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; MAYOR OF PITTSBURGH, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE PRO-LIFE UNION OF GREATER PHILADELPHIA, AMICUS CURIAE SUPPORTING PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae, the Pro-Life Union of Greater Philadelphia, provides various resources to those with unplanned pregnancies in southeast Pennsylvania. These include counseling, social services, prenatal vitamins, parenting classes, moms' groups, pregnancy testing, ultrasounds to confirm pregnancy, material resources, adoption resources, post-pregnancy support, and relationship and marriage support through pregnancy resource centers including AlphaCare, Cradle of Hope, Hope Pregnancy Center, and Save a Life, International. *Amicus* also provides housing for pregnant women, birth moms, and their children, through Guiding Star Ministries, Our Lady's House, Good Counsel Homes, and Mother's Home. These resources empower women to independently navigate the complexities of pregnancy and parenthood. Core to its efforts is a team of roughly 150 sidewalk counselors affiliated with the Pro-Life Union who serve pregnant women entering abortion clinics by connecting them with information, resources, and a caring ear. The Pro-Life Union of Greater Philadelphia appears as *amicus* to discuss the impact of the misguided opinion of the Court of Appeals on its ability to serve those experiencing an unwanted pregnancy.

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[1] No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or any person other than *amicus curiae* or its counsel contributed money intended to fund preparation or submission of this brief. This brief is filed with consent of the parties.

INTRODUCTION

The City of Pittsburgh adopted an ordinance aimed at "protecting the listen[er] from unwanted communication" outside of abortion clinics. Joint Appendix, *Bruni v. City of Pittsburgh* (3d Cir. Apr. 13, 2018) ("JA") at 402a. Petitioners, like those working with *amicus* Pro-Life Union of Greater Philadelphia, are sidewalk counselors outside of abortion clinics. The Court of Appeals aptly described sidewalk counseling:

> Plaintiffs do not physically block patients' ingress or egress or engage in violent tactics. Instead, they engage in what they call "sidewalk counseling," meaning "calm" and "quiet conversations" in which they "offer assistance and information to" women they believe are considering having an abortion "by providing them pamphlets describing local pregnancy resources, praying, and . . . peacefully express[ing] [a] message of caring support."

Bruni v. City of Pittsburgh, 941 F.3d 73, 80 (3d Cir. 2019).

The City of Pittsburgh passed an ordinance stating that persons shall not "congregate, patrol, picket or demonstrate in a zone extending fifteen (15) feet from any . . . health care facility." Pitts. Code §

623.04.[2] Yet the ordinance went on to exempt others, such as "agents of the . . . clinic." *Id.* Because both parties have always understood the ordinance's broad language to mean that sidewalk counselors are prohibited from one-on-one conversations within this fifteen-foot buffer, *see Bruni*, 941 F.3d at 84, the sidewalk counselors did not enter that zone, *see id.* at 85 n.12, to the detriment of effectively reaching their target audience. As the sidewalk counselors associated with the instant *amicus* affirm, effective sidewalk counseling requires the kind of natural, loving interaction that is undercut when a person needs to raise their voice to be heard at a distance. While the City made it near to impossible to reach the sidewalk counselors' intended audience, it still permitted clinic workers to speak with persons within the buffer zone. *See* § 623.04 (exempting clinic workers). Thus, one side had a voice while the other did not, subjecting sidewalk counselors to viewpoint discrimination.

The sidewalk counselors working with the Pro-Life Union of Greater Philadelphia fear that if buffer zones like Pittsburgh's are permitted in other Pennsylvania municipalities, their ability to serve their intended audience will be undermined. Worse, they fear the same kind of viewpoint targeting that their counterparts in Pittsburgh suffered. For these

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[2] It should not go unnoticed that the City of Pittsburgh has deemed 6 feet a sufficient distance from others to be safe from Coronavirus or COVID-19 but here requires no less than 15 feet to be "safe" from pro-life speech. *See* City of Pittsburgh, *City of Pittsburgh Announces More Social Distancing Procedures,* March 11, 2020, https://pittsburghpa.gov/press-releases/press-releases/3831.

reasons, and in order to give clear guidance to the courts of appeals, *amicus* requests that this Court grant certiorari.

