

**RECEIVED****Dec 12 2025**

S.C. SUPREME COURT

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

C/A No. 3:25-cv-537-JFA

American Civil Liberties Union of South  
Carolina Foundation

Plaintiff,

v.

Alan Wilson in his official capacity as  
South Carolina Attorney General; Joel  
Anderson, in his official capacity as  
Interim Director of South Carolina  
Department of Corrections,

Defendants,

and

Henry McMaster, in his official  
capacity as Governor of the State of  
South Carolina,

Intervenor.

**ORDER FOR CERTIFICATION**

TO: The Honorable Chief Justice and Associate Justices of the South Carolina Supreme Court:

This Court has determined that the above-captioned case involves questions of law of the State of South Carolina, which are most probably determinative of several issues including: (1) the merits of the parties' First Amendment claims; (2) Article III Standing as is required to maintain suit in Federal Court; and (3) pending cross motions to compel discovery. There appears to be no controlling precedent in the decisions of the Supreme

Court of the State of South Carolina or lower courts of this State concerning the scope of the information protected under S.C. Code Ann. § 24-3-580 (Supp. 2023). Accordingly, pursuant to South Carolina Appellate Court Rule 244, the United States District Court hereby certifies the questions of law addressed below to the Supreme Court for instructions based on the following facts and procedural background:

### **I. Nature of the Controversy**

This controversy concerns S.C. Code Ann. § 24-3-580, (the “Statute”).<sup>1</sup> American Civil Liberties Union of South Carolina Foundation, (“Plaintiff”), filed the above-captioned lawsuit on January 29, 2025, against Alan Wilson in his official capacity as South Carolina Attorney General; and Joel Anderson in his official capacity as Interim Director of the South Carolina Department of Corrections, (“Defendants”), arguing Subsection (C) and Subsection (G) of § 24-3-580 violate the First Amendment. (Am. Compl. ECF No. 52). Specifically at issue here are Subsection (A)(2) and Subsection (C) which state:

“Identifying Information” shall be construed broadly to include any record or information that reveals a name, date of birth, social security number, personal identifying information, personal or business contact information, or professional qualifications. The term “identifying information” also includes any residential or business address; any residential, personal, or business telephone number; any residential, personal or business facsimile number; any residential, personal, or business email address; and any residential, personal, or business social media account or username.

S.C. Code Ann. § 24-3-580(A)(2)

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<sup>1</sup> Plaintiff refers to § 24-3-580 as the “Secrecy Statute” whereas Defendants refer to it as the “Shield Statute.” For ease of reference, the Court will simply refer to § 24-3-580 as the “Statute.”

A person shall not knowingly disclose the identifying information of a current or former member of an execution team or disclose a record that would identify a person as being a current or former member of an execution team. Any person and his immediate family, or entity whose identity is disclosed in violation of this section shall have a civil cause of action against the person who is in violation of this section and may recover actual damages and, upon a showing of willful violation of this section, punitive damages. A person who violates the provisions of this subsection also must be imprisoned not more than three years.

S.C. Code Ann. § 24-3-580(C)

Capital punishment is a historic punitive practice in South Carolina, tracing back to the State's founding in 1670. *Owens v. Stirling*, 443 S.C. 246, 256, 904 S.E.2d 580, 585 (2024). Following the adoption of execution by lethal injection, a series of unexpected consequences led to a decades-long struggle to perform execution by lethal injection. South Carolina, like many other states, struggled to obtain the drugs necessary to carry out execution by lethal injection because “anti-death penalty advocates pressured pharmaceutical companies to refuse to supply the drugs used to carry out the death sentences.” *Glossip v. Gross*, 576 U.S. 863, 870 (2015).

