

No. 26-34

In the Supreme Court of the United States

CATHERINE L. HANAWAY, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF MISSOURI,
Petitioner,

v.

THOMAS SANDERSON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**BRIEF OF IOWA AND 15 OTHER STATES
AS AMICI CURIAE IN SUPPORT OF
GRANTING THE PETITION**

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QUESTIONS PRESENTED

1. Does Missouri's Halloween sign-posting requirement, which requires factually accurate disclosures, unconstitutionally compel the speech of convicted sex offenders?

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INTEREST OF AMICUS CURIAE¹

When a child asks a stranger, “Trick or treat?” the answer should come in the form of candy. And parents should know that when their children on Halloween put away their natural wariness of adult strangers, that they are doing so in a relatively safe environment. Here, Missouri worked to add an extra layer of security to trick-or-treating, by requiring neutral warnings about houses at whom the trick may not be a treat.

Amici curiae are sovereign States with a paramount and compelling interest in the safety and well-being of their children. Like the State of Missouri, *Amici* States has enacted a comprehensive regulatory framework designed to mitigate the risks posed by recidivist sex offenders and to provide the public with the information necessary for its own protection. While the specifics of *Amici* States’ regulations may vary from Missouri’s, the underlying constitutional principle is identical: the First Amendment does not strip a State of its traditional police power to implement common-sense, factual safety disclosures.

Several *Amici* States also are at home in the Eighth Circuit, and so they have an immediate interest in the legal standard applied by that court here. The decision threatens to upend settled law for a State’s authority to require factual notifications in the service of public safety. By subjecting a simple, non-ideological safety disclosure—one that merely informs the public of a resident’s non-participation in a door-to-door event involving children—to the most

¹ Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

exacting form of strict scrutiny, the court below has created a precedent that could jeopardize *Amici* States' own efforts to manage sex offender residency, exclusion zones, and community notification.

Amici States' interests are rooted in the practical reality that on-site, physical notification is often the only effective means of preventing unauthorized contact in the specific, chaotic context of a holiday like Halloween. Digital registries and abstract notice requirements are insufficient when a child is standing on a doorstep in the dark.

The proper exercise of the police power requires recognizing that the State may compel the disclosure of purely factual, non-controversial information to protect the public from harm. *Amicus curiae* respectfully submits this brief to provide the Court with the perspective of a fellow sovereign and to emphasize the constitutional necessity of affirming Missouri's authority to protect its children through the challenged statute.

SUMMARY OF ARGUMENT

Facially prohibiting enforcement of Missouri's requirement that convicted sex criminals post Halloween signs rests on a fundamental misunderstanding of the First Amendment's application to factual safety disclosures. By applying the most exacting form of strict scrutiny to a requirement that registrants simply notify the public of their non-participation in a door-to-door event, the court below has not only created an untenable hurdle for public safety legislation but has also intruded on the sovereign prerogative of the States to protect their most vulnerable citizens.

First, the challenged statute is primarily a regulation of conduct, not expression. Section 589.426 is part of a broader effort to manage the unique risks of “Halloween-related contact” between recidivist sex offenders and children. Mo. Rev. Stat. § 589.426.1(1). The requirement to post a sign stating “No candy or treats at this residence” is an incidental burden necessary to effectuate the State’s legitimate prohibition on such contact. Mo. Rev. Stat. § 589.426.1(3). Just as the government may require a business to post its hours of operation or a “No smoking” sign to facilitate the enforcement of health and safety laws, Missouri may require a registrant to signal the closure of their home to trick-or-treaters to prevent the very contact the statute proscribes.

Second, even if the mandate is analyzed as a speech regulation, it is a permissible compelled disclosure of purely factual, non-ideological information. Unlike the “live free or die” motto at issue in *Wooley v. Maynard*, the sign mandate does not force any individual to become a courier for the State’s political or ideological message. 430 U.S. 705, 717 (1977). It is a functional safety warning—no different in kind from a mandatory label on a hazardous product. In the context of public safety, the government has broad latitude to require disclosing factual information to prevent public deception or physical harm.