SUMMARY OF ARGUMENT

The City of Pittsburgh passed an ordinance with broad language designed to silence pro-life speech (speech encouraging options other than abortion). *See* JA402a. Consistent with its intention, the City has used the law to force sidewalk counselors outside of a 15-foot buffer zone around the entrance to abortion clinics. This restriction has presented a significant harm to sidewalk counselors, who endeavor to help women entering abortion clinics by engaging them in one-on-one conversation. Without the proximity, both conversation and leafletting are largely undermined. Though this Court recognized the necessity of proximity for the speech rights of sidewalk counselors and the severe burden lack of conversational distance put on their activities, *see McCullen v. Coakley*, 573 U.S. 464, 487 (2014), the Third Circuit's analysis failed to adequately address the free speech deprivation that Petitioners have experienced. The reach of the buffer zone that Petitioners were forced to live under, depriving them of the ability to effectively engage in sidewalk counseling, is in many instances worse than the buffer zones in the four principal cases this Court has examined. While *McCullen*'s intent was to protect the speech rights of sidewalk counselors, it appears that decision did not do enough to protect sidewalk counselors in situations like this.

ARGUMENT

The ordinance in Pittsburgh was created to suppress unwanted speech, a purpose acknowledged by its prime sponsor. *See* JA402a. In this regard, the speech of sidewalk counselors was in view. Indeed, it has been the City's understanding that this prohibits the speech of sidewalk counselors — because it involves the subject of abortion — but speech on other subjects has been permitted in the zone. *See* Petition for Writ of Certiorari at 8 (collecting citations to the record). If the City had a problem with sidewalk counselors undermining safety or access, it could have employed existing laws — or if that failed — sought a narrow injunction. Instead, the City has used a broadly worded ordinance to achieve its goal of suppressing the First Amendment free speech rights of sidewalk counselors because of the content of their speech — due to its stated goal of "protecting the listen[er] from unwanted communication" outside of abortion clinics. JA402a.

Despite this Court's intention in *McCullen* of protecting the free speech rights of sidewalk counselors at abortion clinics from unconstitutional buffer zones, these buffer zones continue to be used to restrict the manner of free speech in which sidewalk counselors need to engage if they are going to reach their audience. This Court should grant cert because the *McCullen* decision did not do enough to prevent lower courts from applying special rules to speech restrictions outside of abortion clinics, resulting in the opposite of what *McCullen* intended.

It is extremely important to protect the speech of sidewalk counselors because it is core speech that occurs on public streets and sidewalks, traditional public fora, and it is uniquely there that a person may not be able to "tune out" a message. *See McCullen*, 573 U.S. at 476. "In light of the First Amendment's purpose 'to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail,' this aspect of traditional public fora is a virtue, not a vice." *Id.* (quoting *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984)). "As a general rule, in such a forum the government may not 'selectively . . . shield the public from some kinds of speech on the ground that they are more offensive than others.'" *Id.* at 477 (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 209 (1975)). That importance is never higher when, as here, the intended audience is about to engage in an imminent and irreversible action that they could choose not to take simply by hearing the speaker's words of hope. Of course, when the government opposes a message as the City of Pittsburgh does, its temptation to use unconstitutional means to quash the message abounds.

Sidewalk counselors too often face not only disapproval, but as here, government silencing through laws aimed at preventing them from reaching their intended audience. Because sidewalk counselors need physical proximity to effectively reach their audience, the City has effectively silenced them. What the sidewalk counselors were subjected to by means of the City's ordinance is worse than the laws and injunctions involved in this Court's leading buffer zone cases. As such, the City's ordinance was not narrowly tailored.

I. Buffer zones affect sidewalk counselors in unique ways such that the effect on them is particularly detrimental to their speech.

