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2026 Oct 23 AM 11:33
CLERK OF THE SEDGWICK COUNTY DISTRICT COURT
CASE NUMBER: SG-2026-CV-002760
PII COMPLIANT

In the District Court
of
Sedgwick County, Kansas

Mason Grimmett, Plaintiff, v. **City of Wichita, Kansas.** Defendant.	Civil Action No. SG-2026-CV-002760 Mason Grimmett's Response to the City of Wichita's Motion to Dismiss; Certificate of Service. Hon. William Woolley (Div. 23) Hearing Date: Dec. 4, 2026, at 9:00 a.m.

Mason Grimmett's Response to the City of Wichita's Motion to Dismiss

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Introduction

Mason Grimmett's lawsuit challenges the City of Wichita's indiscriminate and warrantless dragnet surveillance of everyone driving in the City of Wichita. Through a pervasive network of automated license plate readers (ALPRs), Wichita is continuously tracking, surveilling, monitoring, and compiling a searchable database on *law-abiding Kansans*—without a warrant, without probable cause, without reasonable suspicion—without even so much as a hunch—and it's all done without *any* judicial oversight whatsoever.

Wichita has blanketed the city with nearly 200 ALPRs, and its police officers are expected to use license plate reader-equipped vehicles as often as possible. Mr. Grimmett and Wichitans like him are surrounded by automated license plate readers and government officials who use them. And Wichita's automated license plate readers do *far more* than their name suggests.

The government's A.I.-powered cameras track travelers who pass them twenty-four hours a day, seven days a week; and the surveillance software allows police officers to search its surveillance database for things such as "I Support the Second Amendment," or "Guns Kill;" and "Value them Both," or "Defend Reproductive Rights."

Wichita's ALPR technology is so advanced, it also allows police officers to conduct location-based searches and time-based searches, which means officers can see where a person has gone, and when. Conducting that search is as easy as shopping online, or using Google, and can be done via an officer's smartphone or smartwatch.

There is virtually no oversight of Wichita's warrantless dragnet surveillance program either. It is ripe for abuse. The police officer in charge of the warrantless ALPR dragnet surveillance program admits it's *not even possible* to scrutinize all of the officers' surveillance database searches. And given how easy it is to abuse the system, police officers are in fact abusing it. Since it's just as easy as searching the internet, officers have used it to track estranged spouses, and some have reportedly tracked ex-girlfriends and their ex-girlfriends' new boyfriends.

Nearly every day, Mr. Grimmett drives past Wichita's ALPR cameras. Whether he is going to work, the YMCA, a union meeting, a gun range, visiting a family member in a nursing home, his

doctor's office, attending meetings with lawyers, City Council meetings, or Sunflower Privacy Alliance meetings—of which he is a member—he is being surveilled, tracked, cataloged, and databased. And given the constant surveillance and highly sophisticated technology deployed in Wichita, the City's warrantless ALPR dragnet surveillance program easily reveals Mr. Grimmett's movements to these sensitive locations.

Mr. Grimmett's petition is based on facts drawn from public meetings, news articles, the leading ALPR company's website (Flock), Wichita's contracts with Flock, trademark application by Flock, presentations by the Wichita Police, Congressional Research Services publications, Wichita's ALPR guidance document, and much more.

As those extensive factual allegations demonstrate, Wichita's dragnet surveillance program violates Mr. Grimmett's expectation of privacy in the whole of his physical movements, which has already been recognized as objectively reasonable by the United States Supreme Court and others. As a federal district court recently put it, ALPR surveillance is "a large-scale, dragnet-type surveillance system" that violates that "reasonable expectation of privacy that society *already accepts*." *United States* v. *Kyle*, No. 26-CR-00189-SEH, --- F.Supp.3d ----, 2026 WL 2958728, *12, *13 (N.D. Okla. Oct. 1, 2026) (emphasis added). Wichita's dragnet surveillance program is unconstitutional under a property-based analysis as well. The government-mandated license plate, coupled with the A.I.-powered surveillance technology, is the functional equivalent of a GPS tracking device. And the petition also demonstrates that the dragnet surveillance program violates Section 20 of the Kansas Constitution Bill of Rights.

In short, Mr. Grimmett has sufficiently put the government on notice of the facts and allegations of his claims, which is all that is required at this early stage. For these reasons and those that follow, the government's motion to dismiss should be denied.

Summary of the Facts

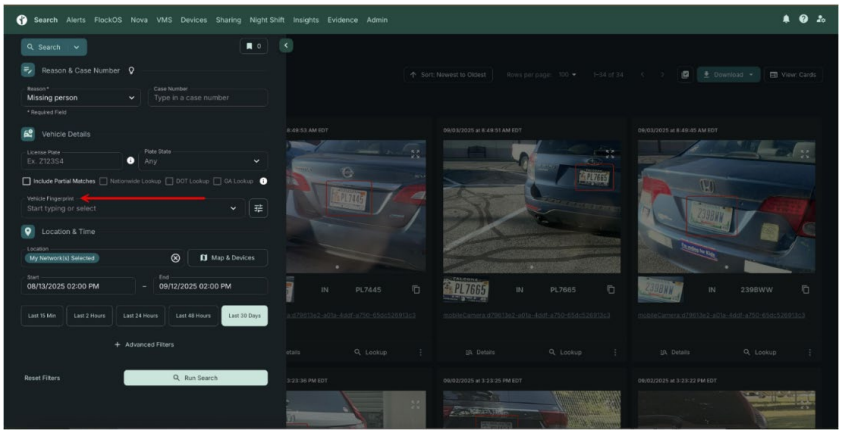
The City of Wichita has a vast and pervasive network of nearly 200 ALPRs that blanket the city, ¶¶ 2, 64, 68, 74, and police officers are expected to use license plate reader-equipped vehicles as often as possible, ¶ 2.[1]

The government's A.I.-powered cameras track *every* traveler who passes them, twenty-four hours a day, seven days a week. ¶¶ 1-3, 33, 64. Once Wichita's ALPRs capture an image, the technology Wichita uses—which is A.I.-powered—converts images into searchable data, including a vehicle's make, model, color, location, and time, and other unique identifiers. ¶ 35; *see* ¶¶ 2-6, 34, 36-46. The technology Wichita uses, called "Vehicle Fingerprint," *is so advanced*, police officers can search for bumper stickers that reveal a person's associations, beliefs, religious views, and political views. ¶¶ 4-5, 38, 43-44.



And the technology allows the Wichita Police to conduct location-based searches and time-based searches, which means officers can see where a person has gone, and when. ¶¶ 6, 41; *see* ¶ 34-35.

[1] Unless otherwise noted, all paragraph citations come from Mr. Grimmett's Petition for Declaratory Judgment, which is fully incorporated as if set forth here.



What's more, the technology Wichita uses is capable of generating a vehicle journey map, ¶ 47; a list of vehicles that have visited locations the police find interesting, ¶¶ 48-50; a "convoy analysis," which documents vehicles that have been spotted in the vicinity of the government's target vehicle, ¶ 51; can predict the route a vehicle will take, ¶ 52; and permits image searches, ¶ 53.

Searching Wichita's surveillance database, which is tracking people's movements, is as easy as shopping online, or using Google, and it can be done via an officer's smartphone or smartwatch. ¶¶ 7-8, 45.

Wichita's surveillance network is so sophisticated and easy to use, it surveils, tracks, and databases *millions* of individuals' information every few months, *see* ¶¶ 78-79, 106; Wichita Police use it hourly, ¶ 80; the most useful part of the surveillance program is the ability to search for historical information about one's movements, ¶ 81; and according to the person who administers the program, it's the equivalent of 200 police officers working twenty-four hours a day, seven days a week, ¶ 76, which would otherwise be impossible.

Wichita's warrantless ALPR dragnet surveillance program is just one part of a larger surveillance program, which aggregates information from ALPRs, gunshot detectors, body camera footage, around 1,500 video streams, and drones that capture visible spectrum and thermal images. ¶¶ 123-129. And the technology Wichita uses is evolving. ¶ 130.

On paper, Wichita has a written ALPR policy. But in reality, it's just a "guidance" document. Pet. Ex. 17 (purpose is to provide "guidance on the application" of license plate

readers). In that guidance document, non-Flock ALPR data may be retained *for three years*, ¶ 85; and Flock-specific data may be retained for 30 days, ¶85, but can be stored *indefinitely* for other reasons, including "whenever directed by a supervisor," ¶¶ 86-87; and in any event, there is nothing preventing officers from downloading or storing the data every thirty days, ¶¶ 87-88; or providing the data to a whole host of other agencies who can simply return it to Wichita, ¶¶ 89-90. In any event, the Wichita Police Department is free to revise its "guidance" document at any time so that data can automatically be stored indefinitely.

ALPR dragnet surveillance is ripe for abuse and Wichita's dragnet surveillance program is no different. ¶¶ 89-94. Because there's no oversight, the police captain overseeing Wichita's ALPR surveillance program admits that he "knew" that police officers were going to misuse the program "eventually," and that such misuse "is not shocking." ¶ 101. And the *reason* there's no oversight is because, according to Wichita, it's "*not even possible*" to "scrutinize" all of the "police searches" involving the ALPR surveillance program. ¶ 96 (italics added).

Given the wholesale problems with ALPR surveillance above, including its estimated error rate, ¶¶ 54, 105, which causes innocent people to be pulled over and seized at gunpoint, ¶¶ 109-110, it's no surprise the public despises ALPR dragnet surveillance, including Wichita's. ¶¶ 112-122.

Given the pervasiveness of Wichita's warrantless ALPR dragnet surveillance program, the technology it uses, and that Mr. Grimmett cannot escape Wichita's ALPR surveillance cameras, the government's warrantless ALPR dragnet surveillance easily reveals Mr. Grimmett's physical movements. ¶¶ 1-8, 15, 33-36, 38-54, 64, 78-82, 137-138, 141, 144-150, 152-172, 165, 210.a., 212.i., 216.e-f., k-m., o., p.; *see* ¶ 138. Indeed, the most useful thing about Wichita's ALPR surveillance, the government admits, is the ability to look back through a person's movements historically. ¶ 81.

In sum, Mr. Grimmett is a law-abiding Wichitan trapped in Wichita's warrantless ALPR dragnet surveillance program. ¶ 15. Nearly every day, Mr. Grimmett drives past Wichita's ALPR cameras. ¶ 15. Whether he is going to work, the YMCA, a union meeting, a gun range, visiting a family member in a nursing home, his doctor's office, attending meetings with lawyers, City

Council meetings, or Sunflower Privacy Alliance meetings—of which he is a member—he is being surveilled, tracked, cataloged, and databased. ¶ 15. And given the constant surveillance and highly sophisticated technology deployed in Wichita, the City's warrantless ALPR dragnet surveillance program easily reveals the totality of Mr. Grimmett's movements. ¶ 15. All of which Mr. Grimmett objects to, opposes, and has not consented to. ¶¶ 144, 149-172; *see also* ¶ 114.g., 140-142, 168 (further explaining how Wichita's dragnet surveillance impacts Mr. Grimmett).

Mr. Grimmett filed his lawsuit against the City of Wichita for non-monetary, prospective relief on July 29, 2026. Mr. Grimmett seeks a declaratory judgment that Wichita's warrantless ALPR dragnet surveillance program violates Section 15 and Section 20 of the Kansas Constitution Bill of Rights. ¶ 245. He has also sought permanent injunctive relief, ¶ 246, and has not moved for temporary or preliminary injunctive relief.

Argument

Standard of Review

At this early stage, all that matters is whether Mr. Grimmett's petition "sufficiently apprises" the government of facts and his allegations, not whether he will ultimately succeed. *Kucharski-Berger v. Hill's Pet Nutrition, Inc.*, 60 Kan. App. 2d 510, 521 (2021). Because dismissal is "drastic" and disfavored, *any* doubt about Mr. Grimmett's claims should "be resolved in favor" of "allow[ing] the case to be decided on its merits," *Boydston v. Bd. of Regents for State of Kan.*, 242 Kan. 94, 101 (1987), including under "any possible theory the court can divine," *Nungesser v. Bryant*, 283 Kan. 550, 559 (2007).

I. Mr. Grimmett has standing to challenge Wichita's warrantless ALPR dragnet surveillance program.

Mr. Grimmett's extensive factual allegations readily satisfy the "relaxed" and "minimal" standing requirements for declaratory judgment cases. *Hartman v. City of Mission*, 43 Kan. App. 2d 867, 869 (2010); *Robinson v. Kansas State High Sch. Activities Ass'n, Inc.*, 260 Kan. 136, 140 (1996); *see also Solomon v. State*, 303 Kan. 512, 520 (2015); K.S.A. § 60-1713 (declaratory judgment act is remedial and should be liberally construed).

It's undisputed that Wichita is systematically and continuously surveilling, tracking, cataloging, and databasing Mr. Grimmett *and* the whole of his movements, through its hundreds of pervasive, A.I.-powered ALPRs. ¶¶ 15, 64.[2] It's also undisputed that Wichita's warrantless ALPR dragnet surveillance program reveals Mr. Grimmett's movements, which he opposes, and which he testified against at a June 9, 2026, City Council Meeting. ¶ 15; *see also* ¶¶ 64, 142, 151-160, 210.a-c, 212.i, 216.e, j, k, l, o; ¶ 144, ¶ 149; ¶¶ 114.g, 140-142 (City Council references).[3] And it's undisputed that Wichita's warrantless ALPR program is just one component of Wichita's larger dragnet surveillance program. ¶¶ 123-129.

[2] *Nungesser*, 283 Kan. at 559 (district courts must assume the factual allegations are true).

[3] *See also*, ¶ 15 (surveillance program "reveals the totality of Mr. Grimmett's movements"), ¶ 64 (surveillance program tracks "the movements of virtually everyone in Wichita"), ¶ 144 (Mr. Grimmett opposes the surveillance program's tracking, cataloging, databasing, and revealing his movements), ¶ 149 (Mr. Grimmett doesn't want his movements tracked, cataloged, databased, and revealed by the program), ¶ 156 (Wichita has "30-day history of Mr. Grimmett's movements"), ¶ 212.i (surveillance program "gives police access to information previously unknowable, including the ability to reconstruct a person's movements"), ¶ 216.j (surveillance program violates Mr. Grimmett's "reasonable expectation of privacy in the whole of his movements"); ¶ 216.k (warrantless access to database unconstitutional because "the data is what enables deductions from the whole of individuals' movements, it creates a retrospective database of everyone's movements across the city, and it enables police to deduce from the whole of individuals' movements") (cleaned up); ¶ 216.l (surveillance program unconstitutional because it "is tracking the sum of Plaintiff's movements, it generates a comprehensive record of his public movements, and it reflects a wealth of detail about his associations") (cleaned up); ¶ 216.m (surveillance program unconstitutional because "with just the click of a button the Government can access its repository of historical location information at practically no expense," "the retrospective quality of the data gives police access to a category of information otherwise unknowable, the Government can now travel back in time to retrace a person's whereabouts, the tracking capacity runs against everyone, and the police need not even know in advance whether they want to follow a particular individual, or when") (cleaned up); ¶ 216.o (surveillance program unconstitutional because it "allows police officers to reconstruct retrospectively, and with no real effort, people's comings and goings in any area, it enables tireless surveillance of any number of people in any number of places, and permits the government to access an individual's movements, in both public and private places such that it possesses a virtual panopticon with which to scrutinize its citizens' activities") (cleaned up).

Mr. Grimmett cannot escape the government's warrantless dragnet surveillance program either, ¶¶ 145-146, 165, 216.f.; *see* ¶ 138, which causes him anxiety and frustration, ¶¶ 164-165, 16, *and* which violates his rights under the Kansas Constitution.

Because Mr. Grimmett is trapped in Wichita's dragnet, he seeks an injunction preventing the dragnet surveillance program's continued operation, ¶ 246.a.; requiring Wichita to delete *all of the records* regarding his movements, ¶ 246.b.; alternatively, permitting Mr. Grimmett to "completely, and totally, opt-out" of the dragnet surveillance program, ¶ 246.d.; prohibiting Wichita from sharing his information with other agencies, ¶ 246.c.; and requiring Wichita to direct other agencies to delete the information Wichita has shared, ¶ 246.d., among other things.

