No. _____

In the
Supreme Court of the United States

COALITION LIFE,

Petitioner,

v.

CITY OF CARBONDALE, ILLINOIS,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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July 16, 2024

QUESTION PRESENTED

In *Hill v. Colorado*, 530 U.S. 703 (2000), this Court upheld a Colorado law that prevented sidewalk counselors from sharing a message on a profound moral issue with their fellow citizens in the public way outside an abortion facility. Even then, multiple members of the Court denounced *Hill* as "patently incompatible with the guarantees of the First Amendment," contrary to "more than a half century of well-established First Amendment principles," and explicable only by the Court's abortion jurisprudence. *Id.* at 741-65 (Scalia, J., dissenting); *id.* at 765-68 (Kennedy, J., dissenting). Since then, this Court's intervening First Amendment precedents have "all but interred" *Hill*, leaving it "an aberration." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 92, 104 (2022) (Thomas, J., dissenting). And most recently, this Court revisited its abortion precedents while citing *Hill* as an example of how those cases had "distorted First Amendment doctrines." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 287 & n.65 (2022).

Dobbs should have made clear beyond cavil that *Hill* could no longer skew public debate on a divisive issue being returned to the people. Inexplicably, however, the City of Carbondale treated *Dobbs* as an invitation to enact a brand-new ordinance modeled on, and virtually identical to, the law upheld in *Hill*. The lower courts had no choice but to uphold that carbon-copy measure. This Court has a better option.

The question presented is:

Whether this Court should overrule *Hill v. Colorado*.

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellant below) is Coalition Life.

Respondent (defendant-appellee below) is the City of Carbondale, Illinois.

CORPORATE DISCLOSURE STATEMENT

Petitioner has no parent corporation, and no shareholders own 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Coalition Life v. City of Carbondale, Illinois*, No. 23-2367 (7th Cir.), judgment entered on March 8, 2024;
- *Coalition for Life St. Louis v. City of Carbondale, Illinois*, No. 23-CV-01651-SPM (S.D. Ill.), judgment entered on July 6, 2023.

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There are few things more central to the First Amendment than the right "to converse with … fellow citizens about an important subject on the public streets and sidewalks." *McCullen v. Coakley*, 573 U.S. 464, 496 (2014). That kind of communication is "the essence" of our commitment to free speech and has long been afforded "special protection." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011). Unless, that is, it occurs on public streets or sidewalks near the entrance to a facility that performs abortions. As this Court recently recognized, *see Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231, 287 & n.65 (2022), for decades there has been "an entirely separate, abridged edition of the First Amendment applicable to speech against abortion," *McCullen*, 573 U.S. at 497 (Scalia, J., concurring in the judgment). That atextual abridgement is exemplified by this Court's decision in *Hill v. Colorado*, 530 U.S. 703 (2000), which upheld a law that prohibited coming any closer than eight feet to anyone entering an abortion facility to share literature or engage in "oral protest, education, or counseling" without first obtaining their permission. *Id.* at 707.

Hill came under heavy fire the day it was decided, which has continued ever since. Among other things, *Hill* not only invented an "interest" on the part of an "unwilling listener" in being shielded from "unwanted communication" in quintessential public places, but then elevated that novel "interest" above the speaker's constitutional *right* to speak. *Id.* at 714-17. It declared a law that facially discriminated against "protest, education, or counseling" content neutral on

the theory that it (purportedly) did not discriminate based on *viewpoint* or seek to suppress messages out of disagreement with them. *Id.* at 723. And it deemed what the Court admitted to be a broad "prophylactic" restriction on speech "narrowly tailored" simply because it did not foreclose speech opposing abortion altogether and everywhere. *Id.* at 726-29.

None of those propositions found any support in settled precedent when *Hill* was decided, and each has been explicitly and repeatedly repudiated since. Indeed, just two years ago, this Court pointed to *Hill* as evidence that this Court's now-discarded abortion jurisprudence "distorted First Amendment doctrines." *Dobbs*, 597 U.S. at 287 & n.65. Nevertheless, unless and until this Court intervenes, lower courts remain bound to follow *Hill* when confronted with speech-restricting laws modeled on the law upheld in *Hill*. And as this case vividly illustrates, such laws are not anomalies. Not only did several states and municipalities enact and retain these laws after *Hill*; they continue to proliferate anew even in the wake of *Dobbs*. Indeed, while the City of Carbondale went nearly 170 years without *any* speech or even conduct restrictions specific to public ways near abortion facilities, its city council enacted an ordinance that consciously copied Colorado's draconian law nearly verbatim as a response to *Dobbs*—and openly invoked *Hill* as a justification. As the city correctly predicted, the lower courts had no choice but to uphold that law simply and solely because they remain bound by *Hill*.

This Court is not similarly constrained. *Hill* was wrong the day it was decided, and its tenuous foundations have been thoroughly eroded by later

cases. Nonetheless, *Hill* continues to perpetuate a dynamic under which courts must "license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *R.A.V. v. City of St. Paul,* 505 U.S. 377, 392 (1992). That was bad enough in the days when debates on abortion rights focused on federal courtrooms, but it is particularly problematic in the wake of *Dobbs*, as the whole point of that decision was to return the sensitive issue of abortion to the people. Yet as things stand, jurisdictions in which anti-abortion views are disfavored have a ready tool to try to silence those who advance them—and to do so precisely when and where their speech may matter most. That state of affairs is "antithetical to our entire First Amendment tradition," *Hill*, 530 U.S. at 768 (Kennedy, J., dissenting), and the Court should not permit it to persist. The Court should grant certiorari, overrule *Hill*, and vindicate the time-honored principle that speech "on public issues should be uninhibited, robust, and wide-open." *Snyder*, 562 U.S. at 452.

OPINIONS BELOW

The Seventh Circuit's opinion is available at 2024 WL 1008591 and reproduced at App.1-3. The district court's opinion is available at 2023 WL 4681685 and reproduced at App.5-6.

JURISDICTION

The Seventh Circuit issued its opinion on March 8, 2024. Justice Barrett granted an extension of time to file a petition for writ of certiorari to July 16, 2024. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the First and Fourteenth Amendments to the U.S. Constitution and the City of Carbondale's Ordinance are reproduced at App.6-9.

STATEMENT OF THE CASE

A. Legal Background

1. *Hill v. Colorado* involved a state law that prohibited certain speech near healthcare facilities in Colorado, including facilities that provide abortion. In particular, the statute made it "unlawful within the regulated areas"—which encompassed all sidewalks and other public ways "within 100 feet of the entrance to any healthcare facility"—"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.'" 530 U.S. at 707 & n.1 (quoting Colo. Rev. Stat. §18-9-122(3)). The objective and impact of that restriction was plain: to impede the ability of those who oppose abortion to share that message or offer support to women in need near an abortion facility. The *Hill* petitioners, sidewalk counselors who sought to peacefully "educate" and "counsel … passersby about abortion and abortion alternatives," challenged the law on First Amendment grounds. *Id.* at 708-10. A sharply divided Court rejected their claim. *Id.* at 714.

The majority acknowledged that "leafletting, sign displays, and oral communications are protected by the First Amendment" and that "the public sidewalks, streets, and ways affected by the statute are

'quintessential' public forums for free speech." *Id.* at 715. It further acknowledged that "[t]he right to free speech, of course, includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker's message may be offensive to his audience." *Id.* at 716. Nevertheless, the majority insisted that this core First Amendment right must be "balance[d]" against a purported "privacy interest in avoiding unwanted communication," such that the desire not to hear the message someone wants to share in a public forum could override the First Amendment right to share it. *Id.* at 714, 716.

