No. 24-853

IN THE

Supreme Court of the United States

RORY DOUGLAS WILSON,

Petitioner,

v.

IDAHO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF IDAHO

BRIEF OF *AMICI CURIAE* FIRST AMENDMENT CLINICS AT DUKE, CORNELL, AND SOUTHERN METHODIST LAW SCHOOLS, AVI ADELMAN AND WILLIAM OETJEN IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES:

Cited Authorities

Cited Authorities

Cited Authorities

Page

STATUTES AND ORDINANCES:

Page

OTHER AUTHORITIES:

Page

INTERESTS OF *AMICI CURIAE*[1]

Amici curiae include the First Amendment Clinics at Duke, Cornell, and Southern Methodist Law Schools. The Clinics defend and advance freedoms of speech, press, assembly, and petition through court advocacy, serve as an educational resource on free expression and press rights, and provide law students with practice experience to become the next generation of leaders on First Amendment issues. The Clinics engage in advocacy and representation across the country and have an interest in promoting the sound interpretation of the First Amendment to preserve the liberties guaranteed by the U.S. Constitution.

Amicus curiae Avi Adelman is an independent photojournalist based in Dallas, Texas. As with the Petitioner, city officials selectively enforced against Mr. Adelman a local ordinance that regulates the posting of notices, posters, and other forms of protected written speech on public property. Mr. Adelman had stapled posters on a telephone pole in support of Israeli hostages. Citing the ordinance, Dallas Code Compliance officials took down Mr. Adelman's posters after neighbors complained that his posters constituted "bullying" and "political hate" speech. Mr. Adelman attempted to replace his posters several times, but officials continued to remove

1. Counsel for *amici curiae* certify, pursuant to Supreme Court Rule 37.6, that this brief was not authored in whole or in part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than *amici* and their counsel have contributed money for this brief. All counsel of record received timely notice of the intent to file this brief and written consent of the parties was obtained.

them until he eventually stopped posting altogether out of a concern that his persistence could lead to more serious punishment. Meanwhile, the city has left many other signs and posters throughout Dallas untouched, suggesting that the city specifically and repeatedly targeted Adelman's speech for censorship.

Amicus curiae William Oetjen is a resident of Burlington, Vermont, and member of "Gender Critical Vermont," a gender-based advocacy group. As happened to Petitioner, Burlington city officials selectively enforced against Mr. Oetjen a local ordinance that regulates the posting of graffiti on public property. Specifically, Mr. Oetjen had posted stickers around Burlington in support of the rights of women and girls. Mr. Oetjen was issued three citations under the city's graffiti ordinance, resulting in a $1,200 fine, even though Burlington had not previously enforced the ordinance against other sticker-posters in the city.

INTRODUCTION AND SUMMARY OF ARGUMENT

Like many university towns, downtown Moscow, Idaho, is blanketed with posters, signs, and stickers. People searching for lost pets, advertising yard sales, and expressing political ideas and slogans have long shared their messages on Moscow public property without fear of retribution. Petitioner Rory Wilson is the only person ever arrested and prosecuted by Moscow under its ordinance regulating sign posting (the "Ordinance") since it was first enacted in 2009. That Wilson was targeted by Moscow law enforcement is no coincidence. Wilson's grandfather is the leader of Christ Church of Moscow, which made national

news in 2020 after police arrested and issued citations to several attendees at an outdoor "psalm sing" that the church organized to protest the city's COVID-19 policies. Several months later, police issued Wilson a citation for affixing small, removable vinyl stickers with the image of a hammer-and-sickle, the phrase "Soviet Moscow," and Moscow's COVID-19 slogan ("Enforced because we care") at various locations across the city.

Wilson was charged under the Ordinance, codified at Moscow City Code § 10-1-22(A) (2025), which provides that:

> No person shall post, paint, tack, tape or otherwise attach or cause to be attached, any notice, sign, announcement, or other advertising matter to any fence, wall, building, tree, bridge, awning, post, apparatus or other property not belonging to said person without first obtaining the consent of the owner or lessee of such property or their agent(s) or representative(s). No person shall post, paint, tack, tape or otherwise attach or cause to be attached any notice, sign, announcement, or other advertising matter to any telephone or electric pole within the City.

As written, the Ordinance violates the First Amendment under two long-established doctrines protecting free speech. *First*, under the doctrine of prior restraint, the government may not enforce licensing schemes that give unfettered discretion to public officials to pick and choose who may speak. *See Staub v. City of Baxley*, 355 U.S. 313, 322–24 (1958) (collecting cases).

