No. 24-881

In the Supreme Court of the United States

GEORGIA ASSOCIATION OF CLUB EXECUTIVES, INC.,
Petitioner,

v.

STATE OF GEORGIA, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT

BRIEF OF SECULAR PRO-LIFE, PROGRESSIVE ANTI-ABORTION UPRISING, AND LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

KELSEY HAZZARD
SECULAR PRO-LIFE
3770 Recreation Lane
Naples, FL 34116

THOMAS C. ARTHUR
Counsel of Record
EMORY UNIVERSITY
SCHOOL OF LAW
1301 Clifton Road NE
Atlanta, GA 30322
(404) 727-5792
lawtca@emory.edu

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

Secular Pro-Life is a not-for-profit organization whose mission is to advance secular arguments against abortion; create space for atheists, agnostics, and other secularists interested in anti-abortion work; and build interfaith coalitions of people interested in advancing secular arguments. Secular Pro-Life envisions a world in which people of all faith traditions, political philosophies, socioeconomic statuses, sexualities, races, and age groups oppose abortion.

Financial precarity motivates nearly three-quarters of abortions. The pro-life movement offers practical resources to help families overcome financial barriers and choose life for their children—but these resources are only useful to the extent that pregnant mothers know about them before it is too late. Therefore, Secular Pro-Life strongly supports the practice of peaceful sidewalk outreach to prevent abortions. Sidewalk outreach is especially critical for religiously unaffiliated mothers, who are disproportionately at risk for abortion compared to the general population, and who may not otherwise learn about free pregnancy supports that are commonly advertised through faith-based channels.

Secular Pro-Life takes an interest in this case because *Hill v. Colorado*, 530 U.S. 703 (2000), inhibits life-saving sidewalk outreach and unconstitutionally censors the speech of Secular Pro-Life's members.

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[1] No counsel for any party authored this brief in whole or in part, and no party or their counsel made a financial contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, Counsel of Record for all parties received timely notice of the intent to file this brief.

Progressive Anti-Abortion Uprising (PAAU) is a single-issue non-profit organization committed to ending elective abortion, focusing on issues that land at the intersection of pregnancy and parenting. Non-violent direct action, including sidewalk advocacy, is at the core of PAAU's mission. Buffer zone laws of the type this Court upheld in *Hill v. Colorado* are designed to impede peaceful challenges to the oppressive status quo.

The following professors teach and/or research in the area of law and religion and are interested in the development of sound doctrine in this area, as well as the protection of free speech rights in *Hill v. Colorado*-type contexts.[2]

Helen Alvaré
Robert A. Levy Professor of Law
Antonin Scalia Law School
George Mason University

Teresa Stanton Collett
Professor of Law
Director, Prolife Center
University of St. Thomas, Minnesota

George W. Dent, Jr.
Professor Emeritus of Law
Case Western Reserve University

Stephen G. Gilles
Professor Emeritus of Law
Quinnipiac University School of Law

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[2] These *amici* join in their individual capacities. Institutional affiliations are for identification only.

Robert J. Pushaw
James Wilson Endowed Professor of Law
Pepperdine Caruso School of Law

SUMMARY OF THE ARGUMENT

Hill v. Colorado, 530 U.S. 703 (2000), was egregiously wrong on the day it was decided and remains so today. Relying on a line of cases that began with *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), this Court in *Hill* treated buffer zone laws as content-neutral time, place, and manner regulations subject to only intermediate First Amendment scrutiny. This Court should instead apply strict scrutiny because buffer zone laws are, in both theory and practice, content-based restrictions on disfavored anti-abortion speech.

"To be sure, this Court has not uttered the phrase 'we overrule *Hill*.'" *Coalition Life v. City of Carbondale*, 145 S. Ct. 537, 540 (2025) (Thomas, J., dissenting from denial of certiorari). But "*Hill* has been seriously undermined, if not completely eroded." *Id.* at 542.

Although this case does not involve a buffer zone, Petitioner's direct challenge to the mistaken reasoning of *City of Renton* and its progeny offers this Court an ideal vehicle to, at long last, utter the phrase "we overrule *Hill*" and restore freedom of speech to pro-life Americans.

ARGUMENT

I. *Hill v. Colorado* Should Be Overruled.

In *Hill v. Colorado*, 530 U.S. 703 (2000), this Court wrongly upheld a Colorado statute that criminalized

"knowingly approach[ing]" within eight feet of a person, without their consent, "for the purpose of . . . engaging in oral protest, education, or counseling" near the entrance of a "health-care facility." Colo. Rev. Stat. § 18-9-122(3). This type of statute is popularly known as a buffer zone law.