The majority went on to hold that the law was "a content-neutral time, place, and manner regulation"—even though it singled out healthcare facilities and imposed special restrictions on speech involving "oral protest, education, or counseling." *Id.* at 719-20. While the majority acknowledged the need to "examine the content of a communication to determine" whether it was covered by the law, it insisted that the law was still content neutral because it "was not adopted 'because of disagreement with the message it conveys,'" and because the "examination" of the content need only be "cursory." *Id.* at 719, 721-22. The majority also puzzlingly insisted that the law did not discriminate on the basis of *content* because it purportedly "place[d] no restrictions on … *viewpoint*" since it applied to *all* speech seeking to protest, educate, or counsel (albeit only near the entrance to a healthcare facility). *Id.* at 723 (emphases added).

Having decided to subject the law only to the less rigorous scrutiny applicable to content-neutral time-

place-and-manner restrictions, the majority then deemed it "narrowly tailored," reasoning that it "does not entirely foreclose any means of communication," and that "[a] bright-line prophylactic rule may be the best way to provide" guidance on enforcement and "protection" to "unwilling listeners." *Id.* at 726-27, 729.

Justice Scalia authored a dissent, which Justice Thomas joined. As he explained, Colorado's law was "obviously and undeniably content based," as "[a] speaker wishing to approach another for the purpose of communicating *any* message except one of protest, education, or counseling may do so without first securing the other's consent." *Id.* at 742 (Scalia, J., dissenting). He had "no doubt that this regulation would be deemed content based *in an instant* if the case before us involved antiwar protesters, or union members seeking to 'educate' the public about the reasons for their strike." *Id.* The only explanation he could identify for the majority's contrary conclusion, and for its failure to apply "even the less demanding scrutiny we apply to truly content-neutral regulations of speech in a traditional public forum," *id.* at 749, was "the 'ad hoc nullification machine' that the Court ha[d] set in motion to push aside whatever doctrines of constitutional law stand in the way of" the Court's abortion jurisprudence, *id.* at 741. Justice Kennedy authored a separate dissent in which he "reinforce[d]" Justice Scalia's analysis and elaborated on how the "Court's holding contradicts more than a half century of well-established First Amendment principles." *Id.* at 765, 768 (Kennedy, J., dissenting).

2. Criticism of *Hill* was not limited to the dissenting opinions. The decision was met by an "abundance of scathing academic commentary" nearly as soon as it issued. *McCullen*, 573 U.S. at 505 (Scalia, J., concurring in the judgment). Professor Laurence Tribe, for example, decried it as "slam-dunk wrong." Colloquium, *Professor Michael W. McConnell's Response*, 28 Pepp. L. Rev. 747, 750 (2001). Others agreed, lamenting that *Hill* "inverted ordinary free-speech principles," *id.* at 748, and "mark[ed] a dramatic downward departure from this [Court's] core First Amendment tradition," and expressing hope that it would only "be remembered as a flash-in-the-pan aberration," *e.g.*, Jamin B. Raskin & Clark L. LeBlanc, *Disfavored Speech About Favored Rights*, 51 Am. U. L. Rev. 179, 189 (2001).

Hill has not fared well in this Court either. The Court has barely mentioned the decision in the 24 years since it came down, with the majority shunning it even in cases involving restrictions on speech outside abortion clinics, like *McCullen v. Coakley*. *McCullen* involved a Massachusetts law that prohibited anyone from *entering* within a 35-foot buffer zone around an abortion facility, save people entering or leaving the facility, people who worked there, law enforcement and the like, and people using the rights-of-ways encompassed by that buffer zone to get to other places. 573 U.S. at 471-72. The Court unanimously held the law unconstitutional, and the majority opinion significantly eroded the foundation of *Hill*, while three concurring Justices would have overruled *Hill* outright.

For example, although the majority concluded that the law was content neutral because—rather than targeting only protest, education, and counseling—it prohibited essentially *any* speech within the buffer zone, it went out of its way to note that "[t]he Act *would* be content based if it required 'enforcement authorities' to 'examine the content of the message … to determine whether" the law applied, *id.* at 479 (emphasis added), or if it "were concerned with undesirable effects that arise from 'the direct impact of speech on its audience' or '[l]isteners' reactions to speech,'" *id.* at 481. As Justice Scalia observed in his concurrence, joined by Justices Thomas and Kennedy, "[t]he unavoidable implication of that holding is that protection against unwelcome speech cannot justify restrictions on the use of public streets and sidewalks." *Id.* at 505 (Scalia, J., concurring in the judgment). *But see Hill*, 530 U.S. at 715-19, 726-28. And in holding that the law was not "narrowly tailored to serve a significant governmental interest," the majority explicitly rejected the notion that it is enough that a law does not foreclose *all* avenues for speech near abortion facilities, instead recognizing that speakers have a First Amendment right in *how* they convey their message too. *McCullen*, 573 U.S. at 486, 489. *But see Hill*, 530 U.S. at 726.

3. *Hill* took yet another blow the following year in *Reed v. Town of Gilbert,* 576 U.S. 155 (2015), which thoroughly repudiated *Hill*'s capacious conception of content neutrality. *Reed* involved a First Amendment challenge to a sign code that regulated categories of signs differently depending on "the type of information … convey[ed]." *Id.* at 159. Relying on *Hill*, the Ninth Circuit upheld the ordinance, positing that it was

content neutral because the town "did not adopt its regulation of speech because it disagreed with the message conveyed" and its "interests in regulat[ing] temporary signs are unrelated to the content of the sign." *Id.* at 162. This Court reversed.

The Court reiterated that what matters at the "crucial first step" of assessing content neutrality is "whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys," whether by its "subject matter" or by its "function or purpose." *Id.* at 163-65. If a law does, then it is not content neutral, no matter what may have animated its enactment. As the Court explained, "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech." *Id.* at 167. *But see Hill*, 530 U.S. at 719. The Court also rejected the town's (and, implicitly, *Hill*'s) effort to "conflate[]" viewpoint and content neutrality, reiterating that while "discrimination among viewpoints … is a more blatant and egregious form of content discrimination[,] … [t]he 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." *Reed*, 576 U.S. at 169-70. *But see Hill*, 530 U.S. at 723.

While the Court refined its content-neutrality jurisprudence further in *City of Austin v. Reagan National Advertiser of Austin, LLC*, 596 U.S. 61 (2022), that decision undermined the analysis employed in *Hill* yet again, as no member of this Court would embrace *Hill* as a proper understanding of how

to identify content-based laws. *See id.* at 86-87 (Thomas, J., dissenting); *id.* at 76 (majority op.).

4. This Court published its latest word on *Hill* in *Dobbs*, and it was in the nature of a requiem. In determining that the traditional *stare decisis* factors counseled in favor of overruling its abortion precedents, the Court echoed Justice Scalia's "ad-hoc nullification machine" criticism, *Hill*, 530 U.S. at 741 (Scalia, J., dissenting), by observing that those precedents "have led to the distortion of many important but unrelated legal doctrines," including "First Amendment doctrines." *Dobbs*, 597 U.S. at 286-87. And the Court's chief illustration of that distortion of bedrock free speech principles was none other than *Hill*. *Id.* at 287 n.65.

