No. 20A_______

In the Supreme Court of the United States

STATE OF LOUISIANA,

Applicant,

v.

TAZIN ARDELL HILL

Respondent.

EMERGENCY APPLICATION FOR A STAY PENDING THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI

To the Honorable Samuel A. Alito
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Fifth Circuit

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PARTIES TO THE PROCEEDING

- The applicant (the appellant below) is the State of Louisiana, in its sovereign capacity as a State.
- The respondent (the defendant-appellee below) is Tazin Ardell Hill, an individual.

RELATED PROCEEDINGS

Louisiana Supreme Court (decision immediately below):

- *State v. Hill*, 2020-0323 (La. 10/1/20), 2020 WL 6145294; attached as Appendix A.

Louisiana District Court:

- *State v. Hill*, La. 15th Jud. Dist. Ct., no. 160634, Division "K" (10/30/2019); attached as Appendix A.

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TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Under Supreme Court Rule 23, 28 U.S.C. § 2101(f), and the All Writs Act, the State of Louisiana moves for an emergency stay of the Louisiana Supreme Court's judgment pending the disposition of a petition for a writ of certiorari. The Louisiana Supreme Court held that two critical provisions of Louisiana's sex-offender registry laws violated the First Amendment and struck them down. Those laws (1) require some convicted sex offenders to obtain and carry a State ID bearing the words "SEX OFFENDER" and (2) prohibit sex offenders from fraudulently altering those IDs. *See* La. Rev. Stat. 40:1321(J); La. Rev. Stat. 15:542.1.4(C). The Louisiana Supreme Court held both of those laws invalid under the First Amendment because, it reasoned, they impermissibly compelled Defendant Tazin Hill's speech.

Louisiana needs immediate relief from this Court. The decision below threatens irreparable public-safety harms: Louisiana now can neither protect its citizens from sex offenders by requiring them to carry a marked ID nor prosecute those sex offenders—like Hill—who fraudulently remove the sex-offender designation. Without this Court's intervention, sex offenders can alter their IDs or forgo carrying them altogether. That makes Louisiana law enforcement and the public less able to identify sex offenders moving through the community, with potentially life-threatening consequences. Granting a stay, in contrast, maintains the status quo until this Court can consider Louisiana's forthcoming petition.

A stay is warranted because the Louisiana Supreme Court's analysis of the First Amendment is deeply flawed and sharply conflicts with this Court's precedent holding (1) the First Amendment does not protect fraud, and (2) information on a State ID falls outside the ambit of the First Amendment because it is government speech that is neither publically displayed nor endorsed by the person bearing the ID. The Louisiana Supreme Court's decision also deepens a split with other courts about the scope of the First Amendment's protections.

For these reasons, the Court is likely to grant certiorari and Louisiana is likely to succeed on the merits. Louisiana respectfully asks for a stay to issue as soon as possible.

OPINIONS BELOW

A transcript of the district court's oral declaration that La. Rev. Stat. 15:542.1.4(C) and La. Rev. Stat. 40:1321(J) are unconstitutional is unreported and is reproduced at Appendix (App.) 52a–53a. The Louisiana Supreme Court's opinion affirming the district court's order is reported at *State v. Hill*, 2020-0323, 2020 WL 6145294 (La. 10/1/20), and is reproduced at App. 4a–33a. The Louisiana Supreme Court's opinion denying rehearing is reported at *State v. Hill*, 2020-00323, 2020 WL 7234459 (La. 12/9/20), and reproduced at App. 3a. The Louisiana Supreme Court's denial of the State's motion to stay the judgment pending disposition of a petition for a writ of certiorari is not reported and is reproduced at App. 1a–2a.

JURISDICTION

This Court has jurisdiction over this application under 28 U.S.C. §§ 1257(a),

1651(a), and 2101(f).

STATEMENT OF THE CASE

When he was 32 years old, Defendant Tazin Hill repeatedly had sex with a 14-year-old girl for approximately three months. For those crimes, he pleaded guilty in 2010 to committing "felony carnal knowledge of a juvenile." La. Rev. Stat. 14:80. Upon his release from custody, he became subject to Louisiana law mandating that he obtain and carry a State-issued identification card marked with the words "SEX OFFENDER" in capital letters.[1] La. Rev. Stat. 40:1321(J).

