No. 23-74

In the Supreme Court of the United States

DEBRA A. VITAGLIANO,
Petitioner,

v.

COUNTY OF WESTCHESTER,
Respondent.

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

BRIEF OF KENTUCKY, ALABAMA, ARKANSAS, IDAHO, IOWA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, SOUTH CAROLINA, TENNESSEE, TEXAS, UTAH, AND WEST VIRGINIA AS *AMICI CURIAE* SUPPORTING PETITIONER

DANIEL CAMERON
Attorney General of Kentucky

MATTHEW F. KUHN
Solicitor General
Counsel of Record

Office of the Kentucky Attorney General
700 Capital Avenue
Suite 118
Frankfort, KY 40601
(502) 696-5300
Matt.Kuhn@ky.gov

DANIEL J. GRABOWSKI
JENNA M. LORENCE
Assistant Solicitors General

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INTERESTS OF *AMICI CURIAE*[1]

The *amici* States have an overwhelming interest in protecting their citizens' free-speech rights. But around abortion facilities, many bubble- or buffer-zone laws infringe on those rights at the moment they are needed most. The zones prohibit discussions on a hotly contested moral and political issue at the last place the speech could have an effect: before a mother makes a life-altering decision for herself and her child.

Ordinarily, the government could only justify such a content-based restriction after satisfying strict scrutiny. But *Hill v. Colorado*, 530 U.S. 703 (2000), "distorted" this First Amendment doctrine, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2276 (2022). Under *Hill*, the government needs to satisfy only a watered-down version of intermediate scrutiny to silence its citizens. *Hill*'s holding is irreconcilable with this Court's other free-speech cases. That is hardly up for debate. The only question here is whether the Court should grant review to say so. It should. The States file this amicus brief to urge the Court to grant certiorari and overturn *Hill*.

SUMMARY OF THE ARGUMENT

Outside abortion facilities around the country, sidewalk counselors like Debra Vitagliano offer women a compassionate listening ear. The counselors tell women about pregnancy and parenting resources. And counselors assure women that they are not alone. But some jurisdictions ban this counseling near these

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[1] *Amici* have notified counsel for all parties of their intent to file this brief. Sup. Ct. R. 37.2.

facilities. In other words, they prohibit speech based on its content.

In any other context, such content-based restrictions must run the gauntlet of strict scrutiny. But in 2000, this Court gave the government pretty close to a free pass outside abortion facilities. In *Hill*, a content-based restriction became a content-neutral one. *See* 530 U.S. at 725. And rather than make the government then justify its restrictions under typical intermediate scrutiny, the Court recast narrow tailoring to mean something different at abortion facilities: a prophylactic, bright-line rule is good enough. These rules are at odds with the First Amendment's guarantee of free expression.

Though *Hill* is an outlier in this Court's case law, it continues to distort the First Amendment. To be sure, the Court cabined *Hill* in *McCullen v. Coakley*, 573 U.S. 464 (2014). And the Court cast doubt on *Hill* in later cases like *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). But the Court has yet to overrule *Hill*. So it remains binding on lower courts. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997). And that means that if a law looks enough like the one in *Hill*, then a lower court has no choice but to uphold it. This is true even though it robs Americans of their First Amendment rights—just what happened to the sidewalk counselor here. Plus, even when the law differs from that in *Hill*, some lower courts are still led astray.

Kentucky knows this all too well. In 2021, its largest city, Louisville, banned sidewalk counselors from speaking in a buffer zone outside an abortion facility. *Sisters for Life, Inc. v. Louisville-Jefferson County*, 56

F.4th 400, 402 (6th Cir. 2022). For over a year, the law was in effect while the sidewalk counselors sought a preliminary injunction, were denied that injunction based on *Hill*, and then had to appeal to the Sixth Circuit. And that loss of their First Amendment rights had an enormous effect on the sidewalk counselors' efforts to persuade women not to undergo an abortion.

Although the Sixth Circuit ultimately allowed the counselors to return to their ministry, *Hill*'s damage during that span could not be undone. That loss of the sidewalk counselors' rights and their inability to reach pregnant women seeking an abortion could not be corrected. And Kentucky's experience is just one example. Other jurisdictions around the country continue to adopt *Hill*-style restrictions, confident that *Hill* gives them enough latitude to bar speech outside abortion facilities.

