No. 21-374

In the Supreme Court of the United States

STEVEN EDWARD STRUVE,
Petitioner,

v.

STATE OF IOWA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Iowa

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Iowa's traffic code prohibits drivers from using cellphones for most purposes but permits a few, narrow functions.

The question presented is:

Whether Iowa police officers observing a driver use a cellphone in a manner consistent with a prohibited purpose—and lacking information to negate the inference of unlawful usage—possess reasonable suspicion to justify a brief investigatory stop.

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INTRODUCTION

More than forty percent of surveyed motorists admitted reading a text-message or email while driving at least once in the previous thirty days.[1] And cellphones support many functions beyond text-messaging, including browsing the internet, watching television programs, posting on social media, or playing games. But distracted driving is dangerous, leading to crashes, injuries, and deaths.

To address the dangers of distracted driving, Iowa enacted a statute to limit drivers' use of handheld communication devices. See generally Iowa Code § 321.276 (2018). Although the Iowa Supreme Court has not yet defined the bounds of the statute, it summarized that the law "allows drivers to use cell phones for some limited purposes while prohibiting most others." Pet. App. 5a.

Petitioner Steven Struve was stopped for suspicion of violating Iowa's cellphone statute. He filed a motion to suppress, alleging officers lacked reasonable suspicion for the stop. The district court denied his motion, and the Iowa Supreme Court affirmed. Struve now seeks certiorari, but this Court should deny his petition for three reasons:

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[1] AAA Found. for Traffic Safety, 2018 Traffic Safety Culture Index, at 5 (2019) [hereinafter AAA 2018 Traffic Safety Index], https://aaafoundation.org/wp-content/uploads/2019/06/2018-TSCI-FINAL-061819_updated.pdf, https://perma.cc/SF5X-QWWZ, *cited in* Pet. App. 24a–25a & n.4.

First, the petition does not accurately state the breadth of conduct prohibited by Iowa's statute. The disagreement over how to interpret the statute divided the Iowa Supreme Court as much as the reasonable-suspicion question did. Although Struve now asserts the law permits "myriad other purposes," Petition at 4, during oral argument below he conceded the statute prohibits all but the few, narrow functions the statute expressly permits. Pet. App. 16a. Certiorari is not appropriate when the petition relies on an interpretation of an Iowa statute that the Iowa Supreme Court did not adopt and that conflicts with the position Struve accepted below.

Second, not enough appellate courts have addressed the question to develop a clear split of authority. Even among those few rulings, differences in the scope of conduct prohibited by various state statutes drove the different outcomes under the reasonable-suspicion analysis. Thus, there is no clear split in the lower courts necessitating this Court's intervention.

Third, the Iowa Supreme Court reached the correct result. The majority closely followed the recent decision in *Kansas v. Glover*, 140 S. Ct. 1183 (2020), which reaffirmed that commonsense inferences may support reasonable suspicion. Officers who observed Struve using a cellphone in a manner consistent with unlawfully sending or viewing an electronic message could rationally infer he violated Iowa's statute. And because officers did not observe any conduct indicative of one of the statute's narrow exceptions, the circumstances did not dispel their

initial inference. Accordingly, the officers were justified to investigate with a brief traffic stop.

STATEMENT OF THE CASE

Petitioner Struve held a cellphone "in front of his face" while he drove down a highway in Clinton, Iowa. Pet. App. 6a. Officers Curtis Blake and Roger Schumacher were driving next to Struve, and through the darkness they noticed the glow of the illuminated phone coming from his vehicle. *Ibid.* Struve was "manipulating" the phone screen with his finger. *Ibid.* The officers continued observing him use the phone for approximately ten seconds before making a traffic stop. *Ibid.*

Struve continued using the phone when officers approached his vehicle. *Ibid.* He "explained he had been showing his passenger photos from his phone's gallery." *Ibid.* While Officer Schumacher spoke with Struve, Officer Blake noticed a drug pipe protruding from a backpack in the back seat. *Ibid.* Officers searched the car and found a baggie containing more than twenty grams of suspected methamphetamine. *Ibid.*

Struve was arrested and charged with possession with intent to distribute more than five grams of methamphetamine and failure to affix a drug tax stamp. *Id.* at 6a–7a. He filed a motion to suppress contending police lacked reasonable suspicion that he was committing a traffic violation. *Id.* at 7a. The district court denied the motion to suppress, finding officers had reasonable suspicion that Struve's use of a cellphone while driving violated Iowa Code section 321.276. *Ibid.* Struve consented to a stipulated bench trial on a reduced charge of possession with intent to

distribute less than five grams of methamphetamine. *Ibid.* He was found guilty and appealed, challenging only the initial stop. *Ibid.*