In late 2016, Hill reported to the Lafayette Parish Sheriff's office to update his address information. During Hill's visit, an officer observed that the words "sex offender" had been removed from Hill's ID. Hill claimed the letters simply "came off"—but close inspection revealed that visible transparent tape had been placed over the spot where the designation was supposed to appear.

Four months later, the State issued a bill of information against Hill, charging him with altering his ID to conceal the designation that he was a registered sex offender. Louisiana law forbids fraudulently altering a sex offender's ID card.[2] La. Rev. Stat. 15:542.1.4(C). The purpose of such ID cards is to allow

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[1] The identification card is identical to a driver's license; however, it is available to individual who do not wish to or cannot drive. *See* La. Rev. Stat. 40:1321(E); La. Dept. Pub. Safety Office of Motor Vehicles, Identification Requirements, https://www.powerdms.com/public/LADPSC/documents/368154 (providing administrative Guidance on Identification Requirements).

[2] Although other Louisiana laws penalize fraudulently altering State IDs, Louisiana has a heightened penalty for fraudulently altering an ID with a sex-offender designation. *See* La. Rev. Stat. 14:70.7; La. Rev. Stat. 40:1131.

Louisianans, including law enforcement, to quickly verify whether a person is a convicted sex offender.

Hill moved to quash the indictment, arguing that two separate statutes were facially unconstitutional: (1) the prohibition on fraudulently altering a sex offender's ID, La. Rev. Stat. 15:542.1.4(C); and (2) the requirement that sex offenders carry a marked ID in the first place, La. Rev. Stat. 40:1321(J). He contended that the words "sex offender" on his license constituted compelled speech forbidden by the First Amendment. The District Attorney for the Fifteenth Judicial District of Louisiana and the Louisiana Attorney General opposed Hill's motion.

The district court held a hearing and granted Hill's motion to quash, declining to provide written reasons for its decision. However, the district court orally explained that having the words "sex offender" written on an ID card was "not the least restrictive way to further the State's legitimate interest of notifying law enforcement." App. 53a. The court suggested that Louisiana could use a more discreet designation. At the end of the hearing, the court declared both La. Rev. Stat. 40:1321(J) and La. Rev. Stat. 15:542.1.4(C) unconstitutional under the First Amendment. App. 52a–53a.

Because the State district court struck down two Louisiana statutes, Louisiana law allowed the State to appeal directly to the Louisiana Supreme Court. After briefing and oral argument, a split decision of the Louisiana Supreme Court affirmed the district court's judgment and held that the "sex offender" designation "constitutes compelled speech and does not survive a First Amendment strict

scrutiny analysis." App. 5a. One Justice dissented, reasoning that a "sex offender" designation on a State ID was "not First Amendment protected speech," but rather was "the embodiment of government speech." App. 31a.

The State moved the Louisiana Supreme Court for rehearing, pointing out that the Court had failed to grapple adequately with the State's argument that the First Amendment does not protect fraud, among other arguments. On December 9, 2020, the Louisiana Supreme Court denied the State's motion for rehearing, over the dissent of two Justices. That same day, the State moved the Louisiana Supreme Court for a stay pending disposition in this Court. The Louisiana Supreme Court denied the State's request for a stay on December 10, 2020.[3]

Because Louisiana has exhausted all other avenues for relief, it now seeks an emergency stay of the Louisiana Supreme Court's judgment from this Court, pending resolution of a forthcoming petition for a writ of certiorari.

REASONS FOR GRANTING THE APPLICATION

"A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment." S. Ct. R. 23(2). To justify a stay, "[t]here must be a reasonable probability that certiorari will be granted (or probable jurisdiction noted), a significant possibility that the judgment below will be reversed, and a likelihood of irreparable harm (assuming the correctness of the applicant's position) if the judgment is not stayed." *Barnes v. E-Sys., Inc. Grp. Hosp.*

[3] For this reason, the "relief sought is not available from any other court or judge." S. Ct. R. 23(3).

