No. _____

In the Supreme Court of the United States

STATE OF LOUISIANA, *Petitioner*,

v.

TAZIN ARDELL HILL, *Respondent.*

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) May a State require convicted sex offenders to obtain and carry a state identification bearing the words "sex offender" without facially violating the First Amendment's prohibition on compelled speech?

(2) Does a convicted sex offender have a First Amendment right not to be prosecuted for fraudulently altering a state identification card after scratching off a statutorily required sex-offender designation?

RELATED PROCEEDINGS

Louisiana v. Hill, 141 S. Ct. 1232 (2020);

State v. Hill, 2020-0323 (La. 10/1/20), 2020 WL 6145294;

State v. Hill, La. 15th Jud. Dist. Ct., no. 160634, Division "K" (10/30/2019).

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PETITION FOR A WRIT OF CERTIORARI

The State of Louisiana respectfully petitions the Court for a writ of certiorari to review the judgment of the Louisiana Supreme Court.

OPINIONS BELOW

The district court's oral ruling declaring Louisiana Revised Statute 15:542.1.4(C) and Louisiana Revised Statute 40:1321(J) unconstitutional is unreported, but it is reproduced in the Appendix at App. 60–62. 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. 6–45. The Louisiana Supreme Court's opinion denying rehearing is reported at *State v. Hill*, 2020-00323, 2020 WL 7234459 (La. 12/9/20), and is reproduced at App. 4–5. The Louisiana Supreme Court's denial of the State's motion to stay the judgment pending a disposition of a petition for a writ of certiorari in this Court is not reported and is reproduced at App. 1–3.

JURISDICTIONAL STATEMENT

This Court has jurisdiction based on 28 U.S.C. § 1257(a). The Supreme Court of Louisiana issued the ruling below on October 20, 2020. The State later moved for rehearing, which was denied on December 9, 2020. This Court issued an order on March 19, 2020, automatically extending the time to file any petition for a writ of certiorari to 150 days from the date of the lower-court judgment, order denying discretion review, or order denying a timely petition for rehearing. This

petition is thus timely filed under this Court's Rules 13.3 and 30.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Louisiana Supreme Court struck down two state statutes—Louisiana Revised Statutes 40:1321(J) and 15:542.1.4(C)—under the First and Fourteenth Amendments to the United States Constitution.

The First Amendment provides, in relevant part, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I.

The Fourteenth Amendment provides, in relevant part, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

Louisiana Revised Statute 40:1321(J) provides, in relevant part, "[a]ny person required to register as a sex offender with the Louisiana Bureau of Criminal Identification and Information, as required by R.S. 15:542 *et seq.*, shall obtain a special identification card issued by the Department of Public Safety and Corrections which shall contain a restriction code declaring that the holder is a sex offender. This special identification card shall include the words 'sex offender' in all capital letters which are orange in color and shall be valid for a period of one year from the date of issuance. This special identification card shall be carried on the person at all times by the individual required to register as a sex offender."

Louisiana Revised Statute 15:542.1.4(C) provides, in relevant part, "[a]ny person who . . . is in possession of any document required by . . . R.S. 40:1321(J) that has been altered with the intent to defraud . . . shall, on a first conviction, be fined not more than one thousand dollars and imprisoned at hard labor for not less than two years nor more than ten years without benefit of parole, probation, or suspension of sentence."

STATEMENT OF THE CASE

When he was 32 years old, Defendant Tazin Hill repeatedly had sex with a 14-year-old girl. He pleaded guilty in 2010 to the crime of "felony carnal knowledge of a juvenile." La. Rev. Stat. 14:80. Upon Hill's release from custody, Louisiana law required him to obtain and carry a State-issued identification card bearing 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. App. 74.

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

The State charged Hill with altering his ID to conceal the sex-offender designation. Louisiana law carries special penalties for those who fraudulently alter a State ID with a sex-offender designation.[2] La. Rev. Stat. 15:542.1.4(C).

