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Privacy Versus Property: Tire-Chalking and the Fourth Amendment Post-Jones

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# Privacy Versus Property: Tire-Chalking and the Fourth Amendment Post-Jones

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INTRODUCTION

If you have ever noticed a small white mark on your tire after parking in a time-limited public parking spot, your constitutional rights were violated. By placing a chalk mark on your tire without a warrant and probable cause to believe your car would overstay its welcome, the parking enforcement agent searched you in violation of the Fourth Amendment—that is, if you are within the Sixth Circuit. Taylor v. City of Saginaw (“Taylor II”) declared tire-chalking by municipal parking enforcement officers an unreasonable trespassory search. In a country where the National Security Agency constantly monitors our communications and the Transportation Security Administration routinely scans every inch of our bodies without a warrant or probable cause, this outcome is puzzling. Moreover, the Sixth Circuit was persuaded that a city’s access to non-trespassory methods of monitoring parking, such as parking meters (which collect sensitive credit card data) and digital license plate scanners (which collect time-stamped photos and GPS data), contributed to the unreasonableness of the search. Given that the basic purpose of the Fourth Amendment is “to

1. “Chalking consists of a City parking officer placing an impermanent chalk mark of no more than a few inches on the tread of one tire on a parked vehicle. The parking officer must place the chalk mark on every vehicle parked in a given area of the City; officers do not single out particular vehicles for chalking. If a vehicle’s chalk mark is undisturbed after the parking limit has expired, this shows the vehicle has exceeded the time limit for the space. The parking officer may then issue a citation for violation of the City’s parking regulations. According to the district court’s findings, the chalk mark on the tire rubs off within a few tire rotations after driving.” Verdun v. City of San Diego, 51 F.4th 1033, 1035 (9th Cir. 2022).

2. In addition to regulating the federal government, the Fourth Amendment regulates state and local governments through the Due Process clause of the Fourteenth Amendment. See generally Wolf v. Colorado, 338 U.S. at 32 (1949) (incorporating the Fourth Amendment); Mapp v. Ohio, 367 U.S. 643, 660 (1961) (holding that the exclusionary rule applies to states); Ker v. California, 374 U.S. 23, 33–34 (1963) (holding that warrantless searches must comport with federal constitutional guarantees).

3. Taylor v. City of Saginaw (Taylor II), 11 F.4th 483, 489 (6th Cir. 2021). Taylor II was the Sixth Circuit’s second opinion addressing and rejecting the City’s arguments about the applicability of various exceptions to the warrant standard for reasonableness. See Taylor v. City of Saginaw (Taylor I), 922 F.3d 328, 332–33 (6th Cir. 2019) for the Sixth Circuit’s first opinion.

safeguard the privacy and security of individuals,” the logic of this holding seems backward.5

Faced with the same set of legally significant facts, the Ninth Circuit upheld tire-chalking in Verdun v. City of San Diego.6 The Ninth Circuit did not conclusively rule on whether the practice amounted to a search7 and proceeded to a reasonableness analysis. It applied the administrative search framework,8 which exempts a search from the “warrant-plus-probable-cause” reasonableness model9 in favor of a balancing test weighing public interest against the intrusiveness of the search.10 Given the “infinitesimal” invasion of privacy that tire-chalking entails, the Ninth Circuit easily determined reasonableness in the City’s favor.11

In the modern era, Fourth Amendment “search” cases of first impression often concern new technologies with privacy implications that the framers of the U.S. Constitution could not have imagined.12 In this sense, the constitutional attack on tire-chalking is anomalous.13 Cities across the country have implemented tire-chalking for almost a century to encourage an appropriately-paced turnover of coveted parking spots.14 Despite the inevitable millions of frustrated parking ticket recipients as potential plaintiffs, tire-chalking was not challenged in court until 2017.15 Chalking strains a common sense understanding

7. Id. at 1037.
8. Id. at 1038.
9. See Missouri v. McNeely, 569 U.S. 141, 148 (2013) (providing that searches and seizures are generally unreasonable and invalid unless they are based on probable cause and executed pursuant to a warrant).
10. See Verdun, 51 F.4th at 1041–42.
11. Id. at 1045.
12. See, e.g., Carpenter v. United States, 138 S. Ct. 2206, 2220 (2018) (discussing the constitutionality of subpoenaing cell site location information (“CSLI”) from third party cell service providers).
15. See Taylor v. City of Saginaw (Taylor II), 11 F.4th 483, 486 (6th Cir. 2021); see also James R. Touchstone, “Chalking” The Tires of Parked Vehicles Found to Be
of what it means to search someone; however, a formalistic application of Fourth Amendment doctrine leads to that end. Taylor II and Verdun raise several unique questions about current Fourth Amendment search doctrine. The current doctrine reveals some of the consequences of United States v. Jones, a landmark case which added a property-based search test to an already convoluted body of Fourth Amendment doctrine. This Comment analyzes the circuit split over tire-chalking and argues that by making the reasonable expectation of privacy standard set forth in Katz v. United States residual to a strict property rights rule, Jones creates an arbitrary preference for contactless data-gathering methods while ignoring deeper privacy implications. Part I evaluates whether, under Jones, a trivial physical contact designed to convey one limited piece of information should be considered a “search.” Part II discusses how Jones’s over inclusiveness impacts the administrative search doctrine. Part III contemplates the tire-chalking cases’ broader implications for municipal operations and privacy rights. This Comment’s working definition of “privacy” is a cluster of values which are deeply intertwined with personhood and freedom, in contrast to a reductivist possessory interest in property definition of privacy.

