No. 12-1168

In the Supreme Court of the United States

ELEANOR MCCULLEN, ET AL., PETITIONERS

v.

MARTHA COAKLEY, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
JOCELYN SAMUELS
Acting Assistant Attorney General
IAN HEATH GERSHENGORN
Deputy Solicitor General
ELAINE J. GOLDENBERG
Assistant to the Solicitor General
DIANA K. FLYNN
SASHA SAMBERG-CHAMPION
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a Massachusetts statute that creates buffer zones extending 35 feet from the entrances and driveways of reproductive health-care facilities violates the First Amendment, either on its face or as applied at several specific facilities.

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INTEREST OF THE UNITED STATES

The Attorney General of the United States has primary responsibility for enforcing the Freedom of Access to Clinic Entrances Act of 1994 (Act), 18 U.S.C. 248. The Act 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 any person from doing so in the future. 18 U.S.C. 248(a)(1). Injunctive relief in civil actions brought by the Attorney General pursuant to the Act, see 18 U.S.C. 248(c)(2)(B), can include restrictions on entering or remaining in an area within a specified distance from a health-care facility. Because the principles that the

Court articulates here could affect the scope of injunctive relief available under the Act, the United States has a significant interest in the resolution of this case.

STATEMENT

1. By the "late 1990s, Massachusetts had experienced repeated incidents of violence and aggressive behavior" near reproductive health-care facilities. *McGuire* v. *Reilly*, 260 F.3d 36, 39 (1st Cir. 2001) (*McGuire I*). Those incidents included shootings at two different facilities in December 1994; the shooter killed two Planned Parenthood receptionists and wounded five other people. See *In re Opinion of the Justices to the Senate*, 723 N.E.2d 1, 5 & n.4 (Mass. 2000); J.A. 14; *id.* at 57-59 (letter to legislators from victim's brother).

Massachusetts courts issued injunctions against various actors in an attempt to ensure public safety and continued access to the health-care services that such facilities offer. For instance, in *Planned Parenthood League* v. *Bell*, 677 N.E.2d 204 (Mass.), cert. denied, 522 U.S. 819 (1997), the Supreme Judicial Court upheld an injunction against a woman who (in violation of prior injunctions to which she was subject) physically blocked and screamed at patients in the street and posed as a facility escort. *Id.* at 206-208, 209-212; see, *e.g.*, *Planned Parenthood League* v. *Blake*, 631 N.E.2d 985 (Mass.), cert. denied, 513 U.S. 868 (1994); *Planned Parenthood League* v. *Operation Rescue*, 550 N.E.2d 1361 (Mass. 1990); see also *Commonwealth* v. *Cotter*, 612 N.E.2d 1145 (Mass. 1993) (upholding conviction for violating injunction).

Those injunctions were not adequate to address the problem, however. At hearings before the state legislature in 1999, witnesses "described how advocates of

both sides of one of the nation's most divisive issues" continued to "frequently meet within close proximity of each other in the areas immediately surrounding the State's clinics, in what can and often do become congested areas charged with anger." *Opinion of the Justices*, 723 N.E.2d at 5; see *McGuire I*, 260 F.3d at 39; J.A. 12-24 (testimony about incidents in which driveways and entrances were blocked, family members of patients were jostled and shoved, patients and facility employees were videotaped, and patients' children were "scream[ed] at" and "badger[ed]"); see also J.A. 26-27 (deposition testimony that pro-choice demonstrators "yell[ed] * * * vulgarities").

2. Having "thoroughly" investigated these concerns, *McGuire I*, 260 F.3d at 44, Massachusetts concluded that "existing laws did not adequately safeguard clinic staff, prospective patients, or members of the public." Pet. App. 95a. In 2000, the Commonwealth enacted a statute modeled on the Colorado law that this Court upheld in *Hill* v. *Colorado*, 530 U.S. 703 (2000).

The 2000 Massachusetts statute created zones extending 18 feet from the entrances and driveways of reproductive health-care facilities, and it banned anyone in those zones during business hours from knowingly "approach[ing]" within six feet of another person without consent for the purpose of "passing a leaflet or handbill," "displaying a sign," or "engaging in oral protest, education or counseling." Mass. Ann. Laws ch. 266, § 120E½(b) (LexisNexis 2002); see *id.* § 120E½(e) (prohibiting "knowing[]" obstruction of facility entrances). The statute exempted persons with specific business at the facility, including facility employees and agents "acting within the scope of their

employment," *id.* § 120E½(b); the Massachusetts Attorney General issued guidance clarifying the limited scope of that exception and provided training to facilities and law enforcement agencies consistent with that guidance. *McGuire* v. *Reilly*, 386 F.3d 45, 52 (1st Cir. 2004) (*McGuire II*) (noting guidance statement prohibiting "counter-protests, counter-education, or counter-counseling" within the zones), cert. denied, 544 U.S. 974 (2005).

The First Circuit upheld the 2000 statute both on its face and as applied. As to the facial challenge, the court of appeals ruled that the statute "lawfully regulate[d] the time, place, and manner of speech without discriminating based on content or viewpoint." *McGuire I*, 260 F.3d at 39; see *id.* at 46, 48-49. As to the as-applied challenge, the court concluded that employees and agents were not permitted to engage in protest, education, or counseling in the 18-foot zones and that authorities had enforced the statute's restrictions evenhandedly. See *McGuire II*, 386 F.3d at 64-65.

3. Over time, the Massachusetts legislature became convinced that the 2000 statute was not adequately protecting public safety and ensuring access to health care for women seeking not only abortion-related counseling and services, but a wide array of other health services. See J.A. 61 (stating that "[m]ore than two-thirds" of visits at particular facility "were for non-abortion related services"); *id.* at 14, 18.

Even when the law was obeyed, threats to safety and access problems persisted. Facility entrances were choked with people, all standing as close to the door as possible in the hopes that each patient would have to approach them to get inside. See, *e.g.*, J.A. 62,

67, 77-78, 122-124; Pet. App. 138a; see also J.A. 86. And protesters continued to confront each other at very "close quarters." J.A. 69; see *id.* at 80, 86, 95; see also *id.* at 123 (describing "frequent disturbances, including physical jostling," outside Boston facility "involv[ing] pro-choice protestors, pro-life protestors, patients, and patient companions"). Pro-choice protestors could be "particularly disruptive," since they sometimes would "push, shove, and step on other people's feet in order to get a good position" inside the 18-foot zones. *Ibid.*; see *ibid.* (explaining difficulties with "combined presence of * * * protestors").

