

No. 23-74

In the Supreme Court of the United States

DEBRA A. VITAGLIANO, *Petitioner*,

v.

COUNTY OF WESTCHESTER, NEW YORK, *Respondent*.

*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT*

**BRIEF FOR THE PREGNANCY CARE CENTER,
INC. D/B/A ELINOR MARTIN RESIDENCE &
CLARITY WOMEN'S CENTER, SALIDA
PREGNANCY RESOURCE CENTER, BOULDER
PREGNANCY RESOURCE CENTER,
STEAMBOAT SPRINGS PREGNANCY
RESOURCE CENTER, AND DELTA PREGNANCY
RESOURCE CENTER AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for *Amici Curiae*

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INTEREST OF *AMICI CURIAE*

Amici are pregnancy resource centers that provide counseling, practical assistance, and material support to expectant mothers who are considering their pregnancy options. Because *amici* seek to protect and preserve mother-child relationships, they have a significant interest in this case. They also have a significant interest in this case because they operate in jurisdictions that have limited their ability to provide effective counseling to women outside of abortion clinics. See Laws of Westchester County §§ 425 *et seq.*; Boulder, Colo., Code § 5-3-10; Colo. Rev. Stat. § 18-9-122.*

Amicus The Pregnancy Care Center, Inc., d/b/a Clarity Women's Center and also as The Elinor Martin Residence, is a New York not-for-profit corporation. Formed in 1975, its guiding principle is that "[i]t is the right of every pregnant woman to give birth, and the right of every child to be born." The Center seeks a decrease in the number of abortions in Westchester Country by offering pregnant women and girls help and alternatives to abortion. The Center also seeks to create and maintain in society an awareness of the needs of pregnant girls and women, and to remove the social stigma associated with the

* Pursuant to Rule 37.2, *amici* provided timely notice of their intention to file this brief. In accord with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

unwed mother and her child and to encourage a more humane understanding of her and her problems.

One of the Center's founders, Elinor Martin, toiled to assist pregnant women, ultimately opening a residence because a major factor in the decision-making process for many women seeking abortion is the lack of affordable housing that could accommodate her child. The Center provided counseling training to Debra Vitagliano, which led to her challenge here.

Amicus Salida Pregnancy Resource Center was formed in 1989 to provide support for women and families facing an unplanned pregnancy in Salida, Colorado.

Amicus Boulder Pregnancy Resource Center supports and empowers women facing an unplanned or unexpected pregnancy with confidential, compassionate help. It is in Boulder, Colorado.

Amicus Steamboat Springs Pregnancy Resource Center, d/b/a SELAH, is a pregnancy care center in Steamboat Springs, Colorado. It was established in 2000 to meet the physical, spiritual, emotional, and mental needs of clients who face a range of issues related to pregnancy, sexual integrity, and healthy relationships. SELAH offers resources to the Steamboat Springs community and surrounding Routt County, as well as clients from Moffat, Jackson, and Grand Counties in Colorado.

Amicus Pregnancy Resource Center of Delta County, d/b/a Delta Pregnancy Resource Center, is a Colorado non-profit corporation formed in 1988. Among other services, it offers pregnant women and girls education focusing on prenatal preparation,

infant and toddler growth/milestones, personal healing, and learning new life skills.

SUMMARY OF THE ARGUMENT

Among the most important questions facing women with an unplanned pregnancy are socioeconomic and basic health concerns. Many studies show that women considering an abortion are focused on questions like how to afford a new child, how to balance a baby with other obligations, and how to find adequate personal support. This is no surprise: these questions confront every new parent, but they are especially pressing for women likely to be considering abortion—a cohort that is younger, more financially unstable, and less likely to have the support of a partner. Addressing these questions is critical to the decision of a woman considering abortion.

Pregnancy centers and the sidewalk counselors they are affiliated with are ideally situated to address these common socioeconomic and basic health concerns of expectant mothers. That is their primary mission. During pregnancy, they provide counseling and education about the decisions facing the mother. They provide training about being a mother (and father). Once the child is born, they provide tangible assistance in the form of diapers, bottles, formula, free daycare, and even safe places to stay. *Amici* have seen such help change the lives of hundreds of women and their families.

