

No. 18-556

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IN THE  
*Supreme Court of the United States*

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STATE OF KANSAS,

*Petitioner,*

—v.—

CHARLES GLOVER,

*Respondent.*

ON WRIT OF CERTIORARI TO THE  
TO THE SUPREME COURT OF KANSAS

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**BRIEF OF *AMICI CURIAE* FINES AND FEES  
JUSTICE CENTER, *et al.* IN SUPPORT OF RESPONDENT**

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## INTEREST OF THE AMICI CURIAE

The Fines & Fees Justice Center (“FFJC”) is a national center for advocacy, information, and collaboration on effective solutions to the unjust and harmful imposition and enforcement of fines and fees in state and local courts. FFJC’s mission is to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably.<sup>1</sup>

The R Street Institute is a non-profit, nonpartisan, public-policy research organization. R Street’s mission is to engage in policy research and educational outreach that promotes free markets, as well as limited yet effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty.

The Cato Institute is a non-partisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute’s Project on Criminal Justice was founded in 1999 and focuses on the proper role of the criminal sanction in a free society, the scope of substantive criminal liability, the proper and effective role of police in their communities, the

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. No party nor counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than amici curiae and their counsel made any contribution of any kind to this brief. All parties have consented to the filing of this brief.



protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

The Institute for Justice (“IJ”) is a nonprofit public-interest law firm that litigates for greater judicial protection of individual rights. These include the right to own and use private property without unreasonable governmental interference. Many of IJ’s cases involve legal challenges to unconstitutional searches and seizures, as well as excessive systems of fines, fees, and forfeitures imposed on the poor and vulnerable. This case thus falls squarely within a core area of concern for IJ.

The Southern Poverty Law Center (“SPLC”) has provided pro bono civil rights representation to low-income persons in the Southeast since 1971, with particular focus on combating unlawful discrimination and ending poverty. The SPLC provides educational materials, engages in policy reform, and develops litigation to minimize the disparate burdens placed on indigent individuals and low income communities caused by the criminal justice system.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

In recent decades, the United States has seen an explosion of driver’s license suspensions for reasons that have nothing to do with public safety. The vast majority of states, including Kansas, suspend drivers’ licenses for unpaid traffic, criminal, or parking fines and fees, as well as delinquent child support. In fact, because state and local jurisdictions increasingly rely on fines and fees as a source of

revenue, most license suspensions today issue for reasons unrelated to driving.

Not surprisingly, these suspensions are concentrated in poor communities and disproportionately in communities of color. And in those communities, there are fewer vehicles per household, making drivers more likely to borrow vehicles from friends or family members.

Kansas contends that its officers should be permitted, consistent with the Fourth Amendment, to conduct suspicionless seizures of vehicles based solely on the fact that the registered owner of the vehicle has a suspended driver's license. Kansas justifies its position in part on public safety, arguing that people with suspended licenses are dangerous drivers. Although Kansas concedes that fully two-thirds of the drivers its officers may resultantly stop are not the registered owner of the vehicle, it contends that the resulting harm is *de minimis*.

*Amici* write to urge the Court to reject Kansas's proposed rule. Permitting police officers to conduct suspicionless seizures of vehicles registered to owners with suspended licenses—without knowing who is actually driving—will invade the Fourth Amendment rights of millions of Americans, with little to no corresponding benefit to public safety. Kansas's arguments ignore the reality of license suspension practices in the United States, and the dangers of suspicionless stops to drivers of color, particularly black drivers.

### ARGUMENT

The Fourth Amendment prohibits “unreasonable” searches and seizures. Whenever the law uses the

term “reasonable,” it invokes a weighing of factors, and the Fourth Amendment context is no different. Broadly speaking, a search or seizure is “reasonable” if the harm it prevents outweighs the intrusion into the individual’s legitimate expectation of privacy and personal security.<sup>2</sup> Kansas overstates its case on both sides of that scale.

