

## ABORTION – CLINIC DEMONSTRATIONS

### **Hill v. Colorado** (buffer zones at abortion clinics)

**Background:** Hill involved a challenge to a Colorado law protecting access to the state's medical facilities. The statute created an eight-foot floating buffer zone in which unconsented approaches in front of medical facilities are prohibited. We filed an amicus in the case arguing that the Colorado statute is constitutional. In a 6-3 decision authored by Justice Stevens, the Court held the Colorado statute valid.

Q: What is your reaction to the Court's decision?

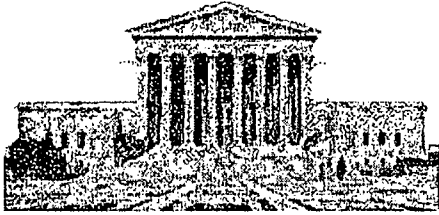
A: I am pleased that the Court has endorsed the position of the Administration and has upheld Colorado's carefully crafted attempt to balance a person's right to protest certain medical procedures against another person's right to obtain medical treatment free from harassment, fear and intimidation. In order to preserve a woman's right to choose we must protect access to reproductive health services. That is why I championed the Freedom of Access to Clinic Entrances Act (FACE), a federal statute that protects women and doctors from violence at reproductive health clinics.

Q: Doesn't the Colorado statute prevent free speech (unfairly burden pro-choice/anti-abortion speech)?

A: No. At a distance of eight feet, a speaker can be heard at normal conversational tones, literature can be offered, and signs or pictures can be read. The only thing the statute prohibits is unwanted pursuit within striking distance of the target. Eight feet is close enough to deliver a message, but not close enough to obstruct access or deliver a blow.

Q: Doesn't this statute unfairly single out anti-choice advocacy?

A: No. The Colorado statute upheld by today's decision applies regardless of viewpoint: Patient escorts and sidewalk counselors alike must follow the same rules.



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**HILL v. COLORADO (98-1856)**  
**973 P.2d 1246, affirmed.**

Syllabus	Opinion [Stevens]	Concurrence [Souter]	Dissent [Scalia]	Dissent [Kennedy]
HTML version PDF version	HTML version PDF version	HTML version PDF version	HTML version PDF version	HTML version PDF version

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued.

The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.

See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## HILL et al. v. COLORADO et al.

## CERTIORARI TO THE SUPREME COURT OF COLORADO

No. 98—1856. Argued January 19, 2000—Decided June 28, 2000

Colorado Rev. Stat. §18—9—122(3) makes it unlawful for any person within 100 feet of a health care facility's entrance to "knowingly approach" within 8 feet of another person, without that person's consent, in order to pass "a leaflet or handbill to, displa[y] a sign to, or engag[e] in oral protest, education, or counseling with [that] person . . . ." Claiming that the statute was facially invalid, petitioners sought to enjoin its enforcement in state court. In dismissing the complaint, the District Judge held that the statute imposed content-neutral time, place, and manner restrictions narrowly tailored to serve a significant government interest under *Ward v. Rock Against Racism*, 491 U.S. 781, in that Colorado had not "adopted a regulation of speech because of disagreement with the message it conveys," *id.* at 791. The State Court of Appeals affirmed, and the State Supreme Court denied review. This Court vacated that judgment in light of its holding in *Schenck v. Pro-Choice Network of Western N. Y.*, 519 U.S. 357, that an injunctive provision creating a speech-free floating buffer zone with a 15-foot radius violated the First Amendment. On remand, the Court of Appeals reinstated its judgment, and the State Supreme Court affirmed, distinguishing *Schenck*, concluding that the statute was narrowly drawn to further a significant government interest, rejecting petitioners' overbreadth challenge, and concluding that ample alternative channels of communication remained open to petitioners.

**Held:** Section 18—9—122(3)'s restrictions on speech-related conduct are constitutional. Pp. 9—30.

(a) Each side has legitimate and important concerns. Petitioners' First Amendment interests are clear and undisputed. On the other hand, the State's police powers allow it to protect its citizens' health and safety, and may justify a special focus on access to health care facilities and the avoidance of potential

trauma to patients associated with confrontational protests. Moreover, rules providing specific guidance to enforcement authorities serve the interest in evenhanded application of the law. Also, the statute deals not with restricting a speaker's right to address a willing audience, but with protecting listeners from unwanted communication. Pp. 9—13.

