No. 24-____

In the Supreme Court of the United States

WANDA LYNN EDWARDS, PETITIONER

v.

STATE OF SOUTH DAKOTA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When police officers have probable cause to believe that a stopped car contains contraband, they may search containers in the car, including a purse sitting on the back seat. *See Wyoming v. Houghton*, 526 U.S. 295, 300-01, 307 (1999). But probable cause to search the car does not authorize a search of the passengers themselves, including their outer clothing. *See id.* at 303. Justice Breyer raised the question whether a search is authorized "if a woman's purse, like a man's billfold," is "attached to her person." *See id.* at 308 (Breyer, J., concurring). He explained that the purse may count as "outer clothing" that "receive[s] increased" constitutional "protection," and cannot be searched just because an officer has reason to stop the vehicle or search its driver. *Id.* That open question has divided state high courts, and the Court should resolve the acknowledged split.

Here, Petitioner Wanda Lynn Edwards was a passenger in a vehicle that a police officer in Sturgis, South Dakota, pulled over for driving without its headlights on. During the traffic stop, another officer forcibly took and searched the purse Ms. Edwards wore on her shoulder. As a result of the search, Ms. Edwards was convicted of drug possession.

The question presented is whether officers must have probable cause to search purses held or worn by passengers during traffic stops (as the Supreme Courts of Kansas, North Dakota, and Idaho have held), or whether officers may conduct warrantless searches of any purses held by any person in a stopped vehicle (as the South Dakota Supreme Court, joining the Supreme Courts of Minnesota, Nebraska, and Ohio, held below over a dissent).

RELATED PROCEEDINGS

Supreme Court of the State of South Dakota (S.D.):

State of South Dakota v. Wanda L. Edwards, No. 30448-a-SRJ, 2024 S.D. 62, 13 N.W.3d 199 (Oct. 16, 2024)

State of South Dakota Circuit Court:

State of South Dakota v. Wanda L. Edwards, No. 46CRI22-001154 (Aug. 23, 2023) (judgment of conviction)

State of South Dakota v. Wanda L. Edwards, No. 46CRI22-001154 (Mar. 10, 2023) (findings of fact and conclusions of law regarding defendant's motion to suppress and order)

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INTRODUCTION

This case presents an entrenched and acknowledged conflict over an important constitutional question: whether police officers may conduct a warrantless search of a purse that a car's passenger is holding or wearing, just because the officers may lawfully search the car. The Supreme Courts of Kansas, North Dakota, and Idaho say no—like the passenger and her clothing, a purse the passenger is wearing is protected from warrantless search. Justice Breyer teed up the critical question in *Wyoming v. Houghton*, 526 U.S. 295 (1999), observing that "if a woman's purse, like a man's billfold, were attached to her person," then it might "amount to a kind of 'outer clothing,' which under the Court's cases would properly receive increased protection." *See id.* at 308 (Breyer, J., concurring). But the South Dakota Supreme Court below disagreed, siding instead with the Supreme Courts of Minnesota, Nebraska, and Ohio to hold that officers may search passengers' purses without a warrant even when the passengers are holding them. Over a dissent, the South Dakota high court held that Ms. "Edwards' purse was not entitled to a heightened expectation of privacy and was subject to the same search conditions as any other container found inside of the vehicle that was capable of concealing contraband." App. 13a-14a.

The question implicates fundamental, constitutionally recognized privacy rights, and this case is an excellent vehicle for resolving it. Moreover, the South Dakota Supreme Court's decision was wrong, and it cheapens the Fourth Amendment's protections against warrantless searches of a person's clothing. The Court should grant review and reverse.

1. Petitioner Wanda Lynn Edwards was a passenger in a car that police stopped because its headlights were off. App. 3a. During the stop, Ms. Edwards held her purse on her lap and wore it on her shoulder, insisting that police needed a warrant to search it. App. 5a. But an officer at the scene forcibly took and searched her purse, finding "a small amount of methamphetamine and drug paraphernalia." App. 3a, 5a. The trial court refused to suppress the evidence, and, after a bench trial, it convicted Ms. Edwards of "possession of a controlled substance, obstructing a law enforcement officer, and possession of drug paraphernalia." App. 6a. The South Dakota Supreme Court upheld the search. App. 13a-14a.

2. The lower courts are intractably divided about the legality of searches like the one conducted here. The Court's precedents establish that when officers stop a car and develop probable cause to believe it contains contraband, they may conduct a warrantless search of any unattended containers in the car, like a purse sitting on the back seat. *See Houghton*, 526 U.S. at 307. But probable cause to search the *vehicle* does not authorize the officers to search the *passengers* or to rifle through passengers' pockets. *See id.* at 303. As Justice Breyer anticipated, however, those decisions do not resolve whether a purse the passenger is wearing or holding counts as the sort of outer clothing that receives constitutional protection. *Id.* at 308 (Breyer, J., concurring). State high courts have split on that question.

On one side, the Supreme Courts of Kansas, North Dakota, and Idaho hold that a purse a passenger carries is not subject to search during a warrantless automobile search. Those courts reason that a purse on a passenger's person is analogous to outer clothing.

On the other side, the Supreme Court of South Dakota here joined the Supreme Courts of Minnesota, Nebraska, and Ohio in holding that a purse held by a passenger is subject to search during a warrantless search of the car. The split is entrenched, and further percolation will not help resolve it or make this Court's job any easier. Only this Court can resolve the conflict.

