In The

Supreme Court of the United States

No. 2023-2024

Chris Chambers,

Petitioner,

v.

State of New Storke,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of New Storke

Order of the Court

The petition for a writ of certiorari is granted, limited to the following questions:

1. Whether Chris Chambers' conviction under § 424 of the New Storke Penal Code violates the Free Speech Clause of the First Amendment?

2. Whether Chris Chambers' conviction under the Public Official Privacy Act of 2021 violates the Free Speech Clause of the First Amendment?

Revised February 2, 2024

IN THE SUPREME COURT OF THE
STATE OF NEW STORKE

No. 2021-0425

CHRIS CHAMBERS, *Defendant—Appellant*

v.

STATE OF NEW STORKE, *Plaintiff—Appellee*

Appeal from the New Storke Court of Appeals
for the Fifth District

SURANI, J., delivered the opinion of the Court, in which RAMASWAMY and LEWIS, JJ., joined. MEYERS, J., filed a dissenting opinion, in which STITZLEIN, C.J., joined.

JUSTICE SURANI:

Chris Chambers ran a parody Twitter account purporting to be the Silliman Police Department. Following a post that caused public confusion, the Department arrested Chambers for police impersonation. Chambers then made one final post on the account, filled with vitriol towards Silliman Chief of Police Alexander Pigeon and containing Pigeon's home address.

Protests and vandalism ensued at Pigeon's home that night. Chambers was subsequently tried and convicted under the state's police impersonation and anti-doxing laws. The Court of Appeals affirmed his convictions; we granted certiorari. In this appeal, we are asked to decide whether Chambers' convictions violate the Free Speech Clause of the First Amendment. We conclude that they do not.[1]

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[1] Both parties have stipulated to the facts set out in Part I of this opinion. No issues of material fact, statutory interpretation, or procedure are properly preserved on appeal.

I

A

The defendant, Chris Chambers, is a resident of the Town of Silliman, a city of 200,000 residents in the State of New Storke. The Silliman Police Department (SPD) serves as the primary law enforcement body of the town of Silliman. The department is led by Chief of Police Alexander Pigeon. Since Pigeon's tenure began in 2018, the SPD has faced frequent allegations of police brutality and cover-ups. Coverage of these allegations has led to widespread criticism of the department in the media and online.

SPD operates a Twitter account under the username "@SillimanPolice". The official SPD account regularly posts updates on major cases, law enforcement news, and issues public pronouncements. Examples of tweets by the official SPD Twitter account include:

> "We are pleased to announce that Alexander Pigeon has been hired as the new Chief of the Silliman Police Department! He has 23 years of law enforcement experience, and we can't wait to serve with him." — May 23, 2021
>
> "To celebrate St. Patrick's Day, the SPD will be marching in the Silliman St. Patrick's Day Parade this Saturday, March 20th. Please be advised that Elm Street between 10th Street and 18th Street will be closed from 9 AM to 5 PM on March 20th." — March 15, 2021
>
> "This is a Public Service Announcement: Josephine Gorbanzo has escaped from the Phelps-Hall State Penitentiary and is believed to be en route to Silliman. She was convicted of three counts of murder in 2014 and is considered highly dangerous. Contact us with any tips." — April 8, 2022

On May 13, 2021, Chambers registered an account on the social media platform Twitter with the username "@Sill*y*manPolice" (emphasis added). Twitter has 80 million active users in the United States, and posts ("tweets") by public officials are frequently discussed in local and national news outlets. A core feature of Twitter is its "main feed," in which users are shown tweets by users they follow

as well as tweets from other accounts that are automatically recommended based on the user's interests, past activity, and location.[2]

Chambers began posting on the "@SillymanPolice" account on May 19, 2021. That same day, he changed the profile picture and display name of the account to match those of the official SPD Twitter account. Since then, he has posted regularly. His posts mimic the style of Twitter posts by the official SPD account, but do not convey accurate information. Chambers describes the purpose of his account "as a parody that provides humorous commentary on the operations of the local police." Examples of posts from the "@SillymanPolice" account include:

> "We are pleased to announce our new state-of-the-art police robots. They can traverse busy sidewalks at speeds up to 50 MPH and come equipped with military-grade weaponry and armor. We believe that with their help we can finally put an end to shoplifting." — August 9, 2021
>
> "ALERT: In honor of the storied relationship between cops and donuts, the Dippin' Donuts at 345 Main Street is reserved for POLICE OFFICERS ONLY on March 27th to celebrate the release of the new maple-bacon-sugar-dusted-cookies-and-Boston-creme-double-decker-donut."
> — March 20, 2022
>
> "This is a Public Service Announcement: we are bad at our jobs"
> — April 8, 2022

Chambers claims that he never intended for anyone to believe that any of the posts on his account were official statements from the Silliman Police Department. Despite his stated intention, there are instances where his posts were taken seriously by Silliman residents.

On January 12, 2022, Chambers posted: "Tomorrow from 10 AM to 2 PM at the Elm Street Station come meet the Police K9 unit! Bring your little kiddos to meet our fluffy doggos. Live attack-dog demonstrations on people who look at the

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[2] Chambers concedes that he was aware of Twitter's recommendation functionality, and that other users who did not follow the account would sometimes see his tweets in their main feeds.

officers funny will be provided!" A colorful flier advertising the "event" was attached. Channel 11, a local news channel, publicized the flier during its 8 PM news hour, its most viewed hour. While it later issued an online correction, an estimated 35 people went to the event, only to realize that it didn't exist.

On February 1, 2022, following a news story about a decline in enrollment at the Police Academy, Chambers posted: "We are offering immediate spots on the police force to anyone who can recite the Miranda rights in under 5 seconds while maintaining a threatening tone. Come to the Elm Street Police Station to show us what you've got! (Due to budget cuts, you must provide your own firearm.)" The following day, four residents of Silliman went to the Elm Street Police Precinct and asked the front desk officer how they could attempt the special offer for a spot on the police force.

Chambers' conviction under § 424 of the New Storke Penal Code arises out of a post he made in May 2022. On May 8, a local TV news station aired an investigative report detailing allegations of excessive force by three SPD officers. The officers were accused of using pepper spray and nightsticks to subdue Silliman residents during routine traffic stops on several occasions, and threatening those residents not to report the violence.

The next day, at 2:00 PM, the Silliman Police Department released the following statement: "We are conducting an investigation into the actions of Patrol Officers Samuel Chen, Steven Chang, and Keion Roshan. Their alleged misconduct is not a reflection of the standards of the department." This statement drew criticism from other Twitter users for treating the officers as scapegoats for more systemic issues within the police department.

At 7:47 PM, Chambers tweeted: "It has come to our attention that there are some people impersonating SPD officers. Please be advised that the three individuals pictured here are fake cops and should not be obeyed under any circumstances. Obviously, no real officer would ever do what they did." The post attached pictures of the three officers, taken from their public social media profiles:

At the time of Chambers' post, the individuals pictured were active-duty SPD patrol officers. Chambers claims that the post was "a tongue-in-cheek allusion to his own parody" and "a commentary on the SPD's tolerance of police brutality."

