No. 25-923

In the Supreme Court of the United States

MIKE YODER, ET AL., PETITIONERS

v.

SCOTT BOWEN, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The petition for certiorari frames the question presented as follows:

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

Petitioners' question is not presented here because the Sixth Circuit did not rule against Petitioners on that question. To the contrary, it ruled that the means Petitioners use to create non-political speech *is* protected by the First Amendment.

PARTIES TO THE PROCEEDING

Petitioners Mike Yoder, Drone Deer Recovery, LLC, and Jeremy Funke were the appellants in the court below.

Respondent Scott Bowen, in his official capacity as Director of the Michigan Department of Natural Resources, was the appellee in the court below.

RELATED CASES

The petition accurately lists the directly related cases within the meaning of Rule 14.1(b)(iii).

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OPINIONS BELOW

Petitioners accurately identify the opinions below.

JURISDICTION

Respondent agrees this Court has jurisdiction to consider the petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I.

Section 40111c of Chapter 324 of Michigan's Compiled Laws (the Drone Statute) states in part:

> (2) An individual shall not take game or fish using an unmanned vehicle or unmanned device that uses aerodynamic forces to achieve flight or using an unmanned vehicle or unmanned device that operates on the surface of water or underwater.

Section 40104 of Chapter 324 of Michigan's Compiled Laws states in part:

> (1) "Take" means 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.

INTRODUCTION

Petitioners have offered an interesting question of free speech within the context of an emerging issue—the use of drones for purposes of information-gathering. But their question has no foundation in the decision below. That disconnect creates a serious vehicle problem—exacerbated by independent standing defects—and undercuts their circuit split argument as well.

Petitioners assert that the Sixth Circuit held that their information-gathering is unprotected by the First Amendment because it does not produce "political" speech. Pet. i. The court held no such thing. Its actual holding was that Petitioners' non-political information-gathering *is* protected by the First Amendment and that the Drone Statute must therefore satisfy intermediate scrutiny. Petitioners do not challenge either aspect of that holding. On the very question presented—whether the First Amendment protects the means of creating non-political speech—Petitioners are the prevailing party below.

The petition suffers from an independent, threshold defect: Petitioners' lack of standing. Their pre-enforcement suit lacks all the hallmarks of a case fit for federal court adjudication. The district court dismissed the case for lack of standing, and although the Sixth Circuit majority concluded that Petitioners had alleged enough to proceed, it found the question to be "close"—and one judge would have held the other way. Standing remains a stumbling block for Petitioners.

Even setting these threshold defects aside, the petition presents no question warranting this Court's review. The Sixth Circuit's actual holding does not conflict with those of other circuits and is supported by this Court's precedents. It is well-established that content-neutral regulations that do not target expression and only incidentally burden speech need only satisfy intermediate scrutiny. Petitioners do not identify any holding from this Court or other courts of appeals to the contrary.

STATEMENT OF THE CASE

A. The Drone Statute

The Michigan Legislature has declared that the "fish and wildlife populations of the state . . . are of paramount importance to the citizens of this state." Mich. Comp. Laws § 324.40113a(1)(a). It has also declared "that hunting, fishing, and the taking of game are a valued part of the cultural heritage of this state" that "play an important part in the state's economy," and that those "activities . . . should be forever preserved." Mich. Comp. Laws § 324.40113a(3).

In Michigan, to "take" an animal is not just to "kill" it, but to "chase; follow; harass; harm; pursue; shoot; rob; trap; capture; or collect" it, "or to attempt to engage in such an activity." Mich. Comp. Laws § 324.40104(1). Thus, "taking" an animal includes tracking a wounded animal after it has been shot. Hunters typically track wounded animals on foot or with dogs or trail cameras. Pet. App. 2a, 71a ¶ 19.

It had long been unlawful in Michigan to use an aircraft (such as an airplane or helicopter) to take an animal. (Exhibit 1 to 2/15/2024 Br., ECF No. 25-1, PageID.124.) In 2015, the Michigan Legislature extended that prohibition to drones, making it unlawful to use a drone either to "hinder or prevent the lawful taking of an animal," Mich. Comp. Laws § 324.40112, or to "take game or fish," Mich. Comp. Laws § 324.40111c(2). The purpose of the amendment was to prevent "hunters [from] seeking an unfair advantage" and to ensure that people could not "disrupt" hunters with drones. Pet. App. 3a. (See also Ex. 1 to 2/15/2024 Br., ECF No. 25-1, PageID.124.)

