No. 23-74

In the Supreme Court of the United States

DEBRA A. VITAGLIANO,

Petitioner,

v.

COUNTY OF WESTCHESTER,

Respondent.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

The County of Westchester ("the County") enacted Chapter 425 of the Laws of Westchester County ("Chapter 425"), implementing several restrictions relating to conduct outside of facilities providing reproductive health care services. Only one of the many provisions of that law was challenged by Petitioner herein. On August 7, 2023, the County of Westchester repealed Subdivision (i) of Section 425.31 of the Laws of Westchester County, the singular provision at issue in this action. Given that repeal, the question presented is whether this action is moot.

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INTRODUCTION

Inherent in the powers granted to it by Article III of the Constitution, and in accordance with the Court's long history and tradition, this institution operates under the fundamental principle that it only hears cases where it can decide issues that affect the rights of the litigants before it.

Here, there is no active controversy before the Court. Petitioner challenges the constitutionality of Section 425.31(i) of the Laws of Westchester County. However, that law no longer exists. The County has repealed the provision, rendering the question of its validity moot.

Further, Petitioner brought this action as a pre-enforcement challenge; never once did Petitioner allege that she: (1) engaged in the activity prohibited by that subsection; (2) was actually threatened with enforcement; or (3) was subject to enforcement. As such, damages—nominal or otherwise—are not available to Petitioner, because she never established a past, completed injury. The only possible relief Petitioner could achieve—invalidation of Section 425.31(i)—is now unavailable. Thus, this Court cannot grant meaningful relief.

Where there is no meaningful relief to be granted, there is no case or controversy to be heard. As such, this Court should deny the petition before it as moot.

STATEMENT OF THE CASE

A. Enactment of Chapter 425

On June 27, 2022, the County enacted Chapter 425, which contained a number of provisions that regulated speech outside of facilities providing reproductive health care services—including both abortion-providing facilities such as Planned Parenthood, and anti-abortion counseling facilities, such as pregnancy crisis centers. *See* Pet. App. 32a - 41a.

Among the provisions contained in Chapter 425 was a "bubble zone"—a regulation that, within 100 feet of the entrance to a covered facility, made it unlawful to knowingly approach within 8 feet of another person, without that person's consent, for the purpose of protest, education, or counseling, or to pass any object to that person. *Id.* at 38a (§ 425.31(i)).

B. Petitioner's Lawsuit

In November 2022, Petitioner commenced the instant lawsuit, challenging solely the bubble zone contained in Section 425.31(i). *See* Pet. App. at 65a. In her complaint, Petitioner alleged that she had never engaged in sidewalk counseling—she attended prayer vigils, and had volunteered at pregnancy crisis centers, but never made the transition to approaching women on the sidewalk to speak. *Id.* at 47a-49a. Petitioner instead went through "training," and only after completion of that training, believed she was ready to begin sidewalk counseling. *Id.*

In her sole cause of action, Petitioner asserted that *Hill* v. *Colorado*, 530 U.S. 703 (2000), controlled her action, and that it should be overturned by this Court—in other words, Petitioner conceded the merits of her action at the District Court level. *Id*. at 65a. Petitioner never once asserted that § 425.31(i) (or any provision of Chapter 425) was enforced—or actually threatened to be enforced—against her or any other person.

The County, in compliance with the individual rules of the District Court, filed a pre-motion letter, seeking permission to file a motion to dismiss. In that letter, the County asserted its position that *Hill* was controlling—as specifically conceded by Petitioner. In response, Petitioner again conceded that *Hill* "foreclose[d] her claims" and asked the District Court to dispense with formal motion practice and to dismiss the action on the pre-motion letters. *Id*. at 23a. The District Court acceded to that request and dismissed the proceeding without any formal briefing. *Id*. In so doing, the District Court held that *Hill* controlled, and also found that Petitioner did not have standing to bring her challenge (an issue not raised in the pre-motion letters). *Id*. at 23a-31a.

