McCullen v. Coakley
Argued: January 15, 2014 Decided: June 26, 2014

Background: The First Amendment protects all forms of communication from government censorship. The right to free speech is not absolute, however. There are some situations where the government can restrict speech. Some laws regulate the content of speech—*what* the speaker is allowed to say or not to say. As a general rule, the government cannot regulate the content of expression except in very special situations. However, the government can make reasonable rules governing the time, place, and manner of the speech. These rules control when, where, and how speech is allowed. For example, cities can require citizens to obtain permits to hold a parade, limit the times of day when loudspeakers may be used, or limit the places where political posters can be displayed.

When a court is evaluating whether a law is a valid restriction on the time, place, or manner of speech in a public forum like a street or park, it looks at these three factors:

* It must be content- and viewpoint-neutral, that is, it cannot regulate the speech based on its content or on the viewpoint of the person speaking.
* It must be “narrowly tailored” to serve a significant government interest—meaning the government’s reason for limiting the speech could not instead be accomplished with a law or policy that impacted free speech substantially less.
* It must leave reasonable alternatives for the speakers to communicate their information.

This is a case about when a law is a valid regulation of the time, place, or manner of speech, and when it becomes an unconstitutional limit based on the content of the speech.

**Facts:** In 2007, Massachusetts passed a law intended to address repeated violence, harassment, and intimidation at abortion clinics. Protesters at clinics had clashed with clients and employees of the clinics. The law created a fixed “buffer zone” around the entrance to clinics. People could not knowingly enter or stand within a 35 foot radius of a facility entrance. Only people entering and leaving the facility and individuals simply passing through the zone on public sidewalks were permitted to enter the zone.

This 2007 law was actually an expansion of an earlier law from 2000, which had created “floating,” rather than fixed buffer zones. These floating buffer zones meant that no one could come within six-feet of an individual who was within 18-feet of a clinic entrance, unless the individual consented to the approach. Again, people entering or leaving the facility were exempt from this rule. After the floating buffer zones went to effect, protestors still blocked entrances and conflicts occurred. Deciding this law was not effectively preventing violence and intimidation, the Massachusetts legislature passed the 2007 “fixed” buffer zone. Since the law went into effect violence associated with the protesting has been a lot lower.

Eleanor McCullen and others wanted to stand on the sidewalk outside of a clinic to give quiet counseling to women considering abortion. Prior to 2007, she spoke to and supported many women who ultimately decided not to have abortions. The 2007 law made reaching these women significantly more challenging. McCullen sued, arguing that the law violated her right to free speech. The district court said the law was constitutional and the Court of Appeals agreed.

Issues: Do fixed buffer zones around abortion clinics violate the First Amendment rights of protestors?

**Precedents:**

* **Martin v. Struthers (1942):** Struthers, OH, had an ordinance that prohibited distribution of information by knocking on doors and ringing doorbells. A Jehovah’s Witness who was distributing information about a meeting in that way was fined under the law. She argued that the law was a violation of her free speech rights. The Supreme Court agreed. They acknowledged the city’s interest in preventing crime and reducing nuisances. But the Court said that trespassing laws could also serve that purpose without limiting speech. The justices said that the type of speech in this case was “clearly vital to the preservation of a free society” and, aside from reasonable time and manner restrictions, it must be protected.
* **Ward v. Rock Against Racism (1989):** New York City created guidelines regulating the volume of outdoor rock concerts. “Rock Against Racism” was planning a concert and was required to use city sound equipment and technicians rather than providing their own. Rock Against Racism argued the requirement to use city equipment was an unconstitutional limit on their free speech. They said there were other, less-restrictive, ways for the city to regulate volume. The Supreme Court disagreed. The Court said that the government had a substantial interest in protecting the well-being of other persons in the park and those who lived near it. The Court said that restrictions on the time, place, or manner of speech are not invalid “simply because there is some imaginable alternative that might be less burdensome on speech.”
* **Hill v. Colorado (2000):** Colorado passed a law that created “no-approach” buffer zones near health care facilities. This law prevented people from approaching within 8 feet other non-consenting people who were inside a 100 foot radius around the facility’s entrance. Anti-abortion activists said the law violated their right to free speech. The Supreme Court ruled against the activists and said the law was “not a regulation of speech. Rather, it is a regulation of the places where some speech may occur.” The Court said the law balanced the protestors’ rights to speak and the patient’s rights to avoid the speech. It also left reasonable alternatives for activists to speak to women at the facility.

**Identifying Arguments:***Read each of the following arguments and place a MC next to those arguments that support McCullen and a C next to those that support Coakley’s position.*

\_\_\_\_\_1. **MC/C** This law does not regulate speech based on its content. It applies equally to everyone who wants to speak near these facilities, regardless of their topic or message.

