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IN THE SUPREME COURT OF IOWA

NO. 25-0555

LINN COUNTY NO. FECR151994

STATE OF IOWA,

Plaintiff-Appellee,

vs.

WALTER LEON CONKRIGHT,

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY, IOWA
THE HONORABLE IAN K. THORNHILL, PRESIDING

APPELLANT'S APPLICATION FOR FURTHER REVIEW

of the Iowa Court of Appeals decision dated September 19, 2026

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CERTIFICATE OF FILING AND SERVICE

I, Nathan M. Peterson, hereby certify that I filed this Petition for Further Review by electronically filing said brief on the 8th day of September 2026.

I further certify that I served this Petition for Further Review by electronically mailing one (1) copy to the following counsel of record:

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I further certify that I served this Petition for Further Review Brief by mailing one (1) copy to Defendant-Appellant Walter Leon Conkright.

/s/ *Nathan M. Peterson*
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QUESTION PRESENTED FOR REVIEW

Walter Leon Conkright, Defendant-Appellant, pursuant to Iowa Rule of Appellate Procedure 6.1103, makes application for further review of the August 19, 2026, decision of the Iowa Court of Appeals herein and presents the following question for review:

1. Whether Iowa Code section 710.10(2) extends felony criminal liability to conduct involving an adult private citizen posing as a minor, where the Legislature specifically identified law enforcement officers and their agents posing as minors as persons included within the statute.

STATEMENT SUPPORTING FURTHER REVIEW

This case is appropriate for further review because it presents an important question of law that has not been, but should be, decided by the Supreme Court. Iowa R. App. P. 6.1103(1)(b)(2). This case presents more than an isolated dispute over the meaning of one word. The Court of Appeals has held that section 710.10 applies to private adults who create fictitious minors and independently conduct sting operations. The holding therefore determines the scope of criminal liability under a statute that may be invoked whenever a private citizen, activist organization, or other nongovernmental actor creates a fictitious minor profile. Because this question is likely to recur, ultimate resolution by the Supreme Court is essential to guide lower courts, prosecutors, and the defense bar in the future. *State v. Bullock*, 638 N.W.2d 728, 730 (Iowa 2002).

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BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

I. STANDARD OF REVIEW

The standard of review for questions of statutory interpretation is for corrections of errors at law. *State v. Coleman*, 907 N.W.2d 124, 134 (Iowa 2018).

II. THE COURT OF APPEALS' "ABSURD RESULT" ANALYSIS RESTS ON A FALSE PREMISE: CONKRIGHT'S INTERPRETATION DOES NOT EXCLUDE ACTUAL MINORS FROM SECTION 710.10.

Bikers Against Predators, a private organization operated by adults, conducts "sting" operations against alleged online predators. Its members created a dating-app profile posing as a thirteen-year-old girl named "Emma" and, on October 25, 2023, engaged Conkright in a sexual conversation. Conkright arranged for "Emma" to come to his hotel room for sex despite learning she was thirteen. Adult members then confronted Conkright at his hotel and reported his conduct to Cedar Rapids police. Conkright ultimately pleaded guilty, but reserved the right to appeal the instant issue of statutory interpretation.

The Court of Appeals rejected Conkright's interpretation principally because, in its view, that interpretation would "place actual minor victims beyond the statute's reach." *State v. Conkright*, No. 25-0555, 2026 WL 2427666, at *4 (Iowa Ct. App. Aug. 19, 2026). The court characterized that consequence as "absurd" and therefore as evidence that the General Assembly could not have intended Conkright's interpretation. *Id.* But the premise of that conclusion is

incorrect. Conkright's interpretation does not exclude actual minors from section 710.10. It expressly preserves them.

Section 710.10(2) criminalizes specified conduct undertaken with the intent to commit an illegal sex act upon or sexual exploitation of "a minor under the age of sixteen." The operative victim language then provides that the defendant must "entice[] or attempt[] to entice a person reasonably believed to be under the age of sixteen including a law enforcement officer or agent posing as a minor under the age of sixteen." Iowa Code § 710.10(2) (2023).

Nothing in Conkright's interpretation removes an actual child under sixteen from the category of persons "reasonably believed to be under the age of sixteen." An actual thirteen-year-old is, necessarily, a person reasonably believed to be under sixteen when the defendant knows or reasonably believes the child is thirteen. The statute therefore continues to protect actual minors.

