No. 24-993

In The
Supreme Court of the United States

GABRIEL OLIVIER,
Petitioner,

v.

CITY OF BRANDON, MISSISSIPPI, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Heck v. Humphrey, 512 U.S. 477 (1994) bars civil claims that "necessarily imply" the invalidity of criminal judgments. And when they do, under *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005), such claims may be barred "no matter the relief sought[.]"

The question presented is:

Whether a plaintiff who is found guilty under state law and receives a suspended sentence may challenge the state law's constitutionality in a civil action seeking both damages and prospective injunctive relief, even though the plaintiff failed to challenge the constitutionality of the state law in the underlying state court criminal proceeding.

PARTIES TO THE PROCEEDING

The City of Brandon is a Mississippi municipality. William Thompson[1] is an individual who formerly served as Brandon's police chief. These parties were defendants in the district court, appellees in the Fifth Circuit, and respondents here.

[1] Thompson is not a proper party, since official capacity claims are duplicative of anything aimed at the City and since he no longer serves as police chief. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity."); *Green v. Johnson*, 977 F.2d 1383, 1391 (10th Cir. 1992) ("Brown was properly relieved in his official capacity of his duty to defend when a new warden replaced him.").

STATEMENT OF RELATED PROCEEDINGS

Along with the proceedings listed in the petition (at iii), the following are related to this case:

- *Siders v. City of Brandon, Mississippi*, 130 F.4th 188 (5th Cir. Feb. 26, 2025);
- *Siders v. City of Brandon, Mississippi*, 123 F.4th 293 (5th Cir. Dec. 11, 2024); and
- *Siders v. City of Brandon, Mississippi*, Civil Action No. 3:21-CV-614-DPJ-FKB, 2023 WL 4053414 (S.D. Miss. June 16, 2023).

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INTRODUCTION

Petitioner requests certiorari on two questions but presents them in an illogical order. Logically, the threshold question is whether *Heck* applies only to incarcerated prisoners and, if it does not, whether *Heck* also applies to free-world people seeking prospective injunctive relief. This case – which comes to the Court from an unpublished Fifth Circuit opinion – is not a proper vehicle to address either.

On the first question, the pending petition in *Wilson v. Midland Cty.*, No. 24-672 (Docketed Dec. 20, 2024) directly addresses the incarcerated-prisoner versus free-world debate. If this Court chooses to weigh in, it presumably would accept *Wilson*. That is the route the Fifth Circuit chose when it took *Wilson* en banc in the face of simultaneous rehearing petitions. The Fifth Circuit declined Petitioner's suggested "opportunity" to address both the application and relief issues together.

This Court should too, although it should not entertain the application question at all. There are still Circuits that have not ruled on whether *Heck* is a habeas rule aimed only at prisoners, and Petitioner puts Circuits that have ruled in the wrong camp. The two Circuits that recently went en banc decided by large margins that *Heck* extends beyond a prison's walls. Those decisions uphold this Court's collateral-attack rationale in the interests of federalism and comity.

On the second question, there is no meaningful split whatsoever. Petitioner attempts to create one with an unpublished Tenth Circuit case that includes a single stray sentence about prospective relief. In reality, only the Fifth and Ninth Circuits have sparred over the issue, and the debate remains ongoing in the Fifth Circuit. The Panel decision is correct, but the question presented is far from ripe for review.

Plus, Petitioner is an odd candidate to carry the torch. All he could ultimately obtain is a shot at challenging Brandon's ordinance on the merits. But we know how that story ends, since the Fifth Circuit recently rejected the same constitutional challenge to Brandon's ordinance. Petitioner also failed to adequately present his argument in the district court or the Fifth Circuit, so he should not be allowed to do so here.

This Court should deny the petition.

STATEMENT

The City of Brandon, Mississippi opened an Amphitheater in 2018 to hold live concerts and events. Shortly thereafter, Petitioner traveled to the Amphitheater with a group to "evangelize." The group's evangelism included calling individuals "whores," "Jezebels," "grody," "nasty," "sissies," and other derogatory names over a loudspeaker. ROA.669-71; ROA.398-424. They also held large signs depicting various messages as well as pictures of aborted, blood-covered fetuses. ROA.349-353, 675, 502. These things were done at the Amphitheater's

main intersection, where both vehicular and pedestrian traffic is heaviest, and within feet of a police officer directing traffic. ROA.349-53, 669-71, 674.

