No. 18-1516

In The Supreme Court of the United States

VERONICA PRICE, DAVID BERGQUIST, ANN SCHEIDLER, PRO-LIFE ACTION LEAGUE, INC., LIVE PRO-LIFE GROUP, AND ANNA MARIE SCINTO MESIA,

Petitioners,

v.

CITY OF CHICAGO, RAHM EMANUEL, AS MAYOR OF THE CITY OF CHICAGO, ET AL.,

Respondents.

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

BRIEF OF AMICI CURIAE THE AMERICAN FAMILY ASSOCIATION AND DR. ALVEDA KING IN SUPPORT OF PETITIONERS

B. Tyler Brooks
Counsel of Record
Law Office of B. Tyler Brooks, PLLC
5540 Centerview Drive, Suite 200
Raleigh, North Carolina 27606
(336) 707-8855
btb@btylerbrookslawyer.com

Counsel for Amici Curiae

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND OTHER AUTHORITIES

INTEREST OF THE AMICI CURIAE[1]

The American Family Association (AFA) is a non-profit 501(c)(3) organization founded in 1977 by Donald E. Wildmon, who was the pastor of First United Methodist Church in Southaven, Mississippi, at the time. Since 1977, AFA has been on the frontlines of the nation's debates on cultural and social issues. Today, AFA is led by President Tim Wildmon, and it continues as one of the largest and most effective pro-family organizations in the country with hundreds of thousands of supporters.

AFA seeks to spur activism directed to the preservation of marriage and the family; decency and morality; the sanctity of human life; stewardship; and media integrity. Ensuring that pregnant women have access to accurate information about the alternatives they possess to ending the life of their unborn child is a vital part of its mission.

Dr. Alveda C. King is a niece of Dr. Martin Luther King, Jr., and a civil rights activist herself. She currently serves as Director of African American Outreach for Gospel of Life, which is headed up by Father Frank Pavone of Priests for Life. She is also a former member of the Georgia House of Representatives.

---

[1] Counsel for the parties have consented to the filing of this amicus brief. Petitioners previously filed a blanket consent, and counsel for Respondents granted specific consent to the filing of this brief. No counsel for a party authored this brief in whole or in part. The American Family Association contributed the costs associated with the preparation and submission of this brief. No person other than AFA and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Unless otherwise noted, all statements made by amici are on file with counsel for amici curiae.

Dr. King has had two abortions during her life. Her abortions caused her to experience eating disorders, depression, nightmares, and sexual dysfunctions. Additionally, she struggles with guilt and anger and has faced difficulty in bonding with her other six children, who ask her why she "killed our baby." She wishes that she had received more information about abortion prior to her decisions because, if she had seen a sonogram and known the increased risk for depression and cervical and breast cancers, she never would have had either procedure.

Dr. King is far from alone in regretting her abortions. Instead, she is one of countless women who would have made a different decision had they been presented with full and complete information about the effects of choosing abortion over life. Such women have previously offered their perspectives on these issues, and they are once again cited to this Court in the hope that, in the future, women will have access to the type of information they did not.

SUMMARY OF ARGUMENT

Dr. King can attest to the heartrending difficulties that may be caused by the decision to have an abortion. Often a woman facing an unplanned pregnancy turns to abortion out of a sense of desperation. Later, the realities of abortion cause these women to wish they had received more (and more accurate) information prior to electing abortion.

In a nation that prides itself on the uninhibited exchange of ideas, restrictions on providing information to pregnant women must be considered

intolerable. This is particularly true when the barrier to a woman's receipt of information comes in the form of a municipal ordinance that curtails speech at the precise time and place when its delivery would be most efficacious.

The Seventh Circuit here upheld Chicago, Ill., Code § 8-4-010(j)(1) ("Ordinance"), under the authority of *Hill v. Colorado*, 530 U.S. 703 (2000). This Ordinance effectively prevents women who might be contemplating an abortion from receiving vital information that could influence an extraordinarily momentous life decision by limiting the speech of individuals offering additional information and alternatives. Nevertheless, the same Ordinance leaves open opportunities for communication by abortion proponents, resulting in blatant discrimination on an exceptionally pressing moral, political, and personal issue.