In addition, the 2000 law was violated "routinely." Pet. App. 145a; see, *e.g.*, J.A. 60. Members of the gathered crowds thrust their heads and hands into open car windows and deposited literature inside the cars, see JA. 36, 51, 61, 79; Pet. App. 142a; surrounded patients and employees while "shout[ing] at" and "taunt[ing]" them, J.A. 50, 61, 96; videotaped patients and facility employees at close range, see *id.* at 51, 61, 124; and dressed in shirts and hats reading "Boston Police" while asserting that patients entering driveways were required to provide their names and other personal details, see *id.* at 36-37, 89, 99, 124; see also *id.* at 51, 62, 69-71, 79-80.

Enforcement of the law was difficult. In chaotic crowds, outnumbered police officers could not readily discern who was approaching whom and whether the approaching party was within six feet of a moving target; as one officer testified, the law turned him into "a basketball referee down there, where we're watching feet, we're watching hands." Pet. App. 146a; see *id.* at 145a. Officers often were not well positioned to evaluate claims that those approached had consented

or that the approacher had ventured close to another person for proper purposes. See Pet. App. 145a; J.A. 50-51. Accordingly, few violators were arrested, and even fewer were successfully prosecuted. See J.A. 68-70; Pet. App. 147a.

4. In 2007, the Massachusetts legislature heard extensive testimony on the persistence of a disorderly and threatening climate at facility entrances—as well as testimony on the First Amendment implications of any change in the law. See J.A. 31-89; Pet. App. 149a-150a. The legislature concluded that there remained a "significant public safety and patient access problem," Pet. App. 165a, and it amended the 2000 law to address that continuing concern. See *id.* at 150a-151a; 2007 Mass. Legis. Serv. ch. 155.

The 2007 legislation, the constitutionality of which is at issue here, eliminated the prior law's floating 6-foot "bubble" within an 18-foot zone and replaced it with a 35-foot fixed buffer zone that requires no inquiry into whether a speaker is engaging in protest, education, or counseling. The 2007 statute provides that "[n]o person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility within a radius of 35 feet of any portion of an entrance, exit or driveway of a reproductive health care facility or within the area within a rectangle created by extending the outside boundaries of any entrance, exit or driveway * * * in straight lines to the point where such lines intersect the sideline of the street." Mass. Gen. Laws ch. 266, § 120E½(b); *id.* § 120E½(d) (making first-time violators subject to "a fine of not more than $500 or not more than three months in a jail or house of correction"). The buffer zone is enforceable only during

business hours and only if it is "clearly marked and posted." *Id.* § 120E½(c). The legislature left in place other portions of the 2000 statute, including exemptions covering "(1) persons entering or leaving such facility; (2) employees or agents of such facility acting within the scope of their employment; (3) law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment; and (4) persons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such facility." *Id.* § 120E½(b).

Shortly after enactment of the 2007 amendment, the Massachusetts Attorney General issued further guidance regarding the exemptions. The guidance states that the first exemption, for persons entering or leaving, "allows people to cross through the buffer zone on their way to or from the clinic" but does not permit them "to stand or remain in the buffer zone." J.A. 93. The second exemption, the guidance explains, "allows clinic personnel to assist in protecting patients and ensuring their safe access to clinics, but does not allow them to express their views about abortion or to engage in any other partisan speech within the buffer zone." *Ibid.* The third exemption, which covers municipal employees performing official duties, is similarly limited. See *ibid.* Finally, as to the fourth exemption, the guidance provides that a protester may walk through the buffer zone to the other side—for instance, to "reach and speak with someone outside the zone"—if "the individual does not do anything else within the buffer zone." *Id.* at 93-94.

Enforcement of the 35-foot buffer zone has resulted in a "much more orderly" atmosphere and "fewer confrontations." J.A. 126; see *id.* at 97. Meanwhile, the public continues to have ample opportunity to express its views near Massachusetts reproductive health-care facilities. See, *e.g.*, *id.* at 97-98, 126-127. The number of protesters has not decreased. See, *e.g.*, *id.* at 125. And patients entering the facilities can still see and hear the people who are engaging in different forms of expression, who are free to approach patients outside the zone for quiet conversation or to call out to them as they traverse the zone (or cross private property) with expressions of compassion and offers of assistance. See, *e.g.*, *id.* at 148, 171-172, 206, 274-275, 278, 288, 291-292, 304, 306.

5. Petitioners—individuals who regularly stand near facilities in Boston, Springfield, and Worcester to protest abortion and to speak with patients—challenged the new law, on its face and as applied.

a. The district court denied the facial challenge. Pet. App. 121a-210a. The court of appeals affirmed, holding that the law is a permissible time, place, or manner regulation. *Id.* at 93a-120a.

First, the court of appeals found the law neutral as to content and viewpoint. It reasoned that the law merely regulated "the places in which speech might occur" and was "justified" by "legitimate safety and law enforcement concerns" without "reference to the content of any speech." Pet. App. 102a; see *id.* at 103a-105a. In light of extensive "legislative factfinding," the court concluded that such concerns were not a pretext for animus against anti-abortion speech. *Id.* at 104a. And the court rejected the argument that exempting facility employees and agents impermissi-

bly favored one viewpoint. *Id.* at 105a-106a (citing *McGuire I*, 260 F.3d at 45-47).

Second, the court of appeals found that the law "facilitates a substantial governmental interest that would be less effectively served without" it. Pet. App. 107a. The court pointed to "the ineffectiveness of the preexisting law" and the legislature's determination, "after considerable study," that additional protection was needed. *Id.* at 109a.

Finally, the court of appeals ruled that the 2007 law leaves open ample alternative channels of communication. The court observed that the law "places no burden at all on the plaintiffs' activities outside the 35-foot buffer zone," including "offer[ing] either literature or spoken advice to pedestrians," and that those activities "may be seen and heard by individuals entering, departing, or within the buffer zone." Pet. App. 110a-111a. Moreover, the court added, "[a]ny willing listener is at liberty to leave the zone, approach those outside it, and request more information." *Id.* at 111a; see *ibid.* ("the size of the zone is not unreasonable").

b. The district court subsequently rejected petitioners' as-applied challenge. Pet. App. 29a-91a. The court of appeals again affirmed. *Id.* at 1a-28a.