Understandably, these activities presented hardships. ROA.294, 296-301, 671. Officers left their traffic posts to prevent fights from breaking out between the group and event-paying attendees. ROA.294, 296-301, 671. Officers also had difficulty hearing radio directions related to traffic control. ROA.294, 296-301, 671. The group further created safety issues because event attendees left the sidewalks and walked in the road to avoid the group who took up residence in the middle of the sidewalk. ROA.294, 296-301, 349-353, 671, 502.

The City passed an ordinance that redirects "protests" and "demonstrations" to a designated protest area (one that is a mere 265 feet away from Petitioner's preferred location) three hours before an event and one hour after. It also bans the use of loudspeakers that are "clearly audible more than 100 feet" from the protest area and requires all signs to be handheld. The restrictions apply "regardless of the content and/or expression" of the protest or demonstration.

In May 2021, Lee Brice and Parmalee held a concert at the Amphitheater. When Petitioner and his group arrived, then-Chief William Thompson spoke with them about the ordinance and provided them a copy. The group proceeded toward the Protest Area, stopped short of the area, had a discussion, and

proceeded to the sidewalk at the intersection of Boyce Thompson Drive and Rock Way in the Restricted Area. ROA.674. At no point did the group attempt to "preach" from the protest area. ROA.674.

A police officer tasked with directing pedestrian and vehicular traffic again told the group to go to the designated area and called Chief Thompson for backup. ROA.674-75. At no point did Petitioner attempt to "evangelize." ROA. 502. Instead, he engaged with the officer while another person in his group used a megaphone. ROA.502.

As Chief Thompson approached, he observed large poster signs, the use of at least one voice amplification device, and attempts to hand out literature to those passing by on the sidewalk. ROA.675. He observed that some in the group had body cameras or other recording devices, conduct common to protester groups. ROA.108. Chief Thompson advised the group to relocate to the designated Protest Area during the restricted period. ROA.675. Failing to adhere to Chief Thompson's command to cease protesting in the Restricted Area and to relocate to the designated Protest Area, Petitioner was arrested and charged with violating the ordinance. ROA.675.

In June 2021, Petitioner appeared in Brandon Municipal Court, with counsel, and entered a nolo contendere plea. ROA.382-84, 675-76. He was found guilty and received a suspended sentence of ten days' imprisonment, a fine, and a year's probation.

ROA.382-84, 675-76. Petitioner paid the fine and did not appeal his criminal conviction.

Rather, Petitioner filed a civil lawsuit against the City and Chief Thompson seeking injunctive and monetary relief. ROA.7-32. The City and Chief Thompson responded with a request that the case be dismissed under *Heck v. Humphrey*, 512 U.S. 477 (1994), or, alternatively, on the merits. ROA.427-58.

The district court entered an order of dismissal. ROA.666-85. In particular, the district court held that Petitioner's claims were barred under *Heck* and did not reach the question of whether the ordinance was a constitutional time, place, or manner restriction. ROA.666-85.

One day before the Court entered its judgment, Petitioner moved to amend his complaint. *Compare* ROA.625 *with* ROA.666. The amendment sought to add a new plaintiff, Spring Siders, who was part of his group at the concert but was not arrested. ROA.659-60. The amended complaint also sought to delete the request for compensatory damages, although it continued seeking nominal damages. *Compare* ROA.23-24 *with* ROA.648-49. Without receiving a ruling on the motion to amend, Petitioner noticed an appeal. ROA.6.

Siders, in turn, filed a substantially similar lawsuit against the City on the same day. A different district judge denied Siders' request for a preliminary injunction. *Siders v. City of Brandon, Mississippi*, 2023 WL 4053414 (S.D. Miss. 2023). Siders, like Petitioner, appealed to the Fifth Circuit.