"The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Synder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). When, however, the goal of an "uninhibited marketplace of ideas," *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969) (citations omitted), ceases to be a reality, society as a whole loses, *United States v. Alvarez*, 567 U.S. 709, 728 (2012) (quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)).

Continued adherence to *Hill* undermines the marketplace of ideas and restricts both the ability of

speakers to communicate their message and the ability of listeners to receive critical information. Proof that *Hill* is "incompatible with current First Amendment doctrine" comes from nothing less than the Seventh Circuit's own pronouncement in this case, which identified the irreconcilability of *Hill* with this Court's more recent decisions. *Price v. City of Chicago*, 915 F.3d 1107, 1117 (7th Cir. 2019).

In application, *Hill* has wrought destructive life consequences through restrictions on pro-life speech. "Buffer zones" isolate and stigmatize pro-life counselors, preventing them from delivering their message. But moreover, they interfere with the ability of abortion-minded women to receive information that could help them avoid the injurious physical, emotional, and psychological effects that may result from having an abortion.

Because the continued vitality of *Hill* presents a pernicious threat to the First Amendment, this Court should grant certiorari and reverse its anomalous—and dangerous—decision in *Hill*.

REASONS FOR GRANTING THE PETITION

The decision of the Seventh Circuit here highlights an area of discordance in First Amendment law that results in discrimination against one side in the debate surrounding a highly-controversial issue—much to the physical, emotional, and psychological detriment of women like Dr. King and others.

The time has come to end this discrimination and restore jurisprudential integrity to this aspect of the First Amendment.

I. THE COURT SHOULD ACCEPT THIS CASE AND OVERRULE *HILL V. COLORADO* AS INCONSISTENT WITH THE FIRST AMENDMENT.

"As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002). "[A] government, including a municipal government vested with state authority, 'has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (quoting *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)).

If a governmental restriction on speech is content-based, it is subject to strict scrutiny; only when it is content-neutral, does the speech restriction enjoy a less exacting review. *Compare United States v. Playboy Entm't Group*, 529 U.S. 803, 813 (2000) (applying strict scrutiny), *with Ward v.*

Rock Against Racism, 491 U.S. 781, 791 (1989) (permitting time, place, or manner regulations of protected speech under certain circumstances). When a law "target[s] speech based on its communicative content" it is content-based and thus deemed "presumptively unconstitutional," meaning it "may be justified only if the government proves that [its restrictions] are narrowly tailored to serve compelling state interests." *Reed*, 135 S. Ct. at 2226 (citation omitted). A regulation is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S. Ct. at 2227 (citations omitted); *see also Consol. Edison Co. v. Public Serv. Comm'n*, 447 U.S. 530, 537 (1980).

Discrimination "among viewpoints—or the regulation of speech based on the specific motivating ideology or the opinion or perspective of the speaker—is a more blatant and egregious form of content discrimination." *Reed*, 135 S. Ct. at 2230 (internal quotation marks and citations omitted). But, a law need not target a particular viewpoint to be subject to strict scrutiny. "[I]t is well established that the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Id.*

This Court's decision in *Hill* should not be used to short-circuit the necessity of performing this otherwise applicable First Amendment analysis. Rather than permitting a court to indulge in the presumption that buffer-zone laws are content-neutral, the need to adhere to fundamental principles of the First Amendment persists and must be properly recognized.

Moreover, the Seventh Circuit's opinion in this case exposes the untenable façade of content-neutrality on which the majority's analysis in *Hill* depended. *See Hill*, 530 U.S. at 725. If pro-life advocates do not convey their message outside an abortion clinic, women contemplating abortion may be deprived of access to information on such matters as the health risks of undergoing an abortion and alternatives to the procedure, such as adoption. By contrast, those working for the clinic have unrestricted access to a woman once she enters the facility, after which they are free to deliver their pro-abortion perspective unchallenged. *Cf. Hill*, 530 U.S. at 748 ("[I]t blinks reality to regard this statute, in its application to oral communications, as anything other than a content-based restriction upon speech in the public forum [that must be subject to strict scrutiny].") (Scalia, J., dissenting).