(b) Section 18—9—122(3) passes the *Ward* content-neutrality test for three independent reasons. First, it is a regulation of places where some speech may occur, not a “regulation of speech.” Second, it was not adopted because of disagreement with the message of any speech. Most importantly, the State Supreme Court unequivocally held that the restrictions apply to all demonstrators, regardless of viewpoint, and the statute makes no reference to the content of speech. Third, the State's interests are unrelated to the content of the demonstrators' speech. Petitioners contend that insofar as the statute applies to persons who “knowingly approach” within eight feet of another to engage in “oral protest, education, or counseling,” it is “content-based” under *Carey v. Brown*, 447 U.S. 455, 462, because it requires examination of the content of a speaker's comments. This Court, however, has never held that it is improper to look at a statement's content in order to determine whether a rule of law applies to a course of conduct. Here, 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 social or random conversation. The statute is easily distinguishable from the one in *Carey*, which prohibited all picketing except for picketing of a place of employment in a labor dispute, thereby according preferential treatment to expression concerning one particular subject. In contrast, §18—9—122(3) merely places a minor place restriction on an extremely broad category of communications with unwilling listeners. Pp. 14—21.

(c) Section 18—9—122(3) is also a valid time, place, and manner regulation under *Ward*, for it is “narrowly tailored” to serve the State's significant and legitimate governmental interests and it leaves open ample alternative communication channels. 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. The 8-foot zone should not have any adverse impact on the readers' ability to read demonstrators' signs. That distance can make it more difficult for a speaker to be heard, but there is no limit on the number of speakers or the noise level. Nor does the statute suffer from the failings of the “floating buffer zone” rejected in *Schenck*. The zone here allows the speaker to communicate at a “normal conversational distance,” 519 U.S., at 377, and to remain in one place while other individuals pass within eight feet. And the “knowing” requirement protects speakers who thought they were at the proscribed distance from inadvertently violating the statute. Whether the 8-foot interval is the best possible accommodation of the competing interests, deference must be accorded to the Colorado Legislature's judgment. The burden on the distribution of handbills is more serious, but the statute does not prevent a leafletter from simply standing near the path of oncoming pedestrians and proffering the material, which pedestrians can accept or decline. See *Heffron v. International Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640. Pp. 21—25.

(d) Section 18—9—122(3) is not overbroad. First, the argument that coverage is broader than the specific concern that led to the statute's enactment does not identify a constitutional defect. It is precisely because the state legislature made a general policy choice that the statute is assessed under *Ward* rather than a stricter standard. Second, the argument that the statute bans virtually the universe of protected expression is based on a misreading of the statute and an incorrect understanding of the overbreadth doctrine. The statute does not ban any forms of communication, but regulates the places where communications may occur; and petitioners have not, as the doctrine requires, persuaded the Court that the statute's impact on the conduct of other speakers will differ from its impact on their own sidewalk counseling, see *Broadrick v. Oklahoma*, 413 U.S. 601, 612, 615. Pp. 25—27.

(e) Nor is §18—9—122(3) unconstitutionally vague, either because it fails to provide people with ordinary intelligence a reasonable opportunity to understand what it says or because it authorizes or encourages arbitrary and discriminatory enforcement, *Chicago v. Morales*, 527 U.S. 41, 56—57. The first concern is ameliorated by §18—9—122(3)'s scienter requirement. It is unlikely that anyone would not understand the common words used in the statute, and hypothetical situations not before the Court will not support a facial attack on a statute that is surely valid in the vast majority of its intended applications. The Court is likewise unpersuaded that inadequate direction is given to law enforcement

authorities. Indeed, one of §18—

9—122(3)'s virtues is the specificity of the definitions of the zones. Pp. 27—29.

(f) Finally, §18—9—122(3)'s consent requirement does not impose a prior restraint on speech. This argument was rejected in both *Schenck* and *Madsen*. Furthermore, "prior restraint" concerns relate to restrictions imposed by official censorship, but the regulations here only apply if the pedestrian does not consent to the approach. Pp. 29—30.