The question before the Court is whether an officer can stop a vehicle based on nothing more than the knowledge that the vehicle’s owner has a suspended license. Contrary to Kansas’s position, the harm prevented by these suspicionless stops is minimal. Even assuming the owner is driving the vehicle, most drivers with suspended licenses pose no more of a threat to public safety than validly licensed drivers.<sup>3</sup> States, including Kansas, suspend licenses for many reasons unrelated to bad driving habits, such as unpaid parking tickets, unpaid court fines and fees, failure to appear in court or unpaid child support. Today, most license suspensions issue for one or more of these non-driving reasons.<sup>4</sup>

On the other side of the scale, Kansas’s proposed rule threatens significant harm to individual liberty, particularly for citizens of color. License suspensions disproportionately affect black Americans. Moreover, black drivers are much more likely to be stopped by law enforcement. Once stopped, blacks are more than *twice* as likely to be searched following a routine traffic stop than whites despite the fact those

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<sup>2</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985).

<sup>3</sup> See section I(A), *infra*.

<sup>4</sup> See section I(A), *infra*.

searches result in proportionately less contraband being found.<sup>5</sup>

Further, the stops are likely to be much more common than Kansas suggests. Automated License Plate Readers (ALPRs)—far from being the dystopian fantasy Kansas makes them out to be—are increasingly prevalent in American cities and are capable of flagging a vehicle multiple times over the course of an average commute.<sup>6</sup> For a young black man borrowing a vehicle from a family member with a suspended license, Kansas’s proposed rule presents a real threat to liberty and safety.

### **I. Drivers with Suspended Licenses are Not Inherently More Dangerous than Other Drivers.**

As originally conceived, driver’s license suspension promoted the goal of highway safety.<sup>7</sup> The concept was intuitive: driving is a privilege, and individuals unable or unwilling to drive responsibly should have that privilege revoked.<sup>8</sup> Thus, suspensions might issue for individuals who drive under the influence, drive recklessly, get too many

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<sup>5</sup> See section I(B), *infra*.

<sup>6</sup> See section II, *infra*.

<sup>7</sup> Jon Carnegie and Robert Eger, III, *Reasons for Driver License Suspension, Recidivism, and Crash Involvement among Drivers with Suspended/Revoked Licenses*, National Highway Transportation and Safety Administration, 1 (Jan. 2009).

<sup>8</sup> Amici do not mean to suggest that licenses can or should be suspended lightly. Once a license is issued, it cannot “be taken away without that procedural due process required by the Fourteenth Amendment.” *Bell v. Burson*, 402 U.S. 535, 539 (1971).

speeding tickets, or for any number of other driving-related offenses.

Over time, however, that changed. State lawmakers began to see suspension not as a means of achieving road safety, but as a tool to compel compliance with all kinds of laws. Reasons for suspension diversified and proliferated. Kansas and many other states began suspending licenses for failure to appear in court, failure to pay parking tickets, failure to pay court fines and fees, failure to pay child support and myriad other reasons unrelated to driving.<sup>9</sup> As state and local governments began increasingly to rely on revenue generated from fines and fees,<sup>10</sup> license suspensions morphed from a safety measure to a collections tactic.

**A. Most license suspensions issue for reasons unrelated to highway safety.**

Today, forty-two states use license suspensions as a coercive means of collecting fines and fees, and almost all suspend licenses for unpaid child support. It's a paradoxical policy. People without licenses have a hard time getting to work, and people without jobs have a hard time paying debts.<sup>11</sup> But regardless

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<sup>9</sup> Carnegie and Eger, *Reasons for Driver License Suspension*, *supra* n. 7, at 23.

<sup>10</sup> Rachel McLean and Michael Thompson, *Repaying Debts*, Bureau of Justice Assistance, 33 (2007).

