

**In the
Supreme Court of the United States**

RICHARD NATHAN SMATHERS,
Petitioner,

v.

NORTH CAROLINA,
Respondent.

**On Petition for a Writ of Certiorari to the
Supreme Court of North Carolina**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

North Carolina requires every registered sex offender, on pain of felony prosecution, to report to the sheriff every “online identifier” he uses or intends to use, including the pseudonyms under which he blogs, comments on news articles, or posts videos. It also requires the sheriff to disclose these identifiers to any member of the public who asks, and to release them whenever the sheriff deems it “necessary to protect the public.” The Second and Ninth Circuits have held materially similar laws inconsistent with the First Amendment, while the Illinois and Iowa Supreme Courts have upheld them.

The question presented is whether North Carolina’s scheme is narrowly tailored as required by the First Amendment.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Richard Nathan Smathers was the defendant-appellant below. Respondent North Carolina was the plaintiff-appellee below.

RELATED PROCEEDINGS

Supreme Court of North Carolina: *State v. Smathers*, No. 133P26 (Aug. 12, 2026)

Court of Appeals of North Carolina: *State v. Smathers*, No. 25-357 (Mar. 18, 2026)

North Carolina General Court of Justice, Superior Court Division, Buncombe County: *State v. Smathers*, Nos. 23CR338100, 23CR000260 (Apr. 24, 2024)

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PETITION FOR A WRIT OF CERTIORARI

Richard Smathers respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of North Carolina.

OPINIONS BELOW

The opinion of the Court of Appeals of North Carolina (App. 1a-28a) is published at 929 S.E.2d 60. The orders of the Supreme Court of North Carolina denying discretionary review (App. 29a) and dismissing the appeal (App. 30a) are published at 933 S.E.2d 341 (Mem.) and 933 S.E.2d 345 (Mem.), respectively.

JURISDICTION

The Supreme Court of North Carolina entered its judgment on August 12, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides in relevant part: “Congress shall make no law ... abridging the freedom of speech.”

N.C. Stat. § 14-208.6(1n) defines “Online identifier” as “Email address, instant message screen name, user ID, chat or other internet communication name, but it does not mean social security number, date of birth, or pin number.”

N.C. Stat. § 14-208.7(a) provides in relevant part: “A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides.”

N.C. Stat. § 14-208.7(b)(7) provides: “The Department of Public Safety shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require all of the following: (7) Any online identifier that the person uses or intends to use.”

N.C. Stat. § 14-208.9(e) provides in relevant part: “If a person required to register changes an online identifier, or obtains a new online identifier, then the person shall, within 10 days, report in person to the sheriff of the county with whom the person registered to provide the new or changed online identifier information to the sheriff.”

N.C. Stat. § 14-208.10(a) provides in relevant part: “The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person.”

N.C. Stat. § 14-208.10(b) provides in relevant part: “Any person may obtain a copy of an individual’s registration form, a part of the county registry, or all of the county registry, by submitting a written request for the information to the sheriff.”

N.C. Stat. § 14-208.11(a)(10) provides: “A person required by this Article to register who willfully does any of the following is guilty of a Class F felony: (10) Fails to inform the registering sheriff of any new or changes to existing online identifiers that the person uses or intends to use.”

STATEMENT

The First Amendment protects the right to express views anonymously. “Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either

anonymously or not at all.” *Talley v. California*, 362 U.S. 60, 64 (1960). “Anonymity ... provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342 (1995).

North Carolina effectively denies this right to registered sex offenders. Registrants must provide the county sheriff with every “online identifier” they use or intend to use—that is, every email address, screen name, user ID, and the like. The sheriff must disclose this information to the public whenever he deems it necessary to protect the public—a judgment the statute leaves entirely to him. Any member of the public may obtain this information simply by submitting a written request. A registrant commits a felony by failing to provide or update an online identifier. As a result, registrants are effectively disabled from expressing their views anonymously online.

The state justifies these rules as a means of preventing sex offense registrants from contacting potential victims by email and on social media that allow private person-to-person communication. But the rules sweep in much more speech than that. They are extraordinarily overinclusive, making it practically impossible for registrants, for example, to express political opinions anonymously on blogs or in the comments section of newspaper websites. A registrant cannot criticize a town policy or a local official without risking the exposure of his identity.

Most states have similar provisions. Over the past few years there has been a burst of litigation challenging these provisions as violations of the First Amendment. The lower courts have split right

down the middle, with approximately half on each side. This case is a good vehicle in which to resolve the conflict.

1. In North Carolina, convicted sex offenders must register with the local county sheriff. N.C. Stat. § 14-208.7(a). The sheriff provides each registrant with a form, on which the registrant must provide his full name, all aliases, his date of birth, his sex, his race, his height, his weight, his eye color, his hair color, and his home address. *Id.* § 14-208.7(b)(1). The registrant must also provide a current photograph and his fingerprints. *Id.* § 14-208.7(b)(3), (4).

The registrant is also required to provide “[a]ny online identifier that the person uses or intends to use.” *Id.* § 14-208.7(b)(7). The statute defines an “online identifier” as an “[e]mail address, instant message screen name, user ID, chat or other internet communication name, but it does not mean social security number, date of birth, or pin number.” *Id.* § 14-208.6(1n). If the registrant changes an online identifier or obtains a new one, he must report the new information, in person, to the county sheriff within ten days. *Id.* § 14-208.9(e). A registrant’s failure to comply with this requirement is a felony. *Id.* § 14-208.11(a)(10).