Petitioner appealed. On June 21, 2023, the Court of Appeals for the Second Circuit vacated the District Court's decision on standing, but affirmed the decision on the merits—once again finding that *Hill* controlled as Petitioner again conceded. *Id*. at 1a-22a.

C. Repeal of the Bubble Zone

Subsequent to the Second Circuit's decision, and prior to the filing of the instant petition, on July 7, 2023, the Westchester County Board of Legislators ("the Board") began considering legislation that would repeal subsection (i) of Section 425.31, together with certain definitions only applicable to that subsection.[1]

On July 10, 2023, the relevant committees of the Board voted to refer the amendment to the full Board. That same evening, the Board voted to set a public hearing on the amendment, which was scheduled for August 1, 2023.[2] On August 1, 2023, the public hearing was held, and on August 7, 2023, the Board adopted the amendment, which was approved by the County Executive on the same day.

In repealing the bubble zone, the Board was able to look back on the experiences of the past year. It recognized that the bubble zone was difficult to enforce, and was not necessary to effectuate the intent of Chapter 425. Supp. App. at 1sa-2sa. The public comments received at the public hearing—which supported the repeal—reiterated that the bubble zone

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[1] *See* Westchester County Board of Legislators, Legislative Record, Local Law Intro. No. 309-2023, http://tiny.cc/BubbleZoneRepeal (last visited Oct. 23, 2023).

[2] *See* Westchester County Board of Legislators, Public Hearing Record, Local Law Intro. No. 309-2023, http://tiny.cc/RepealPublicHearing (last visited Oct. 23, 2023).

was difficult to enforce and unnecessary.[3] Speakers supported the repeal, including both a representative of Planned Parenthood, and a sidewalk counselor who prayed and handed out materials outside of a Planned Parenthood location. The Board also received letters from advocacy organizations supporting the repeal based on determinations that the provision was not necessary and was difficult to enforce.[4]

REASONS FOR DENYING THE PETITION

Given the repeal of the bubble zone—the only provision of Chapter 425 at issue in this case—this Court should deny the petition as moot. Moreover, even if the Court were to consider an exception to the mootness doctrine, granting the petition would only serve to continue litigation over a provision of law that was never enforced and that no longer exists in Westchester County.

A. The petition is moot

This Court has long held that it "is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it." *St. Pierre* v. *United States*, 319 U.S. 41,

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[3] Westchester County Board of Legislators, Video of August 1, 2023 Public Hearing, http://tiny.cc/PHVideo (last visited Oct. 23, 2023).

[4] *See* Westchester County Board of Legislators, Legislative Record, Local Law Intro. No. 309-2023, http://tiny.cc/BubbleZoneRepeal (last visited Oct. 23, 2023).

42 (1943). "And it is quite clear that 'the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions.'" *Flast* v. *Cohen*, 392 U.S. 83, 96 (1968) (quoting C. Wright, Federal Courts 34 (1963)). As noted by Chief Justice Warren in *Flast*, this rule "was established as early as 1793 and the rule has been adhered to without deviation." *Id.* at n. 14 (internal citation omitted); *see Moore* v. *Harper*, 143 S. Ct. 2065, 2091-92 (2023) (Thomas, J., dissenting).

Given that the bubble zone was repealed, there is no risk of enforcement against Petitioner. Thus, the case is moot "because a federal court cannot grant [Petitioner] 'any effectual relief whatsoever.'" *Uzuegbunam* v. *Preczewski*, 141 S. Ct. 792, 803 (2021) (Roberts, C.J., dissenting) (quoting *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013)).