The Iowa Supreme Court affirmed Struve's conviction. *Id.* at 31a. The majority followed this Court's recent decision in *Kansas v. Glover*, which recognized the reasonable-suspicion standard allows an officer "to rely on 'commonsense judgments and inferences about human behavior' in determining whether the particular facts known to the officer indicate criminal activity sufficient to warrant investigation." *Id.* at 10a (quoting *Glover*, 140 S. Ct. at 1187–88). The majority determined Iowa's statute "broadly prohibits" many cellphone uses beyond text-messaging. *Id.* at 16a. It distinguished a Seventh Circuit decision that relied on Indiana's narrower texting-while-driving statute, and it declined to follow a North Dakota Supreme Court decision that predated and conflicted with *Glover*. *Id.* at 19a–22a. Similar to *Glover*, the majority followed a "commonsense observation, supported by empirical evidence that a significant number of drivers continue to read and write text messages while driving." *Id.* at 26a. The majority concluded:

> the officers' observations of Struve holding the lit cell phone in front of his face for at least ten seconds while manipulating the screen allowed them to briefly stop Struve and clear up the ambiguity created by his actions, particularly in light of the expanded coverage of activity prohibited by section 321.276.

Id. at 30a.

The dissent reached a different conclusion based on a different interpretation of the statute. It determined section 321.276 "permits drivers far more lawful uses of their phones than the majority acknowledges." *Id.* at 34a. According to the dissent, the statute created only "a handful of prohibited uses" and "innumerable permitted uses." *Id.* at 33a. Relying on this narrow construction, the dissent concluded that nothing about Struve's conduct was "more indicative of any forbidden use . . . than any permitted use . . . ." *Id.* at 41a. The dissent dismissed this Court's *Glover* opinion as having "minimal value" outside of "vehicle registration cases." *Id.* at 44a.

After an unsuccessful petition for rehearing in the Iowa Supreme Court, *id.* at 3a, Struve filed a petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION

I. The Iowa Supreme Court did not resolve an issue of statutory interpretation that drove the reasonable-suspicion analysis.

The task of interpreting Iowa's statute should be left to Iowa's courts. In this case, the Iowa Supreme Court expressly declined to define the bounds of what cellphone uses violate Iowa's statute. See *id.* at 5a ("We do not decide today what uses of a cell phone are permitted and what uses are prohibited by section 321.276."). Yet a fundamental disagreement over statutory interpretation manifested in how the majority and dissent analyzed the reasonable-suspicion question. And Struve in particular advances an interpretation in his petition that conflicts with a concession he made in the Iowa Supreme Court. Accordingly, the looming statutory-

interpretation question makes this case a poor vehicle to address the reasonable-suspicion issue.

Iowa's cellphone statute, as revised in 2017, prohibits writing, sending, or viewing an electronic message while driving. Iowa Code § 321.276(2). But the prohibition extends beyond text-messaging—the statute expressly forbids "playing, browsing, or accessing" functions "including a text-based message, an instant message, a portion of electronic mail, an internet site, a social media application, or a game." *Id.* §§ 321.276(1)(a) & (d). The statute is not violated by a driver "using a global positioning system or navigation system" or when using a phone "for the purpose of engaging in a call." *Id.* § 321.276(2)(a). Additionally, the prohibition does not apply to members of public safety agencies, healthcare professionals during an emergency, or people "receiving safety-related information including emergency, traffic, or weather alerts." *Id.* § 321.276(2)(b).

The Iowa Supreme Court's majority and dissent sharply disagreed about how to interpret the statute. The majority recognized that the 2017 revision "greatly expanded the statute's coverage from its prior limited prohibitions." Pet. App. 18a n.2. It determined the revised statute "allows drivers to use cell phones for some limited purposes while prohibiting most others." *Id.* at 5a. Although the statute did not attempt to list every available cellphone application, the majority pointed out that many such "apps" communicate with the provider in a manner similar to accessing an internet site, which the statute clearly prohibits. See *id.* at 18a n.2. The

dissent found the opposite: that the statute had only "a handful of prohibited uses" and "innumerable permitted uses." *Id.* at 33a.

