No. 19-1184

In The
Supreme Court of the United States

NIKKI BRUNI; JULIE COSENTINO;
CYNTHIA RINALDI; KATHLEEN LASLOW;
AND PATRICK MALLEY,

Petitioners,

v.

CITY OF PITTSBURGH; PITTSBURGH CITY COUNCIL;
AND MAYOR OF PITTSBURGH,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

BRIEF OF *AMICUS CURIAE* ELEANOR MCCULLEN IN SUPPORT OF PETITIONERS

EDWARD M. WENGER
Counsel of Record
GARY V. PERKO
MOHAMMAD O. JAZIL

119 South Monroe Street,
Suite 300
Tallahassee, FL 32301
(954) 661-5075
edw@hgslaw.com

Counsel for Amicus Curiae
Eleanor McCullen

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

INTEREST OF AMICUS CURIAE[1]

Eleanor McCullen was the lead petitioner in *McCullen v. Coakley*, 573 U.S. 464 (2014). When she filed her petition for a writ of certiorari, she was spending her Tuesdays and Wednesdays helping women outside of a Planned Parenthood Clinic. In addition to a message of love and support she offered to women footsteps away from terminating a pregnancy, Ms. McCullen and her husband have spent thousands of dollars of their own money to pay for baby showers, lodging, utilities, food, diapers, and other necessities for women in need who choose to have their babies.

Ms. McCullen believes that every human life, from the child in the womb to the woman dealing with a crisis pregnancy, is precious and worthy of dignity and respect, love and protection. That is why she has devoted her time to sidewalk counseling, and that is why she petitioned this Court, in 2013, to protect her First Amendment right to do so. As another group of sidewalk counselors petitions this Court to ensure their First Amendment right to express their message of hope to women facing perhaps the most profoundly difficult decisions they have ever faced, Ms. McCullen, this time as *amicus curiae*, offers the following to

---

[1] Pursuant to Rule 37.2(a), all parties were timely notified of, and have consented to, the filing of this brief. In accordance with Rule 37.6, counsel affirms that no counsel for any party authored this brief in whole or in part. No person or entity other than the undersigned counsel contributed the costs associated with the preparation and submission of this brief.

crystalize the exceptional burdens that buffer-zone laws inflict on sidewalk counselors.

SUMMARY OF THE ARGUMENT

In *McCullen*, the Court recognized that sidewalk counselors are not abortion protestors. 573 U.S. at 472. And it unanimously concluded that buffer-zone ordinances violate the First Amendment by choking off sidewalk counselors' quiet expressions of support to women open to information about abortion alternatives. *Id.* at 496–97.[2] In so holding, the Court returned to several foundational tenets of First Amendment law. These include the principles that traditional public fora, especially streets and sidewalks, are enshrined with a "special position in terms of First Amendment protection," *United States v. Grace*, 461 U.S. 171, 180 (1983); that "one-on-one communication" is "the most effective, fundamental, and perhaps economical avenue of political discourse," *Meyer v. Grant*, 486 U.S. 414,

[2] Justice Roberts's majority opinion found the Massachusetts buffer-zone law constitutionally infirm because it was not narrowly tailored. *McCullen*, 573 U.S. at 496–97. Justices Scalia, Kennedy, Thomas, and Alito agreed that the Massachusetts buffer-zone law violated the First Amendment, but they would have held that it should have been reviewed "under the strict-scrutiny standard." *Id*. at 509 (Scalia, J., concurring in the judgment); *see also id.* at 512 (Alito, J., concurring in the judgment) ("It is clear on the face of the Massachusetts law that it discriminates based on viewpoint. Speech in favor of the clinic and its work by employees and agents is permitted; speech criticizing the clinic and its work is a crime. This is blatant viewpoint discrimination.").

424 (1988); and that "handing out leaflets in the advocacy of a politically controversial viewpoint . . . is the essence of First Amendment expression," *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995).

