

did not significantly impair the ability to convey messages by signs, and ordinarily allowed speakers to come within a normal conversational distance of their targets. Because the statute allowed the speaker to remain in one place, persons who wished to hand out leaflets could position themselves beside entrances near the path of oncoming pedestrians, and consequently were not deprived of the opportunity to get the attention of persons entering a clinic.

A five-Justice opinion in *McCullen v. Coakley*, written by Chief Justice Roberts, retained a content-neutral analysis similar to that in *Hill*, but nonetheless struck down a statutory 35-foot buffer zone at entrances and driveways of abortion facilities.¹⁵²⁰ According to the Chief Justice, the buffer zone was not narrowly tailored to serve governmental interests in maintaining public safety and preserving access to reproductive healthcare facilities, the concerns claimed by Massachusetts to underlie the law. The opinion cited several alternatives to the buffer zone that would not curtail the use of public sidewalks as traditional public fora for speech, nor significantly burden the ability of those wishing to provide “sidewalk counseling” to women approaching abortion clinics. The Court also held that, to preserve First Amendment rights, targeted measures, such as injunctions, enforcement of anti-harassment ordinances, and use of general crowd control authority, as needed, are preferable to broad, prophylactic measures.¹⁵²¹ The failure of the opinion to include a more tightly drawn buffer zone as an alternative may raise a question on any use of buffer zones as a protective device, especially when considering that four concurring Justices viewed the buffer zone in the case as a content-based restriction on speech requiring strict judicial scrutiny.

Different types of issues were presented by *Hurley v. Irish-American Gay Group*,¹⁵²² in which the Court held that a state’s public accommodations law could not be applied to compel private organizers of a St. Patrick’s Day parade to accept in the parade a unit that would proclaim a message that the organizers did not wish to promote. Each participating unit affects the message conveyed by the parade organizers, the Court observed, and application of the public accommodations law to the content of the organizers’ message contravened the “fundamental rule . . . that a speaker has the autonomy to choose the content of his own message.”¹⁵²³

¹⁵²⁰ 573 U.S. ___, No. 12–1168, slip op. (2014).

¹⁵²¹ Slip op. at 23–29.

¹⁵²² 515 U.S. 557 (1995).

¹⁵²³ 515 U.S. at 573.