In Petitioner's appeal, a Fifth Circuit panel affirmed. *Olivier v. City of Brandon, Miss.*, 2023 WL 5500223 (5th Cir. Aug. 25, 2023). The panel held that *Clarke v. Stalder*, 154 F.3d 186 (5th Cir. 1998) foreclosed Petitioner's appeal and explained that Petitioner had not argued "that *Clarke* [wa]s no longer good law[.]" 2023 WL 5500223, at *6. The panel also refused to carve out "an independent exception" like the Ninth Circuit seemingly had done previously. *Id.*

A rehearing request was filed on two issues. First, Petitioner asked whether *Heck* applies to free-world plaintiffs. Rehearing was denied in light the Fifth Circuit's earlier confirmation in *Wilson v. Midland Cty.*, 116 F.4th 384 (5th Cir. 2024) that it does. Second, Petitioner asked a categorical question: "Can the *Heck v. Humphrey* doctrine bar a civil rights plaintiff's claim for prospective relief?" Rehearing also was denied on this issue. *Olivier v. City of Brandon, Miss.*, 121 F.4th 511 (5th Cir. Nov. 14, 2024).

In Sider's appeal, a Fifth Circuit panel likewise affirmed. *Siders v. City of Brandon, Miss.*, 123 F.4th 293, (5th Cir. Dec. 11, 2024). Siders had not been convicted, so there was no *Heck* issue. Instead, the panel addressed whether Brandon's ordinance was a constitutional time, place, or manner restriction and held that Siders could not "show a likelihood of success on the merits." Rehearing was denied by a 15-to-2 vote. *Siders v. City of Brandon, Miss.*, 130 F.4th 188 (5th Cir. Feb. 26, 2025).

Petitioner now seeks certiorari through new counsel while Siders is back in the district court represented by the same counsel she and Petitioner have had since the beginning.

REASONS FOR DENYING THE PETITION

Petitioner seeks certiorari on two issues. There are problems with both. Each reason for denying the petition is addressed in turn.

I. Petitioner mischaracterizes the parties.

Petitioner presents himself as "a Christian" who wishes to peacefully "share[] his faith on public streets[.]" Pet.6. He likewise did so in the district court, claiming he does not hurl insults and speaks only in a conversational tone to people walking by. ROA.21. Video evidence proves otherwise. On multiple occasions, Petitioner has yelled insults at event attendees, including "whore," "Jezebel," "fornicator," "drunkards," and "sissy." ROA.295-301. The conduct caused disturbances that would have resulted in violence had law enforcement not intervened. ROA.293-301.

Group protests are his normal course of action, with individuals in his group having been found guilty of simple assault for harassing citizens and one court even describing their actions as "domestic terrorism." ROA.398-424. The group has targeted, followed, hurled insults at, spit on, harassed individuals, and, at one point, "began closing in" on a couple. ROA.398-424. The court found that the repeated targeted harassment of individuals was not

protected speech and that it could not be converted into protected speech by invoking the name of God or making Biblical references. ROA.398-424.

Besides distorting his own reputation, Petitioner twists the City's. These cases have never been about religious freedom or faith-based hostility. Brandon, Mississippi sits in the heart of the Bible Belt, where it is often said there is "a church on every street corner." *See* Matthew Spandler-Davison, Why We Need More Churches in Small Towns, available at https://www.thegospelcoalition.org/article/why-we-need-more-churches-in-small-towns/ (last visited Jan. 4, 2025). Far from discriminating against those who share the Gospel, Brandon celebrates religious exercise in countless ways. *E.g.*, Mayor's Prayer Breakfast, https://brandonmainstreet.com/event/mayors-prayer-breakfast/ (advertising the City's annual Mayor's Prayer Breakfast) (last visited Jan. 16, 2025).

What these cases are about is Petitioner and Siders' desire to have their preferred method of protest, without regard for the rights or interests of anyone else. As the Fifth Circuit's decision in *Siders* demonstrates, the governing principle is the uncontroversial idea that the Constitution does not provide unlimited freedom for private speakers on government property. *See Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 799 (1985).

II. The *Wilson* petition adequately addresses *Heck*'s applicability to non-prisoners, and *Wilson* was correctly decided.