The court of appeals rejected petitioners' claim that application of the employee-related exemption constitutes "viewpoint discrimination." Pet. App. 14a-18a. Even assuming that employees in a buffer zone sometimes express views and interfere with protesters' speech, the court held, such behavior by private actors cannot be attributed to the Commonwealth, because the exemption "does not purport to allow either advocacy by an exempt person or interference

by an exempt person with the advocacy of others." *Id.* at 15a. In addition, the court detected "no allegation that such behavior has been sanctioned by the state" or that plaintiffs ever complained about it to any "state authorities." *Id.* at 17a.

The court of appeals also found that the law preserved ample alternative channels of communication at the particular facilities where petitioners exercise their First Amendment rights. Applying the district court's factual findings, the court of appeals noted that "communicative activities flourish at all" of those facilities: "[petitioners] and their placards are visible to their intended audience," with petitioners able to "disseminate their message and elicit audience reactions"; petitioners' "voices are audible" and may also be enhanced by amplification equipment if desired; and members of the public continue to "congregate in groups outside a clinic, engage in spoken prayer, employ symbols (such as crucifixes and baby caskets), and wear evocative garments" or "don costumes." Pet. App. 23a; see J.A. 309.

SUMMARY OF ARGUMENT

The Massachusetts statute at issue in this case is content neutral, is narrowly tailored to significant governmental interests, and leaves open ample alternative channels of communication. Accordingly, it is a permissible time, place, or manner restriction under the First Amendment.

A. The 2007 statute is content neutral. It regulates conduct only, draws no distinctions on the basis of what a speaker is saying, and requires no inquiry into the content or nature of speech to enforce its prohibitions. Moreover, the statute was enacted in response to an extensive history of dangerous and

obstructive conduct around reproductive health-care facilities, and the Commonwealth thus acted independent of any speech-related goal when it sought to clear small areas outside those facilities to protect public safety and ensure unimpeded access to important health-care services.

Petitioners are wrong to suggest that the law is content based because it applies only to those particular areas. Because the legislature had before it no history of confrontation and intimidation around other types of facilities, its decision to enact a narrow statutory prohibition is evidence not of pretext or selectivity, but instead of an appropriate match between problem and solution. That petitioners' speech is unconstrained outside of the 35-foot buffer zone confirms that conduct, not content, was the legislation's target.

This Court has previously upheld statutes regulating conduct at or near specific facilities or identified places. See, *e.g.*, *Cox* v. *Louisiana*, 379 U.S. 559, 562 (1965) (state courthouses); *Heffron* v. *ISKON*, 452 U.S. 640, 650-651 (1981) (state fair); *Frisby* v. *Schultz*, 487 U.S. 474, 477 (1988) (residences). In addition, similar statutes at both the state and federal level address vexing problems such as picketing at funerals, *Snyder* v. *Phelps*, 131 S. Ct. 1207, 1218 (2011), even though the protests in question may well center around particular topics. Petitioners' approach to content neutrality would cast doubt on all such regulation.

Petitioners are also wrong to suggest the existence of viewpoint discrimination. The 2007 statute's exemption for facility employees or agents acting "within the scope of their employment," by its terms and as interpreted by the Massachusetts Attorney General,

privileges no speech; it simply permits the facility to conduct normal operations by allowing individuals who have job responsibilities that take them through the zone to go about their business. Moreover, petitioners' pleadings offered no factual allegations of selective enforcement to support a viewpoint discrimination claim.

B. The 2007 statute is also "narrowly tailored to serve * * * significant governmental interest[s]." *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989) (citation omitted). The statute creates a buffer zone that is modest in size and that leaves unaffected the ability of petitioners or others standing outside the zone to speak, leaflet, or engage in any other activities protected by the First Amendment—including in areas that patients must cross to reach the facility in question. And Massachusetts arrived at that approach only after trying and failing to ensure public safety and access in a variety of other ways, including through use of a "floating" buffer zone modeled on the one at issue in *Hill* v. *Colorado*, 530 U.S. 703 (2000). The 2007 statute therefore does not sweep in substantially more speech than necessary to achieve the Commonwealth's goals.

Petitioners argue that the Commonwealth's interests can be equally well served by laws that target obstruction of reproductive health-care facilities or that prohibit violence or other criminal activity. But such laws deal with only the most "blatant and specific attempts" to endanger people or impede access, *Burson* v. *Freeman*, 504 U.S. 191, 206-207 (1992) (plurality opinion), and Massachusetts has already attempted to rely on them without success. The least restrictive alternative is not constitutionally required, and an

ineffective alternative is not constitutionally significant.

Petitioners also complain that the quiet conversation and leafleting in which they seek to engage would have little impact on the Commonwealth's interests. The law does not, in fact, bar those activities entirely; it merely requires that petitioners conduct them 35 feet away from a facility entrance or driveway. In any event, narrow-tailoring analysis must take into account not only petitioners themselves, but also everyone else who would crowd and effectively block entrances if no restriction existed. The 2007 statute is narrowly tailored to the "overall problem the government seeks to correct." *Ward*, 491 U.S. at 801.

C. Finally, the 2007 statute leaves open ample alternative channels of communication. Petitioners' ability to speak in any manner, so long as they do so without physically entering a zone that extends only 35 feet from a facility entrance or driveway, remains entirely unrestricted. And the record shows that petitioners have continued to convey their message effectively—using means including leafleting, quiet conversation, and signs—to patients who are approaching and within the buffer zone.

Petitioners contend that that these alternative channels are an imperfect substitute for the ability to follow patients right up to a facility's door. But this Court has already rejected the argument that a time, place, or manner restriction fails simply because it denies a speaker the preferred or even the most effective means of communication. *Heffron*, 452 U.S. at 653. Petitioners can continue to win the attention of their desired audience without deviating from the

message they wish to deliver, and the alternative channels available to them are thus amply sufficient.

D. This case does not provide a suitable opportunity for revisiting *Hill*. Unlike *Hill*, this case involves a fixed buffer zone, applicable to all speakers and not only those engaged in protest, education, and counseling. Moreover, unlike the 100-foot limitation in *Hill*, the 2007 statute affects conduct only within 35 feet of facility entrances and driveways. Regardless of the result in *Hill*, the law at issue here is constitutional.