Petitioner's throwaway request for damages—whether nominal or compensatory[5]—does not save this action from mootness. "Nominal damages go only to redressability and are unavailable where a plaintiff

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[5] Petitioner does not make a serious demand for compensatory damages, as the petition is bereft of any allegation of actual injury. *See generally*, Pet. App. 42a-66a. As this Court has held, "no compensatory damages may be awarded in a § 1983 suit absent proof of actual injury." *Farrar* v. *Hobby*, 506 U.S. 103, 112 (1992). Given that the standard for compensatory damages is higher than that for nominal damages, *see ibid* (nominal damages are available "when a plaintiff establishes the violation of his right . . . but cannot prove actual injury"), Petitioner's inability to recover nominal damages as discussed *infra* resolves the question of compensatory damages, as well.

has failed to establish a past, completed injury." *Uzuegbunam*, 141 S. Ct. at 802 n.*. Here, there is no past, completed injury, as this was solely a pre-enforcement challenge of a law that had never been enforced against anyone.

In *Uzuegbunam*, this Court found that Petitioner Uzuegbunam's nominal-damages claim was not moot, where an unconstitutional policy had actually been enforced against him prior to the policy's discontinuance. *See generally*, *id*. However, this Court did not reach the same result with respect to the co-petitioner, Bradford, who had sought nominal damages for his alleged self-censorship due to the policy. This Court did not "decide whether Bradford c[ould] pursue nominal damages," which it explained "go only to redressability and are unavailable where a plaintiff has failed to establish a past, completed injury." *Ibid.* Instead, this Court remanded for the District Court to determine "whether the enforcement against Uzuegbunam also violated Bradford's constitutional rights." *Ibid.* In other words, for there to be even a possibility of nominal damages, there needed to be an enforcement against somebody, and a determination that enforcement led to a violation of petitioner's rights. That burden cannot be met here.

As this Court noted in *Whole Woman's Health* v. *Jackson*, 142 S. Ct. 522, 538 (2021), the "chilling effect" of a "potentially unconstitutional law" is not always enough to even confer standing for a pre-enforcement challenge. It certainly cannot then constitute a "past, completed injury" as required for damages under *Uzuegbunam*. Indeed, the entire point of pre-enforcement challenges is so a determination

can be rendered *before* a "past completed injury" occurs. *See Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 161 (2014) ("plaintiffs faced a credible threat of enforcement and should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.") (internal quotation marks and citation omitted).

There is no meaningful relief that can be granted to Petitioner. The law she sought to challenge has been repealed, and Petitioner has no entitlement to damages. Moreover, the validity of a law that has been repealed has no prospective practical importance, and the Court's review would be entirely advisory. Therefore, the instant petition should be dismissed as moot.[6]

B. The voluntary-cessation doctrine does not apply

There is no reasonable expectation that the County will reenact the bubble zone provision, and therefore the voluntary-cessation doctrine does not apply in this

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[6] As per the Court's "ordinary practice," it may wish to vacate the judgment of the Second Circuit with direction to dismiss the action. *See N.Y. State Rifle & Pistol Ass'n* v. *City of New York*, 140 S. Ct. 1525, 1526 (2020) (quotation marks and citations omitted). Given that the first portion of the Circuit's decision is not the subject of the petition, and goes to a general standing question in a pre-enforcement challenge where a law is in effect and injunctive relief is available, it is respectfully submitted that this Court may wish to vacate only part II of the decision, which dealt with the merits. *See* Pet. App. at 11a-22a.

case. The voluntary-cessation doctrine is an exception to mootness that applies only if it is reasonably likely that the behavior will recur. *See United States* v. *Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968). The test is one of reasonableness, not whether the action could "*conceivably* reoccur." *City of Erie* v. *Pap's A.M.*, 529 U.S. 277, 303 (2000) (Scalia, J., concurring) (emphasis in original).