The uncontroverted evidence is that sidewalk counselors were targeted by this law. *See* JA402a.[3] That is precisely what the sidewalk counselors have experienced from the City, since both parties have

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[3] It is fair to conclude that Petitioners experienced content discrimination. As this Court stated in *McCullen*,

> [T]he Act would not be content neutral if it were concerned with undesirable effects that arise from "the direct impact of speech on its audience" or "[l]isteners' reactions to speech." If, for example, the speech outside Massachusetts abortion clinics caused offense or made listeners uncomfortable, such offense or discomfort would not give the Commonwealth a content-neutral justification to restrict the speech.

573 U.S. at 481 (quoting *Boos v. Barry*, 485 U.S. 312, 321 (1988)). However, the Pittsburgh ordinance's sponsor acknowledged that they were "protecting the listen[er] from unwanted communication" outside of abortion clinics. JA402a. That is why abortion was the only topic of discussion banned from within the buffer. *See* Petition for Writ of Certiorari at 8. Moreover, because the outward indicia typical of a demonstration or picketing are not required under the law, enforcement authorities necessarily must examine the content of one-on-one conversations. It is, therefore, necessarily content based. *See McCullen*, 573 U.S. at 479 (quoting *League of Women Voters of Cal.*, 468 U.S. at 383, 377 for the proposition that the "Act would be content based if it required 'enforcement authorities' to 'examine the content of the message that is conveyed to determine whether' a violation has occurred'").

agreed that the ordinance's broad language prohibits the sidewalk counselors' abortion related speech, but not other speech. *See* Petition for Writ of Certiorari at 8. For that reason, the sidewalk counselors have chosen to stay outside of the buffer zone rather than be arrested. *See id*.

The problem, of course, is that sidewalk counselors are engaged in conversational speech, not the kind of speech that can occur a distance away. This Court aptly describes

> "sidewalk counseling," which involves offering information about alternatives to abortion and help pursuing those options. . . . McCullen, for instance, will typically initiate a conversation this way: "Good morning, may I give you my literature? Is there anything I can do for you? I'm available if you have any questions." If the woman seems receptive, McCullen will provide additional information. McCullen and the other petitioners consider it essential to maintain a caring demeanor, a calm tone of voice, and direct eye contact during these exchanges.

McCullen, 573 U.S. at 472-73 (citations omitted).

Likewise, a sidewalk counselor and board member of *amicus* describes the heart behind and the methods of sidewalk counseling this way:

> Women often choose abortion out of fear and a lack of resources. They are told that they aren't wealthy enough, old enough, young enough, or strong enough or that they will be alone. A sidewalk counselor enters at that moment. With quiet, calm, compassionate words and body language, this person shares what is available to this terrified mother. They share about hope, housing, financial support, community, and a baby shower, and they do this quietly on the sidewalk. If a sidewalk counselor is far away, it is impossible to share this message in the same way. Women deserve to know all of their options before they choose to make such a life altering choice.

Therefore, when the City has used the broadly worded ordinance to prohibit sidewalk counselors from being within the 15-foot buffer zone, the City has separated them from their audience and has significantly burdened their speech. Buffer zones have compromised their "ability to initiate the close, personal conversations that they view as essential to 'sidewalk counseling.'" *Id.* at 487. This Court noted the "toll" that buffer zones take on sidewalk counseling:

> Although McCullen claims that she has persuaded about 80 women not to terminate their pregnancies since the

> 2007 amendment, she also says that she reaches "far fewer people" than she did before the amendment. Zarrella reports an even more precipitous decline in her success rate: She estimated having about 100 successful interactions over the years before the 2007 amendment, but not a single one since.

Id. at 487-88 (internal citations omitted). The sidewalk counselors in Pittsburgh find it similarly difficult to engage in quiet, one-on-one conversations with women entering the clinic. *See* Petition for Writ of Certiorari at 9.

Buffer zones also make it substantially more difficult for sidewalk counselors to distribute literature to arriving patients. The Court in *McCullen* found the buffer zone deprived sidewalk counselors of "their two primary methods of communicating with patients." *McCullen*, 573 U.S. at 488. As this Court found in *McCullen*, lower Courts and opponents of sidewalk counselors are wrong to downplay these burdens on sidewalk counselors' speech. "[W]hile the First Amendment does not guarantee a speaker the right to any particular form of expression, some forms — such as normal conversation and leafletting on a public sidewalk — have historically been more closely associated with the transmission of ideas than others." *Id*.