Second, the Ordinance is a paradigmatic example of a broadly written penal statute that enables selective enforcement and "may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973); *see also Thornhill v. Alabama*, 310 U.S. 88, 97–98 (1940) (noting the threat to expressive freedoms posed by a penal statute that broadly sweeps expressive activities into its ambit because the statute "readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, [and] results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview").

The danger to speech posed by the selective enforcement of ordinances like Moscow's is not hypothetical. In cities large and small across the country, known critics of the government have been arrested and prosecuted for violating sign-posting laws that were seldom, if ever, enforced. Today, there are hundreds of ordinances like Moscow's in effect. As Justice Gorsuch has opined, the threat of selective enforcement increases as criminal laws expand "to cover so much previously innocent conduct that almost anyone can be arrested for something." *Nieves v. Bartlett*, 587 U.S. 391, 412 (2019) (Gorsuch, J., concurring in part and dissenting in part). There would be little left of our First Amendment liberties if the state could use criminal laws "not for their intended purposes but to silence those who voice unpopular ideas." *Id.*

For these reasons, the Court should accept Wilson's petition and hold that the Ordinance—and others like it—are unconstitutional.

ARGUMENT

I. Moscow's Ordinance Violates the First Amendment Because It is a Prior Restraint and is Overbroad, Inviting Selective Enforcement.

The First Amendment protects "uninhibited, robust, and wide-open" debate on public issues, including (and especially) "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). To preserve open discourse on public matters, the Constitution forbids government retaliation against people who voice critical or unpopular opinions. *Hartman v. Moore*, 547 U.S. 250, 256 (2006). Licensing schemes that regulate where and how people may communicate their ideas, and broadly written laws that provide cover for the punishment of unpopular viewpoints, betray the First Amendment's promise that "[e]very freeman has an undoubted right to lay what sentiments he pleases before the public." *Near v. Minnesota ex rel. Olsen*, 283 U.S. 697, 713–14 (1931) (quoting 4 William Blackstone, Commentaries on the Laws of England 151–52 (1769)).

Moscow's broad prohibition on posting signs, and other ordinances like it, pose a two-fold threat to that promise. *First*, these laws are unlawful prior restraints when they provide no clear mechanism for obtaining the government's consent in advance of speaking and no clearly defined standards to limit the discretion of government decisionmakers. *Second*, as with the Ordinance, overbroad statutes enable selective enforcement—because they permit law enforcement to use a little-enforced statute as a pretext for punishing disfavored speakers—and

selective enforcement deters other would-be dissenters from speaking.

a. Moscow's Ordinance is an Unconstitutional Prior Restraint.

The Moscow Ordinance falls within the ambit of the Court's many decisions holding that "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969). On its face, the Ordinance establishes a licensing scheme whereby any person who desires to post a notice on city property must first obtain consent from the property owner (apart from posting on telephone or electrical poles, which is completely forbidden). Moscow City Code § 10-1-22(A). But its fatal flaw is that it does not specify how to obtain such consent, let alone impose any limits upon the officials who would be responsible for enforcing the Ordinance's permission-based regime. Indeed, "[n]o standards appear anywhere; no narrowly drawn limitations; no circumscribing of this absolute power; no substantial interest of the community to be served." *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

Any system of prior restraints on expression bears "a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).[2]

2. This Court has historically expressed heightened concern about licensing regimes that "throttle" speech before it is uttered, as opposed to laws that impose criminal penalties "to punish the

To legitimately impose a pre-clearance regime for speech, the government must include "procedural safeguards that reduce the danger of suppressing constitutionally protected speech." *Conrad*, 420 U.S. at 559 (citing *Bantam Books*, 372 U.S. at 71). But even if a city can regulate sign posting to preserve esthetic values, s*ee, e.g., Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806 (1984), it cannot use a permission-based model to achieve its goals without ensuring that the licensor is guided by clearly defined standards. *Shuttlesworth*, 394 U.S. at 150–51. Otherwise, "the mere existence of the licensor's unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, even if the discretion and power are never actually abused." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988); *see also Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (noting that an ordinance that delegates overly broad discretion to the decisionmaker creates an impermissible risk of suppression of ideas in every application).