Those like Petitioners seek to speak "at the very time and place a grievous moral wrong, in their view, is about to occur." *Hill*, 530 U.S. at 792 (Kennedy, J., dissenting). *Hill*, however, has been interpreted to diminish First Amendment protections when and where they are most needed.

II. *HILL* PREVENTS WOMEN FROM RECEIVING VITAL INFORMATION ABOUT THE EFFECTS OF, AND ALTERNATIVES TO, ABORTION.

Upholding the constitutionality of the Chicago Ordinance (and other similar laws) undermines the ability of a woman to make a fully informed choice about abortion. Because the rights at stake here repose at the core of the First Amendment's

protections, the consequences of their abridgement are severe.

"[Our Founders] believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth[.]" *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring). Thus, in the contest of ideas, "the remedy . . . is more speech, not enforced silence." *Id.* at 377. "Freedom of speech and thought flows not from the beneficence of the state but from the inalienable rights of the person." *Alvarez*, 567 U.S. at 728.

The "right to receive information and ideas . . . is fundamental to our free society." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (internal citation omitted); *see, e.g., Martin v. Struthers*, 319 U.S. 141, 143 (1943) (the right to receive information "may not be withdrawn even if it creates [a] minor nuisance"). The First Amendment thereby "maintain[s] a free marketplace of ideas, a marketplace that provides access to 'social, political, esthetic, moral, and other ideas and experiences.'" *Sorrell v. IMS Health Inc.,* 564 U.S. 552, 583 (2011) (quoting *Red Lion*, 395 U.S. at 390); *see Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) ("Speech concerning public affairs is more than self-expression; it is the essence of self-government.").

The rights of both speakers and listeners must be protected for a true marketplace of ideas to exist. "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no

buyer." *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring) (citations omitted).

When an ordinance like Chicago's curtails a listener's ability to know what information is available, this right vanishes, impermissibly burdening her First Amendment right to receive information. The availability of information is perhaps no more important than in the difficult and intensely-personal decision many women face on the issue of abortion.

In point of fact, it was long ago recognized that the decision to abort "is often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences." *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 67 (1976). Individuals like Petitioners seek to ensure that women receive information about abortion from counselors espousing a pro-life perspective and specifically from someone who (unlike an abortion provider) has no economic interest in seeing that a woman follows through with the procedure. Nevertheless, the Ordinance here restricts consensual speech and violates the rights of women to receive information about abortion—even the fact that there are people willing to have a calm and meaningful discussion with them about the very significant decision they are soon to make.

The Court should address these issues because grave consequences may result when a woman decides to end her pregnancy without adequate information. Without information on risks and alternatives, there is a substantial "risk that a

woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 882 (1992) (plurality opinion); *see, e.g., Texas Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 579-80 (5th Cir. 2012) (upholding Texas informed consent statute under *Casey*).

Some women experience what Dr. King did: deep regret when they realize they decided to abort a child without knowing all the facts. Many women also report they have suffered psychologically and even physically due to making the decision to abort based on erroneous or incomplete information.

For example, in an amicus brief submitted to this Court during its consideration of *McCullen v. Coakley*, 573 U.S. 464 (2014), numerous women detailed the effects of not receiving complete and accurate information about the risks of abortion and the alternatives that existed.

- Cindy Adams explained that, after her abortion, she was filled with shame and regret. She turned to "self-destructive behavior," including heavy drinking and a desire to be killed in an accident. She had been told by the abortion provider that having an abortion was no different than what her body does naturally every month.

- After her abortion, Marlynda Augelli suffered psychological trauma that contributed to her divorce from her first husband. She received no information on alternatives to having an abortion from her doctor prior to undergoing the procedure.

- Nona Ellington had an abortion after being told by a Planned Parenthood clinic that her unborn child was a mere "blob of tissue." Though she received some information about the danger of never being able to have children in the future due to the procedure, she was not provided information on alternatives to having an abortion. As a result of her abortion, she began a pattern of destructive behavior, including alcohol, drugs, and promiscuity. She also suffered depression and destructive relationships and even attempted to commit suicide; moreover, as anticipated, she was later unable to have children.

