No.

In the Supreme Court of the United States

MIKE YODER, DRONE DEER RECOVERY LLC, AND JEREMY FUNKE,

Petitioners,

v.

SCOTT BOWEN, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

ANDREW R. QUINIO
Counsel of Record
DONNA G. MATIAS
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814
(916) 419-7111
AQuinio@pacificlegal.org

Counsel for Petitioners

QUESTION PRESENTED

Petitioner Mike Yoder and his company, Drone Deer Recovery LLC, use drones to locate downed game and to generate and transmit factual location information to hunters, including Petitioner Jeremy Funke. Michigan criminalizes that speech-producing activity and the receipt of that information, even though the state permits drones to be used for other expressive purposes, such as photographing wildlife and landscapes.

The Fourth and Ninth Circuits hold that the First Amendment protects the means of acquiring and creating information necessary to produce speech, including non-political speech. *Garcia v. Cnty. of Alameda*, 150 F.4th 1224, 1231 (9th Cir. 2025) and *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed'n, Inc.*, 60 F.4th 815, 828 (4th Cir. 2023) (*PETA*). The Sixth Circuit adopted a contrary rule, holding that Yoder's drone-based information-gathering is unprotected because it does not produce "political" speech. As Judge Bush explained in his separate statement, a political/non-political distinction conflicts with those sister circuits and with this Court's recognition that the First Amendment protects the creation of factual information, including information "devoid of advocacy [or] political relevance." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011).

The question presented is:

Whether the First Amendment protects the means of acquiring or creating speech when the speech is non-political.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners were plaintiffs in the district court. They are Mike Yoder, Drone Deer Recovery LLC, and Jeremy Funke.

Respondent is Scott Bowen,[1] in his official capacity as Director of the Michigan Department of Natural Resources. Mr. Bowen was the defendant in district court.

Mr. Yoder and Mr. Funke are natural persons. Petitioner Drone Deer Recovery LLC is a limited liability company and the business name of HLE Drones LLC. Its parent corporation is Inspire Drone Technologies and no publicly held corporation holds any stock in it.

[1] The original defendant was Shannon Lott, former Acting Director of the Michigan Department of Natural Resources, who has since been substituted.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

- *Yoder et al. v. Bowen*, No. 1:23-cv-00796-PLM-SJB, W. D. Mich (June 18, 2024) (granting defendant's motion to dismiss)
- *Yoder et al. v. Bowen*, No. 24-1593, 6th Cir. (July 31, 2025) (affirming the grant of the motion to dismiss)
- *Yoder et al. v. Bowen*, No. 24-1593, 6th Cir. (October 3, 2025) (denying petition for rehearing *en banc*)

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Mike Yoder, Drone Deer Recovery LLC, and Jeremy Funke petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The decision of the Sixth Circuit is available at 146 F.4th 516 and reprinted at App. 1a. The Sixth Circuit's denial of *en banc* review is available at 154 F.4th 454 and reprinted at App. 47a.

The decision of the United States District Court for the Western District of Michigan is not reported but it is available at 2024 WL 6304957 and reprinted at App. 36a.

JURISDICTION

The final decision of the Sixth Circuit sought to be reviewed was issued on July 31, 2025. App. 1a. Denial of *en banc* review was issued on October 3, 2025. App. 47a. On December 23, 2025, Justice Kavanaugh granted a motion to extend the deadline to file a petition for writ of certiorari to February 2, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides: "Congress shall make no law. . . abridging the freedom of speech."

Relevant portions of the Michigan Compiled Laws appear at App. 59a-66a.

INTRODUCTION

This case presents an important and recurring First Amendment question about the protection afforded to speech creation: when a state restricts the means of acquiring or generating factual information, does the First Amendment treat that as a burden on speech—regardless of whether the resulting speech is "political"?

This Court's cases recognize that "the creation and dissemination of information are speech within the meaning of the First Amendment," including "dry information, devoid of advocacy, political relevance or artistic expression." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011). But the Court has not had occasion to decide whether, or when, a government may categorically exclude the creation of non-political factual information from First Amendment scrutiny by labeling it outside the sphere of protected "speech inputs." The courts of appeals have now divided on that question—with the Sixth Circuit adopting a political/non-political line that other circuits have not drawn.

The Sixth Circuit adopted the political/non-political line and used it to deny First Amendment protection to Petitioners' drone-enabled information gathering. It held that the First Amendment protects speech inputs only when they generate core political speech, and that Petitioners' activity falls outside the Amendment's reach because it produces non-political location data. App. 19a-20a. Under that rule, a state may prohibit the tools used to acquire or generate factual information—without triggering heightened scrutiny—so long as the resulting speech lacks political content.

