No. 24-993

IN THE

Supreme Court of the United States

GABRIEL OLIVIER,

Petitioner,

v.

CITY OF BRANDON, MISSISSIPPI;
WILLIAM A. THOMPSON,

Respondents.

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

BRIEF FOR *AMICUS CURIAE* THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS (ISKCON) IN SUPPORT OF PETITIONER

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September 9, 2025

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QUESTION PRESENTED

Gabriel Olivier is an evangelical Christian who often preaches in public as a part of his religious mission. In 2021, while sharing his faith outside of the Brandon Amphitheatre—a city-owned venue in Brandon, Mississippi—Olivier was arrested and fined for violating a municipal ordinance restricting protests outside the Amphitheatre. Olivier pleaded *nolo contendre* and paid a nominal fine. Believing that the ordinance violates his First and Fourteenth Amendment rights, Olivier thereafter sued under 42 U.S.C. § 1983 to enjoin future enforcement of the ordinance. A panel of the Fifth Circuit upheld a district court determination that Olivier's claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), in which this Court established a bar against § 1983 claims that necessarily imply the invalidity of a criminal conviction. The Fifth Circuit then narrowly denied rehearing *en banc*, further solidifying a circuit split. The question presented is:

Whether the Fifth Circuit erred in applying *Heck* to bar purely prospective relief under § 1983 based on payment of a nominal fine for past violation of the challenged ordinance.

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INTEREST OF *AMICUS CURIAE* [1]

Amicus the **International Society for Krishna Consciousness** ("ISKCON"), otherwise known as the Hare Krishna movement, belongs to a monotheistic *Gaudiya-Vaishnava* faith within the broad Hindu tradition. ISKCON has over seven hundred temples and rural communities, one hundred affiliated vegetarian restaurants, and ten million congregational members worldwide—many of whom live in the Fifth Circuit's jurisdiction. ISKCON members believe that all living beings have an eternal relationship with God, or Lord Krishna, and that the purpose of life is to awaken our dormant love of God. Thus, protecting religious freedom for all people is an essential principle for ISKCON. Much like the Petitioner here, ISKCON's members practice their faith with public chanting and distribution of literature. ISKCON's members have similarly been arrested and fined for their efforts to express their religious beliefs; thus, the decision below specifically affects ISKCON's members, barring them from seeking relief in the future because of previous fines.

Amicus has significant interest in the protection of constitutional rights, particularly religious evangelism and liberty, as it applies to it and others who seek to preserve individual rights to share religious convictions with the public. *Amicus* is committed to preserving constitutional freedoms under the First Amendment, especially as it pertains to questions of religion.

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[1] Pursuant to this Court's Rule 37.6, *amicus* confirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its counsel or its members made any monetary contributions intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The First Amendment shields religious speakers from prior restraint in traditional public fora. Yet the court below stretched *Heck v. Humphrey*, 512 U.S. 477 (1994), to bar Olivier's forward-looking constitutional challenge to an ordinance that constrains his speech solely because he previously paid a nominal fine to resolve a backward-looking violation thereof. This misapplication very effectively insulates unconstitutional ordinances from judicial review under § 1983 in the Fifth Circuit—excluding those who actually have standing from vindicating their rights in court—and thereby chills the exercise of constitutional rights.

The decision below was not only wrong but has broad and damaging implications for religious speech moving forward. The past payment of a nominal fine to dispose of an infraction should have exactly nothing to do with the ability to utilize § 1983 to avoid future infractions and fines (or worse). Permitting the decision below to stand will create a disfavored group of people—those who like *Amicus* must disseminate or perform their religious convictions in public—who are most likely to need to challenge restrictive ordinances and who are also most likely to have existing infractions or convictions for violating those very ordinances. This is a Catch-22 that relegates evangelical traditions of every stripe to second class. The Constitution does not countenance this. The Court should reverse the decision below to restore the proper constitutional order.

ARGUMENT

The First Amendment to the United States Constitution protects individuals from government actions substantially interfering with the free exercise of religion or abridging freedom of speech or assembly. U.S. Const. amend. I. Liberty guaranteed by the First Amendment is incorporated against the States via the Fourteenth Amendment. *E.g.*, *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (free exercise); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (free speech).

This Court has long recognized that public streets, sidewalks, and parks are held in trust for the people and occupy a privileged position under the First Amendment. "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public . . . for purposes of assembly, communicating thoughts between citizens, and discussing public question." *Hague v. CIO*, 307 U.S. 496, 515 (1939); *see also Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 93, 96 (1972) (expanding public fora to include sidewalks). The government's authority to restrict speech in those traditional public fora is therefore sharply constrained. *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 800 (1985). These spaces have historically been open to all manner of speech from all perspectives—political, cultural, and religious. Religious speakers cannot be excluded or silenced in such spaces absent a compelling justification, and certainly not based on a standardless, discretionary licensing scheme or under the guise of a facially neutral ordinance. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009).

Yet that is precisely what the decision below permits. It misapplies *Heck v. Humphrey* to bar Olivier's § 1983 claim solely because he paid a nominal

fine in the past. *Heck* was intended to prevent collateral attacks on criminal convictions, often in the context of damages claims that would ***necessarily*** imply the invalidity of the conviction. But stretching *Heck* to bar claims seeking purely prospective relief—such as injunctions against ongoing enforcement of unconstitutional ordinances—misapplies the principle. Nothing about a forward-facing injunction ***necessarily*** undermines a past conviction that is not even being reviewed. The court below made *Heck* unrecognizable.

