No. 18-1516

IN THE
Supreme Court of the United States

VERONICA PRICE, *ET AL.*, *Petitioners*,

v.

CITY OF CHICAGO, ILLINOIS, *ET AL.*, *Respondents*.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

Brief *Amicus Curiae* of Conservative Legal Defense and Education Fund, Pro-Life Legal Defense Fund, U.S. Constitutional Rights Legal Defense Fund, Eleanor McCullen, California Constitutional Rights Foundation, Fitzgerald Griffin Foundation, Pass the Salt Ministries, The Transforming Word Ministries, Restoring Liberty Action Committee, and Center for Morality in Support of Petitioners

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MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

Conservative Legal Defense and Education Fund, Pro-Life Legal Defense Fund, U.S. Constitutional Rights Legal Defense Fund, California Constitutional Rights Foundation, Fitzgerald Griffin Foundation, Pass the Salt Ministries, and The Transforming Word Ministries, are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Eleanor McCullen was the plaintiff in McCullen v. Coakley, 573 U.S. 464 (2014), discussed *infra*. Restoring Liberty Action Committee and Center for Morality are educational organizations.

Amici organizations were established, *inter alia*, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* filed an *amicus* brief in this case in the Seventh Circuit on August 25, 2017.

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[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to its filing; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

The Chicago public sidewalk regulation constricting the pro-life petitioners' education and counseling activities — like the Colorado statute that it emulates — crosses the jurisdictional line affixed by the laws of nature and of nature's God. Although the Colorado statute was found by this Court in Hill v. Colorado to meet its judicially contrived doctrine of "content neutrality," its decision was, and still is, a nullity, in conflict with the divinely ordained free marketplace of ideas, as originally understood by two great American statesmen — Thomas Jefferson and John Madison. The Jurisdictional Principle these men recognized limits the power of all governments, as reflected in the First Amendment, separating those duties owed exclusively to the Creator, enforceable only by reason and conviction, from those duties owed to civil government, enforceable by force and violence.

The Chicago ordinance is a content-based restriction on the freedom of speech, and yet was not decided by the courts below based on this Court's traditional First Amendment jurisprudence, but rather based solely on an outlier decision of this Court, Hill v. Colorado. In Hill, this Court applied a special set of jurisprudential principles that repeatedly have been used in cases which even tangentially involve "the constitutional right to an abortion" even though "[t]he Constitution itself is silent on abortion." Box v. Planned Parenthood of Ind. and Kent., 139 S.Ct. 1780, 1793 (2019) (Thomas, J., concurring). To prevent a continuation of this Court's abortion jurisprudence, it should grant review of this case and review the

Chicago ordinance based on original First Amendment principles.

The ordinance being challenged in this case is not unique, but part of a growing wave of actions by certain government officials designed to suppress voices of dissent. In some cities, police are directed to stand down from protecting Americans against groups like Antifa which employs the techniques of actual fascists. Yet in the City of Chicago, peaceful, rational discourse conducted in public places has been criminalized. With this case, this Court has the duty to enforce the Jurisdictional Principle, and protect the People's right to engage in rational discourse.

ARGUMENT

I. THE CHICAGO ORDINANCE, LIKE THE COLORADO STATUTE APPROVED IN HILL, IS INVALID, CONTRARY TO THE LAWS OF NATURE AND OF NATURE'S GOD.

The Petition for Certiorari ("Pet.") persuasively explains that this Court's decision in Hill v. Colorado, 530 U.S. 703 (2000), on which the Circuit Court's decision was entirely grounded, has been overtaken by, and is now unreconcilable with McCullen v. Coakley, 134 S.Ct. 2518 (2014) and Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015). *See* Pet. at 17-22. The Petition also correctly asserts that the Hill decision was and is an "outlier" in Supreme Court jurisprudence. *See* Pet. at 2. However, to understand the violence that the Hill decision does to rights protected by the First Amendment, and the manifest injustice done by the

Seventh Circuit in relying on that ruling to determine the constitutionality of the Chicago ordinance, it is necessary to return to and examine First Principles.