Petitioner leads with his prospective relief arguments. But relief cannot be ordered absent a valid claim. *Thomas v. EMC Mortg. Corp.*, 499 F. App'x 337, 343 n.15 (5th Cir. 2012) ("[A] request for injunctive relief absent an underlying cause of action is fatally defective."). The Fifth Circuit correctly held that *Heck* bars certain claims, regardless of whether a plaintiff has been released from custody or not.

While Petitioner claims there is an "entrenched split" on this issue, he does not accurately identify the lineup. For example, he places the Eleventh Circuit in the minority with four others despite the Eleventh Circuit often recognizing that it "has not definitively answered the question." *E.g.*, *Topa v. Melendez*, 739 F. App'x 516, 519 n.2 (11th Cir. 2018).[2] Petitioner also does not acknowledge that two other Circuits he places in the minority – the Fourth and Sixth – have both applied *Heck* to noncustodial plaintiffs. *See Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 198 (4th Cir. 2015) ("We have held once—in an unpublished opinion—that *Heck* bars a claim that implies the invalidity of a conviction or sentence even if the claimant is no longer in custody."); *Hobbs v. Faulkner*, 2020 WL

[2] *See also Butler v. Georgia*, 2022 WL 17484910, *4 (11th Cir. 2022) (Rosenbaum, Newsom, & Brasher, JJ.) (explaining that "neither the Supreme Court nor this Court has applied [the Justice Souter] exception in a published opinion").

12933850 (6th Cir. 2020) (rejecting plaintiff's argument "that *Heck* does not apply because he is no longer 'in custody' and thus cannot seek habeas relief").

So what Petitioner calls an entrenched split is really an emerging trend of uniformity. Along with the Fifth Circuit going en banc to confirm *Heck*'s reach, the Seventh Circuit went en banc in 2020 to correct its former error. *See Savory v. Cannon*, 947 F.3d 409 (7th Cir. 2020) (en banc). *Wilson* and *Savory* both had the benefit of considering an aged split yet both reached the same result. Judges in Circuits using the contrary view have begun calling for change, so this Court should give those Circuits the opportunity to course correct like the Seventh Circuit did. *See, e.g., Roberts v. City of Fairbanks*, 962 F.3d 1165 (9th Cir. 2020) (VanDyke, J., dissenting).

If given the opportunity, the minority Circuits likely will follow the Fifth and Seventh Circuits' lead. That is so because, in *Heck*, this Court did not limit the bar to prisoners. Indeed, Justice Scalia's majority opinion directly rejected Justice Souter's contrary view. *See Heck*, 512 U.S. at 490 n.10. The bar spanned to all civil judgments that "necessarily imply the invalidity" of prior criminal judgments. *See id.* at 487.

When lower courts subsequently endorsed the Souter approach, they did so because of a later dissent by Justice Stevens in *Spencer v. Kemna*, 523 U.S. 1, 21 (1998) (Stevens, J., dissenting). The argument was that the Souter and Stevens opinions,

"cobbled together, now formed a new majority, essentially overruling footnote 10 in *Heck*." *See Savory*, 947 F.3d at 420-21.

The Fifth Circuit was never among the courts who subscribed to the cobbling approach. Indeed, in *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000), a panel rejected that theory of judicial-opinion reading. The panel was proven correct in *Muhammad v. Close*, 540 U.S. 749, 752 n.2 (2004), when this Court refused the notion that it had implicitly switched to the Souter view.

There is no reason to go backwards three decades later. The bar was never a habeas rule aimed at prisoners; it instead was a collateral-attack rule. Habeas is but one way that a conviction can be overturned, with there of course being others such as a "revers[al] on direct appeal, expunge[ment] by executive order, [or a] declar[ation of] invalid[ity] by a state tribunal authorized to make such determination[.]" *See Heck*, 512 U.S. at 487. None of these apply to Petitioner, as he entered the functional equivalent of guilty plea in criminal court and proceeded straight to civil court on the very same set of facts.

The question in *Heck* cases is whether a civil judgment would undermine a prior criminal judgment, not whether someone is locked up or out of jail. The Circuits have begun to consistently recognize what this Court originally said in *Heck*, so there is no need to accept certiorari and say it again.