3. The question presented is important, and this case is an ideal vehicle for resolving it. Every day, police officers stop over 50,000 vehicles. Open Policing Project, *Findings*, Stanford University (2023), https://openpolicing.stanford.edu/findings/. This Court has recognized that "it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle," meaning that police officers often search those vehicles. *United States v. Ross*, 456 U.S. 798, 803-04 (1982). The South Dakota Supreme Court's decision imperils the constitutional rights of passengers in those cars. And it does so in a way that uniquely disadvantages women—the court below granted greater constitutional protections to the way many men carry their belongings than the way many women do. But the Fourth Amendment protects "persons … and effects" equally, U.S. Const. amend. IV, without distinguishing between "worthy" and "unworthy" containers. *Ross*, 456 U.S. at 822. And this issue is particularly important to Ms. Edwards. If the decision below is overturned, Ms. Edwards's suppression motion would be granted, and the evidence obtained during the traffic stop would be suppressed and her convictions vacated.

4. The decision below is wrong. In assessing the reasonableness of a warrantless search, courts

consider "on the one hand, the degree to which [the search] intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Houghton*, 526 U.S. at 299-300. Individuals have a significant privacy interest in the purses they hold, because purses are "repositories of especially personal items." *Id.* at 308 (Breyer, J., concurring). The government has a greater investigatory interest in passengers' purses that aren't near the passengers—a criminal has more opportunity to hide contraband in those belongings, *see id.* at 305-06 (majority opinion), than in purses on passengers' persons. A passenger has especially significant privacy interests in a purse she is wearing. Thus, as with clothing worn by passengers, balancing the interests weighs against searching purses held by passengers. *See United States v. Di Re*, 332 U.S. 581, 583, 595 (1948). Indeed, treating purses held by passengers differently than the passengers' coat pockets would contravene this Court's instruction that the Fourth Amendment does not distinguish between "worthy" and "unworthy" containers, *see Ross*, 456 U.S. at 822, to say nothing of the Fourteenth Amendment's command that states must afford men and women "the equal protection of the laws." U.S. Const. amend XIV, § 1.

The Court should grant review.

OPINIONS BELOW

The Supreme Court of South Dakota's opinion (App. 1a-16a) is reported at 13 N.W.3d 199. The South Dakota Circuit Court's judgment of conviction, findings and verdict after court trial, and findings of fact and conclusions of law regarding defendant's motion to suppress and order are unpublished, but are

reproduced at App. 17a-23a, App. 24a-27a, and App. 28a-41a, respectively.

JURISDICTION

The Supreme Court of South Dakota entered its judgment on October 16, 2024. App. 2a. Justice Kavanaugh's order of December 23, 2024, extended the time to file the petition for a writ of certiorari to February 13, 2025. *See* 28 U.S.C. § 2101(c). This petition is timely filed on February 10, 2025. The Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

STATEMENT

A. Legal background

"The Fourth Amendment protects 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *Houghton*, 526 U.S. at 299 (alteration adopted). "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967).

This case involves the convergence of two lines of Fourth Amendment caselaw. On the one hand, a police officer who has authority to conduct a warrantless search of a vehicle may search containers in the vehicle that are not on a passenger's person. On the other hand, a police officer who has authority to conduct a warrantless search of the vehicle may not conduct a body search of a passenger or rummage through a passengers' pockets.

1. a. The "automobile exception," *California v. Acevedo*, 500 U.S. 565, 566 (1991), provides that where police officers have probable cause to believe that an automobile contains evidence of contraband, the officers may search the automobile without a warrant. *See Carroll v. United States*, 267 U.S. 132, 149 (1925). The rationale for the exception is that "the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained." *Chambers v. Maroney*, 399 U.S. 42, 51 (1970).

The officers' authority to search the car includes searching containers in the car that are not on a passenger's person. *See Ross*, 456 U.S. at 825. "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Id.* The Court has explained that the scope of a warrantless search of an automobile is "defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Id.* at 824. That limitation means, for example, that "probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." *Id.*

The Court in *Houghton* explained that as part of the search of containers in the vehicle, police officers may search a passenger's purse that is sitting unattended in the car. 526 U.S. at 307. In that case, a Highway Patrol officer stopped an automobile for speeding and driving with a faulty brake light. *Id.* at 297. The officer saw a syringe in the driver's pocket, and the driver admitted to taking drugs. *Id.* at 298. Given that admission, the officer searched the car, including a purse on the back seat that belonged to a passenger sitting in the front seat. *Id.* The Court concluded that the search of the purse was lawful because "[a] passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment, are 'in' the car, and the officer has probable cause to search for contraband *in* the car." *Id.* at 302.

b. Another exception for searches incident to arrest also provides for limited searches of containers within automobiles. In *New York v. Belton*, 453 U.S. 454, 460 (1981), the Court held "that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." As part of the search, "the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." *Id.* at 460-61. But the court has since clarified that police officers may search only "the space within an arrestee's 'immediate control,' meaning 'the area from within which he might gain possession of a weapon or destructible evidence.'" *Arizona v. Gant*, 556 U.S. 332, 335 (2009). Thus, after

Gant, "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Id.* at 351.

2. Passengers in a car are not subject to suspicion merely because of their proximity to a driver's wrongdoing. In *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979), the Court set forth a fundamental Fourth Amendment principle: "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." That principle meant that officers with a search warrant covering the tavern and one of its employees violated the Fourth Amendment when they frisked and then searched a customer within the tavern. *Id.* at 88-89, 96.