The import of the decision below is to effectively insulate rights-trampling ordinances in three States from most federal judicial scrutiny under the Constitution. Individuals often just pay municipal fines—imposed for things like time, place, and manner violations, as here, or ubiquitous speed camera tickets or trash violations—to avoid the cost and time burdens of litigation over a trivial amount of money. The payment of those fines is not an admission of guilt (nor should that matter in any event).

Nor is such payment a knowing waiver of constitutional rights, which this Court has held must be shown by clear and compelling evidence. "By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by 'clear and compelling' evidence." *Janus v. AFSCME, Council 31*, 585 U.S. 878, 930 (2018). The decision below eviscerates this high bar to constitutional rights waivers practically *sub silentio* and closes the § 1983 door to those who are most injured and most need it.

Preventing religious adherents from seeking prospective relief under § 1983 simply because they paid a fine in the past chills their religious freedom and

undermines the principle that unconstitutional laws should not be shielded from review. *E.g.*, *Wyatt v. Cole*, 504 U.S. 158, 161 (1992) ("The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails."). Judge Oldham's dissent in Olivier's case on petition for rehearing *en banc* well illustrates why the lower court's application of *Heck* to bar Olivier's § 1983 claim sets a dangerous and absurd precedent:

> Suppose that—after Olivier is convicted of violating the Ordinance—one of his fellow protestors brings a § 1983 suit. Let's call this fellow protestor Sam. Sam was with Olivier on May 1, 2021, but Sam was not arrested and convicted. Sam brings a § 1983 claim seeking prospective injunctive relief. If the district court were to grant relief and enjoin future enforcement of the Ordinance against Sam, that decision would undermine the legal reasoning of Olivier's previous conviction. But does that mean that Olivier's conviction somehow prohibits Sam from protecting his own constitutional rights? Of course not, because that would mean that no one could ever challenge a law after any other person had been convicted for violating it.

App. 51a (Oldham, J., dissenting).

"Nothing in the Constitution, federal law, or Supreme Court precedent dictates this curious result." App. 47a (Ho, J., dissenting).

To uphold this precedent would be to undermine the principle that unconstitutional laws should not be shielded from forward-facing review. The people must retain the ability to challenge laws that pose continuous infringement of their constitutional rights, despite prior convictions or fines for past violations. Olivier's prior conviction demonstrates precisely why he remains at significant risk of future injury under the ordinance and why the lower court's application of *Heck* must be addressed.

Like Olivier, *Amicus* has sincerely held religious beliefs and practices that require public displays of the sacraments of their faith. ISKCON adherents engage in a religious practice known as *sankirtan*: the public chanting of God's names in the form of the *maha-mantra*, or the now well-known great prayer for deliverance: "Hare Krishna, Hare Krishna, Krishna Krishna, Hare Hare/Hare Rama Hare Rama, Rama Rama, Hare Hare." This religious exercise also includes the distribution of sacred literature to members of the public. This form of ministry is not optional or symbolic for *Amicus*—they are religious duties, grounded in centuries of tradition and scriptural command. These duties cannot be deferred or relocated to private venues and certainly as to ISKCON should not be any further restricted.[2] These practices must occur freely

[2] This Court has twice approved restrictions on the seventh and final purpose of ISKCON, the distribution of writings, on the theory of solicitation. ISKCON's seventh purpose is meant to advance its central tenets via the publication and dissemination of writings to the broader public. In *Heffron*, this Court held that the sequestering of ISKCON members handing out pamphlets at a Minnesota state fair to a small designated area was a permissible time, place, and manner restriction upon their religious obligations. *Heffron v. Int'l Soc. For Krishna Consciousness*, 452 U.S. 640, 647–652 (1981). This Court reached a similar

in public, among the people—precisely where the First Amendment's protections are at their zenith.

The First Amendment embodies an ideal that is uniquely American—that true liberty exists only where men and women are free to hold and express conflicting political and religious conscience. Under this aegis, the government must not interfere with its citizens living out and expressing their freedoms but rather embrace the liberty and security only a pluralistic society affords. That is why the First Amendment protects exercise of a religious person's conscience. This Court recently confirmed that the First Amendment "does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (cleaned up). Petitioner sought and was denied prospective injunctive relief concerning the constitutionality of an ordinance and its application to his exercise of religious conscience and expression in the future. Therefore, your *Amicus* highlight the profound importance of this deeply rooted constitutional liberty interest.

Aggrandizing *Heck* to bar prospective relief based on prior citations would alter how *Amicus* are able to express their religious traditions—many members of ISKCON have suffered similar fates as Olivier for exercising their personal religious convictions. The

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conclusion in *Lee*, determining that the Port Authority of New York and New Jersey's "prohibition on solicitation passes muster," and the Port Authority could rightly restrict the distribution of ISKCON publications within New York and New Jersey airports. *Int'l Soc. For Krishna Consciousness v. Lee*, 505 U.S. 672, 677–683 (1992).

ruling below will affect *Amicus*'s and any evangelical religion's ability to share their good news out of fear. When, as here, government action intrudes upon the exercise of religious conscience and expression, it imperils not only individual liberty but also the constitutional order that depends upon protecting those freedoms as the cornerstone of our pluralistic republic.

CONCLUSION

For the foregoing reasons and those stated by Petitioner, the Court should reverse the decision below.

Respectfully submitted,

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