No. 24-57

IN THE

Supreme Court of the United States

COALITION LIFE,

Petitioner,

v.

CITY OF CARBONDALE, ILLINOIS,

Respondent.

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

BRIEF OF *AMICI CURIAE* RIGHT TO LIFE (MI), LIFE LEGAL DEFENSE FOUNDATION, AND THE WAGNER CENTER IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether this Court should overrule *Hill v. Colorado*, 530 U.S. 703 (2000) that improperly enables government to prohibit and punish speech content with which it disagrees? In discussing whether this Court should revisit *Hill,* this amicus brief focuses on why the doctrine of *stare decisis* does not require adherence to the incorrect holding of that case.

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, *Amici Curiae*, *Right to Life of Michigan*, *Life Legal Defense Foundation*, and the *Wagner Center,* submit this brief.[1]

Right to Life of Michigan, Inc., (RLM) is a non-profit and nonpartisan organization that believes every human being holds the inalienable right to life from conception until natural death. RLM advocates and strives to achieve its goals by educating the public on right to life issues, motivating the citizenry to action, encouraging community support, and participating in programs and legislation that foster respect and protect human life. RLM, with its hundreds of thousands of members, dedicates its work to protecting the sanctity of life by preparing pro-life educational material for sidewalk counseling, and by supporting public policy that respects all human life, including the lives of unborn children.

Life Legal Defense Foundation (LLDF) is a California non-profit corporation that provides legal assistance to pro-life advocates. The mission of LLDF is to give a trained and committed defense of innocent human life, and to support pro-life advocates in the nation's courtrooms. LLDF handles a wide array of cases in the defense of

1. Pursuant to Rule 37.2, *Amici curiae* gave 10-days' notice of its intent to file this brief to all counsel. *Amici Curiae* further state that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *Amici curiae*, its members or its counsel, made a monetary contribution to the preparation or submission of this brief.

human life. These include preserving the right to pro-life speech at a time when governments increasingly seek to make constitutionally protected expression unlawful.

Housed on the campus of Spring Arbor University, the Wagner Center promotes good governance and the Rule of Law. The Center champions the cause of the defenseless and oppressed, speaking on behalf of the persecuted and most vulnerable across the globe. Most importantly for this case, the Wagner Center works to preserve the freedom of citizens to compassionately, peacefully, and persuasively express viewpoints on various topics, and is a leading voice in this area.

Amici Curiae have special knowledge helpful to this Court in this case, holding a significant interest in the protection of First Amendment freedoms. *Amici Curiae* file this brief to encourage this Honorable Court to guide the American judiciary, and other branches of government, to return to a sound constitutional basis for protecting First Amendment liberty in our nation.

SUMMARY OF THE ARGUMENT

The First Amendment to the United States Constitution prohibits governmental infringement on free expression and the free exercise of religious conscience. U.S. Const. amend. I. The writers of the First Amendment did not say "make no law abridging freedom of speech, unless you seek to prohibit and punish a person's conscience-based pro-life viewpoint on the topic of abortion." Instead, the Framers of the First Amendment doubly protected such freedom of expression, requiring the application of strict scrutiny. *Kennedy v. Bremerton School District,* 142 S. Ct. 2407, 2421, 2426 (2022)

In *Hill v. Colorado*, 530 U.S. 703 (2000), this Court drifted away from its constitutional jurisprudence recognizing First Amendment freedoms as a fundamental liberty interest requiring the most rigorous scrutiny. Even though the government's action prohibiting content-based speech in *Hill* substantially infringed on First Amendment protected liberty, *Hill* simply deemed it a permissible content-neutral time place, and manner regulation satisfying intermediate scrutiny -- wrongly failing to require appropriate justification by the government for its conduct. This was so even though the law regulated expression in a content-based way, in some of the most historically revered public places traditionally protected for speech. The nature of *Hill's* erroneous First Amendment jurisprudence, its poor reasoning, the significance of post-*Hill* First Amendment cases, and lack of a legitimate reliance interest, all support granting the Petition to overturn *Hill.*

The doctrine of *stare decisis* must not be used to immortalize a decision that is contrary to a true and correct reading of the Constitution. Simply because the decision in *Hill* occurred, does not mean it must stand. Incorrect decisions require correction, not preservation. Just as this Court properly ceased to adhere to *Roe's* error for the sake of "predictability" or "consistency" it ought to likewise do so here. Being consistently and predictably unconstitutionally wrong is no virtue.