As Justice Scalia pointed out in his dissent, buffer zone laws like the one enacted in Colorado are facially content-discriminatory: "Whether a speaker must obtain permission before approaching within eight feet—and whether he will be sent to prison for failing to do so—depends entirely on *what he intends to say* when he gets there." *Hill*, 530 U.S. at 742 (Scalia, J., dissenting). Moreover, although the statute defined "health care facility" broadly, it was clear from the legislative history and context that the buffer zone was enacted for the benefit of abortion facilities to discourage protests against them.

The majority nevertheless treated the buffer zone like a content-neutral regulation, opining that "the statute applies equally to used car salesmen, animal rights activists, fundraisers, environmentalists, and missionaries." *Id.* at 723 (majority opinion). That reasoning is pretextual to the point of undermining confidence in the Court. "[I]t blinks reality to regard [Colorado's] statute, in its application to oral communications, as anything other than a content-based restriction upon speech in the public forum." *Id.* at 748 (Scalia, J., dissenting); *see also McCullen v. Coakley*, 573 U.S. 464, 501 (2014) (Scalia, J., concurring in judgment) ("It blinks reality to say . . . that a blanket prohibition on the use of streets and sidewalks where speech on only one politically controversial topic is

likely to occur—and where that speech can most effectively be communicated—is not content based.").

This Court has since come to appreciate that the criminal prohibition on "oral protest, education, or counseling" at issue in *Hill* was not content-neutral and in fact discriminated against pro-life speakers. In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), this Court noted that its prior abortion jurisprudence had "distorted First Amendment doctrines," identifying *Hill* as the primary example of that First Amendment abortion distortion. *Id.* at 287 & n.65. *Hill* is an "erroneous decision" which used a "long-discredited approach" to uphold a "blatantly content-based prohibition" on pro-life speech near abortion facilities. *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 86-87 (2022) (Thomas, J., dissenting); *see also Reed v. Town of Gilbert*, 576 U.S. 155, 167 (2015) (relying on *Hill* dissents).

Hill immediately received overwhelming criticism from legal scholars. *See, e.g.*, Jamin B. Raskin & Clark L. LeBlanc, *Disfavored Speech About Favored Rights: Hill v. Colorado, the Vanishing Public Forum and the Need for an Objective Speech Discrimination Test*, 51 Am. U. L. Rev. 179, 182-83 (2001); Kathleen M. Sullivan, *Sex, Money, and Groups: Free Speech and Association Decisions in the October 1999 Term*, 28 Pepp. L. Rev. 723, 737-38 (2001); *Constitutional Law Symposium, Professor Michael W. McConnell's Response*, 28 Pepp. L. Rev. 747, 752 (2001) (quoting Prof. Chemerinsky as being "troubled by the rationale that was given" in Hill); TIMOTHY ZICK, SPEECH OUT OF DOORS: PRESERVING FIRST AMENDMENT LIBERTIES IN PUBLIC PLACES 101 (2008); Ronald J. Krotoszynski, Jr. &

Clint A. Carpenter, *The Return of Seditious Libel*, 55 UCLA L. Rev. 1239, 1262-63 (2008). In the quarter-century since, *Hill* has only continued its slide into this Court's anti-canon. "Yet, lower courts continue to feel bound by it" and continue to uphold buffer zone laws. *Coalition Life*, 145 S. Ct. at 538 (Thomas, J., dissenting from denial of certiorari).

With the notable exception of *Hill*, this Court's First Amendment jurisprudence reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Among the most important of those debates is "if and when prenatal life is entitled to any of the rights enjoyed after birth." *Dobbs*, 597 U.S. at 263. And nowhere is that deliberation more consequential than in the very place that buffer zone laws aim to censor it.

Therefore, this Court should overrule *Hill v. Colorado*.

II. The "Secondary Effects Doctrine" Ties This Case to *Hill*.

At first blush, *amici* might seem to have little in common with Petitioner—a trade association for adult entertainment clubs in Georgia. But both find themselves in conflict with the same line of cases that undermines their First Amendment rights.

Petitioner presents the following question:

> A Georgia statute imposes a tax that, on its face, singles out businesses defined by the content of their expression; the State seeks to justify the tax by the need to ad-

> dress "secondary effects." Is this tax subject to strict scrutiny under the First Amendment because it is facially content-discriminatory, as recently affirmed by *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), or does a content-neutral rationale make the tax subject to intermediate scrutiny under *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)?