The distinction is between an actual minor and an adult who merely represents himself or herself to be a minor. Conkright's interpretation gives effect to both portions of the amended sentence: actual minors remain within the general category, while the specifically identified class of adults who may also be treated as falling within that category consists of law enforcement officers or their agents posing as minors.

The Court of Appeals therefore presented a choice that the statutory language does not require:

1. either "including a law enforcement officer or agent" is nonexclusive and the statute covers every adult who pretends to be a minor; or
2. actual minors are excluded from the statute.

There is of course a third—and materially different—possibility: the general language continues to cover actual minors, while the specific 2023 amendment establishes that law enforcement officers and their agents posing as minors are also within the statute's reach. That is precisely the interpretation advanced by Conkright.

The Court of Appeals' conclusion is consequently not an absurdity argument. It is a consequence of assuming that Conkright's interpretation necessarily excludes actual minors and then declaring the assumed consequence absurd. But statutory interpretation cannot proceed by first attributing an erroneous consequence to the proposed construction and then using that consequence to reject the construction.

Indeed, the Court of Appeals' reasoning is internally inconsistent. It first identifies "a person reasonably believed to be under the age of sixteen" as the "full universe of covered persons." *Conkright*, 2026 WL 2427666, at *4. But if that

phrase independently encompasses actual minors—as the court necessarily recognized—then limiting the persons who may additionally fall within that category by reference to the specifically enumerated class of law-enforcement officers does not somehow remove actual minors from the statute.

The State's own brief illustrates the point. The State argues that the phrase "reasonably believed to be under the age of sixteen" encompasses both actual minors and adults who represent themselves as minors. State's Brief at 14–15. But the Legislature's decision in 2023 to specifically add "a law enforcement officer or agent posing as a minor" is meaningful only if the General Assembly intended to identify a particular class of persons whose adult status would otherwise create uncertainty concerning application of the statute. The amendment did not say "including any person posing as a minor." It said "including a law enforcement officer or agent posing as a minor." Iowa Code § 710.10(2).

The Court should therefore reject the Court of Appeals' conclusion that Conkright's interpretation produces an absurd result. It does not. It simply gives effect to the distinction the Legislature chose to draw.

III. THE COURT OF APPEALS' "BELT-AND-SUSPENDERS" THEORY CANNOT JUSTIFY RENDERING THE 2023 AMENDMENT FUNCTIONALLY MEANINGLESS.

The Court of Appeals candidly recognized the fundamental difficulty with its interpretation: if the pre-2023 language already covered every person

reasonably believed to be under sixteen, then the 2023 amendment adding law enforcement officers or agents is "functionally surplusage." *Conkright*, 2026 WL 2427666, at *5. Rather than confront that problem, the court invoked "belt-and-suspenders caution" and concluded that the Legislature may simply have decided to repeat itself to remove any possible doubt. That approach gives insufficient weight to the statutory-surplusage canon, particularly in a criminal statute.

Iowa courts have repeatedly held that statutes should be interpreted so that every word and provision is given effect if possible. See, e.g., *Vroegh v. Iowa Dep't of Corr.*, 972 N.W.2d 686, 703 (Iowa 2022); *Rojas v. Pine Ridge Farms, LLC*, 779 N.W.2d 223, 231 (Iowa 2010). The Supreme Court recently reiterated that courts "presume statutes or rules do not contain superfluous words." *Iowa Individual Health Benefit Reinsurance Ass'n v. State Univ. of Iowa*, 999 N.W.2d 656, 663 (Iowa 2023).

The Court of Appeals' construction does precisely what this canon seeks to prevent. Under that construction, before 2023 the statute already prohibited enticing any person whom the defendant reasonably believed to be under sixteen. Under the Court of Appeals' interpretation, the 2023 Legislature then amended the statute to add an example—law enforcement officers posing as minors—that was already necessarily included within the existing language.

That is not merely a minor redundancy. It eliminates the operative interpretive significance of the Legislature's only substantive amendment to the relevant portion of section 710.10. The State's answer is that the Legislature sometimes legislates redundantly. That proposition is unobjectionable in the abstract. The Supreme Court itself has recognized that legislators sometimes employ "belt-and-suspenders" drafting. See *Johnston v. Iowa Dep't of Transp.*, 958 N.W.2d 180, 186 (Iowa 2021). But *Johnston* does not establish a rule that courts may disregard otherwise meaningful statutory amendments whenever the State proposes that the Legislature was merely being cautious.

