

**In the
Supreme Court of the United States**

CATHERINE L. HANAWAY, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF MISSOURI, AND
JAMES HUDANICK, IN HIS OFFICIAL CAPACITY AS CHIEF
OF POLICE OF THE CITY OF HAZELWOOD, MISSOURI,
Petitioners,

v.

THOMAS L. SANDERSON,
Respondent.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit*

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Respondent questions whether Missouri has a compelling interest in protecting children from sex offenders on Halloween. Opp. 13–15. However, “[i]t is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’” from sex offenders is “compelling.” *New York v. Ferber*, 458 U.S. 747, 756–57 (1982). And this Court has rightly recognized that “[s]ex offenders are a serious threat in this Nation.” *Conn. Dep’t of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003).

Unfortunately, the lower courts displayed jurisprudential confusion in enjoining Missouri’s sensible law requiring sex-offenders to post signs confirming their non-participation in Halloween. Despite authority from the Fifth Circuit confirming that mandated sex-offender disclosures do not qualify as compelled speech, *see* Pet. 10–11, the Eighth Circuit found Missouri’s limited disclosure requirement unconstitutional, App. 11a. If allowed to stand, the Eighth Circuit’s rationale will pave the way for future challenges to sex-offender disclosure statutes.

In opposing certiorari, Respondent asserts that the First Amendment dooms a range of sex-offender disclosure laws. *See* Opp. 10–11. True, as Respondent observes, the Eighth and Eleventh Circuits agreed with his view—and rejected the Fifth Circuit’s approach. *See* Opp. 6–10; *see also* App. 7a–8a; *McClendon v. Long*, 22 F.4th 1330, 1337 (11th Cir. 2022). But Respondent identifies no vehicle issue that

prevents this Court from resolving that disagreement and providing clarity to the law governing sex-offender disclosure statutes. The Court should grant certiorari.

ARGUMENT

I. Courts are split on whether sex-offender notifications qualify as compelled speech.

Respondent all but acknowledges that a circuit split exists; he just disputes its nature. Opp. 7–9 (suggesting “some tension” exists). Despite Respondent’s best melding efforts, the lower courts’ decisions remain incompatible.

On the one hand, the Fifth Circuit has held that the disclosure requirements codified in the Sex Offender Registration and Notification Act (SORNA) do not qualify as compelled speech. *See United States v. Arnold*, 740 F.3d 1032, 1033–35 (5th Cir. 2014). Importantly, SORNA requires offenders to describe their appearance, where they live, their job, and the nature of their offence. *See* 34 U.S.C. §§ 20913–20914. Nonetheless, the Fifth Circuit saw no compelled-speech problem: It recognized that the purely factual disclosures did not require an offender to affirm a message he disagrees with. *Arnold*, 740 F.3d at 1034–35; *accord Book People, Inc. v. Wong*, 91 F.4th 318, 339 (5th Cir. 2024) (reaffirming governments can require sex offenders to disclose their status); *Crist v. Florida*, 419 So. 3d 183, 197–98 (Fla. Dist. Ct. App. 2025) (en banc) (rejecting a challenge to sex-offender status being printed on government identification because it was not “a form of expressive conduct” (quoting

Fowler v. Stitt, 676 F. Supp. 3d 1094, 1105 (N.D. Okla. 2023)).

In contrast to the Fifth Circuit’s approach, the Eighth and Eleventh Circuits held that requiring sex offenders to disclose their nonparticipation in Halloween compels speech in violation of the First Amendment. *See* App. 7a–8a; *McClendon*, 22 F.4th at 1337. Yet, in both of those cases, individuals did not even have to disclose their status as a sex offender. *See* App. 6a; *McClendon*, 22 F.4th at 1333. If the Eighth and Eleventh Circuits are right, then the Fifth Circuit must be wrong.

This Court should grant review and resolve this split.

II. The decision below misapplied this Court’s compelled-speech precedent.

In defending the decision below, Respondent bungles two lines of this Court’s precedent.

1. To start, Respondent repeats the Eighth Circuit’s error by divorcing the conduct restrictions in the Halloween statute from the Halloween-notice rule. Respondent correctly acknowledges that “the State’s [Halloween] *conduct* restrictions have no expressive aspect,” but then oddly suggests that the Halloween-notice rule is a “separate provision” aimed at speech. Opp. 11. In particular, Respondent objects that posting such a sign “effectively tell[s] his neighbors he is dangerous to children.” Opp. 12.