Unless this Court affirmatively acts to restore fundamental right status to First Amendment expression here, *Hill*, as a practical matter, denudes any meaningful constitutional protection for expression or conscience as a limit on the exercise of government power.

This Court should, therefore, grant the Petition, revisit *Hill*, and correct the error.

ARGUMENT

I. THIS COURT SHOULD GRANT THE PETITION TO REVISIT *HILL* AND RESTORE FULL FUNDAMENTAL RIGHT STATUS TO THE UNALIENABLE LIBERTY PROTECTED BY THE FIRST AMENDMENT.

Ratified in 1791, the First Amendment to the United States Constitution provides that "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech ...." U.S. Const. amend I. This Court holds liberty protected by the First Amendment applicable to the States via the Fourteenth Amendment. See, e.g., *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (Free Speech); *Everson v. Board of Education*, 330 U.S. 1, 8 (1947).

Hill v Colorado wrongly upheld government action prohibiting and punishing a person's speech for their pro-life viewpoint on the topic of abortion, peacefully shared on a sidewalk. 530 U.S. 703 (2000). Relying on *Hill*, and in reaction to the overruling of *Roe v Wade*, 10 U.S. 113 (1973), the city of Carbondale made it a crime to engage in First Amendment activity, banning some of the most protected kinds of expression in some of the most protected places for such expression. Here authorities made it a crime to engage others on sidewalks and other public fora in proximity to abortion facilities "for the purpose

of ***engaging in oral protest, education, or counseling," unless the other person consents. CARBONDALE, IL, CITY CODE § 14-4-2(H) (2023).

This case provides the opportunity for the Court to overrule *Hill's* wrongly decided precedent that government authorities increasingly use to unconscionably (and unconstitutionally) burden a person's speech and conscience when it disagrees with the topic or viewpoint expressed.

A. Stare Decisis Does Not Control Where a Precedent is Incorrectly Decided and Unconstitutional.

When a court correctly decides a precedent, other courts ought to adhere to that precedent under the doctrine of *stare decisis.* See *Dobbs v Jackson Women's Health Org.*, 142 S.Ct. 2228, 2261-62 (2022) (recognizing valuable ends served by the doctrine) This doctrine substantially contributes to good governance by providing the predictability and consistency necessary for the citizenry to reliably function within the Rule of Law. *Id.* For example, the doctrine protects those acting in reliance on a past decision, fosters fair decision-making, and helps preserve integrity of the judicial process. *Id.*

Stare decisis must not apply though in cases like *Roe,* or *Hill* when the decision in question was not only knowingly incorrect but unconstitutional. The doctrine of *stare decisis* must not be used to immortalize a decision that is contrary to a true and correct reading of the Constitution. The doctrine "is not an inexorable command," and it "is at its weakest when [the Court]

interpret[s] the Constitution." *Dobbs,* 142 S.Ct. at 2262 (quoting *Pearson v Callahan*, 555 U.S. 223, 233 (2009) and *Agostini v. Felton*, 521 U.S. 203, 235 (1997)).

Simply because the decision in *Hill* occurred, does not mean it must stand. Incorrect decisions require correction, not preservation. *Dobbs,* 142 S.Ct. at 2262 (recognizing a high value on having matters concerning constitutional liberty "settled right"). Just as this Court properly ceased to adhere to *Roe's* error for the sake of "predictability" or "consistency" it ought to likewise do so here. Being consistently and predictably unconstitutionally wrong is no virtue. "No interest which could be served by so rigid an adherence to *stare decisis* is superior to the demands of a system of justice based on a considered and a consistent application of the Constitution." *Graves v. Schmidlapp*, 315 U.S. 657, 665 (1942). Correcting an erroneous constitutional ruling is an "appropriate circumstance" to "reconsider and, if necessary, overrule constitutional decisions." *Dobbs,* 142 S.Ct. at 2262.

i. The Nature of Hill's Erroneous First Amendment Jurisprudence and its Poor Reasoning Support Granting the Petition to Overturn Hill

Hill was egregiously wrong and deeply damaging on the day this Court decided it. See *Dobbs,* 142 S.Ct. at 2265 (discussing the nature of the Court's error as a factor in overturning a prior constitutional ruling).