A. The Jefferson/Madison First Amendment Divine Law Foundation.

> [T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.[2]

This famous Jeffersonian aphorism has been cited to, as well as cited by, this Court on innumerable occasions. Most recently, Justice Alito relied on these words twice to shore up this Court's decision to overrule a 41-year-old Supreme Court precedent that permitted government-imposed union dues on public workers. *See* Janus v. AFSCME, Council 31, 138 S.Ct. 2448, 2464 (2019). But in both instances Jefferson was cast by Justice Alito only to play a supporting role, seconding the Court's own recent precedents (*id.* at 2464) and taking his place with nameless "others [who] expressed similar views." *Id.* at 2471, n.8. However, as this Court first acknowledged in Reynolds v. United States, 98 U.S. 145 (1879), Thomas Jefferson and James Madison virtually wrote the script for the freedom of religion, as it appears in the First Amendment, condemning laws that compel speech —

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[2] Thomas Jefferson, A Bill for Establishing Religious Freedom, Virginia House of Delegates (1779), reprinted in 5 The Founders Constitution at 77 (P. Kurland & R. Lerner, edts.) (Liberty Fund: 1987).

religious or otherwise — as both "sinful and tyrannical." Thus, the Jefferson 1779 Bill for Establishing Religious Freedom and the Virginia Assembly's 1785 Statute of the same name applied not just to matters of religious doctrine and faith, but to the entire "**field of opinion**." 5 Founders Constitution at 77, 84-85.

From the principles penned by the author of our nation's Declaration of Independence, both the freedom of speech and the free exercise of religion that the First Amendment was designed to protect were understood to rest on the same principle — the freedom of the mind. And that freedom, Jefferson proclaimed to be of divine origin:

> Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations ... are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do.... [*Id.* at 84.]

This is a powerful statement. First, Jefferson invokes the law of the Creator. And second, he exposits a divine moral and political constraint on any ruler who would be of the mind to use force to establish political hegemony by thought-control. As Madison observed in his Memorial and Remonstrance, the People not only would suffer because of the wickedness of a tyrant, but they would violate their duty to God to be free:

> This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. [James Madison, "Memorial and Remonstrance against Religious Assessments," (1785) 5 Founders Constitution at 82.]

Furthermore, Madison insisted that this was more than an abstract and theoretical proposition, but an inescapable reality of man's dependent place in God's world.[3] Madison's insight is a compelling one:

> Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. [*Id.*]

From these truths, Madison derived this working postulate: "[I]n matters of Religion, no mans right is abridged by the institution of Civil Society [in] that

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[3] "Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being." I Blackstone's Commentaries on the Laws of England at 39.

Religion is wholly exempt from its cognizance." *Id*. In the words of Jefferson's Preamble to his Bill, "Almighty God hath created the mind free, and manifested his Supreme will that free it shall remain, by making it altogether insusceptible of restraint." *Id*. at 77. Or, in the words of the Holy Author of our religion, man's duty is divided between that which belongs to Caesar, subject to his coercive power, and that which belongs to God, subject to reason alone. *See* Luke 20:22-26. To Jefferson, this jurisdictional line of liberty was supported and confirmed by history: "the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking, as the only true and infallible...." 5 Founders Constitution at 77. For Madison, this same jurisdictional line had already been constitutionally acknowledged by the adoption of the principled working definition of religion in Article I, Section 16 of the 1776 Virginia Declaration of Rights:

> That Religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.... [5 Founders Constitution at 70.]

Thus, Madison began his Memorial and Remonstrance with the fundamental proposition that Religion, so defined in the Virginia Constitution, marked a **jurisdictional line** between two kinds of duties, (a) those outside the authority of the civil government,

belonging exclusively to God and enforceable only by "reason and conviction," and (b) those within the lawful orbit of civil power to impose by "force or violence." This jurisdictional divide is absolute, as Jefferson's famous line illustrates when read along with his lesser-known follow-up:

> That even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable of giving his contributions to the particular pastor whose morals he would make his pattern. [5 Founders Constitution at 77.]

Summing up, Madison reminded the readers of his Remonstrance that the civil magistrate may not employ a duty owed exclusively to God as an "engine of Civil policy" which is what the Chicago ordinance in this case, and the Colorado statute approved in Hill after which the Chicago scheme is patterned, both do. *See* Pet. 3-5, 14-22.