Chambers' May 9 post swiftly went viral. It became the most viewed, liked, and re-tweeted post on the "@SillymanPolice" Twitter account. It was viewed 40,000 times, compared to his account's average of 10,000 views per post. Numerous residents of Silliman reported seeing the post recommended to them in their Twitter feeds, despite not following and having no prior knowledge of the "@SillymanPolice" account. In the two weeks following Chambers' post, the three targeted SPD officers reported eight instances of town residents refusing to obey commands and citing the alert from Chambers' post as justification. The residents involved in three of the incidents were not familiar with the allegations of excessive force. In one such instance, a crowd refused to obey an officer commanding them to clear a suspected crime scene, delaying the Department's ability to collect evidence.

Following these disturbances, the Silliman Police Department began an investigation into the owner of the "@SillymanPolice" account. They uncovered that Chambers was the sole owner. On July 19, 2022, the Silliman Police Department arrested Chris Chambers for violating New Storke Penal Code § 424 which states:

> Any person who causes an obstruction of law enforcement by falsely and recklessly pretending to be a local, city, county, state, or federal law-enforcement officer is guilty of a Class 1 misdemeanor.

Chambers was only charged for his May 9 tweet, but Chambers points to his account's history of parody as evidence that nothing he said should have been taken seriously.

B

Chambers was released on bail the day after his arrest. Apparently enraged by his arrest, Chambers posted the following on the "@SillymanPolice" account at 5:15 PM on July 20, 2022:

> @ChiefPigeonSPD Hey piggy! You and your thugs tired of killing innocent people yet?? Ur so thin skinned that u had me thrown in jail for making fun of you…
>
> Honestly someone should put u in the ground (and maybe they will!! -- 494 Lagoon Rd) with everything youve done i wouldn't sleep well if i were u

"@ChiefPigeonSPD" is the Twitter username of Silliman Chief of Police Alexander Pigeon. At the time of Chambers' post, Pigeon and his family resided at the address noted in the post.

Pigeon is a controversial figure in Silliman.[3] At times, his public appearances at department events have been protested by dozens of town residents. One such protest in 2021 became violent after a protestor threw a bottle at a police officer;

[3] Pigeon has drawn statewide attention on several occasions due to his department's alleged misconduct, but also because of his flamboyant speaking style. In one widely-mocked press conference, Pigeon responded to allegations of racial profiling by SPD officers, saying: "No, no, no. We don't see color. The only colors we see in these great United States of America are red, white and blue!"

seven protestors and two police officers were injured in the confrontation that followed. Pigeon has also received several anonymous death threats by email, though none to date have been deemed credible.

By the time of Chambers' July 20 post, news reports about his arrest had drawn substantial new attention to the "@SillymanPolice" account. As a result, his invective-laced tweet was viewed more than 50,000 times in the 17 hours before it was removed for violating Twitter's Terms of Service.

As with several of his previous posts, the July 20 post had real-world consequences. On the night of the 20th, 150 protestors gathered outside Pigeon's residence. Chambers did not attend the demonstration. News reports indicated that many protestors were angered by Chambers' arrest, which they viewed as an abuse of power, as well as by past instances of misconduct by SPD officers. Protestors chanted anti-police slogans as well as taunts of Pigeon and calls for his arrest. Reports also documented several acts of vandalism: one protestor threw a rock through a second-story window and others graffitied hateful messages on Pigeon's car.

Pigeon and his wife, who were at home at the time of the protests, would later testify that they feared the protestors would storm the home and physically harm them. Police dispersed the crowd at 1:34 AM on July 21, two hours after the protest began.

Three days later, Chambers was arrested again. For his July 20 post, he was charged with violating New Storke's Public Official Privacy Act of 2021 (POPA).

C

POPA was passed in 2021 to address the phenomenon commonly known as "doxing." Doxing is the practice of publishing the private information of another individual on the internet with malicious intent. Use of the term varies widely, and can refer to anything from revealing the identity of an anonymous poster on an online forum to publishing the home address of a public figure.

POPA's passage was motivated by several doxing incidents during 2019 and 2020. Most salient was the case of Governor V. Ron Magesh's Public Health Advisor, Dr. Martha Storelli. During the early days of the COVID-19 pandemic, Storelli was an outspoken advocate of public health measures, including mask mandates and lockdown restrictions. Storelli became a target of far-right groups, including one online community known as the New Storke Liberation Front (NSLF).

In August 2020, Storelli's home address, phone number, and email address were posted to an NSLF forum. Two days later, Storelli was assassinated in her home by Cindy Chen, an NSLF forum user with a history of violence.

Public outcry over the murder of Storelli and other incidents[4] led New Storke legislators to consider several proposals to protect public officials from harm.[5] These efforts culminated in the passage of the Public Official Privacy Act on February 3, 2021.[6]

POPA grants special legal protection to a group of "protected individuals," which includes public health officials, members of law enforcement, and elected officials in New Storke. The Act criminalizes the online dissemination of certain information about those officials (e.g., home addresses, phone numbers, biometric data) if a person shares that information with malicious intent and in a way that would cause a reasonable person to fear for their physical safety. Violators can be sentenced to up to twelve months in prison.[7]

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[4] Two months after Storelli's death, a plot by members of a far-right militia to kidnap Michigan Governor Gretchen Whitmer was foiled by the Federal Bureau of Investigation.

[5] Two legislators proposed an expansive program of security and police protection available on request for public officials, but the proposal did not move forward after other lawmakers criticized it as fiscally infeasible given the state's ongoing budgetary crisis.

[6] In recognition of the acute threat of violence to public officials, POPA was passed unanimously by both houses of the New Storke state legislature and swiftly signed into law by Gov. Magesh.

[7] The full text of the Act can be found in Appendix B, *infra* at 33, to this opinion.

D

We return to Chambers. At trial, prosecutors introduced several private messages written by Chambers to friends on the night of July 20. These messages included, in relevant part:

> "he deserves it.. would just love to give him a scare"
>
> "look obv i'm not gonna do anything, but i'm not the only one that hates [Pigeon] :))"

Evidence adduced at trial showed that Chambers had learned of Pigeon's address through an acquaintance who had previously lived in the same neighborhood as Pigeon.[8]

A jury found Chambers guilty on both the police impersonation and POPA counts. He was sentenced to seven months in prison. Chambers appealed; the Court of Appeals affirmed. We granted certiorari to resolve Chambers' First Amendment challenges to his convictions. We now take each issue in turn.

II

We first consider whether the First Amendment to the U.S. Constitution protects Chambers' false claim to be a police officer. Chambers asserts that his speech is protected parody. Failing that, he argues Section 424 imposes an impermissible content-based restriction. We disagree.

A

Thirty-six years ago, the Supreme Court of the United States wrote that "[t]he First Amendment recognizes no such thing as a 'false' idea." *Hustler Magazine v. Falwell*, 485 U.S. 46, 51 (1988). The First Amendment's strong protection encompasses "imaginative expression" and "rhetorical hyperbole" no less than dry facts and restrained civil commentary. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). Yet this protection has meaningful and important limits.

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[8] The parties have stipulated that Chambers obtained Pigeon's address legally.

Where parody is concerned, these limits have traditionally been drawn by reference to how we might reasonably interpret or understand the statements at issue—there must be a joke for us to get, or at least for someone with a better sense of humor than ours to get. In this tradition, the First Amendment "provides protection for statements that cannot 'reasonably [be] interpreted as stating actual facts.'" *Milkovich*, 497 U.S. at 20 (quoting *Hustler Magazine*, 485 U.S. at 56). When a statement is clearly made in jest, it would be unreasonable to take that statement seriously.