B. Factual Background

1. To the extent anyone was not already on notice that *Hill* was a distortion of First Amendment principles, *Dobbs* removed all doubt. So one might have hoped that states and municipalities would reexamine any existing speech restrictions singling out abortion facilities and abortion-related speech to ensure their constitutionality. But *Dobbs* seems to have had the exact opposite effect on a number of local governments, including the City of Carbondale, Illinois.

A mere six months after *Dobbs*, the city enacted a first-in-its-history measure dubbed the "Disorderly Conduct Ordinance," which features a carbon copy of the Colorado statute in *Hill*: The ordinance makes it unlawful to "[k]nowingly approach[] … within eight feet" of another person within 100 feet of "any entrance … to a hospital, medical clinic or healthcare

facility" 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." App.9. In fact, the city council not only copied the Colorado law nearly verbatim, but explicitly invoked *Hill* as a justification for enacting it. Dist.Dkt.1-1.at.2. More remarkable still, the council invoked *Dobbs* itself as an excuse for its effort to curtail speech opposing abortion, blaming the decision for what it dubbed an "increase in activism and opposition from groups opposing abortion access" and (unidentified and utterly unsupported) reports of "frequent acts of intimidation, threats, and interference from individuals protesting abortion access and services." Dist.Dkt.1-1.at.2-3.

Notably, the new ordinance included a separate provision targeting conduct, rather than speech, by prohibiting "disorderly conduct" defined to include, "[b]y force or threat of force or by physical obstruction, intentionally injure[], intimidate[] or interfere[] with or attempt[] to injure, intimidate or interfere with any person entering or leaving any hospital medical clinic or healthcare facility." App.9. The city council made no effort to explain why that provision (not to mention the federal Freedom of Access to Clinic Entrances Act, 18 U.S.C. §248) was not sufficient to address any concerns about acts of "intimidation, threats, and interference." Comments during the hearing that produced the ordinance suggest that Carbondale's motivation had more to do with chastising this Court and suppressing speech than with any actual access or safety concerns. For example, one council member who supported the ordinance lambasted this Court as

"a lawless and partisan institution," the *Dobbs* decision as a "raw exercise of naked political power," and constitutional law more broadly as "a scam." Dist.Dkt.1.at.¶19, Item 8.3, Carbondale, Ill. City Council Meeting, at 44:55-45:56 (Jan. 10, 2023).

2. Petitioner Coalition Life is a Missouri nonprofit that organizes sidewalk counselors who "counsel, educate, pray, display signs, [and] distribute literature" in public ways outside abortion facilities. Dist.Dkt.1.at.¶9. Coalition Life's goal is to "offer information and assistance to women approaching abortion facilities," including "alternatives" to abortion. *Id.* Coalition Life's counselors do not engage in (and, in fact, are forbidden from engaging in) intimidating or threatening speech or conduct. On the contrary, their goal is to engage in "one-on-one conversation in a calm, intimate manner," which they find to be the most effective way of getting people to listen to their admittedly sensitive message. Dist.Dkt.1.at.¶10. As their experience has proven, "it is necessary to draw" close to those whom they seek to converse with "so they can make eye-contact and speak from a normal conversational distance in a friendly and gentle manner." Dist.Dkt.1.at.¶11.

Until recently, Carbondale was among the places where Coalition Life counselors engaged in this peaceful speech. But Carbondale's new ordinance "severely hinders" their ability to do so, as it could deem something as innocuous as approaching someone entering a facility to offer literature about alternatives to abortion "disorderly conduct." Dist.Dkt.1.at.¶¶21-24, 48. Because of the 100-foot buffer zone around all abortion facilities in the city,

moreover, counselors who seek to exercise their speech rights at one of the city's largest facilities are forced to stand by a busy road, far away from those to whom they wish to speak. Dist.Dkt.1-4.at.22. And the buffer zone around Carbondale's other largest facility creates an even worse problem, as it encompasses the entire parking lot and adjacent healthcare properties and extends even into the street, making intimate counseling activities effectively impossible. Dist.Dkt.1-4.at.7. That is no accident. The ordinance was initially crafted to impose only a 50-foot buffer zone, but the council enlarged it to 100 feet specifically to ensure that the ordinance would encompass the public ways surrounding that rural facility. Dist.Dkt.1.at.¶19 (quoting Carbondale, Ill. City Council Meeting, *supra*).

Ultimately, the city accomplished its goal, as the ordinance largely precluded counselors who work with Coalition Life from engaging in personal conversations with those seeking abortions in Carbondale, or from sharing with them literature about potential alternatives. *See* Dist.Dkt.1.at.¶¶21-24, 48. Coalition Life accordingly filed suit against the city, alleging (as relevant here) that the ordinance violates the First Amendment. Dist.Dkt.1.at.¶1.[1] The city, in turn, moved to dismiss, arguing that *Hill* and a Seventh Circuit decision reluctantly applying *Hill*—*Price v. City of Chicago*, 915 F.3d 1107 (7th Cir. 2019)—controlled and required dismissal. Dist.Dkt.14.at.1. Coalition Life conceded, as *Price* indicated, that *Hill* controlled in the lower courts, but

[1] Petitioner did not challenge the provision of the ordinance that prohibits intimidation, threats, or interference. App.9.

persevered its right to ask this Court to overrule *Hill*. Dist.Dkt.15.at.1-6.

The district court granted the city's motion, acknowledging that it was bound by *Hill* and *Price*. App.4-5. But the court observed that "*Hill* has eroded through the years, most recently being cited by the Supreme Court for 'distort[ing] First Amendment doctrines.'" App.5. The Seventh Circuit summarily affirmed, acknowledging that it was "bound by *Hill* because the Supreme Court … has not expressly overruled it," but it likewise observed that this Court "has questioned the case's viability." App.3.

REASONS FOR GRANTING THE PETITION

For nearly a quarter of a century, sidewalk counselors like those who work with Coalition Life have been forced to live with "an entirely separate, abridged edition of the First Amendment" when it comes to the kind of peaceful, conversational speech outside an abortion facility in which they wish to engage. *McCullen*, 573 U.S. at 497 (Scalia, J., concurring in the judgment). That "aberration" in free speech law, *City of Austin*, 596 U.S. at 92 (Thomas, J., dissenting), is owing to this Court's decision in *Hill*, which "contradict[ed] more than a half century of well-established First Amendment principles," *Hill*, 530 U.S. at 765 (Kennedy, J., dissenting). Those well-established principles, and the rights they protect, are more important than ever now that this Court has returned the abortion debate to the people. The time has come for the Court to restore the constitutional rights that *Hill* eviscerated, and this case provides a perfect opportunity to do so.

Since virtually the day *Hill* was decided, it was met with heavy criticism in court and out, even by commentators sympathetic to Colorado's concerns. And that chorus of criticism has only grown stronger over the nearly two-and-a-half decades since, with *Hill*'s foundations thoroughly eroded and this Court classifying the decision as a "distortion of … First Amendment doctrines." *Dobbs*, 597 U.S. at 286-87 & n.65. Yet rather than treat *Hill* as a discredited anachronism, Carbondale used it as a cornerstone for a brand-new restriction on First Amendment rights that was expressly modeled on the law upheld in *Hill*. The city passed that law, while expressly invoking *Hill* and criticizing *Dobbs*, confident that lower courts would have no choice but to follow *Hill* and uphold its copycat ordinance.

