Written by **Bob Adelmann** on July 25, 2023

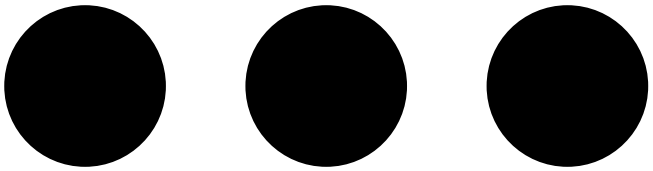
Supreme Court Asked to Review Its Decision Limiting Sidewalk Counseling Near Abortion Clinics

A pro-life Catholic, Debra Vitagliano of White Plains, New York, knows she is called to witness to pregnant women entering the White Plains Planned Parenthood clinic. She trained for it, but before she could begin the county passed a law prohibiting her from doing so.

On Thursday she, with the help of The Becket Fund for Religious Liberty, asked the U.S. Supreme Court to overturn the county's law.

The county adopted nearly all the language from a Colorado law passed in 1993 and upheld by the Supreme Court in 2002 – *Hill v. Colorado*. The county's "Sidewalk Counseling Ban" makes it unlawful for any person to:

> knowingly approach another person within eight (8) feet of such person, unless such other person consents, for the purpose of passing any material, item, or object to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way within a radius of one hundred (100) feet from any door to a reproductive health care facility.



AP Images

Abortion foe Cal Zastrow, second from left, stands outside Jackson Women's Health Organization Inc., Mississippi□s only commercial abortion clinic in Jackson, Miss., with other foes Friday, Jan. 11, 2013. The men attempt to "sidewalk counsel" women entering the clinic, which faces a Friday deadline to comply with a 2012 state law that requires anyone doing the procedure to be an OB-GYN with admitting privileges at a local hospital. The clinic has been unable to get the privileges, but it will not immediately be shut down if it fails to comply, the state Health Department says. (AP Photo/Rogelio V. Solis)

In 2000 the high court not only ruled that the Colorado law was constitutional, but Justice John Paul Stevens found an unknown "right" to bolster his case:

> The state [of Colorado] has a compelling interest in creating this legislation.
>
> Its interest is to protect citizens entering or exiting a medical facility from unwanted communication.
>
> The law does not prevent patients from being communicated with entirely but better allows them to better avoid situations in [which] they wish to not listen to the message of speakers.
>
> Even though speakers have a right to persuade, that cannot extend to unwilling listeners because people also have a right "to be let alone."

Upholding this outrageous infringement of First Amendment rights was acceptable, the high court said at the time, because it "protect[ed] the well being of patients entering … healthcare facilities … because they are more likely to be emotionally and physically vulnerable."

This was an awful distortion, said Justices Antonin and Clarence Thomas in their dissenting opinion:

> The law is not content neutral, as it is obviously being applied only to abortion clinics and anti-abortion messages;
>
> Protecting citizens from unwanted speech is not a compelling state interest; and
>
> The decision is in conflict with other First Amendment restriction cases.

But they were outvoted by the liberals then controlling the high court: Justices David Souter, Sandra Day O'Connor, Ruth Bader Ginsburg, and Stephen Breyer.

That was then. This is now. The high court is now populated with a majority of justices who cherish more deeply the First Amendment guarantees of freedom of speech and freedom of religion. In fact, five of those present have written that *Hill v. Colorado* was a grievous mistake and only four of them are needed to take up Vitagliano's complaint.

Recent decisions from the present court confirm the likelihood of overthrowing *Hill* if it takes it under consideration, including the high court upholding the right of a postal worker not to be required to work on the Sabbath and the football coach who could not be prohibited from praying on the field following games.

In fact, the lawsuit mentions the fact that those crafting the law knew that if it ever went to the high court, "we know what the Supreme Court would rule." It would toss it, rectifying an aberration that has persisted for nearly a quarter of a century.

As Mark Rienzi, president and CEO of Becket, said: "No one should be arrested and put behind bars for having peaceful, face-to-face conversations on a public sidewalk. The Court should fix the mistake of *Hill* and make clear that the First Amendment protects these offers of help and information to women in need."

And Vitagliano herself put the matter succinctly:

> I am called to be a compassionate voice to abortion-vulnerable women, letting them know that that they are loved, supported, and can choose life for their babies.
>
> I pray that the Justices will take this case and allow me to help women in need.

She could know as soon as September whether the Supreme Court will take her case.