Hill is not necessary for the government to protect the public outside abortion facilities. Physical harm, property damage, trespassing, and threats of violence are all appropriately criminalized under various federal, state, and local laws. Yet under *Hill,* the government can criminalize personal, compassionate offers of care and support alongside these dangerous actions. Of course, that nullifies the constitutional command that the government should not burden substantially more speech than necessary to achieve its ends.

There is no abortion exception to the First Amendment. Sidewalk counseling is not second-class speech, and government restrictions on it must meet the same standards as every other content-based restriction. *Hill* was wrong from the moment it was decided. And

only this Court can fix it. The Court should grant certiorari to overturn *Hill*, requiring all content-based restrictions on speech to satisfy strict scrutiny.

ARGUMENT

I. *Hill* is an aberration and should be overruled.

Sidewalks have always occupied "a 'special position in terms of First Amendment protection' because of their historic role as sites for discussion and debate." *McCullen*, 573 U.S. at 476 (citation omitted). The government must hold these spaces "in trust for the use of the public" because they are "used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Id.* (citation omitted).

Sidewalks are especially important because they are not an echo chamber for speech. "[T]hey remain one of the few places where a speaker can be confident that he is not simply preaching to the choir." *Id.* On a sidewalk, a citizen may "encounter[] speech he might otherwise tune out"—a reflection of the First Amendment's goal to "preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Id.* (citation omitted). Excluding speech based on its content flies in the face of this goal, particularly on public sidewalks. So if the government wants to exclude speech based on its content, its restriction must survive strict scrutiny. *See City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1471 (2022).

It should not be difficult to discern whether a restriction on speech is content-based or not. *See Reed*,

576 U.S. at 163. The first step is asking whether the law "'on its face' draws distinctions based on the message a speaker conveys," either by defining speech by subject matter or "by its function or purpose" serving as a content proxy. *Id.* (citations omitted); *City of Austin*, 142 S. Ct. at 1474. And even if a restriction is facially content neutral, it may still require strict scrutiny if it "cannot be justified without reference to the content of the regulated speech" or the government adopted it "because of disagreement with the message the speech conveys." *Reed*, 576 U.S. at 164 (cleaned up) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

Hill applied this test exactly backwards. It failed to start with the text of the Colorado law at issue, which banned "oral protest, education, or counseling" outside abortion facilities. 530 U.S. at 707. It instead examined the government's intent, asking "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id.* at 719 (citation omitted). And rather than look to "reference[s] to the content of the speech" for evidence that a facially neutral statute was content-based, *Reed*, 576 U.S. at 164 (citation omitted), *Hill* used the government's oblique references to "access" and "privacy" to cure any content-based concerns, 530 U.S. at 715–25. So *Hill* subjected Colorado's facially content-based restrictions on speech to a lower standard of review than any of the Court's cases since.

But *Hill*'s errors did not stop there. It adopted a watered-down version of intermediate scrutiny and applied it to protect—for the first time—the "right to

be let alone" from "unwanted communication" on public sidewalks. *Hill*, 530 U.S. at 716–18 (citation omitted). This is the exact opposite of the "uninhibited marketplace of ideas" the First Amendment guarantees. *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984) (citation omitted); *see also Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (protecting "even hurtful speech on public issues to ensure that we do not stifle public debate").

Confusing matters further, *Hill* then determined that the statute was narrowly tailored because its "prophylactic approach" provided a "bright-line" rule and offered "clear guidance." 530 U.S. at 729. That's not how narrow tailoring works. The government cannot "attempt to suppress speech . . . for mere convenience." *McCullen*, 573 U.S. at 486. This sacrifice of "speech for efficiency" is "not permit[ted]" under the First Amendment. *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). Yet it was in *Hill*. Outside the abortion facility there, it was not only condoned but encouraged as "the best way" to limit speech. *Hill*, 530 U.S. at 729.

Since *Hill* was decided, this Court has never again relied on its analysis. The Court ignored it in *McCullen* while invalidating a law originally "modeled on" the *Hill* statute. 573 U.S. at 470. In *Reed*, the Court reversed courts that relied on *Hill* to "conclude[] that [a speech restriction was] content neutral." 576 U.S. at 162–63. The Court has even pointed out *Hill*'s "distort[ion of] First Amendment doctrines." *Dobbs*, 142 S. Ct. at 2276. And it has explicitly disclaimed reaffirming *Hill* when determining whether another speech

classification was content neutral. *See City of Austin*, 142 S. Ct. at 1475.