This Court has a better option. *Hill* was egregiously wrong the day it was decided, and virtually all of its reasoning has been explicitly repudiated in subsequent decisions that faithfully applied bedrock First Amendment doctrine, leaving no one with any credible (let alone legally viable) claim to reliance on the departure from settled precedent that it marked. And the city's actions make clear beyond all doubt that *Hill* is not some harmless relic, but a proverbial "loaded weapon ready for the hand of any authority" that wants to distort important public debates or protest this Court's decisions. *See Korematsu v. United States*, 323 U.S. 214, 246 (1944) (Jackson, J., dissenting).

That alone is reason enough to grant certiorari and give *Hill* a proper burial. But the need to restore the First Amendment rights *Hill* eviscerated is all the

more pressing after *Dobbs*. The whole point of *Dobbs* was to return debate about the sensitive questions surrounding abortion to the people. That revitalized public debate cannot be conducted with one side licensed "to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *R.A.V.*, 505 U.S. at 392. Yet *Hill* does just that. And the problem is neither theoretical nor obsolescing; *Hill*-style laws have proliferated, as the ordinance here dramatically illustrates. Unsurprisingly, moreover, those laws tend to be found in jurisdictions where abortion is more widely supported and more prevalent—i.e., in the jurisdictions where the kind of speech in which sidewalk counselors wish to engage is disfavored and has the greatest potential for impact. The denial of constitutional rights that *Hill* perpetuates is thus even more pronounced in *Dobbs*' wake, making the need for this Court's intervention more pressing now than ever.

This case provides a perfect vehicle to right the wrong that *Hill* inflicted. It is undisputed that Carbondale's ordinance is identical to Colorado's law in all material respects; indeed, the city council consciously copied it precisely because doing so would enable it to invoke *Hill* as a shield in the lower courts. And both courts below dismissed Coalition Life's case expressly and exclusively because they were bound by *Hill*, so there are no issues in play beyond whether that precedent should remain on the books. In short, the question of *Hill*'s continued viability is clearly and cleanly presented, and an answer is sorely needed, lest revitalized public debates continue to be skewed by discredited precedents. The Court should grant certiorari and overrule *Hill*.

I. The Court Should Overrule *Hill v. Colorado*.

Hill was wrong the day it was decided, and the case for overruling it has only strengthened ever since. Indeed, virtually all of the considerations that come into play when determining whether to revisit precedent—the nature of the error, the quality of the reasoning, consistency with subsequent decisions, and workability and reliance interests, *see, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83, 106 (2020)—counsel strongly in favor of overruling *Hill*. That is especially so given that *stare decisis* "is at its weakest" when it comes to constitutional questions, and carries even "le[ss] force" when it comes to "decisions that wrongly denied First Amendment rights." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 917 (2018). In short, *stare decisis* does not command that the Court continue to perpetuate the "distortion" of "First Amendment doctrines" that it has now openly acknowledged *Hill* created. *Dobbs*, 597 U.S. at 286-87.

A. *Hill* Was Egregiously Wrong From the Start.

As three members of this Court recognized in real time, *Hill* was egregiously wrong the day it was decided. Indeed, at virtually every turn, it marked "an unprecedented departure from this Court's teachings respecting unpopular speech in public fora." *Hill*, 530 U.S. at 772 (Kennedy, J., dissenting).

1. Public sidewalks and ways have long "occupie[d] a special position in terms of First Amendment protection," as they are classic "forum[s] for public expression." *United States v. Grace*, 461 U.S. 171, 180 (1983). *Hill*'s creation of and reliance on

a purported right to be shielded from disconcerting speech in these public forums turned that principle on its head.

Time and again, this Court has emphasized that it is "firmly settled" that "the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." *Street v. New York*, 394 U.S. 576, 592 (1969). Indeed, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). For that very reason, just three Terms before *Hill*, the Court explicitly rejected any so-called "right of the people approaching and entering [abortion] facilities to be left alone." *Schenck v. Pro-Choice Network of W. N.Y.,* 519 U.S. 357, 383 (1997). Yet *Hill* in one fell swoop not only invented "[t]he unwilling listener's interest in avoiding unwanted communication," but elevated that purported interest above the speaker's "undisputed" First Amendment *right* to speak in "'quintessential' public forums.'" *Hill*, 530 U.S. at 714-17.

While *Hill* tried to ground its reasoning in this Court's precedents, its strained efforts to do so just underscore its extraordinary departure from settled precedent. *Hill* purported to derive its novel right to be shielded from unwanted speech principally from "a *bon mot*" in Justice Brandeis' *dissent* in *Olmstead v. United States*, 277 U.S. 438 (1928). *Hill*, 530 U.S. at 751 (Scalia, J., dissenting). And that dissent does not even support *Hill*'s reasoning, as the "right to be let alone that Justice Brandeis identified was a right the

Constitution 'conferred, *as against the government*' … not some generalized 'common-law right' or 'interest' to be free from hearing the unwanted opinions of one's fellow citizens" that empowered government censorship. *Id.* (quoting *Olmstead*, 277 U.S. at 478 (Brandeis, J., dissenting)).

More inexplicable still was *Hill*'s reliance on *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975), *Frisby v. Schultz*, 487 U.S. 474 (1988), *Rowan v. U.S. Post Office Department*, 397 U.S. 728 (1970), and *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184 (1921). *Erznoznik* held that "the Constitution does not *permit* government to decide which types of otherwise protected speech are sufficiently offensive to require protection *for the unwilling listener or viewer*.'" *Hill*, 530 U.S. at 751 (Scalia, J., dissenting) (quoting *Erznoznik*, 422 U.S. at 210). *Frisby* and *Rowan* observed that people do *not* have any right to be free from "objectionable speech" "outside the sanctuary of the home." *Frisby*, 487 U.S. at 484 (quoting *Rowan*, 397 U.S. at 738). And *American Steel* was not a First Amendment case at all; indeed, free speech was not even "mentioned in the opinion." *Hill*, 530 U.S. at 753-54 (Scalia, J., dissenting).

2. *Hill*'s approach to content neutrality was equally unmoored from settled First Amendment precedent. According to *Hill*, content neutrality turns on "whether the government has adopted a regulation of speech because of disagreement with the message it conveys" and whether a law applies "regardless of viewpoint." *Id.* at 719-20. That has never been the law, and it emphatically is not the law now.

To be sure, "suppression of uncongenial ideas is the worst offense against the First Amendment—but it is not the *only* inquiry." *Id.* at 746 (Scalia, J., dissenting). In assessing content neutrality, the Court recognized long before *Hill* that the critical question is whether a law "[*o*]*n its face* … accords preferential treatment" based "on the nature of the message being conveyed." *Carey v. Brown*, 447 U.S. 455, 460-61 (1980) (emphasis added); *see also, e.g.*, Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. Chi. L. Rev. 413, 438-41, 443-46 (1996). And "the mere assertion of a content-neutral purpose" is not "enough to save a law which, on its face, discriminates based on content." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994).