Consequently, Mr. Grimmett has an unmistakable "personal stake in the outcome" of this case, *Aeroflex Wichita, Inc. v. Filardo*, 63 Kan. App. 2d 588, 595 (2023) (cleaned up), and has suffered "some actual or threatened injury as a result of" Wichita's warrantless ALPR dragnet surveillance program. *Solomon*, 303 Kan. at 521.

The government nonetheless suggests, even though Mr. Grimmett is trapped in Wichita's warrantless dragnet surveillance program, that he lacks standing because "his license plate has never been searched," Govt's Br. at 4, police officers have not "quer[ied] the ALPR system," *id.* at 7, and "images" have not been "improperly utilized or released," *id.* at 9.

Wichita's argument badly misses the mark. Mr. Grimmett only needs to allege that the government has collected and stored his information, not that a police officer will actually review it, or that an officer will improperly disseminate it. Mr. Grimmett easily satisfies that requirement. It's undisputed that Mr. Grimmett and his movements are being systematically and continuously surveilled, tracked, cataloged, and databased. ¶¶ 15, 131-138, 152-160. *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 979 F.3d 219, 225 (4th Cir. 2020) (*Leaders of a Beautiful Struggle I*)[4] ("It is enough to confer standing that plaintiffs are likely to be photographed."); *Am. C.L. Union v. Clapper*, 785 F.3d 787, 801 (2d Cir. 2015) ("[A]ppellants surely have standing to allege injury

[4] Vacated on reh'g en banc, 2 F.4th 330 (4th Cir. 2021).

from the collection, and maintenance in a government database, of records relating to them.")*; *Schuchardt v. President of the United States*, 839 F.3d 336, 346 (3d Cir. 2016) (standing exists where plaintiff "has alleged a program of government surveillance that, though universal in scope, is unmistakably personal in the purported harm."); *Commonwealth v. Bell*, 113 Va. Cir. 316, 2024 WL 5516362, *2 (2024) (merely collecting and storing ALPR data is a Fourth Amendment search); *see Dow Chem. Co. v. United States*, 476 U.S. 227 (1986) (case involving warrantless aerial photography decided on the merits, not on standing).

Furthermore, every time Wichita police officers query its surveillance database—*which it does hourly*, ¶ 81—it's searching "all of the material stored in the database in order to identify records that match the search term. In doing so, it necessarily searches" Mr. Grimmett's "records electronically, even if such a search does not return" Mr. Grimmett's "records for close review by a human agent." *Clapper*, 785 F.3d at 802. As a result, Mr. Grimmett has "standing to object to the collection and review of [his] data," *id.*, even if Wichita never specifically queries the database for Mr. Grimmett's information. The government's database search is functionally no different than instances where police officers conduct a city-wide, house-by-house manhunt for a fugitive. A homeowner would certainly have standing to challenge the search, even though they weren't the target of the search.

At this stage, Mr. Grimmett's factual allegations must be accepted as true. Consequently, as shown above, there is nothing "hypothetical" or "speculative" about Wichita collecting hundreds or thousands of time-stamped, geolocated photographs of Mr. Grimmett's vehicle, feeding all of that data to an A.I.-powered system, and storing it in a long-term database that enables Wichita to "retrace all of [Mr. Grimmett's] whereabouts," whenever it wants. Govt's Br. at 8. For the same reason, the government is wrong when it tells this Court that Mr. Grimmett only "*believes* that photos *may* have been taken of his vehicle." Govt's Br. at 8 (emphasis added). Mr. Grimmett has plainly alleged that he must drive past numerous ALPRs every day just to get to work or go about his daily life, and by their very nature these ALPRs collect, analyze, and store information about him every time he passes. *See* ¶¶ 15, 152-156. Because it must be accepted as true that Mr.

Grimmett and his movements are being systematically and continuously surveilled, tracked, cataloged, and databased, he has suffered a constitutional injury sufficient to confer standing.

Besides being wrong under the caselaw, this Court should reject Wichita's crabbed view of standing for another reason. If accepted, the Wichita Police could indiscriminately, and without any judicial authorization whatsoever, collect *any* information it wanted, about anyone or everyone, in whatever manner it wanted, to be stored in a database for as long as it wanted, and nobody could challenge that, unless they were charged with a crime. Govt's Br. at 8 (evidently suggesting only criminal defendants have standing). The government could, moreover, record and store a lifetime's worth of cell site location data; or location history data from Google; or use thermal imaging devices to snoop inside homes; or look at photographs inside cell phones; or listen to conversations inside phone booths; and there would be *no recourse* until Wichita weaponized this information in a criminal proceeding. Wichita's argument, simply put, ignores basic constitutional principles. "By protecting the people against unreasonable searches," "the Constitution protects *all*," including "the innocent." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 347 (4th Cir. 2021) (*Leaders of a Beautiful Struggle II*). And it ignores the whole point of the Kansas Declaratory Judgment Act, which is "settle and provide relief from uncertainty and insecurity with respect to disputed rights, status and other legal relations." K.S.A. § 60-1713.

The government's remaining arguments about Mr. Grimmett's expectations of privacy are equally unavailing. Wichita incorrectly suggests, several times over, that Mr. Grimmett doesn't have an expectation of privacy in his license plate, and therefore he doesn't have standing. Govt's Br. at 6, 8, 9. Of course, that's decidedly *not* what this case is about, or what Mr. Grimmett has alleged. This case is about dragnet surveillance that reveals the whole of Mr. Grimmett's movements. *See* footnote 3, *supra*.

But in any event, the government's argument is confused. Whether Wichita has *in fact* violated Mr. Grimmett's reasonable expectation of privacy is "more properly placed within the purview of substantive law than within that of standing." *Minnesota v. Carter*, 525 U.S. 83, 88 (1998) (cleaned up); *see also Moreno v. Idaho*, No. 4:15-CV-00342-BLW, 2017 WL 1217113, at *4

n.4. (D. Idaho Mar. 31, 2017) (The United States Supreme Court "did away with the concept of 'standing' in the Fourth Amendment context" more than forty years ago in *Rakas v. Illinois*, 439 U.S. 128 (1978)).

Stated differently, the government's argument about Mr. Grimmett's expectations of privacy is a *merits issue,* not a standing issue. *See Byrd v. United States*, 584 U.S. 395, 410-411 (2018). That's why in *Leaders of a Beautiful Struggle I*, for instance, the plaintiffs *had* standing, even though the panel initially held they did not have a reasonable expectation of privacy.[5] And that's why in *Schmidt v. City of Norfolk*, No. 2:24-CV-621, 2025 WL 410080 (E.D. Va. Feb. 5, 2025), the plaintiffs had standing to challenge Norfolk's ALPR surveillance program even though they eventually lost on the merits.[6] Just as in *Hill's Pet Nutrition*, the "parties can address the *merits* of the allegations at later stages of the litigation." 60 Kan. App. 2d at 531 (emphasis added).

For those reasons, Mr. Grimmett's full-throated argument that Wichita's ALPR dragnet surveillance program violates his reasonable expectation of privacy in his physical movements are made below. *See* Section II.A.

In addition to his reasonable expectation of privacy claim, Mr. Grimmett has pleaded a violation of Section 15 under the property-based framework described in *United States v. Jones*, 565 U.S. 400 (2012) and *State v. Talkington*, 301 Kan. 453, 462 (2015). *See* ¶¶ 185-188, 201-208, 216.h. Wichita has never suggested that Mr. Grimmett lacks *standing* to bring his property-based claim.[7] For good reason. Mr. Grimmett's property interests confer standing. *See, e.g., United States v. Gordon*, No. 11-cr-20752, 2013 WL 791622, at *5-6 (E.D. Mich. Mar 4, 2013) (owner of vehicle could challenge trespassory search); *Williamson v. Bernalillo Cnty. Sheriff's Dep't*, 125 F.3d 864

[5] The Fourth Circuit, sitting *en banc*, eventually held that the plaintiffs *did* have a reasonable expectation of privacy. *See Leaders of a Beautiful Struggle II*, 2 F.4th 330 (4th Cir. 2021).

[6] *Schmidt* was decided before the United States Supreme Court issued *Chatrie v. United States*, 609 U.S. 605 (2026), a game-changing Fourth Amendment case about warrantless searches, (more on *Chatrie* later), and the plaintiffs have appealed the summary judgment ruling located at 819 F. Supp. 3d 492 (E.D. Va. 2026), *appeal docketed* No. 26-1227 (4th Cir. 2026).

[7] The government only suggests that Mr. Grimmett can't prevail on the merits of his property-based claim. Wichita is wrong about that, for the reasons Mr. Grimmett spells out below.

(10th Cir. 1997) (unpublished) (possessory interest can be enough to establish standing); *Carpenter v. United States*, 585 U.S. 296, 397–98 (2018) (Under a traditional property-based approach, "if a house, paper or effect was *yours* under law," "no more was needed to trigger the Fourth Amendment.") (Gorsuch, J., dissenting); *see also State v. Bartlett*, 27 Kan. App. 2d 143, 149 (2000).

And finally, the government doesn't challenge Mr. Grimmett's *standing* to raise his Section 20 claim, just that he can't prevail under it. Wichita is wrong about that for the reasons spelled out below.

In sum, Mr. Grimmett has standing to challenge Wichita's warrantless ALPR dragnet surveillance program under Sections 15 and 20 of the Kansas Constitution Bill of Rights.

II. Wichita's warrantless ALPR dragnet surveillance program violates Section 15 of the Kansas Constitution Bill of Rights.

The government's motion to dismiss should be denied. Based on Mr. Grimmett's extensive factual allegations—that the government mostly ignores—Wichita's warrantless ALPR dragnet surveillance program violates Section 15 of the Kansas Constitution Bill of Rights, which affords Mr. Grimmett "*at least* the same protections" as the Fourth Amendment, *State v. Cleverly*, 305 Kan. 598, 604 (2016) (emphasis added). And that's true under *either* the privacy-based framework from *Katz v. United States*, 389 U.S. 347 (1967), or the property-based framework described in *Jones*, 565 U.S. 400, and *Talkington*, 301 Kan. 453, both of which Mr. Grimmett pleaded. *See* ¶¶ 185-188, 201-208, 216.h.

Broadly stated, Mr. Grimmett has an expectation of privacy *in the whole of his physical movements*, which has already been recognized as objectively reasonable by the Supreme Court and others. And just as a federal district court very recently held, warrantless ALPR surveillance is "a large-scale, dragnet-type surveillance system" that violates a "reasonable expectation of privacy that society *already accepts*." *Kyle*, --- F.Supp.3d ----, 2026 WL 2958728 at *12, *13 (emphasis added).

Under a traditional property-based analysis, a government-mandated license plate, coupled with Wichita's ALPR dragnet surveillance, is the functional equivalent of a GPS tracking device, which constitutes a trespassory search as well.

Mr. Grimmett first explains why the government's program is unconstitutional under the privacy-based analysis, and then turns to the property-based analysis.

A. Wichita's ALPR dragnet surveillance program is a "search" because it violates Mr. Grimmett's reasonable expectation of privacy in his physical movements.

A search occurs "when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (citing *Katz*, 389 U.S. at 361 (1967) (Harlan, J., concurring)); *Talkington*, 301 Kan. at 461-462. There is "no single rubric" that "definitively resolves which expectations of privacy are entitled to protection." *Carpenter*, 585 U.S. at 304-305; *see also Chatrie v. United States*, 609 U.S. 605, 621 (2026).

But the Framers enacted the Fourth Amendment to "secure the privacy of life against arbitrary power," *Carpenter*, 585 U.S. at 305 (cleaned up), "place obstacles in the way of a too permeating police surveillance," *id.*, and protect "Americans' long-held conviction that no government official should have free access to the most closely kept aspects of their lives." *Chatrie*, 609 U.S. at 621.[8] And when the government uses technological advances to conduct warrantless surveillance that "would previously have been unknowable," "the surveillance is a 'search'" and *presumptively unconstitutional*. *Kyllo*, 533 U.S. at 40.

1. Mr. Grimmett has a reasonable expectation of privacy in his physical movements.

Mr. Grimmett alleges a violation of his reasonable expectation of privacy in the whole of his physical movements. The government's motion to dismiss, however, attacks arguments Mr. Grimmett has not made. Instead, the government attempts to recast the issue as whether Mr.

[8] Mr. Grimmett is exclusively raising a Section 15 claim, not a Fourth Amendment claim. But given the way Section 15 is currently interpreted, a Fourth Amendment analysis is pertinent. *See* ¶ 183, n.99.

Grimmett has an expectation of privacy *in his license plate*. Govt's Br. at 6, 8, 9. The reason Wichita does this is because the Supreme Court and others have already recognized that Mr. Grimmett has a reasonable expectation of privacy in *his physical movements*, which is precisely how Mr. Grimmett framed the issue in his petition. *See* footnote 3, *supra*.

In *Jones*, 565 U.S. 400, the government used a GPS tracking device to monitor Mr. Jones's car over a 28-day period. *Id*. at 403. Because the GPS device was physically attached to Mr. Jones's car, the Court considered it a trespassory search. *Id*. at 412-413. But five justices *also* concluded that a person's *movements* are constitutionally protected from warrantless surveillance because "society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period." *Id*. at 430 (Alito, J., concurring in the judgment). And the government *violates* society's reasonable expectation of privacy when it warrantlessly compiles a "comprehensive record of a person's public movements," which can reveal "a wealth of detail" about one's "familial, political, professional, religious, and sexual associations." *Id*. at 415-416, (Sotomayor, J. concurring) (cleaned up).

In *Carpenter*, the Supreme Court reiterated the principle from *Jones* that an "individual maintains a legitimate expectation of privacy" in one's "physical movements" *even if* those movements were disclosed to the public.[9] 585 U.S. at 309-310. That's because the tracking of one's comings-and-goings "provide an intimate window into a person's life," and reveal "the privacies of life." *Id*. at 311 (cleaned up). And the government "invade[s]" that reasonable expectation of privacy in one's movements where "the retrospective quality" of the data allows the police to "travel back in time to retrace a person's whereabouts," or where the "*tracking capacity runs against everyone.*" *Id*. at 312 (emphasis added).

In *Leaders of a Beautiful Struggle II*, 2 F. 4th at 342, the Fourth Circuit sitting *en banc* held—based on *Jones* and *Carpenter*—that Baltimore's warrantless aerial surveillance program, which

[9] Mr. Grimmett has not *voluntarily* exposed *anything* to the public. Instead, he's *required* to display the government license plate. *See* ¶¶ 202, 206-207.

consisted of continuous daytime photography of the entire city, and everyone in it, "violate[d] the reasonable expectation of privacy individuals have in the whole of their movements."

Just last term, in *Chatrie v. United States*, the Supreme Court yet again reiterated the principles from *Jones* and *Carpenter* that society has a reasonable expectation of privacy in their physical movements. In *Chatrie*, the government used surveillance technology that indiscriminately gathered information on people's movements that *could* reveal the privacies of life—information that would otherwise be impossible to obtain without that technology. And the technology allowed law enforcement to "log" people's movements, "with just the click of a button," without deciding in advance "who they want to follow and when." 609 U.S. at 624 (cleaned up). Given the retrospective nature of the information collected, that it was easy and cheap to gather, indiscriminately ran against everyone, and allowed police officers to "reconstruct" "people's comings and goings in any area," that violated society's expectations of privacy. *See Chatrie*, 609 U.S. at 626 (cleaned up). This was true even though the government obtained "only a short amount" of surveillance data. When "the Fourth Amendment applies, it applies—regardless of the quality or quantity of information the government obtains." *Id.* at 629.

And just this month, a federal district court held that ALPR technology is "a large-scale, dragnet-type surveillance system" that violates a "reasonable expectation of privacy that society *already accepts*," which is "the same expectation of privacy that the Supreme Court has continued to recognize in cases like *Carpenter* and *Chatrie*." *Kyle*, --- F.Supp.3d ----, 2026 WL 2958728 at *12, *13 (emphasis added).