<sup>11</sup> One study found that 42% of survey respondents lost their jobs after their licenses were suspended. Jon Carnegie, *et al.*, *Driver's License Suspensions, Impacts and Fairness Study*, N.J. Dept. of Transp., 56 (Aug. 2007).

of how wise (or unwise) it is to suspend licenses for nonpayment, the fact remains that it is very common. So common, in fact, that several recent studies suggest that an individual's license is more likely to be suspended for non-driving reasons than for driving reasons.

In Florida, for instance, 71% of licenses suspended are for unpaid court debt.<sup>12</sup> In 2017, there were over three million suspensions issued in Ohio, and 62% of those suspensions were unrelated to driving.<sup>13</sup> In Wisconsin, 56% of license suspensions are issued for “failure to pay the fine on a ticket for a nonmoving traffic offense”—that is, unpaid parking tickets.<sup>14</sup> One study in New Jersey found that “[l]ess than six percent of all suspended drivers are suspended for purely driving-related reasons.”<sup>15</sup>

There is no reason to think these jurisdictions are unique—others simply have not conducted the same studies. Indeed, a recent analysis by the Washington Post concluded that over 7 million Americans have had their licenses suspended for failure to pay court or administrative debt.<sup>16</sup>

Kansas ignores this dramatic shift in the landscape of license suspension, arguing that it

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<sup>12</sup> Data on file at Fines and Fees Justice Center.

<sup>13</sup> Data on file at Fines and Fees Justice Center.

<sup>14</sup> Joseph Shapiro, *How Driver's License Suspensions Unfairly Target the Poor*, NPR (January 5, 2015).

<sup>15</sup> Carnegie, et al., *Impacts and Fairness Study*, *supra* n. 11, at 65.

<sup>16</sup> Justin Wm. Moyer, *7 Million People May Have Lost Licenses Due to Traffic Debt*, The Washington Post (May 19, 2018).

suspends the licenses of “those who demonstrate an inability or unwillingness to abide by” the rules of the road.<sup>17</sup> Maybe so, but it also suspends the licenses of those who demonstrate an inability or unwillingness to pay child support,<sup>18</sup> and those who demonstrate an inability or unwillingness to pay traffic tickets.<sup>19</sup> There is no reason to think that the majority of licenses suspended in Kansas are for driving reasons, and every reason to think the opposite.

**B. License suspensions unfairly target poor communities and communities of color.**

When states wield license suspension as a cudgel, they primarily hit the poor. This is so obvious that it barely requires explanation. People living paycheck-to-paycheck “have fewer resources available to divert to paying court debt” than those with means.<sup>20</sup> And people who cannot immediately pay their fines and fees are subject to significant additional penalties—collection fees, interest, non-payment fees, payment plan set-up fees, probation fees, and warrant fees, to name a few—that rapidly multiply already unmanageable burdens into impossible sums.<sup>21</sup> When license suspension is the penalty for non-

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<sup>17</sup> Pet. Br. 22 (citing Kan. Stat. Ann. §§ 8-254 and 8-286).

<sup>18</sup> Kan. Stat. Ann. § 20-1204a(g).

<sup>19</sup> Kan. Stat. Ann. § 8-2110(b)(1).

<sup>20</sup> Mario Salas and Angela Ciolfi, *Driven by Dollars: A State-by-State Analysis of Driver’s License Suspension Laws for Failure to Pay Court Debt*, Legal Aid Justice Center, 3 (2017).

<sup>21</sup> Alexis Harris *et al.*, *Monetary Sanctions in the Criminal Justice System* 14 (April 2017).

payment, those who cannot afford to pay will have their licenses suspended.

It should thus come as no surprise that black Americans—who are more likely than white Americans to live in poverty—are also more likely than white Americans to have their licenses suspended for nonpayment of court fees.<sup>22</sup> But the disproportionate impact on black Americans goes beyond the well-established connection between race and poverty. The Department of Justice investigation of policing practices in Ferguson, Missouri, found a revenue-driven system of fines and fees designed to raise money from poor black citizens.<sup>23</sup> When those citizens could not pay the (often exorbitant) fees, Ferguson suspended their licenses until they paid in full.<sup>24</sup>

Ferguson is not an isolated example. In New York state, communities with the highest percentage of people of color have license suspensions rates two to four times higher than white communities.<sup>25</sup> Florida suspends the licenses of its black citizens at a rate

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<sup>22</sup> In addition to being intuitive, this effect has been documented in several states. Salas and Ciolfi, *Driven by Dollars*, *supra* n. 20, at 3 (citing studies documenting disproportionate effect on black Americans in California, Virginia, and Wisconsin).