Unfortunately, most expectant mothers will not receive this information or help unless counselors and care centers can provide it. Abortion clinics do not offer

it. They have no interest in encouraging women to make a fully informed decision. Their interest is the opposite: scare women into choosing abortion, and get the procedure over quickly. For this reason, pregnancy centers and sidewalk counselors play a vital role in informing what this Court has repeatedly recognized to be a difficult and complex decision: whether to obtain an abortion. By cutting off this source of information at a crucial moment—without *once* recognizing the reality that counselors and care centers affirmatively help many, many women and their families—*Hill v. Colorado* failed to account for the significant interest of a mother in having enough information to make a genuine decision. And it disregarded settled First Amendment principles, including the right of women to receive relevant information and help.

The Court should grant the petition and overrule *Hill*.

REASONS FOR GRANTING THE WRIT

I. Socioeconomic and basic health concerns are relevant to women considering abortion.

The decision to seek an abortion often stems from circumstances outside the pregnant woman's control. That decision is not a purely medical one. Instead, it involves a complex interplay of personal, societal, familial, and medical considerations. Substantial evidence suggests that the predominant reasons for considering an abortion are socioeconomic issues—precisely the issues that sidewalk counselors and pregnancy resource centers are equipped to address.

Several studies have been conducted to document what affects a women’s decision to have an abortion, and the results have been consistent. These studies find that the primary reason women consider abortion is socioeconomic. In particular, perceived post-childbirth burdens are a significant factor. In a 2013 study, 64% of women surveyed reported that more than one factor affected their decisions to obtain abortions.¹ Forty percent of women reported financial reasons as being either their only reason or one of their reasons for having an abortion.² Survey respondents highlighted other socioeconomic factors too, including timing (mentioned by 36%) and partner-related reasons (mentioned by 31%).³ Only 12% of survey respondents reported health concerns as a factor, even when that category was broadly defined to include “health-related reasons ranging from concern for [the woman’s] own health (6%), health of the fetus (5%), drug, tobacco, or alcohol use (5%), and/or non-illicit prescription drug or birth control use.”⁴

These findings mirror a 2005 study finding that 73% of women reported that not being able to “afford a baby now” contributed to their decision to have an abortion.⁵ Seventy-eight percent reported concerns about educational or employment interference or

¹ M. Antonia Biggs et al., *Understanding Why Women Seek Abortions in the U.S.*, 13(29) *BMC Women’s Health* 1, 1 (2013).

² *Id.* at 6.

³ *Id.*

⁴ *Id.* at 7.

⁵ Lawrence C. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 *Perspectives on Sexual and Reproductive Health* 110, 112–13 (2005).

about raising other children.⁶ By contrast, only 12% of women reported health concerns for themselves as being a factor, and 13% reported that the health of the baby was a factor.⁷ Once again, these health concerns broadly encompassed anything “from chronic or debilitating conditions such as cancer and cystic fibrosis to pregnancy-specific concerns such as gestational diabetes and morning sickness.”⁸ These results suggest that abortion is rarely a decision made because of a severe medical condition or emergency.

A 2013 study suggested that financial difficulties, disruptive life events, and access to the necessities of child rearing can influence a woman’s decision to have an abortion.⁹ The study said that “[a]bortions among poor women accounted for 42% of the 1.21 million procedures performed in 2008.”¹⁰ Surveying women who had obtained abortions, the study found that in the 12 months before the abortion, nearly 20% had a period of unemployment, 16% separated from their partner, and 57% had at least one of these or other disruptive life events.¹¹

Other people in a woman’s life are often relevant to decisions about abortion. One study found that 48% of women reported that single-mother status or

⁶ *Id.* at 113–14.

⁷ *Id.* at 112.