Had *Hill* abided by that settled principle, it would have had to find Colorado's law content based. Like Carbondale's copycat ordinance, Colorado's law *on its face* restricts speech based "on the nature of the message being conveyed," *Carey*, 447 U.S. at 460-61, as it imposes special restrictions on speech containing a message of "protest, education, or counseling." Colo. Rev. Stat. §18-9-122(3). Thus, "[w]hether particular messages violate the statute" must be "determined by their substance." *Hill*, 530 U.S. at 766 (Kennedy, J., dissenting). Indeed, the *Hill* majority admitted as much, but dismissed that concern on the theory that the "examination" of content need only be "cursory." *Id.* at 722. But whether a law is content based turns on whether it draws distinctions based on content, not on how quickly government censors know it when they see it. And a law that treats messages of approval more favorably than messages of disapproval and

protest "is obviously and undeniably content based." *Id.* at 742 (Scalia, J., dissenting).

Indeed, the law in *Hill* was not just content based but viewpoint discriminatory. Unlike laws that seek to ban all speech near abortion facilities (which are nonetheless unconstitutional, *see McCullen*, 573 U.S. at 471), the statute in *Hill* imposed special restrictions on "protest, education, or counseling." And the Colorado legislature eliminated any doubt about the viewpoint-discriminatory purpose and effect of that language by acknowledging on the face of the law that it was enacted to constrain "the exercise of a person's right to protest or counsel *against certain medical procedures*." Colo. Rev. Stat. §18-9-122(1) (emphasis added). The legislature thus admitted what was already plain for all to see: The law's prohibitory language was just a collection of "code words for efforts to dissuade women from abortion." *Hill*, 530 U.S. at 743 n.1 (Scalia, J., dissenting).

3. Not satisfied with inventing shield rights for purportedly "unwilling" listeners or eliding well-settled precedent on content neutrality, *Hill* reduced intermediate scrutiny to little more than rational-basis review. Indeed, the Court's tailoring analysis hewed "not to the standards of Versace, but to those of Omar the tentmaker." *Id.* at 749.

The majority tried to minimize the burden Colorado imposed on First Amendment rights by "demot[ing]" the right to speak in public forums to a mere "interest[]," *id.* at 751, and then deeming it sufficient that "demonstrators" could still hold signs and try to speak to women from eight feet away, *id.* at 726 (majority op.). Indeed, the majority even went so

far as to posit that the law might "assist[] the speakers' efforts to communicate their messages" by somehow "encourag[ing] the most aggressive and vociferous protesters to moderate their confrontational and harassing conduct." *Id.* at 727.

That does not even make sense on its own terms, as distancing protestors from their intended audience undoubtedly will just necessitate already "aggressive and vociferous protestors" to raise the volume. But equally important, that (il)logic "displays a willful ignorance of the type and nature of communication" in which the petitioners there (and here) seek to engage, which is not "demonstrating," but rather trying to forge an intimate connection with a woman at one of the most difficult moments of life. *Id.* at 756 (Scalia, J., dissenting). What sidewalk counselors have found is that, with the right approach, some women who believe that they have no option but to abort may seem like "unwilling listeners" at first blush but may, in fact, be open to hearing more. Preventing counselors from trying to forge that connection thus not only impedes their own speech, but may impede the rights of women who would welcome their message if given a chance to hear it in the less confrontational manner that sidewalk counselors can offer when not confronted with an artificial barrier.

Making matters worse as judged from the standpoint of any normal narrow-tailoring analysis, the majority openly *championed* the fact that Colorado adopted a "bright-line prophylactic rule" "forbid[ding] all unwelcome" so-called "demonstrators," positing that "offering clear guidance and avoiding subjectivity" would somehow do more "to protect

speech" than confining the state to prohibiting the kind of harassment and obstruction that all agree the First Amendment does not protect. *Id.* at 729 (majority op.). But as a long line of cases before *Hill* made clear, "[p]rophylaxis is the antithesis of narrow tailoring," *id.* at 762 (Scalia, J., dissenting). Indeed, narrow tailoring deems it a *vice* when laws "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989); *see also, e.g.*, *NAACP v. Button*, 371 U.S. 415, 438 (1963) ("Broad prophylactic rules in the area of free expression are suspect."); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988) ("[T]he First Amendment does not permit the State to sacrifice speech for efficiency.").

In short, *Hill* marked a "glaring departure from precedent" at every turn and effected a wholesale "abdication" of the Court's "responsibility to enforce the First Amendment." *Hill*, 530 U.S. at 771, 791 (Kennedy, J., dissenting).

B. *Hill*'s Shaky Foundations Have Been Eroded by More Recent First Amendment Cases.

Difficult as *Hill* was to try to justify when it was decided, its incompatibility with this Court's First Amendment jurisprudence has only grown more pronounced since then. Indeed, the Court has not relied on *Hill* in the 24 years since it was decided—even when confronted with speech restrictions outside abortion facilities—and on the rare occasions when it has even referenced *Hill*, it has done so only to openly

criticize it or reject lower-court reliance on its reasoning.

Take, for instance, *McCullen*, which involved the first abortion buffer-zone law to reach the Court after *Hill*. The Court began by acknowledging that the law there "was modeled on" the Colorado law in *Hill*, and that the lower court had "[r]el[ied] on *Hill*" in "sustain[ing]" it. 573 U.S. at 470. The Court never mentioned *Hill* again, despite invalidating a law with a far greater claim to content neutrality than the law upheld in *Hill*. The concurring opinion, by contrast, invoked *Hill* at great length—but only to explain why it was wrong, why the Court should expressly overrule it, and why the majority had implicitly already done so. *See id.* at 504-05 (Scalia, J., concurring in the judgment). As Justice Scalia explained, "by stating that 'the Act would not be content neutral if it were concerned with undesirable effects that arise from ... "[l]isteners' reactions to speech,"' and then holding the Act unconstitutional for being insufficiently tailored to safety and access concerns, the Court itself has *sub silentio* (and perhaps inadvertently) overruled *Hill*," as "[t]he unavoidable implication of that holding is that protection against unwelcome speech cannot justify restrictions on the use of public streets and sidewalks." *Id.* at 505 (citation omitted).

McCullen repudiated *Hill* in additional respects. In stark contrast to *Hill*'s endorsement of "bright-line prophylactic rule[s]," 530 U.S. at 729, *McCullen* lauded "the First Amendment virtues of targeted injunctions as alternatives to broad, prophylactic measures," 573 U.S. at 492. Whereas *Hill* sought to justify Colorado's approach as more administrable

than case-by-case inquiry into whether someone actually crossed the line between speech and harassment, *see* 530 U.S. at 720, *McCullen* emphasized that, "by demanding a close fit between ends and means, the tailoring requirements prevents the government from too readily 'sacrific[ing] speech for efficiency,'" 573 U.S. at 486. And *McCullen* thoroughly rejected efforts "to downplay the[] burdens" that buffer-zone laws impose on speech, explaining that sidewalk counselors seek "not merely to express their opposition to abortion, but to inform women of various alternatives and to provide help in pursuing them," and that if all that women entering facilities "can see and hear are vociferous opponents of abortion, then the buffer zones have effectively stifled [the counselors'] message." *Id*. at 488-90.

Hill has fared no better in this Court outside the abortion context. Just as in *McCullen*, *Reed* cited the majority opinion in *Hill* only to observe that the lower court had relied on it in finding the sign code at issue there content neutral, 576 U.S. at 162—and then invoked the two *Hill dissents* when explaining why the lower court was wrong to do so, *id.* at 167. The Court invoked those dissents, moreover, for the proposition that a law that draws content-based distinctions on its face is *not* content neutral just because it was not adopted to disfavor certain speech, *id.*—which is the exact opposite of what the majority in *Hill* held, *see* 530 U.S. at 719. *Reed* also made clear that a law does not have to explicitly "defin[e] regulated speech by particular subject matter" to be facially content based; "more subtle" efforts, such as Colorado's (and Carbondale's) approach of "defining regulated speech

by its function or purpose," are equally problematic. 576 U.S. at 163-64.