Hill moved to quash the bill of information, arguing that two separate state statutes are facially unconstitutional: (1) the prohibition on fraudulently altering a sex offender's ID, La. Rev. Stat. 15:542.1.4(C); and (2) the predicate requirement that sex offenders carry an ID bearing the sex-offender designation in the first place, La. Rev. Stat. 40:1321(J). He contended that requiring him to carry an ID with the words "SEX OFFENDER" on it 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 orally granted Hill's motion to quash. The district court explained that the sex-offender designation was "not the least restrictive way to further the State's legitimate interest of notifying law enforcement." App. 62. The court suggested that Louisiana could use a more discreet designation. At the end of the hearing, the court declared both Louisiana Revised Statute 40:1321(J) and Louisiana Revised Statute 15:542.1.4(C) facially unconstitutional under the First Amendment. App. 62.

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[2] Other Louisiana laws also penalize fraudulently altering State IDs. *See* La. Rev. Stat. 14:70.7; La. Rev. Stat. 40:1131.

Because the State district court struck down two Louisiana statutes, the State could appeal directly to the Louisiana Supreme Court. After briefing and oral argument, the Louisiana Supreme Court affirmed the district court's judgment in a split decision, holding that the "SEX OFFENDER" designation "constitutes compelled speech and does not survive a First Amendment strict scrutiny analysis." App. 7. One Justice dissented, reasoning that the sex-offender designation was "not First Amendment protected speech," but rather was "the embodiment of government speech." App. 42.

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. App. 1.

Louisiana then petitioned Justice Alito for an emergency stay on December 11, 2020. The stay application was referred to the full Court, and denied, on December 30, 2020.[3]

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[3] This Court has repeatedly granted review of an issue due to its importance or a split in the lower courts, even after denying a stay. *See, e.g.*, *Glossip v. Gross*, 576 U.S. 863, 957 (2015) (Sotomayor, J., dissenting); *Spallone v. United States*, 493 U.S. 265, 273 (1990); *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 546 (1976); *Rosario v.*

REASONS FOR GRANTING THE PETITION

The Louisiana Supreme Court's decision below conflicts with this Court's First Amendment compelled-speech and government-speech jurisprudence, widens splits among lower courts, and threatens to disrupt the State's ability to comply with the Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. § 20901 *et seq*. Indeed, the Louisiana Supreme Court's holding that Hill—a convicted sex offender—has a First Amendment right not to be prosecuted for fraudulently altering his ID directly interferes 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). The decision below cries out for plenary review.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S HOLDINGS THAT THE FIRST AMENDMENT DOES NOT LIMIT STATE SPEECH OR PROTECT FRAUDULENT SPEECH.

The Louisiana Supreme Court invoked the First Amendment when striking down two laws: (1) a law requiring convicted sex-offenders to obtain and carry a State ID bearing a sex-offender designation; and (2) a statute prohibiting *fraudulent* alteration of such an ID.[4] Those holdings squarely conflict with two lines of this Court's precedent.

Rockefeller, 410 U.S. 752, 756 (1973).

[4] The statute says: "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).

First, it conflicts with this Court's government-speech cases. The First Amendment does not bar a State from speaking on its own behalf. *Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009). And a State ID contains only State speech. The State did not make Hill an "instrument" for public messaging by indicating his status as a convicted sex offender on an ID. *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). The Louisiana Supreme Court strayed from this Court's jurisprudence by concluding otherwise.

Second, the decision below conflicts with this Court's repeated holdings that the First Amendment does not protect fraudulent speech or conduct. The criminal statute that the State charged Hill with violating makes intent to defraud a necessary element of the offense. La. Rev. Stat. 15:542.1.4(C). The Louisiana Supreme Court's holding that the First Amendment protected Hill from prosecution for *fraudulently* removing the sex-offender designation from his ID cannot be reconciled with this Court's cases.

Plenary review is necessary to correct the Louisiana court's deviations from both lines of this Court's longstanding precedent.

A. The Louisiana Supreme Court's Decision Conflicts with this Court's Government-Speech Cases.

1. *The Sex-Offender Designation on Hill's State ID Constitutes State Speech that Falls Outside the Ambit of the First Amendment.*

"[W]hen 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.*, 576 U.S. 200, 207 (2015) (citing *Pleasant Grove*, 555 U.S. at 467–68). And "'persons who observe' designs on IDs 'routinely—and reasonably—interpret them as conveying some message on the *issuer's* behalf.'" *Id.* at 212 (quoting *Pleasant Grove*, 555 U.S. at 471) (emphasis added) (alteration punctuation omitted). That makes the sex-offender designation on Hill's ID card State speech—not Hill's speech.