This disagreement about statutory interpretation dictated how the majority and dissent analyzed the reasonable-suspicion question. The majority concluded, "particularly in light of the expanded coverage of activity prohibited by section 321.276," that Struve holding the lit phone in front of his face while manipulating the screen was sufficiently indicative of unlawful usage. *Id.* at 30a–31a. In contrast, the dissent characterized it as "assumption" that a driver's phone use was "one of the handful of forbidden uses." *Id.* at 44a. Thus, differences in how to interpret section 321.276—whether as a broad prohibition with few permitted exceptions, or as a narrow prohibition with broad permitted uses—swayed the reasonable-suspicion analysis.

For his part, Struve now advances a different statutory interpretation than he did in the Iowa Supreme Court. His petition relies on the dissent to support his belief that "various uses of a cellphone would be allowed under Iowa law despite not being included on the list of expressly permitted activities." Petition 15 n. 4. But during oral argument below, "Struve conceded the statute prohibits a motorist from using a cell phone for any purpose other than the express exceptions identified in section 321.276(2)(a) and subsection (b)." Pet. App. 16a. In particular, he agreed "that his actions of scrolling through his phone's photo gallery and showing pictures to his passenger violated the statute." *Ibid.*

The unsettled question of statutory interpretation should be left to the Iowa Supreme Court. The majority decided to "leave that question for another day where the issue is more directly presented through the adversarial process." *Id.* at 18a n.2. Struve's petition relies on a statutory interpretation that was never adopted by the Iowa Supreme Court and that conflicts with the interpretation he accepted below. This Court should decline to grant certiorari in such a case that risks interfering with the state court's right to interpret state legislation.

II. The petitioner fails to identify a clear split of authority necessitating this Court's intervention.

Few appellate courts have addressed the question Struve presents. Even within that handful of cases, the variance between state cellphone laws complicates any attempt to categorize a clear split of authority. Additionally, the Iowa Supreme Court's opinion in this case is the only one to apply this Court's recent guidance in *Glover*. Certiorari is not warranted when so few lower courts have addressed the issue and when those decisions turned on differences between state cellphone statutes.

Struve's categorization does not reveal a widespread split. In support of his position, he cites rulings from the Seventh Circuit, one state supreme court, and two federal district courts. Petition 13–17 (citing *United States v. Paniagua-Garcia*, 813 F.3d 1013 (7th Cir. 2016); *United States v. Wilkins*, 451 F. Supp. 3d 222 (D. Mass. 2020); *Crigger v. McIntosh*, 254 F. Supp. 3d 891 (E.D. Ky. 2017); *State v. Morsette*, 924 N.W.2d 434 (N.D. 2019)). And although Struve

characterizes the Iowa Supreme Court's holding as "the minority position," *id.* at 10, he notes that it aligns with three state courts of appeals and one federal district court. *Id.* at 12–13 (citing *United States v. Mayo*, No. 2:13–CR–48, 2013 WL 5945802 (D. Vt. 2013); *People v. Corrales*, 152 Cal. Rptr. 3d 667 (Ct. App. 2013); *Williams v. State*, 778 S.E.2d 820 (Ga. Ct. App. 2015); *State v. Dalton*, 850 S.E.2d 560 (N.C. Ct. App. 2020)). But this attempt to align cases into a split does not take into account differences in the state statutes at issue or the heightened legal standards some lower courts have applied.

First, different state statutes have led to different results. In *Paniagua-Garcia*, the Seventh Circuit considered Indiana's statute that prohibited only texting and emailing while driving. 813 F.3d at 1013. "*All* other uses of cellphones by drivers are allowed," including, "making and receiving phone calls, inputting addresses, reading driving directions and maps with GPS applications, reading news and weather programs, retrieving and playing music or audio books, surfing the Internet, playing video games—even watching movies or television." *Ibid.* The court decided that "because a driver is more likely to engage in one or more of [the permissible uses] than in texting . . . the most plausible inference from seeing a driver fiddling with his cellphone is that he is *not* texting." *Id.* at 1013–14; see also *Wilkins*, 451 F. Supp. 3d at 228–29 (following *Paniagua-Garcia* when the court could "perceive no substantive difference between the Indiana statute and the Massachusetts law as it existed at the time of the stop"); *Crigger*, 254 F. Supp. 3d at 898–99 (reaching a similar conclusion after determining Kentucky's statute "does not

prohibit any cellular telephone uses other than text-based communications").