B. Petitioners' operations

Petitioner Mike Yoder and his company use drones to "locate" wounded deer. Pet. App. 69a ¶¶ 6, 10; 70a ¶¶ 12–13; 72a ¶¶ 27–28. As Petitioners concede, there are other ways to "locate" a deer that has been wounded, such as tracking on foot with dogs or with trail cameras. Pet. App. 71a ¶ 19.

Petitioners allege that after a Drone Deer Recovery (DDR) pilot locates a deer, the pilot does not automatically create location information to send to the client. The pilot first must watch the deer to determine whether the deer "is dead or the pilot believes it will be dead by the next morning." Pet. App. 70a ¶ 13. Only then do "DDR's drones create a 'location pin' with the deer's location coordinates." Pet. App. 70a ¶ 13. The pilot then "disseminates the information to the hunter using Google Maps or a similar mapping service." Pet. App. 72a ¶ 29. This "location information," Petitioners

contend, is the "speech" protected by the First Amendment. Pet. App. 74a ¶¶ 40–41.

C. The district court's opinion

Petitioners filed suit against Scott Bowen, Director of the Michigan Department of Natural Resources, in his official capacity, seeking an injunction prohibiting him from enforcing the Drone Statute against them.

Director Bowen moved to dismiss Petitioners' amended complaint, arguing that Michigan does not regulate the creation or dissemination of the location information that Petitioners allege to be "speech." (2/15/2024 Br., ECF No. 25, PageID.108–110.) Director Bowen further explained that a person violates Michigan's law against using drones to take game simply by chasing, following, or pursuing the game, without creating or disseminating a location pin. (2/15/2024 Br., ECF No. 25, PageID.108–110.) Thus, because Petitioners' alleged *speech* is neither prohibited nor regulated by Michigan law, Petitioners lacked standing and failed to state a claim under the First Amendment. (2/15/2024 Br., ECF No. 25, PageID.110–120.)

Alternatively, Director Bowen asserted that even if the Drone Statute were subject to heightened scrutiny, intermediate scrutiny would apply. (4/5/2024 Br., ECF No. 27, PageID.158–159.) And the Drone Statute satisfies that standard because it advances Michigan's legitimate interests, which would be served less effectively without it. (4/5/2024 Br., ECF No. 27, PageID.159–160.)

The district court granted Director Bowen's motion without oral argument. It agreed that the conduct forbidden by law (using a drone) could be distinguished from the speech Petitioners sought to protect (the creation and communication of location pins). Pet. App. 41a. It ruled that Petitioners lacked standing because nothing in the challenged statute "contemplates speech or its regulation," so the statute "does not regulate [Petitioners'] ability to send and receive information regarding downed game." Pet. App. 41a.

The district court also ruled that even if Petitioners had standing, they still failed to state a claim because the Drone Statute regulates only conduct, not speech. Pet. App. 42a–45a. Citing *Zemel* v. *Rusk*, 381 U.S. 1, 17 (1965), the district court ruled that the statute does not implicate the First Amendment simply because the prohibition on conduct makes it less convenient for Petitioners to obtain information. Pet. App. 43a–44a. Thus, the Drone Statute did not have to satisfy First Amendment scrutiny because it did not restrict speech. Pet. App. 42a–45a.

D. The Sixth Circuit's opinion

The Sixth Circuit affirmed, albeit on different grounds. In a split opinion, the court ruled 2-to-1 that Petitioners have standing. The majority did "not agree [with the district court or Director Bowen] that flying drones is separable from creating and disseminating location information." Pet. App. 10a. It held that, based on their allegations, Petitioners had shown an injury traceable to Director Bowen that would be redressed by a favorable ruling. Pet. App. 8a–16a. Still,

the majority recognized that, in this "pre-enforcement context," it was a "close question" whether Petitioners had alleged "an imminent future injury." Pet. App. 8a, 14a. The majority resolved that close question in Petitioners' favor based on this Court's instruction that courts should "give the benefit of any doubt to protecting rather than stifling speech." Pet. App. 14a (citing *Citizens United* v. *FEC*, 558 U.S. 310, 327 (2010)).