The sheriff is required to release the registrant’s online identifiers to the public under two circumstances. First, the sheriff “shall release” the online identifiers, along with “any other relevant information,” whenever such a release “is necessary to protect the public.” *Id.* § 14-208.10(a). Second, “[a]ny person may obtain a copy of an individual’s registration form,” which includes his online identifiers, “by

submitting a written request for the information to the sheriff.” *Id.* § 14-208.10(b). The statute requires no reason for the request. The state Department of Public Safety is required to release the registrant’s online identifiers to the public under the same two circumstances. *Id.* § 14-208.15(a), (b).

2. In 2010, petitioner Richard Smathers was convicted in Buncombe County, North Carolina, of taking indecent liberties with a child. App. 1a-2a. The conviction required him to register as a sex offender in North Carolina for the rest of his life.

Smathers registered at the Buncombe County Sheriff’s Department. *Id.* at 2a. He provided all the required information, including two online identifiers—his email address and his username for the social media application Grindr. *Id.*

A few months later, Smathers had a scheduled meeting with his probation and parole officer, part of which involved the officer’s search of his phone. *Id.* at 3a. The officer saw that Smathers had downloaded a second social media application, Snapchat, and had created an account with the username “Nathan_Smathers.” *Id.* When the officer asked whether he had reported this new username to the sheriff, Smathers said he intended to do so that day. *Id.* He also admitted that he had used Snapchat to send photographs of his penis. *Id.*

Smathers was charged with failing to report this new online identifier and with being a habitual felon. *Id.* Before trial, defense counsel moved to dismiss the substantive charge on First Amendment grounds, but the trial court denied the motion. *Id.* at 3a-4a. Defense counsel renewed this motion at the

close of the state's case and at the close of all evidence, and the trial court again denied the motion on both occasions. *Id.* at 4a.

After a jury trial, Smathers was convicted of the substantive count and found to be a habitual felon. *Id.* He was sentenced to a prison term of 85 to 114 months.

3. The North Carolina Court of Appeals affirmed. *Id.* at 1a-28a.

The court noted that Smathers was mounting a facial challenge to the statute rather than arguing that the statute is unconstitutional as applied to the facts of his case. *Id.* at 5a. “The Constitution gives significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere,” the court explained. *Id.* (quoting *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002)). As the court observed, “[a]n unconstitutionally overbroad statutory scheme ‘prohibits a substantial amount of protected speech relative to its plainly legitimate sweep’ such that ‘society’s interest in free expression outweighs its interest in the statute’s lawful applications.’” *Id.* (quoting *United States v. Hansen*, 599 U.S. 762, 769-70 (2023)).

The court acknowledged that “First Amendment protections apply in full to the internet, which is today the major forum for the exchange of ideas and the exercise of our First Amendment rights.” *Id.* at 6a. The court also recognized that North Carolina’s reporting requirements impose a burden on speech protected by the First Amendment. *Id.* at 8-9. “[O]nce a sex offender is convicted,” the court explained,

a vast amount of their internet use, and therefore their potential First Amendment activity, is subject not only to frequent reporting but to law enforcement monitoring. Some reportable online identifiers are for services that could put juveniles at risk, such as social networking sites or dating apps. Some are for web services less likely to lead to sex crimes, such as user IDs for blogging, watching YouTube, or commenting on news articles. All these services share the ability to host lawful speech and expression protected by the First Amendment.

Id. at 8a. “It necessarily follows,” the court concluded, “that these statutes place an indirect burden with a likely deterrent effect upon offenders’ exercise of certain First Amendment rights.” *Id.* at 9a.

The court added that “[t]he First Amendment also protects anonymous speech.” *Id.* The court noted that “[t]he statutes abridge this protection, because the statutes provide a means for the public to acquire offenders’ online identifiers. Therefore, the reporting requirements raise genuine First Amendment issues.” *Id.*

The court agreed with both parties that the statutory scheme is content-neutral, because it does not restrict the expression of specific subject matter. *Id.* at 10a. The court accordingly determined, again in accordance with the views of both parties, that intermediate scrutiny is the appropriate standard of review. *Id.* Under this standard, the court explained, “[t]he State must prove that the statute is ‘narrowly tailored to serve a significant governmental interest.’” *Id.* at 9a (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989)).

Both parties have agreed all along that protecting children from sex offenders is a significant governmental interest. The court agreed as well. *Id.* at 10a-12a. “When the Legislature enacted these statutes in 1995,” the court observed, “home internet access was a relatively new phenomenon. The internet posed novel threats to child safety but provided new opportunities for preventing sex crimes by known offenders.” *Id.* at 11a. Because some websites are “frequently used for nefarious reasons,” the court had “no doubt this statute furthers important purposes unrelated to the suppression of protected speech.” *Id.* at 11a-12a.

The court then turned to the crux of the issue—whether North Carolina’s statute is narrowly tailored to advance this goal, or whether, on the contrary, it is so overbroad that it violates the First Amendment. *Id.* at 12a-28a.

The court recognized that the statute burdens protected speech far removed from the statute’s purpose of protecting children from sex offenders. *Id.* at 14a-16a. The court offered “a realistic scenario raising legitimate constitutional concerns.” *Id.* at 14a.