B. The Chicago Ordinance Fails to Measure Up to the Jefferson/Madison Divine Foundation.

> [O]ur civil rights have no dependence on our religious opinions, any more than on our opinions in physicks or geometry.[4]

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[4] 5 Founders Constitution at 77.

These words from Jefferson's Preamble to his Bill for religious freedom, although not as catchy as the more famous admonition against compelling opinions, are of equal import — they concern entry into, and participation in, a divinely created and orchestrated free marketplace of ideas.

First of all, Jefferson denounced the practice of:

> proscribing any citizen as unworthy the publick confidence, by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion.... [5 Founders Constitution at 77.]

Rather, Jefferson averred, participation in the exchange of opinions was one of those "privileges and advantages to which, in common with his fellow citizens he has a natural right...." *Id*.

Second, Jefferson acknowledged "[t]hat the opinions of men are not the object of civil government, nor under its jurisdiction" and therefore:

> to suffer the civil Magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty; because he being of course Judge of that tendency will make his own opinions the rule of judgment, and approve or

> condemn the sentiments of others only as they shall square with, or differ from his own. [*Id.*]

Thus, Jefferson insisted, "it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order." *Id.* The litany of actions allegedly taken over a six-year period by the Chicago police to bring into submission the Petitioners' pro-life witness illustrate that this limitation upon the powers of the city has been breached. *See* Price v. City of Chicago, 2017 U.S. Dist. LEXIS 519*; 2017 WL 36444 at *5-*13. (N.D. Ill. 2017). As the Seventh Circuit observed, the Chicago ordinance:

> By its terms ... regulates speech undertaken "for the *purpose* of ... engaging in protest, education, or counseling." And divining purpose clearly requires enforcement authorities "to examine the content of the message that is conveyed." [Price v. City of Chicago, 915 F.3d 1107, 1118 (7th Cir. 2019) (citation omitted).]

C. Courts Have a Historic Duty to Identify and Correct Their Mistakes of Law.

The Seventh Circuit withheld granting legal relief solely because it is only this Court that has the power to overrule its own decision in Hill v. Colorado, which upheld an almost identical statute. Petitioners rely on Justice Kennedy's charge that the Hill Court "deviated from 'more than a half century of well-established First Amendment principles' by 'approv[ing] a law

which bars a private citizen from passing a message, in a peaceful manner and on a profound moral issue, to a fellow citizen on a public sidewalk.'" Pet. at 2-3.

Thus, the Seventh Circuit concluded that Hill is "incompatible with current First Amendment doctrine" of this Court, "McCullen and Reed hav[ing] deeply shaken Hill's foundation." *Id.* at 1117 and 1119. Nevertheless, the Seventh Circuit decided that, while this Court has "deeply unsettled Hill, it has not overruled the decision. So it remains binding on us. The plaintiffs must seek relief in the High Court." *Id.* at 1119. Although the Seventh Circuit clearly had no power to overrule Hill, today's operative rule is that Hill, even if wrongly decided, is nevertheless "absolutely binding [,] the only question [being] how to apply that rule to the facts of the current case." *See* B. Garner, *et al.,* The Law of Judicial Precedent at 155 (Thomson/Reuters: 2016).

In Jeffersonian times, judicial precedents did not enjoy such high standing. "The law," wrote Sir William Blackstone, "and the opinion of the judge are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may mistake the law." I Blackstone's Commentaries on the Laws of England at 71. Thus, Blackstone continued, "decisions of courts of justice are the evidence of what is common law." *Id.* To be sure, such written decisions are, Blackstone contended, the best evidence of the law and therefore:

> it is not in the breast of any subsequent judge to alter or vary from, according to his private

> sentiments: he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one. [*Id.* at 69.]

There is, Blackstone announced, only one exception: "where the former determination is most evidently contrary to reason, much more if it be contrary to the divine law." *Id*. at 69-70. But even then, Blackstone maintained that:

> the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was *bad law*, but that it was ***not*** *law*. [*Id.* at 70 (emphasis added).]