The district court explained why society has an expectation of privacy in their movements:

> Think about it this way. We might reasonably expect our friends and family to tell us something like: 'Hey, I saw you out driving by the store last week.' But we do not expect people we know—let alone strangers, and especially not law enforcement—to randomly approach us to say: 'Hey, I have been following your car for the last 30 days, and here is a detailed log of every place your vehicle has been with supporting photographic evidence. I am also going to share this information with law enforcement throughout the country so they know your whereabouts, too.' Freedom from persistent, dragnet-style surveillance while in public is not a foreign concept in our

> society, and it is a reasonable expectation that society already accepts. This is the same expectation of privacy that the Supreme Court has continued to recognize in cases like *Carpenter* and *Chatrie*. Cell phones also move in public places where people can see you in plain view. But it becomes constitutionally problematic when law enforcement can indiscriminately and passively catalog your whereabouts over an extended period of time and then use that information for any purpose whenever convenient. *Kyle*, --- F.Supp.3d ----, 2026 WL 2958728 at *13.

Under *Carpenter* and *Chatrie*, moreover, it doesn't matter that "ALPR technology does not provide the same precision in location information as cell phones" or that it might only "collect[] mundane information about people's commutes," it "*could* still reveal a lot about a person's whereabouts," or *could* reveal visits to sensitive locations, and therefore, it unconstitutionally "intrude[s] on" one's "reasonable expectation of privacy in the whole of [their] physical movements." *Id*. at *14 (emphasis added).

Even though those cases are reason enough to reject Wichita's motion to dismiss, Mr. Grimmett's petition also demonstrates that "society is prepared to consider reasonable" Mr. Grimmett's "expectation of privacy," and that Wichita's warrantless ALPR dragnet surveillance program violates those reasonable privacy expectations. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Put bluntly, Mr. Grimmett's factual allegations, which must be accepted as true, overwhelmingly establishes that society has a widespread hostility to warrantless ALPR dragnet surveillance *precisely because it violates their reasonable expectations of privacy*.

The public's hostility toward warrantless ALPR dragnet surveillance is well documented, including by local media. *E.g.,* ¶¶ 90, 93, 101, 102, 113, Chance Swaim, *Vehicle Surveillance Prompts Privacy Concerns in Wichita, Kan.* (Nov. 7, 2022); ¶ 212.h., Kris Maher, *The Nationwide Backlash Against Cameras Watching Your Car*, Wall Street Journal (June 16, 2026); ¶ 232.h., Annie Gowan, *AI license plate cameras tore this town apart and led to a state of emergency*, Washington Post (May 17, 2026); ¶ 212(h), Sam Zeff, *Missouri and Kansas police use cameras to track license plates, but residents resist surveillance*, KCUR (June 29, 2026); ¶ 212(h), Amanda Greenwood, *Map Shows Cities That Have Rejected, Deactivated Flock Cameras*, Newsweek (Jul. 28, 2026).

The public is so opposed to warrantless ALPR surveillance—and has such a strong interest in maintaining their privacy from it—they're destroying and vandalizing the ALPR cameras. ¶¶ 118-122; ¶ 121, Sarah Al-Shaikh, *More Flock cameras cut down in Houston amid some privacy concerns* (Jul. 8, 2026); ¶ 121, Pamela Comme, *Flock cameras vandalized in Volusia as critics and supporters clash over technology* (Jul. 10, 2026); ¶ 121, Chloe McCoy, *Police in Carolinas respond after Flock cameras found damaged amid public debate* (Jul. 8, 2026).

And for years, Wichitans have testified against the City's warrantless ALPR dragnet surveillance program at City Council meetings. *E.g.*, ¶ 114.a., Mark Barlow testimony (Flock is taxpayer-funded mass surveillance "hidden carefully in plain sight); ¶ 114.b., Twila Purrity testimony (raising privacy concerns regarding RTIC which includes Wichita's ALPR program); ¶ 114.c., Steven Ahman testimony (criticizing program's expansion and noting ALPR missuses); ¶ 114.d., Zachary Knopp testimony (raising concerns about risks of mistaken identity, abuse, stalking, and harassment; and questioning Wichita's self-audits). ¶ 114.e., Brad Heagler testimony (criticized lack of guardrails and independent oversight; concerned about risk of misuse); ¶ 114.f., Holden Woodward testimony (program skirts Fourth Amendment and risks outweigh the benefits); ¶ 114.g., Mason Grimmett testimony.

Large swaths of society are coalescing to specifically oppose warrantless ALPR surveillance as well, including in Wichita. Consider "deflock.org," an open-source project where users map the location of ALPR cameras throughout the United States, ¶ 115-116, and Sunflower Privacy Alliance—a Wichita-based, non-partisan coalition of researchers, advocates, and citizens concerned with the government's expansion of its surveillance infrastructure, ¶ 133.

The Kansas Legislature has passed two bills which demonstrate that society recognizes the expectation of privacy in a person's movements. In 2022, the Kansas Legislature considered Senate Bill 434, a bill exempting ALPR tracking data from being publicly disclosed through the Kansas Open Records Act. ¶ 212.j. During the bill's debate, now-Captain Casey Slaughter (the person who oversees Wichita's warrantless ALPR surveillance program) submitted testimony on behalf of the Wichita Police Department acknowledging that warrantless ALPR dragnet

surveillance raises legitimate concerns about privacy rights, and that exempting ALPR data from the Kansas Open Records Act would help protect the public from having their sensitive information disclosed to other members of the public. *See* ¶ 212.j.1. Other law enforcement organizations did much the same. ¶ 212.j.2. Ultimately, the Kansas Legislature exempted ALPR tracking data from public disclosure; and by doing so, the Kansas Legislature and Governor affirmed that the public *does* have a legitimate expectation of privacy in their movements. *See* K.S.A. § 45-221(a)(55) (exemption for "[r]ecords of a public agency that contain captured license plate data" from open record requests).

And it's precisely because individuals have an expectation of privacy in their location, movements, or travel patterns, that the Kansas Legislature has *criminalized* the use of "any electronic tracking system or acquiring tracking information to determine the targeted person's location, movement or travel patterns." K.S.A. § 21-5427(f)(1)(G). Of course, that's exactly what Wichita's warrantless ALPR dragnet surveillance program does, indiscriminately, to every driver in Wichita.

Even Wichita's own ALPR guidance document admits that its warrantless surveillance program raises privacy and civil rights concerns. *See* Pet. Ex. 17 (Policy 804) ("[A]ll uses" of "LPR Data" "shall take into consideration the privacy, civil rights, and civil liberties of the individual").

Kansans have a *fundamental right* to travel within Wichita and within the state, *Manzanares v. Bell*, 214 Kan. 589, 600 (1974); and finally, "[b]y nature, Kansans value their privacy and solitude." J. Lyn Entrikin, *The Right to Be Let Alone: The Kansas Right of Privacy* 53 Washburn L. J. 207, 207 (2014); *see also*, *Matter of Clark*, 314 Kan. 814, 823, (2022) (Stegall, J. concurrence) ("Kansas and Kansans, too, have long valued personal privacy, being one of the first states to recognize a common-law right of privacy and action in tort from the public and employers.").

Despite *all of that*, Wichita suggests that *United States v. Knotts*, 460 U.S. 276 (1983), a forty-three-year-old case involving outdated technology—a beeper—"supports the constitutionality of ALPR technology." Govt's Br. at 20. The government simultaneously overreads *Knotts* and "fails to contend with the seismic shifts in digital technology" that allow the

tracking of Mr. Grimmett's location and "also everyone else's," *Carpenter*, 585 U.S. at 313, along with ignoring *Carpenter*'s directive to take into account the "subtler and more far-reaching means of invading privacy" utilized by the government, so that "the progress of science does not erode" the protections afforded by the search and seizure clause, *id.* at 320 (cleaned up).[10]

"*Knotts* does not support the view" that Wichita's ALPR surveillance is "not a search." *Chatrie*, 609 U.S. at 630. Unlike Wichita's A.I.-powered surveillance, which operates around the clock, and captures everyone driving in Wichita, the "rudimentary" beeper in *Knotts* did not "allow[] remote monitoring" and thus "did not turn [an ordinary] tail into a search" just because it allowed police to follow a single journey of a single suspect more effectively. *Chatrie*, 609 U.S. at 630, 631, 630.

Indeed, *Knotts* "was explicit in keeping its holding cabined to that rudimentary technology," *Chatrie*, 609 U.S. at 630, "was careful to distinguish between the rudimentary tracking facilitated by the beeper and more sweeping modes of surveillance," *Carpenter*, 585 U.S. at 306, and the *Knotts* Court itself specifically disclaimed its application to cases like Mr. Grimmett's that involve "dragnet type law enforcement practices." *Knotts*, 460 U.S. at 284.

What's more, as "*Chatrie* confirms," "categorical propositions from older cases should not be carried into new contexts when doing so would undermine the principles the Court insists *Katz* effectuates." John Wrench, *Chatrie and the Roberts Court's New Katz*, 2025-2026 Cato Sup. Ct. Rev. 85, 112 (2026).

"More than 40 years have passed since the Supreme Court's decision in *Knotts*, and this Court is now faced with technology that appears to be approaching the dragnet type law enforcement practice Mr. Knotts warned of. Therefore, lower courts need to reexamine the result in *Knotts* as technology advances past the rudimentary beeper in that case." *Kyle*, --- F.Supp.3d ---, 2026 WL 2958728 at *12

[10] *See also Maehr v. United States Dep't of State*, 5 F.4th 1100, 1120 (10th Cir. 2021) ("When analyzing Supreme Court cases, we must interpret older ones in light of more recent Supreme Court elaboration.") (cleaned up).

A rudimentary beeper hidden in a five-gallon drum of chloroform is nothing like Wichita's warrantless, A.I.-powered ALPR dragnet surveillance program. This Court should reject *Knotts*'s application here, just as the district court rejected *Knotts*'s application in *Kyle*. "Freedom from persistent, dragnet-style surveillance while in public is not a foreign concept in our society, and it is a reasonable expectation that society already accepts, which is the same expectation of privacy that the Supreme Court has continued to recognize in cases like *Carpenter* and *Chatrie.*" *Kyle*, --- F.Supp.3d ----, 2026 WL 2958728 at *13.

For the same reasons, the government's suggestion that its dragnet surveillance program is the equivalent of a police officer shining a flashlight into a car, Govt's Br. at 20, or the equivalent of a police officer taking a single image of a passing car, Govt's Br. at 8, is completely unserious.

Wichita has spent more than a decade building-out its sophisticated surveillance network, ¶¶ 55-74; the network tracks and databases *every* person who passes the A.I.-powered cameras, including Mr. Grimmett and his movements, ¶¶ 1, 3, 8, 64; Wichita police collect *millions* of data points every few months, *see* ¶¶ 79, 106; nationwide, in 2022, Flock ALPRs scanned "one billion plate scans *per month*," Alyssa Archuleta Stolmack, *Eyes on the Road: Strengthening Fourth Amendment Protections Against Law Enforcement's Accelerating Use of Automated License Plate Readers*, 9 UCLA Crim. Just. L. Rev. 113, 121 (2025); Wichita Police query its surveillance program hourly, ¶ 81; the most useful part of the surveillance program is the ability to search for historical information about one's movements, ¶ 81; the ability to track a person's movements is as easy as shopping online or searching Google, and can be done via a smartphone or smartwatch, ¶¶ 7-8, 45; Wichita hopes *to double* its number of surveillance devices, ¶ 76; according to the person who administers the program, it's the equivalent of 200 police officers working twenty-four hours a day, seven days a week, ¶ 76; it's just one part of a larger surveillance program, which aggregates information from ALPRs, gunshot detectors, body camera footage, around 1,500 video streams, and drones that capture visible spectrum and thermal images, ¶¶ 123-129; the technology can generate vehicle journey maps, a list of vehicles that that have visited sensitive locations, a "convoy analysis" which documents vehicles that have been spotted in the vicinity of other vehicles, can

predict the route a vehicle will take, permit image searches, *and is evolving*. ¶¶ 47-53; *see also* ¶¶ 32-54 (explaining how the surveillance system operates); ¶ 130. Wichita's warrantless ALPR dragnet surveillance program uses "sense-enhancing technology" to generate information that "that could not otherwise have been obtained," *Kyllo*, 533 U.S. at 34, *and* is part of a larger surveillance program which plainly "transcends mere augmentation of ordinary police capabilities," *Leaders of a Beautiful Struggle II*, 2 F. 4th at 334-335, 343-345. *See also Kyllo*, 533 U.S. at 27 (courts "must take account of more sophisticated systems that are already in use or in development"). Wichita's A.I.-powered dragnet surveillance program is nothing at all like an officer shining a flashlight or snapping a Polaroid.

Wichita incorrectly contends that *United States v. Jackson,* No. 24-CR-10010-JWB, 2025 WL 1530574 (D. Kan. May 29, 2025), is dispositive of Mr. Grimmett's case. While that case also involved Wichita's warrantless ALPR dragnet surveillance program, the district court carefully limited its holding to the facts of that case, with only "nine data points . . . over the four-hour period." *Id.* at *9. The district court then compared the nine data points over a four-hour period to the extended period of tracking data in *Carpenter* and the four weeks of tracking data in *Jones* and concluded that "the limited nature of the photographs taken in this case . . . assuages the court's concerns *at this time.*" *Id.* (emphasis added). But the district court expressly noted that it remained "concerned that the aggregation and searchability of the photos taken on the Flock System could rise to the level" of a Fourth Amendment violation if more data were collected over a longer period of time. *Id.* Although the district court was correct to be concerned about Wichita's ALPR dragnet surveillance program, that particular Fourth Amendment analysis was directly and categorically rejected by *Chatrie*, which was decided afterwards.

In *Chatrie*, the United States Supreme Court held that "the Government is wrong about the incapacity of short-term location information to reveal private matters." *Chatrie*, 609 U.S. at 628. Even when the tracking only lasts for a few hours or is confined to a specific location the Court has "*never understood* Fourth Amendment protections as kicking in only once an intrusion 'goes too far.'" *Id* (emphasis added). The Fourth Amendment applies "regardless of the quality or

quantity of information the government obtains." *Id.* at 629. Government officials are not given a "pass" if their searches are "of limited duration and thus less likely to intrude on private matters." *Id.* Even "18 minutes of recordings" are enough to violate the Fourth Amendment. *Id.*

It is evident that, post-*Chatrie*, Wichita's argument that the duration and precision of its warrantless surveillance *isn't really that bad* when compared to other types of surveillance fails. Even if ALPR surveillance doesn't provide the "fine-tuned level of detail that something like a cell phone reveals about the whole of someone's physical movements," it's still an unconstitutional search because of "how [it] works," in that "officers using these systems have access to a continuously updated location history for *all* vehicles caught on ALPR cameras within the network," which is "a type of indiscriminate mass surveillance. It is not targeted on a single individual, as in *Carpenter*. It is a tool that collects information about all vehicles that pass by any network-connected camera at all times, and it serves up the information to law enforcement on demand." *Kyle*, --- F.Supp.3d ----, 2026 WL 2958728 at *13. But even if *Jackson* remains good law under its factual record (and it doesn't), the facts of *this* record are far different. Mr. Jackson was an out-of-state resident who only drove in Wichita for four hours and had only 9 data points collected. Mr. Grimmett is a Wichita resident who drives to work, to the YMCA, to Sunflower Privacy Alliance meetings, and so on. ¶¶ 131-138. As a result, Wichita's ALPR dragnet surveillance system has been tracking Mr. Grimmett for years, with at least 30 days of stored data, and potentially hundreds or thousands of data points collected about his comings and goings.

Additionally, the district court in *Jackson* reasoned that a negative "reaction by the public [to a surveillance system] would seem to have at least some bearing on the inquiry as to whether 'an expectation of privacy that society is prepared to consider reasonable is infringed,'" but "[i]n this case, no evidence was presented that such a public response to use of the Flock System by law enforcement has occurred." *Jackson*, 2025 WL 1530574 at *9. Unlike in *Jackson*, Mr. Grimmett

presents evidence about the public's hostility toward Wichita's ALPR dragnet surveillance system. *See* ¶¶ 62-63, 90-96, 101-102, 109-122, 133-134, 140.[11]

Mr. Grimmett's expectation of privacy in the whole of his movements is reasonable. And as shown next, Wichita's warrantless ALPR dragnet surveillance program violates his reasonable expectation of privacy.