⁸ *Id.*

⁹ Rachel K. Jones et al., *More Than Poverty: Disruptive Events Among Women Having Abortions in the USA*, 39 *BMJ Sexual & Reproductive Health* 36, <https://srh.bmj.com/content/39/1/36> (2013).

¹⁰ *Id.* at 36.

¹¹ *Id.* at 38.

relationship problems contributed to their decision to have an abortion.¹² The same study reported that 14% of women named partner pressure as a reason for their abortion.¹³ Another study reported that 31% of women stated they made their “decision specifically due to the persuasive messages they received” from others.¹⁴

Indeed, for many women, abortion is not a genuine “choice” they have made at all. Instead, it is something they are being forced to go through with against their will. This was the reality experienced by Paula Lucas-Langhoff, whose boyfriend “forced her into an abortion by threatening her life, and holding her ‘captive, saying that [she] could not leave until [she] had an abortion.’ The abortion clinic provided ‘misleading information about the abortion,’ including that her ‘baby was only a blob of tissue.’ She did not know that her ‘child was basically fully formed, had a heartbeat, and reacted to pain.’ The night before her abortion, she ‘wandered the neighborhood looking for someone’ to help her, to no avail. The next day, when she tried to back out of the abortion, her doctor ‘yelled at [her] and said that [she] was “wasting his time.””¹⁵

Abortion also plays a significant part in human sex trafficking. In a 2014 study, 114 abortions were

¹² *Finer et al.*, *supra* note 5, at 113.

¹³ *Id.*

¹⁴ Jacquelyn A. Harvey-Knowles, *An Examination of Women's Decision-making Processes During Unplanned Pregnancy*, 13 *Qualitative Rsch. Reports in Commc'n* 80, 84 (2012).

¹⁵ *Amicae Curiae* Brief of 12 Women Who Attest to the Importance of Free Speech in Their Abortion Decisions in Support of Petitioners, p. 2, *McCullen v. Coakley*, 573 U.S. 464 (2014) (No. 19-1392), 2013 WL 5230738.

reported among the 67 sex trafficking survivors who reported having at least one abortion during their trafficking.¹⁶ These women “reported that they often did not freely choose the abortions they had while being trafficked.”¹⁷ A woman subjected to particularly brutal trafficking had experienced 17 abortions.¹⁸ In the group of those who reported experiencing an abortion while being trafficked and specified where they had received it, about 67% percent had an abortion at a clinic—meaning that they had interactions with people who should have been in a position to help them.¹⁹ One woman noted that she had six abortions, two of which were “from Planned Parenthood because they didn’t ask any questions.”²⁰

II. Sidewalk counselors and pregnancy centers provide counseling, education, and resources for women in response to socioeconomic and health-related concerns.

Pregnancy centers like *amici* and the sidewalk counselors they are affiliated with are ideally positioned to address the socioeconomic and even health concerns facing pregnant women considering abortion. Beyond effective counseling, pregnancy

¹⁶ Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 *Annals of Health L.* 61, 73 (2014).

¹⁷ *Id.*

¹⁸ *Id.* at 74.

¹⁹ *Id.* at 79.

²⁰ *Id.*

centers and counselors also provide tangible financial and material support to women facing unplanned pregnancies and to new mothers. They train new parents in life-skills courses. Through all this, they show love and compassion to vulnerable families—addressing in a profound way the fears that women considering abortion often have. In these ways, *amici* have helped empower many women to decide to protect and care for their children.

A. Pregnancy centers and counselors address socioeconomic and health concerns.

Pregnancy centers and counselors come to women with truth and in love focusing on “1) the help available, 2) the harm abortion causes, and 3) the humanity and value of the baby.”²¹ Their goal is never to berate women but to simply engage them in quiet and uplifting conversations—something they can only do if they are able to approach them. *See Price v. City of Chicago*, 915 F.3d 1107, 1110 (7th Cir. 2019) (Sykes, J., joined by Barrett, J.) (“These conversations must take place face to face and in close proximity to permit the sidewalk counselors to convey a gentle and caring manner, maintain eye contact and a normal tone of voice, and protect the privacy of those involved.”).²²

²¹ Debra Braun, *Basic Guidelines for Sidewalk Counselors and Prayer Supporters*, Pro-Life Action Ministries, <https://plam.org/basic-guidelines-for-sidewalk-counselors-and-prayer-supporters/> (last visited Aug. 21, 2023).