The Court's fortification of the First Amendment in *McCullen* is at risk of erosion. The City of Pittsburgh, Respondent here, agrees with the Petitioners that its buffer-zone ordinance prohibits sidewalk counseling within the demarcated areas outside of two metropolitan abortion clinics.[3] *See* Pet. App. 11a, 19a n.12, 21a n.14, 24a n.16. Although the City's ordinance inflicts a greater wound to the First Amendment rights of sidewalk counselors than the constitutionally infirm statute at issue in *McCullen* imposed, the City has maintained that it survives scrutiny because it imposes a comparatively smaller burden (in part, because the buffer zone is comparatively smaller) on the First Amendment rights of Pittsburgh-area sidewalk counselors.

This attempt to distinguish away the Court's binding precedent should be rejected. In an act of viewpoint discrimination far more extreme than the law at issue in *McCullen*, the ordinance, and the buffer zones it

---

[3] Rather than address the critical First Amendment issues implicated by the ordinance, the Third Circuit deployed the constitutional-avoidance doctrine to rewrite (rather than narrowly construe) it. However well-intentioned, this approach violated bedrock notions of federalism, which, as the Petitioners conclusively show, entrenches a Circuit split necessitating this Court's review. *See* Petition for Certiorari at 15–24, *Bruni v. City of Pittsburgh*, No. 19-1184 (U.S. Mar. 26, 2020).

creates, forbid sidewalk counselors from conversing with consenting pregnant women while permitting wide swaths of other conversation to continue. This sort of differential treatment is repugnant to the First Amendment and has iced the expression of Pittsburgh's sidewalk counselors who (rightly) fear hefty fines and the possibility of jail time should they engage in constitutionally guaranteed expression too close to the City's abortion clinics.

The cert-worthiness of this case is evident from the Petition for Certiorari. *See* Petition for Certiorari at 15–30, *Bruni v. City of Pittsburgh*, No. 19-1184 (U.S. Mar. 26, 2020). Specifically, the Third Circuit's opinion attains the exceptional distinction of further entrenching an existing circuit split (on the question of a federal court's ability to rewrite a municipal ordinance to salvage its constitutionality) while creating another (on the questions of content neutrality and narrow tailoring). Rather than reiterating those points, Ms. McCullen offers the following not only to underscore why she brought her case to this Court in 2013, but also to emphasize the unique peril inflicted by buffer-zone ordinances on those who adhere to the view that, "[w]hen the conduct of men is designed to be influenced, persuasion, kind, unassuming persuasion, should ever be adopted." THE COLLECTED WORKS OF ABRAHAM LINCOLN 273 (Wildside Press LLC 2008).

REASONS FOR GRANTING THE WRIT

I. Buffer-zone ordinances impose uniquely harsh burdens on sidewalk counselors.

As Justice Scalia observed in his *Hill v. Colorado* dissent, the public areas outside of facilities providing abortions have evolved into "a forum of last resort" in the pro-life/pro-choice debate. *See* 530 U.S. 703, 763 (2000) (Scalia, J., dissenting). Among those contributing to this marketplace of ideas are the abortion-facility employees who, naturally, offer speech "in favor of the clinic and its work." *McCullen*, 573 U.S. at 512 (Alito, J., concurring in the judgment). There are also the "protestors, who express their moral or religious opposition to abortion through signs and chants or, in some cases, more aggressive methods such as face-to-face confrontation." *Id*. at 472.

Then, there are the sidewalk counselors—those who "take a different tack." *Id*. They do not shout slogans over bullhorns, don provocative t-shirts, trot out inflammatory signs, or block entryways to abortion clinics. Although they believe that abortion ends the life of a human child, their approach shares little resemblance with those "fairly described as protestors." *Id*. In lieu of a bellow, sidewalk counselors believe that a message of hope and love, expressed through gentle, intimate conversation, carries far more power than any criticism or condemnation ever could.

Their message, distilled to its core, is one of respect and dignity not only for the life of the unborn but also for the woman deciding whether to carry her baby

to term. They steadfastly believe that many women choose to end a pregnancy because of fear, pressure, isolation, and the mistaken assumption that they have no other choice. Rather than demonize, sidewalk counselors seek to humanize through a message of "kindness, love, hope, gentleness, and help," Joint Appendix at 574a, *Bruni v. City of Pittsburgh* (3d Cir. Apr. 13, 2018). As Ms. McCullen explained to the Court once before, her approach throughout her years as a sidewalk counselor was to "engage with women who may be seeking abortions in close, kind, personal communication with a calm voice, caring demeanor, and eye contact." Petition for Certiorari at 11, *McCullen v. Coakley*, No. 12-1168 (U.S. Mar. 25, 2013).