The values protected by the First Amendment are offended when citizens like Petitioner are required

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few who abuse rights of speech after they break the law." *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558–59 (1975). The Ordinance here is a chimera that embeds a prior restraint *within* a criminal prohibition, strengthening the concerns that animate the Court's prior restraint jurisprudence, because the added threat of a criminal penalty amplifies the chill felt by would-be speakers. *See Alexander v. United States*, 509 U.S. 544, 568 (1993) (Kennedy, J., dissenting) ("'[T]his idea of the freedom of the press can never be admitted to be the American idea of it' because a law inflicting penalties would have the same effect as a law authorizing a prior restraint." (quoting 6 Writings of James Madison 386 (G. Hunt ed. 1906))).

to seek permission from a government official before expressing their views, especially without strict limits on the official's discretion. *See Staub*, 355 U.S. at 325 (striking down ordinance that made "enjoyment of speech contingent upon the will of the Mayor and Council of the City"); *Shuttlesworth*, 394 U.S. at 150–51 (striking down ordinance that granted "virtually unbridled and absolute power to prohibit any 'parade,' 'procession,' or 'demonstration' on the city's streets or public ways"); *Conrad*, 420 U.S. at 560–62 (striking down licensing scheme for use of municipal theater for lack of procedural safeguards); *Watchtower Bible & Track Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–67 (2002) (striking down ordinance that required speaker to get a permit before engaging in door-to-door advocacy); *see also Martin v. City of Struthers*, 319 U.S. 141, 146–47 (1943) (opining that the "[f]reedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved"). But despite this Court's admonishments to the contrary, local governments continue to enact laws, like the Moscow Ordinance, that function as prior restraints because they give local censors the freewheeling authority to exclude disfavored speakers from the public square.

Where similar ordinances have been subjected to legal challenge, they have failed to withstand scrutiny because conditioning the exercise of a First Amendment right on the whims of government officials is among the most fundamental evils of a prior restraint. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225–26 (1990) (ordinance requiring a more onerous inspection regime

for sexually oriented businesses); *Epona, LLC v. Cnty. of Ventura*, 876 F.3d 1214, 1222–26 (9th Cir. 2017) (ordinance requiring that conditions be met "to the satisfaction of the appropriate decision-making authority"); *Baker v. City of Fort Worth*, 506 F. Supp. 3d 413, 421–25 (N.D. Tex. 2020) (ordinance requiring permission of city council to post any "handbill, sign, poster or advertisement"); *Driver v. Town of Richmond ex rel. Krugman*, 570 F. Supp. 2d 269, 272 (D.R.I. 2008) (ordinance requiring approval of Chief of Police to post a sign); *Lawson v. City of Kankakee*, 81 F. Supp. 2d 930, 935 (C.D. Ill. 2000) (ordinance requiring consent of the city); *Bella Vista United v. City of Phila.*, No. 04-1014, 2004 WL 825311, at *3–5 (E.D. Pa. Apr. 15, 2004) (ordinance requiring permission from the city); *see also Lusk v. Vill. of Cold Spring*, 475 F.3d 480, 491–92 (2d Cir. 2007) (invalidating sign-posting ordinance that froze speech for impermissibly long time during pendency of permitting process).

The Moscow Ordinance's "consent" requirement commits the same sin. It effectively confers upon Moscow officials the unfettered discretion to regulate expression, without establishing clear criteria, procedures, or time frames for seeking consent or determining its grant or denial. Petitioner's prosecution demonstrates *ex post* why these safeguards are necessary; without them, viewpoint-based prosecutions are more likely, because the lack of guardrails emboldens officials to wield these ordinances selectively against speakers they dislike. Here, despite the documented absence of enforcement of the Ordinance prior to Petitioner's prosecution—or to put it differently, despite a history of Moscow giving constructive permission to all other members of the public to post stickers and other signage on public property without first obtaining the

City's blessing—the City acted swiftly and specifically to punish Petitioner for his speech. Those actions should be fatal both to Petitioner's prosecution and to the ordinance itself. This Court should review the Ordinance and Petitioner's conviction to reiterate that official censorship has no place in a free country.

b. Overbroad Statutes Allow Governments to Punish Disfavored Speakers.

The Moscow Ordinance is broadly written, giving law enforcement virtually unfettered discretion to decide whom to prosecute for sign posting. This discretion invites selective enforcement—as happened in Petitioner's case—which in turn chills speech. These dual concerns sit at the heart of the overbreadth doctrine: "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of expression." *Thornhill*, 310 U.S. at 97; *see also Broadrick*, 413 U.S. at 612 (expressing a concern that "protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes").