To deal with this issue, South Carolina enacted its original Statute, 2010 S.C. Acts No. 203, § 1, which prohibited a person from “knowingly disclosing the identity” of “execution team members” and created a civil enforcement mechanism against violators. In 2023, still facing the issue of acquiring the drugs necessary to perform executions, the General Assembly substantially modified the State's existing Statute to its current version: S.C. Code Ann. 24-3-580 (Supp. 2023). As amended, Subsection (C) prohibits a person from “knowingly disclos[ing] the identifying information of a current or former member of an execution team or [] a record that would identify a person as being a current or former

member of an execution team.” § 24-3-580(c). “Identifying information” is defined as “any record or information that reveals a name, date of birth, social security number, personal identifying information, personal or business contact information, or professional qualification.” § 24-3-580(A)(2).

Further, “execution team” member is expressly defined as “any person or entity that participates in the planning or administration of the execution of a death sentence, including any person or entity that prescribes, compounds, tests, uses, manufactures, imports, transports, distributes, supplies, prepares, or administers the drugs, medical supplies, or medical equipment utilized in the execution of a death sentence.” § 24-3-581(A)(1). Additionally, § 24-3-580, while still including civil penalties, also states that “[a] person who violates the provision of [Subsection (C)] also must be imprisoned not more than three years.” § 24-3-580(c).

## **II. Statement of the Facts**

Plaintiff alleges it has information that falls under the definition of “identifying information” that it would disclose but for Subsection (C) of the Statute. § 24-3-580 (C). Consequently, Plaintiff challenges Subsection (C) of the Statute as a content and viewpoint-based speech restriction that is both invalid on its face and as-applied to Plaintiff. (ECF No. 52, ¶¶ 17-19). Discovery in this case is ongoing. At this time, the entirety of the documents held by Plaintiff contains information that was readily available

in the public domain prior to the 2023 amendments of the statute.<sup>2</sup> Plaintiff indicates that “[p]ut simply, even if Defendants somehow prevailed in their motion to compel, ACLU-SC would not produce any new documents.” (ECF No. 79, p. 4). Defendants<sup>3</sup> provided this Court with a summary chart, attached hereto as Exhibit A, detailing where Plaintiff’s alleged “identifying information” was already publicly accessible. As indicated in Exhibit A, the information contained in documents held by Plaintiff consists of South Carolina Department of Corrections (“SCDC”) documents, an SCDC press release, Court Filings, News Articles, Law Review Articles, Public Interest Group Publications, and US Senators’ Letters. Plaintiff maintains; however, that it possesses information that qualifies as non-public which it has not yet disclosed to Defendants or this Court.

Defendants argue information that was in the public domain prior to the enactment of the amended Statute does not constitute “identifiable information” under S.C. Code Ann. § 24-3-580(A)(2). (ECF No. 99, p. 5). Defendants contend to read otherwise would constitute “excising that definition and reading it in isolation ... miss[ing] the critical part of the statute: that ‘identifying information’ ‘be confidential.’” (ECF No. 107, p. 3) (citing S.C. Code Ann. § 24-3-580 (B)). Further, Defendants argue that information publicly

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<sup>2</sup> The Court notes some information held by Plaintiff was published/filed after 2023. However, this information, such as filings by the South Carolina Supreme Court in 2024, do not appear to contain new information not previously in the public domain prior to the enactment of the Statute.

<sup>3</sup> Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina intervened in this suit, (ECF No. 15). Governor McMaster as Intervenor and Defendants have moved jointly in their discovery motions and Motion to Certify these Questions to the Supreme Court. Defendants and Intervenor are hereinafter collectively referred to as (“Defendants”).

available from any source cannot be “knowingly disclosed” for the purposes of Subsection (C). (ECF No. 99, p. 5).

Conversely, Plaintiff argues the Statute itself is clear and unambiguous as to what the definition of “Identifying Information” extends to. (ECF No. 104, p. 3). Plaintiff contends that Defendants are requesting the term “‘publicly available’ be plucked out of thin air and added into the South Carolina Code.” *Id.* Further, Plaintiff argues any ambiguities found in Subsection (A)(2) or Subsection (C) may be resolved by Subsection (I) which states “[t]his section shall be broadly construed by the courts of this State so as to give effect to the General Assembly’s intent to ensure the absolute confidentiality of the identifying information of any person or entity directly or indirectly involved in the planning or execution of a death sentence within this State.” § 24-3-580 (I).