This approach works. By offering a hand instead of a holler, Ms. McCullen has helped scores of women (approximately eighty at the time of her case before the Court) "effectuate their own choice to pursue an alternative to abortion." *Id*. at 14. And she did so by stating the following:

- "Good morning."
- "[M]ay I give you my literature?"
- "Is there anything I can do for you?"
- "I'm available if you have any questions."

McCullen, 573 U.S. at 472. These exchanges often lead to lasting relationships between the women counseled and the sidewalk counselors. Ms. McCullen, for example, often receives messages of appreciation from women who chose not to terminate their pregnancies, sometimes years after their encounters. The women frequently

relay their pride and joy in their children's development. Ms. McCullen has also, by request, been present during the birth of some of the children she helped save, and she is a proud God Mother to others. Some women have chosen to name their children after her.

There is one catch, however. The receptivity of this message depends entirely on the ability to engage with willing, pregnant women in a close, quiet, intimate, personal manner. For sidewalk counselors, a calm voice is essential; eye contact is critical; openness from the recipient is non-negotiable. As the Court has already recognized, being "seen and heard by women within the buffer zones" is not enough. *Id*. at 489. Because "[i]t is easier to ignore a strained voice or a waving hand than a direct greeting or an outstretched arm," allowing only the message expressed by "vociferous opponents of abortion" to be received "effectively stifle[s]" the sidewalk counselors' message. *Id.* at 490.

Before the Court intervened in her case, a Massachusetts buffer-zone law made it difficult, sometimes impossible, for Ms. McCullen to "distinguish patients from passersby outside the Boston clinic in time to initiate a conversation before they enter the buffer zone." *Id*. at 487. When she managed "to begin a discussion outside the zone, she" was forced to "stop abruptly at its painted border, which she believe[d] cause[d] her to appear 'untrustworthy' or 'suspicious.'" *Id*. For that reason, she was "often reduced to raising her voice at patients from outside the zone"—an approach anathema to the "compassionate message she wishe[d]" to convey. *Id*.

The same burdens plague the Petitioners in this case, all of whom are sidewalk counselors who wish to

show compassion and offer assistance to women seeking services from Pittsburgh's abortion clinics, but who may have never been told that help is available. In the case below, the Third Circuit observed that the Petitioners, none of whom "physically block patients' ingress or egress or engage in violent tactics," Pet. App. 10a, were "unable to differentiate between passersby and individuals who intend to enter the facility" from their post outside the buffer zone, "causing them to miss opportunities to engage with their desired audience through either speech or leafleting." Pet. App. 11a–12a. And at that distance, the "street noise makes it difficult for people to hear them, forcing them to raise their voices in a way inconsistent with sidewalk counseling." Pet. App. 11.

Ms. McCullen is not an abortion protestor. Neither are the Petitioners in this case. Although they are all pro-life, they seek not to shout their pro-life message; rather, their goal is to inform pregnant women heading towards an abortion clinic that there is another way, that the other way is feasible, and that help is available. This communication, immensely powerful when received by a willing audience, remains fragilely susceptible to regulation that imposes distance. As the Court recognized in *McCullen*, and as it recognizes each time it protects the free expression rights of speakers who do not necessarily implement the same level of civility shown by Ms. McCullen and the Petitioners,[4] the First Amendment demands more.

---

[4] *See, e.g.*, *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019) (holding that a prohibition on the registration of "immoral[ ] or scandalous" trademarks violates the First Amendment); *Snyder v. Phelps*, 562

II. *McCullen* was an important step towards fully safeguarding the First Amendment rights of sidewalk counselors.

The foregoing highlights why it was critical for the Court to have granted review in *McCullen*. And in deciding *McCullen* the way that it did, the Court accentuated several other areas of First Amendment jurisprudence that bear reiterating here. Specifically, the Court discussed where First Amendment protection reaches its apex (*i.e.*, traditional public fora, including public streets and sidewalks); how First Amendment expression must be allowed to operate (*i.e.*, one-on-one communication and leafletting); and what it means to leave open other adequate alterative channels of communication.

