No. 17-689

IN THE
Supreme Court of the United States

ANDREW MARCH,
Petitioner,
v.

JANET T. MILLS, individually and in her individual capacity as Attorney General for the State of Maine, et al.,
Respondents.

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

BRIEF AMICUS CURIAE OF FOUNDATION FOR MORAL LAW IN SUPPORT OF PETITIONER

MATTHEW J. CLARK
Counsel of Record
FOUNDATION FOR MORAL LAW
One Dexter Avenue
Montgomery, AL 36104
(334) 262-1245
matt@morallaw.org

Counsel for *Amicus Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Constitutions, Statutes, and Regulations

Other Authority

INTEREST OF AMICUS CURIAE[1]

Amicus Curiae Foundation for Moral Law ("the Foundation"), is a national public-interest organization based in Montgomery, Alabama, dedicated to the defense of religious liberty and the strict interpretation of the Constitution as written and intended by its Framers.

The Foundation has an interest in this case because it believes that the Maine Civil Rights Act ("MCRA") violates Andrew March's free speech rights guaranteed by the First and Fourteenth

---

[1] Pursuant to Rule 37.3, all parties have consented to the filing of this brief. Pursuant to Rule 37.6, no party or party's counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

Pursuant to Rule 37.2, the Foundation notified counsel of record for Petitioner March and Respondents Mills, Krier, and Pries of its intent to file this brief at least ten days before the due date. Neither the name nor the contact information for John Wall (attorney for Respondents City of Portland, Nadeau, and Hults) appeared on the Court's website before the Foundation contacted the parties, and therefore the Foundation was not aware that there was one more attorney whose consent was needed. The Foundation was made aware of Mr. Wall's involvement in this case and his contact information on December 4, 2017. It contacted Mr. Wall the same day and obtained his consent. Also on the same day, the Foundation contacted the Clerk's Office and explained the situation. The Clerk's Office confirmed that submitting this brief would be permissible as long as all parties had consented.

Amendments of the United States Constitution. Because the speech at issue has a religious motivation, the Foundation is concerned that its suppression

SUMMARY OF ARGUMENT

Believing that the Constitution should be interpreted strictly according to its plain meaning as understood by its Framers, the Foundation fully endorses the legal and constitutional arguments of March. Instead of burdening the Court by repeating the same points that March raised in his petition, the Foundation raises three additional arguments in his support.

First, the relevant provision of the MCRA discriminates not only on content but also on viewpoint. Content-based and content-neutral restrictions may not be used "in practical operation" to discriminate against viewpoints. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391-92 (1992). In practical operation, the MCRA applies only outside of abortion clinics and targets only speech coming from pro-life speakers. In other words, in practical operation, the MCRA targets only the pro-life viewpoint. The MCRA therefore constitutes viewpoint discrimination under *R.A.V.*

Second, the provision of the MCRA prohibiting noises that "interfere with the safe and effective delivery of [health] services" suffers from unconstitutional vagueness. The void-for-vagueness doctrine requires a person of ordinary intelligence to

be able to discern what conduct is prohibited. The above-quoted provision has a chilling effect on free speech because the speaker is not able to discern at what point an "effective delivery of a health service" begins. This problem is exacerbated by the fact that the speaker has no way of knowing what is going on inside the abortion clinic and therefore does not know when he has to stop speaking. The above-quoted language may also be unconstitutionally overbroad for similar reasons.

Third, the Founders considered the right to freedom of speech to be an "unalienable right" given neither by the government nor by man, but by God. The Founders believed that God-given rights precede human law, and they designed their government to secure those rights. The Bible teaches that man has freedom of speech because God did not give the civil government jurisdiction over the mind of man. Thus, the MCRA violates not only the Constitution of the United States, but also the divine right of free speech that the Constitution secures.