III. Petitioner did not properly present the injunctive relief question below.

Petitioner asks this Court to decide whether *Heck* "bars § 1983 claims seeking purely prospective relief where the plaintiff has been punished before under the law challenged as unconstitutional." Pet.i (emphasis added). But Petitioner has violated the party-presentation rule in several ways. *See United States v. Sineneng-Smith*, 590 U.S. 371, 375-76 (2020) ("[O]ur system is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.") (cleaned up).

To start, Petitioner assuredly did not seek "purely prospective relief." The Fifth Circuit Panel acknowledged that, rather than arguing *Clarke* was wrongly decided, Petition tried to distinguish *Clarke* in briefing and at oral argument by saying he was not requesting both damages and injunctive relief like the *Clarke* plaintiff. That distinction fell apart during argument, when it was pointed out that Petitioner's complaint in fact had requested both forms of relief requested in *Clarke*. *See* Oral Arg. Recording, available at https://www.ca5.uscourts.gov/OralArgRecordings/22/22-60566_8-8-2023.mp3. Any suggestion that Petitioner sought "purely prospective relief" is counter to the record. ROA.24.

What's more is that Petitioner's argument that *Heck* cannot bar his request for prospective relief

was, at best, raised in the district court only in an improper sur-reply. A recap of the parties' motion practice underscores the point.

In the opening motion, the City argued *Heck* barred Petitioner's lawsuit due to the nolo contendere plea and subsequent conviction. ROA.515-16. Particularly, the City argued that success on Petitioner's claims would "necessarily imply the invalidity of the punishment imposed for violating the ordinance." ROA.516. The City emphasized that the *Heck* bar encompassed both declaratory and prospective relief. ROA.516.

In response, Petitioner argued one thing: that *Heck* did not apply because Petitioner was not a prisoner who could pursue habeas relief. *See* ROA.557 ("The [*Heck*] defense is inapplicable for obvious reasons: Olivier is not and has not been a prisoner regarding the claim he brings."). The only arguable mention of any other reason came in an uncited and unsupported footnote. *See* ROA.557 ("Moreover, Olivier is not challenging his conviction in this cause, but the constitutionality of § 50-45 and its continued enforcement against him."). Crucially, there was no attempt to distinguish between *Heck*'s applicability to money damages and injunctive relief or to explain why his claims would not challenge the validity of his conviction.

In reply, the City again explained why *Heck* barred Petitioner's claims and why arguments as to his non-prisoner status failed. ROA.593-94.

Although the City raised no new argument in their reply brief, Petitioner requested leave to file a sur-reply. ROA.587. His request was improperly lodged at the end of his response to a motion for excess pages and did not explain the basis for his request. ROA.587. Over objections, the district court allowed Petitioner to file his sur-reply without any explanation for why it was warranted. ROA.589, 612-13.

In his sur-reply, Petitioner switched gears. Although he paid lip service to his prior argument, his sur-reply seemingly argued he was not challenging his conviction. ROA.615-17. Still, there was no specific argument that *Heck* could not bar his request for prospective relief as argued in the Fifth Circuit.

Then the argument changed yet again on rehearing in the Fifth Circuit. There, Petitioner asked a categorical question: "Can the *Heck v. Humphrey* doctrine bar a civil rights plaintiff's claim for prospective relief?" But the answer is obvious: In *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005), this Court specifically held that, if a civil judgment would undermine a prior criminal judgment, then *Heck* serves as a bar – "no matter the relief sought[.]" (Emphasis added). Any purported Circuit split is on a very different question—what specific type of prospective relief can survive *Heck*.

IV. There is no cert worthy Circuit split on the injunctive relief question.

Whatever might be said about the split on the prisoner versus free-world question, the same cannot be said about the injunctive relief question. Indeed, it is mathematically wrong for Petitioner to suggest there is an "entrenched" split. *See* Pet.23. Petitioner tries to create confusion where none exists by citing the Tenth Circuit's unpublished decision in *Lawrence v. McCall*, 238 F. App'x 393 (10th Cir. 2007). But the strategy is easily dismantled.

