IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

COALITION LIFE,

Applicant,

v.

CITY OF CARBONDALE, ILLINOIS,

Respondent.

APPLICATION TO THE HON. AMY CONEY BARRETT FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Applicant Coalition Life, hereby moves for an extension of time of 40 days, to and including July 16, 2024, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be June 6, 2024.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Seventh Circuit rendered its decision on March 8, 2024 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case involves a First Amendment challenge to the Respondent City of Carbondale, Illinois' recently enacted Disorderly Conduct Ordinance. "The First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Snyder v. Phelps*, 562

U.S. 443, 452 (2011). That commitment is perhaps at its zenith on sidewalks and in other public places, which "occupy a special position in terms of First Amendment protection because of their historic role as sites for discussion and debate." *McCullen v. Coakley*, 573 U.S. 464, 476 (2014). "Leafletting and commenting on matters of public concern" in public spaces, for example, "are classic forms of speech that lie at the heart of the First Amendment" and thus receive robust protection. *See Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 377 (1997).

3. Notwithstanding those well-settled principles, the City of Carbondale, Illinois passed an Ordinance on January 11, 2023, that prohibits any person within a 100-foot radius of a hospital, medical clinic, or healthcare facility from "[k]nowingly approach[ing] another person within eight feet … unless [that] person consents, 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." Carbondale, Ill., City Code §14-4-2(H) (2023). The Ordinance seeks to unlawfully prohibit pro-life groups, including Applicant Coalition Life, from speaking to or interacting with people outside of abortion facilities and extends to public rights of way. The Ordinance does not appear to have been prompted by any demonstrated spate of violence or harassment in Carbondale, but rather appears to have been prompted, perversely, by this Court's decision in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

4. The City of Carbondale modeled its Ordinance after an identical statute that this Court upheld in *Hill v. Colorado*, 530 U.S. 703 (2000). In that case, this Court rejected a challenge to a Colorado statute that set a 100-foot boundary within

which it was unlawful for any person to "'knowingly approach' within eight feet of another person, without that person's consent, '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….'" *Id.* at 707 (quoting Colo. Rev. Stat. §18-19-122(3) (1999)). This Court held that the Colorado law was a content-neutral time, place, and manner regulation of speech that satisfied intermediate scrutiny. *Id.* at 719-30. In particular, the Court found that the 8-foot bubble zone was "not a regulation of speech" but "a regulation of the places where some speech may occur." *Id.* at 719. It also determined that the law was content neutral because of its purpose in ensuring clinic access, patient privacy, and the provision of clear guidance to law enforcement. *Id.* at 719. And when confronted with the proposition that the law might be content based because enforcement authorities would have to "review the content of the statements made by a person approaching within eight feet … to determine whether the approach is covered by the statute," this Court held that such "cursory examination" of a speaker's content or viewpoint did not render the statute content based. *Id.* at 722-23. Finally, in its application of intermediate scrutiny, this Court held that Colorado's interest in preserving clinic access and protecting patients from unwelcome or offensive speech was significant, and that a prophylactic 8-foot bubble zone within 100 feet of a clinic entrance was narrowly tailored to serve those interests. *Id.* at 726-30.

5. In more recent years, however, this Court (and others) have questioned the logic and reasoning of *Hill*, and by extension, the City of Carbondale's reliance on

it. In *McCullen v. Coakley*, for example, this Court set aside a statute that imposed a fixed 35-foot buffer zone around abortion facilities in Massachusetts, and exempted only certain people (such as patients, employees, law enforcement, and fire-fighters) from its enforcement. 573 U.S. 464, 471 (2014). This Court found that the law was not content based but emphasized (contrary to *Hill*) that it "would be" if it "required enforcement authorities to examine the content of the message … to determine whether a violation has occurred" or if it were concerned with the "undesirable effects that arise from … listeners' reactions to speech" outside abortion clinics, such as "caus[ing] offense or ma[king] listeners uncomfortable." *Id.* at 479, 481. As for its intermediate scrutiny, the Court held (again, contrary to *Hill*) that "the buffer zones impose serious burdens on [the sidewalk counselors'] speech" by making it "substantially more difficult" for them to "distribute literature to arriving patients" and to engage in the form of personal conversation required to deliver their delicate message. *Id.* at 487-88. The Court closed by emphasizing (once again, contrary to *Hill*) that a state may not, "consistent with the First Amendment" close off a "traditional public forum" to those who "wish to converse with their fellow citizens about an important subject." *Id.* at 496-97.