Med. & Surgical Ins. Plan, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers); *see also San Diegans For Mt. Soledad Nat. War Mem'l v. Paulson*, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers). In close cases, "it may [also] be appropriate to 'balance the equities,'" weighing the potential harms and benefits of a stay to both sides. *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers). Each of these factors favors granting a stay here.

I. THE COURT IS LIKELY TO GRANT CERTIORARI AND REVERSE THE JUDGMENT BELOW.

The Louisiana Supreme Court's decision broadly expands the scope of the First Amendment's prohibition on compelled speech at the expense of a State's rights to speak on its own behalf. The court also ruled that the First Amendment prevented the State from prosecuting Hill for fraudulently altering his ID—a large interference with the State's ability to "administ[er]" its "criminal justice system[]," which "lies at the core of [its] sovereign status." *Oregon v. Ice*, 555 U.S. 160, 170 (2009). Those holdings put the Louisiana Supreme Court out of step with this Court's precedent. They also widen a split between lower courts on these issues.

For these reasons, the Court is likely to grant certiorari and reverse the judgment of the Louisiana Supreme Court.

A. The sex-offender designation on Hill's State ID constitutes government speech that implicates no First Amendment concern.

The Louisiana Supreme Court's decision expands the scope of the First Amendment's prohibition on compelled speech at the expense of a State's right to speak on its own behalf. The ramifications of this decision are far reaching.

"When government speaks [on its own behalf], it is not barred by the Free Speech Clause from determining the content of what it says." *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2245 (2015) (citing *Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009)). And this Court has noted that "'persons who observe' designs on IDs 'routinely—and reasonably—interpret them as conveying some message on the *issuer's* behalf.'" *Walker*, 135 S. Ct. at 2249 (quoting *Summum*, 555 U.S. at 471) (emphasis added) (alteration punctuation omitted).

To be sure, a State cannot force a private party to "be an instrument for fostering public adherence to an ideological point of view he finds unacceptable." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). And "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley*, 430 U.S. at 714; a*ccord Hurley v. Irish-Am. Gay, Lesbian, and Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995). This protection extends not only to slogans and ideological speech, but also to facts. *Hurley*, 515 U.S. at 573–74.

But those concerns are irrelevant here because the State ID that Hill fraudulently altered was not compelled speech. This Court has laid out two factors for determining whether the government has impermissibly compelled a private person to be "an instrument" of its message: (1) whether the speech is publicly displayed, like a "billboard," *Wooley*, 430 U.S. at 715 & n.15; and (2) whether a speaker is "closely linked with the expression in a way that makes them appear to

endorse the government message," *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 565 n.8 (2005). Some members of the Court have also analyzed whether "essential operations of government may require" the speech "for the preservation of an orderly society[]—as in the case of compulsion to give evidence in court." *W. Va. St. Bd. Of Educ. v. Barnette*, 319 U.S. 624, 645 (1943) (Murphy, J., concurring). Under any of those three factors, the sex-offender designation is not impermissible compelled speech.

First, Hill's State ID card is not a billboard-like public display. *See Wooley*, 430 U.S. at 717 n.15. Its contents are revealed only occasionally, and then typically in circumstances most likely to further the critical public-safety interests that motivated the Louisiana Legislature to pass the underlying law—such as interactions with law enforcement, potential landlords, employers, or organizations that use volunteers. In this respect, the ID card is a far cry from the New Hampshire automobile license plates bearing the words "Live Free or Die" that this Court deemed to be compelled speech because "New Hampshire's statute in effect requires that [drivers] use their private property as a 'mobile billboard,'" displayed to the public. *Id.* at 715. Rather, the sex-offender designation resembles the words "In God We Trust" displayed on currency, which was not impermissible compelled speech in part because "[c]urrency is generally carried in a purse or pocket and need not be displayed to the public. The bearer of currency is thus not required to publicly advertise the national motto." *Id.* A State-issued ID card—which is also carried around in a purse or pocket—is more analogous to currency than a license

plate. Indeed, all Louisiana drivers' licenses are required by law to include the phrase: "DON'T DRINK AND DRIVE; DON'T LITTER LOUISIANA." La. Rev. Stat. 32:410(A)(3)(a)(ix)(c). The State is no more required to survive a strict scrutiny analysis to place such statements on its IDs than it is to place the sex-offender designation there.