Plaintiff argues some of the information it has already disclosed in its documents is arguably non-public because it lies behind paywalls and within court dockets, this Court is not convinced such payment or extra steps render this information non-public.<sup>4</sup> Plaintiff further maintains; however, it holds entirely non-public information it has not yet

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<sup>4</sup> Recently, the Fourth Circuit Court of Appeals made a similar distinction finding that information located on the dark web where payment was required to access it constituted public information. *Holmes v. Elephant Ins. Co.*, No. 23-1782, 2025 WL 2907615, at \*7, f.n. 10 (4th Cir. Oct. 14, 2025) (“Strictly speaking, [plaintiff] only alleges that he found her information for sale on the dark web, which implies that his full driver’s license number is only accessible with payment. But we do not see why this should make a difference. One classic example of publicity in public-disclosure tort cases is listing information in a newspaper. *See* Restatement (Second) of Torts §652D cmt. a (‘[A]ny publication in a newspaper or a magazine, even of small circulation ... is sufficient to give publicity.’) Yet many newspapers are only accessible with payment too. We see no reason to treat the internet differently. Paywalled or not, information listed on the internet is ordinarily accessible to many.”)

disclosed. This Court is left with a pivotal question. Does information that is publicly available constitute “Identifiable Information” as intended by § 24-3-580(A)(2)? Further, can such information be “knowingly disclose[d]” such that the penalties of Subsection (C) are implicated? Upon Defendants’ filing of their Motion to Certify a Question to the South Carolina Supreme Court, it has become apparent that guidance from the Honorable Chief Justice and Associate Justices of the South Carolina Supreme Court on these questions is essential to the continued hearing of this case. The answers to these questions are vital to ruling on pending discovery motions currently before the Court, the merits of the First Amendment claims, and whether Plaintiff has standing.

Plaintiff alleges that Subsection (C) constitutes a content and viewpoint-based speech restriction that is both invalid on its face and as-applied to Plaintiff. (ECF No. 52, ¶¶ 17-19). Therefore, Subsection (C) can only survive constitutional review if it satisfies strict scrutiny. *U.S. v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000) (holding that “content-based restrictions [] can stand only if [they] satisf[y] strict scrutiny”) (citation omitted). Strict scrutiny “requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015) (citation and internal quotations omitted). A law is “narrowly tailored if it targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy.” *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). “If a less restrictive alternative would serve the Government’s purpose, the legislature must use that alternative.” *Playboy*, 529 U.S. at 813.

Thus, determining the scope of information covered by Subsection (C) is essential to evaluating the merits of Plaintiff's First Amendment claim. Plaintiff contends information that is already available in the public domain is covered by Subsections (A)(2) and (C). Conversely, Defendants contend information that was in the public domain prior to the enactment of the amended Statute does not constitute "identifiable information." Determining which interpretation of the Statute is correct will be essential to deciding whether the Statute is narrowly tailored sufficient to pass muster under the First Amendment.

Importantly, the answers to the below included questions<sup>5</sup> are also critical for this Court to determine whether Plaintiff has standing such that this Court would not run afoul of its charge as specified by Article III of the Constitution of the United States by hearing this case. While determinations such as whether information held by Plaintiff may be encompassed by the Statute or whether public information can nonetheless be disclosed may seem like esoteric exercises only legal scholars should concern themselves with, it is an integral determination to ensure this Court is not faced with a mere hypothetical dispute.