Difficulty arises, however, when courts must define which statements are sufficiently comedic to receive this protection. But our colleagues in the Tenth Circuit have synthesized the constitutional requirements for "all cases involving fantasy, parody, rhetorical hyperbole, or imaginative expression," with particular attention to the out-of-court "context" in which the speaker originally spoke. *Mink v. Knox*, 613 F.3d 995, 1006 (10th Cir. 2010). And so, following their example, we must decide "whether the charged portions, in context, could be reasonably understood as describing actual facts about the [Silliman Police Department] or actual events in which [they] participated." *Id.* Limiting our inquiry to the charged statements, we find that they can be so understood.

Chambers began with a claim that could reasonably be understood to describe an actual fact. It was, in fact, an actual fact: "[T]here are some people impersonating SPD officers."

In the next sentence, Chambers continued: "Please be advised that the three individuals pictured here are fake cops and should not be obeyed under any circumstances." The sentence begins with a phrase borrowed directly from previous official SPD tweets, like the Department's March 15 post, which reads: "Please be advised that Elm Street between 10th Street and 18th Street will be closed." And it goes on to deliver a message similar in its content to the Department's April 8 tweet regarding an escaped inmate from a local prison—announcing a threat to public safety and advising caution.

Last, Chambers finished his message with the kind of commentary that the official SPD account made frequently: "no real officer would ever do what they did." In comparison with the official statement: "[t]heir alleged misconduct is not

a reflection of the standards of the department,"[9] this comment was no clear outlier. It was an opinion on policing virtually indistinguishable in principle from official SPD statements.

To complete our review of the tweet's context, we must also consider its audience and delivery. Both weigh against parody protection. Chambers posted his message to social media, where it would be displayed alongside various combinations of his and others' posts. With its wide distribution, Chambers' tweet entered a context where there were no obvious markers that it was a parody, and was delivered to an audience which had no reason to expect it to be anything but actual fact.[10]

This is distinguishable from cases in which Courts have recognized a protected parody right. In *Hustler Magazine*, the Supreme Court noted that "[t]he magazine's table of contents [] lists the ad as 'Fiction; Ad and Personality Parody.' 485 U.S. at 48. Similarly, in *Mink*, the editorials at issue "contained an express disclaimer regarding the [parodic character of the] editor." 613 F.3d 995 at 1008. And in both cases, the parodies were inseparable from their context, in a magazine and an internet journal respectively, without intentional modification. Chambers' tweet, in contrast, carried no disclaimer and had no permanent context that would make the parody evident.[11] These factors, combined with the post's serious content, lead us to conclude that the tweet, "in context, could be reasonably understood as describing actual facts about the [Silliman Police Department]." *Id.* at 1006. It is therefore not entitled to protection as parody.

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[9] From the same day as Chambers' charged tweet. *See* Appendix C, *infra* at 34.

[10] JUSTICE MEYERS suggests that anyone could "view the rest of [Chambers'] tweets, all of which were just as absurd as the May 9 post." *Post* at 21 (MEYERS, J., dissenting). But Chambers' account as a whole is the wrong frame of reference. Chambers' May 9 tweet must be read in the context of the mix of unrelated tweets that comprise any particular user's feed. Unrelated tweets would give no indication that Chambers' tweet is meant to be humorous.

[11] JUSTICE MEYERS argues that the play on words in Chambers' username "acts as a disclaimer" sufficient for "any perceptive reader." *Post* at 21 (MEYERS, J., dissenting). But this gives undue weight to a single letter. The wordplay in "@SillymanPolice" is indistinguishable from a typographical error; the same could not be said of the disclaimers in *Mink* and *Hustler Magazine*, which were substantial and unmistakable. The reasonable interpreter does not read like a Straussian.

B

We turn next to Chambers' second argument: that even if his statement is not protected parody, his conviction is reversible because § 424 makes an impermissible content-based distinction.[12] In making this argument, Chambers principally relies on the plurality opinion from *United States v. Alvarez*, 567 U.S. 709 (2012).

1

We reject this argument. All nine Justices of the *Alvarez* Court distinguished officer impersonation statutes from the law struck down in that case. *See id.* at 721 (plurality opinion) ("Statutes that prohibit falsely representing that one is speaking on behalf of the Government . . . protect the integrity of Government processes, quite apart from merely restricting false speech."); *id.* at 735 (Breyer, J., concurring) ("Statutes forbidding impersonation of a public official typically focus on acts of impersonation, not mere speech"); *id.* at 748 (Alito, J., dissenting) ("All told, there are more than 100 federal criminal statutes that punish false statements made in connection with areas of federal agency concern."). Thus *Alvarez*, by its text, does not control a case like the one we decide today.

On this conclusion, we agree with the Fourth Circuit. Addressing *Alvarez* in the immediate aftermath of its decision, that court upheld a police-impersonation statute which regulated speech even more directly than New Storke's. *United States v. Chappell*, 691 F.3d 388 (2012). The *Chappell* court noted that, unlike the Stolen Valor Act struck down in *Alvarez*, "[t]he statute does not proscribe all untruths about one's occupation or accomplishments, but only lies that may trick ordinary citizens into the erroneous belief that someone is a peace officer *and that may in turn* 'deceive[]' a person into following a harmful 'course of action he would not have pursued but for the deceitful conduct.'" *Id.* at 399 (quoting *Alvarez*, 567 U.S. at 735

[12] Even if the speech were protected parody, it is not clear from *Milkovich* and *Hustler Magazine* that this must be the end of the inquiry. If we were to proceed consistently with our treatment of protected speech in other criminal law cases, we would require that the law survive a strict scrutiny analysis—which § 424 does. *See infra* at 13–14.

(Breyer, J., concurring in the judgment)) (emphasis added). Compared to the Virginia law at issue in that case, § 424 is further from a direct regulation of speech, because it requires that a defendant actually "cause[] an obstruction of law enforcement." Both in *Chappell* and in this case, the statute's regulation of the effects of speech rather than speech on its own provides strong evidence of constitutional validity.

Returning to *Alvarez*, we read Justice Breyer's concurrence in that case as binding.[13] Under that opinion, a proportionality analysis which Justice Breyer calls "intermediate scrutiny" is the appropriate standard of review. And rightly so. "The dangers of suppressing valuable ideas are lower where, as here, the regulations concern false statements about easily verifiable facts that do not concern [humanistic and theological matters of opinion]." *Alvarez*, 567 U.S. at 732 (Breyer, J., concurring in the judgment). Thus, applying intermediate scrutiny, we must decide "whether the statute works speech-related harm that is out of proportion to its justifications." *Id.* at 730. Put differently: Does the statute restrict speech more than is necessary to achieve its goals?

2

We think not. Beginning with the scope of the speech restriction: § 424 covers only speech which has a proven causal relationship with "an obstruction of law enforcement." And it requires that prosecutors show a speaker acted knowingly or recklessly, which decreases the threat of prosecution for unforeseeable obstructions. To be reckless, a speaker must "foresee the possibility of harmful consequence and consciously take the risk" that their speech will result in obstruction.[14]

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[13] As the Fourth Circuit recognized, Justice Breyer's concurring opinion is binding precedent because *Alvarez* yielded no majority opinion and Justice Breyer concurred in the judgment of the Court on the narrowest grounds. *Chappell*, 691 F.3d at 399.