\_\_\_\_\_2. **MC/C** This law is a valid regulation of the time, place and manner of the speech. The protestors are not prevented from speaking, just limited from entering a narrow zone to protect the safety of others. The government has an important interest in protecting people’s safety.

\_\_\_\_\_3. **MC/C** The law does not leave the activists with effective alternative channels of communication. These activists make a difference by speaking quietly with and counseling women. Displaying large signs and yelling across a 35-foot barrier will not be nearly as effective in achieving their goals of convincing women to avoid abortion.

\_\_\_\_\_4. **MC/C** The law does not restrict any viewpoint more than another. Both pro-choice and pro-life advocates are prevented from speaking in the buffer zone. Employees are not allowed to protest within the buffer zone either; they are only allowed to act in their “scope of employment.”

\_\_\_\_\_5. **MC/C** This law restricts the content of the activists’ speech, which is unconstitutional. It only applies to abortion clinics, not hospitals or other medical centers (unlike *Hill*). This means that the law effectively only restricts speech about abortion.

\_\_\_\_\_6. **MC/C** Even worse, the law restricts one particular viewpoint on this issue. Since the anti-abortion activists are the only ones who want to engage in speech at these clinics, the law effectively bans anti-abortion speech only. The law allows clinic employees, who are probably pro-abortion, to walk within the zone and escort patients into the clinic and talk to them.

\_\_\_\_\_7. **MC/C** The activists want to discuss important public issues on public sidewalks. That is exactly the kind of speech that should receive the highest level of protection from government interference.

\_\_\_\_\_8. **MC/C** The law is not too broad. The state tried a less restrictive law, but it was not effective. Even peaceful protestors can block entrances or intimidate patients. This law is effective because it prevents violence while still allowing free speech.

\_\_\_\_\_9. **MC/C** There are many alternatives open to the protesters. They are still able to convey their message. The Constitution does not guarantee the right to communicate one’s views at all times in all places.

\_\_\_\_\_10. **MC/C** The law is not “narrowly tailored.” It addresses peaceful speech and consensual conversations. If the purpose of the law was to prevent large mobs, violence, and blocked entrances, then a more narrow law that does not also ban peaceful, cooperative speech would work.

\_\_\_\_\_11. **MC/C** Our society has many examples of “buffer zones” in which speech is constitutionally – from zones around political conventions and voting areas, to those that protect funeral goers, to a rule prohibiting protesting on the plaza of the Supreme Court itself.

\_\_\_\_\_12. **MC/C** The government has criminal penalties for things like harassment, obstructing entrances to buildings, and violent acts. The government should prosecute people who violate those rules, not restrict everyone’s speech.

**The Argument(s) above I thought was most persuasive stated….If I was a Supreme Court Justice, I would you decide the case for… because…**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Decision:** The Court ruled in favor of McCullen, deciding that the Massachusetts buffer zone law was unconstitutional. Chief Justice Roberts wrote the opinion of the Court, which Justices Breyer, Ginsburg, Sotomayor and Kagan joined. Justice Scalia wrote a concurring opinion, which Justices Kennedy and Thomas joined. Justice Alito wrote a concurring opinion.

Majority: The Court decided the Massachusetts buffer zone law violates the First Amendment. The Court said that since the law restricted speech on public sidewalks—a place that traditionally receives strong First Amendment protection— then it must:

* be neutral with regard to the content of the speech or viewpoint of the speakers, and
* be narrowly tailored to a specific government interest,
* leave open alternative channels of communication.

The majority ruled that the law was content and viewpoint neutral, because it affected the speech of all parties. However, the justices said that the buffer zones were not narrowly tailored—that they burdened more speech than was necessary to achieve the government’s interests in protecting patient safety. The type of quiet counseling that Eleanor McCullen wants to provide does not threaten patient safety. They said Massachusetts could have used existing harassment or assault laws or passed different laws that both protected free speech and protected patient safety. For example, a narrowly tailored law might instead prohibit people from blocking entrances to facilities or harassing or physically harming others.

The opinion emphasized that speaking and offering pamphlets on a public sidewalk are a traditional way to share information and ideas. The Court determined that since the Act is not narrowly tailored, they did not need to address whether it left open alternative channels of communication.

Concurrence: Justice Scalia agreed that the law violates the First Amendment, but believes the law was not content neutral. He argued because the buffer zones were only located around abortion clinics and because employees of the clinics were exempted, that content was regulated. When a law restricting speech is not content neutral, it is almost always unconstitutional. Justices Scalia, Kennedy, and Thomas also said that Hill v. Colorado should be overturned.

Justice Alito wrote that the act violates the First Amendment because it is not viewpoint neutral. The law is aimed at the speech of individuals offering counseling against abortions, not the employees providing information on how to obtain an abortion.

**In plain English, what did the Court decide and why?**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Why did the dissenting justices not sign on with majority opinion? Explain** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **Which opinion did you find most persuasive? Explain.**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_