Third, the court below erred by facially enjoining enforcement of the statute and affirming a sweeping statewide injunction. Under this Court’s recent guidance in *Trump v. CASA, Inc.*, the extraordinary remedy of a facial injunction is deeply disfavored, particularly where—as here—the statute

has many constitutional applications. 606 U.S. 831, 837 (2025). *Amici* States have a profound interest in ensuring that the First Amendment remains a shield for individual liberty without becoming a sword that dismantles the States’ traditional police power to provide for the safety of their neighborhoods.

For these reasons, and those reasons argued by Petitioner State of Missouri, this Court should grant certiorari to reverse.

ARGUMENT

I. THE HALLOWEEN SIGN REQUIREMENT IS A CONSTITUTIONAL REGULATION OF CONDUCT THAT IMPOSES ONLY AN INCIDENTAL BURDEN ON SPEECH.

The Eighth Circuit erred from the start by starting its analysis as a content-based speech restriction rather than merely a law that incidentally burdens speech. By characterizing Missouri’s sign mandate as a standalone, content-based speech restriction, the Eighth Circuit ignored the statutory context that gives the requirement its constitutional character. Section 589.426 is not a speech code; it is a conduct code.

Indeed, Missouri’s law is a targeted exercise of the State’s police power designed to regulate the physical interactions between recidivist sex offenders and children during a unique, door-to-door holiday. Under this Court’s longstanding precedents, a statute that regulates conduct—even if it requires the use of language to effectuate that regulation—is subject to a far more deferential standard of review than the strict scrutiny applied by the court below.

***A. The Mandate is Integral to Regulating
Aimed at Proscribing Harmful Conduct.***

It is a long-recognized principle that “the First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011). When “‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.” *United States v. O’Brien*, 391 U.S. 367, 376 (1968).

The “nonspeech” element here is the physical contact between a registered sex offender and children participating in Halloween. The Missouri Legislature did not pass § 589.426 because it disliked the message of registrants’ decorations or their silence; it passed the statute because “[s]ex offenders are a serious threat in this Nation.” *McKune v. Lile*, 536 U.S. 24, 32 (2002) (plurality opinion). The statute is a package of conduct-based requirements: registrants must stay inside, turn off their lights, and—crucially—notify the public that they are not participating.

The requirement to post a sign stating “No candy or treats at this residence” is the functional equivalent of a “No Trespassing” sign or a “Closed” sign on a business. It is a verbal act that defines the boundaries of permissible physical conduct. This Court has consistently held that the government may compel such speech when it is “incidental to” the regulation of conduct. See *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 62 (2006) (“FAIR”).

In *FAIR*, this Court upheld the Solomon Amendment, which required law schools to give military recruiters access to their campuses. *Id.* at 70. The schools argued that they were being compelled to speak by sending emails and posting notices on behalf of the recruiters. *Id.* at 61–62. This Court disagreed, recognizing that the compelled speech was merely “incidental to the Solomon Amendment’s regulation of conduct.” *Id.* at 62. The same logic applies here. Missouri is regulating the conduct of Halloween-related interactions. The sign is the mechanical tool by which that regulation is enforced at the doorstep.

B. The Eighth Circuit Erred by Divorcing the Sign from its Functional Purpose.

Treating a sign that notes “no candy or treats” are present for minor trick-or-treaters as if it were an ideological billboard is an error. “No candy or treats” is a purely factual, functional directive. It carries no more ideological weight than a sign required by a health department stating “Employees Must Wash Hands” or a building code requirement for “Exit” signs. Neither of which are compelled speech requiring heightened scrutiny.

When the government regulates a specific activity, it necessarily has the power to require the disclosures that make that regulation effective. For example, the government can prohibit price-fixing and then require a company to disclose its prices to the public. See *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949). So too can Congress prohibit employers from discriminating in hiring by requiring removal of a “White Applicants Only” sign. See *FAIR*, 547 U.S. at 62 (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 389 (1992)).