A. The Court framed its analysis by repeating that sidewalks and public streets, as traditional public fora, occupy a "'special position in terms of First

---

U.S. 443 (2011) (holding that the First Amendment protects picketing in front of a military funeral with signs stating, *inter alia*, "God Hates the USA/Thank God for 9/11," "America is Doomed," "Don't Pray for the USA," "Thank God for IEDs," "Thank God for Dead Soldiers," "Pope in Hell," You're Going to Hell," and "God Hates You"); *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 788 (2011) (holding that a law imposing restrictions on violent video games violates the First Amendment); *United States v. Stevens*, 559 U.S. 460, 464 (2010) (holding that a statute criminalizing the commercial creation, sale, or possession of certain depictions of animal cruelty violates the First Amendment); *Boos v. Barry*, 485 U.S. 312, 315 (1988) (holding that a law prohibiting signs within five-hundred feet of a foreign embassy, if the signs tend to bring that foreign government into "public odium" or "public disrepute," violates the First Amendment); *Cohen v. California*, 403 U.S. 15, 16 (1971) (holding that the First Amendment protects right to wear a jacket with the phrase " * * * * the draft" in a courthouse).

Amendment protection' because of their historic role as sites for discussion and debate." *McCullen*, 573 U.S. at 476 (quoting *Grace*, 461 U. S. at 180). Since "time out of mind," these areas "have been held in trust for the use of the public and . . . have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983)). Because the First Amendment exists "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984), these areas "remain" critical as "one of the few places where a speaker can be confident that he is not simply preaching to the choir," *McCullen*, 573 U.S. at 476.

This particular species of traditional public fora, "a forum of last resort" for many pro-life voices, *see Hill*, 530 U.S. at 763 (Scalia, J., dissenting), not only enjoys the "full force" of the First Amendment's protection, *McCullen*, 573 U.S. at 477, but is also tailor made for the compassionate work of sidewalk counselors. Their message, although offered with the sincere belief that "a woman seeking an abortion may welcome speech that can offer both moral support and more concrete assistance," Petition for Certiorari at 8, *McCullen v. Coakley*, No. 12-1168 (U.S. Mar. 25, 2013), is susceptible to dismissal out of hand. But unlike "other means of communication," where "an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site," the streets and sidewalks allow sidewalk counselors to offer speech that someone "might otherwise

tune out." *McCullen*, 573 U.S. at 476. "This aspect of traditional public fora is a virtue, not a vice," *id.*, and for a pregnant woman a few feet away from the entryway to an abortion clinic, it might be the last chance to hear, perhaps for the first time, that there is help for her.

B. The Court also emphasized that the two primary ways in which sidewalk counselors express their messages—one-on-one conversation, and leafletting—fall within the heartland of First Amendment protected expression. The former remains "the most effective, fundamental, and perhaps economical avenue of political discourse." *Meyer*, 486 U.S. at 424; *see also Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 377 (1997) (holding that a "floating" buffer zone around people entering an abortion clinic was invalid, in part, because it prevented others "from communicating a message from a normal conversational distance"). The latter "is the essence of First Amendment expression"; indeed, "[n]o form of speech is entitled to greater constitutional protection." *McIntyre*, 514 U.S. at 347; *see also Schenck*, 519 U.S. at 377 ("Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment."). And when "the government makes it more difficult to engage in these modes of communication, it imposes an especially significant First Amendment burden." *McCullen*, 573 U.S. at 489.