Second, the sex-offender designation is not "readily associated" with Hill because there is no reason to think he *endorses* it. *Wooley*, 430 U.S. at 717 n.15; *Johanns*, 544 U.S. at 565 n.8. Contrary to the Louisiana Supreme Court's reasoning below, speech is not impermissibly compelled simply because it is connected to a private speaker. *See* App. 17a. The question is whether private parties "are closely linked with the expression in a way that makes them appear to *endorse* the government message." *Johanns*, 544 U.S. at 565 n.8 (emphasis added). Sex offenders do not "endorse" the sex-offender designation any more than people with driver's licenses endorse their weight or height or other designs and information listed on those IDs. Indeed, Hill's actions here confirm his desire to *disassociate* himself from that speech, not endorse it.

Finally, including information on a State ID and protecting the public from sex offenders are both essential operations of government—as the Louisiana Legislature has expressly recognized. *See* La. Rev. Stat. 15:540 ("Persons found to have committed a sex offense or a crime against a victim who is a minor have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government."). Courts around the country have also

recognized that including information on IDs and protecting the public from sex offenders are essential operations of government. *See, e.g.*, *Carney v. Okla. Dep't of Pub. Safety*, 875 F.3d 1347, 1354 (10th Cir. 2017) ("[T]he license requirement does not stray from what state governments do each and every day: communicate important information about its citizens on state-issued IDs."); *United States v. Arnold*, 740 F.3d 1032, 1035 (5th Cir. 2014) ("When the government, to protect the public, requires sex offenders to register their residence, it conducts an essential operation of the government, just as it does when it requires individuals to disclose information for tax collection."); *United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995) (concluding that IRS summons are essential operations of government).

Thus, all three factors militate in favor of concluding that the contents of Hill's State ID are government speech not subject to First Amendment protections. By re-characterizing information on a State ID as the ID holder's speech, the Louisiana Supreme Court dramatically expanded the scope of the First Amendment's compelled-speech protections, at the expense of a State's right to speak for itself and conduct essential operations.

It is difficult to overstate the importance of the Louisiana Supreme Court's expansion of the compelled-speech doctrine. The decision unsettles Louisiana's statutory scheme to monitor sex offenders and protect the population from them. When a sex offender is released from custody, he must provide "his name, residential address, a description of his physical characteristics . . . and a photograph" to "every residence or business" near his residence. La. Rev. Stat.

15:542.1; *see also* La. Rev. Stat. 15:542.1.5. The Louisiana Supreme Court failed to provide any rationale that would explain why the First Amendment allows the State to require sex offenders to provide registration information to their neighbors and publish information in the local newspaper but does not allow the State to place a sex-offender designation on a State ID. Every State maintains a public sex-offender registry. The Louisiana Supreme Court's reasoning puts Louisiana out of step with every other jurisdiction in the nation, endangers Louisiana's and other States' residents, and provides a rationale for challenging other States' sex-offender notification laws.

B. The First Amendment does not prohibit a State from prosecuting a person for fraudulently altering a State ID.

The Louisiana Supreme Court erred by invoking the First Amendment to strike down a statute prohibiting fraudulent alteration of a State ID. The State charged Hill with violating a law that provides: "Any person . . . who is in possession of any document required by . . . [La. Rev. Stat.] 40:1321(J) that has been altered *with the intent to defraud* . . . [shall be punished]." La. Rev. Stat. 15:542.1.4(C) (emphasis added). Intent to defraud is a necessary element of the offense.

It is well established that "the First Amendment does not shield fraud." *Illinois, ex rel. Madigan v. Telemarketing Associates*, 538 U.S. 600, 612 (2003) (explaining that fraudulent charitable solicitation is unprotected speech). This is fatal to Hill's challenge to the fraudulent-alteration provision. The government's

power "to protect people against fraud" has "always been recognized in this country and is firmly established." *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948). Frauds may be "denounced as offenses and punished by law." *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939). Justice Story defined "fraud" as "any cunning, deception, or artifice used to circumvent cheat, or deceive another." 1 J. Story, Equity Jurisprudence § 186, pp. 189–190 (1870). The State alleges that Hill sought to deceive members of his community when he intentionally removed the sex-offender designation. To convict Hill, the State must convince a unanimous jury beyond a reasonable doubt that he altered his license with fraudulent intent.