²² *See also id.*; *What We Offer*, Sidewalk Advocates For Life, <https://sidewalkadvocates.org/our-program/what-we-offer/> (last visited Aug. 10, 2023).

The sidewalk counselors are equipped to inform each woman about the options available to her and to address the socioeconomic factors that impact her decision about an abortion. They are trained to provide information on where free ultrasounds can be obtained, facts about the baby at each stage of the pregnancy, details on the side effects of abortion (both physical and psychological), and access to baby clothing, maternity clothing, long-term support programs, financial aid, places to live, and much more.²³ Many of these services are provided through care centers like *amici*. And these resources help resolve the concerns that pregnant women may face.

These resources provide tangible help to expectant and new mothers. According to a 2020 study, 2,525 pregnancy centers nationwide offered material assistance to new parents.²⁴ This came most often in the form of diapers: 1,290,079 packs.²⁵ It also came in the form of “689,382 packs of wipes, 2,033,513 baby clothing outfits, 30,445 new car seats, and 19,249 strollers.”²⁶ All this help would have otherwise cost

²³ Patty Knap, *Why ‘Sidewalk Counselors’ Are Crucial to the Pro-life Movement*, Nat’l Catholic Register (July 25, 2017), <https://tinyurl.com/yp5c8e5r>; Christine Yi, *What I Saw Sidewalk Counseling*, Focus on the Family (July 13, 2023), <https://tinyurl.com/anu3amts>; Daniel Parks, *What is Sidewalk Counseling*, Sidewalks 4 Life (Nov. 1, 2019), <https://sidewalks4life.com/what-is-sidewalk-counseling/>.

²⁴ *Pregnancy Centers Stand the Test of Time*, p. 17, Lozier Institute (2020), <https://tinyurl.com/4u82y9c4>.

²⁵ *Id.* at 16.

²⁶ *Id.* at 52.

upwards of \$26 million.²⁷ Adding the value of all the other pregnancy assistance, counseling and outreach services, and public health services provided by pregnancy centers easily pushes that figure over \$100 million.²⁸

B. Pregnancy centers provide training and other help for new parents.

The help provided by pregnancy centers and counselors does not end at birth. These centers continue to provide education, training, daycare assistance, and even shelter to young families.

In 2019, education was offered at 86% of pregnancy centers nationwide, covering both prenatal and parenting programming.²⁹ New parents were introduced to valuable training including CPR courses, financial management, marriage counseling, nutrition, employment skills, and more.³⁰ In 2019, these programs were attended by 291,230 individuals, with an estimated value of over \$51 million.³¹

Sometimes these programs are offered simply as an added service of the center, and sometimes as an incentivized program, where new parents can “earn as you learn.” In the incentivized programs, parents can go to classes and earn points they can exchange for

²⁷ *Id.*

²⁸ See Brief for *Amicus Curiae* Charlotte Lozier Institute in Support of Petitioners, p. 2, *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018) (No. 16-1140), <https://tinyurl.com/brxfnm9s>.

²⁹ *Pregnancy Centers*, *supra* note 24, at 17.

³⁰ *Id.* at 49.

³¹ *Id.* at 50.

wipes, diapers, and other essential items. The training—and the “incentives”—are given for free.³²

For instance, Heartbeat International, Inc. serves women and children by connecting them to help centers, maternity homes, and nonprofit adoption agencies.³³ Through a telephone and web-based “Option Line,” individuals with unplanned pregnancies can obtain information and referrals to help organizations. In 2020, the line took 371,701 calls, emails, messages, and chats.³⁴ On average, the line connected individuals to help organizations once every 88 seconds.³⁵

These centers—and their employees and volunteers—are often uniquely equipped to effectively respond to the fears and concerns of the women (and men) they serve. By providing families with education, these centers promote the dignity of their clients, empowering them to make informed and educated decisions.