"Article III confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021); U.S. Const. art. III, § 2, cl. 1. "[It] is an integral component of our nation's checks and balances and a key

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<sup>5</sup> The Court presented a Proposed Order for Certification and allowed the parties to provide comments. (ECF No. 108). Both Plaintiff and Defendants provided comments to the Proposed Order. Thus, the below-included questions were formulated in collaboration between the Court and the parties.

mechanism of judicial restraint.” *State of Maryland v. United States Dep't of Agric.*, 151 F.4th 197, 208 (4th Cir. 2025). “The ‘core component’ of the requirement that a litigant have standing to invoke the authority of a federal court ‘is an unchanging part of the case-or-controversy requirement of Article III.’” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). “Under Article III, federal courts do not adjudicate hypothetical or abstract disputes[,] [and] do not possess a roving commission to publicly opine on every legal question.” *TransUnion LLC*, 594 U.S. at 423.

“Therefore, our exercise of jurisdiction is appropriate only when a plaintiff has affirmatively established ‘(1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief.’ To fail this three-part test is to put a period on the case.” *State of Maryland*, 151 F.4th at 208 (quoting *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 540 (2020)). Recently, the Fourth Circuit has taken a renewed interest in ensuring federal courts do not rove beyond the charge of Article III. *See e.g. Holmes*, No. 23-1782, 2025 WL 2907615; *State of Maryland*, 151 F.4th at 208 (“[Standing] is no ‘troublesome hurdle’ to be cleared with the most whimsical of attempts on the way to the merits.” (internal citation omitted)).

Accordingly, this Court must continuously assure itself of its jurisdiction at every phase of litigation. The answers to the below specified questions are vital to this determination. Whether Plaintiff holds information that is covered by the Statute is an

indispensable question. If Plaintiff does not hold information covered by the Statute, this Court's continued hearing of this case may be in contravention to its mandate pursuant to Article III of the United States Constitution.

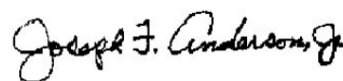
Accordingly, the Court respectfully requests the Honorable Chief Justice and Associate Justices of the South Carolina Supreme Court provide guidance on the below questions. If the South Carolina Supreme Court feels the need to broaden these questions to provide a complete answer, the Court welcomes that venture.

### III. Questions of Law to be Answered

- 1) Does information that is publicly available constitute "identifying information" under S.C. Code Ann. § 24-3-580(A)(2)?
- 2) If information is publicly available, can a person "knowingly disclose" that information for purposes of S.C. Code Ann. § 24-3-580(C)?

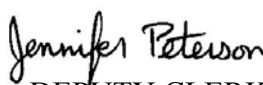
IT IS SO ORDERED.

December 12, 2025  
Columbia, South Carolina



Joseph F. Anderson, Jr.  
United States District Judge



A TRUE COPY  
ATTEST: ROBIN L. BLUME, CLERK  
BY:   
DEPUTY CLERK

## Summary of ACLU Document Production

	A	B	C
1	ACLU Bates Number	Document Type	Public Source
2	000001-000544	SCDC Documents	FOIA response
3	000545-000670	SCDC Documents	FOIA response
4	000671-001190	SCDC Documents	FOIA response
5	001191-001192	SCDC Press Release	SCDC
6	001193-001241	Court filing	Complaint and exhibits from <i>Bixby v. Stirling</i> , No. 3:24-cv-5072 (D.S.C.), ECF No. 1
7	001242-001272	Court filing	Complaint and exhibits from <i>Justice 360 v. Stirling</i> , No. 3:20-cv-3671 (D.S.C.), ECF No. 1
8	001273-001308	Court filing	Complaint from <i>Sigmon v. Stirling</i> , No. 3:21-cv-1651 (D.S.C.), ECF No. 1
9	001309-001345	Court filing	Complaint from <i>Owens v. Stirling</i> , No. 3:21-cv-1651 (D.S.C.), ECF No. 13
10	001346-001691	Court filing	TRO motion an exhibits from <i>Justice 360 v. Stirling</i> , No. 3:20-cv-3671 (D.S.C.), ECF No. 23
11	001692-001712	Court filing	Complaint from <i>Bowman v. Stirling</i> , No. 3:25-cv-199 (D.S.C.), ECF No. 1
12	001713-001736	Court filing	Response to preliminary injunction motion from <i>Bowman v. Stirling</i> , No. 3:25-cv-199 (D.S.C.), ECF No. 18
13	001737-001810	Court filing	Response and exhibit to preliminary injunction motion from <i>Bowman v. Stirling</i> , No. 3:25-cv-199 (D.S.C.), ECF No. 18
14	001811-001827	Court filing	Summary judgment order in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 75
15	001828-001860	Court filing	Deposition of T. Bracey, filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 49-3 - 49-5
16	001861-001906	Court filing	Deposition of I. Baxley, filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 49-6 - 49-9
17	001907-001953	Court filing	Deposition of T. Bracey, filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 69-1 -69-3
18	001954-001969	Court filing	Deposition of I. Baxley, filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 69-4