The Louisiana Supreme Court did not discuss or even cite any of this Court's controlling precedent when it incorrectly held that the First Amendment protects fraudulently defacing government property. App. 24a–25a. When rejecting the State's arguments, the court relied heavily on *Wooley* and *United States v. O'Brien*, 391 U.S. 367 (1968)—but neither of those cases has anything to do with fraud. As the State pointed out in its motion for rehearing, the Louisiana Supreme Court incorrectly suggested that the *State* relied on *Wooley* and *O'Brien* to argue that the First Amendment does not protect fraud. When arguing the point in its original brief before the Louisiana Supreme Court, the State relied on *Illinois, ex rel. Madigan v. Telemarketing Associates., Inc.*, 538 U.S. 600, 612 (2003), *Donaldson v. Read Magazine*, Inc., 333 U.S. 190 (1948), and *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939), not *Wooley* and *O'Brien*.

Neither *Wooley* nor *O'Brien* is relevant to the issue of whether the First

Amendment protects fraud. The word fraud does not appear in *Wooley*. *Wooley* concerned a message displayed on a New Hampshire license plate, which a Jehovah's Witness found to be "morally, ethically, religiously and politically abhorrent." 430 U.S. at 713. At no point did the Jehovah's Witness attempt to deceive the government or surreptitiously change his license plate. On the contrary, the defacement of the license plate was on full display—available for all to see. And that was the point. The Jehovah's Witness wanted everybody to know that he disagreed with the State's message.

The Louisiana Supreme Court's discussion of *O'Brien* is also irrelevant to the State's fraud argument. In that case, a man climbed up "on the steps of the South Boston Courthouse" and—for all to see—burned his Selective Service certificate. 391 U.S. at 369. He was not seeking to deceive anyone, but in fact wanted people to see him destroy the certificate. Hill, in contrast, did not want anybody to know that he altered his State ID. He certainly did not remove the words "sex offender" on the courthouse steps. And, in any event, this Court ultimately upheld O'Brien's conviction. *Id.* at 386.

The Louisiana Supreme Court's holding—that a statute prohibiting fraudulent alteration of government property must be struck down under the First Amendment—warrants reversal. State courts enjoy broad latitude in interpreting the laws of their own States, but they may not ignore key principles of federal constitutional law when interpreting the federal constitution. And because the Louisiana Supreme Court went out of its way to explain that it was basing its

analysis on the federal constitution, not the State's constitution, *see* App. 6a n.1, there is no adequate and independent state law ground for the Court's decision.

There is a strong likelihood that the State will succeed on the merits before this Court.

C. Even if Louisiana's sex-offender designation on State IDs amounts to compelled speech, the challenged laws survive strict scrutiny.

Even if the designation on Hill's license constitutes compelled speech, that does not end the inquiry. The Court "must also determine whether the State's countervailing interest is sufficiently compelling" to require Hill to comply with the law. *Wooley*, 430 U.S. at 715–16 (citing *O'Brien*, 391 U.S. at 376–77).

This Court has explained that "[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). And so, the Court should consider the challenged laws "a content-based regulation of speech." *Id.* "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

To be sure, "it is the rare case in which a State demonstrates that a speech restriction is narrowly tailored to serve a compelling interest." *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015) (internal quotation marks omitted). "*But those cases do arise*." *Id.* (emphasis added). This is one of those rare cases.

1. Louisiana has a compelling interest in protecting the public from recidivistic sex offenders.

The Louisiana Legislature has declared its sex-offender registration laws to be of "paramount" importance. La. Rev. Stat. 15:540(A). Similarly, this Court has "recognized that there is a compelling interest in protecting the physical and psychological well-being of minors." *Sable Commc'ns of Cal., Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989); *see New York v. Ferber*, 458 U.S. 747, 757 (1982). ("The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.").