Judge Mathis, concurring, would have affirmed the dismissal on standing grounds. In his view, Petitioners had failed to adequately allege a "credible threat of enforcement" and therefore could not "show an injury in fact." Pet. App. 28a–35a.

Although the Sixth Circuit ruled that Petitioners have standing, it nevertheless affirmed the dismissal of the case. The court held that the Drone Statute implicates the First Amendment and concluded that the statute is subject to only intermediate scrutiny, which it satisfies. Pet. App. 16a. The court rejected each of Petitioners' three arguments for applying strict scrutiny. Pet. App. 17a.

First, the Drone Statute is not content based. It applies to "anyone . . . who wants to use a drone to 'follow' an animal" and is violated "even if the pilot never shares a location pin with anyone else," so there is no need for the government to examine any of Petitioners' "transmissions" to determine if the statute was violated. Pet. App. 17a–18a. The Drone Statute "does not ban the use of drones for taking game[ ] based on the message conveyed or the information created." Pet. App. 18a. Instead, it "incidentally burdens

[Petitioners'] ability to create location information, rather than targeting expression." Pet. App. 19a.

Second, the Drone Statute does not regulate the type of "speech inputs" this Court has identified for heightened protection. Pet. App. 19a. It does not regulate the money used to create "core 'political speech,' " like the statutes at issue in *Buckley* v. *Valeo*, 424 U.S. 1, 44–45 (1976), *Meyer* v. *Grant*, 486 U.S. 414, 425 (1988), and *Buckley* v. *American Constitutional Law Foundation*, *Inc.*, 525 U.S. 182, 188, 195 (1999). Pet. App. 19a–20a. Nor does it explicitly target specific viewpoints expressed by specific speakers, like the statute at issue in *Sorrell* v. *IMS Health Inc.*, 564 U.S. 552, 564–65 (2011). Pet. App. 20a.

Third, flying a drone is not "inherently expressive conduct." Pet. App. 20a. Unlike waving a flag, flying a drone does not send a "particularized message" that "a viewer could understand from the conduct alone" without further explanation. Pet. App. 21a (citing *Rumsfeld* v. *F. for Acad. & Institutional Rts.*, *Inc.*, 547 U.S. 47, 66 (2006); and *Texas* v. *Johnson*, 491 U.S. 397, 404 (1989)).

Although strict scrutiny did not apply, the Sixth Circuit determined that intermediate scrutiny did apply because, under Petitioners' allegations, the use of drones was not "separable" from their alleged speech, and the statute therefore still "burden[ed]" the speech—though only "incidentally." Pet. App. 10a, 22a, 24a. The court held that the Drone Statute satisfies that standard. Michigan had the authority "to enact the Drone Statute," which "furthers" Michigan's

"important conservation and preservation interests." Pet. App. 23a. The statute does not target "free expression" for the same reason it is content-neutral. Pet. App. 24a. And while the Drone Statute incidentally burdens speech, it does so "no more than necessary" because "it would be harder for Michigan to achieve its stated interests . . . without banning the use of drones to take game." Pet. App. 24a.

This petition followed.

REASONS FOR DENYING THE PETITION

I. The petition presents significant vehicle problems.

The Court should deny this petition. Most glaringly, Petitioners' question presented misunderstands the decision below. They frame the case as one in which the Sixth Circuit denied First Amendment protection to their drone-based information-gathering. But the Sixth Circuit held the opposite. It found that the Drone Statute implicates the First Amendment and is subject to intermediate scrutiny. That the State satisfied that scrutiny does not mean that Petitioners' information-gathering went unprotected—it means that protection yielded to a content-neutral regulation that only incidentally burdens speech.

In addition to this problem, Petitioners lack standing. Their pre-enforcement suit lacks any of the characteristics that would permit an Article III court to hear a case like this one. The district court dismissed the case on that ground, and even the Sixth Circuit

majority, over a dissent on that question, found it to be a "close question." Pet. App. 14a.

A. The Sixth Circuit did not address the question presented by Petitioners.

Quite simply, Petitioners ask the wrong question. They ask this Court whether "the First Amendment protects the means of acquiring or creating speech when the speech is non-political." Pet. i. But the Sixth Circuit did not hold that the methods of creating non-political speech are categorically excluded from First Amendment protection or otherwise address the question Petitioners present to this Court. Nor did it conclude "that [Petitioner's] drone-based information gathering is unprotected because it does not produce 'political' speech." Pet. i.