I. DEFINING A JONES SEARCH

A. Katz and the Shift From Property to Privacy

Starting in the early twentieth century, increasingly sophisticated technology made it possible for the government to peer into the private lives of citizens without touching their property. For example,
wiretapping was permitted for decades because it involved “no entry of the houses or offices of the defendants.”21 In 1967, the Court finally addressed the under-protectiveness of a property-based construction of the Fourth Amendment. Justice Stewart delivered a landmark opinion in *Katz v. United States*, which found that government agents’ attachment of an eavesdropping device to a public telephone booth was a search.22 Justice Harlan’s concurrence set forth the language of the modern test for a government search, declaring that a search occurs when officers violate a person’s “reasonable expectation of privacy.”23

*Katz* became the primary legal test for a search.24 It was not until 2012, when *Jones* was decided, that tire-chalking could be categorized as a “search.”25 In *Jones*, government agents installed a GPS tracking device on the undercarriage of Antoine Jones’s Jeep Grand Cherokee while it was parked in a public parking lot.26 By attaching the device to the Jeep, the agents encroached on a constitutionally protected area—Jones’s “effect.”27 Agents then used the device to monitor the vehicle’s movements for twenty-eight days, eventually gathering enough evidence to charge Jones with drug trafficking.28 The Court’s majority opinion, authored by Justice Scalia and joined by four other Justices, upheld a favorable ruling on Jones’s motion to suppress evidence obtained as a result of the GPS tracker’s trespassory installation.29 It

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23. Id. at 360 (Harlan, J., concurring).
25. The trespass-based search criteria laid out in *Jones* paved the way for tire-chalking challenges. *Id.* at 407.
26. Technically, the Cherokee was registered to Jones’s wife. *Id.* at 402.
27. *Id.* at 410. See also U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .”)
29. *Id.* at 404, 413.
declared that a search occurs when the government (1) physically occupies private property (2) to obtain information.\textsuperscript{30}

The Jones decision in 2012 came as a surprise to many because it resuscitated a long-dormant property-based trespass test. The Jones Court answered whether a common law trespass-to-property search definition had survived Katz.\textsuperscript{31} The majority asserted that Katz extended, but did not supplant, the pre-Katz definition of a search.\textsuperscript{32} However, Justice Alito’s concurrence, joined by Justices Ginsburg, Breyer, and Kagan, highlighted the majority opinion’s “[d]isharmony with a substantial body of existing case law,” questioning the majority’s insistence that Jones simply reiterated the current search law.\textsuperscript{33} Furthermore, while Jones purported to renew attention to a pre-Katz conception of a search which had never been extinguished, it arguably created an entirely new test for identifying a search.\textsuperscript{34}

B. Interpreting Jones’s Scope

i. Occupation of Private Property

Under the framework set forth in Jones, a search occurs when two elements are met: the government (1) physically occupies private property (2) to obtain information.\textsuperscript{35} The Jones Court describes the first element of its test in multiple ways: a “common-law trespass,”\textsuperscript{36} a

\begin{itemize}
  \item \textsuperscript{30} Id. at 403. The Court never considered whether the search might nonetheless be reasonable because the burden of proving reasonableness then shifted to the government, who had not raised the issue.
  \item \textsuperscript{31} Id. at 407.
  \item \textsuperscript{32} Id. at 406–07.
  \item \textsuperscript{33} Id. at 423–24 (Alito, J., concurring). For post-Katz case law contradicting the Jones majority’s claim that Katz did not replace the previous trespassory definition of a search, see Rakas v. Illinois, 439 U.S. 128, 143 (1978) (“[T]he capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.”); Kyllo v. United States, 533 U.S. 27, 32 (2001) (“We have since decoupled violation of a person’s Fourth Amendment rights from trespassory violation of his property.”).
  \item \textsuperscript{34} See Orin S. Kerr, The Curious History of Fourth Amendment Searches, 2012 SUP. CT. REV. 67, 68–69 (2012).
  \item \textsuperscript{35} Jones, 565 U.S. at 404–05.
  \item \textsuperscript{36} Id. at 409.
\end{itemize}
“physical[] occup[ation of] private property,”37 and a “physical intrusion.”38 These are not synonymous. While a “trespass” can be mere contact with the exterior of an effect,39 “occupation” and “intrusion” demand something more. In Cardwell v. Lewis, a case where officers collected paint scrapings from a murder suspect’s car, the Court emphasized the fact that the evidence was taken only from the car’s exterior, holding that the collection was not an “intrusion” and thus did not violate the Fourth Amendment.40 In assessing a search, there is a meaningful distinction between contact with the exterior of an object and an intrusion into its interior.

The terminology that a court employs determines the scope and rigor of application as to the first element of the Jones test. In Taylor I, the Sixth Circuit classified the first element as a “physical trespass,” noting that Jones did not specify which common law understanding of trespass should apply.41 The court adopted a broad definition from the Second Restatement of Torts, which requires mere “physical contact.”42 While dusting a tire with impermanent chalk is physical contact by extension of a handheld object—sufficient to satisfy “physical contact”—it would be a stretch to label the act an “occupation” or “intrusion.”

The Sixth Circuit’s firm classification of chalking as a “physical trespass” is bolstered by the comparable facts of Jones, which similarly

37. Id. at 404–05.
38. Id. at 407 (quoting United States v. Knotts, 460 U.S. 276, 278 (1983) (Brennan, J., concurring)).
39. Id. at 406.
40. Cardwell v. Lewis, 417 U.S. 583, 588–89 (1974) (“The evidence with which we are concerned is not the product of a ‘search’ that implicates traditional considerations of the owner’s privacy interest. It consisted of paint scrapings from the exterior and an observation of the tread of a tire on an operative wheel.”) (emphasis in original).
41. Taylor v. City of Saginaw (Taylor I), 922 F.3d 328, 332–33 (6th Cir. 2019).
42. Id. (“As defined by the Restatement, common-law trespass is ‘an act which brings [about] intended physical contact with a chattel in the possession of another . . . [A]n actor may . . . commit a trespass by so acting upon a chattel as intentionally to cause it to come in contact with some other object.’ Adopting this definition, there has been a trespass in this case because the City made intentional physical contact with Taylor’s vehicle.”) (quoting RESTATEMENT (SECOND) OF TORTS § 217 cmt. e (1965)) (internal citations omitted).
involved minimal physical contact with the exterior of an effect, rather than a physical “intrusion” or “occupation,” which connotes some greater degree of entry into a protected space. This conclusion also finds support in Silverman v. United States, where the government used a spike microphone to eavesdrop on the defendant from an adjacent apartment. There, the dispositive fact was that the microphone made physical contact with a heating duct connected to the defendant’s house. Based thereon, it appears that the “physical contact” approach, which is less broad than the “trespass” approach, is the most faithful reading of the first element of the Jones test, despite the Court’s refusal to articulate the element in those terms.

ii. Obtaining Information and the De Minimis Doctrine

The second element of the Jones test concerns the government’s purpose for coming into contact with the protected effect. It supplies a privacy-related component which distinguishes benign contact from a search. To constitute a search, the government’s purpose in coming into contact with the protected effect must be “to obtain information.” While this element is relatively straightforward, it is also extremely broad.