Thus, authorization to conduct a warrantless search of a car does not permit officers to conduct a body search of a passenger or rummage through a passenger's pockets. In *Di Re*, for example, officers searched the front seat automobile passenger after an informer told law enforcement that the driver was selling counterfeit gasoline ration coupons. 332 U.S. at 583. The Court held that probable cause to search a car did not extend to a body search of a passenger. *Id.* at 587. The Court was "not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled." *Id.* That was true even though "the contraband sought [was] a small article which could easily be concealed on the person." *Id.* at 586. The Court rejected the government's argument that "law enforcement will be more difficult and

uncertain," explaining that the Constitution was in fact designed "to place obstacles in the way of a too permeating police surveillance." *Id.* at 595.

Houghton preserved the limitation that probable cause to search the automobile does not authorize a search of the passenger. 526 U.S. at 303. The search of the purse on the back seat in *Houghton* was unlike the searches in *Di Re* and *Ybarra*, the Court explained, because those cases "turned on the unique, significantly heightened protection afforded against searches of one's person." *Id.* The Court in *Houghton* reaffirmed the reasoning in those cases, explaining that "[e]ven a limited search of the outer clothing … constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience." *Id.* (second alteration in original) (quoting *Terry v. Ohio*, 392 U.S. 1, 24-25 (1968)). But a search of a purse that was sitting by itself in the back seat, away from passengers, did not implicate the same personal interests. *Id.* at 303-05.

3. While the Court in *Houghton* did not resolve the question whether police can conduct a warrantless search of a purse worn by a passenger during a traffic stop, Justice Breyer anticipated the issue in his concurrence. He reasoned that the key question would be whether the purse was held by a passenger: "it would matter if a woman's purse, like a man's billfold, were attached to her person. It might then amount to a kind of 'outer clothing,' which under the Court's cases would properly receive increased protection." *Id.* at 308 (Breyer, J., concurring) (quoting *Terry*, 392 U.S. at 24)).

B. Factual and procedural background

1. In November 2022, petitioner Wanda Edwards was riding as the front-seat passenger in a car that she owned. App. 3a. A police officer in Sturgis, South Dakota, Sergeant Tebben, stopped the car because its headlights were not illuminated. *Id.* The car's driver gave Sergeant Tebben his purported name, but the driver could not give his home address or social security number, and he did not have his driver's license. App. 3a-4a. Sergeant Tebben was unable to verify the driver's identity, so Sergeant Tebben asked him to step out of the car, handcuffed him, and patted him down. App. 4a. During the patdown, Sergeant Tebben "discovered an orange hypodermic needle cap, two hypodermic needles, and a jewelry bag with a white crystal-like residue on the driver's person." *Id.* Sergeant Tebben arrested the driver for false impersonation, possession of a controlled substance, and drug paraphernalia. *Id.*

When other officers arrived on the scene, Ms. Edwards was still in the passenger seat of the car, with her purse on her lap. App. 4a-5a. The officers instructed Ms. Edwards to get out of the car, and she did so, placing the purse over her shoulder. App. 5a. The officers told Ms. Edwards to give them her purse so that they could search it. *Id.* She repeatedly refused, maintaining that the officers needed a warrant to search her purse. *Id.*

Eventually, one of the officers forcibly seized Ms. Edwards's purse. *Id.* The officers searched the purse and found "two hypodermic needles, a small mirror with a white crystalline substance on it, and a bullet-shaped keychain that contained a marijuana cigarette." *Id.* "The needle and powder presumptively

tested positive for methamphetamine." *Id.* The officers arrested Ms. Edwards "for possession of a controlled substance; possession of marijuana, two ounces or less; obstructing a law enforcement officer; and possession of drug paraphernalia." *Id.*

2. Ms. Edwards moved to suppress the evidence obtained during the traffic stop. App. 6a. She argued that the officers' search of her purse was unconstitutional. *Id.*

The trial court disagreed and refused to suppress the evidence. It held that the search of the car was a lawful search incident to arrest. *Id.* And because the purse was a container within the car at the time of the arrest, it was also subject to search. *Id.*

After a bench trial, Ms. Edwards was convicted of "possession of a controlled substance, obstructing a law enforcement officer, and possession of drug paraphernalia." *Id.*

3. a. Ms. Edwards appealed her convictions to the South Dakota Supreme Court on the ground that the search of her purse violated the Fourth Amendment. *Id.* "The State argue[d] that law enforcement was authorized to search Edwards' vehicle both as a search incident to a lawful arrest and because there was probable cause to believe that criminal activity was present inside the vehicle based upon the drug residue and paraphernalia found on the driver's person." App. 8a. Countering with "decisions from other state courts concluding that a purse physically attached to an individual is entitled to an increased expectation of privacy, much like outer clothing," Ms. Edwards argued that "her purse 'is more analogous to a pocket attached to her outer clothing than a container resting elsewhere in the vehicle.'" App. 7a-8a &

n.1 (alteration adopted). Ms. Edwards explained that her purse was thus not lawfully subject to search because probable cause to search a vehicle does not authorize a search of a passenger and her pockets. App. 10a.

b. The South Dakota Supreme Court, in a 3–1 divided opinion, affirmed Ms. Edwards's convictions. App. 3a, 14a. The court first summarized the relevant caselaw from this Court. It explained that one exception to the Fourth Amendment's warrant requirement is that "'contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant' where probable cause exists." App. 9a (quoting *Houghton*, 526 U.S. at 300). That means that "when a police officer has probable cause to search a vehicle, they 'may inspect passengers' belongings found in the car that are capable of concealing the object of the search.'" App. 10a (quoting *Houghton*, 526 U.S. at 307). But the South Dakota Supreme Court also recognized that "probable cause to search a vehicle and its containers does 'not justify a body search of a passenger.'" *Id.* (quoting *Houghton*, 526 U.S. at 303).

