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

Syllabus

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, §18–19–122(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

Syllabus

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.