Although *City of Austin* further refined the analysis of what makes a law content based, no Justice revived or endorsed *Hill*'s anomalous approach. In fact, in *City of Austin*, not a single Justice was willing to endorse *Hill*'s conception of content neutrality. While the majority reaffirmed *Reed*'s holding that laws that draw distinctions based on categories of speech or that use the "function or purpose" of speech as a "proxy" for an "obvious subject-matter distinction" are content based, it rejected the notion that a "classification that considers function or purpose is *always* content based." 596 U.S. at 74. The dissenters took issue with even that narrow holding, expressing concern that it "is reminiscent of" "*Hill*'s long-discredited approach." *Id.* at 86-87 (Thomas, J., dissenting). The majority responded not by defending or embracing *Hill*, but by refusing to even acknowledge it by name, insisting that "we do not … 'resuscitat[e]' a decision that we do not cite." *Id.* at 76.

Of course, the Court did cite *Hill* in *Dobbs*—but not to endorse anything it held or said. To the contrary, the Court again embraced the *Hill dissents* detailing how this Court's abortion jurisprudence had undermined textually enumerated rights and cited *Hill* as Exhibit A for how the Court's abortion cases had "distorted First Amendment doctrines." *Dobbs*, 597 U.S. at 287 & n.65.

C. All Remaining Criteria Counsel in Favor of Overruling *Hill*.

As the foregoing illustrates, neither *Hill*'s result nor *Hill*'s reasoning is defensible, particularly given

intervening developments in the law. *Hill*'s invention of the unwilling listener's purported right to be left alone in public flouts the time-honored "principle that 'debate on public issues should be uninhibited, robust, and wide-open.'" *Boos v. Barry*, 485 U.S. 312, 318 (1988). *Hill*'s content-neutrality analysis was unprecedented and ignored both text and context. And *Hill*'s praise of Colorado's "prophylactic" approach is an affront to the very concept of "narrow tailoring." *Button*, 371 U.S. at 438. All of that likely explains why this Court has largely refused to acknowledge or "resuscitate" *Hill*, let alone endorse its reasoning. It is, in short, the very model of a case that was egregiously wrong when it was decided and remains so to this day.

There can be little doubt, then, that the "quality of [*Hill*'s] reasoning" too counsels in favor of overruling it. *Loper Bright Enters. v. Raimondo*, 2024 WL 3208360, at *19 (U.S. June 28, 2024). Indeed, even "commentators … who agreed with the decision as a matter of policy[] were unsparing in their criticism" from the get-go, *Dobbs*, 597 U.S. at 278. *See, e.g.*, *Professor Michael W. McConnell's Response*, *supra* at 750; Jamin B. Raskin & Clark L. LeBlanc, *supra* at 189. And "[d]evelopments since" *Hill* have further "'eroded' the decision's 'underpinnings,'" leaving "it an outlier among [the Court's] First Amendment cases." *Janus*, 585 U.S. at 924. That "erosion" does not end with the most directly on-point cases like *McCullen*, *Reed*, and *City of Austin*. Time and again since *Hill*, this Court has reiterated that "public … speech … *cannot* be restricted simply because it is upsetting" to those who may hear or see it. *Snyder*, 562 U.S. at 458 (2011) (emphasis added); *see also, e.g.*, *303 Creative*

LLC v. Elenis, 600 U.S. 570, 586 (2023) ("[T]he First Amendment protects an individual's right to speak his mind regardless of whether the government considers his speech … likely to cause 'anguish' or 'incalculable grief.'").

The "workability"—or, more aptly, lack thereof—of the rule *Hill* established likewise counsels in favor of formally interring it. *See Janus*, 585 U.S. at 921. *Hill* is what forced this Court to intervene in both *McCullen* and *Reed*, each of which was the product of a lower court's reliance on aspects of the decision that are irreconcilable with the rest of this Court's First Amendment jurisprudence. *See* pp. 7-9, *supra*. And leaving *Hill* in place while repeatedly repudiating its reasoning has arguably made matters worse, as lower courts now struggle to understand the difference between a permissible *Hill* "bubble zone" and an impermissible *McCullen* "buffer zone." Indeed, earlier this year, the Third Circuit invoked *Hill* to uphold an ordinance that prohibited virtually *any* speech within eight feet of the entrance to a healthcare facility, reasoning that the ordinance was more like the law in *Hill* than the law in *McCullen* simply because the buffer zone was eight feet instead of 35. *Turco v. City of Englewood*, 2024 WL 361315, at *1, *3 (3d Cir. Jan. 31, 2024). *But see, e.g.*, *Sisters for Life, Inc. v. Louisville-Jefferson Cnty.*, 56 F.4th 400, 402, 408 (6th Cir. 2022) (ordering ordinance imposing a 10-foot buffer zone preliminarily enjoined). That unworkability and confusion creates a perverse dynamic where the surest way to pass a law lower courts will endorse is to pass a law that is *least* consistent with well-established First Amendment principles—namely, a law that, like the ordinance

here, replicates verbatim Colorado's prophylactic elimination of "protest, education, or counseling."

Finally, overruling *Hill* would in no way "upend substantial reliance interests." *Dobbs*, 597 U.S. at 287. Any claim to reliance on legally mandated buffer or bubble zones that might be asserted by abortion facilities or those who frequent them would "not establish the sort of reliance interest that could outweigh the countervailing interest" of those whose speech such laws restrict "in having their constitutional rights fully protected." *Arizona v. Gant*, 556 U.S. 332, 349 (2009). And to the extent state and local governments have relied on *Hill* to enact laws restricting speech, this Court has already explained that the existence of such "legislative acts" "is not a compelling interest for *stare decisis*." *Janus*, 585 U.S. 928 n.27. That is "especially so because [governments] have been on notice for years regarding this Court's misgivings about" *Hill*, *id.* at 927, which makes a late-breaking ordinance like Carbondale's particularly difficult to justify as grounded in any genuine reliance interest.

II. It Is Exceptionally Important To Overrule *Hill* Now, So It Can No Longer Distort The Public Debate That *Dobbs* Renewed.

The question for this Court thus is not so much whether, as when, *Hill* should be overruled. The time is now. This Court granted certiorari in *Hill* itself "[b]ecause of the importance of the case." 530 U.S. at 714. Exceptional as it was 24 years ago, the importance of the issue *Hill* resolved has magnified since *Dobbs*. The whole point of *Dobbs* was to "return[]" the profoundly sensitive issues of whether

and to what extent abortion should be available "to the people," where the Court determined the Constitution assigns those debates. 597 U.S. at 292, 302. It would be nothing short of perverse, however, to return politically contentious issues to the "democratic process," *id.* at 269, while allowing the government to "license one side of [the] debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *R.A.V.*, 505 U.S. at 392. Yet that is the dynamic that *Hill* perpetuates.