ARGUMENT

The 35-foot buffer zone around entrances and driveways of reproductive health-care facilities in Massachusetts applies regardless of any message a speaker wishes to convey and affects no speech at all by persons standing outside the zone, whether directed at patients approaching or inside the zone. With respect to traditional public forums such as sidewalks and streets, Massachusetts may "impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.'" *Ward*, 491 U.S. at 791 (quoting *Clark* v. *Community for Creative Non-Violence,* 468 U.S. 288, 293 (1984)). The 2007 statute meets that test.

A. The Statute Is Content Neutral

1. Massachusetts' effort to safeguard the entrances and driveways of reproductive health-care facilities is content neutral. See *Ward*, 491 U.S. at 791 ("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.").

First, the Massachusetts legislation regulates conduct, not speech. The statute does not refer to speech, let alone directly regulate it. Rather, it simply bars entering or remaining in a small area around reproductive health-care facilities' entrances and driveways. The law applies regardless of how affected speakers wish to express themselves, or whether they wish to discuss abortion, facilities' employment practices or accessibility to individuals with disabilities, local or national elections, or any other issue. See, *e.g.*, *Turner Broad. Sys., Inc.* v. *FCC*, 512 U.S. 622, 643 (1994) ("laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral"). Enforcement of the statute therefore requires no inquiry into the content or nature of the speech. *Regan* v. *Time, Inc.*, 468 U.S. 641, 655-657 (1984) (plurality opinion) (statute content neutral where "the Government does not need to evaluate the nature of the message being imparted in order to enforce the * * * limitations"); Erwin Chemerinsky, *Constitutional Law* 936 (3d ed. 2006).

Second, the statute was enacted in response to an extensive history of dangerous and obstructive conduct immediately outside of Massachusetts facilities. See, *e.g.*, J.A. 31-89. The statute does not concern itself with the reason why people engaged in that conduct; it merely seeks to make the conduct stop. *Sorrell* v. *IMS Health, Inc.*, 131 S. Ct. 2653, 2664 (2011) ("content-neutral speech regulations are those

that are '*justified* without reference to the content of the regulated speech'") (quoting *City of Renton* v. *Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986)); *Heffron*, 452 U.S. at 649 (regulation requiring that sales and solicitations at state fair take place at booths "applies evenhandedly to all who wish to distribute and sell written materials or to solicit funds"). In short, nothing in the statute privileges or disadvantages any viewpoint or any topic of conversation, or indicates disagreement with any particular speaker's message.

That analysis is consistent with this Court's decisions in other buffer zone cases. Writing for the Court in both *Madsen* and *Schenck*, for example, Chief Justice Rehnquist held that injunctions creating buffer zones for specified protesters around certain facilities were content neutral because they were imposed not on the basis of an "antiabortion message," but on the basis of protesters' "repeated[] violat[ion]" of a court order. *Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 763 (1994); see *Schenck* v. *Pro-Choice Network*, 519 U.S. 357, 372-374 (1997).

Likewise, in *Hill* v. *Colorado*, 530 U.S. 703 (2000), this Court found content neutral a Colorado law that created a 100-foot zone in front of health-care facilities inside which a person could not (absent consent) approach another person within eight feet "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." *Id.* at 707. The Court explained that the law simply regulated "the places where some speech may occur" and did not make "reference to the content of the speech"; that it "was not adopted" due to "disagreement with the

message" conveyed by opponents of abortion; and that the governmental interests advanced were "unrelated to the content of the demonstrators' speech," even if enactment of the law "was motivated by the conduct of the partisans on one side of [the] debate." *Id.* at 719-720, 724.

The Massachusetts law at issue here poses even less cause for concern than the law the Court upheld in *Hill*. In *Hill*, the dissenting Justices would have deemed the law at issue content based on the ground that determining whether "protest, education, or counseling" is occurring requires evaluation of a message's content.[1] The Massachusetts law draws no such distinctions. It addresses only conduct, and it proscribes that conduct by people conveying any message or espousing any viewpoint. See Mass. Gen. Laws ch. 266, § 120E½(b).

2. The Massachusetts legislature limited the scope of its restrictions to the areas surrounding reproductive health-care facilities. Petitioners see this virtue as a vice (Br. 23-27), contending that it renders the statute content based. That argument lacks merit.

A governmental body may focus its legislation on the serious public-safety and access problems it actually experiences. Here, Massachusetts chose to limit the use of a buffer zone to reproductive health-care facilities because only those facilities had suffered the "significant public safety and patient access problem" the legislature sought to address. Pet. App. 165a.

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[1] See 530 U.S. at 742 (Scalia, J., dissenting) ("[w]hether a speaker must obtain permission before approaching * * * depends entirely on *what he intends to say* when he gets there"); *id.* at 766 (Kennedy, J., dissenting) ("[w]hether particular messages violate the statute is determined by their substance").

Petitioners are thus wrong to suggest that the legislature's justification is pretextual, or that the statute amounts to a "targeted burdening of speech" (Br. 25). The statute is instead a targeted regulation of conduct, with an "incidental effect on some speakers or messages but not others" purely because certain people have chosen to engage in that conduct in a particular location. *Ward*, 491 U.S. at 791; see *Madsen*, 512 U.S. at 763. Indeed, the fact that petitioners' speech is unconstrained outside of the 35-foot buffer zone confirms that conduct, not content, was the legislation's target.

Nor is the statute somehow underinclusive. To be sure, the Commonwealth's interest in "freedom from violence and obstruction" (Pet. Br. 24) extends to other kinds of buildings. But history matters. If violence and obstruction had occurred at other facilities and Massachusetts had legislated only with respect to reproductive health-care facilities, such selective legislation could raise First Amendment concerns. See *City of Cincinnati* v. *Discovery Network, Inc.*, 507 U.S. 410, 416-418 (1993). There is, however, no evidence of that kind of selectiveness here. Cf. *Hill*, 530 U.S. at 709 n.6 (Colorado legislature heard evidence about "other types of protests at medical facilities, such as those involving animal rights"); see *id.* at 723-724 (Colorado law did not "distinguish among speech instances that are similarly likely to raise the legitimate concerns to which it responds").[2]

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[2] Contrary to petitioners' characterization (Br. 23-24, 26), *Hill* does not suggest any problem with that approach. See *Hill*, 530 U.S. at 724. Petitioners highlight language about a "general policy choice" (see Br. 24)—but the passage merely rejects the argument that the statute should have applied only to particular reproductive

Petitioners insist that Massachusetts must regulate more broadly, so as to cover every spot that "hosts any activity that *might* occasion protest or comment." Br. 24 (emphasis added). But content neutrality does not come only at the price of a restriction that is overly broad; "[t]he First Amendment does not require States to regulate for problems that do not exist." *Burson*, 504 U.S. at 207 (plurality opinion). Indeed, had Massachusetts attempted to do so, petitioners would no doubt have challenged the law as insufficiently tailored on that basis.