Indeed, *City of Austin* cannot save *Hill*. There, the Court held that a sign code that distinguished between on- and off-premises signs was not content-based. *Id.* at 1471. Even though the distinction required reading the sign to know whether it was allowed, that did not make it content-based. The distinction was "agnostic as to content," requiring "an examination of speech only in service of drawing neutral, location-based lines." *Id.* In other words, the substance of the message was irrelevant. *Id.* at 1472.

The same is not true for the law in *Hill*. To be sure, the Court there held the law was not content-based even though it required hearing the oral communication to discern whether it was for the purpose of counseling or education. *Hill*, 530 U.S. at 716. But that is not like the "neutral, location-based lines" in *City of Austin*. 142 S. Ct. at 1471. Whether a sign is located on or off premise is not about content. Whether a statement provides counseling or education is. Put differently, the law in *Hill* was anything but "agnostic as to content." *Id.* So after *City of Austin*, *Hill* remains an aberration.

II. Continued reliance on *Hill* curtails free-speech rights.

There is no debate that "*Hill*'s content-neutrality holding is hard to reconcile with both *McCullen* and *Reed*." *Price v. City of Chicago*, 915 F.3d 1107, 1109 (7th Cir. 2019); *see also Dobbs*, 142 S. Ct. at 2276 n.65. But until this Court overrules *Hill*, lower courts have

no option but to follow its holding when it directly applies to a case. Ms. Vitagliano's case shows as much. *See Vitagliano v. County of Westchester*, 71 F.4th 130, 141 (2d Cir. 2023) (citing *Agostini*, 521 U.S. at 237).

This has dire consequences. It allows the government to cut off speech on a hotly contested moral and political issue. And it does so at the very last moment when that speech could be effective—outside an abortion facility where a pregnant woman makes a life-altering decision for both herself and her child. Even if a court ultimately determines that a particular restriction is unconstitutional, *Hill* opens the door to speech rights being restricted for months or years while waiting on that resolution.

This very thing happened in Kentucky. In 2021, Louisville adopted an ordinance prohibiting anyone from entering a 10-foot "buffer zone" on the public way or sidewalk in front of "healthcare facilit[ies]." *Sisters for Life*, 56 F.4th at 402. Like Ms. Vitagliano, the plaintiffs in *Sisters for Life* are sidewalk counselors seeking to have "quiet, compassionate, non-threatening one-on-one conversations" to explain to women that there "'are lifesaving alternatives' to abortion." *Id.* They had no intention of blocking access or harming anyone. But when the sidewalk counselors challenged this restriction, the district court denied a preliminary injunction based on *Hill*. *Sisters for Life, Inc. v. Louisville-Jefferson Cnty. Metro Gov't*, 2022 WL 586785, at *6–9, *14 (W.D. Ky. Feb. 25, 2022).

The district court interpreted *McCullen*'s off-hand citation to *Hill* in its fact section as a "signal[] to this Court that [the *McCullen* Court] was aware of *Hill*,

was citing it with approval, and made a conscientious decision not to overturn it." *Id.* at *6. Because *Hill* upheld "an eight foot 'separation'" between speakers and listeners, it apparently followed that Louisville's ten-foot zone was permissible. *Id.* at *9. But the district court never engaged with *why* the Court upheld that eight-foot zone. *Hill* did so because it recognized the government's interest in protecting "unwilling listeners." 530 U.S. at 714. Yet *McCullen* rightly made it clear that interest is not sufficient to broadly proscribe speech.[2] *See* 573 U.S. at 481.

Nearly two years after the Louisville ordinance was enacted, the Sixth Circuit finally ordered the district court to enter a preliminary injunction. It did not resolve whether the restriction was content based "because the ordinance fail[ed] narrow tailoring anyway." *Sisters for Life*, 56 F.4th at 404. The ordinance was overbroad because it "burden[ed] substantially more speech than is necessary." *Id.* at 405 (quoting *McCullen*, 573 U.S. at 486). Further, the government "had not shown that it 'seriously undertook to address' its concerns 'with less intrusive tools.'" *Id.* (quoting *McCullen*, 573 U.S. at 494). The unchallenged sections of the ordinance—barring anyone from "obstructing or hindering or impeding access to a clinic"—sufficed to meet the government's goals of "protect[ing] access"

[2] Even worse, Louisville did not "enforce the ordinance against escorts of women into the Clinic," even though those escorts allegedly told "patients that the pro-life protestors are liars and that patients should not talk or listen to them." *Sisters for Life,* 56 F.4th at 404 (cleaned up). The Sixth Circuit suggested that the district court consider this disturbing issue on remand. *Id.*

and "ensur[ing] order" around its clinics. *Id.* (cleaned up).