The law in *Hill* may have been an outlier at the time, but that is no longer the case. *Hill*-style laws proliferated in the wake of the decision. Montana passed its own speech-suppressing statute in 2005. *See* Mont. Code Ann. §45-8-110(1). New Hampshire then upped the ante, banning individuals from even "enter[ing] or remain[ing] on a public way or sidewalk adjacent to a reproductive healthcare facility within a radius up to 25 feet." N.H. Rev. Stat. §132:38(I). As a belt for Colorado's suspenders, Denver, Boulder, and Walsenburg passed their own, identical versions of the state's law. *See* Denver, Colo., Code of Ordinances §38-114(b); Boulder, Colo., Mun. Code §5-3-10(b); Walsenburg, Colo., Mun. Code §10-3-60(c). And several major cities have enacted similar restrictions. *See, e.g.*, Chicago, Ill., Mun. Code §8-4-010(j)(1); Pittsburgh, Pa., Code of Ordinances §§623.03-623.04; Oakland, Cal., Code of Ordinances §§8.52.020, 8.52.030(B)-(C).[2] Carbondale is not alone, moreover,

[2] *See also, e.g.*, Charleston, W.V., Code of Ordinances §78-235(c); Concord, N.H., Code of Ordinances, tit. I, ch. 4, art. 4-8-2(d); Sacramento, Cal., Code of Ordinances §12.96.020(A)(1); San Francisco, Cal., Police Code §4303(a); San Jose, Cal., Code of

in counterintuitively treating *Dobbs* as an excuse to follow suit even now. Westchester County, New York, passed a speech-suppressing law just days after the leak of this Court's draft opinion in *Dobbs*—only to promptly repeal it once threatened with the prospect that this Court might take up the question of its constitutionality. *See* Westchester Cnty., N.Y., Code of Ordinances ch. 425.31(i) (repealed August 7, 2023). And San Diego, California, just *reenacted* an 8-foot bubble zone ordinance—27 years after repealing its prior bubble zone law, in the wake of this Court's decision in *Schenck*. *See* San Diego, Cal., Mun. Code, ch. 5, §52.1003(c) (effective July 11, 2024).

In short, many *Hill*-style laws suppressing speech opposing abortion remain on the books today. And many lower courts have been forced to uphold them—notwithstanding serious doubts about their constitutionality—because they remain bound by *Hill*. In *Price*, for instance, the Seventh Circuit recognized that "*Hill*'s content-neutrality holding is hard to reconcile with both *McCullen* and *Reed*," and that "its narrow-tailoring holding is in tension with *McCullen*." 915 F.3d at 1109. It had no choice, however, but to continue to follow *Hill* because the decision has not been "overruled." *Id.* In *Bruni v. City of Pittsburgh*, 941 F.3d 73 (2019), while the Third Circuit applied *Hill* to uphold Pittsburgh's law, Judge Hardiman observed in a concurrence that "[t]he continued vitality of [*Hill*'s] content neutrality analysis is

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Ordinances §10.08.030(A); Santa Barbara, Cal., Mun. Code §9.99.020.

questionable after *Reed*." *Id.* at 93 (Hardiman, J., concurring).

The skew in public discourse about abortion that *Hill* continues to perpetuate is all the more pronounced and problematic given the regional variations that have become manifest in light of *Dobbs'* decision to return abortion debates to the states and the people. As was to be expected once those questions were returned to states and localities, jurisdictions throughout the country have taken very different approaches to the circumstances under which they permit abortion. And women are more likely to seek abortions in jurisdictions that take a more permissive approach—which unsurprisingly are also jurisdictions more likely to have *Hill*-style laws.[3] That means that *Hill*-style laws are most prevalent in jurisdictions where the speech of sidewalk counselors is least popular and most urgent from the perspective of the would-be speakers. Sidewalk counselors thus now often find themselves with the least right to speak precisely where and when they need that right most in a post-*Dobbs* world, which makes the need for this Court to intervene and eliminate that "distortion of … First Amendment doctrines," *Dobbs*, 597 U.S. at 286-87, all the more pressing.

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[3] *See, e.g.*, Angie Leventis Lourgos, *Six Months After the End of* Roe*, Illinois Abortion Providers Treat a 'Historic High' Number of Out-of-State Patients*, Chi. Trib. (Dec. 27, 2022,), https://perma.cc/W246-CA38.

III. This Case Is An Ideal Vehicle to Consider Whether To Overrule *Hill*.

This case is an ideal vehicle to decide whether *Hill* should be overruled. Carbondale's ordinance is identical to the Colorado law upheld in *Hill*. In fact, the city itself has stated no less than a dozen times that its ordinance "is identical to," is "modeled" after, is "on all four[s]" with, and "mimic[s]" Colorado's law. CA7.Dkt.13.at.9-16. Coalition Life did not and could not disagree. Nor did either of the lower courts, both of which dismissed Coalition Life's challenge explicitly and exclusively because there is no way to distinguish the measure from the Colorado law, rendering *Hill* controlling. App.1-2. There is thus no need to consider any issue other than whether *Hill* should be overruled to resolve this case, as the decisions below could not stand without *Hill* since that is the sole ground on which they relied.

Nor is there any risk of this case becoming bogged down in any factual or procedural disputes, as the case was resolved on a motion to dismiss. *Contra, e.g.*, *Bruni v. City of Pittsburgh*, 941 F.3d 73 (3d Cir. 2019), *cert. denied*, 141 S. Ct. 578 (2021) (Thomas, J., respecting denial of certiorari) (agreeing "not to take up" challenge to *Hill* "because it involves unclear, preliminary questions," but encouraging the Court to do so "in an appropriate case"). Thus, to the extent any factual issues might matter (though it is hard to imagine they would under a proper application of First Amendment doctrine), they could be resolved on remand once the distorting legal impediment of *Hill* is swept away. For that reason, others have identified this case as particularly well "suited for this Court's

review" of the question presented. Resp.Br., *Vitagliano v. Cnty. of Westchester*, 2023 WL 7162831, at *12 (U.S. filed Oct. 25, 2023).

Perhaps recognizing the writing on the wall, reports have surfaced that Carbondale convened an extraordinary Saturday session in the basement of its City Hall this past weekend to repeal its ordinance just days before it knew this petition would be filed. *See* Brandyn Wilcoxen, *Carbondale Repeals Ordinance Protecting Abortion Access with "No Credible Evidence of Violation,"* S. Illinoisan (July 14, 2014), https://perma.cc/A4HY-7RH4. While the details of that highly unusual effort are still emerging, at least three things are clear.

First, the repeal, even if valid and effective, does not moot this case. Not only does this appear to be a classic instance of voluntary cessation, *see City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982), but the complaint seeks nominal damages and all just and appropriate relief, *see* Dist.Dkt.1.at.p.13, which suffices to avoid mootness, *see Uzuegbunam v. Preczewski*, 141 S.Ct. 792, 798-802 (2021). Second, the city's belated determination that there is no public safety justification for the ordinance proves that it was never needed and was not narrowly tailored. *See* Wilcoxen, *supra*. Third, the city's transparent effort "to manipulate the Court's jurisdiction to insulate a favorable decision from review," *City of Erie v. Pap's A.M.*, 529 U.S. 277, 288-89 (2000), underscores the need for this Court to step in. Only this Court can overrule *Hill*, and jurisdictions that prevail in the lower courts and abridge First Amendment rights during the lower-court process can always try to pull

the plug when the case reaches this Court. The only way to avoid that dynamic is for this Court to overrule *Hill* once and for all.