The Iowa Supreme Court's decision does not directly conflict with *Paniagua-Garcia* or the two district courts because Iowa's cellphone statute prohibits much more conduct. The majority recognized that Iowa Code section 321.276's 2017 revision "greatly expanded the scope of its coverage to prohibit not only writing, sending, or reading text or email messages but also playing games, browsing social media apps, and accessing internet sites." Pet. App. 20a. "Thus, the revised Iowa statute prohibits much of the activity allowed under the Indiana statute that supported the Seventh Circuit's conclusion." *Ibid.* This distinction leaves no clear split between the Seventh Circuit and the Iowa Supreme Court—Iowa law prohibits a much wider scope of cellphone usage, so it is more reasonable for Iowa officers to infer a driver's conduct does not fit one of the law's narrow exceptions.

Next, applying heightened legal standards has led to different results. For example, the Oregon Court of Appeals has reached varying outcomes when applying the state constitution's probable-cause standard. Compare *State v. Rabanales-Ramos*, 359 P.3d 250, 256 (Or. Ct. App. 2015) (finding no probable cause when the trooper observed a driver looking at an illuminated device but not pushing buttons), with *State v. Nguyen Ngoc Pham*, 433 P.3d 745, 747 (Or. Ct. App. 2018) (upholding a stop when officers observed a driver looking at his phone and pressing buttons). However, unlike the Oregon Constitution that requires probable cause, the Fourth

Amendment's reasonable-suspicion standard is "'less demanding'" and "'can be established with information that is different in quantity or content than that required to establish probable cause.'" *Glover*, 140 S. Ct. at 1188 (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)).

Similarly, application of an outdated legal standard may have led to North Dakota's inconsistent ruling. In *State v. Morsette*, the North Dakota Supreme Court disallowed an investigatory stop, noting, "No testimony was elicited about [the officer's] past success rate at identifying violations of the cell phone-use-while-driving law or any unique training he received enabling him to conclude the facts he observed amounted to violations of the law." 924 N.W.2d 434, 440 (N.D. 2019). But *Morsette*'s reasoning conflicts with this Court's subsequent statement in *Glover*, which explained, "Nothing in our Fourth Amendment precedent supports the notion that, in determining whether reasonable suspicion exists, an officer can draw inferences based on knowledge gained only through law enforcement training and experience. We have repeatedly recognized the opposite." *Glover*, 140 S. Ct. at 1189.

The Iowa Supreme Court's adherence to *Glover* sets it apart from any other court analyzing a cellphone stop. Most of the cases Struve identifies—including all the cases on his side of the split—predate *Glover*. And *Glover* provided important direction for the Iowa Supreme Court's decision: "*Glover* reinforces the importance of considering the commonsense understanding about human behavior and use of cell phones in assessing whether the officers had an

objectively reasonable suspicion that Struve was engaged in a prohibited use of his cell phone." Pet. App. 25a–26a. The Fourth Amendment analysis would benefit from more courts taking the opportunity to consider cellphone stop cases—or to rethink their existing cases—in light of *Glover*'s guidance.

There is no significant split calling for this Court's review. Few state and federal appellate courts have considered the constitutionality of stops for unlawful cellphone usage. Of those, differences in the breadth of state statutes influenced the outcomes of individual cases. The Iowa Supreme Court's decision does not expose a clear split of authority, so certiorari is not warranted.

III. The Iowa Supreme Court's decision was correct.

The Iowa Supreme Court followed the established reasonable-suspicion standard, which this Court revisited just two terms ago in *Glover*. Under that standard, officers could make an investigatory stop even though they were not certain Struve was using his cellphone for a prohibited purpose. Instead, they could draw a commonsense inference that Struve's conduct was indicative of unlawful usage, especially because Iowa's statute broadly prohibits most cellphone use. Finally, officers did not observe any additional facts indicative of one of the few permitted cellphone uses, so they could act on their initial reasonable suspicion by making a traffic stop.

A. Officers needed only reasonable suspicion, not probable cause of a violation.

Glover reaffirmed that the Fourth Amendment permits a peace officer to briefly detain a motorist based on reasonable suspicion of a traffic violation, a standard that requires "'considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.'" *Glover*, 140 S. Ct. at 1187 (quoting *Prado Navarette v. California*, 572 U.S. 393, 397 (2014)).

