No. A-_____

In the Supreme Court of the United States

360 VIRTUAL DRONE SERVICES LLC AND MICHAEL JONES, APPLICANTS,

v.

ANDREW L. RITTER, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE NORTH CAROLINA BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS, ET AL.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Under this Court's Rules 13.5, 22, 30.2, and 30.3, Applicants 360 Virtual Drone Services LLC and Michael Jones apply for a 21-day extension of time—to and including Monday, September 9, 2024—within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case. The Fourth Circuit entered its judgment on May 20, 2024. Unless extended, the time for petitioning for a writ of certiorari will expire on August 19, 2024. The jurisdiction of this Court would be based on 28 U.S.C. § 1254(1).

1. This is a case about information. Like many entrepreneurs, applicant Michael Jones became fascinated by drones—small, unmanned aircraft. In 2017 and 2018, he paired his love for drones with another of his interests: photography. With his one-man business, 360 Virtual Drone Services, he began offering a range of aerial photography services, including what are called "orthomosaic" maps. Using a drone, an operator can capture a series of aerial images over a tract of land. And with commercially available software, he or she can process those images into a composite map. These maps can be useful as visual aids. They also can contain various types of location information; with the software, for example, users can measure distances, elevations, areas, and more. Think Google Earth, but with up-to-date images. *See generally* dronegenuity, YouTube, *What Is An Orthomosaic? Orthomosaic Maps & Orthophotos Explained* (short tutorial), https://tinyurl.com/3wwakx77.

Michael Jones began offering these sorts of images. But he had hardly begun to get that part of his business off the ground before the North Carolina Board of Examiners for

Engineers and Surveyors intervened. After a five-month investigation, the Board ordered him to stop offering orthomosaic maps. Because Jones and his company do not have a land-surveyor license, the Board warned, it is illegal for them to give customers aerial maps containing "location and dimension data" or to "produc[e] orthomosaic maps, quantities, and topographic information." Nor did it matter that Jones planned to include a (large and red) disclaimer advising that his images were not created by a surveyor and were not legally authoritative. C.A. App. 111 ("[M]arketing disclaimer is not appropriate as the services still fall within the practice of land surveying."). The right to convey images with basic location information, the Board maintained, is reserved for licensed surveyors alone. Unless Jones "c[a]me into compliance," the agency threatened civil and criminal enforcement.

Jones complied and shut down his budding aerial-mapping business. He also shelved plans to start creating 3D digital models—a related photographic product he wants to develop. *See generally* Pix4D, *Reconstructing heritage assets in Ireland with drones* (May 3, 2016) (3D model of Clifden Castle), https://tinyurl.com/2278c4h9. As with aerial maps, so with 3D digital models: In North Carolina, they are categorically off-limits to people without a land-surveyor license.

2.a. Jones and his company then filed this action, asserting that, as applied to their maps and models, North Carolina's surveying licensure law violated the First Amendment. As the record would come to confirm, the surveying law is triggered—exclusively—by the communicative content in Jones's images. For electronic versions of his images, for instance, it is the presence of location-related metadata that triggers the surveying law. *E.g.*, C.A. App. 346 ("Q. . . . So really the georeferencing information is what triggers the

surveying definition, is that what you're saying? A. That's correct. That's correct. . . . ."). Likewise for hard-copy or pdf versions, the presence of even a scale bar (or, according to the Board's expert, a simple north arrow) converts the images into an illegal, unlicensed land survey. C.A. App. 290. Thus, Jones can lawfully communicate the image below on the left, but not the one on the right. The scale bar—the numbers, letters, and tick marks—would expose him to penalties for unlicensed surveying.

See C.A. App. 99, 418; *see also* C.A. App. 342-43.

b. The district court granted summary judgment to the Board, and, in a published decision, the Fourth Circuit affirmed. The court of appeals did not deny that, as applied to Jones and his company, North Carolina's surveying law was triggered (at a granular level) by the communicative content of their photographic images. Even so, the court held that "as applied to Plaintiffs, the relevant provisions of the Act are aimed at conduct" and restrict their speech only incidentally. App. 24a. In so holding, the court did not evaluate the law against the traditional "line between speech and conduct." *Nat'l Inst. of Fam. & Life Advocs.* v. *Becerra*, 585 U.S. 755, 769 (2018). Nor did the court deny that, "as applied to [Jones and his company,] the conduct triggering coverage under the statute consists of

communicating a message." *Holder* v. *Humanitarian L. Project*, 561 U.S. 1, 28 (2010). Nor did the court identify anything that would trigger North Carolina's statute other than the communicative content in Jones's images.