The right to verbally oppose the government without fear of arrest is a defining feature of our constitutional democracy. *City of Houston v. Hill*, 482 U.S. 451, 462–63 (1987). Expansive discretion in enforcement threatens First Amendment freedoms when officials "exploit the arrest power as a means of suppressing speech," as happened to Petitioner. *Nieves*, 587 U.S. at 406 (quoting *Lozman v. Riviera Beach*, 585 U.S. 87, 99 (2018)); *see also Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (opining that "[t]he pervasive restraint on freedom of discussion by the

practice of the authorities under [a] statute is not any less effective than a statute expressly permitting such selective enforcement"). The potential for law enforcement officers to punish government critics via the selective enforcement of otherwise dormant laws is an increasingly vexing problem. Recently, in *Nieves*, 587 U.S. at 407, this Court noted that it would be "insufficiently protective of First Amendment rights" to dismiss a retaliatory arrest claim brought by a vocal critic of the police who was arrested for jaywalking—behavior that is widely prohibited but rarely prosecuted. To rigidly require the absence of probable cause in those cases could pose "a risk that some police officers may exploit the arrest power as a means of suppressing speech." *Id.* (quoting *Lozman*, 585 U.S. at 99); *see also Gonzalez v. Trevino,* 602 U.S. 653, 665 (2024) (Alito, J., concurring).

Petitioner exemplifies the concern that speakers who are known government critics are particularly vulnerable to selective enforcement. Three months before his arrest, Wilson was part of a "psalm sing" in which congregants of his church were arrested and cited. To protest the arrests, Wilson began his stickering campaign criticizing Moscow's restrictive COVID-19 policies. Soon thereafter, he was arrested for violation of the Ordinance—the only individual ever charged under that law in its fifteen-year history. The City's animus towards Wilson's message is a much likelier explanation for his arrest than any new-found enthusiasm for enforcing its sign-posting ordinance. *See Gonzalez,* 602 U.S. at 665 (Alito, J., concurring) (noting that police animus towards a jaywalker's message may be a much likelier explanation for his arrest than the mere existence of probable cause).

A recent case from the District of Columbia illustrates the way that broadly drafted statutes facilitate selective enforcement that amounts to viewpoint discrimination. In *Frederick Douglass Foundation v. District of Columbia*, 82 F.4th 1122 (D.C. Cir. 2023), the D.C. Circuit held that the city government plausibly engaged in viewpoint discrimination by selectively enforcing its defacement ordinance against a pro-life advocacy organization. The D.C. ordinance at issue prohibited citizens from "'willfully and wantonly . . . writ[ing], mark[ing], draw[ing], or paint[ing]' on public or private property, without consent of the owner or the public official" in control. *Id.* at 1131 (alterations in original) (quoting D.C. Code § 22-3312.1). But in the summer of 2020, the District of Columbia "all but abandoned enforcement" of the ordinance, "creating a de facto categorical exemption" for anyone who marked public or private property with Black Lives Matter ("BLM") messages. *Id.* at 1132. Even D.C. Mayor Muriel Bowser appeared to give her blessing to the BLM messaging by commissioning a painting of "Black Lives Matter" to cover more than a city block. *Id.*

During the same period, however, the Frederick Douglass Foundation sought, but never received, permission from Mayor Bowser to paint "Black Pre-Born Lives Matter" on a sidewalk. *Id.* at 1133–34. When Foundation members arrived for a permitted rally, police officers told them that they would be arrested for violating the defacement ordinance if they chalked on the sidewalk and promptly arrested two Foundation members who began chalking their message. *Id.* at 1134. A year later, the Foundation again sought permission to display their message on the sidewalk but were again denied their request. *Id.* The D.C. Circuit found that the Foundation

had "plausibly alleged the District abridged its members' First Amendment rights by enforcing the defacement ordinance on the basis of the content and viewpoint of their speech." *Id.* at 1142. The decision underscores the principle that the government may not "pick[] winners and losers in public debates" "under the cover of prosecutorial discretion." *Id.*