Struve's behavior supplied a "'particularized and objective basis for suspecting'" he was unlawfully using his cellphone while driving. See *ibid.* (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Officers observed him holding the illuminated phone "in front of his face" while he manipulated the screen with his finger. Pet. App. 6a. To a reasonable officer, these facts would indicate that he was writing or viewing an electronic message—an act expressly forbidden by Iowa law. See Iowa Code § 321.276(1)(a) (listing prohibited uses "including a text-based message, an instant message, a portion of electronic mail, an internet site, a social media application, or a game").

The Iowa Supreme Court correctly rejected Struve's effort to impose a greater burden on officers. He contends "the officer must point to additional facts that suggest impermissible rather than permissible use" and speculates that "[c]ertain cellphone uses might give rise to distinctive bases for suspecting prohibited activity." Petition 19. But as the majority below recognized, "If the officer could see a text

message or Facebook page visible on the screen, the officer would have probable cause to stop the driver. Reasonable suspicion requires a lesser showing." Pet. App. 30a n.6 (citing *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). A rule permitting investigatory stops only after the officer is sure of unlawful cellphone use "would considerably narrow the daylight between the showing required for probable cause and the 'less stringent' showing required for reasonable suspicion." *Glover*, 140 S. Ct. at 1190 (quoting *Delaware v. Prouse*, 440 U.S. 648, 654 (1979)).

The officers who observed telltale signs of texting while driving were not required "to simply shrug [their] shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145 (1972). Even if Struve's phone use turned out to be lawful, "*Terry* accepts the risk that officers may stop innocent people." *Wardlow*, 528 U.S. at 126 (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Officers, therefore, could lawfully stop Struve to confirm or dispel their reasonable suspicion that he was violating Iowa's traffic code.

B. The reasonable-suspicion standard permitted officers to draw a common-sense inference about Struve's cellphone usage.

Officers did not stretch reason or common sense when suspecting unlawful conduct. They "followed alongside Struve and observed him holding the phone in front of his face for a significant period of time while manipulating it, actions consistent with improper use of his phone." Pet. App. 29a. This observation created a "substantial possibility" or

"'moderate chance'" that he was unlawfully writing, sending, or viewing an electronic message. See Wayne R. LaFave, *Search and Seizure* § 9.5(b) (6th ed., Sept. 2020 update) (summarizing the standard from *Safford Unified School District # 1 v. Redding*, 557 U.S. 364 (2009)).

The Iowa Supreme Court obeyed the command for courts to "permit officers to make 'commonsense judgments and inferences about human behavior.'" *Glover*, 140 S. Ct. at 1188 (quoting *Wardlow*, 528 U.S. at 125). In *Glover*, the Court accepted the deputy's "commonsense inference" that the registered owner was "likely the driver of the vehicle, which provided more than reasonable suspicion to initiate the stop." *Ibid.* Similarly, officers observing Struve manipulating a device commonly used for text-messaging, and in a manner consistent with text-messaging, could rationally infer that he was text-messaging.

Additionally, the Iowa Supreme Court followed *Glover*'s lead by considering empirical data to confirm the officers' inference. See *ibid.* ("Empirical studies demonstrate what common experience readily reveals . . . ."). Although nearly all surveyed drivers considered texting while driving to be dangerous, "41% of respondents admitted reading messages while driving and 32% admitted typing such messages within the last thirty days." Pet. App. 25a (citing AAA 2018 Traffic Safety Index, *supra*, at 5). "Respondents aged 25–39 were the worst offenders, with 60% admittedly reading a text and 54% typing a text while driving . . . ." *Id.* at 25a n.4. These statistics support a reasonable probability of unlawful

cellphone usage by drivers like Struve who are observed using a cellphone in a manner consistent with writing or viewing an electronic message. See *Glover*, 140 S. Ct. at 1190 ("[O]fficers, like jurors, may rely on probabilities in the reasonable suspicion context." (citing *United States v. Sokolow*, 490 U.S. 1, 8–9 (1989); *Cortez*, 449 U.S. at 418)).

The possibility that an observer could draw the opposite inference from Struve's phone use did not preclude reasonable suspicion. Officers "'need not rule out the possibility of innocent conduct.'" *Id.* at 1188 (quoting *Navarette*, 572 U.S. at 403). In *Glover*, "[t]he fact that the registered owner of a vehicle is not always the driver of the vehicle does not negate the reasonableness of Deputy Mehrer's inference," *ibid.*, even though one could draw the opposite inference that "someone else (a family member, a friend) must be doing the driving." *Id.* at 1192 (Kagan, J., concurring). Similar to an innocent driver stopped in a car registered to an unlicensed owner, drivers tapping the screen of a cellphone might be engaging in a lawful function like navigation. But the inference of unlawful usage remains strong enough to satisfy the reasonable-suspicion threshold, which "'falls considerably short' of 51% accuracy." *Id.* at 1188 (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)).