This Court has routinely recognized the First Amendment importance of the manner of speech in which sidewalk counselors and others like them

engage. In *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357 (1997), this Court struck down "floating buffer zones" because they burdened more speech than necessary — in part because it prevented protestors "from communicating a message from a normal conversational distance or handing leaflets to people entering or leaving the clinics who are walking on the public sidewalks." *Id.* at 377. "Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment. . . ." *Id.* Likewise, in the context of petition campaigns, this Court "observed that 'one-on-one communication' is 'the most effective, fundamental and perhaps economical avenue of political discourse.'" *McCullen*, 573 U.S. at 488 (quoting *Meyer v. Grant*, 486 U.S. 414, 424 (1988)).

Of concern to *amicus* is that sidewalk counselors like Petitioners end up experiencing buffer zones like this — to the detriment of serving the women outside the clinic — but have no recourse. Even now, the Third Circuit suggests that Petitioners have experienced no harm from the ordinance, when instead they have missed numerous opportunities to serve out of fear that they would be arrested under the ordinance.

II. The buffer zone at issue is just as or more offensive to free speech than those in *Madsen*, *Schenk*, *Hill*, and *McCullen*.

A. The Pittsburgh buffer zone is just as offensive as the buffer zones struck down in *Madsen* and both distinguishable and more offensive than the portion of buffer zone upheld in *Madsen*.

In *Madsen v. Women's Health Ctr.*, 512 U.S. 753 (1994), this Court upheld in part and struck down in part a Florida court's injunction limiting the locations and manner of demonstrations by specific protestors at a single abortion clinic. The injunction was issued as a result of several incidents where the protestors blocked clinic access. They also engaged in loud chanting and singing, using amplifying devices and causing a significant increase in the noise level such that they could be heard from within the clinic. Initial injunctions did not resolve the issue, and public access to the clinic continued to be impeded, so the Florida court issued a broader injunction. *See id.* at 758. The injunction prohibited "congregating, picketing, patrolling, demonstrating or entering" any portion of the public right-of-way or private property within 36 feet of the property line of the clinic. *Id.* at 768. Because the buffer zone also applied to private property to the north and west of the clinic property, the *Madsen* Court examined each portion of the buffer zone separately. *Id.*

The *Madsen* Court upheld the portion of the 36-foot buffer zone from those protesters around the clinic entrance finding that it burdened no more speech than necessary to accomplish the governmental interest in protecting access to the clinic. Still, the Court noted that the "type of focused picketing prohibited by [the state court injunction] is fundamentally different from more generally directed means of communication that may not be completely banned in [public places]." *Id*. at 769 (quoting *Frisby v. Schultz*, 487 U.S. 474, 486 (1988)). In making a distinction between "handbilling and solicitation" on one hand and the speech of protesters on the other, the Court recognized that the speech Petitioners want to engage in requires greater protections. *Id*. Indeed, buffer zones burden sidewalk counselors far more severely than protestors. In *Madsen*, the Court noted that "one of petitioners' witnesses . . . conceded that the buffer zone was narrow enough . . . [that] [p]rotesters . . . can still be seen and heard." *Id.* at 770. While "protesters" who engaged in some forms of protest may still be able to be seen and heard and thus exercise their First Amendment rights with some buffer zones, sidewalk counselors cannot. As this Court recognized in *McCullen*, a buffer zone places a significant burden on the manner that sidewalk counselors exercise free speech.