Instead, the Sixth Circuit answered the very question Petitioners present here in their favor: The court held that their information-gathering *is* protected by the Free Speech Clause because the alleged "speech and nonspeech elements are combined in the same course of conduct." Pet. App. 22a (citation omitted). Petitioners thus prevailed below on the very question they now ask this Court to review.

And although the court held that the Drone Statute is subject only to intermediate scrutiny, Pet. App. 17a, 22a, Petitioners do not challenge that holding here.

The Sixth Circuit did refer to "political speech," but only in a single paragraph, and only to explain why

intermediate rather than strict scrutiny applies. Pet. App. 20a. Below, Petitioners cited *Lichtenstein* v. *Hargett*, 83 F.4th 575 (6th Cir. 2023), for the proposition that the Drone Statute must trigger strict scrutiny. Pet. App. 19a. But in *Lichtenstein*, the Sixth Circuit merely surveyed cases applying strict scrutiny to so-called "speech inputs," such as money—and only where the statutes at issue were either "content-based" or restricted "core political speech." 83 F.4th at 585; see also Pet. App. 20a. Since the Drone Statute fits neither category, *Lichtenstein* provides no support for applying strict scrutiny here. Pet. App. 20a.

Petitioners characterize the Sixth Circuit opinion as "adopt[ing] a categorical political/non-political distinction" for determining whether the act of creating speech is entitled to protection under the First Amendment. Pet. 9. That is wrong. The Sixth Circuit drew no such line. If this Court is inclined to consider whether the First Amendment protects the means of creating non-political speech, it should wait for a case in which a circuit has actually drawn the line Petitioners describe. This case is not it.

B. Petitioners lack standing.

A second, independent vehicle problem confirms that this case is a poor candidate for review: Petitioners lack standing.

Respondent challenged Petitioners' standing both in the district court and the circuit court. The district court and one Sixth Circuit judge agreed that Petitioners come up short. Pet. App. 35a, 42a. And even the

Sixth Circuit majority—which ruled that Petitioners have standing, Pet. App. 7a—called it "a close question," Pet. App. 14a.

That "close question" turns on whether Petitioners alleged a credible injury in fact. Although plaintiffs are not typically required to expose themselves to liability to challenge a statute's constitutionality, a pre-enforcement First Amendment challenge still must allege a "credible threat of prosecution." Pet. App. 30a (concurring opinion) (citing *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 159 (2014)).

This Court has found such a threat credible when there is a "history of past enforcement," when a statutory provision "allow[s] 'any person' with knowledge of the purported violation to file a complaint," and when there is evidence that enforcement proceedings are common rather than "a rare occurrence." *Susan B. Anthony List*, 573 U.S. at 163; see also *McKay* v. *Federspiel*, 823 F.3d 862, 869 (6th Cir. 2016) (citing *Susan B. Anthony List* as the reason why the Sixth Circuit requires a combination of these factors in addition to mere "subjective chill" to establish standing in pre-enforcement First Amendment cases).

Petitioners' allegations satisfy none of these criteria. They did not allege any history of Director Bowen enforcing the Drone Statute against *anyone*, nor that Director Bowen threatened them with enforcement. And unlike the statute at issue in *Susan B. Anthony List*, the Drone Statute contains no provision allowing anyone but the government to enforce it. Pet. App. 31a–35a. What remains is only a subjective chill, with

"no 'circumstances that render . . . threatened enforcement sufficiently imminent.' " Pet. App. 35a (quoting *Susan B. Anthony List*, 573 U.S. at 159).

At the very least, whether this Court would have jurisdiction to reach the question Petitioners present is itself "a close question." Pet. App. 14a. That alone counsels against using this case as the vehicle to resolve it.

II. The Sixth Circuit's actual holding does not conflict with those of other circuits or with this Court's precedents.

Petitioners argue that the Sixth Circuit's holding conflicts with the holdings of other circuits and violates this Court's precedents. Pet. 9–14. But, as noted above, the Sixth Circuit's actual holding was that Petitioners' information-gathering is protected by the First Amendment and that the Drone Statute needs only satisfy intermediate scrutiny. Pet. App. 17a–19a, 22a–25a. That holding is consistent with the decisions of other circuits and with this Court's jurisprudence.