The *Frederick Douglass Foundation* case is just one example of why this Court has cautioned that trusting government officials to fairly apply overly broad statutes invites abuse. *See also Fla. Beach Advert., LLC v. City of Treasure Island*, 511 F. Supp. 3d 1255, 1274 (M.D. Fla. 2021) (finding city sign ordinance unconstitutional because its broadly worded prohibition granted "unbridled discretion" to city in granting exemptions and "[n]othing in the law prevent[ed] the City from encouraging some views and discouraging others through the arbitrary grant or denial of . . . sign permits") (quoting *Lamar Advert. Co. v. City of Douglasville*, 254 F. Supp. 2d 1321, 1328–29 (N.D. Ga. 2003)); *KBS Holdco, LLC v. City of W. Hollywood*, No. 2:22-cv-05750-FLA (GJSx), 2025 WL 551651 at *5 (C.D. Cal. Jan. 2, 2025) (finding plaintiffs alleged facts sufficient to state a claim that sign ordinance was unconstitutional because "the unbridled discretion granted to the City Manager and Screening Committee . . . could cause applicants to self-censor . . . out of fear that they might be excluded from future rounds"). As this Court has observed, "[i]t would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large." *City of Houston,* 482 U.S. at 466 (quoting *U.S. v. Reese*, 92 U.S. (2 Otto) 214, 221 (1876)).

The First Amendment requires "breathing space to survive." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Ordinances that broadly prohibit expressive activities choke out that breathing space. *See United States v. Hansen*, 599 U.S. 762, 769–70 (2023) ("Overbroad laws 'may . . . chill constitutionally protected speech,' and if would-be speakers remain silent, society will lose their contributions to the 'marketplace of ideas.'") (quoting *Virginia v. Hicks*, 539 U.S. 113, 119 (2003)). The threat of being prosecuted for the expression of unpopular views will cause ordinary citizens to "steer 'wide[] of the unlawful zone'" for fear that if their judgment is wrong, they could become the next person arrested under the sign-posting ordinance. *Counterman v. Colorado*, 600 U.S. 66, 77–78 (2023) (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). If the Ordinance is allowed to stand, other citizens of Moscow may be deterred from expressing views critical of the City for fear of being criminally prosecuted, as Petitioner Wilson was.

II. Incidents and Ordinances Across the Country Illustrate the Magnitude of the Problem.

a. Municipalities Continue to Selectively Enforce Their Laws to Restrict Disfavored Speech.

Petitioner Wilson is not alone in being targeted and punished for criticizing his local government. Overbroad ordinances have been wielded by municipalities across the country to selectively enforce ostensibly content-neutral laws against disfavored speech. The problem is especially acute with respect to sign-posting ordinances. As happened to Petitioner Wilson, public officials exploited

overbroad sign-posting ordinances to target and punish *amici*, and others, for expressing disfavored, unpopular, or dissenting viewpoints.

Amicus William Oetjen placed homemade stickers in public places in Burlington, Vermont, to express his view that efforts to advance transgender rights have harmed non-transgender women and girls. Letter from Cornell Law School First Amendment Clinic to Emma Mulvaney-Stanak, Mayor of Burlington, Vt. (July 22, 2024), at 1.[3] Burlington city officials repeatedly expressed their disapproval of Mr. Oetjen's stickering campaign and ultimately enacted a resolution to acknowledge the "spread [of] hate through . . . aggressive stickering" and express support for the continued "tracking all [instances of] . . . hate speech." *Id.* at 2 (citing Burlington, Vt. City Council *Resolution 5.07 Relating to Supporting LGBTQIA+ Community Members and Condemning Transphobia* (Mar. 13, 2023)). Although Burlington had a "longstanding culture of public stickering campaigns on social and cultural issues," the city served Mr. Oetjen with three citations for violating its graffiti ban, § 21-29 of the Burlington Code of Ordinances—the first time the ordinance had been enforced against anyone in the prior eighteen months. *Id.* at 1–2.

The selective enforcement of overbroad sign-posting ordinances chills speech even when the speaker faces only the threat of government punishment, as experienced

3. "Agenda Packet" for City of Burlington, Vt., City Council, Ordinance Committee Aug. 5, 2024, Meeting, https://burlingtonvt.portal.civicclerk.com/event/7365/files/agenda/11480 (click on "CornellClinicLettertoBTVCityCouncil" in sidebar).

