App. No. _____

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,

Applicants,

v.

CITY OF CHICAGO, RAHM EMANUEL, AS MAYOR OF THE CITY OF CHICAGO, REBEKAH SCHEINFELD, COMMISSIONER OF TRANSPORTATION FOR THE CITY OF CHICAGO, AND EDDIE T. JOHNSON, SUPERINTENDENT OF THE CHICAGO POLICE DEPARTMENT, IN THEIR OFFICIAL CAPACITIES,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITIONERS' APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, Applicants Veronica Price, David Bergquist, Ann Scheidler, Pro-Life Action League, Inc., Live Pro-Life Group, and Anna Marie Scinto Mesia respectfully request that the time to file a petition for a writ of certiorari in this case be extended by twenty-one days, to June 4, 2019. Applicants will ask this Court to review a judgment by the U.S. Court of Appeals for the Seventh Circuit issued on February 13, 2019. *See* App. A. Absent an extension of time, the petition would be due on May 14, 2019. Applicants are filing this application at least ten days before that date. *See* Sup. Ct. R. 13.5. The Court has jurisdiction under 28 U.S.C. § 1254 to review this case.

Background

The question presented in this case is whether *Hill v. Colorado*, 530 U.S. 703 (2000), should be overruled in light of this Court's intervening decisions in *McCullen v. Coakley*, 134 S. Ct. 2518 (2014), and *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), which squarely reject the core reasoning of *Hill*.

1. Applicants are individuals and organizations that engage in "sidewalk counseling" on the sidewalks and public ways outside abortion clinics. *See* App. A at 3. This counseling involves respectfully approaching women entering the clinics to offer them pro-life literature, discuss the risks of and alternatives to abortion, and offer support if the women want to carry their pregnancies to term. *Id.* These conversations must take place face-to-face and in close proximity to allow the

counselors to convey a gentle and caring manner, maintain a normal tone of voice, and protect the privacy of those involved. *Id.*

Respondents—the City of Chicago and several of its officials—have nonetheless imposed severe restrictions on sidewalk counseling because they disagree with the content and message of this speech. In October 2009, the City Council amended Chicago's disorderly conduct ordinance to prohibit any person from approaching within eight feet of another person within a radius of 50 feet from the entrance to an abortion clinic for the purpose of engaging in the types of speech associated with sidewalk counseling. *Id.* at 3-4. This ordinance—commonly known as a "bubble zone" law—is facially content-based, as it prohibits approaching a person only "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way …" Chi., Ill., Code § 8-4-010(j)(1). Chicago's bubble zone ordinance is nearly identical to the Colorado statute this Court upheld in *Hill*.

2. In August 2016, Applicants brought suit against Respondents under 42 U.S.C. § 1983, arguing (as relevant here) that the Chicago bubble-zone ordinance is facially unconstitutional under the First Amendment. The district court dismissed that claim on the ground that *Hill* remained binding precedent.

The Seventh Circuit affirmed in an opinion by Judge Sykes. Applicants had argued that "*Hill* is no longer an insuperable barrier to suits challenging abortion-clinic bubble-zone laws" because this Court's "more recent decisions in *Reed* and *McCullen*" have "thoroughly undermined *Hill*'s reasoning." App. A at 5-6. The

Seventh Circuit found that to be a "losing argument in the court of appeals." *Id.* at 6. At the same time, however, the court agreed with Applicants that *Hill* was "incompatible with current First Amendment doctrine as explained in *Reed* and *McCullen*" and urged this Court to reconsider *Hill* in light of those intervening decisions. *Id.* at 19-24. The Seventh Circuit noted several specific ways in which *Hill*'s reasoning had been undermined by *Reed* and *McCullen*:

First, *Hill* held that the "principal inquiry" in determining whether a statute was content-based or content-neutral was "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." 530 U.S. at 719. But "after *Reed* that's no longer correct." App. A at 19. Under *Reed*, "strict scrutiny applies *either* when a law is content based on its face *or* when the purpose and justification for the law are content based." 135 S. Ct. at 2228 (emphasis added). In short, *Reed* makes clear that a lack of viewpoint or subject-matter discrimination cannot save a facially content-based law—such as the Chicago bubble-zone ordinance—from strict scrutiny. App. A at 21.

Second, in upholding the Colorado bubble-zone statute, *Hill* repeatedly noted the need to prevent the purportedly undesirable effects of the speech on listeners. For example, *Hill* noted that Colorado had an interest in "protect[ing] listeners from unwanted communication," safeguarding the "right to be let alone," and preventing the "emotional harm suffered when an unwelcome individual delivers a message … at close range." 530 U.S. at 715-16, 718 n.25, 724. *McCullen*, in contrast, held that a law must be found *content-based* if it is "concerned with [the] undesirable effects that

arise from the direct impact of speech on its audience or listeners' reaction to speech." 134 S. Ct. at 2531-32.

Finally, *Hill* approved the "bright-line prophylactic" bubble-zone measure on the ground that less-restrictive measures (such as existing bans on assault or blocking clinic entrances) were too difficult to enforce. 530 U.S. at 729. But *McCullen* specifically warned *against* the use of broad prophylactic measures when protected speech is at stake. After all, "[a] painted line on the sidewalk is easy to enforce, but the prime objective of the First Amendment is not efficiency." *McCullen*, 134 S. Ct. at 2540. When there are "vital First Amendment interests at stake," a broad prophylactic prohibition cannot be upheld merely because "other approaches have not worked" as well. *Id.*

Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for twenty-one days, to June 4, 2019, for several reasons:

1. The forthcoming petition will present an important question of federal law that this Court should resolve. There is currently significant tension in this Court's First Amendment jurisprudence between *Hill v. Colorado* and the Court's subsequent decisions in *McCullen* and *Reed*. The Seventh Circuit panel faithfully followed *Hill* as a binding precedent of this Court but did not mince words in emphasizing that *Hill*'s reasoning has been "deeply unsettled" by subsequent cases and that "[o]nly the Supreme Court can bring harmony to these precedents." Ex. A at 24. The resolution of this question has far-reaching practical consequences, as a

number of jurisdictions (like Chicago) continue to enforce "bubble zone" laws that severely curtail core speech and expression based on the content of that speech. As Applicants will explain in their certiorari petition, this Court's intervention is warranted to restore uniformity to this critical area of constitutional law and prevent the suppression of protected speech.

2. Applicants recently retained Supreme Court counsel, Jeffrey M. Harris of Consovoy McCarthy Park PLLC, to assist in the preparation of a petition for writ of certiorari. Mr. Harris has had extensive briefing obligations in other matters over the last several weeks—including *Planned Parenthood of Wisconsin v. Kaul*, (W.D. Wisc.); *McDonald v. Longley*, 1:19-cv-219 (W.D. Tex.); and *Swanigan v. FCA US, LLC*, No. 18-2303 (6th Cir.)—and is just beginning to work on this case. This short extension will allow Mr. Harris to review the record in the case, research the relevant issues, and prepare a clear and concise petition for certiorari for the Court's review.

3. No prejudice would arise from this short extension. Regardless of whether Applicants receive this extension, the petition for certiorari would likely be considered at the first conference following the Court's summer recess.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended by twenty-one days, to June 4, 2019.

Dated: April 26, 2019

Respectfully submitted,

/s/ *Thomas Olp*

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