The South Dakota Supreme Court concluded, however, that Ms. "Edwards' purse was not entitled to a heightened expectation of privacy and was subject to the same search conditions as any other container found inside of the vehicle that was capable of concealing contraband." App. 13a-14a. The court recognized decisions from other state courts holding the opposite. App. 8a n.1. But it reasoned that officers need "a bright-line rule in cases where a warrantless search of a vehicle's passenger compartment is authorized," and thus declined to recognize any constitutional protection for purses worn or held by passengers. App. 13a.

c. Justice Myren dissented. App. 15a. He explained that "[b]ecause law enforcement was not allowed to search [Ms. Edwards's] person and she always maintained direct control and possession of her purse, [he] would hold that law enforcement was not authorized to search her purse." App. 16a. In his view, "the convenience of law enforcement should not eliminate Edwards' right to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment." App. 15a. The search of Ms. Edwards's purse was unreasonable because "law enforcement had no probable cause to believe Edwards was engaged in criminal activity." App. 15a-16a.

REASONS FOR GRANTING THE PETITION

State high courts have split 3–4 over whether police may conduct warrantless searches of purses worn or held by passengers just because they have a valid basis to stop and search the vehicle. The Supreme Courts of Kansas, North Dakota, and Idaho treat purses held by passengers like outer clothing. Those courts have concluded that purses held by passengers are not subject to search merely because police officers may lawfully search the vehicle. But the Supreme Court of South Dakota here joined the Supreme Courts of Minnesota, Nebraska, and Ohio in holding that police officers may search a purse held by a passenger as part of a lawful search of the vehicle. The split is entrenched, and there is no benefit to further percolation. Without this Court's intervention, the disagreement will persist, weakening the Fourth Amendment's protections and making them depend on the accident of geography.

The question presented is important, and the case is an ideal vehicle for resolving it. These searches

likely affect many individuals, as police pull over more than 20 million motorists each year. And they go to core Fourth Amendment protections, as the Framers designed the Fourth Amendment to ensure that officials do not have "unbridled discretion to rummage at will among a person's private effects." *Gant*, 556 U.S. at 345. Yet South Dakota has claimed the ability to do just that with passengers who are carrying their personal effects in a purse they hold, rather than in their coat pockets. What's more, ensuring that personal belongings are subject to equal constitutional protections—no matter whether they are in pockets or purses—is critical to avoiding unwarranted gender disparities. The Fourth Amendment doesn't contemplate subjecting women to greater governmental intrusions than men, but that is what the Supreme Court of South Dakota's decision effectively does. And the question presented is dispositive: Ms. Edwards's suppression motion would have been granted in Idaho, Kansas, or North Dakota.

The South Dakota Supreme Court's decision is wrong. Balancing the "degree to which [the search] intrudes upon an individual's privacy" against "the degree to which it is needed for the promotion of legitimate governmental interests," *Houghton*, 526 U.S. at 299-300, makes clear that a lawful search of an automobile may not include a search of a purse held by a passenger. On one side of the ledger, purses are "special containers" that hold "especially personal items that people generally like to keep with them at all times." *Id.* at 308 (Breyer, J., concurring). On the other side of the ledger, the government's interest is weaker than its interest in searching purses not near passengers, because purses held by passengers do not present the same concerns regarding ownership or

surreptitious concealment by the driver that motivated the Court in *Houghton*. *See id.* at 305-06 (majority opinion). The interests here are like a passenger's interests in outer clothing, and the search here was thus unlawful. *See Di Re*, 332 U.S. at 595. By treating pockets differently from held purses, the South Dakota Supreme Court contravened this Court's instruction that there are no "worthy" and "unworthy" containers. *See Ross*, 456 U.S. at 822. Both means of keeping passengers' belongings with them must be equally protected.

This Court should grant review.

I. State high courts have divided over whether a police officer who may lawfully search an automobile may search a purse that a passenger is holding.

State high courts are divided over whether the Fourth Amendment permits a search of a purse carried by an automobile passenger when it would not permit a search of the passenger's body and clothing. As Justice Breyer's concurrence noted, the Court did not reach the issue in *Houghton*. 526 U.S. at 308 (Breyer, J., concurring). Lacking the Court's guidance, courts have split on this important question. Three state supreme courts follow *Di Re* and hold that a purse held by a passenger is a "kind of 'outer clothing,'" *id.*, that officers may not search as part of the vehicle search. Four state supreme courts disagree, holding that a purse a passenger carries is subject to search even though the passenger herself is not.

A. In three states, officers conducting an otherwise lawful warrantless search of an automobile may not search a purse held by a passenger.

In Kansas, North Dakota, and Idaho, police officers may not search a passenger's purse worn on her person as part of their lawful warrantless search of the vehicle.