[14] JUSTICE MEYERS objects that parody is "to a certain extent, inherently reckless." *Post* at 22 (MEYERS, J., dissenting). While this may be true in some abstract sense, we see no reason that this is the case in the specific context of § 424. JUSTICE MEYERS' example is a case in point: a person who dresses as a police officer in public may be reckless with regard to the possibility that others will assume that there is criminal activity in the area (assuming, of course, that the person consciously disregards the risk of this outcome). But that is not sufficient for conviction under § 424. Under §

Recklessness, BLACK'S LAW DICTIONARY 1462 (10th ed. 2014) (cleaned up). That is a narrowly defined category, and the statute's effect on speech is accordingly low.

The statute's justifications, on the other hand, are strong. The Justices in both the plurality and the concurrence of the *Alvarez* Court recognized that officer-impersonation statutes serve important interests, whether to (1) "protect the integrity of Government processes," (2) "maintain[] the general good repute and dignity of . . . government . . . service itself," or (3) redress "specific harm to identifiable victims." *Alvarez*, 567 U.S. at 721 (plurality opinion); *id.* at 734 (Breyer, J., concurring). Other courts, facing similar questions, have recognized a "critical interest in public safety" which is served by preventing police impersonators from exercising police powers. *Chappell*, 691 F.3d at 392. All of these interests apply to § 424. Its combination of significant justifications is more than sufficient to outweigh its speech-related harm.

3

While we apply "intermediate scrutiny" for the reasons discussed above, we think that it is worth noting that § 424 would also satisfy the "most exacting scrutiny" applied by the *Alvarez* plurality. 567 U.S. at 715 (plurality opinion). That scrutiny comes in three parts. First, "[t]he First Amendment requires that the Government's chosen restriction on the speech at issue be 'actually necessary' to achieve its interest;" second, "[t]here must be a direct causal link between the restriction imposed and the injury to be prevented;" and third, "the restriction must be the least restrictive means among available, effective alternatives." *Id.* at 725, 729 (internal citations and quotation marks omitted). We find all three of these requirements satisfied.

As discussed previously, § 424 serves several compelling interests: protecting the reputation and dignity of New Storke's government processes, maintaining

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424, one must be reckless in a way that will "cause[] an obstruction of law enforcement." Parodists may continue to disregard any number of risks inherent in their craft. But, under § 424, there is one exception: they must not obstruct law enforcement.

the effective operation and administration of New Storke's laws, and ensuring public safety. § 424's means are necessary to achieve those interests. Unlike *Alvarez*, in which the federal government could have avoided restricting speech by instead corroborating or contradicting a person's claim to military decoration, so-called counterspeech is not a sufficient response to false assertions of police power. The events of this case demonstrate that point: when Silliman residents refused to obey SPD officer commands and challenged the authenticity of SPD officers, they obstructed the processing of a crime scene. It is not difficult to imagine similar situations where officers' orders are ignored during life-threatening situations, with significantly worse outcomes. We accordingly find that § 424 satisfies any form of First Amendment scrutiny.

III

Next, we consider Chambers' doxing conviction under the Public Official Privacy Act. Chambers raises two primary arguments on appeal with respect to the POPA conviction. First, he contends that his post was protected speech, and that POPA is an unconstitutional content-based regulation of that speech. Second, even if his speech isn't itself protected, he argues that POPA is overbroad—that is, its prohibition sweeps in so much protected speech along with the unprotected that the whole statutory scheme must fall.

The First Amendment does not limit its protection only to speech with social value. Instead, it requires that we not make that determination, and that other than a limited number of recognized exceptions—true threats, incitement, defamation, and a few more—all speech receives the full protection of the First Amendment. So we ask not whether Chambers' "doxing" message served a valuable social purpose, but whether it falls within one of those limited categories of unprotected speech.

Here, two of those categories are plausibly relevant: incitement and true threats. We need not reach the incitement analysis, because Chambers' statements constitute a true threat.

A

True threats are statements through which a "speaker means to communicate a serious expression of an intent to commit an unlawful act of violence" upon another person. *Virginia v. Black*, 538 U.S. 343, 359 (2003). The determination of whether a statement communicates a true threat is "based solely on its objective content." *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023). However, the Supreme Court recently clarified that true threat prosecutions must nonetheless prove that a defendant had at least "some subjective understanding of the threatening nature of his statements"—that he either intended to convey a threat of violence or "consciously disregarded a substantial risk" that his statements would be viewed that way. *Id.* at 2112. So our true threat analysis proceeds in two parts: first, we ask whether a reasonable person would view Chambers' July 20 tweet as a "serious expression of an intent to commit . . . violence," and second, whether he understood that his statements could be taken that way.

We begin with the objective inquiry. The relevant portion of Chambers' post reads: "Honestly someone should put u in the ground (and maybe they will!! -- 494 Lagoon Rd) with everything youve done i wouldn't sleep well if i were u." We read that language as unambiguously threatening. The comment "i wouldn't sleep well if i were u" implies that Pigeon should fear for his life, because Chambers intends to bring about his death. That statement rises to the level of a "serious expression of intent" to inflict harm. Coupled with the address, it says that the speaker has already obtained the information necessary to make good on the threat. Chambers points to the use of "they" in "maybe they will" as evidence that he was not expressing an intent to commit harm himself, but instead a hope that someone else would. We are unpersuaded. Given the context of the rest of the message, that clause is most reasonably read to imply that the "someone" referred to by "they" is Chambers himself.

JUSTICE MEYERS' insistence that a true threat can be found only in the most literal expression of intent to harm should not be mistaken for a rigorous defense of free speech. Indeed, the dissent's analysis ignores the richness and complexity of everyday speech. Would-be criminals have many rhetorical means at their disposal to convey a threat. Consider, for instance, the quintessential example of

witness tampering: "Snitches get stitches." A person who delivers this message need not spell out the subtext for the message to be obvious: if you turn against me, I will hurt you. Under the dissent's conception of true threat law, the speaker would be shielded by the First Amendment unless he perhaps said "Snitches, which includes you if you cooperate in the criminal investigation against me, get stitches, which you will need after I attack you." Needless to say, people do not talk this way, least of all criminals delivering threats of violence. *See, e.g.*, DIE HARD (Twentieth Century Fox 1988) ("It's a very nice suit Mr. Takagi… It'd be a shame to ruin it.").

The point is this: speech cannot be analyzed with a mechanical word-by-word parse, in search of magic phrases that give rise to a true threat. We must understand a message as its recipient would reasonably understand it, "in light of [its] entire factual context, including the surrounding events." *Planned Parenthood of Columbia/Willamette v. Amer. Coal. of Life Activists*, 290 F.3d 1058, 1075 (9th Cir. 2002). Here, that holistic approach reveals the threatening nature of Chambers' post: the address, along with his violent rhetoric, implies both the ability and willingness to inflict physical harm on the Chief of Police and his family.

Turning to the subjective intent inquiry, only a brief remark is necessary. The undisputed facts indicate that Chambers was aware of the menacing nature of his statements and intended them as such. If POPA's intent requirement does not exactly mirror the Supreme Court's *Counterman* formulation, it is a distinction without a difference. We are unaware of any case where the evidence more strongly indicates a defendant's intent to, in his own words, "give the [victim] a scare."

