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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.

**BRIEF OF THE SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE
AND SOUTH CAROLINA SOLICITORS' ASSOCIATION
AS AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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STATEMENT OF THE ISSUE

1. Whether SLED possesses the requisite statutory authority to operate an ALPR database.

INTRODUCTION AND INTEREST OF AMICI

Over the past year, law enforcement's use of automatic license plate readers (ALPRs) has drawn considerable public interest and some critical scrutiny. And although there may be an appropriate time and place to have a policy debate about the appropriate use—or potential misuse—of ALPRs, that policy debate is not before this Court.

Instead, this Court is confronted with a relatively narrow legal question, namely whether the South Carolina Law Enforcement Division's (SLED's) use of an ALPR database exceeds its statutory mandate. For the reasons discussed below, it does not.

Separately, other *Amici*, the Institute for Justice and the Cato Institute, have attempted to inject constitutional concerns into this case, suggesting that SLED's use of ALPRs and their data poses a problem under the federal and state constitutions.¹ Those concerns are ultimately unfounded. This Court should reject those *Amici*'s attempts to constitutionalize the question of ALPR data use and leave the issue where it belongs—with the people and their elected representatives.

The Attorney General and the South Carolina Solicitors' Association write as *Amici* to assist this Court in resolving the issues raised by Appellants and by the other *Amici*. As the State's

¹ Although the Institute for Justice and the Cato Institute raise somewhat distinct privacy and constitutional arguments, they both attempt to insert privacy and constitutional concerns into this Court's analysis of the questions before it. In addressing the question of SLED's statutory authority to operate the ALPR database, this brief responds to those arguments by explaining why those constitutional concerns are unfounded and should not impact this Court's analysis of SLED's statutory authority.

Chief Prosecutor and Chief Legal Officer, the Attorney General has an interest in SLED's continued ability to utilize ALPRs and their data. This State's Circuit Solicitors share that interest.

ARGUMENT

I. SLED's usage of ALPRs and an ALPR database falls within SLED's statutory authority.²

The General Assembly, reflecting the express will of the people, has given SLED broad "authority statewide . . . in matters *including but not limited to* . . . activities *not inconsistent with the mission* of the division or otherwise proscribed by law." S.C. Code Ann. § 23-3-15(A)(9) (emphasis added). The use of non-exhaustive language "including but not limited to" in describing SLED's powers directly undermines Appellants' theory of SLED's narrow statutory authority. *See Doe v. S.C. Dep't of Soc. Servs.*, 407 S.C. 623, 640, 757 S.E.2d 712, 721 (2014) (Kittredge, J., dissenting) ("I believe the legislature defined the term broadly, as evidenced by the 'including, but not limited to,' [language]."). So too does the deliberate inclusion of a catchall provision, giving authority for all "other activities not inconsistent" with SLED's mission "or otherwise proscribed by law," § 23-3-15(A)(9). Together, these provisions are compelling evidence of the General Assembly's intent to give SLED broad authority to accomplish its mission.

But even if this Court is not convinced that SLED's authority is *expressly* broad enough to encompass ALPR use, it is at the very least *implicitly* broad enough. Like other agencies, SLED, as "a creature of statute," is "possessed of . . . those powers expressly conferred or *necessarily implied* for it to effectively fulfill the duties with which it is charged." *Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991) (emphasis added). The degree of implication necessary here is minimal. Sure, legislatures do not tend to "hide

² Although this brief only purports to address the first issue on appeal, *Amici* fully support the arguments regarding the remaining issues raised by SLED in its brief.

elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). But, as discussed above and below, this is no mousehole. And SLED’s ALPR database is no elephant.³

The next question, then, is whether the use of ALPRs and the operation of a database fall within that broad authority. In other words, is the use of ALPRs and an accompanying database an activity “not inconsistent with the mission of the division?” The clear answer is yes. SLED’s “mission” is to “provide[] quality manpower and technical assistance to law enforcement agencies and conduct[] investigations on behalf of the state.”⁴ SLED’s ALPR database exists to provide aid to over 40 law enforcement agencies across the state and to provide technical assistance to those agencies. *See* Initial Brief of Respondents at 6. It serves as a resource and tool when criminal investigations or other public safety emergencies arise. Thus, the conclusion is clear: SLED’s ALPR database is consistent with SLED’s mission and thus falls within SLED’s statutory authority.