- Paula Lucas-Langhoff was forced to have an abortion by her then-boyfriend when she was nineteen. In her declaration filed with this Court in *McCullen*, she states that she was provided misleading information from the abortion clinic and not given any materials or facts on alternatives to abortion. She suffered intense emotional trauma afterwards and relates that her former boyfriend still cannot forgive himself.

- JM was raped as a college sophomore. Her abortion clinic advised her to arrive early to avoid "protestors" (that is, pro-life counselors). Several months later she was hospitalized for nineteen days due to major depression, suicidal thoughts, and psychosis. She then spent over two decades battling emotional and physical problems caused by the trauma of her abortion.

- Madonna Medina was pressured into having an abortion by her doctor's office, which "bombarded

[her] with 'facts and statistics'" designed to convince her to have an abortion. Though she initially decided against an abortion, her fiancé convinced her to change her mind. After the abortion, Ms. Medina fell victim to alcohol and drug use.

- Following her abortion, Jean Pickett suffered "serious damage to [her] mental and physical health," including addiction problems and issues with maintaining both friendships and romantic relationships.

- Heather Shearfield faced a twenty-four year struggle with substance abuse after her first abortion. She further suffered remorse, shame, and homelessness.

- Patti Smith had two abortions. "After [her] first abortion, [she] became increasingly promiscuous, drank more, and was hell-bent on self-destruction." She became suicidal and was committed to a psychiatric hospital for a time.

- Susan Swander had three abortions. As she states in her declaration, "nothing in [her] life has ever been 'well' or the same since [her first abortion in] 1968." Afterwards, she suffered over thirty years of struggle, including depression and eating disorders as well as alcohol and drug issues.

- Molly White had two abortions in the 1980s. Before her first abortion, her doctor told her there was "nothing to it." At the abortion clinic, she asked about the child's development and was told that it was "just a tiny blob of tissue." As a result

> of her abortions, Ms. White has suffered "continual bleeding, a damaged cervix, and uterine scarring, which gave [her] two stillborn children and a miscarriage." She had not been provided information on the dangers involved in having an abortion, alternatives to abortion, or the availability of any crisis pregnancy centers. Ms. White explains that if she had been provided such information she would not have had her abortions.

Amicae Curiae Brief of 12 Women Who Attest to the Importance of Free Speech in Their Abortion Decisions in Support of Petitioners, at App. 1-38, filed Sept. 13, 2013, in *McCullen v. Coakley*, 573 U.S. 464 (2014) (hereinafter, "*McCullen* Amicus").

Studies on the effects of abortion reveal that a woman who has undergone an abortion may encounter many health issues afterwards. Such research has shown that there is a direct correlation between a woman's history of abortion and her risk for such problems as anxiety, depression, suicide, drug dependence, and other mental health issues. *See, e.g.,* David M. Fergusson *et al.*, *Abortion in Young Women and Subsequent Mental Health*, 47 J. CHILD PSYCHOL. & PSYCHIATRY 16 (2006).

There is, however, an opportunity for these consequences to be avoided if an officious municipality merely permits the kind of dialogue that has occurred between earnest individuals in public forums from time immemorial. A government should no longer be permitted to use *Hill* to deny a woman the chance to receive important information about the decision to have an abortion.

III. *HILL* SHOULD BE OVERRULED TO REMEDY THE DISCRIMINATION IT PERMITS AGAINST EFFECTIVE PRO-LIFE SPEECH.

In his concurrence in *McCullen v. Coakley*, the late Justice Scalia wrote that "[t]here is an entirely separate, abridged edition of the First Amendment applicable to speech against abortion." 573 U.S. at 497 (Scalia, J., concurring in judgment). *Hill* was among the cases he cited in explaining that the Court has a "practice of giving abortion-rights advocates a pass when it comes to suppressing the free-speech rights of their opponents." *Id.* (citations omitted). Accordingly, due to the suppression of pro-life speech often carried out under the guise of *Hill*, there arises an impermissible burden on the First Amendment rights of those who wish to speak peacefully to women visiting abortion-providing facilities about their choices.