Imagine the following. A convicted sex offender, fully compliant with the reporting requirements, publishes an article on his popular local politics blog challenging untrue statements from an official’s recent press conference. The offender rightly believes that blogging under his legal name would overshadow the substance of his political posts, because his name and offense are public record and stigma is a “collateral consequence” of sex offender registries. *Smith v. Doe*, 538 U.S. 84, 99 (2003). And like

many political writers before him, including Thomas Paine and the authors of the Federalist Papers, he believes that publishing under his pseudonym makes him a more effective critic. *See Talley v. California*, 362 U.S. 60, 64–65 (1960). The offender is no Alexander Hamilton, but he nevertheless exercises his right to a forum where “a writer who may be personally unpopular [can] ensure that readers will not prejudice [his] message simply because they do not like its proponent.” *McIntyre*, 514 U.S. at 342. Although a member of the public who requests sex offenders’ online identifiers could plausibly unmask him, only the offender and a handful of local officers know the blogger’s identity.

The sheriff happens to live in the offender’s neighborhood. Like many parents, he carefully oversees his children’s internet use. As sheriff, he also has access to the online identifiers of local sex offenders, and he keeps tabs on the offenders who live nearby. But after the blog criticizing the press conference, word gets around within the sheriff’s department that the anonymous blogger and the sex offender are one and the same. Although the blog is protected speech, the sheriff decides to release all the offender’s online identifiers, arguing that they fall under his statutory mandate to “release any other relevant information that is necessary to protect the public concerning a specific person.” N.C.G.S. § 14-208.10(a). A city paper writes up the report, and the offender loses his

de facto anonymity, so he shuts down the blog and stops commenting on local politics.

It would be challenging to argue on these hypothetical facts that it was necessary to unmask the pseudonym for the public's protection, so the sheriff's decision in this hypothetical could constitute a First Amendment violation. Accordingly, the broadness of the statutory scheme makes possible both legitimate and unconstitutional applications, and defendant's argument that release of online identifiers "may deter or 'chill' constitutionally protected speech" is both plausible and well-grounded.

Id. at 14a-15a (parallel citations omitted).

The court nevertheless concluded that "[d]efendant has not shown that the public's interest in preventing plausible unconstitutional applications, like the one illustrated above, is substantially disproportionate relative to its overriding interest in ensuring law enforcement can perform the statutes' constitutional applications." *Id.* at 16a. "The offender's interest in anonymous online speech and the public's interest in hearing it are both important," the court reasoned, "but they cannot overcome the public's interest in online safety and effective policing." *Id.*

The court provided three reasons for concluding that the statute is narrowly tailored.

First, the court explained, although the statute burdens a registrant's anonymous online speech, "the reporting requirements do not categorically prohibit sex offenders from speaking on the internet." *Id.* at 17a. Moreover, "the internet is not the only place a person can express views anonymously."

Id. at 18a. The court noted that registrants have alternative methods of speaking without revealing their identities to the public: “Newspapers often publish anonymous op-eds, lawful protesters often wear masks nowadays, and the Supreme Court has extensive jurisprudential history protecting the right to distribute anonymous handbills.” *Id.* at 19a.

Second, the court declined the state’s invitation to apply a narrowing construction to the statute. *Id.* at 19a-24a. The state proposed defining “online identifier” to include only “online identifiers associated with accounts like email or instant messaging that allow for private, person-to-person communication i.e. user-names for platforms by which offenders are most likely to recidivate.” *Id.* at 19a. The court found that the statute’s broad language would not support such a narrow construction. *Id.* at 20a-23a. “This definition is indeed broad,” the court acknowledged, *id.* at 21a, but it was “therefore prudent,” because the “Legislature of 1995 was no more able to reliably predict the coming of social media and the iPhone than the Founders were able to predict penicillin and commercial space travel.” *Id.* at 22a. “Defendant is correct that the statute reaches beyond the principal evil legislators intended or expected to address,” the court conceded, “but ‘the fact that a statute is applied in situations not expressly anticipated does not demonstrate ambiguity; instead, it simply demonstrates the breadth of a legislative command.’” *Id.* at 23a (quoting *Bostock v. Clayton Cty.*, 590 U.S. 644, 674 (2020)). The court also found it significant that “offenders must report only one’s *current* online identifiers. This means that any names used to

speak online in the past are not covered, and that speech is unaffected.” *Id.* at 23a.

Third, the court held that the public-disclosure provisions are narrowly tailored. *Id.* at 24a-27a. It reasoned that although a registrant’s online identifiers must be disclosed to the public upon request by any person, or even without any request when the sheriff thinks it necessary, “the online identifiers are only disclosed to members of the public in a separate time and place from offenders’ anonymous online speech.” *Id.* at 24a. The court thought it unlikely that members of the public would request disclosure, because “the time, effort, and cost required for a member of the public to maintain a full and current database of offenders’ online identifiers is not negligible.” *Id.* at 25a. The court added that “one can easily understand why individual requests are in the public interest. An offender’s previous victim may want her abuser’s online identifiers to know if he contacts her under another name. A parent may search the online registry for offenders in her neighborhood and wish to know their online identifiers out of an abundance of caution.” *Id.* at 26a. The court also emphasized that “one cannot inquire whether a specific online identifier is associated with an offender.” *Id.*

Finally, as for the sheriff’s power to disclose a registrant’s online identifiers when the sheriff deems disclosure necessary to protect the public, the court reasoned that “it was sensible for the Legislature to grant law enforcement discretion on the question, rather than impose a limiting principle. Because these statutes cover such a wide variety of reportable convictions and offenders, it is reasonable that

certain provisions in the reporting requirements accord discretion and deference to law enforcement as they respond in individual circumstances.” *Id.* at 27a.