Bearing witness to the intolerant laws of seventeenth century England that persecuted individuals because of their conscience-based views, the First Amendment

balances the need for freedom of speech and conscience with the need of a well-ordered central government. *See, e.g.*, Mark A. Knoll, *A History of Christianity in the United States and Canada* 25-65 (1992); F. Makower, *The Constitutional History and Constitution of the Church of England* 68-95 (photo. reprt. 1972) (1895). The First Amendment embodies an ideal that is uniquely American—that true liberty exists only where men and women are free to hold and express conflicting political and religious viewpoints. Under this aegis, the government must not interfere with its citizens living out and expressing their freedoms but embrace the security and liberty only a pluralistic society affords.

The writers of the First Amendment did not say "make no law abridging freedom of speech, unless you seek to prohibit and punish a person's conscience-based pro-life viewpoint on the topic of abortion." Nor did the writers of the First Amendment say that "prior to exercising your constitutionally protected rights of expression or conscience, you need to seek permission from the listener" as both the Colorado law and City of Carbondale ordinance require.

Instead, the Framers of the First Amendment doubly protected such freedom of expression, requiring the application of strict scrutiny. *Kennedy v. Bremerton School District,* 142 S. Ct. 2407, 2421, 2426 (2022).

Content-based regulation of expression by government authorities properly faces strict scrutiny, the highest and most rigorous standard of review in constitutional analysis. *RAV v. City of St. Paul*, 505 U.S. 377, 382 (1992); *Turner Broadcasting System v. FCC* 512 U.S. 622, 641

(1994); *Republican Party of Minnesota v. White* 536 U.S. 765 (2002).

Here the government prohibits a person's speech in the most historically protected of places -- on the public sidewalks, a quintessential public forum. *Hague v. C.I.O.,* 307 U.S. 496, 515 (1939); *United States v. Grace*, 461 U.S. 171, 180 (1983). Thus, the government must not regulate a person's expression in a content-based way unless it can survive strict scrutiny. *Heffron v International Society of Krishna Consciousness Inc.* 452 U.S. 640, 648 (1981); *Perry Education Association v Perry Local Educators' Association* 460 U.S. 37, 45 (1983). When government prohibits a person's speech based on its content, it increases the threat that the government may, by force of law, exclude disfavored viewpoints from the marketplace of ideas. *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991); See also, *Street v. New York*, 394 U.S. 576, 592 (1969) (reaffirming that government must not prohibit "public expression of ideas" based on the reason that the ideas offend some who hear them uttered); *Texas v. Johnson*, 491 U.S. 397, 414 (1989)(citing cases reaffirming that the First Amendment prevents government from "prohibit[ing] the expression of an idea" even if "society finds the idea itself offensive or disagreeable").

State prohibitions on expression "pose the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or [to] manipulate the public debate through coercion rather than persuasion." *Turner Broadcasting*, 512 U.S. at 641 (1994).

In *Hill*, this Court drifted away from its constitutional jurisprudence recognizing First Amendment freedoms as a fundamental liberty interest. 530 U.S. 703 (2000). To accomplish this deed, *Hill's* clever jurisprudence masks its poor reasoning. See *Janus v. Amer Fed of State, County, and Municipal Employees, Council 31, et al.*, 138 S. Ct. 2448, 2479 (2018) (discussing poor reasoning as a factor to consider in deciding whether to overrule a past decision). Even though the government's action prohibiting content-based speech in *Hill* substantially infringed on First Amendment protected liberty, *Hill* simply deemed it a permissible content-neutral time place, and manner regulation satisfying intermediate scrutiny -- wrongly failing to require appropriate justification by the government for its conduct. This was so even though the law regulated expression in a content-based way in one of the most historically revered public places traditionally protected for speech.

Under *Hill,* a person's pro-life viewpoint on the topic of abortion, shared as a matter of conscience peacefully on a public street or sidewalk, is excepted from the constitutional protection contra-expressed in the plain language of the First Amendment. Indeed, the *Hill* case and its flawed reasoning marked an "unprecedented departure from this Court's teaching" 530 U.S. at 772 (Kennedy, J., dissenting). *Amici* here illustrates *Hill's* illusion of content neutrality in the Colorado law by deconstructing two key paragraphs of the opinion. To this end, *Hill* erroneously opined:

> It is common in the law to examine the content of a communication to determine the speaker's purpose. Whether a particular statement

constitutes a threat, blackmail, an agreement to fix prices, a copyright violation, a public offering of securities, or an offer to sell goods often depends on the precise content of the statement. We have never held, or suggested, that it is improper to look at the content of an oral or written statement in order to determine whether a rule of law applies to a course of conduct. With respect to the conduct that is the focus of the Colorado statute, it is unlikely that there would often be any need to know exactly what words were spoken in order to determine whether "sidewalk counselors" are engaging in "oral protest, education, or counseling" rather than pure social or random conversation.