C. *Amici*’s experiences confirm the value of pregnancy centers and counselors.

Amici’s own experiences confirm the concerns that pregnant women often have—and the responsive help

³² Brief of 13 Women and the Catholic Association Foundation as *Amici Curiae* in Support of Petitioners, p. 19, *NIFLA*, 138 S. Ct. 2361, <https://tinyurl.com/ye86dxnp>.

³³ Brief of Heartbeat International, Inc. as *Amicus Curiae* in Support of Petitioners, p. 1, *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022) (No. 19-1392), <https://tinyurl.com/594zy9km>.

³⁴ *Id.*

³⁵ *Id.*

that pregnancy centers and counselors can provide. For many years, the Westchester Center offered a residence for expectant and new mothers in need; it is looking for a new location for this residence now. Several stories from women who lived at the Center's residence or were helped by the Center's services underscore that women considering abortion have concerns that can be addressed by care centers and counselors. The other *amici* have many similar stories. These stories have been condensed for brevity.

Haley: "I will never forget the day I arrived at the [residence]. I had twenty dollars in my pocket and was four months pregnant. [F]ear ran all through me. [But the residence] immediately supported me with two of my goals—registering for college classes and finding employment. [D]uring my pregnancy, doctors diagnosed my daughter with trisomy. I was heartbroken and ready to give up on myself and on my child. Between counseling, the staff, and the other residents in the house, I had so much love and support around me. I gave birth to a beautiful baby girl [who] was healthy and born without trisomy. Throughout it all, I never gave up. If it weren't for the [residence], I don't think I would have been able to do that. Here I stand, twenty years old, an amazing mother, a senior and soon to be college graduate!"

Kelita: "I was abandoned by my [family] when I was about three months pregnant. [They weren't] okay with my coming to terms with

wanting to carry out my pregnancy. I was [at the residence] for about two years. It made it incredibly easy in terms of transitioning from me being me, to me being a mom, and going to school and dealing with other issues in my life. [The residence] taught me how to be a mom and then to be a better mom. [I]t changed my life.”

Myra: “Life puts you in circumstances that you never thought you would be in. I saw myself and my child out on the street and we were in desperate need of housing. All of the women at the residence are in the same situation. At first, I thought I was too old, but everyone made me feel comfortable and safe. I never expected to receive so much support. [The center] gave me the opportunity to return to school for my bachelor’s degree because I knew my child would be in good hands in their daycare program. Thanks to the support of the [center], I became financially and emotionally stable and was able, in one year’s time, to move into my own apartment. They helped me provide a home and school for my daughter. I made the transition from resident to staff, returning as ‘House Mother’ to provide a powerful role model for the other women in the residence.”

Svetlana came to the United States from Eastern Europe, seeking education and a better life. A year later, she found herself pregnant and alone. She said: “I was pregnant, alone and scared. [The Center] saved my life by

giving me incredible support and so many practical resources I needed during this difficult time. With a weight lifted from my shoulders, I was able to make a positive decision that was right for me.” Even after graduating from the residence, Svetlana received free daycare for her new child for six months.

Lindsey: “My heart had always wanted a baby, but my circumstances didn’t. If I decided to keep the baby, it would leave me as a single mother, with not enough resources or adequate finances to give the baby a good life. The soonest I could get [an abortion] was 2 weeks away. So I had time to decide. Do I really want the abortion? Do I want to keep the baby after all? What am I going to tell my family? Should I keep this a secret and never tell anyone? Was I making the right choice? I was panicking and desperate to find answers. A part of me really wanted to keep the baby, but how could that possibly work out?” Lindsey said that after talking to friends, SELAH’s counselors, and family, “I made my decision. I was keeping the baby. [SELAH] offered me support and w[as] there every step of the way. I began attending their educational videos and they’d supply me with clothes, diapers and they helped me get health insurance. Not only that, they were also always on call to answer my panicked messages late at night. They gave me a car seat, breast pump, a stroller and are still by my side to this day. [I] trust[ed] the process, thanks to the strong support system I had from SELAH and many others in the community. That is what it took for me to successfully choose life for my baby.”