Accordingly, we hold that Chambers' conduct meets the constitutional "true threat" standard and is therefore unprotected by the First Amendment.

B

Chambers additionally contends that, even if his speech is unprotected, POPA is facially unconstitutional.

The Supreme Court has recognized that statutes which target unprotected speech may incidentally include protected speech. Such statutes may chill the conduct of speakers, who may alter their speech to avoid breaking the law. *See Counter-*

man, 143 S. Ct. at 2115. In recognition of this phenomenon, the Court has established that defendants may challenge such statutes as "unconstitutionally overbroad." *Sheehan v. Gregoire*, 272 F. Supp. 2d 1135, 1140 (W.D. Wash. 2003). When a statute "reaches a substantial number of impermissible applications" it may be deemed overbroad and facially unconstitutional. *Black,* 538 U.S. at 375 (Scalia, J., concurring) (internal citations omitted). Even if Chambers' speech is itself unprotected, the Court has recognized an exception to general standing requirements when it comes to overbreadth challenges; Chambers may assert the First Amendment rights of others' whose protected speech would be chilled.

The overbreadth doctrine is strong medicine, and it may only be successfully invoked in limited circumstances. *See Reno v. American Civil Liberties Union*, 521 U.S. 844, 896 (1997) (O'Connor, J., concurring) ("to prevail in a facial challenge, it is not enough for a plaintiff to show 'some' overbreadth"). In other words, the overbreadth of the statute must be "real" and "substantial." *Id.* at 896. Recognizing the narrow applicability of this doctrine, lower courts have required litigants to demonstrate a "realistic danger" that the statute will deter protected conduct. *Sheehan*, 272 F. Supp. 2d at 1140.

Chambers' argument does not satisfy this demanding standard. The State seeks to criminalize the dissemination of "sensitive personal information . . . with the intent to intimidate, abuse, threaten, harass, or frighten." The statute's intent requirement limits its scope to unprotected speech. It is tailored towards offenders like Chambers, who, with the intent to frighten, publish sensitive information that will place victims in reasonable fear of physical injury. In order to prevail, Chambers must demonstrate that, relative to its legitimate sweep, there is a realistic danger of protected speech being prosecuted under the statute. He has failed to do so.

Chambers' contention that POPA criminalizes the conduct of well-intentioned journalists and activists is unavailing. None of the hypotheticals raised by the dissent lead to a *prosecution* under the statute. Those journalists who may publish the address or medical information of a politician would lack the requisite intent to "intimidate, abuse, threaten, harass, or frighten." The simple fact that such conduct may be *perceived* as prosecutable under the statute is not enough.

The dissent argues that POPA implicates an excessively broad range of disclosures. In an age where personal data may be leveraged to gain access to the private lives of citizens, this claim holds no water. Such pieces of information are extremely, intimately personal. By gaining access to Social Security numbers or biometric data, malicious actors can obtain a victim's entire financial, professional and medical identity. That information can certainly be used in furtherance of conveying a threat of physical violence.

Chambers has not convincingly shown that POPA realistically applies far beyond what is constitutionally permissible. We reject his overbreadth claim accordingly, and affirm his POPA conviction.

IV

Online misinformation and threats are increasingly destabilizing societal forces. With § 424, New Storke has acted to regulate the usurpation of its power and prevent confusion on matters of public safety. With POPA, it has protected from violence those individuals most critical to the functioning of our society. First Amendment freedom of expression is and will continue to be the bedrock of our democratic system. But even that freedom has its limits. We have carefully applied those limits today.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE MEYERS, dissenting:

Today, this court upholds two laws. One suppresses a parody that protests government injustice; the other censors factual information about public officials. Neither holding, in my view, comports with the First Amendment. I respectfully dissent.

I

The Court holds today that an intelligent and nuanced satire of police misconduct is unprotected speech merely because someone could misunderstand it. The majority opinion errs in its analysis with respect to New Storke Penal Code § 424 in three primary areas: First, the May 9 post Chambers was charged for is clearly parody and is therefore entitled to full First Amendment protection. Second, this law regulates speech based on its content, and therefore strict scrutiny must apply, which this law fails. Third, even if a lesser form of scrutiny is applied, such as intermediate scrutiny, this law fails.

A

As the majority notes, the First Amendment "provides protection for statements that cannot 'reasonably [be] interpreted as stating actual facts.'" *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990) (quoting *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988)). In other words, even if a statement is false, as long as there are enough cues, both textual and contextual, to determine that it is intended to be a joke, then the law does not treat it as a lie. Like the majority, I apply this principle through the standard used by the Tenth Circuit in *Mink v. Knox*, asking "whether the charged portions, in context, could be reasonably understood as describing actual facts about the [Silliman Police Department] or actual events in which [they] participated." 613 F.3d 995, 1006 (2010).

Successful parody mimics the form and style of a well-known trope, convincing the audience that it is authentic before introducing enough absurd or discordant details to reveal itself as satirical. "[This] leverage of form—the mimicry of a particular idiom in order to heighten dissonance between form and content—is what generates parody's rhetorical power." Brief of *The Onion* as *Amicus Curiae* in Support of Petitioner at 8, *Novak v. City of Parma*, 143 S. Ct. 773 (2023).

Chambers' tweet is a near-exact application of this formula. Its initially serious tone mimics that of a real police announcement on Twitter with phrases like "It has come to our attention," and "Please be advised." These phrases, in combination with the matching profiles and display names of his account with the official SPD account, initially signal that the post is a serious report. But Chambers follows these statements with a claim that no informed resident of Silliman would believe: "that the three individuals pictured here are fake cops and should not be obeyed under any circumstances." Of course, most residents of Silliman would know that Chen, Chang, and Roshan are real officers given the heavy media coverage of their alleged misconduct. And just in case a particular reader was unaware of the allegations, the next phrase, "Obviously, no real officer would ever do what they did," indicates that there was an incident with these officers. A concerned and unaware citizen might then investigate further to see what "they did" and realize that these officers are SPD officers. They would then understand the true meaning of Chambers' tweet: a criticism of the lack of accountability by the Silliman Police Department. In the majority's telling, the similarities between Chambers' post and a standard post by the SPD demonstrate that a reasonable reader would be confused. But those similarities are what makes the post parody in the first place.

If this context were not enough, Chambers alters his tone between the formal opening phrases and the statements that follow. A real statement would be highly unlikely to use the colloquialism "fake cop" and would likely contain more logistical information and detail, rather than the uncharacteristically rhetorical, "obviously, no real officer would ever do what they did." The mismatch between the expected tone and the actual tone signals to readers that the post is satire.

Additionally, the fact that Chambers posted no disclaimer does not solely determine whether a reasonable person would understand his posts as parody. "There is no reason to require parody to state the obvious (or even the reasonably perceived)." Brief of *The Onion* as *Amicus Curiae* in Support of Petitioner, *supra*, at 12 (internal citations omitted). Indeed, many cases have found statements to be parody even though they didn't have a disclaimer. *See id.* (collecting cases). In Chambers' case, there are enough contextual clues to signal that the post is a parody. Chambers made his username "@SillymanPolice," changing one letter from the

official account so that it would read "Silly Man Police." To any perceptive reader, that kind of wordplay functions as a disclaimer. Readers could also, with one click, view the rest of his tweets, all of which were just as absurd as the May 9 post.