Theoretically, of course, cases may arise in which it is necessary to review the content of the statements made by a person approaching within eight feet of an unwilling listener to determine whether the approach is covered by the statute. But that review need be no more extensive than a determination of whether a general prohibition of "picketing" or "demonstrating" applies to **innocuous** speech. The regulation of such expressive activities, by definition, does not cover social, random, or other everyday communications. . . . Nevertheless, we have never suggested that the kind of cursory examination that might be required to exclude casual conversation from the coverage of a regulation of picketing would be problematic.

Hill, 530 U.S. at 721-22 (emphasis added).

The above analysis contains deeply flawed reasoning with a myriad of errors.

First, the opinion incorrectly analogized Colorado's proscription of peaceful expression "for the purpose of engaging in oral protest, education, or counseling," with laws criminalizing various forms of unprotected speech (e.g. threats, blackmail). Where a person expresses a true threat or engages in blackmail, the expression itself is harmful, which is why it receives no protection under the First Amendment. *See, e.g., Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949) (rejecting the idea that "the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute"). Laws proscribing threats or blackmail, are therefore, wholly irrelevant when considering the constitutionality of laws that restrict protected speech in a protected forum.

Next, the Court wrongly compared expressive conduct routinely subject to government oversight and regulation (e.g., offers to sell goods or securities) with face-to-face conversations and hand-to-hand leafleting proscribed in the Colorado law. The problem with this faulty analogy is that face-to-face conversations and hand-to-hand leafleting sits at the traditional core of First Amendment protection, at the furthest remove from government regulation. *See, e.g., Lovell v. Griffin*, 303 U.S. 444, 452 (1938) ("what we have had recent occasion to say with respect to the vital importance of protecting this essential liberty [of handbilling] from every sort of infringement need not be repeated"); *McIntyre v. Ohio Elections*

Comm'n, 514 U.S. 334 (1995); *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) ("speech . . . at a public place on a matter of public concern . . . is entitled to 'special protection' under the First Amendment. Such speech cannot be restricted simply because it is upsetting or arouses contempt.")

Next, the opinion disputed whether, or how often, it would be necessary to know "exactly what words were spoken" in order to distinguish prohibited "protest, education, or counseling" from permitted "pure social or random conversation." This distinction distills the unconstitutional essence of the Colorado statute: it criminalizes only that speech important enough to need First Amendment protection, while leaving incidental or "random" speech, that has little need for such protection, unregulated.

The opinion next states that a review of the speech need be "no more extensive" than necessary to distinguish the prohibited speech from "innocuous speech." Common antonyms of "innocuous" are "harmful" and "pernicious." Merriam-Webster.com Thesaurus, available at https://www.merriam-webster.com/thesaurus/innocuous. (last visited July 31, 2024). In other words, the Court here drops the pretense that the Colorado statute is about unwanted physical approaches. The Court implicitly acknowledged what everyone already knew to be true: that the purpose of the statute is to prevent only those approaches accompanied by speech deemed by the government as harmful or pernicious—which happens to coincide with the speech of pro-life sidewalk counselors. *Hill*, 530 U.S. at 742 (Scalia, J., dissenting) ("We know what the Colorado legislators, by their careful selection of content ('protest, education, and counseling'), were taking aim at, for they

set it forth in the statute itself: the 'right to protest or counsel against certain medical procedures' on the sidewalks and streets surrounding health care facilities.") For that reason, approaches for the purpose of other speech deemed "innocuous," e.g., panhandling, asking for directions, distributing pizza coupons, conducting on-camera man-on-the-street interviews, or soliciting money for charity, are not prohibited by the statute.

Finally, the assertion that the purportedly harmful speech "protest, education, or counseling" is easily distinguishable from "social, random, or other everyday communications" is also flawed. Consider the following examples:

Good morning.
God bless you.
God loves you.
Jesus loves you and your baby.
Good morning. How are you doing?
Good morning. How are you feeling today?
Good morning. What brings you here today?
It's a beautiful morning, isn't it?
Isn't this a great day to be alive?
Life is beautiful, isn't it?
Can I help you?
Is there anything I can do for you?