2. Mr. Grimmett's extensive factual allegations demonstrate that Wichita's warrantless ALPR dragnet surveillance program *violates* his reasonable expectation of privacy.

Based on ample factual support drawn from public meetings, news articles, Flock's website, Wichita's contracts with Flock, Wichita's ALPR guidance document, and more, and following the holdings of *Jones, Carpenter, Leaders of a Beautiful Struggle II, Chatrie, and Kyle*, Mr. Grimmett has "sufficiently apprise[d]" the government that he has a reasonable expectation of privacy, and that Wichita's warrantless ALPR dragnet surveillance program violates that expectation, which is all that is required at this early stage. *Hill's Pet Nutrition*, 60 Kan. App. 2d at 521.

a. Wichita's warrantless dragnet surveillance program reveals the privacies and intimacies of Mr. Grimmett's life, including his visits to sensitive locations.

Based upon the facts alleged, which must be accepted as true, Mr. Grimmett has demonstrated that Wichita's warrantless dragnet surveillance program reveals Mr. Grimmett's "physical movements," "provide[s] an intimate window" into his life, reveals the "privacies" of his life, and given the "retrospective quality of the data," allows the police to "travel back in time" to retrace his whereabouts, and that such surveillance "runs against everyone." *Carpenter*, 585

[11] Wichita's reliance on *Junction City Police Dep't. v. $454,280 U.S. Currency*, 531 P.3d 539, 2023 WL 4278881 (Kan. Ct. App. 2023), is equally and entirely misplaced for all of the reasons above. What's more, it's an unpublished case that was decided pre-*Chatrie*; and in any event, the crux of the matter was whether the application of collateral estoppel applied in a forfeiture case, because the claimant's motion to suppress—*filed pre-Carpenter*—was denied in his criminal case. *Id*. at *8.

U.S. at 309-310, 311, 313; ¶¶ 1-8, 15, 33-36, 38-54, 64, 78-81, 82, 144-150, 152-172, 210.a., 212.i., 216.e-f., k-m., o., p.; *see also Leaders of a Beautiful Struggle II*, 2 F.4th at 343-44 (explaining that people's "movements are so unique and habitual," that it is easy to identify people "from just a few random points" of their movements.); Stolmack, *Eyes on the Road*, 9 UCLA Crim. Just. L. Rev. at 121 ("data collected by an ALPR may reveal the movements of a driver and their passengers or cargo in and out of the car").

Wichita's surveillance far exceeds the seven days of surveillance that the Supreme Court declared unconstitutional in *Carpenter*. *See Chatrie*, 609 U.S. at 627-628 ("Recall that *Carpenter* involved seven days' worth of location data); *id*. at n.8 (reiterating that *Carpenter* involved seven days of data).[12] As explained in Wichita's ALPR retention "guidance" document, non-Flock-specific data is automatically retained *for three years*, ¶ 85; and Flock-specific data is automatically retained for 30 days, ¶85, but can be stored *indefinitely* for other reasons, including "whenever directed by a supervisor," ¶¶ 86-87; and in any event, there is nothing preventing officers from downloading or storing the data every thirty days, ¶¶ 87-88; or providing the data to other agencies who can simply return it to Wichita, ¶¶ 89-90. Additionally, Wichita is free to revise its "guidance" document at any time so that data can automatically be stored indefinitely.

Mr. Grimmett has also demonstrated that Wichita's dragnet surveillance program has the capacity to reveal his visits to sensitive locations, such as the gun range, a relative's nursing home, his doctor's office, meetings with his lawyers, union meetings, or Sunflower Privacy Alliance meetings. ¶ 15; ¶¶ 132-138. As *Chatrie* held, "even short-term monitoring of a person's physical movements" is a search because it *can* reveal such trips. 609 U.S. 605, 629 (cleaned up).

And as the district court explained in *Kyle*, even if "ALPR technology does not provide the same precision in location information as cell phones," "it could still reveal a lot about a person's whereabouts, and it is easy to imagine the kinds of sensitive information it collects. It could track and log a couple struggling to start a family at the fertility clinic. It could show how often someone

[12] In its brief, Wichita mistakenly states the number. Govt's Br. at 21 ("In *Carpenter*, the officer's collected 127 days' wor[th] of data.").

visits a liquor store or casino. It could show which doctor someone goes to or what lawyer's office someone visits. It also collects mundane information about people's commutes, but it collects a tremendous amount of such information all the time." --- F.Supp.3d ----, 2026 WL 2958728 at *14. "Regardless of whether someone is suspected of criminal activity, ALPR databases catalog expansive and sensitive accounts of their movements." Stolmack, *Eyes on the Road*, 9 UCLA Crim. Just. L. Rev. at 121 (cleaned up).

b. Wichita's warrantless dragnet surveillance program is cheap, easy, and efficient compared to traditional surveillance techniques, and it runs against *everyone*.

When considering the government's use of modern technology, a "mechanical interpretation" of a search and seizure clause is properly rejected, otherwise it "would leave [individuals] at the mercy of advancing technology." *Carpenter*, 585 U.S. at 305 (cleaned up). Indeed, courts are "obligated—as subtler and more far-reaching means of invading privacy have become available to the Government—to ensure that the progress of science does not erode" one's protections from warrantless searches. *See id.* at 320 (cleaned up).

With that, *Carpenter* considered whether the surveillance tool was "remarkably easy, cheap, and efficient compared to traditional investigative tools" and whether it "runs against everyone." 585 U.S. at 311-312. Similarly, *Chatrie* considered whether the technology allowed law enforcement to "log" people's movements, "with just the click of a button," without deciding in advance "who they want to follow and when." 609 U.S. at 624 (cleaned up).

The reason that matters is because "[p]rior to the digital age, law enforcement might have pursued a suspect for a brief stretch, but doing so for any extended period of time was difficult and costly and therefore rarely undertaken." *Carpenter,* 585 U.S. at 310 (cleaned up); *see also Jones* 565 U.S. at 430 ("[S]ociety's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period.") (Alito, J., concurring in the judgment)

(cleaned up). Courts cannot allow the proliferation of cheap, ubiquitous surveillance devices to erode the constitutional liberties of the people.

Mr. Grimmett's petition shows that, through the government's *own* statements, Wichita's warrantless dragnet surveillance program is comparatively cheap, easy, and efficient. The police captain who oversees the program believes that its surveillance system would be "the equivalent of 200 police officers who are deployed to conduct surveillance twenty-four hours a day, seven days a week," and that as a "practical matter, it would be impossible for the Wichita Police Department to have 200 police officers conducting surveillance around the clock, every day of the year." ¶¶ 76-77. Those 200 never-tiring, always-watching "officers" indiscriminately capture anyone and everyone driving through Wichita and log their movements in a database. ¶¶ 1, 8, 64, 210.a., 216.m.

Mr. Grimmett's allegations are the very reasons the district court in *Kyle* held that ALPR technology invades reasonable expectations of privacy. "[B]y virtue of how ALPR technology works," the district court explained, police officers "using these systems have access to a continuously updated location history for *all* vehicles caught on ALPR cameras within the network. This is a type of indiscriminate mass surveillance. It is not targeted on a single individual, as in *Carpenter*. It is a tool that collects information about all vehicles that pass by any network-connected camera at all times, and it serves up the information to law enforcement on demand." *Kyle*, --- F.Supp.3d ----, 2026 WL 2958728 at *13 "It is not too much" the district court went on, "to draw the line at indiscriminate mass surveillance."

c. Wichita's warrantless dragnet surveillance uses technology to gather information that would otherwise be impossible to obtain without the technology.

The Supreme Court has explained that when technological advances enable surveillance that "would previously have been unknowable," the "surveillance is a 'search' and is

presumptively unreasonable without a warrant." *Kyllo*, 533 U.S. at 40.[13] Using Flock's own website, its trademark applications, presentations by the Wichita Police, Congressional Research Services publications, and much more, Mr. Grimmett has demonstrated that Wichita's sophisticated, A.I.-powered surveillance gathers information that would be otherwise impossible to obtain and was previously unknowable. ¶¶ 3-8; 33-53; *see also*, ¶¶ 200, 212.i, 216.e., m.

B. Wichita's warrantless ALPR dragnet surveillance program violates Mr. Grimmett's Section 15 rights under a property-based analysis.

In addition to violating Mr. Grimmett's reasonable expectation of privacy, Wichita's warrantless ALPR dragnet surveillance is unconstitutional under the property-based framework described in *United States v. Jones*, 565 U.S. 400 (2012) and *State v. Talkington*, 301 Kan. 453, 462 (2015) (collectively referred to as *Jones-Talkington*). That is because a government-mandated license plate, when coupled with Wichita's ALPR dragnet surveillance, is the functional equivalent of a tracking device, which constitutes a trespassory search.

The Fourth Amendment's text "reflects its close connection to property," *Jones*, 565 U.S. at 405, and until 1967 was tied to intrusions on property. *Id.* Section 15's textual connection to property is even more explicit, with *all* forms of "property" falling within its textual protection, not just the Fourth Amendment's "houses, papers, and effects."[14] *See* the definition of "property" below in Section II.D.2.a.

Under the *Jones-Talkington* property-based test, when the government "obtains information" by "intruding" on protected property, a search "has undoubtedly occurred." *Florida v. Jardines*, 569 U.S. 1, 5 (2013) (citing *Jones*, 565 U.S. at 406 n.3). Under the *Jones-Talkington* framework, a search occurs when the government intrudes on any property right to

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[13] *See also, Carpenter*, 585 U.S. at 305 ("As technology has enhanced the Government's capacity to encroach upon areas normally guarded from inquisitive eyes," the United States Supreme Court "has sought to assure preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.") (cleaned up).

[14] *See Jones*, 565 U.S. at 411 n.8 (2012) ("The Fourth Amendment protects against trespassory searches only with regard to those items ('persons, houses, papers, and effects') that it enumerates."

obtain information. The intrusion on property rights does not need to be physical, and a non-physical intrusion on property rights triggers the property-based test. *See United States v. Ackerman*, 831 F.3d 1292, 1307-1308 (10th Cir. 2016) (Gorsuch, J.) (search of e-mail and digital attachments is a search under the property-based test); *see also Chatrie*, 609 U.S. at 646-651 (Gorsuch, J., concurring in the judgment) (digital search of Location History data stored on Google server triggered traditional property-based test).

The *Katz* reasonable-expectation-of-privacy test supplemented the original property-based framework—it did not displace it. *Talkington*, 301 Kan. at 462; *see also Jones* 565 U.S. at 400; *Byrd*, 584 U.S. at 403; *Ackerman*, 831 F.3d at 1307. The property-based approach is the "baseline," while *Katz* provides supplemental protection in situations where the government invaded privacy without intruding on property. *Talkington*, 301 Kan. at 462.

Under the *Jones-Talkington* property-based framework, Section 15's protections do not "rise or fall" based on expectations of privacy, *Jones*, 565 U.S. at 406, which are irrelevant under the property-based test. *Jardines*, 569 U.S. at 11. The *Katz* test "*added to*, not *substituted for* the traditional property-based" framework. *Talkington*, 301 Kan. at 462 (cleaned up). Privacy-based claims could be "extinguish[ed]" under *Katz*, but property-based claims could nonetheless be protected under the property-based rubric. *See Carpenter*, 585 U.S. at 399-400 (Gorsuch, J., dissenting). This is because relying on *Katz*'s privacy-based test alone would erode the "irreducible constitutional minimum" protection afforded by the property-based test. *Jones*, 565 U.S. at 414 (Sotomayor, J., concurring).

The property-based approach must be independently applied irrespective of the existence of a reasonable expectation of privacy. That was demonstrated in *Jones*, where the Court expressly refused to apply the privacy-based test from *Katz*. *See Jones*, 565 U.S. at 407-410. In other words, property-based searches are analyzed differently from privacy-based ones.[15]

[15] *E.g., Jardines*, 569 U.S. 1; *Collins v. Virginia*, 584 U.S. 586, 594 (2018); *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019); *Johnson v. VanderKooi*, 509 Mich. 524, 537 (2022); *United States v. Gregory*, 497 F. Supp. 3d 243, 271 (E.D. Ky. 2020) (under a property-based

Nonetheless, the government's brief repeatedly cites *privacy*-based cases when arguing against Mr. Grimmett's *property*-based claim. Govt's Br. at 16 (citing *United States v. Diaz-Castaneda*, 494 F.3d 1146 (9th Cir. 2007), *United States v. Ellison*, 462 F.3d. 557, 561 (6th Cir. 2006), and *United States v. Walraven*, 892 F.2d 972, 974 (10th Cir. 1989)); *id*. at 17 (citing *United States v. Knotts*, 460 U.S. 276, 286 (J. Brennan, concurring), *Kyllo*, 533 U.S. 27; *id*. at 18 (citing *California v. Ciraolo*, 476 U.S. 207 (1986)). Whatever role those cases may play in Mr. Grimmett's privacy-based claim, they are immaterial to his *Jones-Talkington* property-based claim.

Mr. Grimmett's vehicle is *his property*.[16] Under *Jones-Talkington*, a government intrusion onto Mr. Grimmett's vehicle to collect information[17]—*no matter how minute*—is a Section 15 search.

The government mistakenly claims that Mr. Grimmett "has not asserted any physical trespass on his property or vehicle," Govt's Br. at 18; and that Mr. Grimmett "alleges that the taking of photos of vehicles constitutes a trespassory search," Govt's Br. at 16, but there "is no trespass in taking a photograph of a vehicle," Govt's Br. at 18. The government's argument misses the point. Mr. Grimmett *has* alleged that the government has intruded on his property rights in his vehicle, and all vehicle owners for that matter, not by taking photos, but by mandating that a government license plate be "attached to the rear of the vehicle." K.S.A. § 8-133. ¶¶ 201-208. Moreover, the government has criminalized the placement of anything on that government license plate that would affect its "visibility," "reflectivity," or "legibility," K.S.A. § 8-15,110. And there

framework, "it need not consider whether Gregory held a reasonable expectation of privacy in that area"); *Matter of United States*, 637 F. Supp. 3d 343, 355-66 (E.D.N.C 2022) ("reasonable expectation of privacy" "is irrelevant" under property-based framework).

[16] Even if he were only leasing, renting, borrowing a car, or driving a work vehicle, he would still have property rights in the vehicle as a lessee or bailee, which still triggers constitutional protection. *Jones*, 565 U.S. at 404 n.2.

[17] If Wichita's ALPR system were doing nothing more than scanning for stolen vehicles and reporting them to police, while discarding any image taken of a non-stolen vehicle, that might not trigger the property-based test, since a thief does not have a property right in a stolen vehicle, and it is safe to assume that the lawful owner consented to the search when they reported the vehicle stolen.

is no doubt that the license plate belongs to the government. K.S.A. § 8-142 (misdemeanor for failing or refusing to surrender the government's license plate); *see also Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (license plates are government speech and may not force owners to "use their private property as a 'mobile billboard' for the State's ideological message or suffer a penalty."). Wichita itself requires vehicles to "have attached thereto and displayed thereon the license plate," and makes it a crime to "[r]emove, conceal, alter, mask or deface the license plate." Wichita Code § 11.38.300.

Mr. Grimmett would like to remove or cover the government license plate from his vehicle to prevent being tracked by Wichita's ALPR dragnet surveillance system. ¶ 206. But if Mr. Grimmett were to leave his home and drive in Wichita without the government license plate affixed to his vehicle the Wichita Police Department would enforce the license plate mandate against him.

Wichita, and its ALPR dragnet surveillance system, has forced Mr. Grimmett into the impossible situation of either submitting to persistent warrantless tracking or foregoing travel by private automobile. Given the impracticality of traveling in Wichita by means other than private automobile, ¶¶ 132-138, 208, Wichita gives Mr. Grimmett no choice but to be tracked by the government-mandated license plate. That's true even though Mr. Grimmett has a fundamental right to travel within the city of Wichita, within Kansas, or to other states and countries. *Manzanares*, 214 Kan. at 600.