The Louisiana Supreme Court concluded that the designation on Hill's ID card was compelled speech because "if the government compels private persons to regularly convey its chosen speech, the government forfeits the deference it is normally afforded under the government speech doctrine." App. 28–29.

That reasoning directly conflicts with *this Court's cases* explaining that the government impermissibly compels a private person to be "an instrument" of its message only when (1) the speech is publicly displayed, like a "billboard," *Wooley*, 430 U.S. at 715, 717 n.15; and (2) 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) (emphasis added). Some members of the Court have also considered 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 does not amount to impermissible compelled speech.

First, Hill's 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 even then, merely in circumstances likely to further the critical public-safety interests that motivated the Louisiana Legislature to pass the underlying law: interactions with law enforcement, potential landlords, employers, or volunteer organizations. The ID card differs markedly 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.'" *Id.* at 715. The sex-offender designation is more akin to the "In God We Trust" inscription on currency—which this Court suggested does not violate the compelled speech doctrine because currency "is generally carried in a purse or pocket and need not be displayed to the public." *Id.* at 717 n.15.

Second, there is no reason to think Hill *endorses* the sex-offender designation, so this fact is not "readily associated" with him. *Wooley*, 430 U.S. at 717 n.15;

accord Johanns, 544 U.S. at 565 n.8. Contrary to the lower court's reasoning, simply because speech is connected to a private speaker does not make it impermissibly compelled. *See* App. 24. 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, height, or other information listed on those IDs. In fact, Hill's deliberate alteration of his ID card confirmed his desire to *disassociate* himself from that speech, not endorse it.

As discussed, an ID card generally conveys information on behalf of the issuer, not the bearer. *Walker*, 576 U.S. at 212. 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 need not survive a strict-scrutiny analysis to place those slogans on its IDs any more than it must survive a strict-scrutiny analysis to place a person's height, or weight, or eye color, or hair color, or sex-offender status on them; in each case, this message reflects the State's priorities, not the priorities of the individual carrying the ID. *See Doe v. Kerry*, No. 16-CV-0654-PJH, 2016 WL 5339804, at *18 (N.D. Cal. Sept. 23, 2016).

Finally, including factual 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."). Federal courts have echoed this sentiment. *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." (cleaned up)); *United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995) (concluding that IRS summons that compel certain speech are essential operations of government).

Thus, all three factors confirm that Louisiana law does not impermissibly compel Hill to "be an instrument" of state messaging by requiring him to carry an ID bearing the sex-offender designation. *Wooley*, 430 U.S. at 715. And so, the ID card falls outside the ambit of First Amendment protections. By re-characterizing information on a State ID as compelled speech, the Louisiana Supreme Court dramatically expanded the scope of the First Amendment's protections in a way that conflicts with this Court's precedents establishing a State's right to speak for itself and to conduct essential operations.

It is difficult to overstate the detrimental consequences of the Louisiana court's expansion of the compelled-speech doctrine. The decision unsettles Louisiana's statutory scheme to monitor sex offenders and protect the public 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. Many other States have similar requirements—requiring an offender either to mail notices directly or to provide information so that a State agency can mail notices. *See, e.g.*, Ariz. Rev. Stat. § 13-3825; Colo. Rev. Stat. § 16-13-901 *et seq.*; Del. Code tit. 11, § 4120; 730 Ill. Comp. Stat. 152/120; Tex. Code Crim. Proc. art. 62.056. The decision below jeopardizes all of those laws.

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. If the decision below stands, the status of sex-offender registries in general will be imperiled, hampering the ability of States to protect their citizens from sexual

predators. If the First Amendment really threatens the States' sex-offender laws in those ways, this Court—not a State supreme court—should be the one to say so. The Court should grant review.

2. *Even If Louisiana's Sex-Offender Designation on State IDs Amounts to Compelled Speech, the Challenged Laws Survive Strict Scrutiny.*

Even if the Louisiana Supreme Court correctly concluded that the designation on Hill's license constitutes compelled speech, the First Amendment inquiry does not end there. 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 716 (citing *United States v. O'Brien*, 391 U.S. 367, 376–77 (1968)). The Louisiana Supreme Court's holding that the designation fails strict scrutiny portends troubling consequences for critical Federal and State law-enforcement and public-safety interests.