The fact that eight people in a town of 200,000 did not realize that the post was a parody is no reason to believe that the reasonable reader cannot discern it. Indeed, protected parody is often misunderstood. *The Onion*'s amicus brief in another case documents examples of Chinese and Iranian state media agencies as well as a U.S. congressman falling for satirical *Onion* articles. *Id.* at 9. Chambers' May 9 tweet is not made less of a parody simply because it reached a wider audience than his tweets typically do. Parody is an art form that demands thought from its readers. If it is to survive, judges must trust readers' capacity to discern it, even when done imperfectly.

B

The appropriate level of review for § 424 is strict scrutiny. In this case, the State of New Storke seeks to prohibit speech that "falsely and recklessly pretending to be" a member of law enforcement. That is a "content-based" classification. Accordingly, "the Constitution demands that the law be presumed invalid and that the Government bear the burden of showing its constitutionality." *United States v. Alvarez*, 567 U.S. 709, 717 (2012) (plurality opinion) (cleaned up).

As the majority notes, the strict scrutiny applied in *Alvarez* has three components:

> "First, the First Amendment requires that the Government's chosen restriction on the speech at issue be actually necessary to achieve its interest; second, there must be a direct causal link between the restriction imposed and the injury to be prevented; and third, the restriction must be the least restrictive means among available, effective alternatives." *Ante* at 14 (cleaned up).

The interests cited by the majority include "protecting the reputation and dignity of New Storke's government processes," "maintaining the effective operation and administration of New Storke's laws," and "public safety." *Id.* These are

legitimate, and perhaps even compelling, state interests. But the government has not employed the "least restrictive" means of achieving those interests. In fact, the state of New Storke could achieve the same interest by limiting only conduct, and not speech. To do so, the state should regulate only cases where an imposter actually assumes the powers of a police officer, rather than any case in which someone merely "pretends" to be an officer. Narrowing § 424 in this way would prohibit the types of actions that actually interfere with law enforcement, such as giving false police orders or using a fake siren to avoid traffic, while leaving anything that is purely expressive, such as a parody account or a Halloween costume unregulated. There may be instances, such as this case, where a disruption occurs because people misunderstand a parody or costume, but speakers should not be liable for interpretive errors made by third parties. Punishing speakers based on how others will react necessarily chills speech, because speakers cannot know in advanced how others will perceive what they say. New Storke has means available to it that will not lead to such an outcome. § 424 is therefore not the least restrictive means of achieving its interests.

The majority argues that, because the statute only prohibits "reckless" impersonation that "causes an obstruction of law enforcement," it is already the narrowest effective construction of the law. But these limitations functionally serve to prohibit all parody of law enforcement. By its very nature, parody must attempt to fool its readers, which is, to a certain extent, inherently reckless. Because successful parody must attempt to fool its readers, a parodist understands that some people may not initially understand. This does not mean that parody is an inferior form of speech. Indeed, "[n]othing is more thoroughly democratic than to have the high-and-mighty lampooned and spoofed." Brief of *The Onion* as *Amicus Curiae* in Support of Petitioner, *supra*, at 10 (citing *Falwell v. Flynt*, 805 F.2d 484, 487 (4th Cir. 1986)).

C

The majority uses Justice Breyer's concurrence in *Alvarez* to argue that the appropriate level of scrutiny in this case is intermediate scrutiny. *Ante* at 13. While

there are some superficial similarities between *Alvarez* and this case, the fundamental difference between the two cases is that *Alvarez* deals with lies intended to deceive and this case deals with a parody intended to satirize. Justice Breyer's concurrence applied intermediate scrutiny because "false statements about easily verifiable speech" are less likely to make a "valuable contribution to the marketplace of ideas." *Alvarez*, 567 U.S. at 732 (2012) (Breyer, J., concurring). But *Hustler Magazine v. Falwell*, *Mink v. Knox,* and *Milkovich v. Lorain Journal* all distinguish ordinary false statements from parody. *See Hustler Magazine*, 485 U.S. at 52 (allowing recovery "for libel or defamation only [with proof] that the statement was false and that the statement was made with the requisite level of culpability"); *Mink*, 613 F.3d at 1005 ("Because no reasonable person would take these types of speech as true, they simply cannot impair one's good name."); *Milkovich*, 497 U.S. at 16 (recognizing "constitutional limits on the type of speech which may be the subject of state defamation actions"). On the other hand, Chambers' parody, as commentary on the police's tolerance of misconduct, has substantial social value. His speech is distinguishable from the minimally-valuable lies in *Alvarez*, and strict scrutiny should thus apply.

But even if intermediate scrutiny is applied, the law would not satisfy it. Speech about the government is at the core of the First Amendment's protection. The *Sullivan* standard, which imposes a higher bar for defamation claims brought by public figures is predicated on the idea that public officials naturally expose themselves to increased scrutiny. *See, e.g.*, *Milkovich*, 497 U.S. at 14 ("[A] state-law rule compelling the critic of official conduct to guarantee the truth of all his factual assertions would deter protected speech."). Furthermore, the police, as public officials "usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy." *Id.* at 15 (citing *Gertz v. Robert Welch*, 418 U.S. 323, 344-45 (1974)). In this case, just as in *Alvarez,* the government cannot show why counterspeech would not suffice to clarify any confusion. I would therefore find that § 424 fails any proposed level of scrutiny and reverse Chambers' conviction.

II

Next, I address Chambers' challenge to the Public Official Privacy Act of 2021 (POPA). As the majority correctly notes, the government may only regulate speech that falls within a historically-recognized exception to the First Amendment, or when compelling governmental interests justify a restriction of speech. The Supreme Court has repeatedly recognized that prohibitions of speech—even when justified—"have the potential to chill, or deter, speech outside their boundaries." *Counterman v. Colorado*, 143 S. Ct. 2106, 2114 (2023). The Public Official Privacy Act has such an effect. Its reach extends far beyond any exception to the First Amendment, and criminalizes wide swathes of protected speech.

Take the subject of this case: a home address. Where government officials reside is frequently a matter of public concern.[15] I fear that today's majority empowers these officials to wield anti-"doxing" laws against legitimate reporting. Should a newspaper that has published vitriolic criticism of the mayor fear reprisal for reporting that the mayor's residence is outside city limits? Perhaps the majority has no issue with that. But who can say? The majority sets out a standard so ripe for abuse that it is likely to result in self-censorship for fear of criminal prosecution. We have an obligation "to prevent that outcome—to stop people from steering wide of the unlawful zone." *Id.* at 2115.

Today's majority errs in finding that Chambers' July 20 post constitutes a true threat under Supreme Court precedent. Because Chambers' statement is not a true threat and is therefore protected, POPA's application to him must survive strict scrutiny, which it cannot. Finally, even assuming Chambers' own speech is unprotected, POPA is unconstitutionally overbroad.

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[15] *See, e.g.*, Glenn Kessler, *Tommy Tuberville: Florida's Third Senator?*, WASH. POST (Aug. 10, 2023) (reviewing property records that indicate Alabama Senator Tommy Tuberville may live in Florida); Katie Glueck et al., *Where Does Eric Adams Live? Rivals Question His Residency and Ethics*, N.Y. TIMES (June 9, 2023) (noting that then-N.Y.C. mayoral candidate Eric Adams may have been living in a New Jersey apartment); Bryan Lowry, *Josh Hawley, Who Owns a House in Virginia, Uses Sister's Home as Missouri Address*, KANSAS CITY STAR (Nov. 19, 2020).