Countless more examples confirm the lesson from these stories: pregnancy centers and sidewalk counseling help women and often save babies by addressing the concerns that bring pregnant women to an abortion clinic. *See McCullen*, 573 U.S. at 473 (recognizing “unrefuted testimony” that sidewalk counselors had “collectively persuaded hundreds of women to forgo abortions”).

III. Depriving women of counseling causes permanent harm by denying information about a life-changing decision.

The de facto bans on sidewalk counseling that *Hill* sanctioned harm women and families. *Hill* “recognize[d] that” “forbid[ding]” “close physical approaches” would “sometimes inhibit a demonstrator whose approach in fact would have proved harmless.” *Hill v. Colorado*, 530 U.S. 703, 729 (2000). As most Americans can now attest, six feet apart is too far to have a meaningful conversation; eight feet is worse. But what *Hill* failed to recognize was that buffer zones affirmatively *harm* women by depriving them of critical information about the “difficult and painful moral decision” of whether to have an abortion. *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007).

Abortion presents one of the “gravest moral crises” of our time. *Hill*, 530 U.S. at 792 (Kennedy, J., dissenting); *see Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2240 (2022) (“Abortion presents a profound moral issue on which Americans hold sharply conflicting views.”). The community has significant interests in making sure decisions about abortion are “thoughtful and informed.” *Planned*

Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 872 (1992) (plurality opinion).

Women share those interests. “[T]here are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term.” *Id.* at 872. “[E]nsur[ing] that a woman apprehend[s] the full consequences of her decision . . . reduc[es] the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.” *Id.* at 882; accord *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 67 (1976) (“The decision to abort, indeed, is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences”).

As this Court has said, “[i]t is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know.” *Gonzales*, 550 U.S. at 159–60. “[S]ome women come to regret their choice to abort the infant life they once created and sustained,” and “[s]evere depression and loss of esteem can follow.” *Id.*³⁶

³⁶ Scientific evidence confirms this point. See, e.g., Priscilla K. Coleman, *Abortion and mental health: quantitative synthesis and analysis of research published 1995–2009*, 199 *British J. Psychiatry* 180, 182 (2011) (women who received an abortion “experienced an 81% increased risk of mental health problems”).

Pregnancy center and sidewalk counseling aims to avoid this. Every woman deserves to know all the options available to her before she makes a decision of such magnitude. But abortion clinics do not provide this information. They deny women the opportunity to consider anything other than abortion. As one pro-abortion author wrote, “the clinic director was fond of pointing out, counseling did not generate revenue for the clinic; being seen in the medical room did. Perhaps the greatest problem with slowdowns [counseling sessions that took longer than average] was the risk of annoying doctors.”³⁷

Another pro-abortion clinic worker who provides abortion counseling reported that “[s]ometimes even counseling was done in groups to save time, ten or fifteen women sitting in a circle . . . At other times I was strictly limited to a five-minute counseling session for each patient.”³⁸ Some clinics even prefill their surgical abortion release forms with the statement “Patient Confident with Decision.”³⁹ These clinics run a high-volume business operation, and counseling would only reduce their revenues or increase their costs.

Statements from suffering women also establish that abortionists do not provide the whole picture. One woman who received an abortion said that she “never

³⁷ Carol E. Joffe, *The Regulation of Sexuality: Experiences of Family Planning Workers* 89 (1986).

³⁸ Sarah Terzo, *Abortion Clinics Skip Counseling*, *Live Action* (Sept. 27, 2015), <https://tinyurl.com/4hzeesd2>.