Of course, it would have been preferable if jurisdictions would have recognized for themselves that *Dobbs* sounded the death knell for *Hill*'s distortion of bedrock First Amendment principles. But Carbondale's actions and recent gamesmanship confirm that *Hill* will continue to distort both the First Amendment and public debates about abortion unless and until it is overruled. And a proper respect for vertical stare decisis means no court but this one can perform that necessary task, as numerous lower courts have acknowledged. The Court should grant certiorari, overrule *Hill*, and finally bring an end to the "abridged edition of the First Amendment" that has curtailed "speech against abortion" for far too long. *McCullen*, 573 U.S. at 497 (Scalia, J., concurring in the judgment).

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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July 16, 2024

APPENDIX

TABLE OF APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-2367

COALITION LIFE,[*]

Plaintiff-Appellant,

v.

CITY OF CARBONDALE, ILLINOIS,

Defendant-Appellee.

Submitted: Mar. 6, 2024[†]
Decided: Mar. 8, 2024

Before: Michael B. Brennan, Michael Y. Scudder, and Thomas L. Kirsch II, *Circuit Judges*.

ORDER

Coalition Life sued the City of Carbondale, Illinois, alleging that the City's Disorderly Conduct

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[*] The appellant uses the name "Coalition for Life St. Louis" in its brief, but later notified us that its legal name changed to "Coalition Life," effective January 1, 2024. We have reformed the caption accordingly.

[†] We granted the parties' joint motion to waive oral argument and have agreed to decide the case on the briefs and the record. Fed. R. App. P. 34(f).

Ordinance violates Coalition Life's rights under the First and Fourteenth Amendments. The district court concluded that *Hill v. Colorado*, 530 U.S. 703 (2000), and our precedent foreclose relief. Coalition Life concedes that it cannot prevail unless *Hill* is overruled. Because only the Supreme Court can overrule itself, we affirm.

Coalition Life's sidewalk counselors attempt to talk to people outside of abortion facilities and offer information about alternatives to abortion. The counselors get as close as possible to people in order to "make eye-contact and speak from a normal conversational distance in a friendly and gentle manner." Under the Ordinance, a person commits disorderly conduct by knowingly approaching another person within eight feet, without that person's consent, for the purpose of passing leaflets, displaying signs, or engaging in oral protest, education, or counseling. Carbondale, Ill., City Code § 14-4-2(H) (2023). The provision applies to a radius of 100 feet from any entrance door to a hospital, medical clinic, or healthcare facility. *Id.* Coalition Life contends that the Ordinance unconstitutionally infringes on its free speech rights.

The City moved to dismiss the case. It first stated that the Ordinance was "modeled after and nearly identical to" the statute upheld by the Supreme Court in *Hill*, 530 U.S. at 707, which has not been overruled. It also noted that the Ordinance resembles one we upheld in *Price v. Chicago*, in which we explained that—however "shaken [its] foundation" may now be—*Hill* remains binding. 915 F.3d 1107, 1119 (7th Cir. 2019). In response, Coalition Life conceded that it

could not succeed "unless and until *Price* or *Hill* are overruled." The district court then dismissed the case.

On appeal, Coalition Life again concedes that *Hill* controls and that we cannot overrule a decision of the Supreme Court. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997) (the Supreme Court retains the "prerogative of overruling its own decisions"). That is correct: We remain bound by *Hill* because the Supreme Court—though it has questioned the case's viability—has not expressly overruled it. *See Grayson v. Schuler*, 666 F.3d 450, 453 (7th Cir. 2012) ("[W]e're not supposed to declare a decision by the Supreme Court overruled unless the Court makes clear that the case *has* been overruled, even if we're confident that the Court would overrule it …").

The arguments advanced by Coalition Life are foreclosed, and the judgment of the district court is AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

No. 23-cv-01651

COALITION FOR LIFE ST. LOUIS d/b/a COALITION LIFE,
Plaintiff,
v.
CITY OF CARBONDALE, ILLINOIS,
Defendant.

Filed: July 6, 2023

MEMORANDUM AND ORDER

McGLYNN, District Judge:

On May 16, 2023, plaintiff Coalition Life filed its Complaint for Civil Rights Violations, Injunctive Relief, and Declaratory Judgment against defendant, City of Carbondale "Carbondale" (Doc. 1). Specifically, Coalition Life raises numerous Constitutional challenges against Carbondale's newly enacted "Bubble Zone Ordinance" (Id.).

Pending before the Court is a Motion to Dismiss filed by defendant, City of Carbondale ("Carbondale"), which argues that dismissal is warranted as both Seventh Circuit and Supreme Court precedent bind this Court (Doc. 14); see also *Hill v. Colorado, et al.,* 530 U.S. 703 (2000); *Price v. City of Chicago*, 915 F.3d

1107 (7th Cir. 2019). In *Hill*, the Supreme Court upheld a similar "bubble zone" Colorado statute as a content-neutral time, place and matter restriction. *Hill*, 530 U.S. at 719-720. More recently, this Circuit upheld a similar "bubble zone" ordinance enacted by the City of Chicago after holding that *Hill* remained good law and directly controlled the issue, even though *Hill* was decided more than twenty years ago and appears inconsistent with other Supreme Court decisions. *Price*, 915 F.3d at 1119 ("While the Supreme Court has deeply unsettled *Hill*, it has not overruled the decision. So it remains binding on us.").

It its response, Coalition Life maintains that Carbondale's abortion "bubble zone" ordinance flagrantly violates the Free Speech Clause of the First Amendment (Doc. 15). Indeed, Coalition Life points out that the holding in *Hill* has eroded through the years, most recently being cited by the Supreme Court for "distort[ing] First Amendment doctrines". *Dobbs v. Jackson Women's Health Org.,* 142 S.Ct 2228, 2276 & n. 65 (2022). Nevertheless, Coalition Life concedes that the *Price* and *Hill* decisions preclude Coalition Life from succeeding, unless and until *Price* or *Hill* are overruled (Doc. 15).

CONCLUSION

For the reasons set forth above, defendant City of Carbondale's motion to dismiss is **GRANTED** in its entirety.

IT IS SO ORDERED.

DATED: July 6, 2023

s/Stephen P. McGlynn
Stephen P. McGlynn
U.S. District Judge

Appendix C

RELEVANT CONSTITUTUIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male

inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Carbondale City Code §14-4-2

A person commits the offense of disorderly conduct when he knowingly:

A. Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; or

B. Transmits in any manner to the city fire department a false alarm of fire knowing at the time of such transmission that there is no reasonable grounds for believing that such fire exists; or

C. Does an act in violent or tumultuous manner toward another, which places another person in fear of safety of his life, limb, health or property; or

D. Transmits in any manner to another a false alarm to the effect that a bomb or other explosive of any nature is concealed in such place that an explosion would endanger human life, knowing at the time of such transmission that there is no reasonable grounds for believing that such bomb or explosive is concealed in such place; or

E. Transmits in any manner to a peace officer, public officer or public employee a report to the effect that an offense has been committed, knowing at the time of such transmission that there is no reasonable grounds for believing that such an offense has been committed; or

F. Enters upon the property of another and for a lewd or unlawful purpose deliberately looks into a dwelling on the property through any window or other opening in it; or

G. With the intent to annoy another, makes a telephone call, whether or not conversation ensues; or,

H. Knowingly approaches another person within eight feet of such person, unless such other 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 in the public way within a radius of 100 feet from any entrance door to a hospital, medical clinic or healthcare facility, or

I. By force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person entering or leaving any hospital, medical clinic or healthcare facility. (Ord. 97-118; amd. Ord. 2023-03, 1-10-2023)