The *Madsen* Court struck down the portion of the buffer zone located on two other sides of the clinic because there was no evidence that the presence of protestors on that property limited public access to

the clinic and, therefore, that restriction was more burdensome to free speech than necessary to protect public access. *Id.* at 771. The buffer zone restriction in Pittsburgh is just as offensive to the First Amendment as the portion of buffer zone that was struck down in *Madsen*. As in the case of *Madsen*, Pittsburgh lacked evidence that public access was being prevented by those being burdened by the ordinance — in this case sidewalk counselors. Absent incidents that regularly thwart the governmental interest such that even standard entrance/exit blocking ordinances are impossible to enforce, the government has no basis for implementing what should always be an absolutely last-ditch effort — speech restrictions. Even if blockage were a problem, the City's restrictions are not narrowly tailored.[4]

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[4] Even in the case of those other than the Pittsburgh sidewalk counselors, there was no evidence that genuine attempts at prosecuting the wrongdoers were being made. Though buffer zones are easier to enforce than laws directed at actual wrongdoing, such as blocking entrance ways, efficiency is not a First Amendment value. *See McCullen*, 573 U.S. at 495. Moreover, the Court was not convinced that actual application of non-speech related laws would be too difficult:

> In any case, we do not think that showing intentional obstruction is nearly so difficult in this context as respondents suggest. To determine whether a protestor intends to block access to a clinic, a police officer need only order him to move. If he refuses, then there is no question that his continued conduct is knowing or intentional.

Id.

The Court also struck down a no-approach zone and its consent requirement as being more burdensome to speech than necessary. "[I]t is difficult, indeed, to justify a prohibition on all uninvited approaches of persons seeking the services of the clinic, regardless of how peaceful the contact may be, without burdening more speech than necessary to prevent intimidation and to ensure access to the clinic." *Madsen,* at 774. "As a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment." *Id. (quoting Boos*, 485 U.S. at 322) (internal quotation marks omitted). "The 'consent' requirement alone invalidates this provision; it burdens more speech than is necessary to prevent intimidation and to ensure access to the clinic." *Id*. The present situation is worse, because sidewalk counselors are not permitted to speak even with consent.

B. The Pittsburgh ordinance is just as offensive to free speech as the floating buffer zone that was struck down in *Schenck* and is both distinguishable and more offensive than the fixed buffer zone upheld in *Schenck*.

In *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357 (1997), this Court upheld provisions imposing a "fixed buffer zone" but struck down a "floating buffer zone" on demonstrations outside abortion clinics. Similar to the facts in *Madsen*, the

clinics in *Schenck* were subjected to numerous large-scale blockades. Incidents of trespassing and aggressive behavior, including pushing, shoving, and grabbing, occurred at the clinics. *See id.* at 362-363. Local police were "unable to respond effectively" to the protests. *Id.* In response, the U.S. District Court for the Western District of New York issued an injunction. Three aspects of that injunction were challenged in this Court: (1) the floating 15-foot buffer zones around people and vehicles seeking access to the clinics; (2) the fixed 15-foot buffer zones around the clinic doorways, driveways, and parking lot entrances; and (3) the "cease and desist" provision that forced sidewalk counselors who are inside the buffer zones to retreat 15 feet from the person being counseled once the person indicates a desire not to be counseled. *Id.* at 371.

The ban on demonstrating within a "fixed buffer zone" of 15 feet of entrances was upheld on the record of prior criminal activity and the government's interest in ensuring access to the clinic. *Id.* at 376. The *Schenck* court, however, struck down the "floating buffer zones" around people entering and leaving the clinics because they burdened more speech than is necessary to serve the relevant governmental interests. *Id* at 377. "The floating buffer zones prevent [sidewalk counselors] . . . from communicating a message from a normal conversational distance or handing leaflets to people entering or leaving the clinics who are walking on the public sidewalks. This is a broad prohibition, both

because of the type of speech that is restricted and the nature of the location." *Id.*

It is clear that the actions of a minority of protestors in blocking access to clinics and threatening patients and employees of a clinic is not activity that is protected under the First Amendment. These actions are at odds with the behavior of most protesters, and certainly at odds with the practice of sidewalk counselors who seek quiet, respectful, and caring one-on-one communication. The government may have a legitimate interest in stopping the blockades and threats but not the latter method of communication. There is no harm to public safety or threat to safe access to clinics with the manner that the Pittsburgh sidewalk counselors wish to engage.