For these reasons, the court concluded that the statutory scheme is consistent with the First Amendment. “The statutes impose no speech restrictions, preferring instead to deter recidivist online conduct by mandating regular disclosures,” the court explained. *Id.* at 28a. “This may incidentally burden some speech activity, but this possible encroachment is insufficient to override other relevant public interests, and it does not establish that the Legislature failed to narrowly tailor its requirements.” *Id.*

4. The North Carolina Supreme Court denied discretionary review and dismissed Smathers’s appeal. *Id.* at 29a-30a.¹

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari. Statutes like North Carolina’s are common, and courts have divided over whether they are sufficiently narrowly tailored to satisfy intermediate scrutiny under the First Amendment. The issue is important: most states require registrants to report their online identifiers, and the answer to the question presented will

¹ Because the North Carolina Supreme Court dismissed the appeal for lack of a substantial constitutional question, App. 30a, this Court is reviewing the judgment of the North Carolina Supreme Court, not that of the North Carolina Court of Appeals. See *Grady v. North Carolina*, 575 U.S. 306, 308 n.* (2015) (per curiam).

determine whether hundreds of thousands of people can speak anonymously online. And the decision below is wrong. North Carolina's statute burdens a vast amount of speech that has nothing to do with its interest in protecting potential victims of sex offenses.

I. The lower courts are divided as to whether laws requiring the reporting and the public disclosure of sex offense registrants' online identifiers violate the First Amendment.

The lower courts are sharply divided over the Question Presented. They all apply intermediate scrutiny, and they all recognize that protecting children from sex offenders is a significant governmental interest. But they disagree as to whether these laws are narrowly tailored. Some courts, including the Second and Ninth Circuits, hold that these laws are not narrowly tailored, because they impose serious burdens on a substantial amount of speech that bears no relationship to the risk of sex offenses. Other courts, including the Tenth Circuit and the Illinois and Iowa Supreme Courts, hold the opposite. This Court should grant certiorari to resolve the conflict.

A. Some courts hold that requiring the reporting and public disclosure of online identifiers violates the First Amendment.

Several courts have held that laws like North Carolina's violate the First Amendment because they are so overinclusive.

In *Cornelio v. Connecticut*, 32 F.4th 160 (2d Cir. 2022), for example, the Second Circuit considered Connecticut’s statutory scheme. Like North Carolina, Connecticut requires sex offense registrants to provide all their online identifiers to the state police. *Id.* at 167. A registrant’s failure to comply with this requirement is a felony. *Id.*

The Second Circuit concluded that Connecticut’s “disclosure requirement plausibly fails intermediate scrutiny.” *Id.* at 169. The court found that the state did not provide any evidence that the disclosure requirement deters sex offenses. *Id.* at 172-74. The court also found that the statute was plausibly overbroad, for two reasons. First, “[m]any platforms that allow communications between users do not reasonably present a vehicle by which a sex offender can communicate with minors or exchange prohibited sexual materials.” *Id.* at 175. Second, the disclosure requirement “applies to all persons subject to the sex offender registration law, including registrants who have never engaged in the sort of illicit online activity that the government seeks to deter.” *Id.* The Second Circuit accordingly reversed the District Court’s dismissal of the registrant’s First Amendment claim. *Id.* at 180. On remand, the District Court held that Connecticut’s statutory scheme violates the First Amendment and enjoined the state from enforcing it. *Cornelio v. Connecticut*, 691 F. Supp. 3d 529 (D. Conn. 2023).

The Ninth Circuit reached the same conclusion in *Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014). The case involved California’s statute, which, like North Carolina’s, requires registrants to report their online identifiers to the police. *Id.* at 568-69. The Ninth

Circuit held that the California statute “unnecessarily chills protected speech in at least three ways: the Act does not make clear what sex offenders are required to report, there are insufficient safeguards preventing the public release of the information sex offenders do report, and the 24-hour reporting requirement is onerous and overbroad.” *Id.* at 578.

The Ninth Circuit emphasized that “the Act burdens registered sex offenders’ ability to engage in anonymous online speech,” because “it too freely allows law enforcement to disclose sex offenders’ Internet identifying information to the public.” *Id.* at 579-80. Like North Carolina’s statute, California’s authorizes the police to disclose a registrant’s online identifiers when “necessary to ensure the public safety.” *Id.* at 580. “The problem” with this requirement, the Ninth Circuit held, is that it “contains no standards for judging what is ‘necessary to ensure the public safety.’ Without such standards, the Act impermissibly ‘plac[es] unbridled discretion in the hands of a government official or agency.’” *Id.* (quoting *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 757 (1988)). The Ninth Circuit accordingly concluded that the California statute “unnecessarily deters registered sex offenders from engaging in legitimate expressive activity.” *Id.* at 582.