ARGUMENT

I. The MCRA's prohibition on speech is not only content-based but also viewpoint-based.

During the events at issue in this case, Pastor March was always preaching on a public sidewalk outside the Portland Planned Parenthood. A public sidewalk is a "prototypical example of a traditional public forum." *Schenck v. Pro-Choice Network of W.*

N.Y., 519 U.S. 357, 377 (1997). This Court has held that the strict-scrutiny test applies when the government imposes a content-based restriction in a public forum. *Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 45 (1983). The government may impose content-neutral time, place, and manner restrictions in public fora, so long as such restrictions survive the intermediate scrutiny test. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). "The principal inquiry in determining content-neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id*.

The most egregious form of speech regulation is viewpoint discrimination. "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. . . . Viewpoint discrimination is thus an egregious form of content discrimination." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). While the standard of review for content-based restrictions varies depending on the nature of the forum, the First Amendment prohibits viewpoint discrimination regardless of the nature of the forum. *International Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678-79 (1992).[2]

---

[2] Assuming *arguendo* that the Court finds that the sidewalk in this case is not a traditional public forum, the MCRA's restriction is still unconstitutional if it is viewpoint-based. In *United States v. Kokinda*, 497 U.S. 720, 727-30 (1990), a

The government may not adopt an otherwise valid regulation of speech as a pretext for viewpoint discrimination. In *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992), this Court considered whether the following ordinance violated the Free Speech Clause:

> Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor.

R.A.V., 505 U.S. at 380. The Court concluded that the ordinance was an impermissible content-based restriction on speech. *Id.* at 381.

But the Court also observed, "[i]n its practical operation, moreover, the ordinance goes even beyond mere content discrimination to actual viewpoint discrimination." *Id.* at 391. The Court noted that the

---

plurality of this Court held that a specially constructed sidewalk by a post office was not a public forum. It then subjected the regulation in question to a two-part test: was the regulation reasonable, and was it viewpoint-neutral? *Id.* at 730. In this case, if the Court likewise finds that March was not in a public forum, then the MCRA's restriction of March's speech would still be unconstitutional if it was viewpoint-based. *See Krishna*, 505 U.S. at 678-79; *Kokinda*, 497 U.S. at 730.

ordinance was supposedly based on the "fighting words" doctrine. Since fighting words are not protected speech, the City argued that the ordinance was valid because it was targeting only fighting words. The Court disagreed, reasoning that the ordinance would allow "fighting words" to be used by those advocating *for* racial, religious, or gender equality but not by those opposing them. *Id.* at 391-92. The Court explained that "'fighting words' that do not themselves invoke race, color, creed, religion, or gender—aspersions upon a person's mother, for example—would seemingly be usable *ad libitum* in the placards of those arguing *in favor* of racial, color, etc. tolerance and equality, but could not be used by that speaker's opponents." *Id.* at 391. The Court concluded that the City had "no such authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensbery Rules." *Id.* at 392.

Likewise, Justice Alito, joined by three other justices, recently wrote:

> The adoption of a facially neutral policy for the purpose of suppressing the expression of a particular viewpoint is viewpoint discrimination. See *Crawford v. Board of Ed. of Los Angeles*, 458 U.S. 527, 544 (1982) ("[A] law neutral on its face still may be unconstitutional if motivated by a discriminatory purpose").

Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of Law v. Martinez, 561 U.S. 661, 736

(2010) (Alito, J., dissenting) (alteration in original). The majority in that case held that the question of whether the regulation was a pretext for viewpoint discrimination was not properly before the Court, but it allowed the Ninth Circuit to consider the question on remand. *Id.* at 697-98.

In this case, the MCRA provides, in relevant part:

> It is a violation of this section for any person, whether or not acting under color of law, to intentionally interfere or attempt to intentionally interfere with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State by any of the following conduct:
>
> . . .
>
> D. After having been ordered by a law enforcement officer to cease such noise, intentionally making noise that can be heard within a building and with the further intent either:
>
> 1) To jeopardize the health of persons receiving health services within the building; or

> 2) To interfere with the safe and effective delivery of those services within the building.

