



2013, which were held on Mondays, and which have come to be known as the Moral Monday Protests.

4. At times the members of the large group became quiet at the request of other members in order for individual speakers to be heard.
5. At other times members of the group loudly sang, chanted, clapped, and cheered.
6. The large number of people in the second floor rotunda area made it difficult to move freely in that area.
7. When asked by law enforcement, members of the group moved out of the way to allow free movement of law enforcement through the area. No member of the group willfully or intentionally obstructed ingress and egress through the area.
8. General Assembly Police Chief Weaver (“Chief Weaver”) allowed the group in the second floor rotunda area to gather, speak, cheer, chant, clap, and sing until approximately 6:55 pm when he declared that the group was an unlawful assembly and ordered everyone in the group to disperse.
9. Chief Weaver repeated the order twice, and then proceeded to arrest every member of the group that remained in the rotunda area of the second floor of the State Legislative Building.
10. Chief Weaver arrested every member of the group that remained on the second floor of the rotunda because, in his opinion, the group was creating a disturbance in violation of the Rules of the State Legislative Building in effect on July 15, 2013.
11. Specifically, Chief Weaver determined that the noise was too loud for the normal operation of the State Legislative Building and that members of the group were

blocking ingress and egress into the State Legislative Building. Chief Weaver also determined that some members of the group were also in violation of the Legislative Building Rules in that some carried unauthorized signs.

12. Rule II(4) of the then effective Rules of the State Legislative Building stated that visitors “may move freely about the Legislative Complex so long as they do not disturb the General Assembly, one of its houses or its committees, members, or staff in the performance of their duties.”
13. Rule II(5) of the then effective rules of the State Legislative Building prohibited individuals or groups from carrying signs “for the purpose of expressing support for or opposition to an issue,” with a few limited exceptions.
14. Prior to ordering all members of the group to disperse, Chief Weaver did not ask the group, or any individual members of the group, to reduce the noise level.
15. The Defendants were arrested and charged with second degree trespass, failure to disperse, and violation of the Rules of the State Legislative Building. The State elected to proceed only on the charge of second degree trespass.
16. This is the first time during the course of the State’s prosecution of the cases that are commonly known as the “Moral Monday Cases” that defense counsel has argued the recently decided case of *McCullen v. Coakely*, 134 S.Ct. 2518 (June 26, 2014).
17. In *McCullen*, the United States Supreme Court, in dealing with a content neutral statute, provided guidance on what is required of the State to show that its statute is narrowly tailored so as not to impose serious burdens on conduct protected by the First Amendment to the United States Constitution.

18. The United States Supreme Court held in *McCullen* that the Commonwealth of Massachusetts could not ban all persons from a “buffer zone,” when it “had available to it a variety of approaches that appear capable of serving its interests, without excluding individuals from areas historically open for speech and debate.” *Id.* at 2539.
19. The United States Supreme Court required Massachusetts to take measures to protect persons engaged in constitutionally protected free speech, and restrict only persons who are actually disrupting or obstructing legitimate governmental interests. *McCullen v. Coakely*, 134 S.Ct. 2518, 2541 (June 26, 2014) (“But here the Commonwealth has pursued those interests by the extreme step of closing a substantial portion of a traditional public forum to all speakers. It has done so without seriously addressing the problem through alternatives that leave the forum open for its time-honored purposes. The Commonwealth may not do that consistent with the First Amendment.”)
20. The United States Supreme Court in *McCullen* held “To determine whether a protestor intends to block access to a clinic, a police officer need only order him to move. If he refuses, then there is no question that his continued conduct is knowing or intentional.” *Id.* at 2540.
21. The United States Supreme Court in *McCullen* also held, “To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government’s interests, not simply that the chosen route is easier.” *Id.*
22. In the present case, when individual members of the group were asked to move

they did so.

23. Furthermore, the group showed it was capable of being quiet when requested.
24. The Defendants were not personally engaging in disruptive behavior and did not carry signs. They were assembling peacefully.
25. Although the General Assembly Police issued a memorandum May 13, 2013 stating it intended to warn persons causing a disturbance to cease the disruptive behavior before ordering such persons to leave, the General Assembly Police did not follow this procedure on July 15, 2013.
26. The General Assembly Police ordered all members of the group in the second floor rotunda area to disperse without warning them to move or be quiet. This order also applied to persons who were merely present and standing silently listening to the speeches.
27. The General Assembly Police never gave a warning or request to be quiet prior to the order to leave.

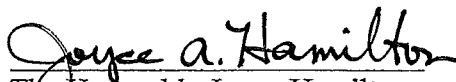
### **CONCLUSIONS OF LAW**

28. The Court concludes that the General Assembly Police failed to explore less restrictive means to accomplish the government interest in dealing with the disturbance.
29. As a result, the Defendants in the present case, who were not creating or contributing to any disturbance while attending the assembly, were subject to an unconstitutional order to disperse that imposed serious burdens on the Defendants' protected constitutional rights.

30. The State has not shown that less restrictive measures would have failed to achieve the government's interests.
31. The actions taken by the General Assembly Police to end the disturbance caused by the loud noise and blocking ingress and egress were content neutral, not triggering strict scrutiny. However, the orders to disperse were not narrowly tailored to serve the governmental interest present in these cases.
32. The charge of trespass, as applied to these defendants, therefore constitutes an unconstitutional burden upon their right to peacefully assemble and speak.

BASED ON THE FOREGOING Findings of Fact and Conclusions of Law, it is ORDERED, that the above captioned cases are dismissed at the close of the State's evidence in light of the recently decided decision *McCullen v. Coakely*, 134 S.Ct. 2518, 2541 (June 26, 2014).

So Ordered this July 30, 2014

  
The Honorable Joyce Hamilton  
Presiding District Court Judge

August 7, 2014

none pro tunc July 30, 2014