Several district courts have reached the same conclusion. See *Does v. Whitmer*, 751 F. Supp. 3d 761, 831-35 (E.D. Mich. 2024) (holding that Michigan’s statute cannot withstand intermediate scrutiny because it chills far more speech than necessary), appeal pending, No. 25-1414 (6th Cir.); *Million v. Rausch*, 671 F. Supp. 3d 851, 862-63 (E.D. Tenn. 2023) (holding that the registrant provided enough

facts to allege a First Amendment challenge to Tennessee’s statute); *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1327-31 (M.D. Ala. 2019) (holding that Alabama’s statute cannot withstand intermediate scrutiny because it is not narrowly tailored); *Delgado v. Swearingen*, 375 F. Supp. 3d 1251, 1261-62 (N.D. Fla. 2018) (holding that the public disclosure provision of Florida’s statute violates the First Amendment and enjoining state officials from disclosing a registrant’s online identifiers to anyone other than law enforcement officials); *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1119-20 (D. Neb. 2012) (holding that Nebraska’s statute violates the First Amendment because it “clearly chills offenders from engaging in expressive activity that is otherwise perfectly proper”); *White v. Baker*, 696 F. Supp. 2d 1289, 1303-12 (N.D. Ga. 2010) (holding that Georgia’s statute violates the First Amendment because it is not narrowly tailored).

B. Other courts hold that requiring the reporting and public disclosure of online identifiers does not violate the First Amendment.

On the other side of the split are several courts that have rejected First Amendment challenges to these statutes on the ground that they *are* narrowly tailored.

In *People v. Minnis*, 67 N.E.3d 272 (Ill. 2016), the Illinois Supreme Court upheld the state’s statute under intermediate scrutiny. The Illinois statute, like North Carolina’s, requires registrants to disclose and update their online identifiers, and requires the police to disclose a registrant’s online identifiers up-

on request. *Id.* at 284-85. “[I]t must be remembered that under the narrow-tailoring requirement of intermediate scrutiny, the content-neutral speech regulation need not be the least restrictive or intrusive means of advancing the government’s content-neutral interest,” the court reasoned. *Id.* at 289. “Rather, the narrow-tailoring requirement is satisfied so long as the law promotes a substantial governmental interest that would be achieved less effectively absent the law.” *Id.* The Illinois Supreme Court held that “the Internet disclosure provision survives intermediate scrutiny because it advances a substantial governmental interest without chilling more speech than necessary.” *Id.* at 291. The court expressly disagreed with the Ninth Circuit’s decision in *Doe v. Harris* because the Ninth Circuit “failed to engage in the comparative analysis of whether the chilling effect was substantially broader than that required by the statutory purpose.” *Id.*

The Iowa Supreme Court upheld Iowa’s statute in *State v. Aschbrenner*, 926 N.W.2d 240 (Iowa 2019). “Applying intermediate scrutiny,” the court concluded, “we hold the Internet identifier reporting requirement is content neutral, serves a significant state interest, is narrowly tailored and, therefore, withstands challenge under the First Amendment.” *Id.* at 244. The Iowa Supreme Court determined that the statute was narrowly tailored because “[r]eporting requirements are limited to Internet identifiers used for *outgoing* communications or postings sent by the offender, consistent with the statute’s purpose to guard against anonymous trolling for victims.” *Id.* at 252.

In *Doe v. Shurtleff*, 628 F.3d 1217 (10th Cir. 2010), the Tenth Circuit considered Utah’s statute, which allows state officials to disclose a registrant’s online identifiers only to law enforcement agencies, not to the general public, and only in the course of an investigation after a new crime has been committed. *Id.* at 1225. With these limitations, the Tenth Circuit concluded, the statute “will not unnecessarily interfere with [the registrant’s] First Amendment freedom to speak anonymously.” *Id.*

Other lower courts have likewise upheld these statutes against First Amendment challenges. See *Ex parte Odom*, 570 S.W.3d 900, 913-16 (Tex. Ct. App. 2019) (applying intermediate scrutiny and concluding that Texas’s statute does not burden more speech than is necessary to further the state’s legitimate interests); *State v. Jackson*, 938 N.W.2d 639, 644-50 (Wis. Ct. App. 2019) (holding that Wisconsin’s statute is narrowly tailored); *Coppolino v. Noonan*, 102 A.3d 1254, 1279-84 (Pa. Commw. Ct. 2014) (upholding Pennsylvania’s statute against First Amendment challenge), *aff’d*, 125 A.3d 1196 (Pa. 2015) (mem.); *Harris v. State*, 985 N.E.2d 767, 775-76 (Ind. Ct. App. 2013) (holding that Indiana’s statute is narrowly tailored because without the reporting requirement, the state would be less able to track registrants’ online activity). See also *Does, 1-11 v. Olson*, --- F.4th ---, 2026 WL 2981298, *9-*10 (8th Cir. 2026) (declining to address the issue because it was not preserved); *Doe v. Burlew*, 165 F.4th 525, 529-36 (6th Cir. 2026) (vacating a preliminary injunction barring enforcement of a Kentucky statute requiring registrants to use their legal names on their social media accounts, on the ground that the

plaintiff failed to show that the statute is facially overbroad).

This conflict does not stem from differences in the states' statutes (except for the Tenth Circuit's decision in *Doe v. Shurtleff*, which distinguished Utah's limited disclosure requirements from the broader requirements in other states). The conflict is caused by disagreement over whether these statutes are narrowly tailored to serve the state's interest in deterring sex offenders from contacting potential victims. The courts that have held these statutes inconsistent with the First Amendment have found that they burden far more speech than is necessary. The courts on the other side have held that they do not. Only this Court can resolve the conflict.