Here, the County has repealed the bubble zone provision of Chapter 425; it has not modified it or otherwise kept it alive in some fashion. Further, there is no evidence that the County is considering or otherwise intends to reinstitute the bubble zone provision, and we have been informed that there is no intention of doing so. Indeed, with the benefit of a one-year lookback, it was clear to the County that the bubble zone was not necessary—it had never been enforced, and it would be difficult to do so, leading to confusion over what was or was not permissible under Chapter 425. The repeal was further supported by, *inter alia*, organizations directly impacted by Chapter 425 (Planned Parenthood) and reproductive-rights advocacy organizations (Choice Matters and the National Institute for Reproductive Health) who confirmed the difficulties with enforcement.[7] As such, there is no basis to conclude that the County would just reenact the bubble zone once this petition has been disposed of. Further, as demonstrated by this opposition (and as further discussed in Section C

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[7] *See* letters in support from Planned Parenthood, Choice Matters, and the National Institute for Reproductive Health, available at http://tiny.cc/BubbleZoneRepeal.

infra), the County does not intend to continue to defend the constitutionality of the bubble zone, or the continued viability of this Court's decision in *Hill*. That is a task left to those with something at stake.

This is in stark contrast to cases where this Court found the voluntary-cessation doctrine applied. In those cases, there was either evidence that demonstrated that the legislature was likely to reenact or reinstate a disputed piece of legislation or policy, a refusal to state it would not do so, or the entity engaged in a vigorous defense of the underlying legislation or policy such that the Court could conclude there was a reasonable likelihood of reenactment or reinstatement. *See City of Mesquite* v. *Aladdin's Castle*, *Inc.*, 455 U.S. 283, 288-89 (1982) (The city set an age restriction, crafted an exemption for the plaintiff, then subsequently repealed the exemption in response to a court judgment. It was reasonable to believe the same course would occur with respect to other challenged language in the law); *Parents Involved in Community Sch.* v. *Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007) ("Seattle also notes that it has ceased using the racial tiebreaker pending the outcome of this litigation. But the district vigorously defends the constitutionality of its race-based program, and nowhere suggests that if this litigation is resolved in its favor it will not resume using race to assign students.") (citation omitted); *West Virginia* v. *EPA*, 142 S. Ct. 2587, 2607 (2022) ("Here the Government nowhere suggests that if this litigation is resolved in its favor it will not reimpose emissions limits predicated on generation shifting; indeed, it

vigorously defends the legality of such an approach.") (quotation marks and citation omitted).

In the absence of either the type of serial amendments which occurred in *City of Mesquite* or the vigorous defense of the underlying program, like in *Seattle* and *West Virginia*, this Court routinely finds that amendments to laws render matters moot. *See Hall* v. *Beals*, 396 U.S. 45, 48 (1969) ("the recent amendatory action of the Colorado Legislature has surely operated to render this case moot. We review the judgment below in light of the Colorado statute as it now stands, not as it once did."); *Diffenderfer* v. *Central Baptist Church, Inc.*, 404 U.S. 412, 414 (1972) (finding the matter moot where the law was amended and stating, "We must review the judgment of the District Court in light of Florida law as it now stands, not as it stood when the judgment below was entered."); *Fusari* v. *Steinberg*, 419 U.S. 379, 387 (1975) (same); *N.Y. State Rifle & Pistol Ass'n* v. *City of New York*, 140 S. Ct. 1525, 1526 (2020) ("After we granted certiorari, the State of New York amended its firearm licensing statute, and the City amended the rule so that petitioners may now transport firearms to a second home or shooting range outside of the city, which is the precise relief that petitioners requested in the prayer for relief in their complaint. App. 48. Petitioners' claim for declaratory and injunctive relief with respect to the City's old rule is therefore moot.").[8]

[8] The County would note that, in *N.Y. State Rifle & Pistol Ass'n*, the City of New York did vigorously defend its then-amended law, and this Court still found the action moot. *See* Br. of Respondents City of New York, et al., Docket 18-280.