Aside from being unpublished, *Lawrence* was a pro se appeal that includes a single passage that "the plaintiffs correctly assert that *Heck* does not bar them from seeking prospective relief[.]" 238 F. App'x at 396. But the court still did not allow the pro se plaintiffs to prevail, and other opinions (published and unpublished) following *Lawrence* make clear that the Tenth Circuit uses *Heck* to bar prospective relief. *See Davis v. Kansas Dept. of Corr.*, 507 F.3d 1246, 1248-49 (10th Cir. 2007); *see also Coleman v. United States District Court of New Mexico*, 678 F. App'x 751 (10th Cir. 2017) ("[I]f he had requested injunctive or declaratory relief, his claims would still be barred under *Heck*[.]").

That is unsurprising, again, because the Tenth Circuit is not at liberty to overrule this Court's recognition in *Edwards v. Balisok*, 520 U.S. 641, 646-47 (1997) and in *Wilkinson* that prospective relief may be barred. Neither are the Fifth or Ninth Circuits.

The pertinent question is not if *Heck* can bar prospective relief but when. Or, to frame it differently, some injunctive relief might "necessarily imply" the invalidity of a criminal conviction while others will not. As Judge Owens explained, this is a fact-specific question that turns on whether the challenge is procedural or substantive. *See Martin v. City of Boise*, 920 F.3d 584, 619 (9th Cir. 2019) (Owens, J. concurring in part and dissenting in part). It is not an issue that should be decided as a broad general proposition but instead on a case-by-case basis.

In that vein, lower courts should have the chance to consider the Ninth and Fifth Circuit decisions and grapple over when injunctive relief "necessarily implies" the invalidity of criminal convictions and when it does not. Petitioner's suggestion of urgency is overblown. *Heck* is a 30-year-old decision, yet Petitioner can cite only a recent debate between the Fifth and Ninth Circuits, as well as an inapplicable Tenth Circuit decision that is unpublished and pro se, to support his request for expedited review.

And even in the Fifth Circuit the question has not sufficiently percolated. The en banc *Wilson* decision addressed injunctions in a footnote. *See Wilson*, 116 F.4th at 398 n.5 ("[A] suit seeking prospective injunctive relief does not implicate *Heck*'s favorable-termination requirement (or, for that matter, *Preiser*'s habeas-channeling rationale)."). It then declined en banc review of the panel's unpublished opinion here by a single vote.

There is no reason to think the Fifth Circuit will not take up the issue again, perhaps in a published case that does not have the presentment problems inherent in this one. *See Olivier*, 121 F.4th at 512 (Richman, C.J., dissenting) (acknowledging the City's argument that "Olivier forfeited his prospective relief arguments by not arguing on appeal 'that the dismissal of his underlying claims was erroneous' and by not 'properly rais[ing] the arguments in the district court'" and explaining that "even [Petitioner's] suit for prospective injunctive relief may be foreclosed on grounds not presently before our court").

V. There are problems with Petitioner's case besides *Heck*.

If Petitioner's certiorari request is granted and he wins, the case will be remanded. That would merely delay the inevitable. One reason is Chief Judge Richman's acknowledgment that Petitioner's "suit for prospective injunctive relief may be foreclosed on grounds not presently before our court[,]" including forfeiture, estoppel, and res judicata. But another reason is *Siders v. City of Brandon, Mississippi*, 123 F.4th 293 (5th Cir. Dec. 11, 2024).

Although Petitioner fails to identify *Siders* in his Statement of Related Proceedings, *see* Pet.iii, *Siders* is material to this case. Spring Siders is Petitioner's friend who was in Petitioner's group when Petitioner was arrested. Petitioner tried to add Siders as a plaintiff to his lawsuit in the district

court, but Siders ended up filing a separate lawsuit over the same incident. Like Petitioner, Siders' case went to the Fifth Circuit. But unlike Petitioner, Siders did not have a *Heck* problem.

The Fifth Circuit rejected Siders' facial and as-applied challenges to Brandon's ordinance. It was held that Siders could not "show a likelihood of success on the merits" because the ordinance was a constitutional time, place, or manner restriction. *Siders*, 123 F.4th at 300-09. Rehearing was denied by a by a 15-to-2 vote. Like Siders' challenge, Petitioner's challenge would fail even if *Heck* were no issue.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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