However, the Halloween-notice requirement is not a separate part of the statute—but rather one part of the statute’s comprehensive regulatory scheme. Mo. Rev. Stat. § 589.426.1; *see also* Pet. 6–7. For statutes

like this one, “where conduct and not merely speech is involved,” this Court judges the speech restriction “in relation to the statute’s plainly legitimate sweep.” *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

As Respondent acknowledges, the State can lawfully “prevent [him] from participating in Halloween,” as it has done with this Halloween statute. Opp. 15.¹ The notice requirement derives from these uncontested conduct restrictions. See *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949). Therefore, the Halloween-notice rule is part of a broader regulatory scheme governing *conduct*—and not aimed at expression. It simply does not require Respondent to speak a viewpoint to which “he does not adhere.” *Contra* Opp. 12 (quoting App. 31a). Because the burdens on speech imposed by the Halloween-notice requirement are merely incidental to conduct regulations, the Eighth Circuit erred in applying strict scrutiny to it. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc. (FAIR)*, 547 U.S. 47, 62–63 (2006).

2. Respondent also misunderstands this Court’s compelled speech precedents—which distinguish between compelled ideological messages and mere *factual* disclosures. Pet. 14–16. Because unchallenged Missouri laws prohibit Respondent from participating in Halloween—requiring him to disclose

¹ Respondent questions whether his criminal conviction under the Halloween statute is valid under state law. Opp. 3–4. To be clear, he pleaded guilty and never challenged his conviction. App. 25a. This conviction is unquestionably valid and final. *Caspari v. Bohlen*, 510 U.S. 383, 390–91 (1994).

that fact to passersby is merely a factual disclosure. *See* Pet. 6.

Respondent nevertheless insists that this case involves compelled speech, which triggers strict scrutiny. Opp. 12–13. But courts must review factual disclosures by their plain terms. *Cf. Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985). Only if the notice does not “relate[]” to the other restrictions should courts look beyond the factual disclosures. *See Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 768–69 (2018). And here, forcing Respondent to convey non-participation in Halloween merely reflects Respondent’s state-law conduct obligation. That “is simply not the same as forcing a student to pledge allegiance, or forcing a Jehovah’s Witness to display the motto ‘Live Free or Die.’” *FAIR*, 547 U.S. at 62.

Respondent next attempts to distance the Halloween-notice rule from reporting requirements (like SORNA’s) because the sign is displayed for the public—whereas other disclosures are made to the government, which may then “itself publish” the information. Opp. 12 (quoting *Riley v. Nat’l Fed’n of Blind of N.C., Inc.*, 487 U.S. 781, 800 (1988)); *see also* Opp. 7–9. Although Respondent cites *Riley*, this reliance is misplaced. The Court’s discussion of an ability to make disclosures to the government (as opposed to the public) was merely part of the least restrictive means analysis. *Riley*, 487 U.S. at 800–01. This Court has made clear that the First Amendment analysis does not turn on whether or not there is “disclosure to the general public.” *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 616 (2021) (quoting *Shelton v. Tucker*, 364 U.S. 479, 486 (1960)); *see, e.g.*,

FAIR, 547 U.S. at 61–62 (law schools did not have to disclose military recruiter status to the government but had to permit military recruiters access); *Wooley v. Maynard*, 430 U.S. 705, 707 (1977) (license plate displayed state motto to the public). And where courts have uniformly upheld sex offender disclosures to registries, *see, e.g., Arnold*, 740 F.3d at 1035, and this Court has upheld States’ public disclosure of sex offender registries, *Conn. Dep’t of Pub. Safety*, 538 U.S. at 7–8, any attempt to distinguish this case based on *whom* the disclosure is made to is unpersuasive, *see Bonta*, 594 U.S. at 616. “[D]issemination of truthful information”—whether indirectly by the government or directly by the sex offender—about sex offender status “in furtherance of a legitimate governmental objective” is permissible under the First Amendment. *Smith v. Doe*, 538 U.S. 84, 98 (2003).

Moreover, *Riley*’s rationale is inapplicable here. The obligation at issue in *Riley*—to disclose charitable contribution percentages—burdened the speaker “with unwanted speech during the course of a solicitation.” 487 U.S. at 800. Here, it is uncontroverted that the Halloween-notice rule cannot burden Respondent’s Halloween participation because he *cannot* participate in Halloween. Mo. Rev. Stat. § 589.426.1; *see also* Opp. 15 (acknowledging as much).