by *amicus* Avi Adelman. Mr. Adelman stapled "Bring Them Home Now" posters supplied by an advocacy group supporting the return of Israeli hostages to a telephone pole in front of his house in East Dallas. Within a few days, neighbors contacted the City of Dallas's Code Compliance office to complain about Mr. Adelman's posters, which one neighbor characterized as "political hate" speech. Code Compliance officers immediately removed the posters pursuant to § 7A-16(a) of the Dallas City Code, which makes it illegal to "post[] or affix[] . . . any notice, poster, or device, which is calculated to attract the attention of the public, to any lamp post, utility pole, telephone pole, cellular telephone pole, or tree that is located on any public right-of-way or other public property, or to any public structure or building." Code Compliance officers told Mr. Adelman that they had no choice but to remove the posters, a rationale belied by the city's long history of allowing posters on other topics to remain on poles throughout North Dallas. Mr. Adelman witnessed this cycle—posting signs only to see them removed by city officials—repeat several times until he eventually gave up and stopped replacing the posters altogether. City officials singled out Mr. Adelman for his viewpoint and successfully used the threat of enforcement under the ordinance to silence him.

Amici are just two of many speakers throughout the country who have been subjected to selective enforcement by law enforcement through the use of overbroad sign-posting ordinances. For example, in East Providence, Rhode Island, two men were arrested after posting literature on telephone poles to recruit new members to the Nationalist Social Club 131, their neo-Nazi group. Mark Reynolds, *In East Providence, Experts Say, Neo-*

Nazis Trying to Recruit Were Not Anonymous This Time, Providence J. (July 8, 2022, 3:01 PM).[4] At the time of the arrests, police had already been following Nationalist Social Club 131 and its activities—just a few months earlier, police were called to a local library after the organization interrupted a reading of the Communist Manifesto. Jack Perry, *Carrying Nazi Flag, Protesters Disrupt Reading of 'The Communist Manifesto' in Providence*, Providence J. (Feb. 22, 2022, 2:35 PM).[5] Police cited a local ordinance that bans posting signs on any pole absent approval by the mayor as their basis for identifying and arresting two members of the group. Reynolds, *supra.*

Wo'O Ideafarm, a resident of Mountain View, California, was likewise well known to the police for his expressive activities, and thus he was "not surprised" to learn that police were seeking a warrant for his arrest for posting signs opposing Proposition 8 and gay marriage on a town utility pole, in contravention of a local ordinance prohibiting sign-posting without permission. Diana Samuels, *Ideafarm in Trouble with Mountain View Police, Again*, Mercury News (Jan. 3, 2011, 4:22 PM).[6] Mr. Ideafarm had previously faced dozens of charges for displaying controversial signs throughout town and

4. https://www.providencejournal.com/story/news/crime/2022/07/08/neo-nazi-recruiters-east-providence-were-not-anonymous-this-time/7821731001/.

5. https://www.providencejournal.com/story/news/local/2022/02/22/nazi-swastika-flag-protestors-disrupt-providence-communist-manifesto-reading-red-ink-library/6891544001/.

6. https://www.mercurynews.com/2011/01/03/ideafarm-in-trouble-with-mountain-view-police-again/.

had been arrested a few months earlier for staging a sit-in at the police station. *Id.* Even though Mr. Ideafarm ultimately decided "not to fight that fight" and offered to take the signs down, police were intent on arresting him: "[W]hen he breaks the law, we go for the warrant," a police spokeswoman declared. *Id.*

b. The Prevalence of Overbroad Sign-Posting Ordinances Makes Clear the Scope of the Problem.

Sign-posting laws implicate core First Amendment rights. *See Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015) (analyzing municipal "Sign Code" as a "content-based regulation[] of speech"); *Taxpayers for Vincent*, 466 U.S. at 803 (noting that an ordinance prohibiting the posting of signs on public property "raises the question whether the ordinance abridges [appellees'] 'freedom of speech' within the meaning of the First Amendment"). This case warrants review to provide clarity to the governments across the country that regulate signs and other forms of protected speech such as posters and stickers.

Hundreds of municipalities regulate sign-posting using language similar to or broader than Moscow's Ordinance. *Amici* identified over 400 sign-posting ordinances enacted by cities large and small, liberal and conservative, reflecting the full scope of the country's regional, economic, and political diversity.[7] *Amici*'s

7. Municipal Ordinances Spreadsheet (April 9, 2025), *available at* https://law.duke.edu/sites/default/files/clinics/firstamendment/2025.04.09_Municipal_Ordinances_Spreadsheet.xlsx *and* https://cornell1a.law.cornell.edu/ordinance-spreadsheet.

research is a non-exhaustive representation of the broad range of local sign-posting ordinances that are currently in force nationwide. The quantity of ordinances underscores the stakes here—Petitioner's arrest in Moscow, Idaho could just as easily have happened in Alva, Oklahoma,[8] or Temple, Texas,[9] or any of hundreds of other cities and towns across the country that have enacted similar prohibitions. The danger of selective enforcement under these laws is thus a national concern, because they give local law enforcement officials virtually unfettered discretion to punish speech with which they disagree.