This Court has upheld time, place, or manner restrictions that apply only to the area around a certain type of facility or in a particular place. See, *e.g.*, *Heffron*, 452 U.S. at 650-651 (state fair); *Cox*, 379 U.S. at 562 (state courthouses); *Frisby*, 487 U.S. at 477 (residences); *Ward*, 491 U.S. at 791 (city bandshell); see also Geoffrey Stone, *Content-Neutral Restrictions*, 54 U. Chi. L. Rev. 46, 69 (1987). "A statute prohibiting solicitation in airports that was motivated by the aggressive approaches of Hare Krishnas does not become content based solely because its application is confined to airports." *Hill*, 530 U.S. at 724; see *ISKON* v. *Lee*, 505 U.S 672, 706 (1992) (Kennedy, J., concurring in judgment) (Port Authority's ban on solicitation is content neutral). And statutes prohibiting picketing at funerals, *Snyder*, 131 S. Ct. at 1218 & n.5, or at military funerals, 18 U.S.C. 1388, which target a vexing problem, are not content based simply because protests at such events may well center around a few particular topics. See, *e.g.*, *Phelps-*

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health-care facilities where protests had taken place, and explains why the statute was subject to the *Ward* test rather than the stricter test applied in *Madsen*. See 530 U.S. at 731.

Roper v. *City of Manchester*, 697 F.3d 678 (8th Cir. 2012) (en banc) (city ordinance restricting picketing and other protest activities at funerals is content neutral). Were petitioners' analysis of content neutrality correct, such decisions would be thrown into question, and governmental bodies would be hamstrung in addressing serious issues faced by their communities with respect to conduct affecting (for example) residences, funerals, airports, courthouses, and hospitals.

3. Petitioners are also incorrect (Br. 27-34) that the statute's exemption for facility employees or agents acting "within the scope of their employment" amounts to discrimination on the basis of viewpoint. Mass. Gen. Laws ch. 266, § 120E½(b). The statute does not, by its terms, contemplate that employees or agents will engage in expressive conduct while inside a buffer zone; it simply permits the facility to conduct normal operations by allowing individuals who have job responsibilities that take them through the zone to go about their business. And the Massachusetts Attorney General's guidance confirms that the exception does not permit political discussion or expression of personal views inside a buffer zone by anyone—including facilities' employees or agents. The construction of the statute reflected in the guidance is a reasonable one that is entitled to significant weight. See *Ward*, 491 U.S. at 795-796 (relying on city's administrative "interpretation" of a challenged restriction); *Hoffman Estates* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1982); see also *Boos* v. *Barry*, 485 U.S. 312, 330 (1988).

In addition, as the court of appeals noted, Pet. App. 16a, petitioners' pleadings made no factual allegations of selective enforcement that would support a view-

point discrimination claim. For that reason, petitioners' comparison (Br. 30-31) of this case to *Hoye* v. *City of Oakland*, 653 F.3d 835 (9th Cir. 2011), is inapt. *Hoye* involved a city ordinance creating a no-approach zone similar to the one upheld in *Hill*. As a matter of official policy, the city permitted self-appointed escorts (who had no official affiliation with the relevant facilities) to approach patients without consent in order to "encourage entry into the clinic for the purpose of undergoing treatment," while barring such approaches by persons expressing the opposite viewpoint. *Id.* at 850; see *id.* at 851. The case at hand involves no such "government favoritism." Pet. Br. 30. Massachusetts has, at worst, imperfectly enforced its law without regard to the viewpoint of those who slip through the cracks. It has not endorsed speech advancing only one side of a divisive issue. See *City of Ladue* v. *Gilleo*, 512 U.S. 43, 52 (1994); see also *Menotti* v. *City of Seattle*, 409 F.3d 1113, 1130 (9th Cir. 2005).

B. The Statute Is Narrowly Tailored To Serve Significant Governmental Interests

The 2007 statute also meets the second requirement for a proper time, place, or manner restriction: it is "narrowly tailored to serve * * * significant governmental interest[s]." *Ward*, 491 U.S. at 791 (quoting *Clark*, 468 U.S. at 293).

1. Petitioners do not appear to quarrel with the proposition that the governmental interests at stake here are significant and legitimate. See Br. 45. Massachusetts has a powerful interest in ensuring public safety and order—in preventing harm to persons or property, in preserving the ability of the public to use streets and sidewalks, and in keeping the way to busi-

nesses and other buildings open. See, *e.g.*, *Heffron*, 452 U.S. at 650 ("[The] State's interest in protecting the 'safety and convenience' of persons using a public forum is a valid governmental objective."); *Cox* v. *Louisiana*, 379 U.S. 536, 555 (1965) ("A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen."); see also *Schenck*, 519 U.S. at 376 (injunction justified by interest in ensuring public safety and order, including concern about "fights that threatened to (and sometimes did) develop"); *Madsen*, 512 U.S. at 767-768; cf. *United States* v. *Grace*, 461 U.S. 171, 182-184 (1983). In addition, the Commonwealth has a powerful interest in protecting citizens' access to lawful reproductive health-care services. See *Hill*, 530 U.S. at 715; see also *Madsen*, 512 U.S. at 758-759, 767-768, 772-773 ("the State has a strong interest in protecting a woman's freedom to seek lawful medical or counseling services"); *NLRB* v. *Baptist Hosp., Inc.*, 442 U.S. 773, 783-784 n.12 (1979).