The distinction is particularly important here because this is a criminal statute. The Legislature is not merely allocating benefits or defining an administrative program. It is defining conduct punishable by imprisonment. The Iowa Supreme Court has repeatedly held that penal statutes are strictly construed and that criminal liability may not be enlarged by implication beyond the fair scope of the statutory language. See *State v. Nelson*, 178 N.W.2d 434, 437 (Iowa 1970) (recognizing "that penal statutes are inelastic and cannot by construction be made to embrace cases plainly without the letter, though within the reason and policy of the law."). As the Supreme Court explained in *Nelson*, the power to define crimes and prescribe punishment belongs to the Legislature, not the courts. *Id.* See also *State v. Muhlenbruch*, 728 N.W.2d 212, 216 (Iowa 2007) (explaining that the rule

of lenity requires doubts concerning criminal liability to be resolved in favor of the accused).

That principle is of crucial importance here. If the Legislature had intended to say that the statute applies whenever an adult private citizen poses as a minor, it knew how to say so. It did not. Instead, it added a specific category: "a law enforcement officer or agent posing as a minor." The Court of Appeals' interpretation therefore converts a specific legislative choice into legislative noise.

The problem is even more apparent when the amendment is considered against the history of section 710.10. The Legislature had previously amended the statute to broaden its reach from actual minors to persons "reasonably believed" to be minors. It then made another targeted amendment in 2023, adding law enforcement officers and agents. Conkright's interpretation does not deny the earlier expansion. It gives independent meaning to the latter.

The Court should be particularly reluctant to presume that a criminal amendment was enacted merely for rhetorical emphasis when there is a reasonable interpretation under which the amendment actually changes the statute's reach.

IV. THE COURT OF APPEALS' RELIANCE ON "BELT-AND-SUSPENDERS" DRAFTING IMPROPERLY REVERSES THE PRESUMPTION AGAINST SURPLUSAGE.

The Court of Appeals effectively reasoned as follows: the 2023 amendment would be unnecessary under Conkright's interpretation; legislators sometimes act

out of an abundance of caution; therefore, the amendment need not have altered the statute's scope. That reasoning puts the interpretive cart before the horse.

The question is not whether the Legislature is capable of redundancy. It plainly is. The question is what meaning should be assigned to this particular amendment when two competing constructions are available—one that gives the amendment substantive effect and one that renders it essentially confirmatory of preexisting law. The first construction should prevail.

The Supreme Court's decision in *Iowa Individual Health Benefit Reinsurance Association* is instructive. 999N.W.2d 656 (Iowa 2023). There, the Court recognized that "including" may be expansive or restrictive depending upon statutory context. *Id.*, at 665. The Court did not mechanically apply the ordinary meaning of "including." It examined the surrounding statutory language and asked which interpretation gave effect to the statute as a whole. *Id.*, at 664–65.

The same contextual analysis is required here. The Court of Appeals correctly recognized that "including" can, depending on context, introduce either an illustrative or an exhaustive list. *Conkright*, 2026 WL 2427666, at *4. The question therefore cannot be resolved simply by declaring that "including" ordinarily means "including but not limited to." The relevant question is what "including" means in this particular criminal statute, after the Legislature deliberately added the words "a law enforcement officer or agent posing as a

minor." The surrounding statutory context strongly supports giving those words independent significance.

And if reasonable minds can disagree about that question—as the Court of Appeals' own discussion demonstrates—the Court should not resolve the uncertainty by expanding criminal liability. Iowa's rule of strict construction exists precisely for such circumstances.

V. THE LEGISLATURE SHOULD NOT BE PRESUMED TO HAVE AUTHORIZED PRIVATE CITIZENS TO CREATE FELONY LIABILITY THROUGH THEIR OWN "STING" OPERATIONS.

There is an additional contextual consideration that warrants particular attention on further review: the Court of Appeals' interpretation does not merely expand the class of hypothetical "victims." It affirmatively permits private citizens to manufacture the factual circumstances necessary to trigger a felony prosecution under section 710.10. That is a significant consequence, and nothing in the statutory text indicates that the Legislature intended it.