A

Beginning with the true threat analysis: as the majority notes, a true threat is a "serious expression of intent to commit an unlawful act of violence." Chambers' post, while violent in tone, does not express an intent to commit violence. A message that wishes death upon a person or even predicts their death is undoubtedly distressing for the recipient, but distress is not the measure of a threat. Only when other factors indicate that such a wish is a veiled expression of a "serious… intent" to inflict bodily harm can it be considered unprotected speech. *Virginia v. Black*, 538 U.S. 343 (2003). Those contextual factors are simply absent from this case.

It may well be true that Chambers' statement, in widely disseminating Pigeon's address, placed Pigeon at increased risk of harm by third parties. I do not minimize that danger, nor the fear and uncertainty felt by Pigeon and his family. We must be clear, however, that not all statements which put a person in reasonable fear of harm are true threats. The Supreme Court has defined a true threat as a "serious expression that a speaker means to *commit* an act of unlawful violence." *Counterman*, 143 S. Ct. at 2114 (emphasis added). As several judges have noted, the significance of this formulation is that "the speaker must indicate he will take an active role in the inflicting." *Planned Parenthood of Columbia/Willamette v. Amer. Coal. of Life Activists*, 290 F.3d 1058, 1088 n.2 (9th. Cir 2002) (Kozinski, J., dissenting); *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 900 n.28 (1982) (finding that a speaker's declaration that "any 'uncle toms' who broke [a] boycott would 'have their necks broken' by their own people" was protected speech). "Someone should kill you (and maybe they will![])" is not a statement that indicates Chambers will take action himself. Indeed, the posting of the address to a broad audience cuts *against* the interpretation that Chambers intended to inflict violence on his own, rather than to allow others to use Pigeon's address for their own purposes.

The majority accuses me of failing to recognize the importance of context in identifying true threats. *Ante* at 17. On the contrary, it is the majority's analysis that betrays a stunted understanding of how to consider the bigger picture. This is apparent in the example the majority relies on, *id.*: a mobster warning a witness that

"snitches get stitches" relies on the witness's pre-existing knowledge that the mobster has a propensity for both violence and vengeance. The statement "snitches get stitches"—say, if uttered by a trusted friend warning that third parties may retaliate if the witness cooperates—is not itself a true threat. Chambers' statement, while abusive, was accompanied by no outside circumstances that would indicate it was a serious threat to commit bodily harm. He had no known propensity for violence and no shared history with Pigeon that would lead Pigeon to reasonably believe that Chambers had the means and intention to harm him.

Let me be clear: the acts described here—putting someone at risk by publishing their location, wishing death upon a human being—are reprehensible. But the First Amendment's protection extends further than just well-intentioned speech, and it reaches that far here.

B

Because Chambers' post is protected speech, the state's actions must be subject to First Amendment scrutiny. Two forms of scrutiny are applied in First Amendment cases: intermediate scrutiny, which requires that the government not burden more speech than is necessary to further a substantial interest, and strict scrutiny, which requires the government to show a law is narrowly tailored to a compelling governmental interest. *Sheehan v. Gregoire*, 272 F. Supp. 2d. 1135, 1145–46 (W.D. Wash. 2003).

Which form should be used depends on whether a law is "content-based" (in which case strict scrutiny applies) or "content-neutral" (in which case intermediate scrutiny applies). A content-based regulation of speech is one that "prohibits otherwise permitted speech based solely on the subjects addressed by the speech." *Id.* at 1146. Because the most insidious forms of censorship regulate speech based on its subject or viewpoint, content-based laws are "presumptively invalid." *Id.* POPA is content-based on its face. The law singles out for regulation particular types of factual information about a select class of public officials. Thus, it must be subject to strict scrutiny.

Several reasons indicate that POPA cannot survive strict scrutiny. The government reasonably asserts that it has a compelling interest in the safety of public

officials. Given that, the relevant inquiry is whether the POPA's means of furthering that interest are narrowly tailored—that is, whether the government has employed the "least restrictive means" available to it. That is doubtful.

The case of *Florida Star v. B.J.F.* is instructive on this point. 491 U.S. 524 (1989). In *Florida Star*, the Supreme Court considered the constitutionality of a Florida law banning the publication of the sexual assault victims' names in "instruments of mass communication." *Id.* at 526. The Court acknowledged the significant public interest in protecting the safety and privacy of assault victims. *Id.* at 534. But it explained that holding a newspaper liable for publishing factual information was too "extreme [a] step" to advance those interests to satisfy narrow tailoring. *Id.* at 537.

POPA is of a similar form to the law struck down in *Florida Star*. It restricts the disclosure of factual information about certain people through particular mediums of communication. In fact, POPA represents a far greater incursion on free speech rights: whereas the statute in *Florida Star* imposed only civil penalties for violation, POPA is a criminal statute, and offenders face the prospect of prison time. It is self-evident that criminal sanctions pose a greater chilling effect on a person's willingness to speak than the prospect of a lawsuit. If the risk of chilling legitimate reporting was too great to bear in *Florida Star*, then it must be in this case, too.

New Storke offers several justifications for why POPA is narrowly tailored. First, it contends that the law's restriction to a small selection of sensitive personal information—addresses, government identifiers, phone numbers, and biometric information—is tailored to those pieces of information whose disclosure will most harm individuals and which there is least legitimate reason to publish. Second, it says that POPA's intent requirement ensures it only applies to malicious "doxing," rather than legitimate reporting.

While these restrictions demonstrate that POPA could perhaps have been drafted even more broadly, they do not show that POPA is the "least restrictive means" of achieving the government's interests. New Storke says its interest is in the ensuring the safety of people in particular danger of harm. If so, what threat to the physical safety of a person is posed by the disclosure of their Social Security Number? Certainly, having one's Social Security Number (or home address, or

phone number) disclosed online can be a difficult and distressing experience. But that experience is one already shared by tens of millions of Americans. *See* Tara Siegel Bernard et al., *Equifax Says Cyberattack May Have Affected 143 Million in the U.S.*, N.Y. TIMES (Sep. 7, 2017). The government has made no showing that there is some unique safety risk posed by that disclosure. Thus, it is unlikely that POPA is even effective at pursuing its privacy objectives, let alone the least restrictive way of pursuing those interests.

Viewed another way, POPA's apparent "tailoring" is itself quite troubling. For instance, POPA criminalizes the dissemination of information that may already be a matter of public record. Say, for example, a political opponent obtains the governor's phone number through a public records request. If the opponent then posts the phone number on social media with the "intent to harass" the governor, he has violated POPA. Yet, one who publishes that same information with friendly intentions, even if the resulting harassment is worse, has not. Similarly, a person who maliciously announces someone's home address on live television has not violated POPA, while one who does so on a small internet forum has.