<sup>23</sup> United States Dep't of Justice, Investigation of the Ferguson Police Department, 78 (March 4, 2015).

<sup>24</sup> *Id.* at 3 (municipal court would not lift a license suspension for anything less than full payment).

<sup>25</sup> Joanna Weiss and Claudia Wilner, *Opportunity Suspended*, Drivenbyjustice.org (last accessed September 5, 2019) (analyzing data from the New York Dep't of Motor Vehicles 2016-2017).



1.5 times higher than the general population.<sup>26</sup> In North Carolina, “the relationship between the number of people in poverty and the number of suspensions in a county is dependent on race.”<sup>27</sup>

Moreover, poor communities and communities of color have fewer vehicles per household and fewer vehicles per neighborhood.<sup>28</sup> Logically, less vehicle access means that individuals in those communities are more likely to borrow vehicles from friends and neighbors, compounding the racial disparity that will result from Kansas’s proposed rule.

Should Kansas prevail, the data suggest that the impact will be felt primarily in poor communities and communities of color. And individuals in those communities will then face a significant risk of racially motivated searches, arrests, and even violence—all more likely for citizens of color following a traffic stop.<sup>29</sup>

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<sup>26</sup> Data on file with Fines and Fees Justice Center.

<sup>27</sup> Brandon Garrett and William Crozier, *Driver’s License Suspension in North Carolina*, Duke L. Sch. Pub. L. & Legal Theory Series No. 2019-27 (April 15, 2019).

<sup>28</sup> Alan Berube, Elizabeth Deakin, and Steven Raphael, *Socioeconomic Differences in Household Automobile Ownership Rates: Implications for Evacuation Policy*, 3 (June 2006), available at: <https://gspp.berkeley.edu/assets/uploads/research/pdf/berubedeakenraphael.pdf>.

<sup>29</sup> Numerous studies and analyses have identified vast racial disparities in post-stop conduct by police officers. See, e.g., Emma Pierson *et al.*, *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, Stanford Computational Policy Lab, 5-6 (March 13, 2019); German Lopez, *There are Huge Racial Disparities in How US Police Use Force*, Vox (Nov. 14, 2018) (analyzing FBI data), available at:

**C. Individuals with licenses  
suspended for non-driving reasons  
are no worse at driving than the  
general public.**

Kansas takes the position that public safety concerns justify stopping vehicles owned by individuals with suspended licenses.<sup>30</sup> But that rationale does not apply to individuals with licenses suspended for non-driving reasons, who, as noted above, are the majority of individuals with suspended licenses.

A person's ability or inability to pay court fees has nothing to do with his or her ability to drive safely. A California Department of Motor Vehicles study found that drivers with licenses suspended for non-driving related reasons "have relatively low traffic risks that are not much higher than the validly-licensed group."<sup>31</sup> A follow-up study commissioned by the American Association of Motor Vehicle Administrators confirmed this result, finding that "[l]ess than 1 percent (0.09%) of drivers suspended for non-driving reasons . . . are involved in a crash while their driver's license is suspended."<sup>32</sup>

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<https://www.vox.com/identities/2016/8/13/17938186/police-shootings-killings-racism-racial-disparities>.

<sup>30</sup> Pet. Br. 22-24.

<sup>31</sup> Michael Gerbers and David DeYoung, *An Examination of the Characteristics and Traffic Risk of Drivers Suspended/Revoked for Different Reasons*, California Department of Motor Vehicles, vii (Nov. 2002).