Additionally, whether “ALPR” or “ALPR database” is explicitly mentioned in SLED’s enabling act is not dispositive. Indeed, “[l]egislative silence is a poor beacon to follow in discerning the proper statutory route.” *Zuber v. Allen*, 396 U.S. 168, 185 (1969). The use of new technology that wasn’t contemplated in the statutory language is not *de facto* unlawful. Such

³ And to the extent other *Amici* attempt to alter this statutory analysis by invoking constitutional concerns and the major questions doctrine, for the reasons outlined below, those attempts must necessarily fail.

⁴ The circuit court properly considered SLED’s mission statements in analyzing the authority provided by subsection 23-3-15(A)(9). *See* (MSJ Order at 10) (noting that SLED’s 1999 Accountability Report stated that “The primary mission of SLED is to provide quality manpower and technical assistance to all law enforcement agencies and to conduct professional investigations on behalf of the state, as directed by the Governor or Attorney General, for the purpose of solving crime and promoting public order in South Carolina.”); *see also* SOUTH CAROLINA LAW ENFORCEMENT DIVISION, <https://tinyurl.com/2mdkkj6h> (last visited July 13, 2026) (“The South Carolina Law Enforcement Division (SLED) provides quality manpower and technical assistance to law enforcement agencies and conducts investigations on behalf of the state as directed by the Governor and the Attorney General.”).

rigidity would lead to absurd results. SLED would have to petition the General Assembly to amend the law each time it sought to use new innovative technologies or techniques to fulfill its mission. That would nullify the General Assembly’s deliberate use of flexible language that it deemed necessary “to insure the effective application of legislative policy to changing circumstances.” *Brothers v. First Leasing*, 724 F.2d 789, 795 (9th Cir. 1984) (quoting 1A J. Sutherland, *Statutes and Statutory Construction* § 21.16, at 95 (C. Sands 4th ed. 1972)).

Instead, only “other activities” that are “inconsistent with the mission of the division or otherwise proscribed by law” are de facto unlawful. S.C. Code Ann. § 23-3-15(A)(9). But Appellants have failed to show that SLED’s use of ALPRs and an ALPR database is “inconsistent with the mission” or “otherwise proscribed by law.”⁵ As to the latter, Appellants have shown no law proscribing the database’s use, nor have they claimed its use is constitutionally proscribed by the Fourth Amendment or the South Carolina Constitution.

In short, the circuit court was correct to conclude that S.C. Code Ann. § 23-3-15(A)(9) authorizes SLED’s operation of ALPRs and the ALPR database.⁶

II. SLED’s use of ALPRs and an ALPR database does not facially violate the Fourth Amendment of the United States Constitution or article I, section 10 of the South Carolina Constitution.

⁵ Appellants have not shown any *misuse* of SLED’s database, either. To be sure, there has been reported misuse of ALPR databases operated and maintained by private vendors, like Flock Safety. See Terry Benjamin II, *Greenville Sheriff Defends Flock Camera use After Firing Two for Misuse*, Greenville News (July 28, 2026), <https://tinyurl.com/3nc8vsw>. But importantly, those databases are separate and distinct from SLED’s database, which is the database challenged here. See Initial Brief of Respondents at 4 n.1 (“SLED’s ALPR database, sometimes called the “ALPR back office,” should not be confused with ALPR databases operated by private vendors like Vigilant Solutions (“Vigilant”) or Flock Safety (“Flock”).”).

⁶ Although *Amici* Attorney General and Solicitors’ Association primarily focus on S.C. Code Ann. § 23-3-15(A)(9) as the source of SLED’s authority to operate ALPRs, *Amici* acknowledge that other statutes may authorize SLED’s operation of the ALPR database. See Initial Brief of Respondents at 17 (discussing the applicability of S.C. Code Ann. §§ 23-3-15(A)(4) and -110).

Appellants have not asserted a Fourth Amendment or article I, section 10 claim. The Court, therefore, need not resolve the constitutional issues raised in other *Amici* briefs. But to the extent this Court considers those arguments as part of its analysis of the statutory authority question, this Court should reject them. The constitutional concerns raised by those *Amici* are ultimately unfounded and do not warrant the application of the major questions doctrine in this case.