Pro-life counselors like Petitioners "seek not merely to express their opposition to abortion, but to inform women of various alternatives and to provide help in pursuing them." *McCullen*, 573 U.S. at 489. "Petitioners believe that they can accomplish this objective only through personal, caring, consensual conversations. And for good reason: It is easier to ignore a strained voice or a waving hand than a direct greeting or an outstretched arm." *Id.* Moreover, some ideas, especially those that are highly-personal and complex, cannot be effectively communicated at a distance.

This description accords with the experience of women like Esther Ripplinger, who participated as an *amica curiae* in *McCullen*. She recalls entering

an abortion facility as a frightened nineteen-year old at the insistence of her then-boyfriend and his family. *McCullen* Amicus at App. 24. She did not have the benefit of a compassionate pro-life counselor or any pro-life counselor at all. Instead, her "only memory is of people with pictures of dead babies shouting," conduct which she did not perceive as "loving and caring[.]" *Id.* at App. 26. Ms. Ripplinger further explains that "[i]f someone had given [her] information and alternatives as [she] walked into the clinic, [she] would not have" proceeded with the abortion that ultimately had such a negative effect on her life. *Id.* Unfortunately, Ms. Ripplinger's experience illustrates the inadequacy of relegating those like Petitioners to the sidelines and preventing them from having a normal conversation with a woman approaching an abortion clinic. *Cf. Alvarez*, 567 U.S. at 728 ("Society has the right and civic duty to engage in open, dynamic, rational discourse.").

The marketplace of ideas that the First Amendment protects deserves better than to permit the creation of ideologically-based barriers between pro-life counselors and abortion-minded women. So long as *Hill* stands, however, this threat to First Amendment freedoms—and women's health—remains.

Amici AFA and Dr. King therefore respectfully ask this Court to grant certiorari and reverse its prior decision in *Hill v. Colorado* so as to bring analysis of laws creating "buffer zones" at abortion facilities in line with the fundamental precepts of the First Amendment.

CONCLUSION

For the above-stated reasons, amici respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

B. Tyler Brooks
Counsel of Record
Law Office of B. Tyler Brooks, PLLC
5540 Centerview Drive, Suite 200
Raleigh, North Carolina 27606
(336) 707-8855
btb@btylerbrookslawyer.com

Counsel for Amici Curiae

ATTACHMENT

Dr. King's Declaration

Declaration of Dr. Alveda C. King

I, **ALVEDA C. KING**, declare based on personal knowledge as follows:

1. My name is Alveda C. King. I am over the age of 18 and competent to testify to the matters stated herein.

2. I am the daughter of slain civil rights activist Rev. A.D. King and a niece of Dr. Martin Luther King, Jr.

3. I am a civil rights activist and minister of the Gospel of Jesus Christ. I currently serve as Director of African American Outreach for Gospel of Life, headed up by Father Frank Pavone of Priests for Life.

4. I am also a former member of the Georgia House of Representatives.

5. During my life, I twice had abortions. As a result, I have experienced eating disorders, depression, nightmares, and sexual dysfunctions in addition to deep regret over my decisions.

6. I have also struggled with guilt and anger and difficulty bonding with my other six children, who ask why I "killed our baby."

7. I wish that I had received more information about abortion prior to making those decisions. If I had seen a sonogram and known the increased risks

for depression and cervical and breast cancers, I never would have had either abortion.

8. I am one of countless women who would have made a different decision if they had been presented with full and complete information about the effects of choosing to have an abortion.

9. As a woman who was contemplating abortion, I would have welcomed a loving and compassionate message from a pro-life sidewalk counselor. Laws like the Chicago ordinance at issue in this case, though, interfere with the ability of such counselors to initiate a conversation with women like myself, who may never learn that there are individuals willing to have a calm, rational, and meaningful conservation with them about the consequences of abortion and the availability of alternatives.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of July, 2019.

/s/Alveda C. King
ALVEDA C. KING