

CONSTITUTIONAL ANALYSIS

Arizona SB1111 Violates the Arizona Constitution

A Conservative Privacy Argument Under Article II, Section 8

"No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

EXECUTIVE SUMMARY

Senate Bill 1111, currently advancing through the Arizona Legislature, purports to regulate automated license plate readers (ALPRs) while actually authorizing unconstitutional mass surveillance. This analysis demonstrates that SB1111 violates Article II, Section 8 of the Arizona Constitution—the "Private Affairs Clause"—which provides broader privacy protections than the federal Fourth Amendment. Using reasoning from *Carpenter v. United States* (2018) and *Leaders of a Beautiful Struggle v. Baltimore Police Department* (2021), we establish that continuous, aggregated ALPR surveillance constitutes an unconstitutional intrusion into Arizonans' private affairs, regardless of whether individual captures occur in public spaces.

I. Arizona's Private Affairs Clause: Broader Than the Fourth Amendment

The Arizona Constitution provides privacy protections that are **explicitly broader** than those found in the United States Constitution. While the Fourth Amendment protects against "unreasonable searches and seizures" of "persons, houses, papers, and effects," Article II, Section 8 of the Arizona Constitution uses fundamentally different language:

U.S. Fourth Amendment	Arizona Article II, Section 8
<i>"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."</i>	<i>"No person shall be disturbed in his private affairs, or his home invaded, without authority of law."</i>

The critical distinctions are threefold:

First, Arizona's clause protects "**private affairs**"—a deliberately broader category than the Fourth Amendment's enumerated "persons, houses, papers, and effects." As the Goldwater Institute has documented, this phrase was specifically chosen by Arizona's framers to encompass matters beyond traditional search-and-seizure contexts, including financial records, business transactions, and personal information that might not qualify as "papers" or "effects" under federal law.

Second, Arizona's clause does **not** use the word "unreasonable." Instead, it requires "**authority of law**." This is a critical distinction: under the Fourth Amendment, a search may be permissible if it is "reasonable," even without explicit legal authorization. Under Arizona's constitution, *reasonableness alone is insufficient*—there must be affirmative legal authority.

Third, the clause separately protects both "private affairs" *and* "home[s]," indicating that the framers intended "private affairs" to encompass something *beyond* mere physical home searches—precisely the kind of surveillance at issue with ALPR technology.

As former Arizona Attorney General Mark Brnovich stated, Arizona residents "have that right to privacy that provides us more protection than the Fourth Amendment does." The Washington Supreme Court—interpreting identical constitutional language—has developed robust protections that Arizona courts should follow,

including holdings that warrantless searches of bank records, trash set at the curb, and phone records all violate the Private Affairs Clause, even though federal courts have found no Fourth Amendment violation in similar circumstances.

II. The Mosaic Theory: Why "Cameras in Public" Is a Weak Argument

Defenders of ALPR surveillance argue that because license plates are visible in public, photographing them cannot violate privacy. This argument fundamentally misunderstands modern Fourth Amendment jurisprudence and is **flatly rejected** by both *Carpenter v. United States* and *Leaders of a Beautiful Struggle v. Baltimore Police Department*.

A. *Carpenter v. United States* (2018): The Supreme Court's Rejection of the "Public Exposure" Argument

In *Carpenter*, the Supreme Court held that government acquisition of historical cell-site location information (CSLI) constitutes a Fourth Amendment search requiring a warrant—even though cell phones transmit signals to towers that are technically "exposed" to third parties. Chief Justice Roberts, writing for the majority, established several principles directly applicable to ALPR surveillance:

KEY PRINCIPLES FROM CARPENTER

- 1. Aggregation Changes the Constitutional Calculus:** "[T]he whole of [one's] physical movements" reveals "the privacies of life" even when individual data points do not.
- 2. Technology Cannot Erode Constitutional Protections:** "[T]he progress of science" should not be permitted to "erode Fourth Amendment protections."
- 3. Public Exposure ≠ No Privacy Interest:** "A person does not surrender all Fourth Amendment protection by venturing into the public sphere."
- 4. Intimate Details Revealed by Patterns:** Comprehensive location tracking provides "an intimate window into a person's life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations."