A. The Sixth Circuit's holding is consistent with those of other circuits.

The Sixth Circuit's holding does not present a "square conflict" with other circuits. Contra Pet. 9. The court's holding has two components—that the Drone Statute implicates the First Amendment and that intermediate scrutiny applies—and neither conflicts with any other circuit's decision. As to the first, every circuit Petitioners cite agrees that laws burdening

information-gathering can implicate the First Amendment; the Sixth Circuit held the same. As to the second component, the Sixth Circuit's holding that intermediate scrutiny applies to the Drone Statute is consistent with the only other circuit to address the level of scrutiny applicable to drone regulations.

That circuit is the Fifth, which analyzed a Texas law that made it illegal to attach a camera to a drone and then use the camera to "capture an image" of private individuals or property without their consent "with the intent to conduct surveillance on the individual or property captured in the image." *Nat'l Press Photographers Ass'n* v. *McCraw*, 90 F.4th 770, 788 (5th Cir. 2024), *cert. denied sub nom.*, *Nat'l Press Photographers Ass'n* v. *Higgins*, 145 S. Ct. 140 (2024). Unlike the Drone Statute, the Texas law expressly regulated the creation and use of images. The Fifth Circuit nevertheless applied intermediate scrutiny to the Texas law, reasoning that doing so "respects the First Amendment values attached to photography while remaining cognizant of the obvious fact that recording from the sky—something the average private person cannot avoid and from where the average photographer would not be able to reach—is simply not the same thing as expressing one's views." *Id.* at 790.

The Sixth Circuit's holding is consistent with the Fifth Circuit's. Both circuits held that intermediate scrutiny applied to the drone regulation before them.

The Sixth Circuit's holding is also consistent with the Ninth Circuit. Contra Pet. 10. In *Garcia* v. *County of Alameda*, 150 F.4th 1224, 1230–31 (9th Cir. 2025),

the Ninth Circuit extended First Amendment protection to a reporter even when his speech "concerned non-political subjects." Pet. 10. But as explained above, the Sixth Circuit did not draw a distinction between "political" and "non-political" subjects to determine whether the speech was entitled to protection; it decided only which level of scrutiny to apply.

Nor does the Ninth Circuit's choice of scrutiny create a conflict. The Ninth Circuit applied strict scrutiny in *Garcia* because the ordinance there was "content based." 150 F.4th at 1232–33. A conflict would exist only if the Sixth Circuit had applied intermediate scrutiny to a content-based statute. It did not. It applied intermediate scrutiny because the Drone Statute is *not* content based. Pet. App. 17a. Petitioners do not challenge that ruling. And the ruling does not conflict with *Garcia*.

Petitioners also contend that the Sixth Circuit's holding conflicts with the Fourth Circuit's holding in *People for the Ethical Treatment of Animals, Inc.* v. *North Carolina Farm Bureau Federation, Inc. (PETA)*, 60 F.4th 815 (4th Cir. 2023), arguing that the Fourth Circuit held that a law "restricting the acquisition and recording of" information remained subject to "First Amendment scrutiny" even if "the resulting speech was not political." Pet. 10. But, again, the Sixth Circuit never held that the political character of speech determines whether it gets scrutiny at all; it decided only the level of scrutiny that applies here. The Fourth Circuit applied strict scrutiny to the statute at issue in *PETA* because that statute directly targeted speech and did so based on content. 60 F.4th at 830. The Sixth

Circuit, on the other hand, applied intermediate scrutiny to the Drone Statute because that statute is *not* content based. Pet. App. 17a. Petitioners do not challenge that ruling. As with *Garcia*, there is no conflict.

Finally, Petitioners cite cases from the Third, Fifth, and Tenth Circuits to argue that the Sixth Circuit "stands alone in conditioning First Amendment protection for speech inputs on the political character of the speech they generate." Pet. 10–11. But this, again, rests on a faulty premise. The Sixth Circuit's actual holding is consistent with all three cases.