According to Blackstone's principles, then, Hill is not just "incompatible" with this Court's "First Amendment doctrine," but it was — and it still is — a nullity, unworthy of any precedential effect whatsoever. Contrast the Blackstone view with the following: "When considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions *decided* against the importance of having them *decided right.*" Citizens United v. Federal Election Commission, 558 U.S. 310, 378 (2010) (Roberts, C.J., concurring). Pragmatic notions of this sort would have no place in the divinely established free marketplace of Thomas

Jefferson, who closed the Preamble of his Statute for Religious Freedom with these immortal words:

> [T]ruth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to errour, and has nothing to fear from the conflict, unless by human interposition, disarmed of her natural weapons, free argument and debate; errours ceasing to be dangerous when it is permitted freely to contradict them.... [5 Founders Constitution at 77.]

II. PETITIONERS' FIRST AMENDMENT CHALLENGE DESERVES TO BE DECIDED ON ITS MERITS, UNTAINTED BY THIS COURT'S ABORTION JURISPRUDENCE.

When courts fail to enforce the Jurisdictional Principle embodied in the Freedom of Speech and Religion discussed in Section I*, supra*, compromises inevitably will follow which trample on the freedom of the mind. Once it allows the Jurisdictional Principle to be breached, this Court must select which constraints on individual freedom it allows, and which it finds offensive — making decisions that can only be seen as political and sociological, not judicial.

No matter better illustrates the consequences of the politicization of this Court than its abortion jurisprudence. From the moment this Court created a right to abortion out of whole cloth, it has bent the principles of law to bow in service to Roe, a decision sometimes described by politicians as a "super-

precedent." As discussed *infra*, this Court has become partial, deciding cases that involve abortion differently from cases which do not. This mistake should not be repeated in deciding the case now before the Court.

A. The Lawlessness of Roe v. Wade.

The refusal to apply established principles of law to abortion cases did not arise after Roe — it began with Roe, and the judiciary's campaign to elevate the non-enumerated "right" to abortion over even enumerated rights, rewriting the Constitution in the process.

The slippery slope on which the Court embarked was forecasted from the beginning. Justice Rehnquist's dissent in Roe v. Wade, 410 U.S. 113 (1973), cataloged a remarkable list of precedents trampled by the majority on its way to imposing abortion on demand on the States, including:

> (i) allowing a plaintiff to seek the vindication of the constitutional rights of others;
> (ii) deciding hypothetical issues not raised by the plaintiff;
> (iii) formulating a rule of constitutional law broader than required;
> (iv) creation of a new, atextual right of "privacy";
> (v) transporting the "compelling state interest" test from the Equal Protection Clause to the Due Process Clause;

(vi) returning to Justice Peckham's view of substantive due process expressed in Lochner v. New York, 198 U.S. 45, 74 (1905);
(vii) finding a right to an abortion "'so rooted in the traditions and conscience of our people as to be ranked as fundamental,'" despite the fact that a majority of the States had restrictions on abortion for at least a century;
(viii) finding a right within the scope of the Fourteenth Amendment that was "apparently completely unknown to the drafters of the Amendment";
(ix) finding a right within the scope of the Fourteenth Amendment that the drafters never intended; and
(x) striking down the Texas law *in toto*, rather than finding the statute unconstitutional as applied, even though the Court conceded that at later periods of pregnancy Texas might impose limitations on abortion. *See* Roe at 171-78 (Rehnquist, J., dissenting).

B. The Corrosive Effect of Roe v. Wade.

Over a 33-year period, Supreme Court opinions by three current Supreme Court Justices (Justices Thomas, Roberts, and Alito) and five past Justices (Chief Justices Burger and Rehnquist, and Justices O'Connor, Scalia, and Kennedy) have all observed that the presence of abortion in a case has seriously distorted the application of general principles of law. The cases discussed *infra* provide ample proof of the risk that a First Amendment case such as that now before the Court could be decided surreptitiously as an

abortion rights case, rather than properly according to First Amendment principles.

1. Three months before Justice Scalia joined the court, Thornburgh v. American College of Obstetricians & Gynecologists, 476 U.S. 747 (1986), was decided. In dissent, Justice O'Connor and then-Justice Rehnquist charged that: "the Court prematurely decide[d] serious constitutional questions on an inadequate record, in contravention of settled principles of constitutional adjudication and procedural fairness." *Id.* at 815 (O'Connor, J., dissenting). These justices described the problem that had developed during the 13 short years since Roe was decided.