Under the reasonable expectation of privacy framework, an act which reveals only one limited piece of information about a privacy interest can be considered a de minimis non-search, not subject to a Fourth Amendment inquiry. The Court has held that the use of drug sniffing dogs is a de minimis non-search because it reveals no lawful

43. Jones, 565 U.S. at 402.
44. Silverman v. United States, 365 U.S. 505, 509 (1961) (“Every inference, and what little direct evidence there was, pointed to the fact that the spike made contact with the heating duct, as the police admittedly hoped it would. Once the spike touched the heating duct, the duct became in effect a giant microphone, running through the entire house occupied by appellants.”).
45. Id. at 505.
46. Id.
47. Jones, 565 U.S. at 404.
48. Id. at 408 n.5.
49. Silverman, 365 U.S. at 505.
personal information, only the presence or absence of illegal narcotics.51 Unlike physically entering someone’s home, which exposes legitimate personal information to the prying eyes of the officer, a police K-9 sniff reveals concealed contraband only, which the Court does not consider a legitimate privacy interest.52

The first Supreme Court case to apply Jones was Florida v. Jardines.53 A police officer walked up to Joelis Jardines’s porch with his drug-sniffing K-9, who signaled to the presence of marijuana within the home.54 The Court held that this was an unreasonable search.55 The dispositive fact here was that the officer stepped upon the curtilage of Jardines’s property, a constitutionally protected area.56 Under Jones, this physical occupation of a constitutionally protected area for the purpose of obtaining information constituted a search.57 The fact that the information obtained was limited to the presence or absence of illegal drugs, which was dispositive in cases applying the de minimis doctrine within the reasonable expectation of privacy framework, did not sway the Court’s analysis. Jardines indicates that the Jones trespassory search framework does not accommodate the de minimis doctrine.

Jones demonstrates that even minimal contact with property meets its search test; Jardines demonstrates that obtaining one piece of information which reveals nothing personal to the officer about the searched individual meets the second element of Jones.58 In Jones, however, the concurrence found that the second prong, “obtaining information,” was overwhelmingly met because GPS monitoring generates “a precise, comprehensive record of a person’s public

52. See Place, 462 U.S. at 707 (“[T]he manner in which information is obtained through this investigative technique is much less intrusive than a typical search.”); Caballes, 543 U.S. at 408–09 (2005) (“[T]he expectation ‘that certain facts will not come to the attention of the authorities’ is not the same as an interest in ‘privacy that society is prepared to consider reasonable.’”) (citing United States v. Jacobsen, 466 U.S. 109, 123 (1984)).
54. Id. at 3–4.
55. Id. at 10.
56. Id. at 7–8.
58. Id. at 404–05; Jardines, 569 U.S. at 14–17.
movement” reflecting “a wealth of detail” about someone’s political, professional, familial, sexual, and religious associations.”

In Jardines, the “trespass,” or contact, prong was surely satisfied because the search involved physical entry onto the curtilage of the defendant’s home, a highly protected space.

Tire-chalking involves both a minimal contact and the collection of a minimal piece of information. Perhaps tire-chalking is distinguishable from both these holdings because it only minimally satisfies the two elements of the Jones test.

The de minimis doctrine can be understood as an escape hatch when the inevitably imperfect language of a legal test captures facts which are materially insignificant to the spirit of the law. The full phrase, de minimis non curat lex, means “[t]he law does not concern itself with trifles.”

In the Fourth Amendment context, this doctrine has primarily been used to justify seizures, typically when the duration of the seizure or the amount seized is deemed too small to make the technical seizure unreasonable.

In Cardwell v. Lewis, the Court held that when police officers took paint scrapings from a murder suspect’s car, upon probable cause but without a warrant, they committed only a de minimis violation of the suspect’s constitutional interests. It remains unclear whether the Court found the seizure and search of the paint scrapings to be constitutional as a de minimis non-search, or as a search that was reasonable for its de minimis nature.

The former interpretation allows the de minimis doctrine to operate as a complete bar to a Fourth Amendment search challenge, whereas the latter interpretation merely recognizes the de minimis nature of a search as a component of

60. Jardines, 569 U.S. at 7.
62. See, e.g., United States v. Jacobsen, 466 U.S. 109, 125 (1984) (“[B]ecause only material was involved, the loss of which appears to have gone unnoticed by respondents, and since the property had already been lawfully detained, the ‘seizure’ could, at most, only have a de minimis impact on any protected property interest.”); see also Jeffrey Brown, How Much Is too Much? The Application of the De Minimis Doctrine to the Fourth Amendment, 82 Miss. L.J. 1097, 1111–1113 (2013).
64. Id. Compare id. at 591 (opinion of Blackmun, J.) (“[W]e fail to comprehend what expectation of privacy was infringed”), with id. at 592, (“Under circumstances such as these, where probable cause exists, a warrantless examination of the exterior of a car is not unreasonable”).
reasonableness.65 Under the second interpretation, searches which absolutely require some level of individualized suspicion to be justified, regardless of how minimally invasive the search was, will be considered unreasonable absent individualized suspicion.66 In Taylor II, the Sixth Circuit considered the de minimis doctrine’s force when applied to a common law trespass, which interprets the legal foundation upon which a Jones search is determined.67 The court ultimately rejected an application of the de minimis doctrine.68 On the other hand, in Verdun, the Ninth Circuit referenced the de minimis nature of tire-chalking as a factor supporting the reasonableness of such a search.69

While police K-9 sniffs which do not enlarge the scope of a seizure are de minimis non-searches, the Court has noted that, “the canine sniff is sui generis . . . [and the Court is] aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure.”70 When ruling in cases such as the one above, the Court had yet to consider tire-chalking as a search. The rationale underpinning police K-9 sniffs—the fact that the property owner “is not subjected to the embarrassment and inconvenience entailed in less discriminate and more intrusive investigative methods”71—extends comfortably to tire-chalking. Discreet and minimal contact with a vehicle’s tire does not divulge embarrassing information, nor does it inconvenience the vehicle’s owner. However, the most obvious distinction between tire-chalking and police K-9 sniffs is that the dog sniffs considered in Place and Caballes involved no technical trespass or physical contact.72

