect any other activity at any other location or relating to any other person. These restrictions thus do not constitute an unlawful prior restraint.

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The judgment of the Colorado Supreme Court is affirmed.

It is so ordered.

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officials the power to deny use of a forum in advance of actual expression'" (quoting *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U. S. 546, 553 (1975) (emphasis added)).

[43] While we have in prior cases found governmental grants of power to private actors constitutionally problematic, those cases are distinguishable. In those cases, the regulations allowed a single, private actor to unilaterally silence a speaker even as to willing listeners. See, *e.g.*, *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 880 (1997) ("It would confer broad powers of censorship, in the form of a 'heckler's veto,' upon any opponent of indecent speech . . ."). The Colorado statute at issue here confers no such censorial power on the pedestrian.