> This Court's abortion decisions have already worked a **major distortion in the Court's constitutional jurisprudence**. Today's decision goes further, and makes it painfully clear that no legal rule or doctrine is safe from **ad hoc nullification** by this Court when an occasion for its application arises in a case involving state regulation of abortion.... [Thornburgh at 814 (O'Connor, J., dissenting) (citation omitted) (emphasis added).]

2. In Madsen v. Women's Health Center, 512 U.S. 753 (1994), Justice Scalia took the lead in a dissent joined by Justices Kennedy and Thomas.

> The entire injunction in this case departs so far from the established course of our jurisprudence that **in any other context** it

> would have been regarded as a candidate for summary reversal. **But the context here is abortion**.... Today the **ad hoc nullification machine** claims its latest, greatest, and most surprising victim: the First Amendment. [*Id*. at 785 (Scalia, J., dissenting) (emphasis added).]

3. In the case principally relied on by both courts below, Hill v. Colorado, 530 U.S. 703 (2000), a dissent by Justice Scalia, joined by Justice Thomas, criticized the abandonment of established legal principles whenever abortion is involved:

> What is before us ... is a speech regulation directed against the opponents of abortion, and it therefore enjoys the benefit of the **"ad hoc nullification machine"** that the Court has set in motion to push aside whatever doctrines of constitutional law stand in the way of that highly favored practice.... Because, like the rest of our abortion jurisprudence, today's decision is in stark contradiction of the constitutional principles we apply in all other contexts, I dissent. [*Id*. at 741-42 (Scalia, J., dissenting) (emphasis added).]

Also dissenting, Justice Kennedy expanded on Justice Scalia's analysis, using the boldest terms, stating:

> The Court's holding **contradicts more than a half century of well-established First Amendment principles. For the first**

> **time**, the Court approves a law which bars a private citizen from passing a message, in a peaceful manner and on **a profound moral issue**, to a fellow citizen on a public sidewalk. If from this time forward the Court repeats its grave errors of analysis, we shall have no longer the proud tradition of free and open discourse in a public forum. [*Id.* at 765 (Kennedy, J., dissenting) (emphasis added).]

Justice Kennedy continued his dissent, discussing recent Supreme Court abortion cases:

> **So committed is the Court to its course** that it **denies these protesters**, in the face of what they consider to be one of life's gravest moral crises, even the opportunity to try to offer a fellow citizen a little pamphlet, **a handheld paper seeking to reach a higher law**. I dissent. [*Id.* at 792 (Kennedy, J., dissenting) (emphasis added).]

4. In a case brought by one of these *amici*, Eleanor McCullen, McCullen v. Coakley, 573 U.S. 464 (2014), this Court struck down a "bubble zone" law for being insufficiently tailored, but did not find it to be in violation of the content neutrality principle. Justice Kennedy joined Justices Scalia and Thomas in criticizing the notion of a special set of rules for abortion-related cases. Concurring with the judgment, Justice Scalia observed:

> Today's opinion carries forward **this Court's practice of giving abortion-rights**

> **advocates a pass** when it comes to suppressing the free-speech rights of their opponents. There is an entirely separate, **abridged edition of the First Amendment** applicable to speech against abortion. [*Id*. at 497 (Scalia, J., concurring) (emphasis added).]

In a separate dissent, Justice Alito explained his view of the Massachusetts statute: "[s]peech in favor of the clinic and its work by employees and agents is permitted; speech criticizing the clinic and its work is a crime. This is blatant viewpoint discrimination." *Id*. at 512 (Alito, J., dissenting).

5. In Whole Woman's Health v. Hellerstedt, 136 S.Ct. 2292 (2016), Justice Thomas quoted from an earlier Justice Scalia dissent, concluding that the majority decision striking down Texas' health restrictions on abortion clinics and doctors:

> exemplifies the Court's troubling tendency "to **bend the rules** when any effort to limit abortion, or even to speak in opposition to abortion, is at issue." Stenberg v. Carhart, 530 U.S. 914 (2000) (Scalia, J., dissenting). [Whole Woman's Health at 2321 (Thomas, J., dissenting) (emphasis added).]