Each of the above remarks is commonly utilized by sidewalk counselors, yet all of them could equally be used by solicitors, panhandlers, or just passersby seeing someone in distress. However, only the pro-life sidewalk counselors could find themselves in jail, as did a minister client of *amicus Life Legal*, for approaching while uttering these statements.

An officer enforcing the law—and citizens trying to abide by the law—are guided only by *Hill's* bizarre standard that the closer the speech is to the core of constitutional protection, the more likely the speech is prohibited under the law. If the speech is farther from the core of constitutional protection, then it is permitted.

Clearly, *Hill* excepted from constitutional protection a person's expression of a prolife viewpoint exercised in conscience. It did so despite a dearth of any supporting jurisprudence justifying such content-based regulation deeply rooted in our Nation's history and traditions, or implicit in the concept of ordered liberty. There is no real question that *Hill* used jurisprudential cleverness to cover its poor reasoning here. The context of *Hill* (and this case) requires speakers in public fora near abortion facilities to not engage in expression with others (i.e., in essence and reality, not share with others a prolife viewpoint on the topic of abortion). For the government to pretend that the censuring of this viewpoint on this topic of great public concern is merely content neutral regulation of a time, place, and manner where speech occurs, deviously diminishes the fundamental nature of First Amendment liberty.

It is worth noting that the pattern of governments using and abusing such jurisprudential diminishment of the First Amendment to accuse those with whom it disagrees, is familiar. For example, *Employment Division v. Smith* held that laws substantially interfering with the free exercise of religion were constitutional if written in a neutral and generally applicable way. 494 U.S. 872 (1990). This decision enables authorities to strategically write laws in a generally applicable way

but then contextually apply the general prohibition in ways that result in accusations against people exercising religious conscience. For example, *Smith* would permit the prosecution of a pastor administrating the sacrament of holy communion with wine on Sunday, if a law generally prohibited the distribution of alcohol on the weekend. With similar cleverness, *Hill* allows the prosecution of a pastor expressing a pro-life viewpoint on the topic of abortion on a public sidewalk in proximity to an abortion facility.

Such jurisprudential creativity covers deficient reasoning that re-writes the Constitution, rather than enforcing it as written. *Hill's* poorly reasoned conclusion cannot be reconciled with this Court's First Amendment jurisprudence.

The First Amendment "is essential to our democratic form of government, and it furthers the search for truth. Whenever ... a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines these ends." *Janus*, 138 S. Ct. at 2464 (2018)

At the heart of the matter here, a law prohibits and punishes citizens (and most often religious citizens) for expressing their pro-life viewpoint on the topic of abortion. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Bd. of Ed. v. Barnette,* 319 U.S. 624, 642 (1943).

ii. Both Pre-Hill and Post-Hill First Amendment Cases Support Granting the Petition to Overturn Hill

Factual and legal developments before and since *Hill* further erode the holding's underpinnings, leaving it an outlier. *Janus*, 138 S. Ct. at 2482-83 (2018) (discussing the latter as a factor to consider when deciding whether to overrule a decision). In *Kennedy*, this Court recently confirmed that "…a [n]atural reading" of the First Amendment leads to the conclusion that "the Clauses have complementary purposes" where constitutional protections for speech and the free exercise of religion "work in tandem," doubly protecting a person's expression and exercise of conscience. *Kennedy,* 142 S. Ct. at 2421, 2426 (2022) citing, *Fulton v. City of Philadelphia,* 141 S. Ct. 1868, 1876-1877 (2021); *Reed v. Town of Gilbert,* 576 U.S. 155, 171 (2015); *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993); *Sherbert v. Verner*, 374 U.S. 398, 403 (1963). In such situations, *Kennedy* reaffirmed the application of strict scrutiny. *Id.* The expression covered by Carbondale's censorship law comprises the kind of First Amendment liberty addressed in *Kennedy.*

Indeed, this Court's First Amendment cases consistently protect expression of a person's conscience, and viewpoints, subjecting government to the strictest of scrutiny if it substantially interferes. See, e.g., *Masterpiece Cakeshop, LTD., v. Colorado Civil Rights Commission,* 138 S. Ct. 1719, 1745-46 (2018) (Thomas, J., concurring) (noting, the necessity of applying "the most exacting scrutiny" in a case where Colorado's public accommodation law penalized expression of cake

designer) citing *Texas v. Johnson*, 491 U.S. at 412 (1989); accord, *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010); see also, *Reed v Town of Gilbert*, Ariz., 576 U.S. at 164 (2015). In *Shurtleff v. Boston*, No. 142 S.Ct. 1583, 1586 (2022) this Court unanimously reaffirmed that government "may not exclude private speech based on 'religious viewpoint'; doing so 'constitutes impermissible viewpoint discrimination,'" (quoting *Good News Club v. Milford Central School*, 533 U. S. 98, 112 (2001)). See also, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828-830 (1995). And see, *Snyder v. Phelps*, 562 U.S. at 458 (2011) (holding "speech . . . at a public place on a matter of public concern . . . is entitled to 'special protection' under the First Amendment").