These principles were crucial to the holding in *McCullen*. To the argument that Massachusetts' buffer-zone law left open "various forms of 'protest'—

such as chanting slogans and displaying signs—outside the buffer zones," the Court responded: "[t]hat misses the point." *McCullen*, 573 U.S. at 489. The point, instead, was 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." *Id*. They "believe that they can accomplish this objective only through personal, caring, consensual conversations," *id*.; accordingly, such personal, caring consensual conversations were entitled to especially strong First Amendment protection, not only because of the long-revered communication methods employed by sidewalk counselors but because *all* speech, civil or otherwise, enjoys constitutional protection. *See supra* n.4. And because their "conversations ha[d] been far less frequent and far less successful since the buffer zones were instituted," *id.*, the buffer zones were invalidated as violative of the First Amendment.

C. Finally, the Court added teeth to the requirement that even a content-neutral speech restriction runs afoul of the First Amendment if it "burden[s] substantially more speech than is necessary to further the government's legitimate interests."[5] *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). It required the government to prove that it did not "too readily forego[ ] options that could serve its interests just as

[5] Ms. McCullen agrees with the Petitioners, and maintains, that the City of Pittsburgh's buffer-zone ordinance "is decidedly content- and viewpoint-based." Petition for Certiorari at 14, *Bruni v. City of Pittsburgh*, No. 19-1184 (U.S. Mar. 26, 2020).

well, without substantially burdening the kind of speech in which [sidewalk counselors] wish to engage." *McCullen*, 573 U.S. at 490. And it explained that the "Court of Appeals" was "wrong[ly] . . . downplay[ing] the[] burdens on" the speech of sidewalk counselors when government officials "deprive [them] of their two . . . methods of communicating with patients." *Id* at 488.

In her case, Ms. McCullen did not dispute that "public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways" are legitimate government interests. *Id*. at 486. Nor does she now. But "completely excluding" sidewalk counselors "from large portions of public sidewalk near abortion clinics virtually destroys their ability to convey their particular message." Petition for Certiorari at 32, *McCullen v. Coakley*, No. 12-1168 (U.S. Mar. 25, 2013). And because the methods of sidewalk counselors ("normal conversation and leafletting on a public sidewalk") "have historically been more closely associated with the transmission of ideas than others," *McCullen*, 573 U.S. at 488, local governments may not "too readily" forego other "options that could serve its interests just as well, without substantially burdening the *kind* of speech in which [sidewalk counselors] wish to engage." *Id.* at 490 (emphasis added).

III. Because the Third Circuit withdrew the protection *McCullen* provided to sidewalk counselors, the Court's review is crucial.

Despite the City's attempt to create daylight between its ordinance and the Massachusetts law found invalid in *McCullen*, the fact remains that the ordinance at issue here, as interpreted by the officials enforcing it, facially discriminates against the speech of the Petitioners. The Pittsburgh ordinance (as construed and enforced by the City) provides that "[n]o person or persons shall knowingly congregate, patrol, picket or demonstrate in a zone extending fifteen (15) feet from any entrance to the hospital and or health care facility." Pet. App. 194a. The City has "take[n] the position that . . . sidewalk counseling falls within the prohibition on 'demonstrating'—if not 'congregating,' 'patrolling,' and 'picketing' too," Pet. App. 11a, but it allows "peaceful one-on-one communication about other subjects, like sports teams," within the buffer zones, Pet. App. 19a. And although the ordinance itself speaks broadly of "health-care facilities," the City must "clearly mark the boundaries of any 15 foot buffer zone in front of any hospital, medical office or clinic prior to the enforcement of" it, Pet. App. 197a, and it has done so around precisely two health-care facilities—Pittsburgh's twin abortion clinics. Pet. App. 72a, 81a, 142a, 165a–66a.

In other words, as interpreted and enforced by the City, the ordinance flatly prohibits sidewalk counseling outside of Pittsburgh's metropolitan abortion clinics while leaving unfettered the free flow of

communication about other content and viewpoints. "[B]latant viewpoint discrimination," abhorrent to the First Amendment, occurs when expression about some viewpoints and content are "permitted" while "speech criticizing [a] clinic and its work is a crime." *McCullen*, 573 U.S. at 512 (Alito, J., concurring in the judgment). In this case, even more so than in the case Ms. McCullen brought years ago, the sidewalk counselors' quiet message of hope and compassion, which depends entirely on a calm voice, a warm smile, and gentle eye contact, are singled out and "effectively stifled." *Id.* at 466.