Before the advent of ALPR dragnet surveillance systems, such as Wichita's, legally mandating license plates on cars may not have violated rights under Section 15. That is because the purpose of that property intrusion was not to *collect information* about drivers' movements *en masse*. Instead, this intrusion was "for the purpose of identifying vehicles registered under the provisions of the motor-vehicle registration laws." K.S.A. § 8-126a. Kansas' motor-vehicle registration laws in general, and the license plate mandate in particular, do not exist to generate records of Mr. Grimmett's movements for criminal investigations, they exist to aid the government in collecting taxes and promoting other financial considerations.

There is a reason the Department of Revenue issues license plates and registration stickers, rather than, say, the Attorney General's Office or the Kansas Highway Patrol: the vehicle registration requirement and license plate mandate are an exercise of the state's tax power, not its police power. The requirements for obtaining a license plate or renewing registration stickers are all financial: payment of personal property taxes; payment of insurance premiums; and payment of tolls to the Kansas Turnpike Authority. K.S.A. § 8-173.

Indeed, trying to justify the license plate requirement under the state's police power would raise serious constitutional concerns. Police may not simply force anyone they see in public to stop and identify themselves. Only when an officer has reasonable suspicion to believe that an individual is committing, has committed, or is about to commit a crime may they detain that individual and "demand of the name, address of such suspect." K.S.A. § 22-2402(1); *see also Terry v. Ohio*, 392 U.S. 1 (1968). Police may not simply sidestep these constitutional protections by forcing pedestrians to wear a visible ID card on a lanyard at all times to allow police to conveniently collect identifying information. Nothing changes when that individual gets behind the wheel. *State v. Doelz*, 309 Kan. 133, 139 (2019) ("if an officer possesses reasonable suspicion to stop a vehicle, it is well established that the officer may ask a suspect to identify himself" under *Terry* and K.S.A. § 22-2402) (cleaned up).

The requirement to affix a plate from the Department of Revenue to a vehicle is no different from the requirement to affix a tax stamp from the Department of Revenue to a pack of cigarettes. K.S.A. §§ 79-3311, 79-3311a, 79-3313. Both intrude on the property rights of the owner, but the limited purpose of the intrusion is to provide proof of tax payments, not to collect information for criminal investigations. Put simply, the government license plate mandate originated as a means of distinguishing tax compliant vehicles that were allowed on the public roads from untaxed vehicles that were prohibited from the public roads.

Wichita's deployment of its ALPR dragnet surveillance and tracking system fundamentally changes the nature of a government license plate. The intrusion on Mr. Grimmett's property rights no longer serves the limited purpose of providing proof of tax payment. Instead, when paired with

Wichita's ALPR dragnet surveillance and tracking system, the government's intrusion on Mr. Grimmett's property now serves to identify Mr. Grimmett and collect information about his comings and goings.

In other words, Wichita has transformed a government tax stamp into the functional equivalent of a GPS tracking device, and if Mr. Grimmett removed or interfered with that tracking device by obscuring it, the Wichita Police would arrest and charge him with a crime. And that requirement to place a tracking device on a vehicle to collect information about its whereabouts makes ALPR dragnet surveillance a search under the *Jones-Talkington* property-based framework. *Jones*, 565 U.S. at 404. Similarly, placing an identifying mark, "regardless of how slight," on a vehicle to collect information "used by the City to issue citations," is a search "to obtain information under *Jones*." *Taylor v. City of Saginaw*, 922 F.3d 328, 333 (6th Cir. 2019).

Even if Wichita claims that K.S.A. § 8-133 or Wichita Code § 11.38.300 provides the government some sort of right to use a portion of Mr. Grimmett's vehicle for a license plate, along the lines of an easement or license, the limited purpose of that easement or license is to provide proof of tax compliance. By using the government license plate to track Mr. Grimmett's comings and goings, Wichita exceeded the scope and purpose of that limited easement or license and violated Mr. Grimmett's property rights. *See Drouhard v. City of Argonia*, 64 Kan. App. 2d 246, 251 (2024) ("An easement holder commits a trespass by exceeding the rights provided under the easement."); *see also* Amy Peikoff, *The Record, Not the Lens: ALPR Retention, Property, and the Fourth Amendment*, 28 N.C. J.L. & Tech (Forthcoming in Apr. 2027).[18]

In *Jardines*, the Court acknowledged an implicit license allowing officers to "approach a home and knock" just like "the Nation's Girl Scouts and trick-or-treaters," but the scope of the license was "limited not only to a particular area but also to a specific purpose." 569 U.S. at 9. "But introducing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence," exceeded that license and was a search under the *Jones-Talkington* test.

[18] Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7280339.

Id. Every time one of Wichita's ALPRs captures Mr. Grimmett's vehicle, analyzes the data, and logs the information in a database it exceeds the scope of its easement or license and commits a new trespass on his property to collect information in violation of Section 15.

Wichita contends that its ALPR dragnet surveillance system is different from the GPS tracker used in *Jones* because the specific device that collects information (the Flock ALPR) is "located in public areas or public right of way," Govt's Br. at 18, and separate from the device on Mr. Grimmett's vehicle (the license plate). Conversely, the GPS device collecting information "in *Jones* physically touched the Defendant's property or effects (underneath side of vehicle)." Govt's Br. at 17. Wichita believes that there can be no property-based search since no "City of Wichita officer has ever had any contact with the Plaintiff or his vehicle, much less physically touched the vehicle." Govt's Br. at 19. This argument is too clever by half.

The only way that the GPS tracking system in *Jones* and the ALPR tracking system in this case can collect any information is because they are complex *systems* that require a portion of the system to be located on the vehicle. The tracker on Mr. Jones's car, on its own, was worthless to law enforcement. Only when paired with a constellation of dozens of government satellites,[19] controlled by dozens of government ground control facilities,[20] and countless cell towers, could the device on Mr. Jones's car collect and convey any information to law enforcement. *Jones*, 565 U.S. at 403 ("By means of signals from multiple satellites, the device established the vehicle's location within 50 to 100 feet, and communicated that location by cellular phone to a Government computer."). The device attached to Mr. Jones's car was just a small, but vital, part of a much larger system needed to collect information about his comings and goings.

Similarly, the device attached to Mr. Grimmett's vehicle—the government license plate—is just a small, but vital, part of a much larger system needed to collect information about his comings and goings. To collect information Wichita's ALPR dragnet surveillance system pairs the

[19] *See* https://www.gps.gov/space-segment

[20] *See* https://www.gps.gov/control-segment

government license plate with hundreds of Flock Falcon cameras, which use a network of cellular towers to transmit photos to Flock's servers, where an A.I. analyzes the photos and then provides information to the Wichita Police via a web portal or mobile app. ¶¶ 7, 33-54, 68-74, 202-203.

It is this surveillance and tracking *system* that Mr. Grimmett challenges, and this system functions by intruding on his property rights in his vehicle to collect information without a warrant, without probable cause, without reasonable suspicion, without even a hunch. As such it violates the *Jones-Talkington* test of Section 15.

C. Wichita's warrantless ALPR dragnet surveillance program is unconstitutionally unreasonable.

1. There is insufficient oversight involving Wichita's warrantless ALPR dragnet surveillance program, and the undisputed evidence demonstrates that it's ripe for abuse.

Where surveillance tools do not have the proper "oversight from a coordinate branch" and are "amenable to misuse," they are unreasonable and thus unconstitutional. *See Jones*, 565 U.S. 400, 416 (Sotomayor, J., concurring); *see Leaders of a Beautiful Struggle II*, 2 F.4th at 347.

As Mr. Grimmett has alleged, there is virtually *no oversight* involving Wichita's ALPR surveillance program. On paper, Wichita has a written ALPR policy. But in reality, it's just a toothless "guidance" document. Pet. Ex. 17 (purpose is to provide "guidance on the application" of license plate readers). Indeed, the policy could be rewritten at any time without even a vote of the City Council.

Because there's no oversight, the person overseeing Wichita's ALPR surveillance program candidly admits that he "knew" that police officers were going to misuse the program "eventually," and that such misuse "is not shocking." ¶ 101. But still, he says, the public should just "trust" "the officer." ¶ 102. And the *reason* there's no oversight is because, according to Wichita, it's "*not even possible*" to "scrutinize" all of the "police searches" involving the ALPR surveillance program. ¶ 96 (italics added).

The concerns about abuses of warrantless ALPR dragnet surveillance aren't academic. The system is, in fact, being abused, including in Wichita.

Using "Wichita's surveillance system," ¶ 93, former Kechi Police Department officer Victor Heiar used Flock ALPRs to track his estranged wife. ¶ 93. The "illicit search went unnoticed until" his estranged wife "complained she was being tracked." ¶ 93. "The former Kechi officer used several different reasons for his search, which never got flagged. Those reasons, according to a court document, included 'test' and 'invest' and 'investigation' and 'ab501' and '123abv' and '****.'" ¶ 93.

Former Sedgwick Police Department Chief Lee Nygaard reportedly used Flock ALPRs to track his ex-girlfriend and her new boyfriend. ¶ 94. And former Bonner Springs Police Department Detective Kyle Rector allegedly used ALPRs to track his wife and two men he believed to be romantically involved with her. ¶ 95. Similar abuse has been reported across the country. ¶¶ 97-100.

Because ALPRs are estimated to be about 80-85% accurate, ¶¶ 54, 105, it's estimated that Wichita's surveillance program is suffering from approximately 135,690 to 180,920 errors a month, ¶¶ 105-108. And because the technology has no oversight, is ripe for abuse, and error-laden, it's no surprise innocent drivers are wrongly being detained because of the ALPRs errors as well, ¶¶ 104-109, 111. The risk of errors in Kansas is even greater because the State issues multiple plates with duplicate numbers, and Flock's A.I. does not bother to distinguish between them. ¶¶ 109-110.

Despite being abused and unreliable, Wichita shares its surveillance with *hundreds* of other governmental agencies, ¶ 9; Pet. Ex. 4; including federal agencies, ¶¶ 12-14; and once it's shared, "Wichita police officials have no control over how those outside agencies use it and no way to flag unlawful searches of its license plate reader database." "Out-of-state agencies could use the city's database to enforce laws that don't exist in Wichita[.]" ¶¶ 89-90.

2. Wichita's warrantless ALPR dragnet surveillance program is functionally the same as the general warrants our Nation's Founders reviled.

Founding-era history is especially relevant when deciding Mr. Grimmett's case. *Carpenter*, 585 U.S. at 296-297 (2018) ("Founding-era understandings" are especially important "when applying the Fourth Amendment to innovations in surveillance tools"); *Chatrie*, 609 U.S. at 621 (analysis informed by "guideposts' stretching back to the Fourth Amendment's beginning"); *Lange v. California*, 594 U.S. 295, 309 (2021) (Fourth Amendment provides "at a minimum the degree of protection it afforded when it was adopted") (cleaned up); *Gonzalez v. United States*, 145 S. Ct. 529, 532 (2025) (Sotomayor, J., respecting denial of certiorari) (Supreme Court's "decisions in *Kyllo*, *Madrid*, *Jones*, *Moore*, and *Lange* all say, however, that the Fourth Amendment must protect at minimum those rights recognized by the founding-era common law"); *Steagald v. United States*, 451 U.S. 204, 217 (1981) (Founding-era common law "instructive in determining the types of searches the Framers of the Fourth Amendment regarded as reasonable").

At the time of our Nation's Founding, Colonists were subjected to suspicionless searches by the Crown—in the form of general warrants and writs of assistance—and the Colonists absolutely *hated* them.

In *Paxton's Case* (1761),[21] the great patriot James Otis described those suspicionless searches as "instruments of slavery," "villainy," and the "worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of the constitution that ever was found in an English law-book." John Adams's "Abstract," *reprinted in* M.H. Smith, The Writs of Assistance Case 552 (1978).[22]

The reasons the Colonists "reviled" those suspicionless searches were because "they unduly interfered with private life," Laura K. Donohue, *The Original Fourth Amendment*, 83 U.

[21] *Paxton's Case* (1761) was, of course, "perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country," *Boyd v. United States*, 116 U.S. 616, 625 (1886), and "helped spark the Revolution itself," *Carpenter*, 585 U.S. at 303-304 (cleaned up).

[22] *See also* https://founders.archives.gov/documents/Adams/05-02-02-0006-0002-0003#LJA02d036n23-ptr

Chi. L. Rev. 1181, 1240 (2016); were "dangerous to freedom, and expressly contrary to the common law," John Dickinson, Letters from a Farmer in Pennsylvania, Letter No. 9, 89 (1768); and because they afford "a power that places the liberty of every man in the hands of every petty officer." Smith, *supra* at 553 (Mr. Otis's argument).

The Fourth Amendment's prohibition on suspicionless and warrantless searches is, therefore, individual liberty's cornerstone, *see Byrd*, 584 U.S. at 402-403 (2018), was meant to "place obstacles in the way of a too permeating police surveillance," *Carpenter*, 585 U.S. at 305 (cleaned up), and "gives concrete expression to a right of the people which 'is basic to a free society,'" *Camara v. Mun. Court*, 387 U.S. 523, 528 (1967) (quoting *Wolf v. People of the State of Colorado*, 338 U.S. 25, 27 (1949)). The prohibitions protect against "unwarranted intrusions," *Winston v. Lee*, 470 U.S. 753, 760 (1985) (cleaned up), "arbitrary invasions," *Camara*, 387 U.S. at 528, and "*all general searches*" by the government, *Go–Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931) (emphasis added). Indeed, their very purpose was to *forever* stamp out the suspicionless searches the Founders despised and reviled. *See Boyd v. United States*, 116 U.S. 616, 625-30 (1886).

And although Section 15 is different from the Fourth Amendment (more on that later), *its* history and purpose, like the Fourth Amendment, includes preventing the return of the "odious general warrants, which placed the liberty of every man in the hands of every petty officer," and was specifically designed to "protect him in his liberty and property against the arbitrary action of those in authority[.]" *In re Kellam*, 55 Kan. 700, 41 P. 960, 961 (1895); *State v. Gleason*, 32 Kan. 245, 4 P. 363, 365 (1884) (holding that Section 15 was itself a fundamental right designed to protect "liberty and property" from arbitrary government power).

Like the odious and reviled general warrants of old, Wichita's warrantless ALPR dragnet surveillance program *is* searching anyone and everyone, without any form of individualized suspicion. Based upon the facts Mr. Grimmett has pleaded, which must be accepted as true, Mr. Grimmett has put Wichita on notice that Wichita's warrantless ALPR dragnet surveillance program is the equivalent of a general warrant, that it puts Mr. Grimmett's liberty in the hands of

petty officers, is dangerous to his freedom, and constitutes too permeating surveillance, and is therefore, violative of his fundamental rights under Section of 15 of the Kansas Constitution Bill of Rights. ¶¶ 103, 142, 216.a.-e.

D. Section 15 affords greater protections than the Fourth Amendment.

Because the Kansas Supreme Court has explained that Section 15 provides *at least* the same protections as the Fourth Amendment, *Cleverly*, 305 Kan. at 604, Wichita's warrantless ALPR dragnet surveillance is unconstitutional. After all, Wichita's dragnet surveillance violates Mr. Grimmett's reasonable expectation of privacy in his movements, under the collective readings of *Katz*, *Kyllo*, *Jones*, *Carpenter*, *Leaders of a Beautiful Struggle II*, *Chatrie*, and *Kyle*; and the program violates Mr. Grimmett's rights under the property-based framework described in *Jones* and *Talkington*.