The State's interest here is at least as compelling as the government interests this Court has blessed in previous speech cases. The Court "has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons" when necessary to allow "governmental entities to perform their functions." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 341 (2010) (citing *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 683, 684 (1986) (recognizing the State's "interest in protecting minors from exposure to vulgar and offensive spoken language")); *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 129 (1977) (recognizing "[t]he interest in preserving order and authority in the prisons is self-evident"); *Parker v. Levy*, 417 U.S. 733, 759 (1974) (ensuring "the capacity of the Government to discharge its [military] responsibilities" (internal quotation marks omitted)); *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 553, 557 (1973) (reaffirming "the well-established governmental interest in restricting political

activities by federal employees" (internal quotation marks omitted)). As discussed above, requiring sex offenders to report the fact of their conviction on their IDs is essential for state operations and public safety. *See Carney*, 875 F.3d at 1354; *Arnold*, 740 F.3d at 1034–35; *Sindel*, 53 F.3d at 878.

The State's expressed interest in public safety is not limited merely to informing law enforcement of sex offenders' status, but also "to public agencies, *and under limited circumstances to the general public."* La. Rev. Stat. 15:540(A) (emphasis added). Louisiana's interest is broader than the interests of other States that have placed a special code or a letter on sex offenders' licenses to inform *law enforcement* of their status. *See* Ala. Code § 15-20A-18 ("The adult sex offender shall obtain . . . a valid driver license or identification card bearing a designation that *enables law enforcement officers* to identify the licensee as a sex offender." (emphasis added)). Merely putting a letter on the State ID would not satisfy Louisiana's compelling interest in protecting the *public* from sex offenders because, as one court has observed, "the general public most likely would not know what that single letter meant." *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1327 (M.D. Ala. 2019).

The compelling nature of the State's interest cannot be seriously disputed.

2. The challenged laws are narrowly tailored to further Louisiana's interest in protecting the public.

The State may "regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to

further the articulated interest." *Sable*, 492 U.S. at 126. "The First Amendment requires that [a State's law] be narrowly tailored, not that it be perfectly tailored." *Williams-Yulee*, 575 U.S. at 454 (internal quotation marks omitted). "The impossibility of perfect tailoring is especially apparent when the State's compelling interest is . . . intangible . . . ." *Id.*

Under this Court's precedent, a law is narrowly tailored if it (1) actually advances the interests asserted; (2) is reasonably necessary; (3) is not underinclusive; and (4) is not overinclusive. *See Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 228 (1989); *Repub. Party of Minn. v. White*, 536 U.S. 765, 775 (2002).

The challenged laws are narrowly tailored. First, requiring sex offenders to carry the required ID actually advances the State's interest. Giving information to the public and law enforcement through State IDs increases the public's ability to protect itself from dangerous criminals. *See State ex rel. Olivieri v. State*, 2000-0172 (La. 2/21/01), 779 So. 2d 735, 747; *accord State v. I.C.S.*, 2013-1023 (La. 7/1/14), 145 So. 3d 350, 356.

Second, the requirement is reasonably necessary. As the Louisiana Supreme Court has observed in other cases, "unless there [is] registration *and community notification*, sex offenders could remain hidden and thereby increase the risk to public safety." *Olivieri*, 779 So. 2d at 747 (emphasis added); *accord I.C.S.*, 145 So. 3d at 356.

Third, the challenged laws are not underinclusive. "Although a law's underinclusivity raises a red flag, the First Amendment imposes no freestanding 'underinclusiveness limitation.'" *Williams-Yulee*, 575 U.S. at 449 (quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 387 (1992)). And so "[a] State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns." *Id.* In general, "underinclusiveness can raise 'doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.'" *Id.* at 448 (quoting *Brown v. Entm't Merchants Ass'n*, 131 S. Ct. 2729, 2740 (2011)). The designation on State IDs does not ameliorate all the dangers sex offenders present to their community, but the Louisiana Legislature clearly intended to advance its interest in protecting the public.