Of course, this observation was made by Justice Thomas who, like Justice Scalia, has repeatedly asserted his fundamental "oppos[ition] to the Court's abortion jurisprudence." *Id*. at 2324. But the same criticism also has come from several other justices as well. Justice Alito, joined by Chief Justice Roberts

(and Justice Thomas), also addressed this issue, stating:

> As a court of law, we have an obligation to apply [legal] rules in a **neutral** fashion in all cases, **regardless of the subject** of the suit. If anything, when a case involves a controversial issue, we should be especially careful to be **scrupulously neutral** in applying such rules. [*Id*. (Alito, J., dissenting) (emphasis added).]

Hence, the Alito dissent concluded that the Court was:

> **determined to strike down** two provisions of a new Texas abortion statute in all of their applications, [and] the Court simply **disregards basic rules that apply in all other cases**.... When we decide cases on particularly controversial issues, we should take special care to apply settled procedural rules in a neutral manner. The Court has not done that here. [*Id*. at 2330, 2353 (emphasis added).]

6. Gee v. Planned Parenthood of Gulf Coast, 139 S.Ct. 408 (2018), addressed whether there are certain private rights of action under the Medicaid Act. The Court denied certiorari, and Justice Thomas surmised that "it has something to do with the fact that some respondents in these cases are named 'Planned Parenthood.'" *Id*. at 410. Justice Thomas dissented because "the question presented has nothing to do with abortion," (*id*.) yet what could be called an "abortion

derangement syndrome" prevented the Court from doing its duty. As Justice Thomas explained, "[s]ome tenuous connection to a politically fraught issue does not justify abdicating our judicial duty. If anything, neutrally applying the law is all the more important when political issues are in the background." *Id.*

C. A Free Speech Case — Arising in the Vicinity of an Abortion Clinic.

To set the stage for the question it presents to this Court for review, the Petition describes the statute being challenged: "Chicago has made it a crime for a speaker to approach within eight feet of another person 'for the purpose of passing a leaflet or handbill, displaying a sign to, or engaging in oral protest, education, or counseling,' without express consent." Pet. at i. Throughout the litigation of this case, Petitioners grounded their challenge to this ordinance in long-standing First Amendment principles and precedents. Thus, Petitioners have presented to this Court a classic First Amendment challenge to a municipal restriction on speech and pamphleteering.

The Petition then describes the geographic area where the ordinance applies: "within 50 feet of the entrance to an abortion clinic or other medical facility." *Id.* With the words "abortion clinic," what had been a simple issue becomes clouded by politics and the risk that this case could be decided not as a First Amendment case, but as an abortion case. And, the recent history, discussed *supra*, demonstrates there is good reason to be concerned.

The question presented in this case is a classic First Amendment issue. The context of the restriction on speech is the vicinity of an abortion clinic, but that does not transform it into an abortion rights case. If this Court views and decides this case according to traditional First Amendment principles, it will put to rest the concern expressed by Justice Scalia in his Hill dissent two decades ago.

> Having deprived abortion opponents of the **political right to persuade** the electorate that abortion should be restricted by law, the Court today continues and expands its assault upon their **individual right to persuade** women contemplating abortion that what they are doing is wrong. [Hill at 741-42 (Scalia, J., dissenting) (emphasis added).]

III. THE CHICAGO ORDINANCE IS BUT ONE ASPECT OF A NEW WAVE OF CENSORSHIP THAT THREATENS THE REPUBLIC.

The moral principle often attributed to Voltaire — "I disapprove of what you say, but I will defend to the death your right to say it" — is being challenged with increasing frequency. The politicians who authored the Chicago ordinance under review have taken the polar opposite approach: "I disapprove of what you say, and I will use whatever power I have to stop you from saying it." These Chicago politicians are part of a new wave of censorship which is foreign to the American experience.