Unlike the situation in *Schenck*, the buffer zone cannot be justified due to safety or access issues as the City has not pointed to any such incidents. The 15-foot permanent buffer zone injunction upheld in *Schenck* was supported by the fact of the protestors' prior unlawful conduct. It was not a broad restriction that applied to unnamed and future individuals who potentially wanted to engage in only lawful conduct, but rather a narrow injunction applied only to protestors who engaged in prior unlawful activity.[5]

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[5] In *McCullen* the court explained the vital difference between narrow injunctions versus broad laws, like the one at issue in Pittsburgh:

> We have previously noted the First Amendment virtues of targeted injunctions as alternatives to broad, prophylactic measures. Such an

Even if protestors or demonstrators had created safety or access issues, it would be unconstitutionally overbroad to impose limitations against another group of protestors, and even more so to impose those limitations on people who simply engage in one-on-one conversation. The City could limit behavior that undermines safety and access without targeting speech as it has done here.

C. The buffer zone in Pittsburgh is distinguishable from and more offensive to free speech than the buffer zone in *Hill*.

In *Hill v. Colorado*, 530 U.S. 703 (2000), this Court reviewed a Colorado statute that regulated speech-related conduct within 100 feet of the entrance to any health care facility. The statute made it unlawful

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> injunction "regulates the activities, and perhaps the speech, of a group," but only "because of the group's past actions in the context of a specific dispute between real parties." *Madsen*, 512 U. S., at 762, 114 S. Ct. 2516, 129 L. Ed. 2d 593 (emphasis added). Moreover, given the equitable nature of injunctive relief, courts can tailor a remedy to ensure that it restricts no more speech than necessary. *See, e.g., id.*, at 770, 114 S. Ct. 2516, 129 L. Ed. 2d 593; *Schenck*, 519 U.S., at 380-381, 117 S. Ct. 855, 137 L. Ed. 2d 1. In short, injunctive relief focuses on the precise individuals and the precise conduct causing a particular problem. The Act, by contrast, categorically excludes non-exempt individuals from the buffer zones, unnecessarily sweeping in innocent individuals and their speech.

See McCullen, 573 U.S. at 492-93.

within the regulated areas for any person to "knowingly approach" within eight feet of another person, without that person's consent, "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person." *Id*. at 707. Although the statute prohibited speakers from approaching unwilling listeners, it did not require a standing speaker to move away from anyone passing by. Nor did it place any restriction on the content of any message that anyone may wish to communicate to anyone else, either inside or outside the regulated areas. *Id*. at 707-708.

The petitioners in *Hill*, like Petitioners here and the sidewalk counselors associated with *amicus*, were engaged in sidewalk counseling, which consisted of efforts "to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech, including conversation and/or display of signs and/or distribution of literature." *Id.* at 708. Their activities frequently entailed being within eight feet of other persons, and their fear of prosecution under the Colorado statute caused them "to be chilled in the exercise of fundamental constitutional rights." *Id*. at 708-709.

In upholding the 8-foot "floating buffer zone," the *Hill* Court focused on whether there was an adverse impact on the three types of communication (sign display, leafletting, and oral speech) regulated by the statute.

With respect to oral statements, while finding that the 8-foot distance "certainly can make it more difficult for a speaker to be heard," this Court found that the zone would allow a speaker to communicate at a "normal conversational distance." *Id*. at 726-727. Additionally, the Court noted that the statute allowed the speaker to remain in one place while others passed within 8 feet and noted that only attempts to address unwilling listeners were affected by the buffer. *Id*. at 727.

Regarding leafletting, the Court noted the "burden on the ability to distribute handbills is more serious because it seems possible that an 8-foot interval could hinder the ability of a leafletter to deliver handbills to some unwilling recipients." *Id*. However, the Court ultimately found that a leafletter could stand near the path of oncoming pedestrians, proffer their material, which could be easily accepted. *Id*.

Hill's restriction, while still highly problematic, is far less offensive to free speech than the present ordinance because *Hill*'s statute allows First Amendment activity within the 8-foot zone if they have consent of the recipient of the speech. Also, *Hill*'s statute allows the speaker to remain in one place while others pass within 8 feet of the speaker. Pittsburgh's ordinance, on the other hand, restricts counselors to a 15-foot buffer. This is a noticeable difference to an 8-foot buffer which places significant limitations on the ability of counselors to conduct quiet, one-on-one conversations.