1. In *State v. Boyd*, 64 P.3d 419, 427 (Kan. 2003), the Kansas Supreme Court held that "where a passenger is told by a police officer to get out of a lawfully stopped vehicle and in response to the officer's order to leave her purse in the vehicle, puts the purse down and exits the vehicle, a subsequent search of the purse as part of a search of the vehicle violates the passenger's Fourth Amendment right against unreasonable search and seizure." Boyd was a passenger in a vehicle that police stopped for a traffic violation. *Id.* at 421. The driver consented to a search of the car. *Id.* Boyd tried to take her purse with her when exiting the car, but the police directed her to leave it in the car. *Id.* After the police found a crack pipe in the car, and thus had probable cause to search the car, the police searched Boyd's purse over her objection. *Id.* The police found crack cocaine and arrested Boyd. *Id.* On appeal, the state argued that the search was lawful because police had probable cause to search the vehicle. *Id.* at 423.

The Kansas Supreme Court held that the search was unlawful. Boyd "attempted to take [her purse] with her but was directed to leave it in the van. Under these circumstances her purse was entitled to the same increased protection from search and seizure as afforded to her person." *Id.* at 427. The court reasoned

that "[t]he heightened privacy interest and expectation in the present case is sufficient to tip the balance from governmental interest in effective law enforcement, which outweighed the privacy interest in *Houghton* where the purse was voluntarily left in the back seat unclaimed." *Id.*

The Kansas Supreme Court further explained its approach in *State v. Groshong*, 135 P.3d 1186 (Kan. 2006). The court recounted that, "[r]elying on Justice Breyer's concurring opinion in *Houghton*, [it had] recognized a heightened privacy interest in purses when they are attached to the owner" in *Boyd*. *Id.* at 1189. Articulating the contours of the rule, the court explained that the *Boyd* rule is not unlimited: "[t]o avoid subjecting a passenger's purse to a search during the lawful search of a vehicle, a passenger … must immediately assert a privacy interest in the purse by taking it upon exiting the vehicle." *Id.* at 1190-91.

2. The North Dakota Supreme Court articulated the same rule in *State v. Tognotti*, 663 N.W.2d 642, 643 (N.D. 2003). There, the court held that "incident to a valid arrest of an occupant in a vehicle, the arresting officer can search the contents of a nonarrested occupant's purse, if the purse was in the vehicle at the time of the arrest and the occupant was not instructed by the officer to leave it in the vehicle upon exiting." *Id.* By contrast, "the Fourth Amendment is violated when an officer directs that a purse be left in the vehicle and then proceeds to search the purse incident to the arrest of another passenger in the vehicle." *Id.* at 650. The court reasoned that "[a] purse, like a billfold, is such a personal item that it logically carries for its owner a heightened expectation of privacy, much like the clothing the person is wearing." *Id.* The court thus remanded for the trial court to

consider the "dispositive" factual question whether the police directed the passenger to leave her purse in the car, or whether the passenger left her purse in the car voluntarily. *Id.*

3. In *State v. Newsom*, 979 P.2d 100, 102 (Idaho 1998), the Idaho Supreme Court held that the search of a passenger's purse was unlawful when the passenger had not left her purse in the car voluntarily. There, the passenger was riding in a car that police officers stopped for turn signal violations. *Id.* at 100. Officers arrested the driver based on outstanding felony arrest warrants. *Id.* The passenger, who was holding her purse on her lap, began to exit the car with her purse before police searched the car, but police ordered her to leave her purse in the car. *Id.* at 100-01. The court "conclude[d] that when the passenger left the vehicle she was entitled to take her purse with her and was not required" to leave it to be searched, because the "purse was entitled to as much privacy and freedom from search and seizure as the passenger herself." *Id.* at 102.

Though decided before *Houghton*, *Newsom* remains good law. The Idaho Supreme Court recently cited both *Houghton* and *Newsom* in its discussion of the Fourth Amendment's automobile exception. *See State v. Maloney*, 489 P.3d 847, 854 (Idaho 2021). The court explained that "case law indicates that the automobile exception does not automatically extend to *all* containers at *all times* associated with the vehicle." *Id.*

B. In four states, a lawful warrantless automobile search may include a search of a purse held by a passenger.

The South Dakota Supreme Court acknowledged the opposing view, App. 8a n.1, but instead joined the

Supreme Courts of Minnesota, Nebraska, and Ohio in holding that police officers may search a purse held by a passenger when the officers are authorized to conduct a warrantless search of the car.

1. In a 3–1 divided opinion, the South Dakota Supreme Court concluded that even though Ms. Edwards held her purse "at all times during her encounter with law enforcement," her "purse was not entitled to a heightened expectation of privacy and was subject to the same search conditions as any other container found inside of the vehicle that was capable of concealing contraband." App. 7a, 13a-14a. The court expressly considered and rejected Justice Breyer's *Houghton* concurrence on the ground that it "blur[s] the bright-line rule regarding searches of passenger's belongings and ignores the reality that passengers are often involved in the same activity as the driver and can easily hide incriminating evidence in their personal belongings that are on or near their person." App. 12a n.3. It also acknowledged several of the decisions adopting Justice Breyer's view but did not follow them. App. 8a n.1.

The dissent disagreed. It would have held "that law enforcement was not authorized to search [Ms. Edwards's] purse." App. 16a (Myren, J., dissenting). "[C]onsistent with Justice Breyer's approach in *Houghton*," and the approach of the Kansas, North Dakota, and Idaho Supreme Courts, the dissent took the view that "[p]urses are special containers." *Id.* (quoting *Houghton*, 526 U.S. at 308 (Breyer, J., concurring)).