65. The Ninth Circuit follows the latter approach in Verdun. Verdun v. City of San Diego, 51 F.4th 1033, 1035 (9th Cir. 2022).
66. This is demonstrated by the Sixth Circuit’s approach in Taylor II. Taylor v. City of Saginaw (Taylor II), 11 F.4th 483, 489 (6th Cir. 2021).
67. Id. at 490.
68. Id. This legal ambiguity was the Sixth Circuit’s basis for granting Tabatha Hoskins, the defendant parking enforcement officer, qualified immunity. Id.
69. Verdun, 51 F.4th at 1045. The Ninth Circuit also references the vehicle exception as a factor lending support to its conclusion; however, because the vehicle exception requires probable cause, it cannot justify a suspicionless search such as tire-chalking. Id. at 1047.
71. Place, 462 U.S. at 707.
Recently, in *State v. Howard*, the Idaho Supreme Court held that under *Jones*, a search occurred when a drug K-9’s nose physically intruded into the open window of a car. *Tire-chalking is distinguishable from Howard if we accept that the occurrence of a search depends on whether a government actor physically intrudes either onto the exterior or into the interior of an effect.* Yet, only pre-*Jones* cases consider this a meaningful distinction. There is no precedent indicating that the broad trespass framework accommodates *de minimis* searches. A formalistic application of *Jones* leads to the conclusion that tire-chalking is, in fact, a search. Accordingly, *any* physical contact with personal property for the purpose of obtaining information—including chalking the outside of a vehicle’s tire—may be considered a violation of someone’s Fourth Amendment rights.

C. *Jones’s Awkward Fit in the Digital Age*

The ultimate result of *Jones* was to bring government conduct which did not offend a reasonable expectation of privacy, but did involve physical contact with property, into the Fourth Amendment’s reach. While some scholars have suggested that the concerns informing trespass law entirely overlap with those that inform expectations of privacy and therefore, *Jones* did not meaningfully alter search jurisprudence, this is simply not the case. This is evidenced by the fact that a literal reading of *Jones* invalidates established doctrines, such as the private search exception. Tire-chalking is a prime example of

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74. See discussion supra Section I.B.i regarding occupation of private property.
76. Entick v. Carrington *(1765) 95 Eng. Rep. 807, 817 (“[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour’s close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour’s ground, he must justify it by law”).*
78. Andrew MacKie-Mason, The Private Search Doctrine After Jones, 126 Yale L.J.F. 326, 327 (2017) (explaining how the logic of the private search doctrine depends on a reasonable expectation of privacy search definition, because when a private party searches something before the government does, privacy has already been breached and the government has not crossed a new line, but this rationale becomes irrelevant under a trespass approach). Furthermore, many criminal
a search that only the *Jones* test could capture. A person has no reasonable expectation of privacy against minor contact with the surface of their car tire while it is parked on a public street or lot.

The distinct foci of *Jones* and *Katz* exemplify the classic dichotomy between rules and standards. Bright-line rules provide clarity and limit judicial discretion, but they suffer from inflexibility and indifference to contextual factors. *Jones* purports to create a straightforward rule to decide whether an act was a search, while *Katz* offers an amorphous standard concerning someone’s “reasonable expectation of privacy.” Under *Jones*, when a physical occupation is present, courts need not engage in lengthy musings on current normative privacy expectations to determine that a search occurred. However, the Fourth Amendment’s search clause is fundamentally about privacy, which, as a right, is inherently ephemeral, context-specific, and subject to fluctuations in shifting technology and social norms. It does not conform well to rigid, efficient rules.


79. “Before the reorientation of Fourth Amendment ‘search’ doctrine around the physical trespass theory, as set forth in [Jones and Jardines], it is not apparent that anyone viewed tire chalking as presenting a grave question of constitutional law, or indeed any question of constitutional dimension.” Verdun v. City of San Diego, 51 F.4th 1033, 1037 (9th Cir. 2022) (citing United States v. Jones, 565 U.S. 400, 406–07 (2012)); Florida v. Jardines, 569 U.S. 1, 5 (2013). “There is evidence that municipalities have been chalking tires for parking enforcement purposes since at least the 1930s.” Verdun, 51 F.4th at 1037 (citing KERRY SEGRAVE, PARKING CARS IN AMERICA, 1910–1945: A HISTORY 120 (2012)) (discussing tire chalking in 1935 in Dallas, Texas); Owens v. Owens, 8 S.E.2d 339, 340 (S.C. 1940) (noting the practice of tire chalking in Columbia, South Carolina); State v. Sweeney, 5 A.2d 41, 41 (N.H. 1939) (describing a police officer chalking a tire in Nashua, New Hampshire); Commonwealth v. Kroger, 122 S.W.2d 1006, 1007 (Ky. Ct. App. 1938) (describing a policeman chalking a tire in Newport, Kentucky on November 7, 1938).

80. See generally David Stras et al., *Justice Scalia and the Criminal Law*, 86 CIN. L. REV. 743, 744 (panelist Orin Kerr discussing Justice Scalia’s influence on Fourth Amendment jurisprudence).

81. *Jones*, 565 U.S. at 400.

82. Cardwell v. Lewis, 417 U.S. 583, 591–92 (1975) (“Stated simply, the invasion of privacy, ‘if it can be said to exist, is abstract and theoretical.’”) (citing Air Pollution Variance Bd. v. W. Alfalfa Corp., 416 U.S. 861, 865 (1974)).
The impetus behind the *Jones* majority’s approach was Justice Scalia’s textualist fervor. Interpreting the framers’ intent as property-focused, he sought to re-invigorate property rights as an indispensable basis for Fourth Amendment protections, despite almost half a century of search law de-prioritizing this very focus. While the Fourth Amendment enumerates material items—“persons, houses, papers, and effects”—there is no indication that the per se rights of property owners were of deeper importance than a loftier and more profound notion of privacy and freedom from government overreach.\(^{83}\) The Fourth Amendment’s enumeration of material items established a sensible line between what was public in nature and what was personal enough to be shielded from the government’s unjustified reach, given the limited contours of the framers’ eighteenth-century world. It was not because the material items themselves had some special, innate quality worthy of protection, aside from the extent to which they harbored content of personal significance.