II. The issue is important, and this case is a good vehicle for resolving it.

This issue is important and recurring. There are nearly 800,000 registered sex offenders in the country. Rob Gabriele, *Sex Offender Registry Statistics: 2024 Data for All 50 States*.² Most states have statutory schemes like North Carolina's that require registrants to report their online identifiers to state officials.³ These requirements are frequently challenged

² <https://www.safehome.org/data/registered-sex-offender-stats>.

³ See Ala. Code § 15-20A-7(9); Alaska Stat. § 12.63.010(b)(1)(I); Ariz. Stat. § 13-3821(I)(2); Ark. Code § 12-12-908(b)(20), (22); Cal. Penal Code § 290.024; Colo. Stat. § 16-22-108(2.5)(a); Conn. Stat. § 54-251(a); Del. Code tit. 11, § 4120(d)(2); Fla. Stat. § 775.21(6)(a)(1); [Georgia's provision was repealed after *White v. Baker*, *supra*]; Haw. Stat. § 846E-2(d)(5); Idaho Code § 18-8305(1)(a); 730 Ill. Comp. Stat. § 150/3(a); Ind. Code § 11-8-8-8(a)(7); Iowa Code § 692A.101(23)(a)(9); Kan. Stat. § 22-4907(a)(19); La. Stat. § 15:542(C)(1)(m); Me. Stat. tit. 34-a,

as violations of the First Amendment. The conflict will not be resolved without this Court’s intervention.

This case is a suitable vehicle. The issue was preserved in the trial court. App. 3a-4a. The Court of Appeals resolved it in a published opinion. There are no procedural obstacles in the way of a decision on the merits. The Court’s resolution of the issue will be outcome-determinative: if the statute is facially unconstitutional, the substantive conviction will have to be vacated, and with it the habitual-felon conviction that depends on it.

This case is also a good vehicle because it is solely a facial challenge to the statute. Smathers has never argued that the statute is unconstitutional as applied to him. As the court below recognized, “[l]itigants to whom a statute is lawfully applied have standing to argue the statute violates the First Amendment on its face because it is overbroad.” App. 5a (citing *United States v. Hansen*, 599 U.S. 762, 769-70 (2023)). Because this case is a facial challenge, it cleanly presents a pure question of law. And

§ 11281(1)(A); Md. Code, Crim. Proc. § 11-706(a)(7); Mich. Comp. Laws § 28.727(1)(i); Miss. Code § 45-33-25(2)(w); Mo. Stat. § 589.407(1)(1); Mont. Code § 46-23-504(3)(h); [Nebraska’s provision was repealed after *Doe v. Nebraska*, *supra*]; N.H. Stat. § 651-B:4-a; N.M. Stat. § 29-11A-4(B)(8); N.Y. Correct. Law § 168-b(1)(a); N.C. Stat. § 14-208.7(b)(7); N.D. Code § 12.1-32-15(7); Ohio Code § 2950.04(C)(10); Okla. Stat. tit. 57, § 584(D)(5); 42 Pa. Stat. § 9799.16(b)(2); 11 R.I. Gen. Laws § 11-37.1-3(e)(11); S.C. Code § 23-3-555(B)(1); S.D. Laws § 22-24B-8(13); Tenn. Code § 40-39-203(a)(7); Tex. Code Crim. Proc. art. 62.051(c)(7); Utah Code § 53-29-304(4)(a)(ix); Va. Code § 9.1-903(B); W. Va. Code § 15-12-2(d)(8); Wis. Stat. § 301.45(2)(a)(6m); Wyo. Stat. § 7-19-302(a)(xii).

unlike some of the cases in the conflict, which arose on motions to dismiss or for preliminary injunctions, this case comes to the Court on a final judgment.

III. The decision below is wrong.

Certiorari is also warranted because the court below erred in concluding that North Carolina's statutory scheme is narrowly tailored. It is not narrowly tailored. North Carolina's statute imposes a significant burden on an enormous amount of speech that has nothing to do with the goal of deterring sex offenses.

A. The statute sweeps far more broadly than the state's interest requires. The state has an undoubted interest in preventing registered sex offenders from using aliases to send messages to potential victims. The state could easily advance this interest by requiring registrants to report to law enforcement any online identifiers used to engage in private person-to-person communication. Such a requirement would be narrowly tailored to the goal of preventing registrants from sending pseudonymous messages to potential victims.

But that is not the statute the state enacted. Instead, North Carolina created a reporting-and-disclosure scheme that covers *all* online identifiers, including identifiers that are used for expressing political views on blogs, identifiers that are used for commenting on newspaper articles, and identifiers that are used to post material for the public to see on websites such as YouTube. Identifiers like these could not possibly be used to contact potential victims of a future sex offense. Yet the state lumps them in with the identifiers that serve its interest,

and subjects all of them to a regulatory scheme that allows state officials to reveal them to the public and indeed requires state officials to disclose them to anyone who asks.

As a result, registrants are effectively unable to speak anonymously online. This is a severe burden on their ability to speak at all, because sex offense registrants are among the most despised people in the country. If a registrant knows that expressing his opinion online may lead to the exposure of his identity, he will be unlikely to take the risk.