Other circuits have refrained from setting that limitation. The Fourth Circuit has held that restrictions on acquiring and recording non-political information burden speech and implicate the First Amendment. *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed'n, Inc.*, 60 F.4th 815, 828-29 (4th Cir. 2023). The Ninth Circuit has likewise held that observation and recording are protected predicates of speech creation, even when the resulting speech concerns non-political subjects. *Garcia v. Cnty. of Alameda*, 150 F. 4th 1224, 1230-31 (9th Cir. 2025). Those courts have declined to condition constitutional protection on the political character of the speech ultimately produced.

The Sixth Circuit's rule rests on a distinction this Court has never endorsed. *Sorrell* recognized that factual information receives First Amendment protection regardless of its political content, but it did not address whether governments may categorically exclude the creation of such information from protection by regulating the tools that produce it. The Sixth Circuit answered that open question by imposing a political-content requirement that other courts have refused to adopt.

That disagreement has significant practical consequences. Modern technologies—drones, cameras, and recording devices—are widely used to acquire and transmit factual information in non-political settings. A rule that allows states to ban those tools whenever the resulting speech is deemed non-political authorizes suppression at the point of creation and gives governments broad discretion to restrict speech before it exists.

The danger is not confined to this case. Information that begins as non-political fact often becomes the foundation for later public debate, advocacy, or reform. A political/non-political dividing line permits governments to suppress speech inputs at the moment of acquisition, even though the value of the information may emerge only after it is created.

This Court should grant certiorari to resolve the division among the courts of appeals and clarify whether the First Amendment permits governments to evade strict scrutiny by restricting the means of acquiring or creating non-political speech.

STATEMENT OF THE CASE

I. Mike Yoder, Drone Deer Recovery, and His Client, Jeremy Funke

Mike Yoder is the owner of Drone Deer Recovery LLC (DDR), a business he started in Ohio that uses drone technology to assist hunters in locating deer and other game after the game has been shot. App. 67a, 69a, ¶¶ 1, 10.

Mr. Yoder's services are valuable because game commonly run off after being shot and then perish at a distance from where they were struck. App. 71a ¶ 18. When this happens, hunters can hire a drone pilot in their area through DDR's website to locate their kill. *Id.* ¶ 23.

DDR provides this service only after the hunter has shot the animal and stowed his or her weapons. *Ibid.* DDR never pilots drones to pursue live animals for hunters to kill. App. 72a ¶ 29.

After the hunter stows his or her weapons, a DDR pilot flies a drone approximately 400 feet above the ground and scans the area for heat signatures using

the drone's thermal imaging technology. App. 71a-72a ¶¶ 23-26. This technology allows drone operators to conduct searches in low-light conditions. App. 72a-73a ¶¶ 26, 30.

Once the drone detects a heat signature resembling the hunter's animal, the pilot activates the drone's 200X zoom camera and lights to view the animal and confirm that it is the one that the hunter shot. App. 72a ¶ 27. If the pilot determines that it is the correct animal and the animal is deceased or will be deceased by the following morning, the pilot directs the drone to relay the animal's coordinates to Global Positioning System satellites, creating a location pin. App. 72a ¶¶ 27-28. The pilot then transmits this location pin to the hunter using Google Maps or another mapping application. App. 72a ¶ 29. The location pin contains the location coordinates of the downed game. *Id.* ¶ 28.

Michigan hunters like Petitioner Jeremy Funke would like to use DDR's services. App. 69a ¶¶ 8, 11. He needs the location information DDR provides because Michigan law requires hunters to make reasonable efforts to retrieve their game. App. 71a ¶ 20. Mr. Yoder's services are especially useful in Michigan's dense landscapes, where felled game can remain hidden. *Id.* ¶ 18. Retrieving downed game also prevents waste. *Id.* ¶ 20.

Drones are less intrusive to the surrounding environment and more effective at locating downed game than other methods like trail cameras or tracking dogs. *Id.* ¶ 22. DDR's drones mostly operate at night, approximately 400 feet above ground, and produce ambient, nondescript noise. App. 72a, 73a ¶¶ 26, 30.

II. Michigan's Ban on the Use of Drones for Hunting Prevents Yoder's Location Services

The Michigan Department of Natural Resources (MDNR) prohibits DDR from communicating the location of downed game by applying a statutory prohibition on hunting with drones to DDR's drone-assisted location services. App. 73a ¶ 31.