<sup>32</sup> Carnegie and Eger, *Reasons for Driver License Suspension*, *supra* n. 7, at 23.

Furthermore, as respondent has repeatedly pointed out, Kansas's proposed rule is relevant only when the vehicle in question is meticulously obeying all rules of the road. Otherwise, the officer has reasonable suspicion to make the stop regardless of the identity of the vehicle's owner. When an officer is following a law-abiding vehicle, it is difficult to see how a stop could be justified on public safety grounds, even if the registered owner of the vehicle has a suspended license.

**II. Stopping Vehicles Belonging to  
Owners with Suspended Licenses  
Imposes a Significant Burden on  
Individual Liberty that is Likely to  
Increase.**

The suspicionless stops at issue in this case pose a significant and increasing threat to individual liberty. Kansas's argument to the contrary presupposes two facts: first, that the stops will occur infrequently due to practical limitations on police resources; and second, that an officer who is mistaken about the driver's identity will inquire no further and send the driver on his way. This is a fantasy, one that ignores the realities of contemporary police practices and promises to infringe significantly on the rights of individual drivers.

Kansas's argument about police resources has surface appeal and may have been correct forty years ago. Essentially, Kansas contends that police officers can only review and report a limited number of license plates per shift, so any particular vehicle is unlikely to be flagged in the first place. But modern police departments are not constrained by the

functional limitations of human police officers to the extent Kansas suggests. Increasingly, they rely on computer technology, including Automated License Plate Readers (ALPRs), to identify and report offenders. If an ALPR covers an individual's route to work, that individual's vehicle is likely to be flagged during every single commute.

This poses a particular problem for citizens of color. As noted above, black Americans are more likely than white Americans to have suspended licenses and will thus be disproportionately affected by the rule Kansas suggests. So, too, will their spouses, children, friends and relatives. Multiple studies have also confirmed that, after a traffic stop, black citizens are more likely to be searched, to be arrested, and to be the target of police violence than white citizens.<sup>33</sup> Thus, for black Americans, Kansas's rule does not present a minimal intrusion into individual liberty, but a persistent and significant potential for police harassment and violent confrontation.

**A. Automated License Plate Readers (ALPRs) are increasingly prevalent in the United States and relay information to police departments.**

ALPRs are cameras that automatically scan and register license plates of vehicles on the road. This process is functionally identical to a police officer manually keying-in the vehicle's plates on a dashboard-mounted computer, as happened in this

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<sup>33</sup> See, e.g., Emma Pierson *et al.*, *Analysis of Racial Disparities*, *supra* n. 29, at 5-6; German Lopez, *Racial Disparities in How US Police Use Force*, *supra* n. 29.

case, except that ALPRs can capture almost two thousand license plates per minute.<sup>34</sup> They can be mounted to just about anything, including highway overpasses, street signs, or even police cruisers.<sup>35</sup>

Police departments across the country already use ALPRs every day. The International Association of Chiefs of Police estimated that about two-thirds of major police departments used ALPRs in 2011.<sup>36</sup> And as the technology gets cheaper—as technology inevitably does—ALPRs will become increasingly prevalent.<sup>37</sup>

The results are positively Orwellian. When an ALPR scans your plates, it uploads the data to a central, searchable database.<sup>38</sup> Over time, those data

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<sup>34</sup> See David J. Roberts and Meghann Casanova, *Automated License Plate Recognition (ALPR) Use by Law Enforcement: Policy and Operational Guide*, International Association of Chiefs of Police: Technical Center, 3 (Aug. 2012); Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, Atlantic (Apr. 22, 2016), <https://www.theatlantic.com/technology/archive/2016/04/how-license-plate-readers-have-helped-police-and-lenders-target-the-poor/479436/>.

<sup>35</sup> Julia M. Brooks, *Drawing the Lines: Regulation of Automatic License Plate Readers in Virginia*, 25 Rich. J.L. & Tech. 1, 3 (2019).