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). The Court considers such 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*, 576 U.S. 155, 163 (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. Fla. 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.

The Louisiana Legislature has declared its sex-offender registration laws to be of "paramount" importance. La. Rev. Stat. 15:540(A). And this Court has noted that sex offenders pose a high risk of recidivism. *See, e.g.*, *United States v. Kebodeaux*, 570 U.S. 387, 395–96 (2013) (citing Dep't 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)); *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 compelling nature of the State's interest in protecting the public from recidivistic sex offenders cannot be seriously disputed.

Beyond that, the sex-offender designation is the least restrictive means of protecting the public. *Sable Commc'ns of Calif., Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989); *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 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).

Placing a sex-offender designation on a State ID does not compel too much speech (assuming it compels speech at all). The Louisiana Legislature concluded that the *public*, and not merely law enforcement, needs to know of a sex offender's status under limited circumstances. La. Rev. Stat. 15:540(A). 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). *See also, 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).

Under the Louisiana Supreme Court's decision, the public will lack an essential tool for identifying sex offenders in the community. Online registries are

insufficient to protect the State's interests because people can easily give a false name and deny their status. During storms and other emergencies, power outages and interrupted internet connections may make it impossible to check the online registry. 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.

B. The Louisiana Supreme Court's Decision Conflicts with This Court's Jurisprudence Holding that the First Amendment Does Not Protect Fraud.

1. *The First Amendment Allows a State to Criminalize the Fraudulent Alteration of an ID with a Sex-Offender Designation.*

"[T]he 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). 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. New Jersey*, 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. 189–90 (1870).

The Louisiana Supreme Court's holding conflicts with that First Amendment jurisprudence. Now, in Louisiana, the First Amendment *protects* fraudulently defacing government property. Worse yet, the Louisiana Supreme Court never cited this Court's controlling precedent in *Telemarketing Associates*, *Donaldson*, or *Schneider*—even though the State expressly relied on those cases—and thus did not even try to reconcile its holding with them. *See* App. 33–35. Even when the State pointed out that shortcoming in its motion for rehearing, the Louisiana court did nothing about it.

Instead, the Louisiana Supreme Court rejected the State's arguments based on its view that *Wooley v. Maynard*, 430 U.S. 705 (1977), and *United States v. O'Brien*, 391 U.S. 367 (1968), control here. Not so. Neither of those cases has anything to do with fraud. Rather, the defendants in both cases altered or destroyed government property through *open* and *overt* attempts to convey or reject the government's message. *See Wooley*, 430 U.S. at 713 (refusing to display a message on a vehicle license plate); *O'Brien*, 391 U.S. at 369 (burning a draft card publicly on the steps of a courthouse). For example, by covering the "Live Free or Die" inscription on his license plate for religious reasons, the defendant in *Wooley* did not intend to *deceive* anybody. And by climbing the courthouse steps and burning his draft card for all to see, the defendant in *O'Brien* was not committing fraud (and, in any event, this Court upheld his conviction).

Wooley and *O'Brien* thus contrast sharply with the facts here. Hill did not climb up on the courthouse

steps when he removed the sex-offender designation and replaced it with transparent tape. The State charged Hill with altering his ID with fraudulent intent.[5] That takes Hill's action outside of the ambit of any First Amendment protection.

2. *The Louisiana Supreme Court's Severability Analysis Does Not Cure the Conflict.*

The Louisiana Supreme Court reasoned that it could strike the fraudulent-alteration provision under the First Amendment because (1) the fraudulent alteration provision "cannot be severed from the rest of the statute,"[6] including the predicate provision requiring sex offenders to obtain and carry an ID card bearing the required notation; and (2) the obtain-and-carry provision violated the First Amendment's compelled-speech doctrine. App. 35–36. In the Louisiana Supreme Court's view, if the two provisions are inseverable, then striking the obtain-and-carry provision under the First Amendment necessarily required striking the fraudulent-alteration provision. This does not eliminate the conflict with this Court's decisions for two reasons.

As an initial matter, and as explained above, the obtain-and-carry provision does not violate Hill's First

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[5] For purposes of the motion to quash, this Court "must accept as true the facts contained in the bill of information." *State v. Perez*, 464 So. 2d 737, 739 (La. 1985).