The County repealed the bubble zone, and has no intention of reinstituting it. Rather than a litigation tactic as seemed to occur in *City of Mesquite*, the County's repeal was a reasoned legislative determination based on a year's worth of experience with the bubble zone and the feedback and support of various individuals and organizations who found the law to be difficult to enforce and unnecessary. Further, the County has no intention of defending this Court's prior holding in *Hill*, or the constitutionality of bubble zones in general. Therefore, the voluntary-cessation doctrine does not apply and the instant petition should be denied as moot.

C. This is not the case to review *Hill*

Even if the Court were inclined to take the extraordinary step of overruling *Hill*, this would not be the appropriate vehicle to do so.

First, as it has repealed the bubble zone, the County is not taking a position on the constitutionality of its law, nor is it taking a position on the continued viability of *Hill*. Consideration of the merits of *Hill* in this action would likely require the appointment by this Court of an *amicus* to argue in favor of *Hill*. *See*, *e.g.*, *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 152 n.4 (2013).

Second, there are other pending cases that would be better suited for this Court's review. *See Coalition for Life St. Louis* v. *City of Carbondale, Illinois* (7th

Cir.) (No. 23-2367); *Faustin* v. *Polis, et al.* (D. Colo.) (No. 23-cv-01376). The defendants in these cases continue to defend their laws, and there is no mootness issue raised in either.

Third, as set forth above, the County has repealed its bubble zone law, rendering this matter moot. Before the Court could reach the question presented in the petition, it would first have to determine whether it has the power to decide the case, including Petitioner's claim of standing[9] and second, determine whether the County's now-repealed bubble zone provision was constitutional under any revised constitutional standard articulated by this Court in a decision in this case on the merits.[10] If that litigation were to result in a determination that the County's repealed bubble zone failed to meet the new standard, then the District Court would also need to decide whether Plaintiff suffered a "past, completed injury"

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[9] While the Second Circuit held that Petitioner sufficiently pled standing, it is a threshold issue that this Court may independently review to assure itself of jurisdiction. *See, e.g.*, *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 340 (2006) ("We have an obligation to assure ourselves of litigants' standing under Article III.") (quotation marks and citation omitted). Given this Court's decision on standing in *Whole Woman's Health*, 142 S. Ct. at 538, it would need to determine whether the "chilling effect" of a "potentially unconstitutional law" was sufficient in this pre-enforcement challenge.

[10] For example, if bubble zones are rendered subject to strict scrutiny (*see*, *e.g.*, *Bruni* v. *City of Pittsburgh*, 141 S. Ct. 578 (2021) (Thomas, J., concurring in denial of *certiorari*)), then there would still need to be an analysis as to whether or not the County's bubble zone met that test in order to determine whether or not Petitioner could ultimately prevail in this matter.

redressable by nominal damages. *Uzuegbunam*, 141 S. Ct. at 802 n.*. This would waste judicial resources on issues related to a controversy that is over, and where the result can have no prospective practical importance given the repeal of the bubble zone. *See generally*, *Scott* v. *Harris*, 550 U.S. 372, 387-88 (2007) (Breyer, J., concurring).

Fourth, unlike in *Hill* (and as alluded to above), this Court would be deciding the matter on an incomplete record. In *Hill*, this Court was presented with a record that included motions for summary judgment, replete with affidavits and the legislative recording underlying the enactment. 530 U.S. at 709-10. A complete record allowed this Court to review and analyze the interests asserted by Colorado in enacting its law, and to determine whether or not the law met those interests in a constitutional manner. *Id*. at 714-15, 719-24. This is similar to other instances where this Court has reviewed bubble or buffer zones. *See Schenck* v. *Pro-Choice Network of Western N.Y.*, 519 U.S. 357, 365-67 (1997) (review of floating and fixed buffer zone injunctions issued after 39 days of testimony); *McCullen* v. *Coakley*, 573 U.S. 464, 475 (2014) (review of fixed buffer zone with a record from a bench trial).