Mich. Comp. Laws § 324.40111c (Drone Statute) provides, "[a]n individual shall not take game or fish using an unmanned vehicle or unmanned device that uses aerodynamic forces to achieve flight." App. 60a, 73a ¶ 34.

Michigan law defines "taking game" to mean "to hunt with any weapon, dog, raptor, or other wild or domestic animal trained for that purpose; kill; chase; follow; harass; harm; pursue; shoot; rob; trap; capture; or collect animals, or to attempt to engage in such an activity." Mich. Comp. Laws § 324.40104; App. 59a, 73a-74a ¶ 35.

MDNR interprets "use" under the Drone Statute to include "locate." App. 74a ¶ 37. Under that interpretation, when a drone locates an animal's carcass after it has been downed by a hunter, the drone is being "used" to "collect" that animal, allegedly in violation of the Drone Statute. *Ibid.*

In 2023, in response to inquiries about whether drones may be used to locate downed game, MDNR officials stated that using drones for that purpose in Michigan is illegal under the Drone Statute. App. 73a ¶¶ 31-33.

Nothing in the text of the Drone Statute prohibits the general operation of drones or the gathering and transmission of other types of information. App. 59a, 60a, 73a-74a ¶¶ 34-35. Indeed, MDNR itself uses

drones for other purposes, including assessing forest health. App. 18a, 54a.

Violations of the Drone Statute are misdemeanors punishable by imprisonment or a fine, depending on the type of animal involved. App. 61a, 74a ¶ 36. As a result, Mr. Yoder and DDR will not operate in Michigan, and Mr. Funke will not seek their services, out of fear of prosecution. App. 69a, 70a-71a ¶¶ 11, 17.

III. Proceedings Below

Mr. Yoder, Drone Deer Recovery LLC, and Mr. Funke brought this civil rights lawsuit in the United States District Court for the Western District of Michigan, challenging Michigan's Drone Statute as applied to DDR's drone-assisted location services. App. 67a-77a. The complaint alleges that the statutory ban on using drones to locate downed game violates Petitioners' First Amendment rights to collect, create, transmit, and receive factual location information. App. 74a-76a ¶¶ 38-51. Petitioners seek declaratory and injunctive relief barring MDNR from enforcing the Drone Statute against their activities. App. 76a-77a.

Respondents moved to dismiss under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), arguing that Petitioners lacked standing and that they failed to state a First Amendment claim.[1] App. 36a, 39a-45a. The district court granted the motion, holding that Petitioners lacked standing because their injury was not redressable and that the Drone Statute regulates conduct rather than speech. *Ibid.* The district court

[1] Respondents also sought dismissal based on MDNR's immunity under the Eleventh Amendment, but the district court did not address this argument.

further held that drones are not protected speech inputs. *Id.*

On appeal, a Sixth Circuit panel reversed the standing ruling but affirmed dismissal for failure to state a claim. App. 1a. The panel held that Petitioners had standing but declined to apply First Amendment strict scrutiny, concluding that the Drone Statute is a content-neutral restriction despite permitting the acquisition and transmission of other information, drones are not speech inputs, and flying a drone is not inherently expressive conduct, thereby rejecting each separately asserted basis for such review. App. 17a-22a.

With respect to speech inputs, the panel distinguished Petitioners' use of drones from other protected inputs on the ground that the information they created—location data regarding downed game—is not political speech. App. 19a-20a. Because the drones did not generate political expression, the panel concluded that the drones are not speech inputs that the First Amendment protects, so prohibiting them did not warrant heightened strict scrutiny. *Ibid.*

Petitioners sought rehearing *en banc*, which the Sixth Circuit denied. App. 48a. Judge Bush issued a separate statement expressing concern with the panel's speech-inputs analysis. App. 49a-50a. He explained that the panel's reasoning conflicted with *Sorrell*, which recognizes First Amendment protection for speech creation and for factual information regardless of political content. App. 53a. Judge Bush further questioned the panel's political/non-political distinction, observing that "the alleged wrong from prohibiting drone usage does not depend on whether the speech is political" and that a ban on a speech

input can violate the First Amendment by "effectively abolish[ing] the speech altogether." App. 52a. He closed by urging this Court to provide guidance on the scope of the speech-inputs doctrine. App. 58a.

REASONS FOR GRANTING THE PETITION

Review is warranted because the decision below adopts a novel limitation on First Amendment protection for speech creation, deepens a direct conflict among the courts of appeals, and presents a clean vehicle for resolving an important and recurring constitutional question. The Sixth Circuit's political/non-political distinction has no footing in this Court's precedents and invites widespread suppression of factual speech at the point of creation.