The 2007 statute—forged in the crucible of experience—is narrowly tailored to serve those interests. See *Ward*, 491 U.S. at 797-800 (explaining that narrow tailoring requirement is satisfied "so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation" and is "not substantially broader than necessary" to achieve that interest (citation omitted)). As the legislative record reflects, neither specific prohibitions on obstruction and intimidation nor the "floating" buffer established by the 2000 statute ensured public safety and access to reproductive health-care facilities. Enforcement of those laws was difficult

for a variety of reasons, including challenges involved in identifying violators in chaotic environments. See, *e.g.*, Pet. App. 145a-147a; J.A. 50, 68-70. Those arrested or charged returned again and again to the facilities, despite the best efforts of the police, see, *e.g.*, *id.* at 69-71, or new violators came in waves to take their places. And people who were not themselves violating laws that barred knowing obstruction, or approaching patients more closely than the "floating" buffer permitted, nevertheless collectively made access to the facilities difficult or impossible, because they sometimes were drawn into conflict and because (like petitioners themselves, see, *e.g.*, *id.* at 176, 189, 252) they all wanted to stand directly in front of driveways and entrances. See, *e.g.*, *id.* at 62, 67, 77-78, 86, 122-124; Pet. App. 138a; see also *In re Opinion of the Justices to the Senate*, 723 N.E.2d 1, 5 (Mass. 2000) (noting difficulties involved with "close proximity" of "advocates on both sides"); J.A. 51 (noting that patients were sometimes driven away).

Based on that experience, Massachusetts enacted the current 35-foot buffer zone. See J.A 31-89. That law regulates conduct within a space extending fewer than 12 yards from entrances and driveways—about "[h]alf the distance from home plate to the pitcher's mound," J.A. 81, and even less than that at the Boston facility, see J.A. 293-294—that the legislature determined needed to be kept clear. The law does not affect the ability of petitioners or others standing outside the buffer zone to speak, counsel, leaflet, picket, or engage in any other activities protected by the First Amendment—including in areas through which patients must cross to reach the facility in question. See, *e.g.*, J.A. 141, 148. Petitioners can approach pa-

tients outside the buffer zone to engage in counseling and hand out literature, cf. *Hill*, 530 U.S. at 707, and speakers can be heard, and their signs and placards seen, from within the zone itself, prompting patients to leave the zone to accept a leaflet or engage in a quiet conversation. See, *e.g.*, Pet. App. 23a; J.A. 98-99, 126-127, 274-275. Thus, members of the public who wish to engage with patients entering a facility remain close enough to deliver their message, but not so close as to interfere with public safety or access. See *infra* pp. 28-33 (discussing ample alternative means of communication).

The 2007 statute is thus narrowly tailored. In addressing an acute and persistent threat to public safety and order, Massachusetts tried various approaches over time, gauged their effect on that threat and on the public's freedom of expression, and ultimately arrived at a workable solution that is not "substantially broader than necessary to achieve the government's interest." *Ward*, 491 U.S. at 800; see *Schenck*, 519 U.S. at 380-381 (explaining that "the District Court was entitled to conclude" based on experience that "the only way to ensure access was to move *all* protesters away from the doorways"); *Madsen*, 512 U.S. at 768-771 ("The failure of the first [injunction] order to accomplish its purpose may be taken into consideration in evaluating the constitutionality of the broader order."). Indeed, that solution "eliminates no more than the exact source of the 'evil' it seeks to remedy," *Frisby*, 487 U.S. at 485-486, because every person who stands right outside the facilities necessarily contributes to the overall problem at which the 2007 statute was targeted. See *City of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 789, 810 (1984). The Common-

wealth's choice therefore should not be second-guessed. See *Ward*, 491 U.S. at 803; see also *Hill*, 530 U.S. at 725-730; *Burson*, 504 U.S. at 210 (plurality opinion).

2. In contending that the 2007 statute is not narrowly tailored, petitioners assert (Br. 35-44) that the Commonwealth could have regulated in a less restrictive fashion. But a time, place, or manner regulation—unlike a law subject to strict scrutiny, see *Riley* v. *National Fed'n of the Blind*, 487 U.S. 781 (1988) (cited in Pet. Br. 35, 39, 44)—is not "invalid 'simply because there is some imaginable alternative that might be less burdensome on speech.'" *Ward*, 491 U.S. at 797-798 (quoting *United States* v. *Albertini*, 472 U.S. 675, 689 (1985)). Petitioners' various arguments fail to demonstrate that the 2007 law sweeps in substantially more speech than necessary to achieve the Commonwealth's goals.

First, petitioners contend that laws directed at individuals who knowingly obstruct reproductive health-care facilities, or who engage in violence or other criminal activity, should be deemed sufficient. See Br. 35-38 (citing, *e.g.*, 18 U.S.C. 248(a)(1) and Mass. Gen. Laws ch. 266, § 120E½(e)). Even if it were true that those laws represented a less restrictive means of advancing the government's goals, Massachusetts would not be required to rely on them to the exclusion of other action. See *Ward*, 491 U.S. at 797-798. More to the point, as described above (pp. 2-6, 22-23, *supra*), Massachusetts has already attempted to rely exclusively on those kinds of laws, and that attempt was a failure. Threats to public safety and access continued even after a few "specific wrongdoers" (Pet. Br. 37) were removed from the scene.

This Court has previously recognized such realities. In *Burson*, which upheld a 100-foot buffer zone outside of polling places, the Court explained that "[i]ntimidation and interference laws fall short of serving a State's compelling interests because they deal with only the most blatant and specific attempts to impede elections," and "undetected or less than blatant acts may nonetheless drive the voter away before remedial action can be taken." 504 U.S. at 206-207 (plurality opinion). The same analysis applies here, where patients and the public are at risk, see *Schenck*, 519 U.S. at 380-382—and, indeed, is even more apt here than it was in *Burson*, because in that case the proposed alternative had not actually been tried and found wanting. See 504 U.S. at 208-209 (plurality opinion).

Second, petitioners argue that the law impermissibly blocks quiet conversation, conversations held at close quarters, and leafleting, all of which they would engage in within the buffer zone were they permitted to do so. See Br. 40-44. The law does not, in fact, block those activities entirely; rather, it bars petitioners and others only from carrying them out by entering or standing in a small area extending from facilities' doors and driveways. It does so because no other viable means has been found for keeping those areas safe and clear.