Here, there is no record. This matter was disposed of on the parties' pre-motion letters—not even on a fully briefed motion to dismiss. As such, a decision by this Court overturning *Hill*, which Petitioner seeks, would not completely resolve the dispute—it would only alter the standard to be applied by the District

Court in reviewing the County's law. At the risk of repetition, resolution of Petitioner's claim in this action would thus require further proceedings at the District Court (and potentially the Circuit Court and this Court) in order to develop that record and determine the validity of the County's bubble zone.[11] Conversely, the *Faustin* matter, for example, should have a robust record by the time decisions are issued, as the parties are currently going through discovery.

Even if this Court did not consider the instant action moot, this is not an "appropriate case" to reconsider *Hill*. *See Bruni*, 141 S. Ct. at 578. Given that a decision herein would lead to additional, needless, litigation regarding a provision of law that is no longer on the books, this Court should decline to engage in what is ultimately an academic exercise and deny the petition.

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[11] Indeed, given the paucity of the record before this Court, it would appear the only way Petitioner could receive her ultimate relief at this stage would be for this Court to rule that bubble zones can never be constitutional—which would be an extraordinary leap. Even in the case of prior restraints, one of the most constitutionally suspect types of speech restrictions, this Court recognizes that they can be "acceptable" in certain circumstances and has not imposed a blanket ban. *See CBS* v. *Davis*, 510 U.S. 1315, 1317 (1994).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

COMMITTEE REPORT

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends passage of "A Local Law amending Chapter 425 of the Laws of Westchester County."

In 2022, this Honorable Board enacted Chapter 425 of the Laws of Westchester County ("Chapter 425") to prohibit interference with accessing reproductive health care facilities and obtaining reproductive health care services within the parameters established by precedent of the United States Supreme Court and the Second Circuit Court of Appeals, in order to: protect and promote the public health, safety, and welfare; ensure order; protect freedom of access to reproductive health care facilities; protect the freedom to obtain reproductive health care services; promote the free flow of traffic in the public way; advance medical privacy and the well-being of patients seeking access to reproductive health care facilities and obtaining reproductive health care services; and safeguard private property. By enacting Chapter 425, this Honorable Board struck an appropriate balance between the rights of those seeking reproductive health care and those seeking to exercise their First Amendment rights outside of reproductive health care facilities.

Your Committee has been informed that, while Chapter 425 has improved access to reproductive

health care facilities, the floating buffer zone provision contained in Section 425.31(i) is difficult to enforce and does not appear to be needed to effectuate the intent of Chapter 425. After consultation with representatives of reproductive rights organizations and enforcement agencies, your Committee has determined that Section 425.31(i) is not necessary at this time, and proposes the enactment of the attached local law to remove that subsection of Chapter 425, together with two definitions that apply only to that subsection.

Your Committee firmly believes that the remainder of Chapter 425 satisfactorily protects access to reproductive health care facilities in Westchester County, without the enforcement difficulties attached to Section 425.31(i).

Finally, your Committee is informed that this Local Law does not meet the definition of an action under SEQRA and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 12, 2023, which is on file with the Clerk of the Board of Legislators.

Your Committee recommends adoption of this Local Law.

Dated: July 7, 2023
White Plains, New York

COMMITTEE ON

LEGISLATION HEALTH

APPENDIX B

LOCAL LAW INTRO. NO. 309 - 2023

A LOCAL LAW amending Chapter 425 of the Laws of Westchester County.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Section 425.21 of the Laws of Westchester is hereby amended to read as follows:

Sec. 425.21. Definitions.

Whenever used in this Chapter, the following words and phrases shall have the meanings indicated, unless the context or subject matter otherwise requires:

[a. "Approach" shall mean to move nearer in distance to someone.

b. "Eight (8) feet" shall be measured from the part of a person's body that is nearest to the closest part of another person's body, where the term "body" includes any natural or artificial extension of a person, including, but not limited to, an outstretched arm or hand-held sign.]