A. SLED’s use of ALPRs does not constitute a search for purposes of the Fourth Amendment.

For purposes of the Fourth Amendment, 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). The reasonableness of that expectation waxes or wanes depending on context. On one end of the spectrum, someone “travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.” *United States v. Knotts*, 460 U.S. 276, 281 (1983). On the other end is round-the-clock surveillance that “tracks nearly exactly the movements of its owner . . . beyond public thoroughfares and into private residences, doctor’s offices, political headquarters, and other potentially revealing locales.” *Carpenter v. United States*, 585 U.S. 296, 311 (2018).

So where does SLED’s use of ALPRs fall on this spectrum? As almost every court to consider the question has held, a state or local government’s use of ALPR cameras falls on the constitutional side of that line—and does not constitute a search for purposes of the Fourth Amendment.⁷

⁷ See, e.g., *Scholl v. Ill. State Police*, 776 F. Supp. 3d 701, 720–21 (N.D. Ill. 2025) (describing a “judicial consensus of courts” that have held that the use of ALPRs is not a Fourth Amendment search); *United States v. Floyd*, 811 F. Supp. 3d 1345, 1348 (M.D. Fla. 2025) (noting that the Court’s “own research” was unable to identify “a criminal case that has held a law enforcement officer must obtain a search warrant to either use an ALPR database or query an ALPR database”); *Sidor v. Thornell*, 2025 WL 3282976, at *10 (D. Ariz. Oct. 24, 2025), *adopted*, 2025 WL 3281746 (D. Ariz. Nov. 25, 2025) (“While often recognizing the privacy issues ALPRs pose, courts

Courts have overwhelmingly reached that conclusion because ALPRs are categorically distinct from the technology at issue in a case like *Carpenter*. As SLED explains in its brief, “ALPRs are cameras linked with software that allows them to identify and read license plates on vehicles along *public roadways*.” Initial Brief of Respondent at 3 (emphasis added).⁸ ALPR

considering the question have thus far uniformly held that the uses of ALPRs before them were not Fourth Amendment searches requiring warrants or probable cause.”); *Schemel v. City of Marco Island*, 2025 WL 2958798, at *2 (M.D. Fla. Oct. 17, 2025) (holding that a city’s use of ALPRs “does not trigger a search under the Fourth Amendment”); *Rinaldi v. Sylvester*, 2025 WL 2682691, at *17 (S.D.N.Y. Sep. 19, 2025) (“Moreover, nearly every court outside the Second Circuit that has considered the issue post-*Carpenter* has held that queries of LPR databases do *not* constitute Fourth Amendment searches.”); *United States v. Brown*, 2025 WL 2444596, at *5 (W.D. Okla. Aug. 25, 2025) (concluding that Fourth Amendment rights were not violated by the search of a Flock system); *United States v. Acosta*, 2025 WL 2427700, at *6 (N.D. Okla. Aug. 22, 2025) (same); *United States v. Slaybaugh*, 2025 WL 2123781, at *1 (M.D. Ala. July 29, 2025) (same with respect to ALPR); *United States v. Sturdivant*, 786 F. Supp. 3d 1098, 1108 (N.D. Ohio 2025) (same); *United States v. Jackson*, 2025 WL 1530574, at *9 (D. Kan. May 29, 2025) (same with respect to use of Flock system); *United States v. Griffin*, 2025 WL 1474679, at *9 (S.D. Ind. May 22, 2025) (same with respect to ALPR camera); *United States v. Martin*, 753 F. Supp. 3d 454, 476 (E.D. Va. 2024) (same with respect to Flock system); *United States v. Porter*, 2022 WL 124563, at *3 (N.D. Ill. Jan. 13, 2022) (same with respect to ALPR database); *United States v. Toombs*, 671 F. Supp. 3d 1329, 1334 (N.D. Ala. 2023) (same with respect to Drug Enforcement Administration System Information License database); *Schemel v. City of Marco Island*, 2023 WL 3010344, at *4 (M.D. Fla. Feb. 14, 2023) (same with respect to ALPR database); *United States v. Rubin*, 556 F. Supp. 3d 1123, 1130 (N.D. Cal. 2021) (same with respect to ALPR database); *United States v. Salcido-Gonzalez*, 2024 WL 2305478, at *12 (D. Utah May 21, 2024) (same with respect to LPR system); *United States v. Cooper*, 2025 WL 35035, at *7 (E.D. La. Jan. 6, 2025) (same with respect to ALPR search); *United States v. Bowers*, 2021 WL 4775977, at *3 (W.D. Pa. Oct. 11, 2021) (same with respect to ALPR data under facts of the case); *Chaney v. City of Albany*, 2019 WL 3857995, at *8 (N.D.N.Y. Aug. 16, 2019) (“Indeed, courts have consistently upheld the use of LPR and similar technologies by law enforcement agencies.”); *United States v. Jiles*, 2024 WL 891956, at *15–19 (D. Neb. Feb. 29, 2024) (concluding that accessing an ALPR database is not a search within the meaning of the Fourth Amendment); *United States v. James*, 2023 WL 3370421 (W.D. La. Jan. 30, 2023) (“This Court’s ruling is in accord with recent jurisprudence throughout the country finding that use of LPR systems does not violate the Fourth Amendment.”); *United States v. Graham*, 2022 WL 4132488, at *5 (D.N.J. Sep. 12, 2022), *aff’d*, No. 23-3197, 2025 WL 342190 (3d Cir. Jan. 30, 2025) (“In contrast to CSLI and GPS technology, however, courts have held that law enforcement’s use of the ALPR database does not infringe upon an individual’s reasonable expectation of privacy because it does not reveal intimate details of an individual’s daily life, nor does it track a person’s every movement . . .”).