Me. Rev. Stat. tit. 5, § 4684-B(2)(D).

Even though the word "abortion" does not appear in the MCRA, the Maine Legislature apparently intended for this law to apply to abortion, since that is the only "health service" this Court has held is protected by the Constitution.[3] Thus, the MCRA applies "in practical operation" only to people speaking outside abortion clinics. *R.A.V.*, 505 U.S. at 391. If this were the total extent of the analysis, then this Court could possibly construe the MCRA as a content-neutral or perhaps content-based restriction instead of viewpoint discrimination.

However, the MCRA does not prohibit *any* noise that can be heard inside an abortion clinic. Instead, it prohibits only noise made "with the further intent" of supposedly interfering with the health or safety of the woman receiving the abortion. While the Foundation doubts that any true pro-lifer would ever

---

[3] The Foundation respectfully but strongly disagrees that the Constitution of the United States guarantees the right to abortion under any circumstances. *See Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 520 (1990) (Scalia, J., concurring) ("[T]he Constitution contains no right to abortion. It is not to be found in the longstanding traditions of our society, nor can it be logically deduced from the text of the Constitution[.]"); s*ee also Ex parte Hicks*, 153 So. 3d 53, 66-72 (Ala. 2014) (Moore, C.J., concurring specially) (arguing that an unborn child has a God-given right to life that is protected by the Equal Protection Clause).

try to jeopardize the health or safety of the mother, the pro-life message is undoubtedly one that discourages abortion and thus could be construed as having the intent "to interfere" with the delivery of such "services." By contrast, pro-abortion speakers standing on the same sidewalk and making noise that is even louder than that of the pro-lifers would be protected under the statute because their intent is to further the performance of abortion.

Thus, "in practical operation," the MCRA targets only those expressing pro-life views, the exact distinction that *R.A.V.* prohibited. *R.A.V.*, 505 U.S at 391-92. The government "has adopted a regulation of speech because of disagreement with the message it conveys." *Ward*, 491 U.S. at 791. The MCRA is neither content-neutral nor content-based, but rather is a "blatant" and "egregious" violation because it "targets not subject matter, but particular views taken by speakers on a subject." *Rosenberger*, 515 U.S. at 829. In practical operation, therefore, the MCRA's prohibition of Pastor Marsh's speech is deliberate viewpoint discrimination and should be recognized as such.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion[.]" *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). But prescribing orthodoxy is exactly what the government does when it discriminates based on the speaker's viewpoint. Because "in practical operation" the MCRA regulates only the

pro-life message, this Court should grant certiorari and reverse the judgment of the First Circuit.

II. The provision of the MCRA that prohibits loud noise intended to "interfere with the safe and effective delivery of [health] services" is unconstitutionally vague.

In addition to discriminating based on the speaker's viewpoint, the Foundation believes that the portion of the MCRA prohibiting noise intended to "interfere with the safe and effective delivery of [health] services" is void for vagueness. "This Court has held that the Due Process Clause prohibits the Government from 'taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.'" *Beckles v. United States*, 137 S.Ct. 886, 892 (2017) (quoting *Johnson v. United States*, 135 S.Ct. 2551, 2556 (2015)). When considering whether a law defining a criminal offense is void for vagueness, the Court has held that a penal statute must "'define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'" *Beckles*, 137 S.Ct. at 892 (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). When a law regulates speech, the vagueness of the law "raises special First Amendment concerns because of its obvious chilling effect on free speech." *Reno v. ACLU*, 521 U.S. 844, 871-72 (1997).