But if this Court believes those Fourth Amendment cases *authorize* Wichita's warrantless ALPR dragnet surveillance program, this Court is not bound by them. The Fourth Amendment is the floor, not the ceiling. *Cleverly*, 305 Kan. at 604 (Section 15 "at least" as protective as the Fourth Amendment). Consequently, for the reasons that follow, this Court should analyze Section 15 under the same methodology the Kansas Supreme Court uses for other rights: examine the text, presume every word was deliberately chosen, consider the historical record and the circumstances of its adoption if necessary, and keep in mind the polestar consideration—the intention of the Framers and Adopters.[23] That interpretative methodology, faithfully applied, demonstrates that

[23] *See, e.g.*, *Wright v. Noell*, 16 Kan. 601, 607 (1876); *State ex rel. Stephan v. Finney*, 254 Kan. 632, 654-55 (1994); *State v. Carr*, 314 Kan. 615, 629 (2022); *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1041 (2024) (Wilson, J., concurrence) ("To interpret our Constitution, we first look to the constitutional text, and when the words themselves do not make the drafters' intent clear, we look to the historical record, remembering the polestar is the intention of the makers and adopters.") (cleaned up); *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 840-41 (2024) (Standridge, J., concurring in part, dissenting in part) (summarizing the court's constitutional interpretive methodology); *id.* at 847 ("Kansas Constitution's unique structure and ordering" an important factor to consider when determining Framers' intent).

Section 15 provides greater protections than the Fourth Amendment,[24] and that Wichita's warrantless ALPR dragnet surveillance program violates Section 15's text, structure, history, and purpose. If, on the other hand, this Court believes that caselaw *requires* it to interpret Section 15 *identically* to the Fourth Amendment, *e.g.*, *State v. Swinney*, 280 Kan. 768, 774 (2006), Mr. Grimmett preserves the issues for appellate purposes below.

1. Section 15 is largely treated the same as the Fourth Amendment only because courts have misread cases implementing *Mapp v. Ohio*'s exclusionary rule.

For more than a century after statehood, the Kansas Supreme Court interpreted Section 15 independently from the Fourth Amendment. But today courts treat it largely the same as the Fourth Amendment. That's *not* because they are the same thing; it's because courts misread one line from the Kansas Supreme Court's case originally applying *Mapp v. Ohio*'s exclusionary rule.

In *State v. Wood*, 190 Kan. 778 (1963), the Kansas Supreme Court considered whether unlawfully obtained evidence should have been admitted at trial after *Mapp v. Ohio*, 367 U.S. 643 (1961). The court explained that prior to *Mapp*, the federal exclusionary rule applied in federal prosecutions for federal crimes under the Fourth Amendment, but it did not apply in state prosecutions for state crimes. *Wood*, 190 Kan. at 785. But after *Mapp*, the *federal version* of the exclusionary had been "imposed" "upon the states." *Wood*, 190 Kan. at 785.

Against that extremely specific backdrop, the court concluded:

> The Fourteenth Amendment of the Federal Constitution, as extended by the United States Supreme Court in *Mapp v. Ohio*, *supra*, to protect citizens of the United States from unreasonable searches and seizures by state officers, does not go beyond the prohibition in our own constitution as above quoted. In other words, the command of the Fourth Amendment in the Federal Constitution to federal officers is identical to the command of

[24] Kansas's method of interpretation seemingly blends original-public meaning originalism with original-intent originalism. *See* Jeremy M. Christiansen, *Originalism: The Primary Canon of State Constitutional Interpretation*, 15 Geo. J.L. & Pub. Pol'y 341, 351-54, 363-65 (2017); *State v. Riffe*, 308 Kan. 103, 113 (2018) (Stegall, J., concurring) ("Though the Kansas Supreme Court has never expressly called our method of constitutional interpretation 'originalism,' we have repeatedly and regularly affirmed originalist principles.").

> Section 15 of the Kansas Bill of Rights to law enforcement officers in Kansas. *Wood*, 190 Kan. at 788.

Properly understood in its context, the court was acknowledging that after *Mapp*, Section 15 had to provide, at a minimum, an exclusionary remedy identical in effect to that which was required by the Fourth Amendment. Put differently, *Wood* merely held that Section 15 could not afford *less protection* than the federal minimum. It did *not* hold that Section 15 and the Fourth Amendment were interchangeable in every respect; or that the two were identical in every regard; and it did not import every federal decision wholesale.

A companion case issued the same day as *Wood* demonstrates that point. In *State v. Blood*, 190 Kan. 812, 816 (1963), the court reiterated that in *Mapp*, "the Fourth Amendment's right of privacy was declared enforceable against the states through the Due Process Clause of the Fourteenth Amendment, and was made enforceable against them by the same sanction of exclusion as is used against the Federal Government."

But in the years that followed, courts have misread *Wood*'s statement that Section 15 must provide an exclusionary remedy "identical" in effect to that which was required by the Fourth Amendment, to mean that the two are identical in every respect. But the Kansas Supreme Court has properly stated that Section 15 affords "*at least* the same protections" as the Fourth Amendment. *Cleverly*, 305 Kan. at 604 (emphasis added).

All of that is to say, *Wood*'s context-specific statement about *Mapp*'s exclusionary rule has been misinterpreted over the years so that Section 15 is largely treated the same as the Fourth Amendment. But under *Wood* and *Blood*, properly understood, Section 15 and the Fourth Amendment *are not identical*. Section 15 can provide *greater* protections, but it cannot provide less. And for the reasons that follow, under the Kansas Supreme Court's current interpretative methodology, Section 15 indeed provides greater protections than the Fourth Amendment.

2. Section 15's text, history, and tradition are different than the Fourth Amendment's.

a. Section 15's text.

The Framers of the Kansas Constitution adopted a search and seizure clause that deliberately departed from the Fourth Amendment. Instead of copying "persons, houses, papers, and effects," Section 15 uses the *much broader phrase* "persons and property."

At the time Section 15 was written, the ordinary meaning of "property" included "right of possession," "possession held in one's own right," "the thing possessed," "nearness or right," or "something useful; an appendage." Samuel Johnson, *A Dictionary of the English Language* 504 (rev. ed. 1834) (cleaned up). The 1851 edition of Noah Webster's *American Dictionary* defined "property" as "The exclusive right of possessing, enjoying, and disposing of a thing; ownership." Noah Webster, et al., Eds., *An American Dictionary of the English Language* 878 (1851) (cleaned up). It also included "possession held in own's right," "the thing owned; that to which a person has the legal title, whether in his possession or not. It is one of the greatest blessings of civil society that the *property* of citizens is well secured," "an estate, whether in lands, goods, or money; as, a man of large *property* or small *property*," or "an estate; a farm; a plantation." *Id.*

Beyond those dictionary definitions, by the time of the Wyandotte Convention, the word "property" had a well-understood broader legal and philosophical meaning, one rooted in natural-rights theories, which was central to the political thought that shaped the Kansas Constitution.

The starting point for determining the meaning of property in the Kansas Constitution is John Locke and his theories on inalienable natural rights. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 639 (2019) ("Locke's views on natural rights are significant."); *State v. Carr*, 314 Kan. 615, 635 (2022) (same). *See also*, Morgan Cloud, *Property is Privacy: Locke and Brandeis in the Twenty-First Century*, 55 Am. Crim. L. Rev. 37, 44 (2018) ("The most influential source of this broader theory of property was John Locke's Second Treatise of Government"); *id.* at 47 ("It is difficult to overstate the impact of the Lockean concept of property.") (cleaned up).

According to Locke, "[t]he great and *chief end* therefore, of Mens [sic] uniting into Commonwealths, and putting themselves under Government, *is the preservation of their property*." John Locke, *Second Treatise of Civil Government* § 124 *in* Peter Laslet ed., *Locke: Two Treatises of Government* 351 (Cambridge University Press 1988) (1698) (emphasis in original).

The whole point of government, under Locke's theory, was "to secure every one's property." *Id.* § 131, at 353; *see also id.* § 138, at 360 (government exists "for the preservation of property" and "for which men enter into society") (cleaned up). Locke's concept of property included estates, possessions, and land. *Id.* § 123, at 350; *id.* §§ 30, 36, 38, at 290, 292-293, 295; *id.* § 32, at 290 ("But the *chief matter or Property* being now . . . the earth itself") (cleaned up)).

Locke used the word property as a "comprehensive term for all rights," Timothy Sandefur & Christina Sandefur, Cornerstone of Liberty: Property Rights in 21st Century America 53 (2d ed. 2016), which included "the safety and liberty of one's person," Cloud, 55 Am. Crim. L. Rev. at 49.

The Lockean concept of property formed the basis for one of history's most significant search and seizure cases, *Entick v. Carrington*, 19 Ho. St. Tr. 1029 (C.P. 1765). In *Entick*, Chief Justice Charles Pratt, relying on "John Locke's philosophy of natural rights," ruled "that the protection of private property underpinned the formation of society as a sacred right," and issued a devasting rebuke of the Crown's use of the general warrant, comparing it to the Star Chamber. William J. Cuddihy, The Fourth Amendment: Origins and Original Meaning 602-1791, 454 (2009). He explained that "every invasion of private property, be it ever so minute, is a trespass," 19 How. St. Tr. 1029, 1066 (C.P. 1765), and was therefore an "invasion of the indefeasible rights of personal security, liberty, and private property," Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1198 (2016).

America's Founders were also profoundly influenced by Locke's theories, including James Madison. Sandefur, *supra* at 11. *See, generally*, Cloud, 55 Am. Crim. L. Rev. 37.

And Madison's views on the meaning of property are particularly instructive when interpreting Section 15. That's because the Kansas Framers adopted Madison's preferred version

of a search and seizure clause. Neil C. McCabe, *State Constitutions and the Open Fields Doctrine: A Historical Definitional Analysis of the Scope of Protection against Warrantless Searches of Possessions*, 13 Vt. L. Rev. 179, , 182, 192 (1988).

To start with, Madison's views on property were similar to Locke's. Cloud, 55 Am. Crim. L. Rev. at 47. In his 1792 essay titled *Property,* Madison explained the "meaning" of property "embraces every thing to which a man may attach a value and have a right." James Madison, *Property*, (National Gazette, 27 March 1792).[25] "In a word," Madison explained, "as a man is said to have a right to his property, he may be equally said to have a property in his rights." *Id.*

In short, Madison "embraced Locke's broad understanding of the nature of property," Cloud, 55 Am. Crim. L. Rev. at 48, both of which were regarded as a natural and unalienable right, *id*. which government was "instituted to protect," *id.*

Besides "persons and property," and particularly relevant in Mr. Grimmett's case, by the time of the Wyandotte Convention, the word "search" meant "to look over or through for the purpose of finding something; to explore; to examine by inspection; as, to *search* the house for a book; to *search* the wood for a thief." Noah Webster, *An American Dictionary of the English Language* 66 (1828).[26] *See also*, John G. Wrench, *The Original Meaning of "Searches"*, 29 U.Pa. J. Const. L. ___ (posted Feb. 25, 2026) (forthcoming).[27]

By the Kansas Supreme Court's interpretative methodology, the phrase "persons and property," and the word "search" are much broader in their scope, meaning, and protections, than how the Fourth Amendment is currently interpreted.

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[25] James Madison, Property, (National Gazette, 27 March 1792). Available at https://founders.archives.gov/documents/Madison/01-14-02-0238

[26]Available at https://archive.org/details/americandictiona02websrich/page/n539/mode/2up

[27] Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6303338

b. The historical record and the surrounding circumstances of Section 15's adoption.

The events leading up to the Wyandotte Convention can help explain why the Framers and Adopters would have intended to depart from the federal constitution.

"The constitutions of Kansas were an outgrowth of the struggle between Freedom and Slavery for the control of the inchoate commonwealth." Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859 at 701 (1920). "[A]t every step of the discussion, the great controlling fact" was "the determination on the one side to make Kansas a slave state, and on the other a free state." *Id.* That "struggle" regularly involved unlawful searches and seizures.

Three years before the Wyandotte Convention, a group of merchants and citizens[28] called for a public meeting at the Free State Hotel in Lawrence to protest acts committed by "an organized band of lawless men along the Missouri river." *Great Commercial Meeting!,* The Kansas Herald of Freedom (March 29, 1856) at 3. The reason for the meeting was because goods and merchandise bound for Kansas were being broken upon and searched. The merchants condemned those lawless actions as "humiliating," "unknown in a civilized society," "detrimental to [their] property and happiness," and were considered "a surveillance degrading to humanity." *Id.*

Contemporaneous newspaper accounts also expressed concerns with general warrants, particularly with respect to abolitionist literature. Beginning in the 1830s, defenders of slavery sought to ban anti-slavery newspapers from the U.S. Mail, an idea endorsed by the Pierce[29] and Buchanan administrations.[30]

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[28] Among the group's officers was James Blood, and among the committee members was William Hutchinson. *Great Commercial Meeting!,* The Kansas Herald of Freedom, March 29, 1856, at 3. It seems likely, given the available record, that these were the same men who later served as delegates at the Wyandotte Convention. Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859 at 14 (1920) (names and occupations listed).

[29] *See* Clement Eaton, *Censorship of the Southern Mails,* 48 Amer. Hist. Rev. 266, 276 (1943).

[30] *See* W. Sherman Savage, The Controversy over the Distribution of Abolition Literature 1830-1860 at 75 (1938).

In March 1856, *The Kansas Herald of Freedom* reprinted an article asking whether President Pierce, through his appointee, Territorial Governor Wilson Shannon, would send a "Sheriff armed with a search warrant from one of the federal judges of the Territory, to make a [descent] upon the dwelling of every Free State man, in search of a copy of the *New York Tribune*, or of *Uncle Tom's Cabin*" or "any of the thousands of newspapers and productions of modern literature which contain 'statements, arguments, opinion, sentiments, doctrine, advice, or inuendo, calculated to produce dissatisfaction among the slaves.'" *What Will Congress Do?,* The Kansas Herald of Freedom, March 22, 1856 (asterisks removed) at 1.

The concern proved warranted. On May 21, 1856, Douglas County Sheriff Samuel J. Jones and U.S. Marshal Israel Donaldson led a violent pro-slavery attack on the town of Lawrence, which destroyed the *Herald of Freedom* press and the Free State Hotel. James C. Malin, *Judge Lecompte and the "Sack of Lawrence," May 21, 1856,* 20 Kan. Historical Q. 465 (1953). During the attack, Jones and Donaldson's henchmen entered "[n]early every house," Rev. Richard Cordley, D.D., A History of Lawrence, Kansas chap. 6 (1895), and searched "trunks, [took] letters, money, drafts, apparel, both ladies and gentlemen's, and destroyed anything that would break, even to daguerreotypes and children's toys," Sara Robinson, Kansas; Its Interior and Exterior Life 246 (1857).[31]

As Ms. Robinson explained:

> The first time in the history of the American people has an American town been besieged and its inhabitants robbed, by forces acting under the instructions of U.S. officers. Every outrage committed was in direct violation of that act in the constitution, which provides for the rights of the people in their persons, houses, papers and effects; but it was done by the administration, acting as the servile tool of the slave power. Can any freeman decide what other provision of the constitution cannot as easily be set aside, when it stands in the way of the slave power's subduing intentions? Robinson, *supra* at 249 (cleaned up).

[31] Sara T. L. Robinson was the wife of Charles L. Robinson, the first Governor of free Kansas. Noble L. Prentis, A History of Kansas 102, 302, 312 (1909).

And later, using language mirroring Section 15, she wrote "In violation of the Constitution of the United States, no regard was paid to the sacred rights of freemen in their persons and property." *Robinson, supra* at 348.

In November 1857, moreover, the *Kanzas News* reported that Deputy Marshal Butcher marched soldiers to the home of John Ritchey[32] to capture a fugitive slave. *Slave Hunting*, The Kanzas News (Nov. 21, 1857) at 1. The soldiers tried breaking into the home without "a writ." *Id.* The article condemned the soldiers' actions as "[a]nother of those outrageous and tyrannical acts which are peculiar to the slavery fostering government of the United States," and asked:

> How long our citizens are to be harassed in this way, the sanctity of their dwellings outraged, themselves subjected to pillage and insult, is a question yet to be answered. Its continuance or cessation depends entirely upon the answer which the people themselves shall give to it. Time was when a man's house was his castle, into which no power could venture with impunity, without due process of law. Shall that time ever return? *Id.*

Read against that contemporaneous historical record, it is unlikely that the Framers and Adopters would have intended to duplicate the very federal search and seizure clause that had failed them. Instead, what's more likely is that they wrote a more robust, Kansas-specific constitutional prohibition that stands on its own, and that provides greater protections than the federal counterpart that failed them.