⁸ SLED’s brief thoroughly explains ALPR systems and its ALPR database:

cameras do not provide continuous, real-time tracking that maps a seamless timeline of a driver's life. Instead, an ALPR network captures isolated, discrete, and disparate "snapshots" of a vehicle at specific geographical points on public roads when the vehicle passes a fixed, mobile, or portable camera unit. Importantly, that is a *quantitative* difference in law-enforcement capacity, not the *qualitative* transformation that Appellants claim. That difference does not offend the Fourth Amendment.

ALPRs are cameras linked with software that allows them to identify and read license plates on vehicles along public roadways. ALPR systems capture a digital image of the vehicle's license plate and transmit that image to a database along with the date, time, and geographical coordinates of the image capture. The ALPR systems also collect limited information about the vehicle like make, model, and color.

ALPR systems may be "fixed, mobile, or portable." A fixed ALPR is installed in a permanent location like a traffic light or bridge. Mobile ALPRs are mounted on law enforcement patrol cars or other vehicles. Portable ALPRs can be moved and deployed in different areas as needed.

SLED operates the ALPR database to house data collected by other law enforcement entities in the State. Over 40 law enforcement entities contribute to the database via approximately 125 ALPR systems. SLED operates only six ALPR systems—accounting for less than 5% of the ALPR systems contributing to the database. License plate "reads" are stored in the database for one year. As of February 7, 2025, the ALPR database contained 141,818,757 reads.

Law enforcement personnel with valid user credentials can log onto the ALPR database to search for a license plate or vehicle when criminal investigations or other public safety emergencies arise. Additionally, the ALPR database features a "hot list" of license plate numbers associated with stolen cars, AMBER alerts, and vehicles owned by persons of interest in a crime. If an ALPR feeding into the database detects a possible license plate read from the "hot list," the system will send an alert to the specified officers. Officers are taught to verify and confirm the accuracy of all reads prior to initiating a stop of a vehicle.

Initial Brief of Respondent at 3-4. (Citations and footnote omitted.).

To bolster this conclusion, recall that a driver lacks a reasonable expectation of privacy in “the physical characteristics of [his] automobile.” *New York v. Class*, 475 U.S. 106, 112 (1986). That’s because “[a] car has little capacity for escaping public scrutiny” since “[i]t travels public thoroughfares” where it is necessarily “in plain view.” *Id.* at 112–113 (quoting *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974)); *see also United States v. Knotts*, 460 U.S. at 281 (1983) (“A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.”). As such, a driver lacks any reasonable expectation of privacy in his “car’s license plate and exterior appearance” as well. *See, e.g., United States v. Sturdivant*, 786 F. Supp. 3d 1098, 1107 (N.D. Ohio 2025). That makes sense, considering “the very purpose of a license plate number . . . is to provide identifying information to law enforcement officials and others.” *United States v. Ellison*, 462 F.3d 557, 561 (6th Cir. 2006).