Cert. Pet. at i. *City of Renton* concerned "a constitutional challenge to a zoning ordinance . . . that prohibits adult motion picture theaters from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school." *City of Renton*, 475 U.S. at 43. This Court acknowledged that "the ordinance treats theaters that specialize in adult films differently from other kinds of theaters." *Id.* at 47. And content-based restraints on speech are normally subject to strict scrutiny. *See id.* at 46-47 (citing *Carey v. Brown*, 447 U.S. 455, 462-63 & n.7 (1980); *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 95, 98-99 (1972)). "Nevertheless, . . . the Renton ordinance is aimed not at the *content* of the films shown at 'adult motion picture theatres,' but rather at the *secondary effects* of such theaters on the surrounding community." *Id.* at 47.

This Court further developed this idea in *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) (upholding regulation of sound amplification in a bandshell), opining that "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Id.* at 791 (citing *City of*

Renton, 475 U.S. at 47-48). The "incidental" impact on speech was outweighed by the governmental interests in addressing secondary effects, namely, "avoid[ing] undue intrusion into residential areas and other areas of the park" and "ensur[ing] the quality of sound at Bandshell events." *Id.* at 791-92.

The sound amplification ordinance at issue in *Ward* is readily distinguishable from content-based buffer zone laws. Nevertheless, Colorado relied upon *Ward* to justify its pretextual censorship of pro-life speech. "All four of the state court opinions upholding the validity of [the Colorado buffer zone law] concluded that it is a content-neutral time, place, and manner regulation. Moreover, they all found support for their analysis in *Ward v. Rock Against Racism*." *Hill*, 530 U.S. at 719. Supporters of the buffer zone cited a secondary-effects interest in "unimpeded access to health care facilities and the avoidance of potential trauma to patients associated with confrontational protests." *Id.* at 715. The *Hill* majority analogized those rationales to the "interest in preserving tranquility" that had led this Court to apply less than strict scrutiny in *Ward*. *Id.* at 716.

And so, adult entertainers and right-to-life advocates find themselves sharing the same doctrinal bed. This Court's use of intermediate scrutiny in *City of Renton* and *Hill* "'is incompatible with current First Amendment doctrine as explained in *Reed*.'" *Bruni v. City of Pittsburgh*, 141 S. Ct. 578 (2021) (opinion of Thomas, J.) (quoting *Price v. Chicago*, 915 F.3d 1107, 1117 (7th Cir. 2019)). As Justice Thomas has written, "the Court should take up this issue in an appropriate case to resolve the glaring tension in our precedents." *Id.*

This is that case. The question presented here has significant implications for the free exchange of ideas concerning abortion and the right to life. Both Petitioner and *amici* deserve the same First Amendment guarantees enjoyed by uncontroversial speakers. This Court should restore consistency to First Amendment jurisprudence by overturning the *City of Renton*/*Hill* line of cases in favor of *Reed*'s strict scrutiny approach.[3]

III. This Case Provides an Ideal Vehicle to Overrule *Hill*.

"This Court has received a number of invitations to make clear that *Hill* lacks continuing force. Some of those invitations have arisen in cases with thorny preliminary issues or other obstacles to our review." *Coalition Life*, 145 S. Ct. at 541 (Thomas, J., dissenting from denial of certiorari) (citing *Bruni*, 141 S. Ct. at 578 (opinion of Thomas, J.)). The buffer zone challenged in *Bruni v. Pittsburgh*, for instance, involved "unclear, preliminary questions about the proper interpretation of state law." *Bruni*, 141 S. Ct. at 578.

But unlike in *Bruni* and other recent buffer zone cases, there are no side issues in this case that would preclude this Court's effective review. The First Amendment question has been fully litigated, and the Georgia Supreme Court expressly relied on *City of Renton* in its analysis. *Ga. Ass'n of Club Executives, Inc. v. State*, 908 S.E.2d 551, 561 (Ga. 2024); Cert. Pet.

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[3] Alternatively, as Petitioner suggests, the Court could substantially reform its First Amendment jurisprudence by limiting *City of Renton*'s application to zoning matters. Cert. Pet. at 6-7, 32. This approach would also have the effect of overruling *Hill*.

at 15a. *City of Renton* and its intermediate scrutiny progeny, including *Hill*, are ripe for review.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

KELSEY HAZZARD
SECULAR PRO-LIFE
3770 Recreation Lane
Naples, FL 34116

THOMAS C. ARTHUR
Counsel of Record
EMORY UNIVERSITY
SCHOOL OF LAW
1301 Clifton Road NE
Atlanta, GA 30322
(404) 727-5792
lawtca@emory.edu

Counsel for Amici Curiae

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