The First Circuit suggested that March could have possibly made a vagueness argument but did not do so. *March v. Mills*, 867 F.3d 46, 55 n.5 (1st Cir. 2017). However, this Court has held that it may consider issues that are ""inextricably linked" with those raised by the parties. *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 214 n.8 (2005). Again, this Court has held that vague statutes present special dangers to free speech because of the "risk of discriminatory enforcement." *Reno*, 521 U.S. at 872 (emphasis added) (citation and internal quotation marks omitted). If a statute is vague, then the government may enforce it selectively against speakers whose viewpoint it dislikes. Vague statutes regulating speech therefore carry the inherent risk of viewpoint discrimination, thus making the issues of vagueness and viewpoint discrimination "inextricably linked." *Sherrill*, 544 U.S. at 214 n.8.

As discussed above, in practical operation the relevant provision of the MCRA targets only speakers wishing to express a pro-life viewpoint. *See* Part I, *supra*. Pro-life activists obviously believe that an unborn child is a human being, who has the same personhood status and the same right to life as a person who has already been born. Thus, pro-lifers believe that abortion is not a health service but rather a procedure that murders a human being.

In contrast, pro-abortion advocates often describe abortion as a "woman's health service" or something comparable. Thus, in the eyes of a pro-abortion advocate, abortion would not involve the murder of a human being, but instead is simply a health service

that terminates a pregnancy of something that could become (but is not yet) a child. Thus, advocates on opposite ends of a hotly debated issue would differ as to what constitutes a "health service."

This Court has recognized that, subject to certain limitations, the Free Speech Clause protects a pro-lifer's right to protest outside an abortion clinic. *See, e.g.*, *McCullen v. Coakley*, 134 S.Ct. 2518, 2541 (2014) (striking down a Massachusetts law excluding pro-life sidewalk counselors from a traditional public forum outside an abortion clinic). Under *McCullen*, then, the MCRA cannot apply to speech that occurs outside an abortion clinic.

But once the mother goes inside, how could a pro-life speaker possibly know whether his speech on the sidewalk would "interfere with .... the effective delivery" of a "health" service? The MCRA places upon the pro-life speaker the burden of knowing whether his speech can be heard inside the building. How can he know this? He would have to know the thickness of the building's walls, its insulation, its acoustics, and whether windows and doors are open. Even then he could only *guess* whether his message can be heard inside the building. If he has to resort to "guessing," then the statute is unconstitutionally vague. *See Federal Commc'ns Comm'n v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012) (holding that a law is void for vagueness if "men of common intelligence must necessarily guess as to its meaning and differ as to its application") (citation and internal quotation marks omitted). Even if he knew what was going on, his view of what constitutes a "safe and

effective delivery of a health service" would probably differ from that of the abortionist. The pro-lifer therefore does not know the standard to which he will be held before he is accused of crossing the line. The First Amendment and Due Process Clause entitle citizens "to know *before they act* the standard to which they will be held" instead of leaving them to "be compelled to guess at the outcome of [government] peek-a-boo." *United States v. Virginia*, 518 U.S. 515, 574 (1996) (Scalia, J., dissenting).

The statute's requirement that the officer must warn the speaker only complicates the vagueness issue. Unless the officer has actually been inside the building immediately before warning the speaker, he too is only guessing as to whether the speaker can be heard inside the building and whether an abortion is about to take place. And if the officer advises the speaker that his speech threatens the "safe delivery of [health] services" because an abortion is about to take place, must the speaker assume that he is banned from speaking at that volume for the rest of the day, or may he resume speaking after a reasonable time has passed? Again, the speaker is left to guess whether his conduct violates the law.

On a related note, the MCRA may suffer from unconstitutional overbreadth in addition to unconstitutional vagueness. In *Coates v. City of Cincinnati*, this Court struck down as unconstitutionally vague a Cincinnati ordinance prohibiting "three or more persons to assemble ... on any of the sidewalks ... and there conduct themselves in a manner annoying to persons passing by." 402

U.S. 611, 611 (1971). The Court held that it was vague because "[c]onduct that annoys some people does not annoy others," meaning that "men of common intelligence must necessarily guess at its meaning." *Id.* at 614 (citation and internal quotation marks omitted). But the Court also held that the ordinance was unconstitutional because, in addition to proscribing conduct that was within the city's power to prohibit, it also proscribed constitutionally protected conduct. *Id.* at 614-16. Thus, it was both vague and overbroad. As one scholar has observed, typically, "vagueness and overbreadth are linked." Calvin Massey, *American Constitutional Law: Powers & Liberties* 979 (3d ed. 2009).