Additionally, a vehicle’s license plate is a creature of regulation in our state, explicitly mandated by state law to be prominently displayed on the exterior of a vehicle. *See* S.C. Code Ann. § 56-3-1240 (requiring license plates to be displayed and “open to view” on South Carolina vehicles). Thus, “[e]very operator of a motor vehicle must expect that the State, in enforcing its regulations, will intrude to some extent upon that operator’s privacy.” *Class*, 475 U.S. at 113.

The fact that ALPRs and their data can be used to track a driver’s public movements more effectively than police “rel[ying] solely on their naked eyes,” *Knotts*, 460 U.S. at 285, makes no difference. The Fourth Amendment “does not punish law enforcement for using technology to more efficiently conduct their investigations.” *United States v. Gregory*, 128 F.4th 1228, 1243 (11th Cir. 2025) (citation modified). ALPRs “merely augment the same sensory faculties that have always been used by” police. *United States v. Martin*, 753 F. Supp. 3d 454, 476 (E.D. Va. 2024).

They “do[] not allow officers to access any previously unobtainable information; [they] simply allow[] them to access information more quickly.” *Sturdivant*, 786 F. Supp. 3d at 1108.

Indeed, vehicle-based monitoring of public roads, often aided by cameras, is elementary policework. ALPRs simply allow police to use automatic cameras rather than “station[ing] agents round-the-clock.” *Gregory*, 128 F.4th at 1243 (citation modified). Even then, an ALPR’s individual plate read may reveal less than an officer’s contemporaneous observation from a lawful public vantage point. For example, an officer may observe occupants, objects, or activity visible from outside the vehicle; detect odors emanating from it; and observe the vehicle’s route and other contemporaneous movements.

So, if drivers lack a reasonable expectation of privacy in the images that ALPRs capture, what about the information that aggregated “ALPR data reveals about their movements”? *Scholl v. Ill. State Police*, 776 F. Supp. 3d 701, 715 (N.D. Ill. 2025). Once again, precedent provides the answer: “A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements,” *Knotts*, 460 U.S. at 281, because “[w]hat a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection,” *Katz v. United States*, 389 U.S. 347, 351 (1967). When a driver chooses to travel on “public streets,” he has “voluntarily conveyed . . . the fact that he was travelling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property.” *Knotts*, 460 U.S. at 281–82. The mere fact that multiple non-search public observations are indexed in a centralized database does not retroactively transform those lawful public snapshots into an unconstitutional search. So, rather than a qualitatively new mass surveillance technique, like the CSLI records at issue in *Carpenter*, SLED’s

maintenance of an ALPR database represents, at most, a quantitative compilation of information that was already publicly (and constitutionally) accessible by law enforcement.

Further, the quantitative advantage ALPR data provides in acquiring already accessible information is quite limited. By collecting “discrete data points with considerable stretches of obscurity in between,” ALPR data “provide[s] no more information than what could have been obtained through police surveillance,” *Rinaldi v. Sylvester*, 2025 WL 2682691, at *18 (S.D.N.Y. Sep. 19, 2025) (citation modified). The location information recorded by ALPRs—while incredibly useful for solving crimes—would be of “sharply limited” “utility” for anyone hoping to glean “an individual’s familial, political, professional, religious, and sexual associations.” *Scholl*, 776 F. Supp. 3d at 720 (citation modified). Data indicating “what portions of an expressway someone passes tells the government far less about the privacies of life.” *Id.* Such limited utility is compounded when you consider all the blind spots and gaps in ALPR coverage. *See Schmidt v. City of Norfolk*, 819 F. Supp. 3d 492, 512 (E.D. Va. 2026) (“Defendants’ ALPR system has many thousands more blind spots than it has ‘unblinking eyes.’”).

The argument advanced by *amicus* Institute for Justice relies extensively on *Carpenter v. United States*, 585 U.S. 296 (2018), and the recent decision in *Chatrue v. United States*, 609 U.S. ___, 146 S. Ct. 2193 (2026), to assert that the aggregation of ALPR data into a searchable database violates a reasonable expectation of privacy. These reliance arguments misconstrue the operational differences between continuous location tracking and ALPR technology.