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## Summary of ACLU Document Production

	A	B	C
19	001970-001975	Court filing	Deposition of R. Ward, filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 69-5
20	001976-001979	Court filing	Declaration of L. Bergman, filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 69-7
21	001980-001986	Court filing	Deposition of R. Ward, filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 69-8
22	001987-001991	Court filing	Deposition of [Redacted Name], filed in <i>Bracey v. Ward</i> , No. 3:07-cv-4068 (D.S.C.), ECF No. 69-9
23	001992-002026	News articles	Assorted articles from different publications
24	002027-002169	Law review article	35 Wm. & Mary L. Rev. 551 (1994)
25	002170-002173	News articles	Assorted articles from different publications
26	002174-002191	Court filing	Exhibit to complaint from <i>Sigmon v. Stirling</i> , No. 3:21-cv-1651 (D.S.C.), ECF No. 1
27	002192-002213	News articles	Assorted articles from different publications
28	002214-002217	Court filing	Exhibit to complaint from <i>Sigmon v. Stirling</i> , No. 3:21-cv-1651 (D.S.C.), ECF No. 1
29	002218-002293	News articles	Assorted articles from different publications
30	002294-002332	Court filing	Trial court order in <i>Owens v. Stirling</i> , No. 2021 CP-40-2306 (S.C. Comm. Pls. Sept. 6, 2022)
31	002333-002382	Court filing	Amicus briefs from <i>Owens v. Stirling</i> , No. 2022-001280 (S.C. Jan. 30, 2024)
32	002383-002437	Court filing	<i>Owens v. Stirling</i> , 443 S.C. 246, 904 S.E.2d 580 (2024)
33	002438-002497	News articles	Assorted articles from different publications
34	002498-002548	Law review article	107 J. Crim. L. & Criminology 443 (2017)
35	002549-002610	News articles	Assorted articles from different publications
36	002611-002764	Public interest group publications	(1) <a href="https://www.hrw.org/report/2006/04/23/so-long-they-die/lethal-injections-united-states">https://www.hrw.org/report/2006/04/23/so-long-they-die/lethal-injections-united-states</a> ; (2) <a href="https://deathpenaltyinfo.org/research/analysis/reports/in-depth/behind-the-curtain-secrecy-and-the-death-penalty-in-the-united-states">https://deathpenaltyinfo.org/research/analysis/reports/in-depth/behind-the-curtain-secrecy-and-the-death-penalty-in-the-united-states</a>
37	002765-002798	Law review article	72 S.C. L. Rev. 971 (2021)

## Summary of ACLU Document Production

	A	B	C
38	002799-002976	Law firm report on Tennessee	chrome-extension://efaidnbmnnnibpcajpcgglefindmkaj/https://ewscripps.brightspotcdn.com/a2/d3/b79f5e7e497e83cb01d884c62bf7/tn-lethal-injection-protocol-investigation-report-and-findings-12-13-22.pdf
39	002977-002996	Law review article	11 Lincoln Mem. Univ. L. Rev. 69 (2023)
40	002997-002999	US Senators' letter	chrome-extension://efaidnbmnnnibpcajpcgglefindmkaj/https://www.warren.senate.gov/imo/media/doc/final_-_warren_booker_follow-up_letter_on_lethal_injection_regulations.pdf