<sup>36</sup> See David J. Roberts and Meghann Casanova, *ALPRs*, *supra* n. 34, at 7. “Major police departments” here means those with over 100 sworn officers.

<sup>37</sup> *Id.* (finding that 71% of police departments using ALPR technology planned to increase their use of the technology over the next five years).

<sup>38</sup> *Automated License Plate Readers (ALPRs)*, Electronic Frontier Foundation (last visited September 5, 2019), <https://www.eff.org/pages/automated-license-plate-readers-alpr>.

points allow anyone with access to the database to paint an intimate portrait of a driver’s life. As the D.C. Circuit stated in *United States v. Maynard*, police can use ALPR data about a person to “deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups—and not just one fact about a person, but all such facts.”<sup>39</sup> The potential for abuse is clear, and indeed, instances of abuse have already occurred.<sup>40</sup>

### **B. Kansas’s proposed rule enables revenue-driven policing practices.**

Enabling police officers to engage in suspicionless stops of vehicles belonging to owners with suspended licenses opens a Pandora’s box of revenue-driven policing practices, particularly in combination with widespread use of ALPRs.

This is not a hypothetical parade of horrors—it has already happened. Take for example a private company called Vigilant Solutions, which owns and operates ALPRs that scan 70 million license plates each month in Texas. Vigilant provides information

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<sup>39</sup> *United States v. Maynard*, 615 F.3d 544, 560–62 (D.C. Cir. 2010).

<sup>40</sup> For example: the Virginia State Police used ALPRs to identify individuals attending Barack Obama and Sarah Palin rallies in 2008; Immigration and Customs Enforcement scanned all plates entering lots for a gun show in 2010, New York police officers electronically recorded the plates of all vehicles parked near a particular mosque. *Automated License Plate Readers (ALPRs)*, Electronic Frontier Foundation (last visited September 5, 2019), <https://www.eff.org/pages/automated-license-plate-readers-alpr>.

on those scans to police.<sup>41</sup> In exchange, police departments give Vigilant access to information on individuals with outstanding court fees, and Vigilant alerts the police when it flags a license belonging to such an individual.<sup>42</sup>

Texas police officers, who can use credit and debit card readers to take payment on the spot,<sup>43</sup> use information provided by Vigilant to pull debtors over. The officers then give the debtors a choice: go to jail or pay the original fine plus a 25% “processing fee” right now.<sup>44</sup> The “processing fee” goes directly to Vigilant.<sup>45</sup>

This system is disturbing because it changes the nature of police practice. Police officers, rather than enforcing public safety, become mobile debt collectors. Their job is to raise money not only for state and local governments, but also for the private entities that own and operate the debtor-spotting cameras.

Moreover, police officers with explicit revenue-related goals—like the police in Ferguson<sup>46</sup>—are

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<sup>41</sup> Dave Maass, “No Cost” License Plate Readers Are Turning Texas Police into Mobile Debt Collectors and Data Miners, Electronic Frontier Foundation (Jan. 26, 2016), <https://www.eff.org/deeplinks/2016/01/no-cost-license-plate-readers-are-turning-texas-police-mobile-debt-collectors-and>.

<sup>42</sup> *Id.*

<sup>43</sup> Tex. Code Crim. Proc. § 103.0025 (2015).

<sup>44</sup> Dave Maass, “No Cost” License Plate Readers, *supra* n. 41.

<sup>45</sup> *Id.*

<sup>46</sup> United States Dep’t of Justice, Investigation of the Ferguson Police Department, 78 (March 4, 2015).

incentivized to stop individuals with court debt. As technology enables police to identify those individuals with increasing ease, there is no reason to believe that suspicionless stops will be few and far between.

### CONCLUSION

Kansas’s proposed rule—allowing police officers to engage in suspicionless stops of vehicles registered to individuals with suspended licenses—imposes a significant and increasing burden on personal liberty in exchange for a minimal public safety benefit. *Amici* urge the Court to find that these seizures are therefore “unreasonable” and prohibited by the Fourth Amendment.

Respectfully submitted,

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