In *Carpenter*, the Court focused on the “unique nature of cell phone location records” and found that an individual maintained a legitimate expectation of privacy in the record of his movements captured through those records. 585 U.S. at 309–10. That Court acknowledged that “[w]hile individuals regularly leave their vehicles, they compulsively carry cell phones with them

all the time.” *Id.* at 311. A cell phone “faithfully follows its owner . . . into private residences.” *Id.* Thus, “[m]apping a cell phone’s location” over an extended period of time “provides an *all-encompassing record* of the holder’s whereabouts.” *Id.* (emphasis added). In contrast, ALPR data contains only an ALPR-captured image of a vehicle’s publicly displayed license plate and exterior appearance, together with the date, time, and known public-road location at which the vehicle passed the camera. Unlike CSLI, the data is vehicle-specific, location-specific, and episodic public observation—not a person-specific, comprehensive history of all movements. It simply cannot follow an individual into “private” places.

What’s more, the Supreme Court in *Carpenter* narrowly tailored its holding, stating explicitly that its decision did not “call into question conventional surveillance techniques and tools, such as security cameras.” *Id.* at 316. Thus, *Carpenter* did not establish that every record containing time and location—or every technology-assisted observation of conduct exposed to public view—is a Fourth Amendment search. ALPR networks are a direct digital extension of conventional passive or active surveillance.

ALPR data is also unlike the location history at issue in *Chatrue v. United States*, 609 U.S. ___, 146 S. Ct. 2193 (2026). There, the Court considered whether obtaining a user’s cell phone location history, which “provides an even more fine-tuned picture of a person’s movements than CSLI,” constituted a search. 609 U.S. ___, 146 S. Ct. at 2208. The Court ultimately held that the “police conducted a search when they gained access to Location History data.” *Id.*, 609 U.S. at ___, 146 S. Ct. at 2199. It found that Location History data tracked even more than CSLI did. For example, while CSLI logged a user’s location an average of 101 times a day, “Location History commonly records a person’s location every two minutes, for a daily average of 720 chartings.” *Id.* 609 U.S. at ___, 146 S. Ct. at 2208. As such, the Court characterized this data as “tireless and

absolute surveillance.” *Id.* As with CSLI, ALPR data simply does not paint such an all-encompassing picture.

Rather than creating a “comprehensive chronicle” of a “person’s past movements,” *Carpenter*, 585 U.S. at 300, ALPRs capture something much more “sporadic” in nature. *United States v. Goins*, 2025 WL 1285936, at *4 (W.D. Va. May 2, 2025). Even if aggregated ALPR data could reconstruct one route a person habitually uses, the concern in *Carpenter* was not the reconstruction of one or two routes, but the reconstruction of *all* routes, i.e., “the whole of” an individual’s movements. In sum, the use of ALPRs and ALPR data is fundamentally distinct from the “tireless and absolute” “near perfect surveillance”—akin to an “ankle monitor”—disallowed in *Carpenter*, 585 U.S. at 312, and in *Chatrle*, 609 U.S. at ___, 146 S. Ct. at 2215.

Apart from parallels to *Carpenter* and *Chatrle*, Appellants attempt to draw parallels to other databases that are regulated, such as the DNA database, to show that the General Assembly “typically imposes safeguards to protect the privacy interests of its constituents.” Initial Brief of Appellants at 28. But the DNA database it references stores very different information. After all, an individual’s DNA and their license plate are quite different. One is, by design, revealed to the public. The other is usually not. In other words, people have a much higher expectation of privacy in their DNA than in their public movements.

Fourth Amendment analysis has recognized as much. For example, “it is undisputed that the collection of a saliva sample for DNA analysis is a search implicating the Fourth Amendment.” *Kohler v. Engle*, 470 F.3d 1104, 1109 n.4 (5th Cir. 2006). Additionally, “[t]he extraction of blood from a prisoner to collect a DNA sample implicates Fourth Amendment rights.” *Groceman v. U.S. Dep’t of Just.*, 354 F.3d 411, 413 (5th Cir. 2004); *see also Skinner v. Ry. Lab. Execs. Ass’n*, 489

U.S. 602, 616 (1989) (“We have long recognized that a ‘compelled intrusion[n] into the body for blood’ . . . must be deemed a Fourth Amendment search.”) (citation modified).

The contrast is clear. The acquisition of DNA is a search; the use of an ALPR is not. Why? Because the expectation of privacy in the former is much greater than the latter. That contextual difference matters here, just as it likely did when the General Assembly, as a reflection of the people, decided to pass a DNA database statute.