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[32] It seems likely that John Ritchey (sometimes spelled Ritchie), was the same man who later served as a delegate at the Wyandotte Convention, and whose home served as a station along the Underground Railroad. Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859 at 14 (1920) (names); *Wyandotte Constitutional Convention, 1859, Cast of Characters*, available at https://freedomsfrontier.org/wp-content/uploads/2022/12/Wyandotte-Constitution_Cast-of-Characters.pdf (describing Ritchie as one of the delegates' "leading radicals"); *Ritchie House: Brown v. Board of Education National Historic Park*, https://www.nps.gov/places/ritchie-house.htm; *see also* H.C. Root, *A Few Incidents In The Life of General John Ritchie*, Kansas State Historical Society (1903). Available at https://8c9d159f-4175-4c51-b309-07967e7341b8.filesusr.com/ugd/eaea6b_a8c0da75ea7c413eb6e69d67c69a65d1.pdf.

c. Polestar consideration: the Framers' and Adopters' intentions.

The Framers wrote a constitution grounded in Lockean principles, designed to protect a non-exhaustive list of inalienable natural rights,[33] and which "liberally enshrine[d] individual rights."[34] Indeed, they adopted the broad, Madisonian formulation of "persons and property." Considering Locke's and Madison's natural rights theories, the Framers' insertion of the broader and more protective phrase "persons and property" into Section 15 makes perfect sense.

Contemporaneous accounts demonstrate the point. One newspaper urging the adoption of the Kansas Constitution described it as "second only to the Declaration of Independence," writing "that it glowed and vibrated with the largest liberty and noblest principles" and "so symmetrical in proportion, so perfect in harmony, so true to whatever is great and good, we may fitly term it the model Constitution of our common country," and "it proclaims that liberty we have struggled so long to win." *The Independence of Kansas*, White Cloud Kansas Chief, (Aug. 11, 1859) at 2 (cleaned up).

Another newspaper echoed that theme, calling the Kansas Constitution "an instrument almost perfect, in every feature," "Free State, freedom-loving in every sentence," "radiant with the sunlight or liberty," and "is true in every line and feature to Freedom!" *The Reason Why.*, *The Republican,* Western Home Journal (Solon O. Thacher ed. Aug. 4, 1859) at 2. Elsewhere the Kansas Constitution was described as where "the rights of the people are jealously cared for." *The Constitution., The Republican,* Western Home Journal (Aug. 4, 1859) at 2.

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[33] *Hodes*, 309 Kan. at 638-641 (recognizing Locke's influence on Kansas's founding documents and holding Section 1 of the Bill of Rights a Lockean guarantee); *id.* at 624-627, 630-633 (Lockean guarantees apply to an enormous variety of topics and are "nonexhaustive."); *Carr*, 314 Kan. at 630 (recognizing the Kansas Constitution protects Lockean natural rights); *Wilson v. Kansas Children's Home and Service League*, 159 Kan. 325, 154 P.2d 137, 139 (1944) (recognizing natural right of parents to custody of their minor children); *Babb v. Rose*, 156 Kan. 587, 134 P.2d 655, 656 (1943) (recognizing natural right of persons to hold and manage property and that statutes in derogation of these natural rights are to be strictly construed).

[34] Chris Birzer, *"Breathing New Life" into Section 15 of the Kansas Bill of Rights*, Kansas Law Review Blog (October 6, 2023). Available at https://kansaslawreview.ku.edu/breathing-new-life-section-15-kansas-bill-rights

Consequently, the polestar consideration—the Framers and Adopters' intent—demonstrates that Section 15 of the Kansas Constitution's Bill of Rights is more protective of rights than the Fourth Amendment; and should not be read as though it were interchangeable with the Fourth Amendment.

d. Tradition.

From the 1860s to the 1960s, the Kansas Supreme Court developed its own body of law regarding probable cause, warrants, and other search-and-seizure-adjacent issues.[35] Three cases particularly demonstrate the point that the Kansas Supreme Court interpreted Section 15 independently from the Fourth Amendment.

In 1884, the Kansas Supreme Court directly addressed Section 15's meaning in *State v. Gleason*, 32 Kan. 245, 4 P. 363, 365 (1884). There the Court held that Section 15 was *itself* a fundamental right designed to protect "liberty and property" from arbitrary government power, which principles "remain absolute and unchangeable," binding upon all future courts and legislatures. *Id.*[36]

Even though Section 15 is similar to the Fourth Amendment, the Court explained, allowing warrants to issue on "mere hearsay or belief" would "sw[eep] away" "all the guards of the common law *and of the bill of rights of our own constitution* to protect the liberty and property of the citizen against arbitrary power[.]" *Id.* at 366 (emphasis added). Notably, that Section 15 *is itself a fundamental right*, was reaffirmed in *State v. Ryce*, 303 Kan. 899, 909, 953 (2016), and then *reaffirmed again* in *Hodes*, 309 Kan. at 689 (Biles, J. concurrence) (describing *Ryce* as involving a

[35] *See, e.g.*, *Mayberry v. Kelley*, 1 Kan. 116, 1862 WL 406 (1862); *Wiley v. Keokuk*, 6 Kan. 94, 1870 WL 463 (1870). Early on, this occurred primarily through tort cases, which is how rights were typically vindicated then. *See, e.g.*, *Wilkes v. Wood*, 19 How. St. Tr. 1153 (C.P. 1763); *Entick*, 19 How. St. Tr. 1029 (C.P. 1765); *Beardmore v. Carrington*, 95 Eng. Rep. 790 (C.P. 1764); *see also* George C. Thomas III, *The Common Law Endures in the Fourth Amendment*, 27 Wm. & Mary Bill Rts. J. 85, 90 (2018) (describing role of tort law in the vindication of rights); Jamesa J. Drake, *Reviving Maine's State Constitutional Protection Against Unreasonable Searches and Seizures*, 68 Me. L. Rev. 321, 337 (2016).

[36] For Mr. Gleason's "[b]rief and argument for defendant, on motion to quash the proceedings," *see Prohibition*, The Humboldt Union (May 10, 1884) at 1-2.

"fundamental right to be free from an unreasonable search"). It's also consistent with Locke's and Madison's natural rights theories on property.

In 1895, the Kansas Supreme Court continued independently interpreting Section 15 in *In re Kellam*, 55 Kan. 700, 41 P. 960, 961 (1895). There, Topeka Police Chief John Wilkerson, relying on a state statute authorizing warrantless arrests "upon reasonable suspicion that an offense has been committed, with or without process, for any offense," arrested Joseph Kellem without a warrant for selling intoxicating liquors, a misdemeanor. 41 P. at 960; *Joe Kellam Released*, The Topeka Daily Capital (Oct. 6, 1895) at 3; *Kellam's Joint*, The Topeka State Journal (Oct. 17, 1895) at 1. Citing *Gleason*, the common law, Section 15's history and purpose—which includes preventing the return of the "odious general warrants, which placed the liberty of every man in the hands of every petty officer," and "protect[ing]" "liberty and property against the arbitrary action of those in authority"—the court declared the statute unconstitutional. 55 Kan. 700, 41 P. at 961.[37]

And in 1924, in *State v. Johnson*, 116 Kan. 58, 226 P. 245 (1924), the Kansas Supreme Court rejected Mr. Johnson's argument that incriminating items should have been returned to him before trial, based on *Weeks v. United States*, 232 U.S. 383 (1914). The "decisions of the Supreme Court of the United Staes are not, of course, binding on this court," it held. *Johnson*, 116 Kan. 58, 226 P. at 246.[38] Whatever one thinks of the merits of the decision, the larger point remains: the Kansas Supreme Court independently interpreted Section 15.

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[37] The Kansas Supreme Court effectively overruled *In re Kellam* in *State v. Flummerfelt*, 235 Kan. 609, 684 P.2d 363 (1984), by following the United States Supreme Court's interpretation of the Fourth Amendment. Illustrating the problems with abandoning its own constitutional reasoning, the United States Supreme Court has since cited *In re Kellam* to help define the Fourth Amendment's limits. *See Gonzalez v. United States*, 145 S. Ct. 529, 531, 533 (2025) (Sotomayor., J and Gorsuch, J., respecting the denial of certiorari).

[38] There are strong reasons to believe the Court was mistaken. *See Johnson*, 116 Kan. 58, 226 P. at 249-251 (Harvey, J., dissenting); *see also* Wesley M. Oliver, *Prohibition's Exclusionary Rule*, 67 DePaul L. Rev. 473 (2018); Roger Roots, *The Originalist Case for the Fourth Amendment Exclusionary Rule*, 45 Gonz. L. Rev. 1 (2010); Roger Roots, *The Framers' Fourth Amendment Exclusionary Rule: The Mounting Evidence*, 15 Nev. L.J. 42 (2014).

3. Policy reasons for interpreting Section 15 differently.

The United States Supreme Court is not the final arbiter of the Kansas Constitution.[39] That's true even if Section 15's text mirrored the Fourth Amendment's, which it doesn't.[40] Reflexive deference to federal precedent deprives Kansans of the very rights the Framers and adopters intended to secure, and forces Kansas courts to follow the "often unpredictable path of U.S. Supreme Court jurisprudence." Bolick, 53 Ariz. St. L.J. at 785.

Marching in lockstep with the United States Supreme Court "guarantee[s] that our constitution will be taken to mean one thing at one time and another thing at another time," Daniel E. Monnat & Paige Nichols, *The Loneliness of the Kansas Constitution*, 34 J. Kan. Assoc. Just. 11 (2010) (cleaned up);[41] and it effectively turns Section 15 into a dead letter. The meaning of the Kansas Constitution should not fluctuate with every federal opinion. *See generally* Monnat & Nichols, 34 J. Kan. Assoc. Just. 10.

Another problem with following the United States Supreme Court in lockstep involves state sovereignty. Treating the Kansas Constitution as "simply a mirror image of the Federal

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[39] *Oregon v. Hass*, 420 U.S. 714, 719 (1975) (state is "free *as a matter of its own law*" to afford greater constitutional protections) (emphasis in original); *Cooper v. California*, 386 U.S. 58, 62 (1967) (States "of course" possess the "power to impose higher standards on searches and seizures than required by the Federal Constitution"); Clint Bolick, *Principles of State Constitutional Interpretation*, 53 Ariz. St. L.J. 771, 771 (2021) ("Our system of dual sovereignty ensures the capacity of state courts to interpret their own constitutions to provide greater protections for individual rights than the federal constitution"); Jack L. Landau, *Should State Courts Depart from the Fourth Amendment? Search and Seizure, State Constitutions, and the Oregon Experience*, 77 Miss. L.J. 369, 384–85 (2007); *see generally* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev., 489 (1977); Daniel E. Monnat & Paige Nichols, *The Loneliness of the Kansas Constitution*, 34 J. Kan. Assoc. Just. 10 (2010); *Hodes*, 309 Kan. 610.

[40] Loretta H. Rush & Marie Forney Miller, *A Constellation of Constitutions: Discovering & Embracing State Constitutions As Guardians of Civil Liberties*, 82 Alb. L. Rev. 1353, 1380 (2019); Jeffrey S. Sutton, *What Does—and Does Not—Ail State Constitutional Law*, 59 U. Kan. L. Rev. 687, 707 (2011); *William J. Brennan Jr., State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 500 (1977).

[41] *See also State v. Perkins*, 310 Kan. 764, 772 (2019) (Luckert, J., concurring) (questioning whether Kansas should continue to apply the good faith exception because federal caselaw has weakened the exclusionary rule).

Constitution relinquishes an important incident of this State's sovereignty, and makes it less of a State than its sister States who recognize the independent significance of their Constitutions." *Id.* at 11 (cleaned up).

Tethering the Kansas Constitution to the United States Constitution also ensures its search and seizure jurisprudence will be a few steps behind the United States Supreme Court, particularly when addressing new technologies. Because the backgrounds, experiences, and makeup of the two courts are different, as are the dockets and the cases they preside over, it makes little sense for the Kansas Supreme Court to simply defer to the United States Supreme Court. *See* Connor D. McDonald, *It Just Means More: Why Tennessee Should Maintain the Tennessee Open Fields Doctrine and Reject the Less Protective Federal Standard*, 10 Belmont L. Rev. 106, 127-128, 137-41 (2022).

4. Wichita's warrantless ALPR dragnet surveillance program violates Section 15's text, structure, history, and purpose.

For all of the reasons stated above, this Court should hold that Section 15 provides more robust protections than the Fourth Amendment, and that Wichita's warrantless ALPR dragnet surveillance program violates Section 15's test, structure, history, and purpose. Doing so makes sense, especially considering that Section 15 *is itself a fundamental right*, *Gleason*, 32 Kan. at 245; *Ryce*, 303 Kan. at 909, 953; *Hodes*, 309 Kan. at 689 (Biles, J. concurrence), by their very "nature, Kansans value their privacy and solitude," Entrikin, 53 Washburn L. J. at 207, and "have long valued personal privacy, being one of the first states to recognize a common-law right of privacy," *Matter of Clark*, 314 Kan. at 823 (Stegall, J. concurrence), and the Founders adopted the much broader protection for "property," under the Kansas Constitution.

Finally, given the established, plain meaning of the word "search" at the time of the Wyandotte Convention—"to look over or through for the purpose of finding something," "to explore," "to examine by inspection"—Wichita's dragnet surveillance is a search. And because the search is without a warrant—or even so much as a hunch—the program violates Section 15's core protections.

III. Wichita's warrantless ALPR dragnet surveillance program violates Section 20 of the Kansas Constitution Bill of Rights.

The Framers of the Kansas Constitution began the Bill of Rights with Section 1's broad embrace of Locke's theory of natural rights and they similarly ended with a robust Lockean guarantee of unenumerated natural rights in Section 20. *See Hodes*, 309 Kan. at 626; Steven Calabresi, *et al.*, *Individual Rights Under State Constitutions in 2018: What Rights Are Deeply Rooted in A Modern-Day Consensus of the States?*, 94 Notre Dame L. Rev. 49, 132-33 (2018). "By wrapping up the previous 19 sections of the Bill of Rights with [Section 20], the framers and adopters conveyed their intent to protect both enumerated and unenumerated rights retained by the people." *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 844 (2024) (Standridge, J., concurring in part and dissenting in part).

According to Locke, when individuals form civil societies, they surrender a limited portion of their natural rights and delegate a limited amount of power to the government, while retaining the rest, to "preserve and enlarge Freedom." John Locke, *Two Treatises of Government* § 57 at 306 (Peter Laslett, student ed. 1988), *see also id.* § 131 at 353. This Lockean understanding was widely accepted at the time of the American Founding. But as Americans began drafting their constitutions, they found it necessary to include a constitutional provision retaining the people's unenumerated natural rights and limited the government to delegated powers, such as Section 20, because without one, an enumerated bill of rights "would even be dangerous" to liberty. *The Federalist* No. 84 at 513 (Hamilton) (Clinton Rossiter ed. 1961).

By enumerating specific rights, a bill of rights could imply there were no other rights, and the government had been delegated the power to pass any legislation so long as it does not violate an enumerated rights provision. This would "furnish, to men disposed to usurp, a plausible pretense for claiming that power." *Id.* Additionally, a complete enumeration of rights would be "impractical and limiting," and imply that every right not enumerated had been surrendered. *League of Women Voters of Kansas*, 318 Kan. at 845 (Standridge, J., concurring in part and dissenting in part). The inevitable result would be "an imperfect enumeration [that] would throw all implied

power into the scale of the government, and the rights of the people would be rendered incomplete." James Wilson, Speech at Pennsylvania Ratifying Convention, Nov. 28, 1787.[42]

Provisions such as Section 20 make clear that an enumerated bill of rights is not an exhaustive list, while the constitution's delegation of powers to the government is an exhaustive list, and that the people's retained, unenumerated rights must be protected just like those rights listed in the bill of rights. This provided "a way of authorizing the enforcement of a Lockean vision of 'rights first – government second." Randy Barnett, *Are Enumerated Constitutional Rights the Only Rights We Have? The Case of Associational Freedom*, 10 Harv. J.L. & Pub. Pol'y 101, 103, 111 (1987).