Whether or not any difficulties would arise if petitioners *alone* were permitted to talk and leaflet without any "place" restriction is beside the point, because Massachusetts must account for everyone who would crowd up to the facilities if no such restriction existed. See *Heffron*, 452 U.S. at 653-655 (criticizing the lower court's failure to "take into account the fact that any

* * * exemption cannot be meaningfully limited to [plaintiff], and as applied to similarly situated groups would prevent the State from furthering its important concern"); *Lee*, 505 U.S. at 685; *Clark*, 468 U.S. at 297-298. Whether one, or a few, particular people will cause a disruption is not determinative of the narrow tailoring question. "[T]he validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case." *Ward*, 491 U.S. at 801; see also *Albertini*, 472 U.S. at 688-689.[3]

In the end, there is nothing remarkable about the conclusion that the 2007 statute is narrowly tailored. This Court has upheld as narrowly tailored laws that limit presence or behavior within site-specific zones in a variety of contexts. See, *e.g.*, *Burson*, 504 U.S. at 211 (plurality opinion) (ban on campaigning within 100 feet of polling place); *Boos*, 485 U.S. at 330-332 (restriction on congregating within 500 feet of embassy); see also *Cox*, 379 U.S. at 562, 564 (limitations on picketing near courthouses); *Frisby*, 487 U.S. at 484-485 (same with respect to private residences); see generally *Carey* v. *Brown*, 447 U.S. 455, 470-472 (1980) (stating that "no mandate in our Constitution leaves States and governmental units powerless to pass laws to

[3] Indeed, were the rule otherwise, no buffer zone would ever be permissible; as to a zone near a political convention, see *Marcavage* v. *City of New York*, 689 F.3d 98 (2d Cir. 2012), cert. denied, 133 S. Ct. 1492 (2013), or a military funeral, cf. 18 U.S.C. 1388; see *Phelps-Roper* v. *Koster*, 713 F.3d 942 (8th Cir. 2013), or a high-profile religious service, see *Mahoney* v. *United States Marshals Serv.*, 454 F. Supp. 2d 21 (D.D.C. 2006), a plaintiff could readily claim that he planned only to talk quietly to attendees near the door.

protect the public from the kind of boisterous and threatening conduct that disturbs the tranquility of" homes or "public and other buildings that require peace and quiet to carry out their functions, such as courts, libraries, schools, and hospitals" (citation omitted)). And, more specifically, this Court has upheld comparable buffer zones around reproductive health-care facilities while applying a more stringent tailoring test than the one used to assess time, place, or manner restrictions. See *Madsen*, 512 U.S. at 757-758, 764-766 (applying test for assessing injunction, which asks whether the relevant provisions "burden no more speech than necessary to serve a significant government interest," and upholding "the establishment of a 36-foot buffer zone on a public street from which demonstrators are excluded"); *Schenck*, 519 U.S. at 380 (upholding fixed 15-foot buffer zone while invalidating floating buffer zone). Under the less exacting scrutiny applicable here, the 2007 statute passes muster.

C. The Statute Leaves Open Ample Alternative Channels For Communication

The Massachusetts statute also "leave[s] open ample alternative channels of communication." *Ward*, 491 U.S. at 802. Contrary to petitioners' argument, the court of appeals did not suggest that petitioners' only remaining options are "shouting, using bullhorns" or "dressing in costumes," Br. 46, although the members of the public who engage in such activities may continue to do so. Rather, the court correctly concluded that the 2007 statute "places no burden at all on [petitioners'] activities outside the 35-foot buffer zone," including "offer[ing] either literature or spoken advice to pedestrians" and conveying messages that

"may be seen and heard by individuals entering, departing, or within the buffer zone." Pet. App. 110a-111a; see *id.* at 22a-26a (explaining how "communicative activities flourish at all three" facilities at issue). Cf. *Heffron*, 452 U.S. at 655 n.16 ("relevant public forum" is entire state fair, not just area of fair subject to restrictions).

First, petitioners can and do "engage fellow citizens" who are outside the buffer zone and are approaching a facility "in peaceful conversations." Pet. Br. 47; see, *e.g.*, J.A. 126-127 ("[p]rotestors continue to have close contact with patients and others approaching the clinic"). For example, without entering a buffer zone, petitioners (and others) go up to patients who are nearing the Boston facility and—unhampered by any restrictions—speak with them, offer them help, and provide them with literature. See, *e.g.*, J.A. 288, 306. Protesters also display signs and religious symbols, pray aloud, sing songs, and engage in other expressive activity that is heard by passersby as well as patients. Pet. App. 6a, 23a; see *Madsen*, 512 U.S. at 769-770 (noting that those excluded from 36-foot zone could "still be seen and heard" from within).

Indeed, the Massachusetts law would appear to permit closer and more sustained contact with patients approaching facility entrances by sidewalk than did the Colorado law at issue in *Hill*. The Massachusetts law operates only for the last 35 feet of the journey, while the Colorado law created a "floating" buffer that limited "approach[es]" within 100 feet of facility entrances. See *Hill*, 530 U.S. at 707-708; see also *Burson*, 504 U.S. at 210 (plurality opinion) (observing that it takes 15 seconds to walk the final 75 feet into a polling place).

Second, even after a patient enters the buffer zone, petitioners may continue to communicate with that person. They can quietly ask someone with whom they have already been talking to stop and continue the conversation—something a willing person is likely to do. They can ask someone to whom they have not yet spoken to listen, or to step out of (or to the edge of) the zone for a longer discussion or to accept a piece of literature. See, *e.g.*, J.A. 126-127 (protesters "continue to communicate verbally" with patients who have entered the zone); see also *id.* at 98, 113, 116-118. Petitioners' voices remain "audible" in that context, Pet. App. 23a; see, *e.g.*, J.A. 113, 117-118, 274-275, 278 (person in zone can hear people calling out messages such as "girls, we love you, please come talk to us" and "anything you need, we can help you")—although they may have to compete with others, including those opposing abortion whose messages petitioners themselves find "counterproductive" or overly "loud." J.A. 149-150, 215.[4]

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[4] The buffer zone at the Boston facility covers an area extending 22 to 26 feet from the building, which can be completely encircled by a small group of people. See, *e.g.*, J.A. 300, 303-304; see also Pet. App. 39a-40a. Speaking to patients is more difficult at the Springfield and Worcester facilities, because most patients arrive by car and walk from private lots to facility entrances without setting foot on any public way. But people continue to make their message heard at those sites through a variety of means, including quiet conversation. See, *e.g.*, Pet. App. 7a-8a, 56a-57a; J.A. 116-120, 200, 217, 274-278, 291-292. And to the extent the 2007 law prevents close approaches to moving vehicles, that is precisely the kind of interaction that the Massachusetts legislature deemed unsafe, with considerable supporting evidence. See, *e.g.*, J.A. 12-16, 18-22, 41, 51, 55, 61, 88-89, 99.