I. The Courts of Appeals Are Divided Over Whether the First Amendment Protects Non-Political Speech Inputs

The decision below deepens a square conflict among the courts of appeals over whether the First Amendment protects the means of acquiring or creating non-political speech. The Sixth Circuit has held that speech inputs receive constitutional protection only when they generate "core political speech." Other circuits have rejected that limitation and have held that restrictions on acquiring or creating factual information implicate the First Amendment regardless of the political character of the resulting speech.

The Sixth Circuit adopted a categorical political/non-political distinction. It concluded that Petitioners' drones are not protected speech inputs because they generate non-political location

information, and that regulations restricting their use therefore do not warrant heightened scrutiny. App. 19a-20a. Under that rule, a state may prohibit the tools used to gather factual information—without triggering strict scrutiny—so long as the information lacks political content.

Other circuits have declined to impose that limitation. The Fourth Circuit has held that laws restricting the acquisition and recording of non-political information burden speech and implicate the First Amendment. *PETA*, 60 F.4th at 828-29. There, the court rejected the argument that restrictions on recording could escape First Amendment scrutiny simply because the resulting speech was not political. *Ibid.*

The Ninth Circuit has taken the same approach. It has held that observation and recording are protected predicates of speech creation, even when the resulting speech concerned non-political subjects. *Garcia*, 150 F.4th at 1231. The court emphasized that the First Amendment protects the process of creating speech and that governments may not evade scrutiny by regulating a predicate of speech rather than its final expression. *Ibid.*

The Sixth Circuit stands alone in conditioning First Amendment protection for speech inputs on the political character of the speech they generate. That division warrants this Court's review. The consensus among the sister circuits rejects conditioning the protection of speech inputs on whether they create political speech, placing the Sixth Circuit at odds with the prevailing law. *See Fields v. City of Philadelphia,* 862 F.3d 353, 358-60 (3d Cir. 2017) ("We need not, however, address at length the limits of this

constitutional right [to record]."); *Turner v. Lieutenant Driver*, 848 F.3d 678, 689 (5th Cir. 2017) (The First Amendment protects "the broader right to film."); *W. Watersheds Project v. Michael*, 869 F.3d 1189, 1197 (10th Cir. 2017) ("The challenged statutes apply specifically to the creation of speech, and thus we conclude they are subject to the First Amendment.").

Although the purpose of the speech at issue in these cases varies, regulations on their *creation* are sufficient to trigger First Amendment protection, regardless of whether the speech is political.

II. The Sixth Circuit's Political/Non-Political Distinction Conflicts with This Court's First Amendment Precedents Protecting Speech Creation

The Sixth Circuit's political/non-political distinction is irreconcilable with this Court's First Amendment jurisprudence, which has repeatedly recognized that the Constitution protects the creation of speech and the acquisition of factual information, regardless of whether the resulting speech is political.

This Court has made clear that "the creation and dissemination of information are speech within the meaning of the First Amendment," and that protection extends to "even dry information, devoid of advocacy, political relevance, or artistic expression." *Sorrell*, 564 U.S. at 570. Although *Sorrell* did not delineate the precise contours of protection for every form of speech creation, it rejected the premise that factual or non-political information occupies a lesser constitutional status. *Id.* at 570-71. Nothing in *Sorrell* suggests that the tools used to create such information may be categorically excluded from First Amendment

scrutiny based on the subject matter of the speech they generate.

This Court's broader precedents likewise confirm that the First Amendment protects speech at multiple stages of the communicative process. "Laws enacted to control or suppress speech may operate at different points in the speech process," and restrictions on speech creation are constitutionally significant even when they do not directly regulate the final message. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 336 (2010); *see also Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 793 n.1 (2011) ("Whether government regulation applies to creating, distributing, or consuming speech makes no difference.").

Consistent with that understanding, the courts of appeals—until the decision below—have recognized that the First Amendment protects the acquisition and creation of factual information, even when the speech produced is non-political. The Third Circuit has held that the First Amendment safeguards the right to record police activity in public, emphasizing that the act of recording itself is protected because it is a necessary predicate to accessing information. *Fields*, 862 F.3d at 358-60. The Seventh Circuit reached the same conclusion in invalidating a ban on audio recording, explaining that restrictions on recording implicate the First Amendment by targeting the creation of information. *Am. C. Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 600 (7th Cir. 2012) ("Any way you look at it, the eavesdropping statute burdens speech and press rights and is subject to heightened First Amendment scrutiny.").

