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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee III, Circuit Court Judge

Trial Court Case No. 2023-CP-40-01850
Appellate Case No. 2025-002437

SOUTH CAROLINA PUBLIC INTEREST FOUNDATION and JOHN SLOAN,
individually and on behalf of all others similarly situated..... Appellants,

v.

SOUTH CAROLINA STATE LAW ENFORCEMENT DIVISION and Mark Keel, in his
official capacity as Chief of the South Carolina State Law Enforcement Division
..... Respondents.

**MOTION FOR LEAVE TO FILE BRIEF OF INSTITUTE FOR JUSTICE
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Pursuant to Rule 213, SCACR, the Institute for Justice respectfully moves this
Court for leave to file the attached Brief¹ of *Amicus Curiae* in support of Appellants.

INTEREST OF AMICUS CURIAE

The Institute for Justice (“IJ”) is a non-profit, public interest law firm committed
to defending the essential foundations of a free society by securing greater protection for
individual liberty. IJ routinely engages in litigation that challenges government
surveillance programs, particularly those that subject innocent people to unconstitutional

¹ No part of the proposed *amicus* brief was authored by any party’s counsel, and no person
or entity other than *amicus* funded its preparation or submission.

searches. *See, e.g., Snitko v. United States*, 90 F. 4th 1250 (9th Cir. 2024); *Mendenhall v. City & County of Denver*, 2026 WL 125748 (10th Cir. Jan. 16, 2026); *Thomas v. Schaeffer*, 2025 WL 2581840 (M.D. Pa. Sept. 5, 2025); *Rosales v. Lewis*, 2025 WL 3256753 (W.D. La. Oct. 6, 2025); *Rainwaters v. Tenn. Wildlife Res. Agency*, 2024 WL 2078231, at *1 (Tenn. Ct. App. May 9, 2024).

IJ has also pushed back on governmental agencies that claim the power to gather and store innocent citizen's private information when the agency lacks statutory authorization to do so. Recently, IJ commented on a notice of proposed rulemaking issued by the Department of Homeland Security ("DHS") that proposed to collect DNA samples from U.S. citizens to be stored and retained indefinitely in a database run by the Department. *See* Inst. For Just., Comment Letter on Proposed Rule on Collection and Use of Biometrics by U.S. Citizenship and Immigration Services (Jan. 2, 2026), <https://www.regulations.gov/comment/USCIS-2025-0205-6743>. IJ's comment challenged the DHS proposal on the grounds that the Department lacked the clear statutory authorization required under U.S. Supreme Court precedent to answer the "major question" of whether the agency may collect and store innocent U.S. citizens' DNA in a government database. *See id.* at 3-10.

The Institute for Justice has a substantial interest in the issues presented in this appeal because it has unique experience litigating cases where the government seeks to use automated license plate readers ("ALPRS") to surveil law-abiding people. IJ is currently litigating two cases in federal court challenging the scope of ALPR databases. *See, Schmidt v. City of Norfolk*, 2025 WL 410080, at *1 (E.D. Va. Feb. 5, 2025); Compl., *Tan v.*

City of San Jose, No. 5:25-cv-03181 (N.D. Cal. Apr. 15, 2026), <https://bit.ly/43wP03k>.

Additionally, the Institute for Justice launched a nationwide campaign, the Plate Privacy Project, to bring awareness to how ALPRs impact the lives of law-abiding people.²

THE BRIEF WILL AID THE COURT IN DECIDING AN ISSUE OF SIGNIFICANT PUBLIC INTEREST

The South Carolina Supreme Court recognizes the importance of *amicus* briefs in cases that “concern a matter of significant public interest.” *State v. Langford*, 400 S.C. 421, 433, 735 S.E. 2d 471, 477 (2012). This case concerns such a matter. The surveillance of innocent civilians enabled by ALPR databases has given rise to significant debate in both Congress and the General Assembly as to whether ALPR databases should exist, and if so, how they should be used.

The Institute for Justice’s proposed *amicus* brief provides this Court with an overview of the Supreme Court’s major questions doctrine, which was developed to aid courts assessing legal challenges to “agencies asserting highly consequential power.” *West Virginia v. EPA*, 597 U.S. 697, 724 (2022). The proposed *amicus* brief explains how applying the major questions doctrine here can aid this Court in resolving a central issue presented by this appeal: Whether the South Carolina Law Enforcement Division has statutory authority to operate an ALPR database that tracks and stores data on the movements of South Carolina drivers who are entirely unconnected to criminal activity.

WHEREFORE, the Institute for Justice respectfully requests that this Court grant it leave to file the *amicus* brief attached to this motion.

² <https://plateprivacy.com/>

Respectfully submitted,

s/E. Brandon Gaskins

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v.

SOUTH CAROLINA STATE LAW ENFORCEMENT DIVISION and Mark Keel, in his
official capacity as Chief of the South Carolina State Law Enforcement Division..... Respondents.

PROOF OF SERVICE

This is to certify that I have this day served counsel in the above-captioned matter with a copy of the **Motion for Leave to File Brief of Institute for Justice as *Amicus Curiae* in Support of Plaintiffs-Appellants and *Amicus Curiae* Brief of the Institute for Justice in Support of South Carolina Public Interest Foundation and John Sloan** via electronic mail only, addressed as follows:

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Respectfully submitted,

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Moore & Van Allen

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VIA E-FILING

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Re: South Carolina Public Interest Foundation and John Sloan, individually and on behalf of all others similarly situated vs. South Carolina State Law Enforcement Division and Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division
Civil Action No.: 2023-CP-40-01850
Appellate Case No.: 2025-002437

Dear Ms. Kitchings,

With regard to the above-referenced matter, please accept the following for filing:

- Motion for Leave to File Brief of Institute for Justice as *Amicus Curiae* in Support of Plaintiffs-Appellants;
- *Amicus Curiae* Brief of the Institute for Justice in Support of South Carolina Public Interest Foundation and John Sloan; and
- Proof of Service.

The required filing fee in the amount of \$50.00 for the motion is being mailed to the Court under separate cover.

By copy of this letter, I am serving all counsel in the above matter with a copy of the above. Thank you for your assistance in this matter. If you should have any questions or concerns, please feel free to contact me.

Sincerely,



E. Brandon Gaskins

EBG/lp

Enclosures: As Stated.

cc:

VIA EMAIL ONLY

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