2. The Minnesota Supreme Court also upheld a search of a passenger's purse as part of a vehicle search, even though the passenger was carrying her

purse. *See State v. Barrow*, 989 N.W.2d 682, 683-84 (Minn. 2023). In that case, a police officer stopped a car after observing lane change violations. *Id.* at 684. The officer stated that he smelled marijuana, and asked the driver and passenger to exit the car. *Id.* The passenger tried to take her purse with her, but the officer directed her to leave her purse on the car, so she placed it on the trunk, and the officer searched it. *Id.* The passenger "argue[d] that the search of her purse pursuant to the automobile exception was akin to a search of her person, and was therefore unconstitutional under *Di Re*'s holding that the automobile exception does not allow police to conduct a warrantless search of persons inside the car." *Id.* at 686. The Minnesota Supreme Court disagreed: because the purse was "a container that was inside the car at the time probable cause arose, and her purse could contain marijuana, the officer was permitted to search the purse under the automobile exception." *Id.* at 688.

3. The Nebraska Supreme Court has also held that a lawful vehicle search may include a purse held by a passenger. *State v. Lang*, 942 N.W.2d 388, 400 (Neb. 2020). As part of a vehicle search, the police officer in *Lang* instructed the driver and passenger to leave the vehicle, and the passenger took her purse with her when exiting. *Id.* at 394. The Nebraska Supreme Court held that the purse was subject to search, because it was "a container that was inside the vehicle when officers developed probable cause to search the vehicle." *Id.* at 400-01.

4. The Ohio Supreme Court takes the same view. In *State v. Mercier*, 885 N.E.2d 942, 942 (Ohio 2008), over a vigorous dissent, the court summarily upheld the warrantless search of a passenger's purse when the passenger held it and sought to keep it with her.

In *Mercier*, the intermediate appellate court had held that police may search a passenger's purse when searching the vehicle, no matter whether the passenger was holding the purse. *See State v. Mercier*, No. C-060490, 2007 WL 1225858, at *4-5 (Ohio Ct. App. Apr. 27, 2007). Mercier, a passenger in the car, had her purse on her lap when the vehicle was stopped, but left her purse in the car only because the police instructed her to do so. *Id.* at *2. The Ohio Court of Appeals rejected her argument that, under *Houghton*, "because her purse was in her lap when [the] car was stopped, it was 'attached to her person,' and, therefore, it could not have been searched in the absence of particularized probable cause to search her person." *Id.* at *4. The Ohio Supreme Court affirmed in a 5-2 decision, also resting on *Houghton*. *Mercier*, 885 N.E.2d at 942.

Two Justices dissented. Expressly aligning with Kansas, North Dakota, and Idaho, the dissent would have held that the search of Mercier's purse was analogous to a search of her person, and was thus unlawful. *Id.* at 943-44 (Lanzinger, J., dissenting). The dissent reasoned that *Houghton* did not directly address the issue, because "[u]nlike in the case before [the court], in *Houghton*, the purse was found in the back seat of the car and was not, at the time of the stop, directly connected to its owner." *Id.* at 942. The dissent thus evaluated whether the search of the purse was "more analogous to a search of a container or a search of her person." *Id.* at 943. It concluded that the search was analogous to a search of the passenger's person, reasoning that "a woman (or man for that matter) in possession of a purse, either worn or carried, has a reasonable expectation of privacy in its contents." *Id.* at 944. The dissent "reject[ed] the idea

that a purse is nothing more than a simple container, subject to search at will." *Id.*

C. The split is outcome-determinative, and only this Court can resolve it.

The split is outcome-determinative. Ms. Edwards "took her purse from her lap and placed it over her shoulder" when she was ordered to exit the car. App. 5a. In North Dakota, Idaho, and Kansas, Ms. Edwards's suppression motion would have come out the other way. In those states, Ms. Edwards's purse would have had a heightened expectation of privacy, and the officers' search would have been unlawful. Thus, the unlawfully obtained evidence would have been suppressed. *See Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). But because Ms. Edwards lives in South Dakota, she was convicted of drug possession based on evidence that officers forcibly recovered from her purse without probable cause.

Only this Court can resolve the conflict. Indeed, the South Dakota Supreme Court acknowledged that other state high courts have reached the opposite result. App. 8a n.1. It rejected those courts' reasoning, however, and deepened the conflict. Further percolation can neither resolve the split nor help this Court address it—further delay would only prevent the uniform application of the Fourth Amendment nationwide. The Court should grant review.

II. The question presented is important, and this case is an ideal vehicle for resolving it.

A. The question presented is important.

This case presents an important constitutional issue. Police officers stop millions of automobiles each year, and officers frequently search vehicles for

contraband. Thus, the question whether officers may search a purse held by a passenger is likely to arise regularly—imperiling the constitutional rights of thousands of vehicle passengers every year. And that type of search implicates the core reason the Founding generation adopted the Fourth Amendment—"the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Gant*, 556 U.S. at 345. This Court's resolution of the question presented and reaffirmation of the Fourth Amendment's protections are critical.

1. Because of the frequency of traffic stops, this type of vehicle search is a significant issue. "Police pull over more than 50,000 drivers on a typical day." Open Policing Project, *supra*. That's "more than 20 million motorists every year." *Id.* And "it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle." *Ross*, 456 U.S. at 803-04. That's because "[p]robable cause 'is not a high bar.'" *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018). Thus, police will have reason to search many of those 20 million motorists each year.

The data bear this out. For example, in Washington State, white individuals had a search rate of 23.4 per 1,000 stops by state patrol agencies. Justin George & Eric Sagara, *How to Cut Down on Searches in Traffic Stops: Legalize Pot*, The Marshall Project (June 21, 2017), https://tinyurl.com/y4mjvsk6. The search rates for black and Hispanic individuals were even higher. *Id.* Extrapolating that rate to 20 million stops would lead to an estimate of 46,800 vehicle searches per year. Many of those vehicles will have passengers, and many passengers carry purses or other handbags. In short, searches of a passenger's purse may arise tens of thousands of times *every year*.