Particularly in the context of trivial trespasses, *Jones*’s rigid property-based approach has a distortive effect on the Fourth Amendment’s purpose of securing individual privacy.\(^ {84}\) While the police in *Jones* collected vast amounts of revealing data, the Court based its conclusion entirely on a minor contact with private property, thus deliberately overlooking the Fourth Amendment’s more fundamental concerns:

> [T]he Court’s reasoning largely disregards what is really important (the use of a GPS for the purpose of long-term tracking) and instead attaches great significance to something that most would view as relatively minor (attaching to the bottom of a car a small, light object that does not interfere in any way with the car’s operation). Attaching such an object is generally regarded as so trivial that it does not provide a basis for recovery under modern tort law.\(^ {85}\)

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83. U.S. CONST. amend. IV.

84. *Jones*, 565 U.S. at 425 (explaining how the majority’s misplaced focus can lead to incongruous results: “If the police attach a GPS device to a car and use the device to follow the car for even a brief time, under the Court’s theory, the Fourth Amendment applies. But if the police follow the same car for a much longer period using unmarked cars and aerial assistance, this tracking is not subject to any Fourth Amendment constraints.”).

85. *Id.* at 424–25 (Alito, J., concurring) (citing W. Prosser & Keeton et al., PROSSER AND KEETON ON THE LAW OF TORTS § 14, at 87 (5th ed. 1984) (explaining
Taylor II exemplifies how Jones can create an outcome where a low-intrusion enforcement method is disfavored simply because it involves miniscule physical contact with property.86

In Cardwell, the Court declared, “Rather than property rights, the primary object of the Fourth Amendment was determined to be the protection of privacy.”87 The Jones Court’s attempt to discipline the Fourth Amendment by making the Katz privacy-oriented standard residual to a strict property rights rule leads to an arbitrary preference for contactless data-gathering methods, regardless of privacy implications. Moreover, Jones reshapes the concept of a search, not only in terms of whether a search occurred, but also in terms of whether the search was reasonable. Part II explains why this is so, elaborating the Sixth and Ninth Circuits’ differing determinations of reasonableness, which are based on the applicability of the administrative search doctrine to tire-chalking.

II. REASONABILITYNESS AND THE ADMINISTRATIVE SEARCH EXCEPTION

After an act is deemed a search, courts evaluate whether the search was reasonable, and this determines whether a Fourth Amendment violation occurred.88 Acts which do not offend a reasonable expectation of privacy, but are nonetheless searches under Jones, complicate existing doctrines for evaluating reasonableness. This is illustrated by the circuit split over tire-chalking, where the Sixth and Ninth Circuits differ in their interpretations of the administrative search exception’s scope89 and how contact with property should factor into a reasonableness analysis.90

86. Taylor v. City of Saginaw (Taylor II), 11 F.4th 483, 490 (6th Cir. 2021).
89. Taylor II, 11 F.4th at 486; Verdun v. City of San Diego, 51 F.4th 1033, 1033 (9th Cir. 2022).
90. Taylor II, 11 F.4th at 486; Verdun, 51 F.4th at 1040.
A. When are Individualized Susicion and Search Warrants Required?

While the text of the Fourth Amendment presents a Reasonableness Clause and a Warrants Clause as distinct items, such that “reasonableness” does not necessarily rely on the existence of suspicion and a warrant, the Supreme Court has endorsed warrant-plus-probable-cause as the gold standard for reasonableness. Warrantless, suspicionless searches are presumptively unreasonable under the Fourth Amendment.

However, given the notorious flexibility of the term “reasonable,” combined with the sheer volume and variety of search-related disputes, the Court has devised exceptions to the warrant and probable cause standard, which create varying frameworks for assessing reasonableness. The administrative search doctrine is one such exception, modifying the warrant and probable cause requirements, and sometimes eliminating them entirely. Under the administrative search doctrine, reasonableness is assessed through a balancing test, weighing the public interest in the policy against the degree of private intrusion.

91. “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.

92. United States v. Lefkowitz, 285 U.S. 452, 464 (1932); see also Arizona v. Gant, 556 U.S. 332, 338 (2009) (citing Katz v. United States, 389 U.S. 347, 357 (1967)) (“[O]ur analysis begins, as it should in every case addressing the reasonableness of a warrantless search, with the basic rule that ‘searches 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.’”); Almeida-Sanchez v. United States, 413 U.S. 266, 277 (1973) (Powell, J., concurring) (“[I]t is by now axiomatic that the Fourth Amendment’s proscription of ‘unreasonable searches and seizures’ is to be read in conjunction with its command that ‘no Warrants shall issue, but upon probable cause’”).


94. See Warrantless Searches and Seizures, supra note 88, at 164.


96. Camara, 387 U.S. at 536 (“Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.”).
The administrative search doctrine originated in *Camara v Municipal Court*, which established a categorical exception to the individualized suspicion requirement when a search facilitates legitimate health and safety regulations and the public interest outweighs the search’s intrusiveness. Two subclasses of administrative searches which require neither a warrant nor individualized suspicion emerged from *Camara*: “special needs” and closely regulated industry searches.

The primary requirements for a “special needs” exception are that the regulatory purpose must serve a “special” purpose, typically one which promotes public health and safety, “beyond the normal need for law enforcement,” and this need would be jeopardized by a warrant or probable cause requirement. When these components are present, among other factors, “courts evaluate the reasonableness of the search by balancing the nature of the intrusion on the privacy interest at stake against the government interest served by the search.”