The court below provided one example of this problem, involving a registrant deterred from challenging false statements made by a government official at a press conference. App. 14a-15a. But this is just the tip of the iceberg. Consider some additional examples:

- A registrant would like to write a blog post favoring the election of a candidate, using a screen name (say, Publius) that is not his real name. The sheriff is a member of the opposing party. (Sheriffs are elected in North Carolina.) The sheriff has the power, whenever he deems it “necessary to protect the public,” to reveal to the world that Publius is a sex offender and to tell everyone Publius’s real name. The registrant is not likely to write the blog post.
- The local newspaper publishes an article exposing misconduct in the sheriff’s office. The paper’s website invites comments from the public. A registrant (who, by definition, has experience with the sheriff’s office) would like to post a comment supporting

the paper's investigation and providing additional information about the sheriff's misconduct. The sheriff has the power to reveal that the anonymous commenter is a sex offender, and who he is. The registrant is not likely to post the comment.

- The state legislature is considering a bill to change the sex offender registry. A registrant would like to post comments on news articles and advocacy websites explaining how the registry works in practice and urging legislators to support or oppose the bill. The people most affected by the law are the people best positioned to explain its effects. But any member of the public can obtain the registrant's online identifiers by written request, and a registrant who argues for loosening the registry will attract precisely the sort of hostility that makes such requests likely. The registrant is not likely to post the comments.
- A registrant would like to post videos on YouTube about gardening, or jazz, or football, or any other hobby. Any viewer who suspects who he is can request his registration file and confirm it. The registrant is not likely to post the videos.
- A registrant who has found a job would like to post an honest review of his employer on Glassdoor, a website where employees anonymously rate their workplaces. His employer may not know he is on the registry, and many employers are unwilling to keep registrants on the payroll once they

find out. If his identity is revealed, he risks losing both the anonymity of his review and his job. The registrant is not likely to post the review.

- A registrant would like to post a negative review of his landlord on Google or Yelp, describing the landlord's failure to make repairs. Registrants already have great difficulty finding landlords willing to rent to them. If the landlord learns that the anonymous reviewer is a sex offender, the registrant may lose his housing. The registrant is not likely to post the review.
- A registrant would like to participate in an online Bible study group (or an online book club, or any online discussion group) using a screen name rather than his real name, because he worries that if the other participants learn his identity, they will not want to associate with him. The registrant is not likely to participate.
- A federal agency invites public comments on a proposed regulation on regulations.gov, which allows anonymous submissions. A registrant would like to submit a comment. Because he must report the identifier he uses to the sheriff, and the sheriff must disclose it to anyone who requests his file, he cannot comment anonymously as every other member of the public can. The registrant is not likely to submit the comment.

North Carolina's statute thus deters an enormous amount of online speech that has nothing to do with

the state’s interest in preventing registrants from sending messages to potential victims. The statute is drastically overinclusive.

For this reason, the statute is inconsistent with the First Amendment. As a content-neutral burden on speech, the statute is subject to intermediate scrutiny, which requires the statute to be “narrowly tailored to serve a significant governmental interest.” *Packingham v. North Carolina*, 582 U.S. 98, 105-06 (2017) (citation and internal quotation marks omitted). “In other words, the law must not burden substantially more speech than is necessary to further the government’s legitimate interests.” *Id.* at 106 (citation and internal quotation marks omitted).

North Carolina’s statute is not narrowly tailored. It burdens substantially more speech than is necessary to further the state’s interest in preventing registrants from using aliases to send messages to potential victims.

A narrower alternative is readily available. “[T]he First Amendment permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor. Specific laws of that type must be the State’s first resort to ward off the serious harm that sexual crimes inflict.” *Id.* at 107 (citation omitted). Such a law might, for example, require registrants to report to law enforcement only the identifiers they use to send private, person-to-person communication. As Justice Alito observed of the North Carolina law at issue in *Packingham*, a statute with “a very broad reach” that “covers websites that are ill suited for use in stalking or abusing

children” is not narrowly tailored. *Id.* at 117 (Alito, J., concurring in the judgment).

California’s experience demonstrates that this alternative is workable. After the Ninth Circuit held the old version of California’s statute unconstitutional in *Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014), as discussed above in section I-A, the state revised its statute. The new version defines “Internet identifier” as “any electronic mail address or user name used for instant messaging or social networking *that is actually used for direct communication between users on the Internet in a manner that makes the communication not accessible to the general public.*” Cal. Penal Code § 290.024(b)(1) (emphasis added). This narrower alternative has been in effect for ten years. It requires registrants to report the online identifiers that are the real cause of concern, without preventing registrants from speaking anonymously online.

Below, the state all but agreed that this narrower alternative would further its interest in deterring sex offenses just as well as the existing statute. The state urged the Court of Appeals to impose a narrowing construction of the statute, under which it would apply only to “private, person-to-person communication.” App. 19a. This is how the statute *should* have been written. As the Court of Appeals recognized, however, it was not written that way. *Id.* at 20a-23a. It was written broadly, to sweep in all online identifiers, even those that could never be used to contact potential victims.