At bottom, this Court has explained that the touchstone of compelled speech is whether the government wishes to “coopt an individual’s voice for its own purposes.” 303 *Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023). Try as he might, Respondent cannot identify an ideological message the Halloween-notice rule forces him to speak. *See* Opp. 10–14. Rather, as

Respondent made clear at trial, he just “want[s] to hand out candy.” App. 78a; *see also* Opp. 2–4 (detailing his desire to set up Halloween displays). The lower courts were wrong to view Respondent’s challenge through a compelled speech lens. Doing so “trivializes the freedom protected in *Barnette* and *Wooley*.” *FAIR*, 547 U.S. at 62.

The Court should grant review and reverse.

III. This case provides a clean vehicle for addressing a matter of national importance.

Respondent offers a few arguments contesting this case’s certworthiness. Each fails.

First, Respondent questions whether this case is a good vehicle to settle the standard of review for sex-offender disclosure requirements. Opp. 15–16. Respondent notes that the District Court issued an alternative holding that the Halloween-notice rule would not survive intermediate scrutiny. App. 36a n.9. But the Eighth Circuit addressed only strict scrutiny. App. 8a–11a. If this Court identifies the correct standard of review, it can either apply that standard itself or give the Eighth Circuit the opportunity to apply the correct standard in the first instance. That is not a vehicle problem, but something this Court has done many times. *E.g.*, *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 76–77 (2022); *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 314 (2013).

Under either approach, Missouri has a good chance of prevailing if this Court clarifies that strict scrutiny does not apply. The Halloween-notice rule applies

quite narrowly—only on Halloween night, only during specific hours, and only to sex offenders. Mo. Rev. Stat. § 589.426.1. And Missouri substantiated its governmental interests below through police officer testimony that the Halloween-notice requirement is important for helping police detect sex offenders who are ignoring the law and participating in Halloween. App. 19a; *see also* App. 148–49a, 173a, 175a–76a. That is more than enough to satisfy any appropriate standard of review. *See McCullen v. Coakley*, 573 U.S. 464, 486 (2014).

Second, Respondent suggests a ruling in this case would not settle all future questions about sex-offender disclosure statutes. Opp. 16. True, sex-offender disclosures exist in a variety of contexts: from state registries to driver licenses to Halloween-notice requirements. *See* Pet. 20–22. In all these contexts, courts have struggled with *how* to analyze sex-offender disclosures under this Court’s First Amendment jurisprudence. *See* Pet. 20–22 (collecting cases). This case embodies this confusion. Both courts below focused on the “verbatim” nature of the Halloween-notice sign without critically analyzing whether the rule requires the sex offender to propagate an ideological message protected by the First Amendment. App. 7a (emphasis omitted); *accord* App. 31a. This case offers this Court an important chance to clarify the law based on recurring and uncontroverted facts: sex-offender status and a required public disclosure based on that status.

Third, Respondent discounts this case’s importance by suggesting the approach of the Eighth and Eleventh Circuits does not undermine sex-offender registries. Opp. 14–15. Missouri hopes

Respondent is right, but there is reason for doubt. Under a state’s sex-offender registry, a sex offender must provide his “name,” “Social Security number,” “address,” employer or learning institution, “license plate number” and vehicle description, information relating to foreign travel, and “[a]ny other information required by the Attorney General.” 34 U.S.C. § 20914. As with the Halloween-notice requirement, registrants “must provide” this information. *United States v. Kebodeaux*, 570 U.S. 387, 397 (2013). Thus, if left in place, the Eighth Circuit’s rationale would seemingly spell trouble for other sex-offender disclosure statutes.

Finally, Respondent makes the remarkable suggestion that Missouri lacks a compelling interest in protecting children from sex offenders on Halloween night. Opp. 14 (suggesting that “State failed to substantiate” that sex offenders pose “an ‘especially serious’ threat . . . on Halloween”). Respondent claims a lack of empirical evidence that sex offenders are dangerous on Halloween. Opp. 14. But to start, this case has broad implications about whether and how States can regulate sex offenders *generally*—not just on Halloween. Pet. 19–20. In any event, this Court has recognized that sex offenders are uniquely dangerous because of their tendency to re-offend. *See Kebodeaux*, 570 U.S. at 395–96; *McKune v. Lile*, 536 U.S. 24, 33 (2002) (plurality op.). And as sixteen other States have recognized in their amicus brief, common sense suggests sex offenders are a threat on Halloween night. States’ Amicus Br. 8–9. After all, Halloween is the night when children are most likely to approach sex offenders’ doors. Whether Missouri can enforce rules designed to keep children

away from those doors is undoubtedly an important question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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