Like the ordinance in *Coates*, the difficulties in interpreting the MCRA present a substantial likelihood of proscribing speech that is by no means illegal. Assuming *arguendo* that the City could require the pro-life speaker to cease from making noise that interfered with the abortion procedure, there is no legitimate reason for making him cease speaking before that moment occurs. Because of the substantial risk of prohibiting the speaker's protected speech in attempt to stop him from interfering with the alleged "safe and effective delivery" of the abortion,[4] the MCRA fails not only the void-for-vagueness test, but also the overbreadth test as well.

Abortion is a matter of great national concern that citizens need to be free to discuss without fear of

[4] Again, the Foundation respectfully submits that there is no such thing as a safe abortion, since it always results in the death of a child.

being penalized by the government. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (recognizing that the First Amendment reflects a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open"). Speech discussing controversial and consequential topics like abortion is exactly the kind of speech that needs to be protected by the First Amendment, even when it happens on a public sidewalk outside of an abortion clinic. The American people need to be able to debate this issue without the chilling effect of a vague statute prohibiting them from exercising their First Amendment rights.

III. Freedom of speech is not only a constitutionally protected right, but also a God-given right.

The previous sections of this brief have cited countless precedents discussing the importance of protecting freedom of speech, but the Foundation would be remiss if it did not remind the Court of *why* protecting free speech is so important. One could argue that the Framers intended for freedom of speech to protect at least two things: political speech and the search for truth. *See, e.g.*, *Mills v. Alabama*, 384 U.S. 214, 218 (1966) ("Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs"); Letter from the Continental Congress to the Inhabitants of the Province of Quebec (Oct. 26, 1774) (stating that freedom of the press is important for purposes of

"advancement of truth, science, morality, and arts in general," as well as the "diffusion of liberal sentiments on the administration of government");[5] 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1878 (1833) (arguing that the freedom of speech and press "is neither more nor less, than an expansion of the great doctrine ... that every man shall be at liberty to publish what is true, with good motives and for justifiable ends").

However, even more fundamentally, freedom of speech is an unalienable right, granted not by the State or even by the People, but by God. The Declaration of Independence states, "We hold these truths to be self-evidence, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." *The Declaration of Independence* para. 2 (U.S. 1776). The Declaration also recognizes that man's Creator has laws of his own, called "the Laws of Nature and of Nature's God." *Id.*, para. 1. The law of nature, in turn, was defined as "the will of [man's] Maker." 1 William Blackstone, *Commentaries* *39. The "law of God," also known as the divine law or the law of revelation, was God's will as revealed through the Scriptures. *Id.* at *41-43. Thus, the Framers of the Constitution did not believe that many of the rights recognized in the Constitution were rights that they created. Instead, they believed that those rights were given by God and that they were simply restraining the government from encroaching upon those rights.

---

[5] *Available at* https://goo.gl/AVMj9m (last visited Dec. 6, 2017).

If there is any doubt that the right to freedom of speech comes from God instead of man, one need only turn to the Bible, which contains "the Laws ... of Nature's God." *The Declaration of Independence* at para. 2. The Bible says the following about God's purpose for government:[6]

> For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good and you will have praise from the same; for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath on the one who practices evil.

Romans 13:3-4; *accord I Peter* 2:14 (stating that government exists "for the punishment of evildoers and the praise of those who do right").[7] These passages are very instructive as to what the purpose and role of government is. While many other passages describe *specific* things the government *does*, very few describe what the government *is* – and therefore what proper role is.