McCullen conclusively establishes that this stifling of core First Amendment speech cannot be pardoned as merely "de minimis." Pet. App. 29a. In excusing the ordinance's First Amendment flout, the Third Circuit stacked error upon error. As a matter of fact, the Third Circuit was simply wrong to conclude that the burden inflicted on the Petitioners' protected speech was anything less than total evisceration; as noted above, the ordinance at issue here (as interpreted by the city officials who enforce it) inflicts the same flat ban on core First Amendment expression that the Court found constitutionally infirm in *McCullen*.[6] But while the law at issue in *McCullen* at least had the venire of content neutrality, the officials enforcing the ordinance at issue

[6] And as more fully set out in the Petition for Certiorari, permitting federal courts to rewrite state, local, and municipal ordinances in a way that cannot be enforced vastly amplifies the risk to the First Amendment rights of any person, including the Petitioners, seeking vindication of those rights in federal court. *See* Petition for Certiorari at 15–22, *Bruni v. City of Pittsburgh*, No. 19-1184 (U.S. Mar. 26, 2020).

here *expressly* smother the message of the Petitioners while allowing other face-to-face communication to continue unmolested.

As a matter of law, the Third Circuit was wrong to graft a non-de-minimis condition precedent on the requirement that a "government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests." *McCullen*, 573 U.S. at 495. Retrofitting this condition precedent onto the test from *McCullen* and *Ward* runs headlong into this Court's pronouncement that there is "no de minimis exception for a speech restriction that lacks sufficient tailoring." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 567 (2001), and creates a lopsided split with the First,[7] Fourth,[8] and Tenth Circuits.[9] More fundamentally, it creates exploitable wiggle room for governments finding it more efficient to bar large swaths of speech, even though doing so comes at the expense of the fragile rights at issue here, which "need breathing space to survive." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Because "the prime objective of the First Amendment is not efficiency," *McCullen*, 573 U.S. at 495, the Court has forbidden this allowance.

---

[7] *See United States v. Ackell*, 907 F.3d 67, 77 (1st Cir. 2018).

[8] *See Reynolds v. Middleton*, 779 F.3d 222, 226, 231–32 (4th Cir. 2015).

[9] *See Verlo v. Martinez*, 820 F.3d 1113, 1135–37 (10th Cir. 2016).

Finally, as a matter of the core First Amendment principles discussed above, *see supra* at 9–13, the Third Circuit's opinion inflicts a body blow against each of the values this Court animated in *McCullen*. It gutted the First Amendment in a fora where the First Amendment protection has traditionally been at its summit—the public sidewalk. It diluted the value of communicative methods—one-on-one communication and leafletting—that this Court has long considered among "the most effective, fundamental, and perhaps economical avenue[s] of political discourse," *Meyer*, 486 U.S. at 424, and "the essence of First Amendment expression," *McIntyre*, 514 U.S. at 347. And it provided an avenue for a City to dispense with its obligation to "restrict[] no more speech than necessary." *McCullen*, 573 U.S. at 492 (citing *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 762 (1994)).

When the Court granted review in *McCullen*, it did so because lower courts were "wrong[ly] . . . downplay[ing]" the burdens that buffer-zone ordinances were imposing on the First Amendment rights of sidewalk counselors. *Id.* at 488. When the Court unanimously found in favor of Ms. McCullen, it did so in a way that marked a return to several foundational First Amendment principles that needed bolstering. *See supra* at 9–13. Because the Third Circuit's opinion is irreconcilable with the fundamental First Amendment principles that drove this Court's analysis in *McCullen*, and because it lends its imprimatur to "blatant viewpoint discrimination," *see McCullen*, 573 U.S. at

512 (Alito, J., concurring in the judgment), certiorari is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

EDWARD M. WENGER
Counsel of Record
GARY V. PERKO
MOHAMMAD O. JAZIL

119 South Monroe Street,
Suite 300
Tallahassee, FL 32301
(954) 661-5075
edw@hgslaw.com
gperko@hgslaw.com
mjazil@hgslaw.com

Counsel for Amicus Curiae
Eleanor McCullen

April 29, 2020