B. The court below erred in concluding that North Carolina’s statute is narrowly tailored.

The Court of Appeals assumed, incorrectly, that a statute is narrowly tailored if more restrictive alternatives can be imagined. The court emphasized that “the reporting requirements do not categorically prohibit sex offenders from speaking on the internet,” like the restriction the Court held unconstitutional in *Packingham*. App. 17a. The court below relied on the fact that disclosure requirements are “a less restrictive alternative to more comprehensive regulations of speech.” *Id.* at 17a-18a (citation and internal quotation marks omitted). The court thought it significant that “offenders must report only one’s *current* online identifiers” and not identifiers used in the past. *Id.* at 23a. But a statute is not narrowly tailored merely because more restrictive alternatives can be imagined. A statute is narrowly tailored if it does “not burden substantially more speech than is necessary to further the government’s legitimate interests.” *Packingham*, 582 U.S. at 106. This statute burdens much more speech than is necessary.

Even apart from that point, the court below erred in supposing that the tailoring inquiry can be relaxed where a statute requires disclosure rather than banning speech outright. Disclosure requirements, like bans, violate the First Amendment where they sweep far beyond the government’s asserted interest. *See, e.g., Watchtower Bible & Tract Soc’y v. Village of Stratton*, 536 U.S. 150, 164-69 (2002); *Shelton v. Tucker*, 364 U.S. 479, 487-88 (1960).

The court below also erred in citing non-Internet forms of anonymous speech as viable alternatives to the speech the statute deters. Rather than blogging

anonymously, the court suggested, a registrant can publish an op-ed in a physical newspaper, or protest while wearing a mask, or distribute an anonymous handbill. App. 19a. This was error for two reasons.

First, these are not genuine alternatives. Newspapers do not publish every op-ed they receive, and few publish anonymous ones. An opinion expressed on a sign or in a handbill will reach a tiny fraction of one expressed online. “While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the vast democratic forums of the Internet.” *Packingham*, 582 U.S. at 104 (citation and internal quotation marks omitted). And “one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.” *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939).

Second, the court once again misunderstood the legal standard, this time by assuming that a statute is narrowly tailored if it leaves alternative methods of communication available. But that is not the standard. The question is whether the statute burdens substantially more speech than is necessary to further the government’s interest, not whether the government might have burdened *more* speech.

The court below erred once more in its assessment of the statute’s burden on speech. The court discounted the risk of public disclosure because of “the time, effort, and cost required for a member of the public to maintain a full and current database of offenders’ online identifiers.” App. 25a. But members of the public need not request the identifiers of every

registrant in the state. More likely, they would request the identifiers of just one registrant, or perhaps the entire registry in a single county. (North Carolina has a hundred counties, some of which have only a few thousand residents and thus very small registries.) Nor would a member of the public need to make the request more than once. A single request would unmask a registrant's pseudonymous speech, and the mere possibility of one is enough to chill it.

The court below also wrongly discounted the statute's burden on speech by noting that "the public may write to request a specific offender's online identifiers, but not *vice versa*: one cannot inquire whether a specific online identifier is associated with an offender." *Id.* at 26a. But this is no obstacle at all. Anyone who suspects who a pseudonymous critic is can simply request that person's file. Or they can request "a part of the county registry, or all of the county registry." N.C. Stat. § 14-208.10(b). And the statute does not require any reason for a request, so even a member of the public who is not concerned about safety can obtain a registrant's online identifiers.

Finally, the court below erred in concluding that "[i]t was sensible for the Legislature to grant law enforcement discretion on the question [whether to release a registrant's online identifiers], rather than impose a limiting principle." App. 27a. The sheriff's discretion makes the problem even worse. The statute requires the sheriff to release "any other relevant information," which includes online identifiers, "that is necessary to protect the public concerning a specific person." N.C. Stat. § 14-208.10(a). The sher-

iff has complete discretion to decide when the release of this information is “necessary.” The power to tell the world that a pseudonymous speaker is a sex offender rests with a single elected official, with no rules to guide him. As the Ninth Circuit observed of California’s similar provision, “[p]ublic safety’—like ‘public interest’—is much too broad a concept to serve as an effective constraint on law enforcement decisions that may infringe First Amendment rights.” *Doe v. Harris*, 772 F.3d at 580. It may have been easier for the state legislature to grant sheriffs unlimited discretion than to cabin that discretion, but “to meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government’s interests, not simply that the chosen route is easier.” *McCullen v. Coakley*, 573 U.S. 464, 495 (2014).

C. Because this case is a facial challenge to North Carolina’s statute, the question is whether “a substantial number of the law’s applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (citation, brackets, and internal quotation marks omitted). *See also United States v. Hansen*, 599 U.S. 762, 770 (2023) (observing that facial invalidation is appropriate where “society’s interest in free expression outweighs its interest in the statute’s lawful applications”).

North Carolina’s statute does have some constitutional applications. There is nothing wrong with the requirement that registrants report their email addresses, because some email addresses do not include a person’s real name, and a registrant might

use such an address to contact a potential victim. Also constitutional, for the same reason, is the requirement that registrants report any screen names they use for private, person-to-person messaging.

But the statute's constitutional applications are swamped by its unconstitutional ones. The statute reaches every identifier a registrant uses to blog, comment on news articles, post videos, review a business, participate in an online religious community, or comment on a proposed regulation. None of these can realistically be used to contact a potential victim, yet the sheriff can reveal every one of them to the public, and must reveal them to anyone who asks. This is a staggering amount of private information that has nothing to do with the state's interest in stopping registrants from sending messages to potential victims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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