973 P.2d 1246, affirmed.

Stevens, J., delivered the opinion of the Court, in which Rehnquist, C. J., and O'Connor, Souter, Ginsburg, and Breyer, JJ., joined. Souter, J., filed a concurring opinion, in which O'Connor, Ginsburg, and Breyer, JJ., joined. Scalia, J., filed a dissenting opinion, in which Thomas, J., joined. Kennedy, J., filed a dissenting opinion.

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TO: Bill Marshall, Michelle Aronowitz  
FR: Degee Wilhelm  
RE: *Hill v. Colorado*, 973 P.2d 1246 (Colo. 1999).  
DT: June 22, 2000

## Background

In 1993, the state of Colorado passed a statute regulating certain conduct near a health care facility with the goal of balancing “a person’s right to protest or counsel against certain medical procedures” against “another person’s right to obtain medical counseling and treatment in an unobstructed manner.” Plaintiffs (now petitioners) brought a facial challenge to one provision of the statute, alleging that it violates the First Amendment of the U.S. Constitution. The challenged provision provides:

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 person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility.

CRS § 18-9-122(3). The **100-foot radius zone** around a health care facility is known as a “**fixed buffer zone**.” Within the 100-foot fixed buffer zone, the **8-foot radius zone** within which no person may knowingly approach another without consent for the purpose of engaging in specified expressive activities is called a “**limited floating buffer zone**.”

The trial court granted summary judgment for the state defendant (now respondent), the court of appeals affirmed, and the state supreme court denied review. The plaintiff petitioned the U.S. Supreme Court for review. The Supreme Court remanded the case for reconsideration in light of its decision in *Schenck v. Pro-Choice Network*, 519 U.S. 357 (1997). On remand, the state court of appeals again ruled for the state defendant, and the Colorado Supreme Court affirmed. The U.S. Supreme Court granted certiorari.

## Differences between *Hill* and Supreme Court decisions in *Madsen* and *Schenck*

- *Madsen* and *Schenck* dealt with **injunctions**; *Hill* deals with a state **statute**
- *Madsen/Schenck* standard: Whether the content neutral injunction burdens no more speech than necessary to serve a significant government interest.
- *Hill* applied the standard from *Ward v. Rock Against Racism*: whether the statute is content neutral, narrowly tailored to serve a significant governmental interest and leaves ample alternative channels of communication open.

- Madsen **upheld** a ban on congregating, picketing, patrolling, demonstrating or entering within 36 feet of a particular abortion clinic's entrances and driveways; and **struck down** a ban on approaching without consent any person seeking clinic services within 300 feet of the clinic
- Schenck **upheld** a 15-foot fixed no-demonstration buffer zone around all abortion clinic doorways, parking lot entrances and driveways (with not more than two sidewalk counselors allowed in the zone, subject to consent) and **struck down** a ban on demonstrating within a 15-foot floating bubble zone around persons or vehicles entering or leaving the clinic (with same exception for two sidewalk counselors)
- Hill **upheld** ban on knowing approach, without consent, for purposes of engaging in certain expressive activities, within 8-foot limited floating buffer zone around any person less than 100 feet from a health care facility

### Reasoning of the Colorado Supreme Court in Hill

The Colorado court determined that the standard established in *Madsen v. Women's Health Center*, 512 U.S. 753 (1994), and applied in *Schenck* applies only to injunctions, not to generally applicable statutes. Instead, it applied the standard *Ward v. Rock Against Racism* used to identify a content-neutral time, place or manner restriction on speech. The Colorado court upheld the statute as a reasonable time, place, and manner restriction.

- It is **content neutral**:
  - It applies to all care facilities in the state
  - It is not limited to anti-abortion protests
- It serves **significant government interests**:
  - Access to health care
  - Safety of individuals seeking wide range of health care services (not just abortion)
  - Response to legislative record that citizens seeking healthcare are subject to harassing, confrontational, and violent conduct
- It is **narrowly tailored** to serve those interests:
  - Regulates expressive conduct, not pure speech
  - Protestors cannot inadvertently violate statute, as in *Schenck*, since it requires a "knowing approach"
  - Protestors will not violate statute if they stand still, since it requires a "knowing approach." In *Schenck*, a protestor would have a duty to withdraw if an individual approached within 15 feet.
  - Not difficult to know how to comply, as in *Schenck*
  - Bubble zone is eight feet, rather than fifteen as in *Schenck*, which allows for normal

conversational tones.