Likewise, in *Fulton,* this Court confirmed that when First Amendment expression and exercise of conscience is at stake:

> A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Lukumi*, 508 U.S. at 546 (internal quotation marks omitted). Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so.

Fulton, 141 S. Ct. at 1881.[2]

2. While the government action in *Fulton* was not generally applicable, nothing in the Court's holding suggests the fundamental nature of the constitutional protection ought to diminish where it is.

iii. Lack of a Legitimate Reliance Interest, Supports Granting the Petition to Overturn Hill

Finally, while sometimes "reliance provides a strong reason for adhering to established law" such must not be the case here. *Janus*, 138 S. Ct. at 2484 (discussing reliance as a factor to consider in deciding whether to overrule a past decision). Reliance on a wrongly decided unconstitutional ruling deserves no deference. This Court's landmark decision in *Brown v. Board of Education,* 347 U.S. 483 (1954) could not have been decided as it was if it considered the reliance of segregationists on *Plessy v. Ferguson,* 163 U.S. 537 (1896). And in this case, it is not any reliance on the morally hazardous convenience of a "right" to kill your offspring that serves as the proper measure to silence expression of a pro-life viewpoint.

To be sure, *Planned Parenthood v. Casey* brazenly cited as its main "reliance" concern "the certain cost of overruling *Roe* for the people who have ordered their thinking and living around that case." 505 U.S. 833, 856 (1992). What sort of human beings order their thinking and life around the ability to kill children before they are born? The very concept is appalling, and *Dobbs's* rightly refused to apply *stare decisis.* This Court should likewise not apply the doctrine here.

From a "reliance" perspective, it is the amount of expression and conscience silenced, and the number of unborn lives sacrificed on the altar of judicial supremacy, that this Court should weigh when deciding whether *Hill* requires reversal. For both citizens of conscience and the pre-born rely on this Court to reject *Hill's* unconstitutional diminishment of fundamental First Amendment freedoms.

B. *Hill* Contributes to a Self-Inflicted Hyper-Politicization of the Judiciary that Undermines the Court's Institutional Legitimacy.

The people entrust the nation's judiciary to independently resolve disputes arising under the Constitution and laws of the United States. This trust exists only to the extent the people continue to perceive the exercise of judicial power as legitimate. The judiciary's duty to apply the Rule of Law, as understood and expressed by the people's representatives, preserves this legitimacy. To facilitate this calling, the Constitution inoculates the judiciary against political interference from the Congress and President by giving lifetime tenure to Federal Judges. U.S. Const., art. III. Federal Judges hold lifetime appointments so that they may apply existing law to resolve disputes without fear of political consequences.

And it is critical that they do so apolitically. With constitutionally instituted independence comes responsibility. Every Justice taking the oath of office swears to uphold the Constitution as it was written. The principle of independence only preserves institutional legitimacy of the judiciary if the judiciary exercises judgment based on what a constitutional provision says, not based on what the judiciary wills it to say.

The judiciary's duty to adhere to the Constitution requires it to resist the temptation to use its independence, as it did in *Roe and Hill*, to impose its will over that of the people. The Constitution guarantees politically accountable representative governance. Unconstitutional usurpation of that authority by the judiciary undermines the judiciary's institutional legitimacy.

Roe was one of the most significant cases in this Court's history, in our nation's history. Yet for all its gravitas, it was a simple case. Not easy, of course, but simple. To restore institutional legitimacy, this Court in *Dobbs* just applied the Constitution as written. *Dobbs,* in overturning *Roe*, helped to diminish the self-inflicted hyper-politicization of the judiciary caused by the judicial overreach in the *Roe* case. Overturning *Hill* furthers this restoration process, repairing and reestablishing the American judiciary's institutional legitimacy.

CONCLUSION

For the foregoing reasons, *Amici Curiae* urge this Court to grant the Petition, revisit *Hill*, and reverse the decision of the Seventh Circuit.

Respectfully submitted,

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