Finally, a marked State ID does not compel too much speech. The public requires the information to protect itself. For example, a property manager needs to know a sex offender's status when leasing an apartment, or the manager might incur liability if a tenant is raped on the premises. *See Veazey v. Elmwood Plantation Assocs.*, 650 So. 2d 712 (La. 1994); *see also Wallmuth v. Rapides Par. Sch. Bd.*, 813 So. 2d 341 (La. 2002) (reaffirming *Veazey* after statutory amendments to the comparative fault doctrine under Louisiana law). A church or Red Cross facility may need to know a person's status as a sex offender when providing shelter from a storm. *See* La. Rev. Stat. 29:726(E)(14)(c)(i) (prohibiting sex offenders from knowingly being sheltered with other evacuees). People trick-or-treating on

Halloween may need a quick way to verify that their children are safe from predators. *See* La. Rev. Stat. 14:313.1 (prohibiting sex offenders from distributing candy or gifts on Halloween or other public holidays). In short, the marked ID could assist the public in a host of ways. *See, e.g.*, La. Rev. Stat. 15:553 (prohibiting employment for certain sex offenders); La. Rev. Stat. 14:313 (prohibiting wearing of masks, hoods, or other facial disguises in public places). And members of the public who see the information on a sex offender's State ID stand within the broad public-safety zone of interests the statute protects.

At bottom, this is the "rare case" where the State can meet its burden to show that the obtain-and-carry requirement is narrowly tailored to meet a compelling state interest. *Williams-Yulee*, 575 U.S. at 444.

D. The decision below diverged from this Court's precedent and widened a split about what counts as government speech for the purposes of the First Amendment.

As explained, the Louisiana Supreme Court's decision sharply diverged from this Court's precedent, especially about the First Amendment's protection of fraud. And the Louisiana Supreme Court's opinion exacerbates tension with federal circuit-court decisions recognizing that the government and the States have broad rights to speak on their own behalf and conduct essential business. *See, e.g.*, *Carney*, 875 F.3d at 1354; *Arnold*, 740 F.3d at 1035; *Sindel*, 53 F.3d at 878. The opinion is also incompatible with the sex-offender registration schemes in every State.

These concerns also directly implicate federal interests. The federal government has recently placed a sex-offender designation on passports. App. 18a.

The Louisiana Supreme Court's position that the First Amendment tolerates sex-offender designations on passports but not State IDs is untenable. There is no meaningful distinction between the two forms of identification: They both contain language issued by the government that is essential for governmental operations. The Louisiana Supreme Court's reasoning that State IDs are more like license plates than passports is implausible. Drivers affix bumper stickers or vanity plates to their cars precisely to be seen; they are "mobile billboards." *Wooley*, 430 U.S. at 715. But no one gets a customized passport. Government IDs contain the government's speech, and nothing more.

The Louisiana Supreme Court is not the only court to conclude that sex-offender designations on State IDs violate the First Amendment's prohibition on compelled speech. In 2019, a federal district court in Alabama struck down an Alabama statute because it required sex offenders to obtain and carry an ID card with the words "criminal sex offender." *See Marshall*, 367 F. Supp. 3d at 1324–26. The Louisiana Supreme Court here relied heavily on the Alabama court's decision when striking the Louisiana laws.

Because of the national importance of this issue and the widening split between the lower courts, and because the Louisiana Supreme Court struck the State's laws under the auspices of the federal constitution, this Court is likely to grant certiorari. In light of the Louisiana Supreme Court's numerous errors, this Court is likely to reverse.

II. LOUISIANA WILL BE IRREPARABLY HARMED IF THE DECISION BELOW IS NOT STAYED.

When enacting its sex offender registry laws, the Louisiana Legislature observed that protecting the public from recidivistic sexual predators "is of *paramount* governmental interest." La. Rev. Stat. 15:540(A) (emphasis added). The Louisiana Supreme Court itself has repeatedly stated that, "unless there [is] registration and community notification, sex offenders could remain hidden and thereby increase the risk to public safety." *Olivieri*, 779 So. 2d at 747; *I.C.S.*, 145 So. 3d at 356. The Louisiana Supreme Court has also noted that "sex offenders pose a high risk of engaging in sex offenses" and "sex offenders have a high incidence of recidivism." *Id.*

These statements comport with this Court's frequent observations that sex offenders pose a high risk of recidivism. *See, e.g.*, *United States v. Kebodeaux*, 570 U.S. 387, 395–96 (2013) (citing Dept. of Justice, Bureau of Justice Statistics, P. Langan, E. Schmitt, & M. Durose, *Recidivism of Sex Offenders Released in 1994*, 1 (Nov. 2003) (reporting that compared to non-sex offenders, released sex offenders were four times more likely to be rearrested for a sex crime, and that within the first three years following release 5.3% of released sex offenders were rearrested for a sex crime)); *McKune v. Lile*, 536 U.S. 24, 33–34 (2002) (plurality op.); *Smith v. Doe*, 538 U.S. 84, 103 (2003) ("The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class.").