2. The offensiveness of purse searches also heightens the need for the Court's review. A search of a purse that a passenger holds, based solely on that passenger's location within the vehicle, implicates the Fourth Amendment's "central concern," "the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Gant*, 556 U.S. at 345. The Framers adopted the Fourth Amendment in response to the "general warrants and warrantless searches" in the colonies. *Chimel v. California*, 395 U.S. 752, 760-61 (1969). General warrants permitted "officers to rummage through homes in an unrestrained search for evidence of criminal activity" and were "reviled" by the Founding generation. *Riley v. California*, 573 U.S. 373, 403 (2014). These searches were "deeply felt" "abuses" that "alienated the colonists." *Chimel*, 395 U.S. at 760-61. The searches were particularly offensive because "they placed 'the liberty of every man in the hands of every petty officer.'" *Boyd v. United States*, 116 U.S. 616, 625 (1886). Indeed, the Founding generation's opposition to these searches not only drove adoption of the Fourth Amendment, but "helped spark the Revolution itself." *Carpenter v. United States*, 585 U.S. 296, 303-04 (2018).

Searching a woman's purse just because she is a passenger in a suspicious person's car is precisely the type of rummaging at will through a person's private effects that drove the revolution and ultimately inspired the Fourth Amendment. The critical Fourth Amendment interests at stake for so many Americans are a powerful reason to grant review.

B. The South Dakota Supreme Court's rule confers greater Fourth Amendment protections to men than women.

The South Dakota Supreme Court gave men greater Fourth Amendment protections than women by treating purses differently from pockets.

Historically, purses and similar handbags have been ubiquitous. "In most cultures, and for much of the history of the West, people have carried the tools and ephemera of the everyday tucked more or less securely about their clothing, often into a belt or suspended from a purse … ." Hannah Carlson, *Pockets: An Intimate History of How We Keep Things Close* 14 (2023). Both men and women often wore purses. *Id.* at 14-15. In their early form, pockets, too, were "independent of clothes" and were accessories like purses—they were "small bag[s]." *Id.* at 16.

Over time, however, fashion trends evolved and men began to use attached pockets. Tailors started affixing pockets into men's breeches in the 1500s. *Id.* at 23. At that point, pockets were like bags, attached at the waistband and hanging freely from it. *Id.* Purses became "more associated with out-of-date country fashions," as "a gentleman could accommodate purse, dagger, and sword about his waist while wearing breeches that likely contained a pocket." *Id.* at 40. In the 1700s and 1800s, pocket books and pocket cases became popular and allowed "male wearers" to organize their effects and carry them close to their bodies. *Id.* at 60-65.

Women's clothing, by contrast, did not transition to sewn-in pockets. Instead, women used purses or "tie-on-pockets," which were "pear-shaped pockets" that "were tied around the waist and lay flat at the

hips," often under women's skirts. *Id.* at 66. These pockets were large, "generally measur[ing] twelve to twenty inches long," but "were far less secure than the pockets integrated into men's suits" and were easily lost. *Id.* at 67, 69. Eventually, women moved to carrying their personal effects in handbags, as designers declined to include large, functional pockets in women's clothes. *Id.* at 120-25.

Today, this distinction persists. Women's pockets are smaller and less functional than men's pockets. Research in 2018 found that women's jeans front pockets are 48% shorter and 6.5% narrower than men's jeans pockets. Jan Diehm & Amber Thomas, *Pockets*, The Pudding (Aug. 2018), https://pudding.cool/2018/08/pockets/. Those results controlled for the size of the person—the jeans compared each had the same size waistband. *Id.* And the pocket-size differences result in meaningful differences as to what men and women can carry. *Id.* While 95% of men's front jeans pockets measured fit a Samsung Galaxy cell phone, only 20% of women's front jeans pockets could do so. *Id.* And all of the men's jeans tested, but only 40% of the women's jeans, fit a wallet designed for front pockets. *Id.*

These design differences have led to differences in real-world behaviors. More men carry their personal effects in their pockets, and more women carry their personal effects in handbags. *See* Fumiko Ichikawa et al., *Where's the Phone? A Study of Mobile Phone Location in Public Spaces*, Proceedings of the 2005 2nd International Conference on Mobile Technology, Applications and Systems (Dec. 2005). In a study of multiple international cities, the majority of women reported keeping their phone in a shoulder bag, while

the majority of men reported keeping their phone in pant pockets. *Id.* at 5-6.

The Fourth Amendment does not contemplate treating pockets and held purses differently. Justice Breyer recognized the equivalence between pockets and purses in his *Houghton* concurrence. He explained that "it would matter if a woman's purse, like a man's billfold, were attached to her person. It might then amount to a kind of 'outer clothing,' which under the Court's cases would properly receive increased protection." *Houghton*, 526 U.S. at 308 (Breyer, J., concurring). That is because the Constitution does not distinguish between "worthy" and "unworthy" means of carrying one's belongings. *Ross*, 456 U.S. at 822. And the Fourth Amendment does not protect men more than women. *See* U.S. Const. amend. XIV, § 1.