**B. Where the Rubber Meets the Road: is Chalking “Special” and “Needed”?**

Because tire-chalking is a suspicionless, warrantless search, it must fit the special needs category to be considered reasonable. In *Taylor*

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97. See id. at 533.
102. See *Camara*, 387 U.S. at 536–37; *Warrantless Searches and Seizures*, supra note 88, at 163–64.
103. *Warrantless Searches and Seizures*, supra note 88, at 54. In *Taylor II*, the Sixth Circuit leaves open the possibility that some other exception besides the administrative search exception could justify the search. 11 F.4th 483, 489 (6th Cir. 2021). The only other viable justification is a cluster of theories related to assumption of risk and implied consent: by parking on public property, motorists implicitly assume the risk of being searched. Cf. Geoffrey Corn, *The Jones Trespass Doctrine and the Need for a Reasonable Solution to Unreasonable Protection*, 73 ARK. L. REV. 531, 548 (2020) (suggesting that social license theory could defeat the “trespassory” nature of what would otherwise be a *Jones* search when it takes place on public property). While the Court has held that there is a reduced expectation of privacy on public roads, the government still needs probable cause to search. *California v.*
II and Verdun, the Sixth and Ninth Circuits took opposite stances regarding the applicability of special needs. Both Circuits faced a dilemma: declare chalking unreasonable and force cities to enforce timed parking in slightly more intrusive ways, or weaken Fourth Amendment protections by expanding the scope of the special needs exception. Taylor II held that chalking neither served a sufficiently special purpose, nor was absolutely necessary to accomplish that purpose. Verdun, which justified its special needs holding in thirteen pages (as opposed to Taylor II’s terse two), took great pains to emphasize the importance of regulating parking and the city’s reliance on chalking to accomplish that goal. The Taylor II court refused to expand the “special needs” category, whereas the Verdun court took a flexible approach and added tire-chalking to the ever-expanding list of suspicionless, warrantless government searches which could be justified on special needs grounds.

Carney, 471 U.S. 386, 392, 105 S. Ct. 2066, 2069 (1985). Justifying warrantless, suspicionless searches on government property under an implied consent theory would set a dangerous precedent, turning all public spaces into danger-zones of zero Fourth Amendment protection. See Michelle Tomkovicz, If You’re Reading This, It’s Too Late: The Unconstitutionality of Notice Effectuating Implied Consent, 70 EMORY L.J. 153, 200 (2020) (arguing against implied consent as an exception to Fourth Amendment protections); Andrew Guthrie Ferguson, Structural Sensor Surveillance, 106 IOWA L. REV. 47, 88 (2020) (explaining how Carpenter limits an assumption-of-risk principle as a Fourth Amendment workaround when a citizen’s voluntary behavior giving rise to the search, such as use of a cell phone, is “societally necessary”) (citing Carpenter v. United States, 138 S. Ct. 2206, 2220 (2018)).

104. Taylor v. City of Saginaw (Taylor II), 11 F.4th 483, 488–89 (6th Cir. 2021); Verdun v. City of San Diego, 51 F.4th 1033, 1038 (9th Cir. 2022).
105. Taylor II, 11 F.4th at 489.
107. Taylor II, 11 F.4th at 489; Verdun, 51 F.4th at 1040 (“[T]hese broader principles and the case law from which they are derived should not be misconstrued as creating absolute ‘floors’ drawn from the particular facts of individual cases. That would effectively calcify the factual premises of other cases into hard-and-fast sub-rules, without justification in the core Fourth Amendment precepts.”).
i. How Special Must the Needs Be?

The Sixth Circuit took the “special” in special needs literally: “[T]ire chalking is not necessary to meet the ordinary needs of law enforcement, let alone the extraordinary.”\(^{109}\) It concluded that something as mundane and low-danger as municipal parking should not qualify for the special needs exception, and to do so would represent an improper expansion of the special needs criteria.\(^{110}\) This approach finds support in Chandler v. Miller, where the Court held the government interest in deterring drug abuse by state politicians was not sufficiently vital to excuse a program of suspicionless urinalysis because proof of frequent drug abuse was lacking and elected officials did not perform immediately dangerous tasks.\(^{111}\) On the other hand, the Supreme Court has applied special needs in similar urinalysis cases where the public health and safety purposes of the search were not particularly dire.\(^{112}\) Other cases also omit the prevention of impending danger as a threshold requirement for special needs to apply.\(^{113}\) The Ninth Circuit acknowledged that the parking enforcement scenario presented less acute dangers than the drunk-driving roadblock cases to which it analogized, but defended its stance: “[w]e do not] think the administrative search exception invariably requires a special need premised on an imminent threat to public health or safety, or circumstances otherwise demanding immediate action in the face of dangerous conditions.”\(^{114}\)

\(^{109}\) Taylor II, 11 F.4th at 489 (citing City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000)).

\(^{110}\) Id. at 488 (citing City of L.A. v. Patel, 576 U.S. 409, 424 (2015)).


\(^{114}\) Verdun v. City of San Diego, 51 F.4th 1033, 1040–41 (9th Cir. 2022).
ii. How Necessary Must the Means Be?

In *Camara*, the fact that an individualized suspicion and warrant requirement would thwart the regulatory program was an important rationale for creating the administrative search exception. The Court emphasized that warrantless, suspicionless searches were “the only effective way to seek universal compliance with the minimum standards required by municipal codes.” In the decades after *Camara*, however, the Court repeatedly stated that “[t]he reasonableness of any particular government activity does not necessarily or invariably turn on the existence of alternative ‘less intrusive’ means.”

A point of disagreement between the circuit courts in *Verdun* and *Taylor II* was whether the availability of alternative non-search enforcement methods should bar application of the special needs exception. The Sixth Circuit was heavily persuaded by the fact that the City of Saginaw had options for regulating parking which did not involve trespassory contact. It determined that the parking enforcement officer’s “job was not impacted in any respect if she did not chalk tires,” and that “for nearly as long as automobiles have parked along city streets, municipalities have found ways to enforce parking regulations without implicating the Fourth Amendment.”

The *Taylor II* court did not apply a “least-intrusive means” test, but rather, an “alternative *non-search* means” test. It described the availability of alternative enforcement methods which would not implicate *Jones*, but failed to weigh the relative privacy implications of the alternative methods. Unless there is a legitimate privacy interest in the surface of a tire, the Sixth Circuit’s alternative means analysis had

116. *Id.* (emphasis added).
117. *Skinner v. Ry. Lab. Execs. Ass’n*, 489 U.S. 602, 629 n.9 (1989) (citing *Illinois v. Lafayette*, 462 U.S. 640, 647 (1983)). *See* *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 453 (1990) (upholding a DUI checkpoint). In *Sitz*, the dissent noted that there are other ways of combatting drunk driving, such as having more patrol officers on the road to watch for erratic motorists, and that there is no evidence that the use of suspicionless search checkpoints is more effective than this, but the majority flatly rejected this reasoning. *Id.* at 456 (Brennan, J., dissenting).
119. *Id.*
little to do with intrusiveness. When the administrative search exception is applied in this way, Jones disrupts the reasonableness analysis by pitting a trespassory search against alternative enforcement methods which are not technical “searches” but are nonetheless contrary to the Fourth Amendment’s emphasis on privacy.

iii. The Unreasonableness of Jones

As one scholar predicted, “Jones’s overbreadth may . . . be offset by a broadening of situations where warrantless trespass searches are assessed by [reasonableness] balancing.”\textsuperscript{120} Verdun is a case in point. On the other hand, Taylor II took a stringent approach and invalidated an extremely low-intrusion enforcement technique. In evaluating tire-chalking, both Circuits faced a dilemma: declare chalking a search and force cities to enforce timed parking in slightly more intrusive ways, or threaten Fourth Amendment protections by expanding a category of suspicionless searches.