6. One year later, this Court brought *Hill* into further disrepute in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). There, the Court first clarified that a speech restriction "is content based if [it] applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 163. That question, the Court observed, "requires" consideration of "whether a regulation of speech 'on its face'

draws distinctions based on the message a speaker conveys," whether by its "subject matter" or its "function or purpose." *Id.* at 163-64. This Court also highlighted that some facially neutral laws should be deemed content based if they "cannot be justified without reference to the content of the regulated speech" or if "adopted by the government because of disagreement with the message the speech conveys." *Id.* at 164. In the end, the Court set aside the Town of Gilbert, Arizona's sign-code ordinance that prohibited the display of outdoor signs because the ordinance banned only certain signs based on the message conveyed, without satisfying strict scrutiny. *Id.* at 164, 171-72. Notably, the Court rejected the Ninth Circuit's decision upholding the law, and its reliance "on this Court's decision in *Hill v. Colorado*," citing Justice Kennedy and Justice Scalia's separate dissents in *Hill* to emphasize that a benign governmental motive cannot save a law that is "content based on its face." *Id.* at 162, 166-67.

7. The Seventh Circuit further recognized this Court's repeated unsettling of *Hill* in a recent decision concerning an ordinance not unlike the City of Carbondale's Ordinance in this case that also restricted access to public spaces around abortion clinics. *See Price v. City of Chicago*, 915 F.3d 1107 (7th Cir. 2019). The Seventh Circuit took pains in *Price* to recount this Court's First Amendment jurisprudence as it relates to laws like the one the City of Carbondale has enacted. *Id.* at 1111-17. And it concluded without apprehension that "*Hill* is incompatible with current First Amendment doctrine as explained in *Reed* and *McCullen*." *Id.* at 1117. The Seventh Circuit nevertheless found itself bound by *Hill* noting that

although *Reed* and *McCullen* "have deeply shaken *Hill*'s foundation … the case remains on the books and directly controls here." *Id.* at 1119.

8. That was, of course, before this Court decimated what remained of *Hill*'s foundation in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 287 & n.65 (2022). In *Dobbs*, this Court cited *Hill* as the poster child for cases in which the Court's now-overruled abortion decisions "have distorted First Amendment doctrines." *Id.* This Court's *Dobbs* decision thus paves the way for eliminating that distortion and overruling *Hill*. *See also City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 76 (2022) (noting two months before *Dobbs* that "we do not cite" *Hill* or seek to "resuscitate[e]" that "decision"). Moreover, returning the issue of abortion to the democratic process in the States only magnifies the importance of ensuring that First Amendment rights are not skewed in favor of one side of the debate. Nonetheless, the City of Carbondale and other jurisdictions have treated *Dobbs* as an occasion for doubling down on *Hill* and using the speech-defying law there as a model.

9. As intimated above, this case turns on the continuing viability of *Hill*. Applicant Coalition Life is America's largest professional sidewalk counseling organization, and for over 11 years has fulfilled its commitment to provide compassionate counsel and assistance at the gates of abortion facilities. In particular, Coalition Life's sidewalk counselors talk to people outside abortion facilities, including about alternatives to abortion. *See Coal. Life v. City of Carbondale*, No. 23-2367, 2024 WL 1008591, at *1 (7th Cir. Mar. 8, 2024). They get as close as possible to "make eye-contact and speak from a normal conversational distance in a friendly