The Court explicitly warned that lower courts "must take account of more sophisticated systems that are already in use or in development." ALPR networks like Flock Safety's 83,000+ camera system—performing over 20 billion vehicle scans monthly—are precisely the "more sophisticated systems" the Court contemplated.

B. *Leaders of a Beautiful Struggle v. Baltimore PD* (2021): The Fourth Circuit's Application to Surveillance Networks

The Fourth Circuit's en banc decision in *Leaders of a Beautiful Struggle* applied *Carpenter*'s reasoning to Baltimore's Aerial Investigation Research (AIR) program, which photographed the city from planes. The court held, 7-6, that this surveillance violated the Fourth Amendment—even though all photographs were taken of public spaces visible from above.

Judge Thacker, writing for the majority, reasoned that such surveillance "could be enhanced with other tools, including **ALPRs**," to enable police to "glean insights from the whole of individuals' movements." The court specifically rejected Baltimore's argument that because the photographs captured only publicly visible information, no Fourth Amendment search occurred.

This reasoning applies with even greater force to ALPR networks: while aerial surveillance captures only photographic images, ALPR systems *automatically convert* those images into searchable databases linked to specific individuals, creating precisely the "detailed, encyclopedic, and effortlessly compiled" record of movements that *Carpenter* found constitutionally protected.

III. SB1111's Specific Constitutional Defects Under Arizona Law

Senate Bill 1111, sponsored by Senator Kevin Payne (R-Peoria), purports to "prevent government overreach" while actually **authorizing unconstitutional mass surveillance**. The bill fails to provide the "authority of law" required by the Arizona Constitution for three fundamental reasons:

A. No Warrant Requirement for Historical Location Data

SB1111 allows law enforcement to access ALPR databases for "any criminal investigation" without a warrant. Under *Carpenter*, access to historical location data constitutes a search requiring judicial authorization based on probable cause. SB1111 provides no such protection.

The Norfolk federal case decided today—*Schmidt v. City of Norfolk*—demonstrates the surveillance intensity at stake: plaintiffs were photographed **526 to 849 times** over four months. One resident was tracked **14 times in 6.5 hours**. Such comprehensive tracking, aggregated over time, reveals the "whole of one's physical movements" that *Carpenter* held constitutionally protected.

B. No Meaningful Retention Limits

SB1111 requires agencies to "adopt and publish policies" for data retention but sets **no maximum retention period**. This is a critical failure. Compare Arizona's approach to other states:

State	Retention Limit	Constitutional Adequacy
New Hampshire	3 minutes	Likely constitutional
Virginia	21 days	Questionable
Arizona (SB1111)	No limit specified	Unconstitutional

The Massachusetts Supreme Judicial Court in *Commonwealth v. McCarthy* (2020) held that "with enough cameras in enough locations, the historic location data from an ALPR system...would invade a reasonable expectation of privacy and constitute a search." Without retention limits, SB1111 enables exactly this unconstitutional accumulation.

C. Elimination of Public Accountability

SB1111 explicitly exempts ALPR data from public records requests: "Captured plate data is **not subject to public review** pursuant to a public records request." This provision is particularly troubling because it eliminates the only mechanism by which citizens can discover how surveillance technology is being used against them.

Public records requests have revealed serious abuses of ALPR technology: Glendale Police Department used an anti-Romani ethnic slur when conducting Flock searches; Arizona police have surveilled protesters exercising First Amendment rights; and nationwide, over 50 agencies have run searches related to protest activity. Without public records access, such abuses would remain hidden.

IV. The Conservative Case Against Mass Surveillance

Opposition to warrantless mass surveillance is not a liberal or libertarian position—it is a **fundamentally conservative** position rooted in the same principles that animated the Founders' distrust of government power.

A. Limited Government Requires Limited Surveillance

The conservative principle of limited government cannot coexist with unlimited surveillance capability. As Justice Sotomayor warned in *United States v. Jones* (2012), mass surveillance "may alter the relationship between citizen and government in a way that is inimical to democratic society." When government can track every citizen's movements without suspicion of wrongdoing, it exercises precisely the kind of unchecked power that the Constitution was designed to prevent.

The Goldwater Institute—Arizona's leading conservative policy organization—has documented how the Private Affairs Clause was written specifically to guard against government "freewheeling investigations or general

inquiries." SB1111 authorizes precisely such inquiries by allowing access to ALPR data for "any criminal investigation" without individualized suspicion.