Yet that is precisely what the South Dakota Supreme Court's rule does in practice. By ruling that the Fourth Amendment protects pockets differently than it protects purses, the court has drawn an arbitrary distinction whereby men's belongings effectively receive greater protection than women's belongings. All effects carried on the person are entitled to Fourth Amendment protections—regardless of how a person carries them.

C. This case presents an ideal vehicle for resolving the question presented.

The question presented is dispositive here. If the Court rules in Ms. Edwards's favor, remand would result in vacatur of her convictions. Ruling for Ms. Edwards would result in granting her motion to suppress, since South Dakota has never argued that its officers had a warrant or probable cause to search Ms. Edwards's purse based on her own conduct. *See* App.

6a. The South Dakota courts would then have to vacate her convictions for possession of a controlled substance, obstructing a law enforcement officer, and possession of drug paraphernalia, because all of those convictions were based solely on the evidence recovered from the warrantless search. *See id.*

III. The South Dakota Supreme Court's decision is wrong.

Courts evaluate the reasonableness of a warrantless search "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Houghton*, 526 U.S. at 299-300. Here, the Supreme Courts of Kansas, North Dakota, and Idaho have it right. A search of a purse that an automobile passenger is holding is analogous to a search of her coat pockets, and should thus similarly be protected from warrantless search under the Fourth Amendment. The significant intrusion on the individual's privacy outweighs the lesser need to promote legitimate governmental interests.

A. On one side of the ledger, the intrusion on an individual's privacy is great. This type of search implicates the "central concern underlying" the Fourth Amendment—"the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Gant*, 556 U.S. at 345. That concern is just as grave when belongings are in a purse that an individual holds as compared to coat pockets. As numerous courts have recognized, "[p]urses are special containers." *Houghton*, 526 U.S. at 308 (Breyer, J., concurring). "They are repositories of especially personal items that people generally like

to keep with them at all times." *Id.* As the North Dakota Supreme Court put it, "a purse is a special personal container and a search of it very nearly involves the same intrusion as the search of the person herself." *Tognotti*, 663 N.W.2d at 649. A search of a purse held by a passenger is like a search of the passenger's outer clothing, which "constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience." *Houghton*, 526 U.S. at 303 (quoting *Terry*, 392 U.S. at 24-25).

B. On the other side of the ledger, requiring a warrant or a lawful arrest to justify searching a passenger's purse held on her person does not hinder legitimate governmental interests. The concerns driving the Court in *Houghton* do not apply here. The Court in *Houghton* focused on the driver's ability to hide contraband in the passenger's belongings "surreptitiously, without the passenger's knowledge or permission." *Id.* at 305. And it warned of the "bog of litigation" that could arise over the contested ownership of various items in the car and the uncertainty that officers would endure if they had to "infer[] ownership." *Id.* at 305-06. But both concerns lack force when the passenger is holding the purse—ownership is clear, and it would be difficult for a driver to surreptitiously access the purse.

C. The balance of interests weighs against permitting a warrantless search of a purse that a passenger is holding. The "degree of intrusiveness upon personal privacy and indeed even personal dignity" weighs against warrantless searches of a passenger, including the passenger's outer clothing. *Id.* at 303. By contrast, a search of "an item of personal property found in a car," away from the passenger's

person, does not have "[s]uch traumatic consequences." *Id.* Here, where the passenger has kept ahold of or is wearing her purse, the balance of interests is comparable to the assessment for a search of her outer clothing. A purse held by a passenger is not distinct from coat pockets in terms of the intrusiveness of a search and the privacy interests involved. Both pockets and held purses are on the person—indeed, Ms. Edwards's purse had to be forcibly removed from her, App. 5a—and both hold personal effects. As the Kansas Supreme Court correctly observed, that "heightened privacy interest and expectation" are "sufficient to tip the balance from governmental interest in effective law enforcement, which outweighed the privacy interest in *Houghton* where the purse was voluntarily left in the back seat unclaimed." *Boyd*, 64 P.3d at 427. "Under these circumstances [a passenger's] purse was entitled to the same increased protection from search and seizure as afforded to her person." *Id.*

There are no countervailing law enforcement interests that could support a search. The test is administrable: police officers can apply the same Fourth Amendment standards that they apply in other contexts—like when they want to search an individual's coat pockets. *See Di Re*, 332 U.S. at 595. The concern that treating purses like pockets will hinder officers' ability to search does not outweigh the individual privacy interest. To the contrary, the Founders "designed our Constitution to place obstacles in the way of a too permeating police surveillance, which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment." *Id.* Thus, just as officers conducting a lawful warrantless automobile search may not command a

passenger to remove her coat and let them search it, *see id.*, officers likewise may not command a passenger to remove her purse and let them search it.

Holding otherwise would violate this Court's instruction that the Constitution does not recognize "worthy" and "unworthy" containers. *Ross*, 456 U.S. at 822. Where a passenger is holding her purse, as here, the purse is a repository of personal effects analogous to coat pockets. Just as men who carry their effects in pockets are entitled to Fourth Amendment protections from warrantless searches, women who carry their effects in purses may "claim an equal right to conceal [their] possessions from official inspection." *Id.* Thus, as the North Dakota Supreme Court has correctly recognized, there is no constitutional justification for treating one container on one's person (a purse) differently from another (a pocket). A purse, like a pocket, "carries for its owner a heightened expectation of privacy, much like the clothing the person is wearing." *Tognotti*, 663 N.W.2d at 650.

* * *

State high courts have split 3–4 on an important constitutional question. Getting the answer right is crucial to protect the constitutional rights of the millions of Americans who ride in cars. The Court should grant review.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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