Despite the Sixth Circuit ultimately protecting sidewalk counselors' First Amendment rights, incalculable damage had been done. For one, the Kentucky sidewalk counselors could not speak in the way they thought most effective on this key matter of public concern for over a year. They were robbed of their First Amendment rights. *See Riley*, 487 U.S. at 790–91 ("The First Amendment mandates that [courts] presume that speakers, not the government, know best both what they want to say and how to say it."). And they cannot get that loss back. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (citation omitted)).

The Kentucky counselors' ability to minister successfully to women dropped significantly. For example, one group of counselors had previously helped changed the minds of 3 to 6 women per month who were dropped off in front of the facility for an abortion. Minter Dep. at 54–55; *Sisters for Life*, No. 3:21-cv-367-RGJ, 2022 WL 586785. But while the buffer zone was enforced, that number dropped to *zero*. *Id.* at 55.

Of course, Louisville is not the only place where these types of restrictions exist. In fact, they have proliferated around the country. Even when they are challenged, courts uphold many of these buffer and bubble zones based on *Hill*. So around the nation, speech is suppressed in key 10-, 15-, and 100-foot zones based on a case that is out of step with the First

Amendment. Many of these restrictions are modeled nearly word-for-word after *Hill*. For example:

Montana: Montana law prohibits "approaching within 8 feet of a person" to "protest, counsel, or educate about a health issue" if the person "does not consent" and "is within 36 feet of" a healthcare facility. Mont. Code. Ann. § 45-8-110.

Carbondale, Illinois: In January 2023, an Illinois city passed a copycat of the law in *Hill*—banning anyone from approaching another person "within eight feet" to engage in "oral protest, education, or counseling" within 100 feet of a healthcare facility. Carbondale, Ill. Code § 14-4-2(H). In deciding a First Amendment challenge to that law, the district court noted that "the holding in *Hill* has eroded through the years," but it found that *Hill* precluded any challenge to Carbondale's law. *Coal. For Life St. Louis v. City of Carbondale*, 2023 WL 4681685, at *1 (S.D. Ill. July 6, 2023) (granting defendant's motion to dismiss), *appeal filed*, No. 23-2367 (7th Cir. July 12, 2023).

Charleston, West Virginia: Like Colorado in *Hill*, West Virginia's capital city chose not to rely on other laws that already prohibit violence or bar someone from entering an abortion facility. Instead, it adopted an ordinance that prohibits "approach[ing] another person within eight feet" without consent to "engag[e] in oral protest, education, or counseling" within "a radius of 100 feet from any entrance door to a health care facility." Charleston, W. Va. Code § 78-235(c). But its only rationale was preventing protests "from becoming violent." MetroNews Staff, *Charleston*

Council committee passes ordinance on facilities access, MetroNews (May 29, 2019), https://perma.cc/Q5GR-7BT7. And the City wasn't worried about a First Amendment challenge because, in its view, "the ordinance was carefully written drawing from language that has previously been upheld in courts." Shauna Johnson, *Charleston council considers language regarding access to health care facilities*, MetroNews (May 29, 2019), https://perma.cc/YY7T-226B.

Chicago, Illinois: Chicago adopted an ordinance "nearly identical" to the law in *Hill*, so the Seventh Circuit panel—including then-Judge Barrett—upheld it. *Price*, 915 F.3d at 1109. Despite the impossibility of reconciling *Hill* with *McCullen* and *Reed*, the court's hands were tied. Because neither case had overruled *Hill*, it "remain[ed] binding" and allowed the city to ban sidewalk counseling. *Id.* So counselors in the Windy City can no longer convey their message in "a gentle and caring manner" while "maintain[ing] eye contact and a normal tone of voice" and "protect[ing] the privacy" of the women they approach. *Id.* at 1110. Instead, the law bars them from "engaging in oral protest, education, or counseling" within eight feet of a person near abortion facilities' entrances. Chicago, Ill. Code § 8-4-010(j)(1).