[6] The Court concluded that the provisions are inseverable because the fraudulent alteration provision—La. Rev. Stat. 15:542.1.4(C)—expressly references the provision requiring sex offenders to carry marked ID cards in the first place. App. 10–14.

Amendment rights. And so the lower court's ruling is wrong right out of the gate.

But even if the obtain-and-carry provision *is* unconstitutional, that still provides no basis for striking the fraudulent-alteration provision under the First Amendment. To see why, consider this Court's opinion in *Riley v. National Federation of the Blind of North Carolina, Inc.*, which struck down a North Carolina statute that governed the solicitation of charitable contributions by professional fundraisers. 487 U.S. 781, 784–85 (1988). *Riley* held that requiring professional fundraisers to disclose to potential donors the gross percentage of revenues retained in prior charitable solicitations amounted to compelled speech forbidden by the First Amendment. *Id.* at 797–98.

But if a professional fundraiser reported fraudulent numbers to potential donors under the North Carolina statute *before* this Court declared it unconstitutional, the State still could have punished that conduct even *after* the Court struck down the law. *See id.* ("North Carolina has an antifraud law, and we presume that law enforcement officers are ready and able to enforce it."). This Court observed that, "[i]n striking down this portion of [North Carolina's law], we do not suggest that States must sit idly by and allow their citizens to be defrauded." *Id.* at 795. Striking down a statute because it compels speech does not immunize any *fraudulent* conduct or speech from criminal prosecution.

The State alleges that Hill fraudulently removed the sex-offender designation from his ID before any lower court struck down Louisiana's fraudulent-

alteration provision. This means that, when everyone in the State understood that convicted sex offenders were required to have a designation on their licenses, Hill was misrepresenting his sex-offender status to those who viewed his State ID. Even assuming it was unconstitutional for the State to place the designation on the ID in the first place, Hill has no First Amendment right to commit fraud with impunity.

3. *Nor Does the Fact that the State Can Prosecute Hill Under Other Statutes Cure the Conflict.*

Finally, the Louisiana Supreme Court justified striking the fraudulent-alteration provision by noting that the fraudulent alteration of ID cards generally, as opposed to sex-offender IDs specifically, is separately criminalized under other state statutes. *See* App. 37, La. Rev. Stat. 14:70.7; La. Rev. Stat. 40:1131. But this is no justification at all. States remain broadly free to penalize fraud as they see fit, including by classifying certain forms of fraud as worse than others. *See Schneider*, 308 U.S. at 164. Because the First Amendment does not protect fraud in any way, there is no constitutional bar on Louisiana's imposing a greater penalty on certain forms of fraud than on others.

The safety risks to potential victims of sex predators make it reasonable for the State to impose a greater penalty on sex offenders who hide their status than, for example, teenagers who alter their IDs to buy alcohol or tobacco. The Louisiana Supreme Court's opinion failed to grapple with this Court's teaching that the First Amendment does not protect fraud. This Court

should grant certiorari and reverse the judgment below striking down Louisiana Revised Statute 15:542.1.4(C).

II. THE LOUISIANA SUPREME COURT'S DECISION UNSETTLES FEDERAL AND STATE SEX-OFFENDER REGISTRY REQUIREMENTS AND EXACERBATES A SPLIT AMONG LOWER COURTS.

A. The Lower Court's Expansion of the First Amendment's Compelled-Speech Doctrine Threatens Federal Sex-Offender Notification Requirements.

The Louisiana Supreme Court's decision provides a roadmap for calling into question the legality of the Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. § 20901 *et seq.*, and every State's sex-offender registry. Under SORNA, every State must include as part of its public sex-offender registry "a thorough community notification system . . . so that other law enforcement agencies, community organizations, and the public at large are aware of any new or changed registrations." Lori McPherson, *The Sex Offender Registration and Notification Act (Sorna) at 10 Years: History, Implementation, and the Future*, 64 Drake L. Rev. 741, 761 (2016); *See* Dep't of Justice, Sex Offender Registration and Notification Act (SORNA), https://www.justice.gov/criminal-ceos/sex-offender-registration-and-notification-act-sorna ("[E]ach jurisdiction is required to comply with the federal standards outlined in [SORNA]"); *see also People v. Minnis*, 67 N. E. 3d 272, 290 (Ill. 2016) (upholding Illinois statute requiring sex offenders to disclose to the public—and periodically update—information regarding their internet identities and websites). In

Louisiana, for example, 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 id.* La. Rev. Stat. 15:542.1.5.