The court, rather, staked out a new standard for determining whether the statute regulates speech or conduct—one based on a "non-exhaustive list of factors." App. 24a; *see also* App. 17a ("[A] variety of factors may come into play."). The court held, for instance, that the fact that Jones's speech takes place on private property (in his own home and on his customers' land) rather than on government-owned property somehow means that the surveying law targets his conduct rather than his speech. *See* App. 25a ("The speech at issue . . . takes place in the private sphere, not on public sidewalks . . . ."). *But see Consol. Edison Co. of N.Y.* v. *Pub. Serv. Comm'n*, 447 U.S. 530, 540 (1980) ("[T]he Commission's attempt to restrict the free expression of a private party cannot be upheld by reliance upon precedent that rests on the special interests of a government in overseeing the use of its property."). As another of its factors, the court observed that Jones's photos do not convey "unpopular or dissenting" viewpoints. App. 25a. As another, it opined that aerial maps and 3D digital models could carry "economic" and "legal" consequences. App. 25a; *see also* App. 24a. Combined, this "variety of factors" led the court to hold that the surveying law "regulates professional conduct and only incidentally burdens speech." App. 17a, 25a.

Having developed a new speech-conduct standard, the court proceeded to develop a new level of First Amendment scrutiny. "[T]ypically," the court acknowledged, "a content-based regulation of speech as speech would trigger strict scrutiny." App. 19a (emphasis omitted). And as for "most content-neutral restrictions on speech," the court noted,

"intermediate scrutiny" would "require[] the government to produce 'actual evidence supporting its assertion that a speech restriction does not burden substantially more speech than necessary.'" App. 24a (quoting *Reynolds* v. *Middleton*, 779 F.3d 222, 229 (4th Cir. 2015)); *see also McCullen* v. *Coakley*, 573 U.S. 464, 486, 494-95 (2014). But for "a regulation aimed at conduct that incidentally burdens speech," the court introduced a "quite different," "more relaxed," "lower," and "loosened" level of First Amendment scrutiny. App. 11a, 19a, 20a, 21a. Under it, judicial "common sense" takes the place of "specific evidence." App. 23a. And speech-restrictive laws can be sustained despite the ready availability of obvious less-speech-restrictive alternatives. *See* App. 28a ("[P]erhaps a disclaimer would suffice to resolve the [State's] concerns in this case . . . ."). Applying this new level of scrutiny, the court of appeals upheld North Carolina's mapping-and-modeling ban.

3. Applicants request a 21-day extension of time, to and including September 9, 2024, within which to file a petition for a writ of certiorari. Good cause supports this request. Along with previously scheduled travel and family obligations (June 25-July 7 and August 2-August 9 for Mr. Gedge and June 17-21 and July 4-12 for Mr. Knight), counsel also have multiple competing litigation deadlines. *E.g.*, *Sparger-Withers* v. *Taylor*, No. 24-1367 (7th Cir.) (reply brief currently due August 9, 2024); *Brumit* v. *City of Granite City*, No. 24-1555 (7th Cir.) (reply brief currently due July 10, 2024); *Woods* v. *State*, No. 01-23-00818-CV (Tex. App.) (reply brief currently due July 17, 2024); *Knott* v. *Frerichs*, No. 24-cv-3067 (C.D. Ill.) (response to motion to dismiss currently due June 21, 2024); *Petersen* v. *City of Newton*, No. 23-cv-408 (S.D. Iowa) (discovery responses due July 27, 2024; depositions scheduled week of July 14, 2024); *Manuel* v. *La. Dept. of Wildlife & Fisheries*, No. C-

744995 (La. Dist. Ct.) (discovery responses due June 27, 2024; depositions scheduled week of August 18, 2024).

The requested 21-day extension also would allow for the coordinating of the petition in this case with a petition presenting similar issues out of the Ninth Circuit. Much like this case, *Crownholm* v. *Moore* involves a First Amendment challenge to a surveyor-licensure regime, *see* No. 23-15138, 2024 WL 1635566 (9th Cir. Apr. 16, 2024), and the questions presented by the petitioners there will be similar to those presented by petitioners here. (Counsel of record for the petitioners in both cases are attorneys with the Institute for Justice.) Last week, Justice Kagan extended the deadline for filing the certiorari petition in *Crownholm*, from July 15 to September 9. *Crownholm* v. *Moore*, No. 23A1099 (June 10, 2024). The extension requested here would set applicants' petition deadline at that same date and would better enable the Court to consider the two petitions in tandem. Applicants thus respectfully submit that the requested 21-day extension is supported by good cause.

Respectfully submitted.

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