B. SLED’s use of ALPRs and an ALPR database does not constitute an unreasonable search or invasion of privacy for purposes of article I, section 10 of the South Carolina Constitution.

Article I, section 10, sometimes called the “privacy provision,” prohibits “unreasonable” searches and seizures and invasions of privacy. While the explicit addition of the privacy phrase grants protections that can extend beyond the Fourth Amendment, this heightened privacy protection is not unlimited. Instead, both the popular meaning of the provision and court precedent suggest that the provision is limited to government intrusions into the private sphere.

At the time the privacy provision was adopted, the provision was understood to extend to technological advances that would intrude into the private lives of individuals. *See* S.C.A.G. Op. dated Oct. 2, 1967 (1967 WL 12658) (noting concerns about the “interception of communications” by “electronic means” and the “collection of data” regarding the “private affairs of citizens,” including information related to “income tax, health, and public welfare”).

The South Carolina Supreme Court has likewise interpreted the provision to extend to uniquely private spheres, including the home and the forced medication of inmates in certain contexts. *See, e.g., State v. Counts*, 413 S.C. 153, 172, 776 S.E.2d 59, 69–70 (2015) (“Because the privacy interests in one’s home are the most sacrosanct, we believe there must be some threshold evidentiary basis for law enforcement to approach a private residence.”); *Singleton v. State*, 313

S.C. 75, 89, 437 S.E.2d 53, 61 (1993) (“We hold that the South Carolina Constitutional right of privacy would be violated if the State were to sanction forced medication solely to facilitate execution.”).

The passive capturing of a vehicle’s external registration plate and appearance as it travels in public using an ALPR system simply does not implicate these privacy concerns. And to the extent the analysis of article I, section 10 instead hinges on an assessment of reasonableness, as explained above, there is no reasonable expectation of privacy in a vehicle’s travel on public roads. *Knotts*, 460 U.S. 276, 281. Therefore, SLED’s use of ALPRs and ALPR data as set out in the record does not establish an unreasonable search or invasion of privacy under South Carolina’s Constitution.

III. SLED’s ALPR database is regulated by the people through the democratic process.

Lastly, Appellants’ arguments sound much more in policy than in law. Accordingly, they must remain in their proper place: the democratic process. Indeed, “even improvident decisions will eventually be rectified by the democratic processes.” *United States v. Skrametti*, 605 U.S. 495, 510 (2025) (citation modified).⁹

In South Carolina, the people vote to elect their preferred representatives, including the legislative representatives that comprise the General Assembly. *See* S.C. Const. art. III, §§ 2, 6. Thus, “[u]nder guiding principles, we must presume legislative enactments reflect the will of the citizens.” *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 293, 882 S.E.2d 770, 827 (2023) (Kittredge, J., dissenting); *see also id.* at 296 n.72 (“the will of the people is expressed in the policy

⁹ In advancing this argument, *Amici* do not intend to endorse legislative action—or inaction—on this topic. Instead, this argument is intended to respond to Appellants’ argument regarding SLED’s statutory authority.

judgments of their elected representatives.”). It is the people then, through the General Assembly, that address the imperfections of their own governance when they arise.¹⁰

Appellants seem to misunderstand this constitutional ordering. They claim that because “the General Assembly never authorized SLED to operate the vehicle surveillance database, the legislative consideration and management of the tradeoffs of indiscriminately tracking everyone driving on South Carolina roads never occurred.” Initial Brief of Appellant at 30. But that contention rests on the mistaken premise that the people—who retain ultimate political authority—lose their ability to address perceived societal harms, simply because the General Assembly has not yet acted or didn’t act fast enough. Clearly, that is not the case. Legislatures, elected by the people, are always in a “better position than [courts] to assess and respond to the changes that have already occurred . . .” *Riley v. California*, 573 U.S. 373, 408 (2014) (Alito, J., concurring in part).

The General Assembly is fully capable of setting parameters for SLED’s ALPR database. As Appellants point out, “it is the General Assembly’s role to make public policy judgments weighing the competing benefits and harms implicated by such a vast system of surveillance.” Initial Brief of Appellant at 2. Indeed, the South Carolina Constitution confirms that the “legislative power of this State” is vested in that body. S.C. Const. art. III, § 1. Included within that legislative power “is the sole prerogative to make policy decisions; to exercise discretion as to what the law will be.” *Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013); *see also* S.C. Const. art. III, § 1.A (“The General Assembly ought frequently to assemble for the redress of grievances and for making new laws, as the common good may require.”).