- It leaves **ample alternative channels of communication open**:
  - Does not prohibit verbal communication
  - merely prohibits knowing approach and limits unconsented verbal communication to more than 8-feet away.

#### **Petitioner's arguments before U.S. Supreme Court:**

- It is overbroad because the bubble covers all who happen to be in the zone, regardless of their connection to the clinic or lack of prior bad conduct, and targets pure expression, not conduct
- It creates an unconstitutional prior restraint on speech by requiring advance consent within the 8-foot limited floating buffer zone, with unbridled discretion and no requisite safeguards
- It is an unconstitutional content-based restriction: it applies only to oral communications which constitute "protest," "counsel," or "education"; and it grants citizens the power to prohibit speech based on viewpoint. Access to healthcare is not a compelling interest, and it is not narrowly tailored since it allows the potential listener unfettered veto power.
- If viewed as a content-neutral restriction, it is not narrowly tailored (same as overbreadth argument) and fails to leave open ample alternative channels of communication (in particular because it prohibits unwelcome hand-to-hand leafletting).
- It is unconstitutionally vague ("protest," "counseling," "education," "consent," "approaching")

#### **Position of the United States and Relevance to FACE**

The United States has filed an amicus brief in support of respondents, taking the position that the statute is a reasonable time, place or manner restriction governed by the standard set out in *Ward*.

The Court's decision in this case has the potential to affect the scope of injunctive relief available under FACE. FACE prohibits, inter alia, the use or threat of force, or physical obstruction, to injure, intimidate, or interfere with any person because that person is, or has been obtaining or providing reproductive health services, or to intimidate them from doing so in the future.



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06/16/2000 03:17:03 PM

Bubble Bill

Record Type: Record

To: Heather H. Howard/OPD/EOP, Lauren M. Supina/WHO/EOP

cc:

Subject: Hill v. Colorado Talking Points

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Talking Points ? Hill v. Colorado  
June 15, 2000

If the Supreme Court Upholds the Statute:

§ By upholding Colorado's clinic protection statute today, the U.S. Supreme Court recognized the importance of shielding women and doctors from torment and violence at reproductive health clinics.

§ Today, the U.S. Supreme Court played its proper role in guarding our liberties. This role is in peril ? if elected President, George W. Bush would appoint justices like Antonin Scalia who would vote to overturn Roe v. Wade. Since the next President likely will nominate two to three Supreme Court Justices, he could nominate enough justices to overturn Roe.

§ A nationwide campaign of violence, vandalism, and harassment is curtailing the availability of abortion services and endangering doctors, nurses, and patients. Since 1993, three doctors, two clinic employees, a clinic escort, and a security guard have been murdered. Sixteen attempted murders have also occurred since 1991. In fact, opponents of choice have directed over 2,400 reported acts of violence against abortion providers since 1977, including bombings, arsons, death threats, kidnappings, and assaults, as well as over 47,600 reported acts of disruption, including bomb threats and harassing calls.

§ The Colorado zone of separation law provides an essential buffer from violence and harassment that is all-too-common at our nation's clinics.

§ Harassment of people seeking access to health care can create medical risks. As a result, the Colorado statute helps ensure that individuals in Colorado have unimpeded access to health care and helps to protect women's



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#### GENERAL NOTES:

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§ As governor of Texas, George W. Bush opposed clinic protection legislation that would have protected women and doctors from violence at reproductive health clinics and facilities. Al Gore supports the Freedom of Access to Clinic Entrances Act (FACE) and making those convicted of clinic violence pay their debts.

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Record Type: Record

To: Heather H. Howard/OPD/EOP, Lauren M. Supina/WHO/EOP

cc:

Subject: Hill v. Colorado Talking Points

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Heather & Lauren -- in preparation for the upcoming Supreme Court decision (could be as early as this monday) in the Colorado bubble bill, I thought you guys would be interested in see our talking points. We are also preparing talking points on the Nebraska pba case and I will get them to you asap.

Talking Points ? Hill v. Colorado  
June 15, 2000

If the Supreme Court Upholds the Statute:

§ By upholding Colorado's clinic protection statute today, the U.S. Supreme Court recognized the importance of shielding women and doctors from torment and violence at reproductive health clinics.

§ Today, the U.S. Supreme Court played its proper role in guarding our liberties. This role is in peril ? if elected President, George W. Bush would appoint justices like Antonin Scalia who would vote to overturn Roe v. Wade. Since the next President likely will nominate two to three Supreme Court Justices, he could nominate enough justices to overturn Roe.