³⁹ *Surgical Abortion Release Form*, Greenville Women's Clinic, <https://tinyurl.com/yrfu4rz5> (last visited August 16, 2023).

met an abortion clinic employee that ‘ever mentioned alternatives to abortion to me’ or [the] risks to my health.”⁴⁰ Another woman recalled that the abortion clinic’s staff “was cold and harsh, offering no information about the procedure apart from its price and no counsel other than pressure.”⁴¹ Many other women receive either misleading or outright false information about the procedure, its effects on their health, and the nature of their baby.⁴² As Judge Jones has noted, “women are often herded through their procedures with little or no medical or emotional counseling.” *McCorvey v. Hill*, 385 F.3d 846, 851 (5th Cir. 2004) (concurring opinion). In many cases, the woman will not even *see* the doctor until she has already been sedated—nor will she see the doctor once she awakes after the abortion.

Abortion clinics’ self-interested approaches are wholly inadequate to provide enough information to a woman in this difficult situation. Sidewalk counselors and pregnancy care centers stand in this gap, “offering information about alternatives to abortion” and “help[ing] [women pursue] those options.” *McCullen*, 573 U.S. at 472. By providing women with information that “gives a [woman] greater knowledge of the unborn life inside her” and “about the effect of an

⁴⁰ *Amicae Curiae* Brief, *supra* note 15 at 6.

⁴¹ Brief of Amici Curiae Ebony Harris, Ethan Taylor, Linda Holliday, Nicole Howard, Destinie Jackson & Jennera Smalls in Support of Plaintiff-Appellee, p. 2, *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 879 F.3d 101 (4th Cir. 2018) (No. 16-2325), <https://tinyurl.com/y9j39y5m>.

⁴² *Id.* at 2–6.

abortion procedure,” counselors provide information “pertinent to her decision-making.” *EMW Women’s Surgical Ctr., P.S.C. v. Beshear*, 920 F.3d 421, 430 (6th Cir. 2019).

Veteran sidewalk counselor, Eleanor McCullen, recently testified before Congress that many women she interacts with outside clinics believe that abortion is their only choice, and they yearn for the hope of another option.⁴³ Likewise, twelve women filed a brief in *McCullen* expressing their deep regret that they had been uninformed and lied to before their abortions and that no one was outside the clinics to offer them kind and gentle counsel.⁴⁴ One explained that “[i]f someone had been outside of the clinic offering me help and information,” “I would have decided against having the abortion, which was the most regrettable decision of my life.”⁴⁵ Instead, these women felt “alone” with only the self-interested voices of an abortionist to guide them.⁴⁶

Without sidewalk counseling, women are unlikely to receive the full range of information necessary to make an informed decision. And, as this Court has said, dialogue that “better informs” “expectant mothers” of the abortion decision is one way in which society advances “respect for life”—both maternal and

⁴³ Eleanor McCullen, Hearing of Senate Judiciary Committee on the Nomination of Ketanji Brown Jackson to be an Associate Justice of the Supreme Court of the United States, C-Span (March 24, 2022), <https://tinyurl.com/5ercenneu>.

⁴⁴ *Amicae Curiae* Brief, *supra* note 15, at 2-3.

⁴⁵ *Id.* at 7.

⁴⁶ *Id.* at 2-3.

fetal. *Gonzales*, 550 U.S. at 129. Not only that, but women have a First Amendment *right* to this information. See *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“This right to receive information and ideas, regardless of their social worth, is fundamental to our free society.” (citation omitted)); see also *Va. State Board of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976) (“[T]he protection afforded is to the communication, to its source and to its recipients both.”).

In sum, pregnancy centers and sidewalk counselors are needed to fill the informational gap that abortion clinics purposefully create. If states can outlaw such counseling, women will have abortions that they would otherwise not have chosen had they been more fully informed. Not only will this cause mothers harm, but it will also end innocent lives. Women have the right to get a perspective that abortionists refuse to provide. Vindicating that right requires overruling *Hill*.

CONCLUSION

For these reasons, the Court should grant the petition and overrule *Hill*.

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Respectfully submitted,

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for *Amici Curiae*

AUGUST 24, 2023