---

[6] All Bible quotations herein are from the New American Standard Bible unless otherwise noted.

[7] The Bible was the most cited source during the Founding Era. These two passages were cited more than any others. *See* Donald Lutz, *The Origins of American Constitutionalism* 140-41 (1988).

But notice what the text says about the government's role. It never says that the government exists to regulate speech or to destroy ideas. On the contrary, the focus is on *behavior*. If the Bible does not allow the government to punish ideas, then it does not allow the government to punish speaking about those ideas, either. That is the true basis of the Free Speech Clause's prohibition on viewpoint discrimination and other forms of unconstitutional regulation of speech. This is, of course, a very broad rule that is subject to exceptions, just like this Court's First Amendment jurisprudence. But based on what the Bible says about the role of government, the general rule is that God did not give the government authority to censor speech.

Thomas Jefferson said essentially the same thing in his *Bill for Establishing Religious Freedom*, which provided, in relevant part:

> Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to

> propagate it by coercions on either, as was in his Almighty power to do, but to extend it by its influence on reason alone ....

Thomas Jefferson, *A Bill for Establishing Religious Freedom* (June 18, 1779).[8] In context, Jefferson was talking specifically about religious freedom, not freedom of speech. However, the same principle applies to speech. God created man's mind in such a way that it can be changed only through reason, not through coercion. This is true in both matters of religion and speech.

James Madison used the same reasoning in his *Memorial and Remonstrance*: "[W]e hold it for a fundamental and undeniable truth, that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." James Madison, *Memorial and Remonstrance* (June 20, 1785).[9] Like Jefferson, Madison realized that God made man in such a way that force, violence, and coercion could not change man's opinions. Madison was discussing religion, but the same principle applies to speech.

In sum, freedom of religion and freedom of speech exist because God did not give civil government jurisdiction over the mind or heart of man.

---

[8] *Available at* https://goo.gl/nLaTaA (last visited Dec. 6, 2017).

[9] *Available at* https://goo.gl/kXRy6h (last visited Dec. 6, 2017).

In this case, therefore, the government may not abridge Pastor March's right to freedom of speech, which was given to him by God and secured by the First Amendment of the Constitution of the United States. This Court has recognized correctly that the freedom of speech is precious and should be guarded with jealousy. But that right is not only precious—it is also sacred, because it is an unalienable right given to man by his Maker.

The MCRA violates not only the First Amendment's ban on viewpoint discrimination and the Fourteenth Amendment's ban on vagueness but also abridges a right that was given to Pastor March by his Creator. In addition, Pastor March probably believes that he has not only a divine *right* to speak, but also a divine *obligation* to speak. It is written:

> Deliver those who are being taken away to death, And those who are staggering to slaughter, Oh hold them back. If you say, "See, we did not know this," Does He not consider it who weighs the hearts? And does He not know it who keeps your soul? And will He not render to man according to his work?

Proverbs 24:11-12. Pastor March likely believes that he has an obligation to use his freedom of speech to stop innocent people from being murdered. This makes the MCRA's infringement of his constitutional rights all the more egregious, and this Court should not allow that violation to stand.

CONCLUSION

The MCRA discriminates based on the speaker's viewpoint, the most egregious infringement of free speech. In addition, a speaker cannot reasonably know what speech is prohibited before he acts because the MCRA suffers from unconstitutional vagueness. Not only does the MCRA violate Pastor March's First and Fourteenth Amendment rights, but it also violates his unalienable, God-given right to speak freely on this issue.

For all of those reasons, the Foundation for Moral Law respectfully requests this Court to grant March's petition for a writ of certiorari and reverse the judgment of the First Circuit.

Respectfully submitted,

MATTHEW J. CLARK
Counsel of Record
FOUNDATION FOR
MORAL LAW
One Dexter Avenue
Montgomery, AL 36104
(334) 262-1245
matt@morallaw.org

Counsel for *Amicus Curiae*