[c]a. "Harass" shall mean to engage in a course of conduct or repeatedly commit conduct or acts that alarm or seriously annoy another person and which serve no legitimate purpose. For the purposes of this definition, conduct or acts that serve no legitimate purpose include, but

are not limited to, conduct or acts that continue after an express or implied request to cease has been made.

[d]b. "Interfere with" shall mean to stop or to restrict a person's freedom of movement, or to stop, obstruct, or prevent, through deceptive means or otherwise.

[e]c. "Intimidate" shall mean to place a person in reasonable apprehension of physical injury to such person or to another person.

[f]d. "Invitee" shall mean an individual who enters another's premises as a result of an express or implied invitation of the owner or occupant for their mutual gain or benefit.

[g]e. "Person" shall mean an individual, corporation, not-for-profit organization, partnership, association, group, or any other entity.

[h]f. "Physically obstruct or block" shall mean to physically hinder, restrain, or impede, or to attempt to physically hinder, restrain or impede, or to otherwise render ingress to or egress from, or render passage to or from the premises of a reproductive health care facility impassable, unreasonably difficult, or hazardous.

[i]g. "Premises of a reproductive health care facility" shall include the driveway, entrance, entryway, or exit of the reproductive health care facility, the building in which such facility is located, and any parking lot in which the facility has an ownership or leasehold interest.

[j]h. "Public parking lot serving a reproductive health care facility" shall mean any public

parking lot that serves a reproductive health care facility and that has an entrance or exit located within one-hundred (100) feet of any door to that reproductive health care facility.

[k]i. "Reproductive health care facility" shall mean any building, structure, or place, or any portion thereof, at which licensed, certified, or otherwise legally authorized persons provide reproductive health care services.

[l]j. "Reproductive health care services" shall mean medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

Section 2. Section 425.31 of the Laws of Westchester is hereby amended to read as follows:

Sec. 425.31. Prohibited conduct.

It shall be unlawful for any person to do the following:

a. knowingly physically obstruct or block another person from entering into or exiting from the premises of a reproductive health care facility or a public parking lot serving a reproductive health care facility, in order to prevent that person from obtaining or rendering, or assisting in obtaining or rendering, medical treatment or reproductive health care services; or

b. strike, shove, restrain, grab, kick, or otherwise subject to unwanted physical contact or injury any person seeking to legally enter or exit the

premises of a reproductive health care facility; or

c. knowingly follow and harass another person within twenty-five (25) feet of (i) the premises of a reproductive health care facility or (ii) the entrance or exit of a public parking lot serving a reproductive health care facility; or

d. knowingly engage in a course of conduct or repeatedly commit acts when such behavior places another person in reasonable fear of physical harm, or attempt to do the same, within twenty-five (25) feet of (i) the premises of a reproductive health care facility or (ii) the entrance or exit of a public parking lot serving a reproductive health care facility; or

e. by force or threat of force, or by physically obstructing or blocking, knowingly injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with, another person in order to discourage such other person or any other person or persons from obtaining or providing, or assisting in obtaining or providing, reproductive health care services; or

f. by force or threat of force, or by physically obstructing or blocking, knowingly injure, intimidate, or interfere with, or attempt to injure, intimidate or interfere with, another person because such person was or is obtaining or providing, or was or is assisting in obtaining or providing, reproductive health care services; or

g. physically damage a reproductive health care facility so as to interfere with its operation, or attempt to do the same; or

h. knowingly interfere with the operation of a reproductive health care facility, or attempt to do the same, by activities including, but not limited to, interfering with, or attempting to interfere with (i) medical procedures or treatments being performed at such reproductive health care facility; (ii) the delivery of goods or services to such reproductive health care facility; or (iii) persons inside the facility. [; or

i. knowingly approach another person within eight (8) feet of such person, unless such other person consents, for the purpose of passing any material, item, or object to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way within a radius of one-hundred (100) feet from any door to a reproductive health care facility.]

Section 3. This Local Law shall take effect immediately.