§ A nationwide campaign of violence, vandalism, and harassment is curtailing the availability of abortion services and endangering doctors, nurses, and patients. Since 1993, three doctors, two clinic employees, a clinic escort, and a security guard have been murdered. Sixteen attempted murders have also occurred since 1991. In fact, opponents of choice have directed over 2,400 reported acts of violence against abortion providers since 1977, including bombings, arsons, death threats, kidnappings, and assaults, as well as over 47,600 reported acts of disruption, including bomb threats and harassing calls.

§ The Colorado zone of separation law provides an essential buffer from violence and harassment that is all-too-common at our nation's clinics.

§ Harassment of people seeking access to health care can create medical risks. As a result, the Colorado statute helps ensure that individuals in Colorado have unimpeded access to health care and helps to protect women's



lives and health.

If the Supreme Court Strikes Down the Statute:

§ The U.S. Supreme Court today failed to adequately protect women's lives and health and gave aid and comfort to anti-choice terrorists.

§ Today's decision highlights the significance of the U.S. Supreme Court and the absolute necessity of electing a President who would nominate justices who understand the fragility of the right to choose and the dangers posed by clinic violence. If elected President, George W. Bush would appoint justices like Antonin Scalia who would vote to overturn *Roe v. Wade*. Since the next President likely will nominate two to three Supreme Court Justices, he could nominate enough justices to overturn *Roe*.

§ A nationwide campaign of violence, vandalism, and harassment is curtailing the availability of abortion services and endangering providers and patients. Since 1993, three doctors, two clinic employees, a clinic escort, and a security guard have been murdered. Sixteen attempted murders have also occurred since 1991. In fact, opponents of choice have directed over 2,400 reported acts of violence against abortion providers since 1977, including bombings, arsons, death threats, kidnappings, and assaults, as well as over 47,600 reported acts of disruption, including bomb threats and harassing calls.

§ Because harassment of people seeking access to health care can create medical risks, we are disheartened that the U.S. Supreme Court failed to uphold a provision that provided an essential buffer and would have helped to protect women's lives and health.


#### GENERAL NOTES:

§ You may be asked: "Doesn't this Colorado provision prevent free speech?" A response to this question: The Colorado statute does not restrict the First Amendment right to engage in forms of communication such as yelling, picketing, leafleting, or singing hymns. Rather, the statute's eight-foot zone of separation simply regulates the distance between the demonstrator and his or her target, regardless of the content of his or her message. As such, the statute prevents demonstrators from forcing unwanted close physical proximity. All viewpoints can still be conveyed from a normal conversational distance ? eight feet.

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## **Hill v. Colorado** (buffer zones at abortion clinics)

 **Statement:** I am pleased that the Supreme Court today, in Hill v. Colorado, upheld a Colorado statute balancing a person's right to protest certain medical procedures against another person's right to obtain medical treatment free from harassment, fear and intimidation. The Colorado law was enacted in response to a real need to ensure safe access to medical treatment in light of increasing obstruction, harassment, and violence in front of health care facilities. In order to preserve a woman's right to choose we must protect access to reproductive health services. That is why I championed the Freedom of Access to Clinic Entrances Act (FACE), a federal statute that protects women and doctors from violence at reproductive health clinics.

Q: What is the White House's reaction to the Court's decision?

A: The President is pleased that the Court has endorsed the position of the Administration and upheld the state of Colorado's carefully crafted attempt to balance a person's right to protest certain medical procedures against another person's right to obtain medical treatment free from harassment, fear and intimidation.

Q: Doesn't the Colorado statute prevent free speech (unfairly burden pro-choice/anti-abortion speech)?

A: No. At a distance of eight feet, a speaker can be heard at normal conversational tones, literature can be offered, and signs or pictures can be read. A speaker can also station himself at a location where people will have to pass closer than eight feet. The only thing the statute prohibits is unwanted pursuit within striking distance of the target. Eight feet is close enough to deliver a message, but not close enough to obstruct access or deliver a blow.

Q: Doesn't this statute unfairly single out anti-choice advocacy?

A: No. The Colorado statute upheld by today's decision applies regardless of viewpoint: Patient escorts and sidewalk counselors alike must follow the same rules.