As the above hypotheticals illustrate, the boundaries of POPA's scheme are simply baffling. What is more, they are evidence of unconstitutionality. "When a State attempts the extraordinary measure of punishing truthful publication in the name of privacy, it must demonstrate its commitment to advancing this interest by applying its prohibition evenhandedly." *Florida Star*, 491 U.S. at 540. Failure to do so is evidence of "facial underinclusiveness," the notion that a government's unjustified selectivity in which speech to restrict undermines its claim that a law is intended only to achieve a compelling interest. *Id.* A law that criminalizes dissemination of factual information by a politician's opponents but not his friends, and by online commentators but not television anchors, is inherently suspect. And no form of underinclusiveness is more dangerous than that of a law which only prohibits speech about certain government officials.

The government has not shown that its interests can be served only by criminalizing the publication of facts. The provisions that narrow POPA's scope serve to deepen its constitutional defects, not alleviate them. POPA cannot survive strict scrutiny, and I would reverse Chambers' conviction on that basis.

C

Even proceeding on the majority's assertion that Chambers' speech is unprotected, however, POPA is facially inconsistent with the First Amendment. "A statute may be facially unconstitutional if it seeks to prohibit such a broad range of protected speech that it is unconstitutionally overbroad." *Sheehan*, 272 F. Supp. 2d at 1140.

In order to identify an overbroad statute, litigants must prove that a substantial number of its applications are invalid. *See id.* ("there must be a realistic danger that the statute will significantly compromise recognized First Amendment protections") (internal citations omitted). The conduct targeted by the statute—publishing factual information that is often already in the public record—is speech that lies at the heart of the First Amendment's protection of speech and the press.

As the Court noted in *Florida Star*, publicly available information enjoys significantly diminished privacy protections. *See* 491 U.S. at 535 ("[P]rivacy interests fade once information already appears on the public record . . . .[M]aking public records generally available to the media while allowing their publication to be punished if offensive would invite self-censorship.") (internal citations omitted). The novelty of "doxing" is its focus on the release of personally identifying information, data that is often publicly accessible via government records and any number of online databases. POPA therefore targets conduct that would otherwise be protected if not for a showing of malicious intent.

The reach of POPA sweeps in an excessive amount of protected speech with the unprotected. Even assuming that the act of disclosing a physical address could rise to the level of a true threat, the other disclosures listed by POPA surely do not.

New Storke's definition of "sensitive personal information" ranges from telephone numbers to any "government-issued identifier." The State could reasonably wield such provisions against an offender who released a government employee's professional phone number or badge number, so long as they exhibited the ill-defined "intent to intimidate." Such disclosures do not constitute unprotected speech as they do not reasonably implicate personal safety concerns. A statement

that includes this kind of personal information lacks an important piece of the puzzle: the speaker is not communicating his intent to inflict physical harm on the victim.

III

This case well illustrates the challenges of applying First Amendment doctrine in the internet age. Speech once considered utterly benign—parody of the police and publication of an address—now appear harmful in an era where every statement can reach millions of people. To some extent, that appearance is justified. It is unlikely, for instance, that the events of this case would have taken place but for the wide dissemination of speech enabled by social media platforms.

Yet that cannot be justification for treating online speech as second-class. In punishing Chambers because a fraction of his audience didn't get the joke and later for disseminating factual information online, New Storke has done just that. Chambers may have used his right to free speech poorly in this case, but it is just that: a right. It does not wither away simply because its exercise has become more potent through the internet.

As the Supreme Court put it during the internet's infancy, our age is one where "any person . . . can become a town crier with a voice that resonates farther than it could from any soapbox. . . . [That] same individual can [as easily] become a pamphleteer. . . . The content of the internet is as diverse as human thought." *Reno v. American Civil Liberties Union*, 521 U.S. 844, 870 (1997) (internal citations and quotation marks omitted). There is therefore "no basis for qualifying the level of First Amendment" protection that should apply to internet speech. *Id.*

They had it right. I respectfully dissent.

Appendix A

Excerpts of the New Storke Penal Code

§ 424

Any person who causes an obstruction of law enforcement by falsely and recklessly pretending to be a local, city, county, state, or federal law-enforcement officer is guilty of a Class 1 misdemeanor.

§ 53

The authorized punishments for conviction of a misdemeanor are:

(a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than $2,500, either or both.

Appendix B

Public Official Privacy Act of 2021*

(1) For the purposes of this Act:
   (a) "Dissemination" means electronically publishing, posting, or otherwise disclosing information to a public Internet site;
   (b) "Protected individual" includes the following groups of people residing in the State, as determined at the time of the offense:
      1. Employees or officials of the New Storke Department of Health;
      2. Employees or officials of local public health departments; and
      3. Employees or officials of police departments within the State;
      4. Any individual who holds elected office in New Storke.
   (c) "Immediate family member" means a parent, grandparent, spouse, child, stepchild, sibling, or grandchild; and
   (d) "Sensitive personal information" includes the following kinds of information:
      1. Home or physical address;
      2. Social Security number or other government-issued identifier;
      3. Telephone number; or
      4. Biometric, health, or medical data.

(2) A person is guilty of disseminating sensitive personal information about another person when, with the intent to intimidate, abuse, threaten, harass, or frighten a protected individual who resides in the State, he or she:
   (a) Intentionally disseminates the sensitive personal information of the protected individual or the protected individual's immediate family; and
   (b) The dissemination would cause a reasonable person to be in fear of physical injury to himself or herself, or to his or her immediate family member.

(3) Violators of this Act shall be guilty of a Class 1 misdemeanor.

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* Portions of this Act are adapted from Ky. Rev. Stat. § 525.085.

Appendix C

Selection of "@SillymanPolice" Tweets

Silliman Police Department
@SillymanPolice

We are pleased to announce our new state of the art police robots. They can traverse busy sidewalks at speeds up to 50 MPH and come equipped with military grade weaponry and armor. We believe that with their help we can finally put an end to shoplifting.

1:47 PM · Aug 9, 2021 · **8,675** Views

Silliman Police Department
@SillymanPolice

Tomorrow from 10 AM to 2 PM at the Elm Street Station come meet the Police K9 unit! Bring your little kiddos to meet our fluffy doggos. Live attack dog demonstrations on people who look at the officers funny will be provided!

1:51 PM · Jan 12, 2022 · **23,324** Views

Silliman Police Department
@SillymanPolice

We are offering immediate spots on the police force to anyone who can recite the Miranda rights in under 5 seconds while maintaining a threatening tone. Come to the Elm Street Police Department to show us what you've got! (Due to budget cuts, you must provide your own firearm.)

3:26 PM · Feb 1, 2022 · **10,787** Views

Appendix C: Selection of "@SillymanPolice" Tweets

Silliman Police Department
@SillymanPolice

ALERT: In honor of the storied relationship between cops and donuts, the Dippin' Donuts at 345 Main Street is reserved for POLICE OFFICERS ONLY on March 27th to celebrate the release of the new maple-bacon-sugar-dusted-cookies-and-Boston-creme-double-decker-donut.

7:41 AM · Mar 20, 2022 · **9,562** Views

Silliman Police Department
@SillymanPolice

This is a public service announcement: we are bad at our jobs

4:49 PM · Apr 8, 2022 · **11,231** Views

Silliman Police Department
@SillymanPolice

It has come to our attention that there are some people impersonating SPD officers. Please be advised that the three individuals pictured here are fake cops and should not be obeyed under any circumstances. Obviously, no real officer would ever do what they did.

7:47 PM · May 9, 2022 · **40,744** Views

Table of Authorities

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