¹⁰ “All political power is vested in and derived from the people only, therefore, they have the right at all times to modify their form of government.” S.C. Const. art. I, § 1.

Pursuant to that power, the General Assembly alone can regulate the way SLED wields its ALPR database to maximize privacy. And that makes sense, because “in circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative.” *United States v. Jones*, 565 U.S. 400, 429 (2012) (Alito, J., concurring).

Yet despite full awareness of ALPR usage¹¹, it has, as of now, not decided to regulate. It has not passed a bill, nor has it regulated ALPRs or SLED’s database through budget proviso. Notably, the General Assembly funds SLED, and, as relevant here, it “has the right to specify the conditions under which appropriated monies shall be spent.” *Edwards v. State*, 383 S.C. 82, 90, 678 S.E.2d 412, 416 (2009). Yet the General Assembly apparently has not used that right to regulate or cut funding for ALPR use.

If, however, the General Assembly does affirmatively decide to regulate ALPR usage, that decision must be the result of the normal legislative process, not judicial adjudication. That legislative judgment might incorporate new procedures or rules associated with ALPR data use. But just because those policy choices *can* be enacted, does not mean they *must* be enacted. In other words, potential policy considerations do not supply a statutory limitation that the General Assembly itself did not enact.

Other states’ approaches confirm that such choices are policy-specific. As of September 2025, 23 States and the District of Columbia had enacted statutes or rules regulating ALPR use. Those enactments are not uniform; instead, they reflect jurisdiction-specific judgments about the entities covered, the uses permitted, and the safeguards required.¹² These state legislatures could

¹¹ Appellants acknowledge that the General Assembly has deliberated upon and considered legislation to regulate ALPRs specifically. Initial Brief of Appellant at 28 (citing H. 4675, 2025 Leg., 126th Sess. (S.C. 2025)).

¹² Leg. Analysis and Pub. Pol’y Ass’n, *Automatic License Plate Recognition Systems: Summary of State Laws* 4 (September 2025), available at <https://legislativeanalysis.org/wp->

regulate ALPR use and individually found it prudent to do so. But prudence is one thing; necessity is another.

In short, the General Assembly—not this Court—must decide whether ALPR technology warrants additional statutory safeguards. *See Jones*, 565 U.S. at 429–30 (Alito, J., concurring) (“A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.”). Appellants’ policy concerns belong in the hands of the people, not in the hands of judges alone. Anything else would be “anathema to the design of our constitutional republic and the democratic process.” *Planned Parenthood S. Atl.*, 438 S.C. at 296, 882 S.E.2d at 828 (Kittredge, J., dissenting). This Court, therefore, need not short-circuit that process by closing it off here.

Affirming the lower court’s decision would protect the legislative process, allowing the people to decide for themselves the tradeoffs between law enforcement and privacy.

content/uploads/2025/09/Automatic-License-Plate-Recognition-Systems-Summary-of-State-Laws.pdf (“As of September 2025, 23 states, the District of Columbia, and the U.S. Virgin Islands have statutes and/or rules in place that regulate the use of ALPRs. In Alabama, Florida, Georgia, New Hampshire, North Carolina, Vermont, and Virginia, those laws and rules only apply to law enforcement agency use of ALPRs. The laws and rules in Colorado, the District of Columbia, Idaho, Kansas, Nebraska, Utah, and the U.S. Virgin Islands apply to all governmental entities, including law enforcement agencies, while the laws and rules in Arkansas, California, Illinois, and Tennessee apply to both governmental entities and private individuals or entities. Minnesota law also applies to both governmental entities and private individuals and entities but limits the application to non-governmental entities to those whose ALPR data is used for law enforcement purposes. In Maine, Maryland, Montana, and Oklahoma, the laws and rules apply only to law enforcement agencies and at least one other specified governmental agency. Maine is also the only state that does not permit ALPR use by private individuals. Finally, Rhode Island law only applies to ALPR systems used for toll collection purposes. New York’s law does not specify to whom it applies.”).

CONCLUSION

For the reasons above, this Court should affirm the circuit court's order.

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Respectfully submitted,

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