Englewood, New Jersey: A New Jersey city created an eight-foot buffer zone around healthcare facilities after a particular group of "militant activists and aggressive protestors" prompted its adoption. *Turco v. City of Englewood*, 935 F.3d 155, 158 (3d Cir. 2019). But the law also silenced the plaintiff in the resulting

lawsuit, who everyone agreed "was not one of the hostile or aggressive anti-abortion protestors." *Id.* at 160. She would "calmly approach women entering the clinic" and attempt "peaceful, nonconfrontational communication." *Id.* She offered "rosaries and literature about prenatal care" while reassuring women that "we can help you" and "we are praying for you." *Id.* After a bench trial, the district court upheld the ordinance under *Hill*. *Turco v. City of Englewood*, 621 F. Supp. 3d 537, 548–52 (D.N.J. 2022), *appeal filed*, No. 22-2647 (3d Cir. Sept. 8, 2022).

Importantly, the district court explicitly "declined" to "ignore *Hill*'s precedential status" even though *Dobbs* used *Hill* as an example of a "distorted First Amendment doctrine[]." *Id.* at 550 n.9 (citation omitted). And it found that *City of Austin*'s discussion of *Hill* also was "not a sufficient basis for this Court to ignore *Hill*'s precedential status." *Id.* So while every other restriction on speech must comply with *Reed*'s test for content-based speech, abortion bubble and buffer zones survive under lessened standards of constitutional scrutiny.

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Until this Court overrules *Hill*, nothing prevents even more jurisdictions from using their First Amendment hall pass to block speech outside abortion facilities. And lower courts must continue to answer the impossible question: how can *Hill*, *McCullen*, and *Reed* coexist? They must continue to follow a demonstrably wrong decision and allow governments to violate their citizens' free-speech rights. *Hill*'s analysis is unlike any other First Amendment case since it was decided. And only this Court can fix it.

Baked into the rule from *Agostini*—that lower courts must follow a directly on-point case even when later cases have questioned it—is that this Court will ultimately consider whether to overrule the suspect case. That means the Court should be willing to grant review to consider whether to do just that. And it should be willing here. This Court should "resolve the glaring tension" in its precedents and set the rules of free speech outside of abortion facilities in line with all other First Amendment law. *See Bruni v. City of Pittsburgh*, 141 S. Ct. 578 (2021) (Mem.) (Thomas, J., statement respecting the denial of certiorari).

III. The government can narrowly tailor laws to protect both speech and safety without *Hill*.

Hill's narrow-tailoring analysis announced a preference for easily enforced "prophylactic" speech restrictions. 530 U.S. at 729. But *McCullen* rejected the government's argument that "fixed buffer zones would make [its] job so much easier." 573 U.S. at 495 (quotation marks omitted). While "[a] painted line on the sidewalk is easy to enforce . . . the prime objective of the First Amendment is not efficiency." *Id.* So overruling *Hill*'s outdated reasoning would correct contradictory First-Amendment law while leaving ample alternative means for the government to keep the peace.[3]

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[3] Indeed, the County of Westchester seems to admit as much. After Ms. Vitagliano sought certiorari, it voted to repeal the challenged section of its buffer-zone law. Board of Legislators, Meeting Minutes, Published Draft at 21–22 (Aug. 7, 2023), https://perma.cc/A2QA-XJRY. It did so because "the remainder of [the ordinance]," which bans non-speech activities like obstruction, unwanted physical contact, and physical damage to a facility, "satisfactorily protects access." Board of Legislators County

But if the government cannot restrict speech outside abortion facilities, must it then abandon its obligation to protect public safety there? Certainly not. To begin with, Congress has enacted the Freedom of Access to Clinic Entrances Act. 18 U.S.C. § 248(a)(1). This law imposes criminal penalties on whomever by force, threat of force, or physical obstruction attempts to or "intentionally injures, intimidates or interferes with . . . any person because that person is . . . obtaining or providing reproductive health services." *Id.* And States can enact "legislation similar to the federal [law]," as "[s]ome dozen other States have done." *McCullen*, 573 U.S. at 491. States can tailor these laws to the particular concerns around their facilities.

Again, take *Sisters for Life* as one illustration of how the government may protect public safety without intruding on free-speech guarantees. No one challenged one section of Louisville's ordinance. *Sisters for Life*, 56 F.4th at 405. That section prohibited "obstruct[ing], detain[ing], hinder[ing], imped[ing], or block[ing] another person's entry to or exit from a healthcare facility." Louisville-Jefferson Ord. Code § 132.09(B)(1). This restriction was sufficient "to meet the County's access and order goals." *Sisters for Life*,

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of Westchester Committee on Legislation and Health, Report at 4 (July 7, 2023), https://perma.cc/S5SP-BSSB.