The *Amici* States often employ “speech-as-conduct” regulations to ensure public safety. We require hazardous materials to be labeled and professionals to display their licenses. *See Natl. Inst. of Fam. and Life Advocates v. Becerra*, 585 U.S. 755, 768 (2018) Those are “speech” in the most literal sense, but they are “conduct” in the constitutional sense. And even conduct that incidentally involves speech is afforded lesser scrutiny than purely content-related speech restrictions. *Id.* Providing facts and information necessary for an “orderly society” does not violate the First Amendment. *United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995).

Several circuits have acknowledged that certain government-imposed requirements, including as to sex offenders, do not offend the First Amendment. *See, e.g., Book People, Inc. v. Wong*, 91 F.4th 318, 339 (5th Cir. 2024) (citing *United States v. Arnold*, 740 F.3d 1032, 1035 (5th Cir. 2014)). There appears to be little doubt that sex offenders can be prohibited from participating in Halloween trick-or-treating. And this Court has recently reaffirmed that “When speech has both protected and unprotected features [] ‘the unprotected features of the speech are, despite their [communicative] character, essentially a ‘nonspeech’ element’ for purposes of the First Amendment.” *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 492 (2025) (cleaned up) (quoting *R.A.V.*, 505 U.S. at 386). The extra safety precaution of mandating a sign to ensure the public has fair warning of that prohibition is much more aligned with standard sex offender related regulations than protected speech.

By focusing on the *content* of the sign rather than the *conduct* of the holiday, the Eighth Circuit

effectively created a speech-only vacuum for Halloween night. But like the ghosts, vampires, and witches that trick-or-treaters may dress up as, that speech-only vacuum does not exist. Indeed, on that night, a house with its lights on and no sign is not a silent participant; in the context of the holiday, it is inviting children to approach. The State has the power to mandate a factual “No” to ensure preventing a physical interaction that it has every right to prohibit.

C. The Statute Satisfies the O’Brien Test for Incidental Burdens.

Because the sign mandate is, at its heaviest, an incidental burden on speech, the most stringent scrutiny applied to the law should be the four-part test set forth in *United States v. O’Brien*; cf. *Free Speech Coalition*, 606 U.S. at 495. The Missouri statute passes this test with ease.

First, the regulation is within the constitutional power of the Government. There can be no doubt that the States possess the “power to protect the health and safety of its citizens,” including to protect children from sexual predators. See *Smith v. Doe*, 538 U.S. 84, 93–94 (2003) (quotation omitted).

Second, it furthers a “substantial governmental interest” that is “unrelated to the suppression of free expression.” *O’Brien*, 391 U.S. at 377. Missouri’s interest is child safety; it is not trying to suppress the registrant’s views on Halloween. Indeed, the registrant is free to express any opinion he wishes about the law, the holiday, or the State—provided they post the functional notice required for safety.

Third, the incidental restriction on First Amendment freedoms is “no greater than is essential to the furtherance of that interest.” *Id.* The Eighth Circuit criticized the mandate for being too broad, but in the context of *O’Brien*, narrow tailoring does not require the least restrictive means. *Id.* It requires that the regulation not “burden substantially more speech than is necessary.” *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

The sign mandate is remarkably narrow: it applies only to a specific class of high-risk individuals, only on a specific night, and only during specific hours. It requires only seven true words. To suggest, as the Eighth Circuit did, that Missouri should instead rely on a website or a general media campaign is to ignore the reality of how safety works. Parents walking down a street with a six-year-old cannot be expected to pre-check every house along their expected path or paths. A physical, on-site disclosure provides much more protection.

Applying strict scrutiny to this conduct-centric regulation would prevent Missouri from “combating crime and other negative secondary effects caused by the presence of” sex offenders on the trick-or-treating circuit. *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 291 (2000) (plurality op.). The sign mandate is a common-sense safety requirement that regulates how a registrant interacts with the community during a door-to-door event. It is a regulation of conduct, and it is entirely constitutional.

CONCLUSION

This Court should grant *certiorari* to reverse the Eighth Circuit's judgment and vacate the facial injunction.

Respectfully submitted,

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