and gentle manner" so that they may deliver their sensitive and important message effectively. *Id.* The City of Carbondale's Ordinance, however, prohibits them from conveying their pro-life message within 100-feet of any abortion facility by "approaching another person within eight feet, without th[e] person's consent, for the purpose of passing leaflets, displaying signs, or engaging in oral protest, education, or counseling." *Id.* (quoting Carbondale, Ill., City Code §14-4-2(H) (2023)). Accordingly, Coalition Life sued the City of Carbondale, alleging a violation of its First and Fourteenth Amendment rights to free speech and due process, and seeking a declaration that the Ordinance is unconstitutional on its face, as well as a permanent injunction against its enforcement. The City moved to dismiss, arguing that *Hill v. Colorado* and *Price v. City of Chicago* controlled and required dismissal because the Supreme Court and Seventh Circuit had already approved of identical and similar statutes in those cases as content-neutral time, place, and manner restrictions. *Coal. for Life St. Louis v. City of Carbondale*, No. 23-CV-01651-SPM, 2023 WL 4681685, at *1 (S.D. Ill. July 6, 2023). In response, Coalition Life maintained that the City's Ordinance violated its constitutional rights, but readily conceded that *Hill* and *Price* controlled, and that this Court's intervention was required for it to succeed on the merits of its First Amendment claim. *Id.*

10. The district court granted the City's motion to dismiss. *Id.* In a single-page memorandum and order, the district court highlighted that "*Hill* was decided more than twenty years ago and appears inconsistent with other Supreme Court decisions," *id.* (citing *Price*, 915 F.3d at 1119), and "that the holding in *Hill* has eroded

through the years, most recently being cited by the Supreme Court for 'distort[ing] First Amendment doctrines,'" *id.* (citing *Dobbs*, 597 U.S. at 287 & n.65). But because, as Coalition Life conceded, *Hill* and *Price* remain binding, the district court granted the City of Carbondale's motion to dismiss, emphasizing that Coalition Life's challenge cannot succeed "unless and until" *Hill* and *Price* "are overruled." *Id.*

11. The Seventh Circuit affirmed. In a two-page order, the Court recounted Coalition Life's practice of having "sidewalk counselors talk to people outside of abortion facilities" in a "friendly and gentle manner," to "offer information about alternatives to abortion." *Coal. Life*, 2024 WL 1008591, at *1. It then highlighted the City of Carbondale's Ordinance, and its similarity to those in *Hill* and *Price*. *Id.* In the end, the Court affirmed the district court's dismissal, agreeing that *Hill* "controls" notwithstanding that "the Supreme Court … has questioned the case's viability" throughout the years. *Id.*

12. While Coalition Life is still working with newly retained appellate counsel to formulate a petition, Coalition Life anticipates filing a petition that highlights the clear conflict between this Court's decision in *Hill* and its well-settled and more recent First Amendment precedents. Indeed, *Hill* was anomalous when it was decided—bucking against established precedent at the time, *see, e.g.*, *Schenck,* 519 U.S. at 377; *Hill*, 530 U.S. at 742, 751-52, 762 (Scalia, J., dissenting); *see also id.* at 765-67 (Kennedy, J., dissenting)—and it remains even more so today, as confirmed by this Court in *McCullen*, *Reed*, and *Dobbs*, *see supra* at ¶¶5-8. At bottom, this Court long ago made clear that *Hill v. Colorado* was an anomaly in a doctrinal area where

the need for consistency and neutrality are paramount. It should therefore provide the City of Carbondale no further refuge to restrict speech in ways that skew the debate on important issues this Court has now left to the democratic process. But until this Court formally overturns *Hill*, the case will continue to stand in the way of Coalition Life's protected speech in public places, which lies at the heart of the First Amendment. *See Schenck,* 519 U.S. at 377; *McCullen*, 573 U.S. at 476.

13. Applicant's counsel, Paul D. Clement, was not involved in the proceedings below and was only recently retained. Applicant's counsel requires additional time to review the record, prior proceedings, and the governing precedent relevant in this case in order to prepare and file a petition for certiorari that best presents the arguments for this Court's review.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including July 16, 2024, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

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