An expanded tolerance for suspicionless searches has profound implications for privacy rights and freedom from governmental overreach. The weakening of Fourth Amendment protections to facilitate valid health and safety regulations is a slippery slope. Boyd v. United States warned that “[I]llegal and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure . . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.”\textsuperscript{121} As Sarah Seo elaborates in Policing the Open Road, the invention of the automobile created the need to enforce traffic safety laws, which resulted in a massive expansion of police forces and a loosening of the Fourth Amendment, contributing greatly to the current carceral state, which in turn, disproportionately affects marginalized communities.\textsuperscript{122} Allowing special exceptions for

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\textsuperscript{120} Corn, supra note 103, at 548.
\textsuperscript{121} Boyd v. United States, 116 U.S. 616, 635 (1886).
\textsuperscript{122} SARAH A. SEO, POLICING THE OPEN ROAD: HOW CARS TRANSFORMED AMERICAN FREEDOM 5–8 (Harvard Univ. Press, 2019). Concerns about disparate impacts are reduced in dragnet-style searches when they are conducted indiscriminately to everyone in a geographic area. See Eve Brensike Primus, Disentangling Administrative Searches, 111 Colum. L. Rev. 254, 260 (2011). Therefore, a lack of individualized suspicion forms the basis for their reasonableness.
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well-intended regulations expands the power of state agents and opens
the door to legally “justified” abuses.

Obviously, the factors involved in tire-chalking are unique and
distinguishable. Ideally, a court considering Verdun as precedent for
the applicability of the special needs exception would note that case’s
sui generis features. The Sixth Circuit’s reluctance to expand special
needs is grounded in legitimate concerns about the dangers of making
constitutional rights malleable.

On the other hand, Taylor II illustrates how an emphasis on the
element of trespass can distort the Fourth Amendment’s central focus
on intrusiveness. Although the Jones majority may have only intended
to refocus the search doctrine at the definitional stage, its influence
bleeds into analyses of reasonableness. Taylor II sets forth a broad
rendering of a trespassory search, and an absolutist application of
special needs, resulting in an ironic preference for a more intrusive
search method simply because it avoids the Jones problem of physical
contact with an effect.

CONCLUSION: JONES IN THE DIGITAL WORLD

After the Sixth Circuit effectively declared the City of Saginaw’s
tire-chalking an unconstitutional search,123 plaintiff Alison Taylor
obtained class certification.124 Copycat suits against cities across the

But see Randall K. Johnson, Uniform Enforcement or Personalized Law? A
Preliminary Examination of Parking Ticket Appeals in Chicago, 93 IND. L.J.
SUPPLEMENT 34, 58 (2018) (finding, through a statistical analysis, that parking
enforcement has lower administrative costs but higher error rates in disadvantaged zip
codes).

123. Taylor II, 11 F.4th at 489 (6th Cir. 2021). While the Sixth Circuit left open
the possibility that some other categorical exception to warrant-preference could
apply, conjuring such an exception would be like pulling a rabbit out of a hat. Id. at
489.

cases is the use of the class action procedural format to enforce the Fourth
Amendment. See generally Brandon L. Garrett, Aggregation and Constitutional
Rights, 88 NOTRE DAME L. REV. 593, 619–23 (2012) (describing the landscape of
Fourth Amendment-based class actions against police). As a practical matter, this is
not how the Fourth Amendment typically operates within the legal system. See id.
Searches are typically contested in the context of criminal proceedings, where
nation ensued,\textsuperscript{125} including \textit{Verdun}, where, on behalf of a class of similarly situated ticket recipients, the plaintiffs sought upwards of $44 million from the City of San Diego.\textsuperscript{126} Ultimately, in \textit{Taylor II}, though the Sixth Circuit declared chalking an unreasonable search, it held the

violations trigger the exclusionary rule, which can change a defendant’s entire future. For a critique of the exclusionary rule and a thoughtful alternative for enforcing the Fourth Amendment, see Nirej Sekhon, \textit{Mass Suppression: Aggregation And The Fourth Amendment}, \textit{51 GA. L. REV.} 429, 430–31 (2017). The exclusionary rule generally does not apply to civil actions brought by the government unless the civil action is closely tied to a corresponding criminal prosecution, such as forfeiture of a stolen good. See Louis J. DeReuil, \textit{Applicability of the Fourth Amendment in Civil Cases}, \textit{1963 DUKE LAW J.} 472, 487 (1963). Therefore, in civil regulatory actions, potential Fourth Amendment violations do not typically garner as much protest by defendants. As for 42 U.S.C. § 1983 or \textit{Bivens} civil actions against the government for conducting an illegal search, claims typically derive from a criminal investigation where downstream consequences of the illegal search, such as imprisonment, establish a worthwhile claim to damages. It is likely that many potentially illegal regulatory searches go unchallenged simply because they do not uncover criminality, nor lead to cognizable damages. Violations of a right to privacy, especially minor ones, are unlikely to procure remedies worth pursuing. The class action format solves some of these problems because it aggregates violations and provides bigger litigation incentives. It is rarely available in Fourth Amendment cases because inquiries into probable cause and reasonable suspicion are too individualized to be brought as a class. See Shawn E. Fields, \textit{Protest Policing and the Fourth Amendment}, \textit{55 U.C. DAVIS L. REV.} 347, 378 (2021). However, when an agency conducts a dragnet-style search and individualized suspicion is a non-factor, the class action is a viable vehicle for challenging the regulatory scheme or method. See generally, Daphna Renan, \textit{The Fourth Amendment as Administrative Governance}, \textit{68 STAN. L. REV.} 1039 (2016) (proposing an alternative system which incorporates Fourth Amendment principles into administrative agency governance).