The facts of this case demonstrate the point. The purported thirteen-year-old "Emma" was not a child, was not a law enforcement officer, and was not an agent of law enforcement. "Emma" was a fictitious identity created and operated by private adults affiliated with Bikers Against Predators. The organization initiated and controlled the sting operation and subsequently summoned law enforcement after obtaining the desired encounter. *Conkright*, 2026 WL 2427666, at *2–3.

Under the State's interpretation, nothing in section 710.10 prevents any private organization from doing precisely the same thing.

That is not a trivial policy consequence. It changes the practical operation of the criminal statute from one enforced by the State against conduct involving actual minors or authorized law-enforcement investigations into one under which private groups may manufacture the factual predicate for felony prosecution.

Iowa law provides substantial evidence that such a result should not be presumed absent clear legislative language. In *Thomas v. Gavin*, the Iowa Supreme Court addressed whether private individuals acting as volunteers for governmental entities should receive the protections afforded state employees. *Thomas v. Gavin*, 838 N.W.2d 518 (Iowa 2013). In discussing the distinction between governmental activity and private conduct, the Court expressly observed that it would not regard a person as acting on behalf of the State where the person was "a private vigilante who took it upon himself or herself to enforce state criminal law on his or her own." See *Thomas v. Gavin*, 838 N.W.2d 518, 527 n.4 (Iowa 2013).

That observation is directly relevant to the interpretive question presented here. Iowa's legal system does not ordinarily treat private citizens who independently decide to enforce criminal law as governmental actors. The State investigates crimes, prosecutors bring criminal charges, and courts adjudicate

them. A private citizen may report suspected criminal conduct to law enforcement, but that does not make the citizen a law-enforcement officer or agent.

Likewise, in *State v. Nelson*, the Supreme Court considered the scope of a statutory defense involving force used to prevent criminal interference. 329 N.W.2d 643 (Iowa 1983). The Court rejected an interpretation that would have authorized force after the underlying criminal conduct had already occurred, emphasizing that "[n]o language" in the statute approved "after-the-fact vigilante action." *Id.*, at 646.

The principle underlying both decisions is straightforward: courts should not infer legislative authorization for private enforcement of the criminal law where the Legislature has not said so. That principle is especially compelling here because the Legislature did say who could conduct the relevant sting operation: "a law enforcement officer or agent posing as a minor." Iowa Code § 710.10(2). The Legislature did not say "a private citizen," "a private investigator," "a nonprofit organization," "an activist," or "any person posing as a minor." The Court of Appeals' interpretation effectively reads those words into the statute.

This is not an argument that private sting operations are categorically unlawful. Nor does Conkright contend that the Legislature is constitutionally prohibited from criminalizing conduct discovered through private investigations. The narrower point is that when the Legislature specifically identified law

enforcement officers and their agents as persons who may pose as minors, the Court should not presume that the Legislature simultaneously intended to grant the same statutory status to wholly independent private groups.

If the General Assembly wishes to authorize private citizens to serve as the functional equivalent of undercover officers for purposes of section 710.10, it can say so. Until it does, the Court should not enlarge a criminal statute to create that authority by judicial construction.

VI. THE COURT OF APPEALS' INTERPRETATION CREATES A PARTICULARLY SERIOUS PROBLEM BECAUSE THE PRIVATE ACTOR CONTROLS THE FACTUAL PREDICATE FOR CRIMINAL LIABILITY.

There is an additional reason why the Court should treat the private-vigilante consequence as more than a policy disagreement. Under the State's construction, a defendant's criminal liability can depend upon a private person's unilateral decision to assume a false identity and create a fictional minor. The private actor determines the purported victim's age, constructs the communications, controls the deception, and decides whether and when to summon police. All of this occurs without any form of public scrutiny, oversight, or transparency.

That means the same conduct by a defendant could produce radically different criminal consequences depending upon who happens to be operating the fictitious profile. If the profile is operated by a thirteen-year-old child, section 710.10 plainly applies. If the profile is operated by an undercover police officer,

the 2023 amendment plainly makes section 710.10 applicable. If the profile is operated by a private citizen acting independently, the 2023 amendment's specific reference to law enforcement officers and their agents becomes difficult to explain. The Legislature's choice to identify law enforcement officers is therefore not surplusage. It establishes an important institutional boundary. The Court of Appeals' interpretation erases that boundary.