Westchester may claim that its actions moot this matter. The States leave this issue to the parties to address but note that Ms. Vitagliano seeks damages. Compl., Pet.66a. Further, a defendant's "voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982).

56 F.4th at 405. Louisville is not the only place with such a law. For example:

Maryland: "A person may not intentionally act, alone or with others, to prevent another from entering or exiting a medical facility by physically: (1) detaining the other; or (2) obstructing, impeding, or hindering the other's passage." Md. Code Ann., Crim. Law § 10-204(c).

Massachusetts: The Bay State imposes criminal penalties if anyone "knowingly obstructs entry to or departure from any medical facility" or "enters or remains in any medical facility so as to impede the provision of medical services, after notice to refrain from such obstruction or interference." Mass. Gen. Laws Ann. ch. 266, § 120E.

Nevada: In Nevada, "a person shall not intentionally prevent another person from entering or exiting the office of a physician, a health facility, . . . or a facility for the dependent by physically: (a) Detaining the other person; or (b) Obstructing, impeding or hindering the other person's movement." Nev. Rev. Stat. § 449.531.

North Carolina: "No person shall obstruct or block another person's access to or egress from a health care facility." N.C. Gen. Stat. § 14-277.4(a). And "[n]o person shall injure or threaten to injure a person who is or has been: (1) Obtaining health care services; (2) Lawfully aiding another to obtain health care services; or (3) Providing health care services." *Id.* § 14-277.4(b).

Washington: Washington law bars anyone from "[p]hysically obstructing or impeding the free passage of a person seeking to enter or depart from the [healthcare] facility," or "[m]aking noise that unreasonably disturbs the peace within the facility," or "[t]respassing on the facility," or "[t]elephoning the facility repeatedly" or "[t]hreatening to inflict injury on the owners, agents, patients, employees, or property of the facility." Wash. Rev. Code § 9A.50.020.

Of course, these are only examples of laws specific to healthcare facilities. In addition, the government may still enforce criminal laws prohibiting stalking, harassment, threats, and violence. *See, e.g.*, Ky. Rev. Stat. §§ 508.010–.040 (prohibiting assault), § 508.075 (prohibiting terroristic threats), § 508.140 (prohibiting stalking), § 525.070 (prohibiting harassment). Because "[o]bstruction of abortion clinics and harassment of patients . . . are anything but subtle," police are "perfectly capable of singling out lawbreakers." *McCullen*, 573 U.S. at 495–96. In short, States can (and do) protect public safety without barring quiet, compassionate conversations on a sensitive subject while standing next to someone.

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Without *Hill*, there would be no doubt that restrictions like the County of Westchester's must survive strict scrutiny. But *Hill* has allowed the government to infringe on First Amendment rights for over twenty years and counting. Speech about a contested political issue belongs on public sidewalks, and this Court should allow it to fully return there.

CONCLUSION

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

Respectfully submitted,

DANIEL CAMERON
Attorney General of Kentucky

MATTHEW F. KUHN
Solicitor General
Counsel of Record

Office of the Kentucky Attorney General
700 Capital Avenue
Suite 118
Frankfort, KY 40601
(502) 696-5300
Matt.Kuhn@ky.gov

DANIEL J. GRABOWSKI
JENNA M. LORENCE
Assistant Solicitors General

ADDITIONAL COUNSEL

STEVE MARSHALL
Attorney General of
Alabama

TIM GRIFFIN
Attorney General of
Arkansas

RAÚL R. LABRADOR
Attorney General of
Idaho

BRENNA BIRD
Attorney General of
Iowa

LYNN FITCH
Attorney General of
Mississippi

ANDREW BAILEY
Attorney General of
Missouri

AUSTIN KNUDSEN
Attorney General of
Montana

MICHAEL T. HILGERS
Attorney General of
Nebraska

ALAN WILSON
Attorney General of
South Carolina

JONATHAN SKRMETTI
Attorney General and
Reporter of Tennessee

ANGELA COLMENERO
Provisional Attorney
General of Texas

SEAN D. REYES
Attorney General of
Utah

PATRICK MORRISEY
Attorney General of
West Virginia