The Fifth and Tenth Circuits have similarly rejected efforts to sever speech creation from First

Amendment protection. The Fifth Circuit has recognized a "broader right to film" as part of the First Amendment's protection for newsgathering and information creation. *Turner*, 848 F.3d at 689. And the Tenth Circuit has held that statutes regulating the "creation of speech" are subject to First Amendment scrutiny, even when the information gathered is factual and non-political. *W. Watersheds Project*, 869 F.3d at 1196-97.

The Sixth Circuit's rule departs from this settled understanding by making First Amendment protection turn on whether the speech created is political. That distinction finds no support in this Court's cases. On the contrary, this Court has repeatedly warned against content-based distinctions that depend on the subject matter or purpose of speech. *Reed v. Town of Gilbert*, 576 U.S. 155, 163-65 (2015). A rule that requires courts to examine whether speech inputs generate "political" or "non-political" speech necessarily depends on the content and function of the speech being produced—and therefore triggers the very scrutiny the Sixth Circuit sought to avoid.

Nor is the Sixth Circuit's limitation administrable. Speech inputs are not inherently political or non-political. A camera, recorder, or drone may be used to create scenic footage, commercial data, academic research, or documentation later used in public debate. Conditioning constitutional protection on the perceived political value of the resulting speech invites arbitrary enforcement and permits governments to suppress speech at the point of creation based on its anticipated use.

Because the Sixth Circuit's political/non-political distinction conflicts with this Court's precedents protecting speech creation and factual information, and because it diverges from the approach taken by every other circuit to consider the issue, this Court's review is warranted.

III. The Sixth Circuit's Rule Threatens Widespread Suppression of Speech at the Point of Creation

The Sixth Circuit's political/non-political distinction has consequences far beyond this case. By allowing governments to prohibit speech inputs whenever the resulting speech is deemed non-political, the decision below authorizes suppression of speech at the moment of creation—before its value, relevance, or future use can be known.

Modern speech depends on tools that acquire, record, and transmit factual information. Drones, cameras, audio recorders, and similar technologies are ubiquitous means of creating speech in journalism, academia, commerce, and everyday life. A rule that permits states to ban those tools based on the perceived subject matter of the information they generate grants governments sweeping discretion to suppress facts before they enter the marketplace of ideas.

Drones alone are widely used in a number of industries to acquire and transmit information.[2]

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[2] Syed Agha Hassnain Mohsan et al., *Unmanned Aerial Vehicles (UAVs): Practical Aspects, Applications, Open Challenges, Security Issues, and Future Trends*, 16 Intelligent Service Robotics 109, 110-11 (2023), *available at* https://tinyurl.com/dukjbwrj.

Readily permitting drone-targeted regulations would significantly hinder transmission of a large swath of non-political information.

That danger is especially acute because speech does not come pre-labeled as "political" or "non-political." Information that begins as neutral fact often becomes the foundation for later advocacy, public debate, or reform. As Judge Bush explained in his separate statement below, "the alleged wrong from prohibiting drone usage does not depend on whether the speech is political," because "the constitutional violation from banning a speech input arises when the restriction effectively abolishes the speech altogether." App. 52a. A rule that permits bans at the point of acquisition ignores the reality that the value of speech frequently emerges only after it is created.

This Court has long recognized that it is "readily apparent" how laws that foreclose an "entire medium of expression" are particularly dangerous to the freedom of speech, even when they do not target a particular viewpoint. *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994). By allowing states to prohibit speech-creating tools whenever they generate non-political information, the Sixth Circuit's rule permits precisely that form of overbroad suppression.

The chilling effect is neither speculative nor limited. If non-political speech inputs fall outside the First Amendment's protection, governments may regulate or ban recording technologies, data-gathering tools, or observation methods whenever the information collected is deemed insufficiently expressive. Judge Bush warned that such a rule "could be employed to diminish academic freedom," or "effectively ban" entire forms of journalism that

involve recording or documenting non-political subjects. App. 56a-57a. That uncertainty leaves speakers unable to know in advance whether the tools they rely on to gather information are constitutionally protected—an uncertainty that itself deters speech.

This case presents a clean vehicle for resolving that issue. The Sixth Circuit squarely held that non-political speech inputs are categorically unprotected, creating a direct conflict with other courts of appeals and prompting a member of the court below to urge this Court's review. Clarification is necessary to prevent the erosion of First Amendment protection for speech at its source.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ANDREW R. QUINIO
Counsel of Record
DONNA G. MATIAS
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814
(916) 419-7111
AQuinio@pacificlegal.org

Counsel for Petitioners

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