Struve adds an extra layer to the probability analysis. He thinks the court must have "at least some understanding of how frequently drivers who use cellphones while driving engage in permissible versus impermissible cellphone uses." Petition 24. Not so in *Glover*, which considered the frequency of

unlicensed registered owners continuing to drive illegally but did not quantify how often a friend or family member might legally drive the vehicle. See *Glover*, 140 S. Ct. at 1188. No fact perceptible from outside the car revealed whether the particular driver was lawful or unlawful, but the probability was high enough to justify an investigatory stop. Likewise, the prevalence of texting while driving permits a reasonable inference when a driver engages in conduct consistent with that unlawful purpose.

The Iowa Supreme Court faithfully applied the principles laid out in *Glover*. Officers articulated facts—phone up, screen lit, and finger swiping, Pet. App. 23a–24a—consistent with unlawfully writing or viewing an electronic message. That commonsense inference about phone use, as confirmed by data demonstrating the pervasiveness of texting while driving, supported the officers' suspicion. And even if there was some chance additional investigation would reveal a lawful use, "'[t]o be reasonable is not to be perfect.'" *Glover*, 140 S. Ct. at 1188 (quoting *Heien v. North Carolina*, 574 U.S. 54, 60 (2014)). The officers' initial inference was sound and supported reasonable suspicion to stop Struve.

C. No additional facts dispelled the officers' initial inference that Struve's conduct violated the statute.

Next, the lack of exculpatory circumstances supported the reasonableness of the officers' suspicion. Although police were not required to rule out the possibility of innocent conduct, "the presence of additional facts might dispel reasonable suspicion." *Id.* at 1191 (citing *Terry*, 392 U.S. at 28). But no facts

available to the officers indicated Struve was engaged in one of the narrow, lawful cellphone uses.

Iowa's statute leaves few legal cellphone uses. The Iowa Supreme Court majority found "section 321.276 allows drivers to use cell phones for some limited purposes while prohibiting most others." Pet. App. 5a. Struve agreed with this interpretation, conceding below that "the statute prohibits a motorist from using a cell phone for any purpose other than the express exceptions identified in section 321.276(2)(a) and subsection (b)." *Id.* at 16a. The possibility that he was using his phone for a lawful purpose must be considered in light of his concession that the statute created a broad prohibition with few exceptions.

The facts available to officers did not suggest Struve was using his cellphone for one of those limited, permissible purposes. First, the facts did not indicate he was "using a global positioning system or navigation system." See Iowa Code § 321.276(2)(a). He held the phone with his hand "up in front of his face," Pet. App. 24a, whereas most drivers would set the phone down while following turn-by-turn directions. Second, the facts did not show that Struve was manipulating his phone "for the purpose of engaging in a call." See Iowa Code § 321.276(2)(a). He held the phone for ten seconds and moved his finger around the screen, Pet. App. 23a–24a, but he did not put the phone to his ear as if he was placing a call. Third, there was no reason to think Struve was "receiving safety-related information including emergency, traffic, or weather alerts." See Iowa Code § 321.276(2)(b)(3). The lower courts reviewed a dash-cam video of the stop, Pet. App. 24a, from which they

could assess the unlikelihood that the sparse traffic and clear weather necessitated any "safety-related" alerts. Fourth, it was obvious that Struve was neither "[a] member of a public safety agency . . . performing official duties" nor "[a] health care professional in the course of an emergency situation." See Iowa Code § 321.276(2)(b)(1)–(2). Thus, the circumstances known to officers, together with reasonable inferences about cellphone usage, did not dispel their reasonable suspicion of unlawful conduct.

* * *

Struve's case does not warrant this Court's review. Officers who observed him holding his cellphone and manipulating the screen rationally inferred he was unlawfully writing or viewing an electronic message. And they perceived no facts indicative of one of the few uses permitted under Iowa law. These circumstances provided reasonable suspicion for officers to briefly detain Struve and verify or dispel whether he had committed a traffic violation. The Iowa Supreme Court correctly applied this Court's precedents when upholding the investigatory stop, so its ruling should stand.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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