The Third and Fifth Circuits held that the public has a First Amendment right to record the police in public but did not decide the level of scrutiny that should apply to any restrictions on that right, though the Fifth Circuit suggested it would be intermediate scrutiny. *Fields* v. *City of Phila.*, 862 F.3d 353, 360 (3d Cir. 2017); *Turner* v. *Lieutenant Driver*, 848 F.3d 678, 690 (5th Cir. 2017); *Nat'l Press Photographers Ass'n*, 90 F.4th at 790 (noting that intermediate scrutiny "is the level of scrutiny suggested in" *Turner*). And the Tenth Circuit held that a Wyoming statute that explicitly outlawed taking photographs or writing down notes on private land implicated the First Amendment, but it did not decide the level of scrutiny that should apply. *W. Watersheds Project* v. *Michael*, 869 F.3d 1189, 1197 (10th Cir. 2017). None of these holdings conflict with the Sixth Circuit's holding that the Drone Statute implicates the First Amendment. They therefore do not support Petitioners' assertion that the Sixth Circuit's ruling contradicts the "consensus among [its] sister circuits." Pet. 10.

B. The Sixth Circuit's holding is consistent with this Court's precedents.

Petitioners next argue that the Sixth Circuit's holding is "irreconcilable with this Court's First Amendment jurisprudence." Pet. 11. That argument fares no better. The actual holding—that the Drone Statute implicates the First Amendment and is subject only to intermediate scrutiny—is consistent with this Court's precedents.

The Court has never held that a government regulation escaping the highest level of scrutiny does not even implicate the First Amendment. To the contrary, as the Sixth Circuit explained, this Court has long recognized lesser levels of scrutiny for regulations that are "content-neutral," only "incidentally burden expression," and are "unrelated to the suppression of free expression." Pet. App. 22a–24a (citing *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968); *Johnson*, 491 U.S. at 407; *Barnes* v. *Glen Theatre*, *Inc.*, 501 U.S. 560, 567 (1991); and *Turner Broad. Sys.*, *Inc.* v. *FCC*, 512 U.S. 622, 662 (1994)). The Sixth Circuit held that intermediate scrutiny applied to the Drone Statute for precisely those reasons. Pet. App. 22a–24a. Petitioners do not challenge that holding.

Nor do they challenge the Sixth Circuit's straightforward application of the *O'Brien* standard to the Drone Statute. Citing Michigan law, the Sixth Circuit held that Michigan had the authority to enact the Drone Statute to preserve and manage its natural resources. Pet. App. 23a. And because the Drone Statute both preserves the principle of fair chase and prevents the disruption of lawful hunting, the court held that

the statute "furthers [Michigan's] important conservation and preservation interests." Pet. App. 23a.

The Sixth Circuit also held that the Drone Statute is "unrelated to the suppression of free expression." Pet. App. 24a (citing *O'Brien*, 391 U.S. at 377). The statute prohibits the conduct of following an animal with a drone—regardless of who is doing it or why. Pet. App. 17a. It does not ban the use of drones "based on the message conveyed or the information created" with the drones, Pet. App. 18a, but rather based on "the action" drone use "entails," Pet. App. 19a (citing *R.A.V.* v. *City of St. Paul*, 505 U.S. 377, 385 (1992)). For that reason, the Drone Statute is violated even when no speech is created or shared. Pet. App. 18a. Thus, the Drone Statute "incidentally burdens [Petitioners'] ability to create location information, rather than targeting expression," which means it is "content-neutral." Pet. App. 19a (citing *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989); and *Turner Broad. Sys.*, 512 U.S. at 645).

Finally, the Sixth Circuit held that the Drone Statute "restricts First Amendment expression no more than necessary" because "it would be harder for Michigan to achieve its stated interests—protecting its natural resources and preserving fair-chase principles in hunting—without banning the use of drones to take game." Pet. App. 24a. Allowing drones to find downed game, the court acknowledged, "might not necessarily threaten those interests," but the First Amendment "does not ban application of a neutral regulation that incidentally burdens speech merely because a party contends that allowing an exception in the particular

case will not threaten important government interests." Pet. App. 24a–25a (citing *United States* v. *Albertini*, 472 U.S. 675, 688 (1985); and *FTC* v. *Superior Ct. Trial Law. Ass'n*, 493 U.S. 411, 430 (1990)).

In short, the Sixth Circuit's holding—that the Drone Statute implicates the First Amendment and is subject only to intermediate scrutiny—and its step-by-step application of that standard rests squarely within this Court's longstanding precedents. Petitioners do not challenge that holding, let alone demonstrate that the Sixth Circuit's opinion is "irreconcilable with this Court's First Amendment jurisprudence." Pet. 11.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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