

More recently, disputes arising from anti-abortion protests outside abortion clinics have occasioned another look at principles distinguishing lawful public demonstrations from proscribable conduct. In *Madsen v. Women's Health Center*,<sup>1504</sup> the Court refined principles governing issuance of "content-neutral" injunctions that restrict expressive activity.<sup>1505</sup> The appropriate test, the Court stated, is "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant governmental interest."<sup>1506</sup> Regular time, place, and manner analysis (requiring that regulation be narrowly tailored to serve a significant governmental interest) "is not sufficiently rigorous," the Court explained, "because injunctions create greater risk of censorship and discriminatory application, and because of the established principle that an injunction should be no broader than necessary to achieve its desired goals."<sup>1507</sup> Applying its new test, the Court upheld an injunction prohibiting protesters from congregating, picketing, patrolling, demonstrating, or entering any portion of the public right-of-way within 36 feet of an abortion clinic. Similarly upheld were noise restrictions designed to ensure the health and well-being of clinic patients. Other aspects of the injunction, however, did not pass the test. Inclusion of private property within the 36-foot buffer was not adequately justified, nor was inclusion in the noise restriction of a ban on "images observable" by clinic patients. A ban on physically approaching any person within 300 feet of the clinic unless that person indicated a desire to communicate burdened more speech than necessary. Also, a ban on demonstrating within 300 feet of the residences of clinic staff was not sufficiently justified, the restriction covering a much larger zone than an earlier residential picketing ban that the Court had upheld.<sup>1508</sup>

In *Schenck v. Pro-Choice Network of Western New York*,<sup>1509</sup> the Court applied *Madsen* to another injunction that placed restrictions on demonstrating outside an abortion clinic. The Court up-

---

importance of avoiding the imposition of punishment for constitutionally protected activity. . . . A court must be wary of a claim that the true color of a forest is better revealed by reptiles hidden in the weeds than by the foliage of countless freestanding trees." 458 U.S. at 933–34.

<sup>1504</sup> 512 U.S. 753 (1994).

<sup>1505</sup> The Court rejected the argument that the injunction was necessarily content-based or viewpoint-based because it applied only to anti-abortion protesters. "An injunction by its very nature applies only to a particular group (or individuals) . . . . It does so, however, because of the group's past actions in the context of a specific dispute between real parties." There had been no similarly disruptive demonstrations by pro-abortion factions at the abortion clinic. 512 U.S. at 762.

<sup>1506</sup> 512 U.S. at 765.

<sup>1507</sup> 512 U.S. at 765.

<sup>1508</sup> Referring to *Frisby v. Schultz*, 487 U.S. 474 (1988).

<sup>1509</sup> 519 U.S. 357 (1997).