Section 20 states that, "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people." Section 20 is patterned after the Ninth and Tenth Amendments to the U.S. Constitution. *See generally* Anthony B. Sanders, *Baby Ninth Amendments: How Americans Embraced Unenumerated Rights and Why It Matters* (2023). Thirty-five states have an unenumerated rights provision similar to Section 20. *Id.* at 149-59.

By the time of Kansas' admission to statehood, it had become commonplace for states to supplement their own enumerated bills of rights with a provision guaranteeing that unenumerated natural rights were still retained by the people and that the government's powers were limited to those powers delegated in the constitution. These antebellum provisions were understood at the time to "protect individual rights." *Id*. at 42 (cleaned up). The matter was uncontroversial and the unsuccessful Topeka,[43] Lecompton,[44] and Leavenworth[45] constitutional conventions each adopted a similar provision. Section 20 was so uncontroversial that its language was not debated at the successful Wyandotte Convention, and it passed without discussion or objection. Kansas

[42] Available at https://press-pubs.uchicago.edu/founders/documents/v1ch14s27.html
[43] Available at https://www.kansasmemory.gov/item/221061/page/3
[44] Available at https://www.kansasmemory.gov/item/207409/page/6
[45] Available at https://www.kansasmemory.gov/item/207410/page/2

Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859. (Kansas State Printing Plant, Topeka 1920) at 291. While there have been very few cases brought under Section 20, as recently as 2022, the Kansas Supreme Court acknowledged that Section 20 "protect[s] vital rights," *Rivera v. Schwab*, 315 Kan. 877, 891 (2022), and as shown next, that includes rights which might be alienable, but are nonetheless retained, under Lockean principles.

For instance, the Kansas Constitution does not enumerate a takings clause limiting eminent domain, yet Kansas courts still universally hold that private property may only be taken by the government for public use with just compensation. *See Venard v. Cross*, 8 Kan. 248 (1871) (takings challenge to government land regulation under Section 20); *Williams v. City of Wichita*; 190 Kan. 317 (1962) (same). While Section 1 protects "inalienable" rights "that cannot be disposed of by sale or assignment to another," *Carr*, 314 Kan. at 633, an individual's rights in a particular piece of property is alienable, otherwise it could never be sold. Thus, while a person's alienable rights in a piece of property may not be protected by Section 1,[46] they have retained those rights under Section 20, and property may never be taken except for public use and with just compensation.

Similarly, even though the people have retained the right to be free from surveillance, tracking, and intrusion into private or personal information under Section 20, an individual can freely alienate this right—and frequently do—by sharing their location, movements, and other private information with others. But the fact that an individual can choose to alienate a portion of this right does not imply that they have simply surrendered this right to the government. Therefore, the government may not subject the people to suspicionless surveillance, tracking, and intrusion into private or personal information through the warrantless ALPR dragnet surveillance program.

Wichita misunderstands Section 20 and Mr. Grimmett's arguments when it suggests that "Section 20 of the Kansas Bill of Rights does not create a new constitutional right to support a

[46] Plaintiff contends that while the right to property, in the abstract, is inalienable, the bundle of rights that a person holds as owner of a particular piece of property are alienable.

cause of action." Govt's Br. at 25. Mr. Grimmett does not argue that Section 20 creates any right. The right to be free from surveillance, tracking, and intrusion into private or personal information is not created by any constitutional provision, it predates government and has been retained by the people even after ratifying the Kansas Constitution. Section 20 simply acknowledges that such retained rights must be protected by the courts. *See League of Women Voters of Kansas*, 318 Kan. at 844 (Standridge, J., concurring in part and dissenting in part). Wichita contends that this Court should interpret Section 20 identically to the federal Ninth Amendment but based on the history from the antebellum era of people understanding Ninth Amendment analogs in state constitutions as protecting individual rights, cases from other states interpreting their own constrictions are much more informative.[47]

The first clause of Section 20 protects the retained rights of the people. The second clause of Section 20 limits the government's powers to those that are "herein delegate" by the constitution. If a power is not delegated to the government by the Kansas Constitution, then it is a violation of Section 20 for the government to exercise that power. Mr. Grimmett argues that the

[47] *See In re Adoption of B.G.S.*, 556 So. 2d 545, 551 (La. 1990) (natural right of parents to their children, as well as "reciprocal rights and obligations of natural parents and children are among those unenumerated rights retained by individuals"); *In re Brown*, 478 So. 2d 1033, 1039 (Miss. 1985) (right to refuse blood transfusion is protected by unenumerated rights provision); *Nickola v. Grand Blanc Twp.*, 394 Mich. 589, 607-08 (1975) (exclusionary zoning law invalid because "[w]hile shelter and food are not specially enumerated constitutional concerns . . . they may be among the unenumerated rights still 'retained by the people'"); *Murphy v. Pocatello Sch. Dist. No. 25*, 94 Idaho 32, 38 (1971), *abrogated on other grounds by Planned Parenthood Great Nw. v. State*, 171 Idaho 374 (2023) ("the right to wear one's hair in a manner of his choice" is protected by unenumerated rights provision); *Thiede v. Town of Scandia Valley*, 217 Minn. 218, 225 (1944) (forcible removal of individuals from their home violated unenumerated rights clause); *City of Mobile v. Rouse*, 233 Ala. 622, 623-24 (1937) ("the right of an individual engaged in an inherently lawful occupation to fix the price for which he will render personal service is a part of the liberty reserved to him against governmental encroachment"); *Roman Cath. Archbishop of Diocese of Oregon v. Baker*, 140 Or. 600, 613 (1932) (striking down zoning prohibition on schools in residential neighborhoods because "[t]he right to own property is an inherent right" protected by unenumerated rights provision); *State v. Williams*, 146 N.C. 618 (1908) (prohibition on transporting more than a half-gallon of liquor fails the real or substantial relationship test required by unenumerated rights provision).

Constitution did not delegate to the government the power to engage in suspicionless surveillance and tracking of the entire citizenry, or to intrude into the private or personal information of the citizenry. It cannot be presumed that the people would have delegated such an expansive and intrusive power to the government through silence, it would only have been delegated to the government through an express enumeration of power.

Wichita misunderstands Mr. Grimmett's delegated powers argument and tries to recast it as a separation of powers argument. Wichita then contends that Article 12, Section 5 Home Rule Amendment delegates the power for cities to "determine their local affairs." Govt's Br. at 28-29. But Article 12, Section 5 is about the division of power between the state legislature and municipalities.

Prior to 1961, Article 12, Section 5 stated: "Provision shall be made by general law for the organization of cities, towns and villages; and their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, shall be so restricted as to prevent the abuse of such power." *State ex rel. Tomasic v. Unified Gov't of Wyandotte Cnty./Kansas City, Kan.*, 264 Kan. 293, 325 (1998). The Home Rule Amendment empowered cities "to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except." The Home Rule Amendment did not grant to the government any new power, it simply shifted greater control of existing government tax power from the state legislature to municipalities. But Section 20 equally limits the powers of state and municipal authorities. The Constitution did not delegate to the state government the power to engage in suspicionless surveillance and tracking of the entire citizenry, or to intrude into the private or personal information of the citizenry, so the Home Rule Amendment could not have transferred that non-existent power to Wichita.

Finally, Wichita attempts to equate Mr. Grimmett's Section 20 claim to a substantive due process right to privacy claim under Section 1 of the Kansas Constitution Bill of Rights or the Fourteenth Amendment to the United States Constitution. Govt's Br. at 29-31. But such "right to privacy" cases are fundamentally different from Mr. Grimmett's Section 20 claim. Such "right to privacy" claims revolve around the idea that certain acts, such as using contraception, engaging in

sexual activities, or abortion, are inherently personal in nature and cannot be criminalized by the government. Mr. Grimmett has made no such claim in this case. He claims that he has the right to be free from surveillance, tracking, and intrusion into private or personal information, and that this right was retained by the people under Section 20.

Mr. Grimmett has notified Wichita of what claims he has alleged, what his legal theories are, and the facts that support both his allegations and his theories. That is all that is necessary at this stage, *Hill's Pet Nutrition*, 60 Kan. App. at 516, and the Court should therefore deny the government's motion to dismiss.

IV. Mr. Grimmett's legal claims are different from his request for relief. But in any event, both are supported by the facts.

Wichita confusingly suggests that Mr. Grimmett's petition "fails to state a claim for an injunction against the city," Govt's Br. at 9 (cleaned up), and that Mr. Grimmett's "claim for injunctive relief" "should be dismissed," Govt's Br. at 12.

But Mr. Grimmett hasn't asserted "*a claim* for injunctive relief," as Wichita suggests. Instead, Mr. Grimmett has asserted two *constitutional* claims. The first is that Wichita's warrantless ALPR dragnet surveillance program violates Sections 15 of the Kansas Constitution Bill of Rights; and the second is that it violates Section 20 of the Kansas Constitution Bill of Rights. *See* Pet. at 28 ("Claim One: Violation of Section 15 of the Kansas Constitution Bill of Rights); *see id*. at 39 ("Claim Two: Violation of Section 20 of the Kansas Constitution Bill of Rights").

In terms of the *relief* Mr. Grimmett has requested, he seeks a declaratory judgment "declaring that the City of Wichita's warrantless ALPR dragnet surveillance program" "violates Sections 15 and 20 of the Kansas Constitution Bill of Rights." ¶ 245. And Mr. Grimmett seeks a permanent, prospective injunction preventing the dragnet surveillance program's continued operation, ¶ 246.a.; requiring Wichita to delete *all of the records* about his movements, ¶ 246.b.; permitting Mr. Grimmett to "completely, and totally, opt-out" of the dragnet surveillance program, ¶ 246.d.; prohibiting Wichita from sharing his information with other agencies, ¶ 246.c.;

and requiring Wichita to direct other agencies to delete the information Wichita has shared, ¶ 246.d., among other things.

What's more, Mr. Grimmett has *not* moved for a temporary restraining order or a preliminary injunction. And in any event, the government is wrong to suggest the preliminary injunction standard applies at the motion to dismiss stage. *See* Govt's Br. at 9-10.

At this stage, Mr. Grimmett *only* needs to "sufficiently apprise[] [the government] of the facts upon which [Mr. Grimmett] claims to be entitled to relief, not whether [he] can prove them or whether they have merit." *Hill's Pet Nutrition*, 60 Kan. App. 2d at 521. As shown above, he's done that. Wichita's argument about injunctive relief is premature and puts the cart before the horse. That is a decision for this Court to make *after* the evidence is adduced, not at the 212(b)(6) stage. In other words, permanent injunctive relief comes after merits, not beforehand.

In constitutional cases, Kansas courts typically issue injunctive relief based on the merits and don't typically address the equities. *See generally Hodes & Nauser, MDs, P.A. v. Kobach*, 318 Kan. 940 (2024) (upholding permanent injunction without balancing equities).

But even under the federal standard, Mr. Grimmett would be entitled to injunctive relief at the merits stage. Under the federal standard, to obtain a permanent injunction after the evidence has been adduced, Mr. Grimmett must have succeeded on the merits and established irreparable harm unless the injunction is issued, that the threatened injury outweighs the harm that the injunction may cause the opposing party, and that the injunction, if issued, will not adversely affect the public interest. Mr. Grimmett's petition demonstrates that he'll meet that standard when the time comes.

As shown above, under the facts as alleged, which must be accepted as true, Wichita's warrantless ALPR dragnet surveillance program violates Mr. Grimmett's rights under Section 15 and section 20. Because Wichita's regime violates Mr. Grimmett's constitutional rights, he is irreparably harmed. *See Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."); *see Bannister v. Bd. of Cnty. Comm'rs of Leavenworth Cnty., Kan.*, 829 F. Supp. 1249,

1252 (D. Kan. 1993) ("It is well-established that a violation of the constitutional right to be free from unreasonable search and seizure protected by the Fourth Amendment causes irreparable harm[.]").

Mr. Grimmett's lawsuit, moreover, involves ongoing constitutional violations reaching into the future. ¶¶ 29 ("violations are ongoing and continuous"); ¶ 169 ("Wichita's warrantless ALPR dragnet surveillance program is ongoing, continuous, and repetitive, and is an ongoing, continuous, and repetitive violation of Mr. Grimmett's rights under the Kansas Constitution."). Monetary damages are inadequate because monetary damages cannot stop Wichita's unconstitutional actions from happening in the future, they can only compensate for past wrongs. *See, e.g.*, *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 499 (S.D.N.Y. 2019); *Linton v. Axcess Fin. Servs., Inc.*, No. 23-CV-01832-CRB, 2023 WL 4297568, at *3 (N.D. Cal. June 30, 2023). *See also* ¶¶ 171-179 (Mr. Grimmett alleging that there is no other adequate remedy available).

Preventing the government from enforcing something unconstitutional doesn't cause the government any injuries either. *See Joelner v. Village of Washington Park, Illinois*, 378 F.3d 613, 620 (7th Cir. 2004). But even if there were some minimal administrative burdens, for example, the "constitutional injury to plaintiff[s] outweighs whatever damage the proposed injunction may cause to the defendant." *Bannister*, 829 F. Supp. at 1253.

The government suggestion that an injunction would be against the public's interest because Wichita's dragnet surveillance program is (allegedly) "effective in solving and deterring criminal activity" is just as egregious as it is dangerous. Govt's Br. at 11-12.

To start with, the government doesn't get to introduce new facts at the 212(b)(6) stage. But in any event, the public has *already* expressed *its* interests—and that's *hostility* toward Wichita's warrantless ALPR dragnet surveillance program. *See* ¶¶ 112-122.

The constitutionality of dragnet surveillance, or any search for that matter, *has never* turned on deterring or solving crime. *Byars v. United States*, 273 U.S. 28, 29 (1927) (a search is "not made lawful by what it brings to light" and that "doctrine has never been recognized by this Court, nor can it be tolerated under our constitutional system"); *United States v. Di Re*, 332 U.S. 581, 595,

(1948). For good reason. Otherwise, the government could *always* conduct warrantless searches by claiming—without any evidence—that the public shouldn't worry, it's for their own good.

Indeed, as Justice Brandeis explained nearly one hundred years ago, "experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Olmstead v. United States*, 277 U.S. 438, 479 (Brandeis, J., dissenting) (overruled by *Katz*).

And as the United States Supreme Court explained more than sixty years ago, "nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Mapp*, 367 U.S. at 659 (cleaned up). And finally, upholding the Kansas Constitution *is always in the public's interest*. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) ("it is always in the public interest to prevent the violation of a party's constitutional rights.").

In sum, Mr. Grimmett's petition has "sufficiently apprise[d]" the government of the facts and his allegations and that is all that is necessary, at this stage, to support the relief requested. *Hill's Pet Nutrition, Inc.*, 60 Kan. App. 2d at 521.

Conclusion

Wichita's warrantless ALPR dragnet surveillance program is an abject failure on several levels. It is degrading to individual liberty; it obliterates the right to be left alone; it puts innocent Kansans under the government's never-ending, always-watching eye; it turns everyone into a target; and it is corrosive to freedom. What's more, this A.I.-powered "tool" has been abused by the police; it ensnares innocent drivers; and its pervasive use has turned Wichita into the

surveillance capital of the state. But the police are not above the law—that of the Kansas Constitution Bill of Rights.

At bottom, Mr. Grimmett has sufficiently alleged that the City of Wichita's warrantless ALPR dragnet surveillance program violates the Kansas Constitution. He has put the government on notice of his claims, his legal theories, and the factual bases for them—and that's all that is required at this stage of the proceedings. This Court should reject Wichita's motion to dismiss.[48]

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Certificate of Service

The undersigned certifies that on Oct. 23, 2026, the above document(s) were filed using the electronic filing system, which will send notification of such filing to all participants, including to Sharon K. Dickgrafe.

/s/ Samuel G. MacRoberts
Samuel G. MacRoberts

[48] If this Court is inclined to grant the government's motion, Mr. Grimmett requests the opportunity to move for leave to amend; or in the alternative, leave to conduct limited, expedited discovery; or dismissal without prejudice so Mr. Grimmett can re-file.