The Court in *Hill* recognized the serious burden that an 8-foot interval creates on oral communication and handbilling. How much greater is the burden on the ability to speak and distribute handbills at a 15-foot interval. The "First Amendment protects the right of every citizen to 'reach the minds of willing listeners and to do so there must be opportunity to win their attention.'" *Id*. at 728 (discussing *Heffron v. International Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 655 (1981) (quoting *Kovacs v. Cooper*, 336 U.S. 77, 87 (1949))). The ordinance in Pittsburgh barely allows counselors the opportunity to get attention, let alone win the attention of those they are seeking to communicate with because there is such a great distance that requires a counselor to either raise their voice or wave their arms, which is contrary to the quiet, one-on-one manner of communication that the counselors need to use to be effective.

Hill places restrictions only on speech addressed to unwilling listeners, whereas the City of Pittsburgh bans speech directed at all listeners regardless of consent. The harm in being restricted from speaking to those who are willing or who may become willing to listen if given enough time is significant. The sidewalk counselors in Pittsburgh, similar to those working with *amicus*, have had great success in reaching many visitors to abortion clinics with their message. For the City to restrict speech that a listener is willing to hear is undoubtedly an unconstitutional restriction on free speech.

D. The ordinance in Pittsburgh is just as offensive to Free Speech as the buffer zone struck down by this Court in *McCullen*.

In *McCullen*, this Court reviewed a Massachusetts statute that made it a crime to knowingly stand on a "public way or sidewalk" within 35 feet of an entrance or driveway to any place, other than a hospital, where abortions are performed. *McCullen*, 573 U.S. at 469. Petitioners in *McCullen* were individuals who approached and talked to women outside such facilities and attempted to dissuade them from having abortions. *Id*.

McCullen held the statute was not "narrowly tailored," *id*. at 493, and imposed "serious burdens on petitioners' speech," *id.* at 487. At each of the clinics where petitioners attempted to counsel patients, the zones carved out a significant portion of the adjacent public sidewalks, pushing petitioners well back from the clinics' entrances and driveways. *Id*. The zones thereby compromised petitioners' ability to initiate the close, personal conversations that they viewed as essential to "sidewalk counseling." *Id*. Petitioners in *McCullen* testified that they often could not distinguish patients from passersby in time to initiate a conversation before the patient entered the buffer zone. And even when petitioners were able to begin a conversation, they had to abruptly stop at the painted border, which they believed caused them to appear "untrustworthy" or "suspicious." *Id*. Given those limitations, petitioners often had to raise their voices

at patients from outside the zone, which is a manner of communication sharply at odds with the compassionate message they wished to convey. *Id*. The *McCullen* court found these burdens took a toll on petitioners because petitioners reached "far fewer people" than they did before the restriction. *Id*.

The ordinance in Pittsburgh is just as restrictive to sidewalk counselors' free speech as the statute in *McCullen*. Similar to the counselors in *McCullen*, the sidewalk counselors in Pittsburgh want to engage in personal, caring, one-on-one conversations. Likewise, they are significantly burdened in their ability to quietly engage in conversation if they are forced to raise their voices in order to be heard. "If all that women can see and hear are vociferous opponents of abortion, then the buffer zones have effectively stifled petitioners' message." *Id*. at 489-490. A 15-foot distance does not allow for a normal one-on-one conversation, so like the counselors in *McCullen*, Petitioners will be deprived of their primary method of communicating with patients if a buffer zone is upheld.

What Petitioners have experienced under Pittsburgh's ordinance is at least as sympathetic as what was experienced in buffer zones in this Court's principal buffer zone cases. It has been worse than the situations in which buffer zones have been upheld, because here sidewalk counselors have no adequate means of communication to those they wish to serve.

CONCLUSION

The sidewalk counselors associated with *amicus* request that this Court grant certiorari in order to clarify and effectuate the protections for core speech upheld by this Court's precedents and to prevent the same from being eroded by the courts of appeals.

Respectfully submitted,

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