Amici's research also revealed that many municipal sign-posting ordinances act as prior restraints because they impose a requirement to obtain permission or consent from local officials to place signs and similar materials on public property, while offering little in the way of clearly defined standards to ensure permission is not withheld based on the content or viewpoint of the speaker. Accordingly, these ordinances enable selective enforcement because municipal officials have unlimited discretion to pick and choose which speakers have permission to speak. For example, in Campbell, Ohio, it

8. "It is unlawful for any person to place, stick, tack, paste, post, paint, mark, write or print any sign, poster, picture, announcement, advertisement, bill placard, device or inscription upon any public or private building, fence, sidewalk, bridge, viaduct, post, automobile, other vehicle or other property of another, without the consent of the owner or person in charge thereof." Alva, Okla., Code of Ordinances § 32-27.

9. "Any person who, without first having obtained the consent of the owner, shall stick, paint or stamp upon any house, fence, wall, pavement, or other object not his own, any written printed or other notice, bill sign, circular, poster or advertisement shall be deemed guilty of a misdemeanor." Temple, Tex., Code of Ordinances § 22-20.

is forbidden to erect any "poster, sign, handbill, placard or literature" on any "public building," without first obtaining permission from the "occupant or owner" of the building. Campbell, Ohio, Codified Ordinances § 709.03. Similarly, in Arcade, Georgia, it is unlawful to post any "sign, poster, advertisement, or notice of any kind" on "any public property" without the "written consent of the owner." Arcade, Ga., Code of Ordinances § 40-1(t).

Moreover, laws that purport to limit their reach to "advertising matter" are not immune from being used as tools of suppression. Petitioner Wilson's conviction under Moscow's Ordinance, which includes a prohibition on the posting of "advertising matter," emphasizes that problem. Moscow, Idaho City Code § 1-22(A). Wilson argued that the plain language of the statute was limited to a prohibition on "advertising matter." *Idaho v. Wilson*, 556 P.3d 450, 455 (Idaho Ct. App. 2024). The Idaho Court of Appeals concluded that the Ordinance included, but was not limited to, "advertising matter," and that Wilson's speech "did not need to constitute 'advertising matter'" to fall within the Ordinance's ambit. *Id.* If interpreted similarly by other state courts, ordinances like those in Durango, Colorado,[10] or Roanoke, Illinois[11] could be used to criminalize core political speech in those municipalities, too.

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10. "It shall be unlawful for any person to post, paint, tack or otherwise attach any notice or other advertising matter to any fence, wall or building or other property until first obtaining the consent of the owner of such property." Durango, Colo., Code of Ordinances § 13-21.

11. "It shall be unlawful for any person to post, paint, tack or otherwise attach any notice or other advertising matter to any fence, wall or building or other property until first obtaining the consent of the owner of such property." Roanoke, Ill., Code § 6-4-2.

The selective prosecution of Petitioner Wilson, under an ordinance that is one of hundreds of similar ordinances in force around the country, reveals a significant First Amendment blind spot in need of correction. Each of these ordinances could be used to silence speakers who express viewpoints unpopular with government officials. When speakers are punished for posting in the same public spaces that others use without incident—provided that their speech conforms to the government's orthodoxy—the specter of viewpoint discrimination is inescapable.

Petitioner Wilson's case is an ideal vehicle to address the broader constitutional concerns raised here. His conviction is the paradigmatic example of an improper, viewpoint-based prosecution that could arise under any of the hundreds of similar ordinances currently in effect around the country. Absent clarification of the basic First Amendment principles that should have restrained local officials from punishing Wilson solely because of his speech, overbroad local ordinances that regulate sign posting will continue to permit selective enforcement against unpopular viewpoints and will deter would-be speakers who fear reprisal. Our public squares are not, and never have been, spaces where only government-sanctioned messages are permitted. Where, as here, the government tacitly opens its spaces for the messages of some, but acts swiftly to punish others, the First Amendment must serve as a check on that discriminatory exercise of government power.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse the decision of the Idaho Court of Appeals.

Respectfully Submitted,

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