If the Louisiana Supreme Court's expansion of the First Amendment's compelled-speech doctrine is allowed to stand, it will mark the path for future litigation challenging the legality of every State's SORNA registration program. For if (as the Louisiana Supreme Court held) the First Amendment forbids a State from placing a sex-offender designation on its own ID cards, can the State legally require sex offenders to issue mailers to every residence near their homes as required by SORNA and Louisiana law? What about newspaper advertisement notifications? Those questions are surely coming. Reversing the Louisiana Supreme Court now will eliminate those uncertainties and save federal and state courts significant time and resources.

Other state and federal interests are also at stake. The federal government has recently placed a sex-offender designation on passports. *See* App. 25. 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 that the government requires and that is essential for governmental operations. Granting this petition and reversing the decision below will obviate this flawed

basis for challenging a materially identical federal requirement.

B. The Louisiana Supreme Court Widened Burgeoning Splits Between Lower Courts.

The Louisiana Supreme Court's decision also deepens to 3-2 a lower-court split on whether forced disclosure of sex-offender status violates 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 Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1324–26 (M.D. Ala. 2019). The Louisiana Supreme Court relied heavily on that Alabama decision when striking Louisiana's laws.

By contrast, three other lower-court decisions have reached opposite conclusions. A federal district court in California considering a sex-offender identifier placed on passports concluded that "the U.S. passport itself is not speech, and the passport identifier does not suggest or imply that the passport-holder has adopted or is sponsoring an ideological or political point of view." *Doe v. Kerry*, No. 16-CV-0654-PJH, 2016 WL 5339804, at *18 (N.D. Cal. Sept. 23, 2016); *see also, e.g.*, *Benson v. Fischer*, No. 16-CV-509-DWF-TNL, 2019 WL 3562693, at *5 (D. Minn. Aug. 6, 2019) (rejecting a First Amendment challenge to a sex-offender civil commitment program, which among other things required participants to wear badges labelled "Minnesota Sex Offender Program."); *Reed v. Long*, No. 5:19-CV-385 (MTT), 2020 WL 7265693, at *12 (M.D. Ga. Dec. 10, 2020) (rejecting a First Amendment

challenge to prominent signs put up by law enforcement in front of sex offenders' homes around Halloween).[7]

Beyond that, the Louisiana Supreme Court's decision creates a square split with the Tenth Circuit about whether communicating factual information on a government ID is essential for government operations. *See Carney*, 875 F.3d at 1354 (concluding that a sex-offender designation on a license "does not stray from what state governments do each and every day: communicate important information about its citizens on state-issued IDs"); *cf. Arnold*, 740 F.3d at 1035; *Sindel*, 53 F.3d at 878.

There is no need for further percolation on these square splits. The opinions cited here fully air both sides of the respective arguments. Waiting any longer to resolve these splits will only threaten additional public safety harms.

And resolving those square splits is not the only reason to grant certiorari. This Court grants plenary review to preserve the rule of law if a lower court-decision directly conflicts with this Court's precedent. *See* Sup. Ct. R. 10(c); *see also Wilkinson v. United States*, 365 U.S. 399, 401 (1961) (granting certiorari "to consider the petitioner's claim that the Court of Appeals had misconceived the meaning" of the controlling Supreme Court decision). As discussed, the

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[7] *Cf. United States v. Fox*, 286 F. Supp. 3d 1219, 1224 (D. Kan. 2018) (concluding that, although "SORNA compelled [a sex offender] to speak," the law was still constitutional because it "serve[d] a compelling government interest and d[id] so in a narrowly tailored fashion.").

Louisiana Supreme Court's decision directly conflicts with this Court's holdings that the First Amendment does not protect fraudulent speech—much less fraudulent *conduct* like altering a State ID to conceal sex-offender status. *See e.g.*, *Telemarketing Associates*, 538 U.S. at 612; *Donaldson*, 333 U.S. 190; *Schneider*, 308 U.S. at 164.

CONCLUSION

The Court should grant the State's petition for a writ of certiorari.

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