This new wave is certainly not historically liberal. Liberal paragon Justice Douglas revered what he called the "market place of ideas," eager to protect "tracts [which] may be the essence of wisdom to some; to others their point of view and philosophy may be anathema." United States v. Rumely, 345 U.S. 41, 56 (1953) (Douglas, J., concurring). This new wave certainly has no appeal to those who embrace the God of the Bible, who could have coerced servitude, but rather encourages rational discourse and decision making: "Come now, and let us reason together, saith the Lord...." Isaiah 1:18.

Although the scope of the First Amendment with respect to political issues has been called into question on innumerable occasions in the history of our country, what before were exceptions to the rule are becoming the norm. Consider, for example, how the pro-life message in America is being suppressed. Pro-life activists are prevented by FCC-licensed and government-regulated broadcast and cable outlets from airing paid television commercials which reveal in graphic detail what actually happens during an abortion. The only exception is ads run by candidates for office whose commercials may only be rejected for copyright infringement or defamatory content.[5] Until stopped by this Court, pro-abortion legislators in California required pro-life crisis pregnancy centers to

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[5] *See* D. McConnell and B. Todd, "Graphic anti-abortion ads air on Washington stations," *CNN Politics* (Oct. 27, 2010).

disseminate the state's pro-abortion message which is antithetical to their own.[6]

Police are widely reported to be given "stand-down" orders by politicians in certain cities, allowing violent groups like Antifa to attack those with whom they disagree. Recently, police failed to intervene when a member of what might be called the alternative press reporting on Antifa, Andy Ngo, was beaten on the streets of Portland.[7] A New York Post columnist reported:

> The antifa slogan in Portland is "we own the streets." And they do. The city has let it happen. Last October, they blocked a street and threatened drivers and passers-by who wanted to get through. A few months before that, they beat up a Bernie Sanders supporter who was carrying an American flag.... They will also have the backing of prominent apologists in the liberal establishment, including Minnesota Attorney General Keith Ellison, who endorsed the antifa handbook,

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[6] Some of these *amici* filed an *amicus* brief (Apr. 20, 2017) protesting this requirement at the petition stage in National Institute of Family and Life Advocates v. Becerra, 138 S.Ct. 2361 (2019), and another *amicus* brief (Jan. 16, 2018) at the merits stage.

[7] *See* "Antifa anarchy, Portland's apathy," *Washington Examiner* (July 3, 2019).

> and CNN's Don Lemon, who said in defense of the group that 'no organization is perfect.'"[8]

Social media providers like YouTube, which was designed to appeal to those who distrust the establishment press, increasingly make decisions against their apparent financial self-interest by shutting down dissenting voices as providing "fake news."[9] Commercial businesses have been granted broad immunity from even non-constitutional claims by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, precisely to encourage free discussion on their platforms, but nevertheless have chosen to de-monetize, de-platform, and otherwise restrict access to what they alone determine to constitute undefined "hate speech" in a completely arbitrary and opaque manner.[10] Banks and financial institutions are pressured by politicians to refuse to provide services to political organizations, including the National Rifle Association, which they brand as dangerous.[11]

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[8] F.H. Buckley, "It's time for a federal civil rights intervention in Portland," *New York Post* (July 5, 2019).

[9] *See* S. Kovach, "Alphabet had more than $70 billion in market cap wiped out, and it's blaming YouTube," *CNBC* (Apr. 30, 2019).

[10] *See* T. Romm, "Senate Republicans renew their claims that Facebook, Google and Twitter censor conservatives," *Washington Post* (Apr. 10, 2019).

[11] *See* J. Seibler, "Gov. Cuomo's Shameless War on the NRA," *The Heritage Foundation* (Nov. 16, 2018).

When government or its agents shut down debate, they stop up the outlets for expressions of frustration and anger, causing dangerous pressure to build up within the society. The government is no longer seen as an honest broker, committed to protecting the rights of all, but akin to a criminal enterprise being run by a band of rogues determined to do whatever may be necessary to maintain themselves in positions of power. While government may be able to suppress dissent for a time, eventually the People burst their restraints. Thus, historically, such suppression of views fails, and does not end well for anyone. In considering the Petition for Certiorari now before it, this Court has the opportunity to reestablish Logos by protecting the marketplace of ideas from government coercion, to the benefit of everyone.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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