VII. THE COURT SHOULD NOT USE THE GENERAL PURPOSE OF PROTECTING CHILDREN TO EXPAND A CRIMINAL STATUTE BEYOND THE LANGUAGE THE LEGISLATURE CHOSE.

The State understandably emphasizes the important purpose of section 710.10: protecting children and preventing sexual exploitation before an actual sexual encounter occurs. Conkright does not dispute that purpose. But a statute's laudable purpose cannot substitute for statutory authorization.

The Iowa Supreme Court has repeatedly emphasized that criminal statutes cannot be expanded simply because the conduct falls within the general evil the Legislature sought to prevent. In *State v. Nelson*, the Court quoted the foundational principle that it would be "dangerous" to conclude that conduct is criminal merely because it is within the reason or mischief of a statute. 178 N.W.2d at 437. Likewise, in *State v. Muhlenbruch*, the Court emphasized that "our task . . . is to enforce the statute as written" and that expanding criminal liability is the province of the Legislature, not the courts. 728 N.W.2d at 216.

That principle is decisive here. The issue is not whether the Legislature could reasonably criminalize conduct such as that which occurred here. It plainly could. The issue is whether the Legislature actually did so when the purported minor was an adult private citizen who was neither a minor nor a law-enforcement officer or agent.

The Legislature's policy choice may be broad or narrow. What it may not be is supplied by judicial construction merely because the broader policy appears desirable.

VIII. FURTHER REVIEW IS WARRANTED BECAUSE THIS CASE PRESENTS A RECURRING AND IMPORTANT QUESTION ABOUT THE SCOPE OF CRIMINAL LIABILITY UNDER SECTION 710.10.

This case presents more than an isolated dispute over the meaning of one word. The Court of Appeals has now held that section 710.10 applies to private adults who create fictitious minors and independently conduct sting operations. The holding therefore determines the scope of criminal liability under a statute that may be invoked whenever a private citizen, activist organization, or other nongovernmental actor creates a fictitious minor profile. The question is likely to recur.

The Court of Appeals' decision also creates an important statutory-interpretation conflict within the structure of section 710.10 itself. The 2023 Legislature specifically added law enforcement officers and their agents. The Court

of Appeals has now held that this amendment did not alter the statute's scope at all, but merely clarified what was already necessarily included. That construction raises a fundamental question concerning the proper application of the surplusage canon to criminal statutes and the extent to which the "belt-and-suspenders" principle may be used to neutralize an otherwise meaningful legislative amendment.

Further review is therefore appropriate to clarify whether courts may presume that a criminal statutory amendment was merely cautionary when another reasonable construction gives the amendment substantive effect.

IX. CONCLUSION

The Court of Appeals' decision should be reviewed and reversed. Its principal rationale—that Conkright's interpretation would produce the absurd result of excluding actual minor victims—rests upon a false premise. Conkright's interpretation leaves actual minors within the statute's general language. It merely gives substantive effect to the Legislature's decision to specifically identify law enforcement officers and their agents as persons who may pose as minors for purposes of section 710.10.

The Court of Appeals' alternative "belt-and-suspenders" rationale fares no better. Although the Legislature may sometimes legislate redundantly, that principle cannot justify rendering a substantive amendment to a criminal statute

functionally meaningless when another reasonable construction gives the amendment independent effect. The ordinary rules requiring every word to be given meaning, coupled with the special rule of strict construction applicable to penal statutes, weigh against expanding criminal liability beyond the Legislature's chosen language.

Finally, the Court should not presume that the Legislature intended to empower private organizations to manufacture felony liability through independent sting operations. Iowa precedent recognizes a fundamental distinction between governmental enforcement of criminal law and private vigilantism. The Legislature expressly identified law enforcement officers and their agents in section 710.10. It did not identify private citizens.

The Court should grant further review, reverse the decision of the Court of Appeals, and hold that Iowa Code section 710.10(2) does not apply where the purported minor is an adult private citizen who is neither an actual minor nor a law enforcement officer or agent posing as a minor.

Certificate of Compliance

This brief complies with Iowa R. App. P. 6.903(1)(g)(1) because:

This brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 3,360 words, excluding the parts of the brief exempted by Iowa R. APP. 6.903(1)(i)(1).

/s/ *Nathan M. Peterson*
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