The danger is not theoretical. Children die when recidivistic sex offenders hide their status. For example, in *State v. Langley*, defendant Ricky Langley—a known pedophile with criminal convictions in both Georgia and Louisiana—evaded his parole, concealed his status as a sex offender, and rented a room in a house with children. *State v. Langley*, 2010-969 (La. App. 3 Cir. 4/6/11), 61 So. 3d 747, 751, *writ denied*, 2011-1226 (La. 1/20/12), 78 So. 3d 139. Langley ultimately confessed to molesting and brutally murdering a neighbor's six-year-old boy. *Id.* at 752.

Under the Louisiana Supreme Court's decision, both law enforcement and the public will lack an essential tool for identifying sex offenders in the community who violate the law by, for example, visiting schools or parks, volunteering as a teacher, renting in an area where the individual is not legally permitted to live, coaching youth sports or volunteering at YMCA, or otherwise interacting with children. *See* La. Rev. Stat. 14:91.2; *see also* La. Rev. Stat. 14:313.1; La. Rev. Stat. 15:553; La. Rev. Stat. 14:313; La. Rev. Stat. 15:538. Online registries are insufficient to protect the State's interests in those contexts because people can easily give a false name and deny their status.

Louisiana suffered a record hurricane season this year. Under the State's emergency preparedness laws, "a registered sexual offender shall not knowingly be housed or sheltered in the same area with other evacuees" during a hurricane evacuation. La. Rev. Stat. 29:726(E)(14)(c)(i). Sex offenders "shall be provided shelter or housing in an alternative shelter separate and apart from the general population of evacuees." La. Rev. Stat. 29:726(E)(14)(c)(ii). The absence of sex-

offender ID cards will make it impossible to enforce those provisions reliably, especially in the midst of a hurricane when the ability to check online databases could be limited. This will likely result in sex offenders being housed together with families, right at a time when the State's law enforcement and emergency services are already stretched thin. *See Sex offenders scattered after Katrina*, NBC, (Sept. 21, 2005), https://www.nbcnews.com/id/wbna9426538.

Moreover, the Louisiana Supreme Court's suggestion that the legislature put a less-conspicuous mark identifying sex offenders on State IDs is insufficient because such marks are, by design, less likely to be noticed or clearly understood by the public. *See Marshall*, 367 F. Supp. 3d at 1326. The Louisiana Legislature determined that the "[r]elease of information about sex offenders . . . to public agencies, and under limited circumstances *to the general public*, will further the governmental interest[] of public safety . . . ." La. Rev. Stat. 15:540(A) (emphasis added). The Louisiana Supreme Court's conciliatory observation that other statutes prohibit the fraudulent alteration of government-issued IDs does not alleviate the harm to the State. App. 27a; *see also* La. Rev. Stat. 14:70.7. Given the decision below, sex offenders are no longer required to carry marked IDs *at all*.

The potential harm to registered sex offenders in maintaining the status quo until the State's appeal is resolved is minimal. Louisiana's sex-offender laws have stood for decades. *See* Acts 1992, No. 388, § 1, eff. June 18, 1992 (now codified at La. Rev. Stat. 15:540). If the Court granted a stay, sex offenders would not be able to deface their ID cards and they would remain obliged to obtain and carry those

cards, as they have for years. Those harms are minimal when compared to the risk of sexual predation and crime that will result if this action is left unstayed.

The State has an indisputable interest in keeping its citizens safe and therefore seeks emergency relief from this Court.

CONCLUSION

This Court should stay the Louisiana Supreme Court's decision striking down La. Rev. Stat. 40:1321(J) and La. Rev. Stat. 15:542.1.4(C) under the First Amendment, pending the filing and disposition of a petition for a writ of certiorari.

Respectfully submitted,

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