\textsuperscript{126} Press Release, Office of San Diego City Attorney, Mara W. Elliot, 9th Circuit Upholds San Diego Chalking Tires (Oct. 27, 2022) (https://www.sandiego.gov/sites/default/files/9221027a.pdf) (“Attorneys in the class-action lawsuit sought damages from the City of at least $11 million for each of the past four years.”).
parking enforcement officer was entitled to qualified immunity.127 The twice-overturned district court, on remand, awarded Taylor only nominal damages against the City of Saginaw.128 Nevertheless, now that the unconstitutionality of chalking is clearly established in the Sixth Circuit, qualified immunity will no longer shield cities from civil liability.129 Considering only the extremely particular practice of tire-chalking, litigation over this parking enforcement method represents a threat of non-trivial financial liability to municipalities across the United States.

Of course, the rules and rationales of Verdun and Taylor II extend beyond the highly particular scenario of tire-chalking. The potential implications of the tire-chalking cases are manifold. On one hand, Verdun expands the special needs doctrine to accommodate a regulatory purpose lacking both a high-stakes public health or safety interest and a reliance on suspicionless searching to achieve its goal.130 On the other hand, Taylor I set forth a broad rendering of a Jones search,131 and Taylor II factors property heavily into its “reasonableness” analysis. Courts which follow Taylor II’s alternative means approach will favor non-trespassory searches even if they permit the government to gather personal data.132

Most of us have felt the pang of anger and regret that comes with exceeding a parking time-limit, hoping for the best, then returning to discover a ticket slapped onto our windshields. The fact that a parking enforcement officer touched our tire with a chalking-stick, as opposed to writing down our license plate number or photographing our car, is generally not the source of our distress; we are disconcerted because of the fine. In the not-so-distant future, the parking enforcement “officer” will perhaps be a street-embedded sensor, or a patrol car equipped with sophisticated License Plate Reader technology, integrated with a

127. Taylor II, 11 F.4th at 486.
128. Taylor v. City of Saginaw, No. 1:17-cv-11067, 2022 U.S. Dist. LEXIS 140564, at *672 (“Defendants’ practice of suspicion-less chalking will be declared unconstitutional, and they will be ordered to pay nominal damages for each instance of chalking.”)
130. Verdun v. City of San Diego, 51 F.4th 1033, 1038 (9th Cir. 2022).
131. Taylor v. City of Saginaw (Taylor I), 922 F.3d 328, 336 (6th Cir. 2019).
citywide network of sensors. Courts will grapple with difficult questions of how infrastructure allowing automated state surveillance alters the right to privacy, a right so fundamental to freedom. Even in this future world, the Jones trespass test will not necessarily become obsolete.

Consider a hypothetical: If you’ve ever found yourself sitting at a red light on an empty road, you might have wished there was a sensor to detect your presence and change the light to green. Instead of operating on a simple, routine timer, efficient traffic lights are responsive to vehicles in real time. Imagine two alternatives for how such sensors could be designed: a scale embedded in the road, or a camera affixed to the traffic light pole. Under the Jones trespass test, interpreted broadly by Taylor, the first option is a search because the road with the embedded weight sensor contacts your vehicle and obtains information. Although the sensor only obtains one discreet piece of information, a strict application of Jones forbids this approach to traffic efficiency. The camera, on the other hand, can capture and store identifying information, and intuitively raises concerns about state surveillance and privacy rights. Yet, it is not a search under Jones, nor is it likely to be a search under Katz because expectations of privacy on public roads are highly limited. Therefore, under the logic of Taylor II, the contactless camera is preferred. While a singular camera may be of no concern, a pooled network of cameras throughout the city can track your every move. The Jones trespass test, and the availability of the administrative search doctrine as a search justification, impacts the ways cities may design infrastructure and manage public spaces, not always for the better.

133. See Ferguson, supra note 103, at 47.
134. In the words of Justice Sotomayor, concurring in Jones, “Awareness that the government may be watching chills associational and expressive freedoms.” 565 U.S. 400, 416 (2012).
135. See New York v. Class, 475 U.S. 106, 114 (1986) (“The exterior of a car . . . is thrust into the public eye, and thus to examine it does not constitute a ‘search.’”) For a discussion of legal challenges to the use of cameras for traffic enforcement, see Paul McNaughton, Photo Enforcement Programs: Are They Permissible Under the United States Constitution?, 43 J. MARSHALL L. REV. 463, 481 (2010) (“The use of automated cameras to photograph drivers . . . does not invoke the protections of the Fourth Amendment because no search or seizure has occurred.”).
136. The extent to which this is a problem is beyond the scope of this article.
137. See Ferguson, supra note 103, at 88 (describing current and future cities embedded with technology and explaining how Fourth Amendment principles must
There is no logical reason why regulatory practices involving minor contact with material property should yield to ones with deeper privacy implications. Courts applying the Fourth Amendment in the modern age should instead be more concerned with aggregated personal data collection\(^\text{138}\) and “too permeating police surveillance.”\(^\text{139}\) In *Carpenter v. United States*, the Court took the approach the *Jones* majority passed over.\(^\text{140}\) Within the reasonable expectation of privacy framework, *Carpenter* placed limits on the quantity and quality of data the government could obtain and utilize.\(^\text{141}\) This approach expands Fourth Amendment protections in a meaningful way and leads to more proportional outcomes. The *Jones* trespass test increases the Fourth Amendment’s coverage, but injects it with a simplistic and inapt contact-with-property component. If the Fourth Amendment is to secure “the privacies of life” against arbitrary power,\(^\text{142}\) searches should be defined and assessed with privacy protections as the ultimate standard.

*Carly Dunn*

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\(^{139}\) *Id.* at 2214 (quoting United States v. Di Re, 332 U.S. 581, 595 (1948)).

\(^{140}\) *Id.* at 2206.

\(^{141}\) *Id.* at 2219. The Court demonstrated skepticism toward the implied consent logic of the third-party doctrine, holding that the government’s acquisition of Timothy Carpenter’s cell-site location information (CSLI) from wireless carriers was a violation of his reasonable expectation of privacy. *Id.*

\(^{142}\) *Id.* at 2214 (quoting Boyd v. United States, 116 U.S. 616, 630 (1886)).

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