B. The Chilling Effect on Constitutional Rights

ALPR surveillance chills the exercise of fundamental constitutional rights. EFF investigations have documented that Arizona police used Flock cameras to **monitor protesters** exercising First Amendment rights. The knowledge that government is recording every vehicle's movements affects how citizens exercise their freedoms of speech, assembly, association, and religion.

As the International Association of Chiefs of Police has acknowledged, ALPR surveillance can cause people to "become more cautious in the exercise of their protected rights of expression, protest, association, and political participation because they consider themselves under constant surveillance." This is antithetical to a free society.

C. Federalism and State Constitutional Supremacy

Conservatives have long championed federalism—the principle that states can and should provide greater protections for individual rights than the federal floor. Arizona's Private Affairs Clause is a perfect example: Arizona's framers *deliberately chose different language* from the Fourth Amendment to provide *stronger protections* for Arizona citizens.

As the Washington Supreme Court recognized in interpreting identical language, "state courts should presume *against* following federal jurisprudence unless good reason exists to do so." Arizona courts have repeatedly acknowledged that the state constitution can and should protect broader rights than federal law—yet they have failed to enforce those protections in the surveillance context. SB1111 would codify this failure.

V. Recommendations: What Constitutional ALPR Legislation Requires

To comply with Article II, Section 8 of the Arizona Constitution, any ALPR legislation must include:

MINIMUM CONSTITUTIONAL REQUIREMENTS

- 1. Warrant Requirement:** Access to historical ALPR data must require a warrant supported by probable cause, as required by Carpenter.
- 2. Strict Retention Limits:** Non-hit data should be deleted within minutes (following New Hampshire's 3-minute standard), not retained indefinitely.
- 3. Public Transparency:** ALPR usage data and audit logs must remain subject to public records requests to ensure accountability.
- 4. Criminal Penalties for Misuse:** Unauthorized access or disclosure should be a felony, not merely a policy violation.
- 5. Prohibition on Data Sharing:** Arizona ALPR data should not be shared with federal agencies or other states without a warrant.
- 6. Community Opt-Out:** Local communities should have the authority to prohibit ALPR deployment within their jurisdictions.

VI. Conclusion

Senate Bill 1111 is, as the Electronic Frontier Foundation described it, "among one of the weakest bills" ever seen for regulating license plate readers. Far from preventing government overreach, it **authorizes and shields from scrutiny** a mass surveillance system that tracks Arizonans' movements without warrants, without meaningful retention limits, and without public accountability.

The Arizona Constitution's Private Affairs Clause was written precisely to prevent such intrusions. The framers deliberately chose broader language than the Fourth Amendment because they understood that liberty requires protection against government surveillance of citizens' private lives—not merely their homes. The Supreme Court's reasoning in *Carpenter* and the Fourth Circuit's analysis in *Beautiful Struggle* confirm that aggregated surveillance over time transforms individual public observations into a constitutional violation.

The argument that "cameras are in public" is a **weak argument** that has been rejected at the highest levels of American jurisprudence. A person does not surrender all privacy protection by venturing into public. The "whole of one's physical movements" remains constitutionally protected—and SB1111 authorizes precisely the kind of comprehensive tracking that reveals that whole.

SB1111 violates Article II, Section 8 of the Arizona Constitution and should be rejected.

References

Legal Sources:

- Arizona Constitution, Article II, Section 8: [Arizona Legislature](#)
- SB1111 Full Text: [Arizona Legislature PDF](#)
- Goldwater Institute, "The Arizona Private Affairs Clause": [Goldwater Institute](#)
- *Carpenter v. United States* (2018): [Justia](#)
- *Commonwealth v. McCarthy* Analysis: [Harvard Law Review](#)

News Coverage of SB1111:

- Arizona Mirror: ["Police-backed GOP bill would shield license plate reader data"](#)
- Senate Committee Advancement: [Arizona Mirror](#)
- Citizen-Proposed Amendments: [Jen's Two Cents](#)

Civil Liberties Resources:

- Brennan Center ALPR Legal Analysis: [Brennan Center](#)
- Congressional Research Service: [Congress.gov](#)
- Texas Law Review, Mosaic Theory Analysis: [Texas Law Review](#)

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