Finally, petitioners and others remain free to communicate their message throughout the community by the use of various media. The means available to them include disseminating phone numbers or website addresses to provide assistance and publicizing their views through counseling clinics (including clinics located directly across the street from facilities where women obtain reproductive health care). See J.A. 143, 256-266; cf. *Lechmere, Inc.* v. *NLRB*, 502 U.S. 527, 539-540 (1992).

Petitioners are having considerable success reaching their intended audience through means of various techniques, including their preferred method of close conversation. For instance, petitioner McCullen asserts that since the 2007 law went into effect she has successfully convinced about 80 women on their way to the Boston facility not to proceed with an abortion, conveying her message by "standing on the sidewalk outside the clinic and offering to speak with people and giving them literature." J.A. 148-149; see *id.* at J.A. 141 (petitioner McCullen hands out 15 to 20 pamphlets a day); see also *id.* at 171-172, 181-182, 288, 306. And although petitioners have contended that they cannot circumnavigate the buffer zone quickly enough to reach some patients, see *id.* at 134, 155, 164, 177, the Attorney General's guidance specifies that "an individual may cross through the buffer zone to reach and speak with someone outside the zone," J.A. 93; see also *id.* at 159 (discussing coverage by teams).

Thus, contrary to petitioners' contention, this is not a case in which "[t]he alternatives * * * are far from satisfactory." *Linmark Assocs., Inc.* v. *Willingboro Tp.*, 431 U.S. 85, 93-94 (1977). Rather, the alternatives available here reach precisely the same "audi-

ence"—and provide a good "opportunity" to "win the[] attention" of that audience, *Kovacs* v. *Cooper*, 336 U.S. 77, 86-87 (1949) (plurality opinion)—without forcing petitioners to convey "a message quite distinct from" the one that they would deliver if they could enter the buffer zone. *Gilleo*, 512 U.S. at 56-57. Indeed, those alternatives are in every meaningful way a "practical substitute" for the narrow channel that Massachusetts has foreclosed. *Id.* at 57; see, *e.g.*, *Frisby*, 487 U.S. at 482-484; *Clark*, 468 U.S. at 295.

Petitioners nevertheless argue that no possible alternatives can substitute for the ability to follow patients right up to a facility's door or to stand directly in front of the door in the first instance. *E.g.*, Br. 48-49; see J.A. 176, 252; *Hill*, 530 U.S. at 724. But this Court has already rejected the argument that a time, place, or manner restriction fails simply because it denies a speaker his or her preferred or even most effective means of communication. Thus, in *Heffron*, this Court upheld the challenged restriction despite respondent's argument that its members could successfully communicate and raise funds "only by intercepting fair patrons as they move about, and * * * stopping them momentarily or for longer periods as money is given or exchanged for literature." 452 U.S. at 653.

It could hardly be otherwise. If an alternative channel of communication were required to be a perfect substitute for the restricted one, then no time, place, or manner restriction would ever be upheld. See *Clark*, 468 U.S. at 291-297 ("reasonable time, place, or manner regulations normally have the purpose and direct effect of limiting expression"); *Kovacs*, 336 U.S. at 88 (plurality opinion) (upholding re-

striction on amplification though "more people may be more easily and cheaply reached by sound trucks"). No doubt protesters outside schools, funerals, political conventions, courthouses, and meetings of international leaders could often convey their messages most effectively unhampered by any time, place, or manner restrictions. Yet courts have deemed such restrictions constitutional, on the ground that ample communicative *alternatives* remain. See, *e.g.*, *Bl(a)ck Tea Soc'y* v. *City Of Boston*, 378 F.3d 8, 14-15 (1st Cir. 2004). The same result is appropriate here.

D. This Court Should Not Overrule *Hill* v. *Colorado*

Petitioners assert (Br. 53-56) that this Court should overrule its decision in *Hill* to the extent that *Hill* supports affirmance. But this case does not present a suitable opportunity for revisiting that decision. This case involves a small, fixed buffer zone that applies regardless of what the person entering or remaining in it is saying, whereas *Hill* involved a "floating" buffer zone, operating within a larger fixed area, that applied to those engaged in protest, education, or counseling. Moreover, the primary controversy among the members of the *Hill* Court relates to a question that this case does not present: whether a law targeted at protest, education, and counseling can be content neutral, or whether such a law necessarily demands that speech be categorized based on the message that it conveys. See, *e.g.*, *Hill*, 530 U.S. at 742-746 (Scalia, J., dissenting); *id.* at 767-769 (Kennedy, J., dissenting). The buffer zone in this case is not, as petitioners suggest (Br. 19), necessarily stricter than the zone at issue in *Hill*—but it is different, and calls for a different analysis.

In any event, the doctrine of stare decisis counsels against revisiting that decade-old decision. See *Vasquez* v. *Hillery*, 474 U.S. 254, 265-266 (1986); see also, *e.g.*, *Phelps-Roper*, 713 F.3d at 950-951 (relying on *Hill* to uphold buffer zone around funeral). Although that doctrine is not an "inexorable command," this Court has recognized that precedents—including those involving constitutional questions—should not be overturned absent "some special justification." *Dickerson* v. *United States*, 530 U.S. 428, 443 (2000) (citations omitted). No such justification exists here; *Hill* is a workable, carefully considered decision, and its "doctrinal underpinnings" have not been "undermined." *Id.* at 443. Accordingly, even were there some reason to revisit *Hill* in this case, its holding should not be disturbed.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
JOCELYN SAMUELS
Acting Assistant Attorney General
IAN HEATH GERSHENGORN
Deputy Solicitor General
ELAINE J. GOLDENBERG
Assistant to the Solicitor General
DIANA K. FLYNN
SASHA SAMBERG-CHAMPION
Attorneys

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