

# Automatic License Plate Readers



By Paul Engel

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- Will you give up your privacy for a promise of safety?
- Do Automatic License Plate Readers violate the Fourth Amendment?
- Should police be allowed to search a license plate database without a warrant?

There will always be tension between our desires for privacy and safety. We're all for privacy, until we find that an invasion of said privacy could have stopped some terrible event. But are we willing to trade our privacy for safety? As Benjamin Franklin said:

**"They who would give up an essential liberty for temporary security, deserve neither liberty or security." –Benjamin Franklin**

In the case of Scholl and Bednarz v. Illinois State Police the privacy question revolves around automatic license plate readers (ALPRs) and what makes a search reasonable.

## Background

While the term "Automatic License Plate Readers" is pretty self-explanatory, how the case came to be is very important.

Six years ago, United States Postal Service worker Tamara Clayton was fatally shot on the I-57 highway. "This

unfortunate expressway shooting sparked a movement within the community, Illinois State Police (ISP), Illinois Department of Transportation (IDOT), local police agencies, and the Governor's office." ... On January 1, 2020, Illinois enacted the Tamara Clayton Expressway Camera Act to fund the installation of approximately 300 cameras—known as “automated license plate readers” or “ALPRs”—across Cook County expressways. ... Two years later, Illinois passed a statute appropriating additional funds and extending the program to twenty other counties. ... To date, the Illinois State Police has installed 344 cameras in Cook County, 78 in St. Clair County, and 44 across 17 other counties.

### [Scholl and Bednarz v. Illinois State Police](#)

As with so many cases, the road to hell is paved with good intentions. I feel for Ms. Clayton's family, and recognize the desire to be safe. But does our desire to be safe trump our rights or the rights of others? On the other hand, does our right to privacy trump the rights of others to be safe? Maybe there's something in the details that can help us navigate this conundrum.

This surveillance program works in two steps. Installed on the side of a road, ALPRs photograph (or “detect”) the license plates of vehicles driving by. The system then uploads the photo to the Law Enforcement Archival Reporting Network (“LEARN”) database. This national database compiles and stores billions of license plate photos taken by ALPRs in Illinois and elsewhere.

### [Scholl and Bednarz v. Illinois State Police](#)

OK, that sounds terrifying. Billions of license plate photos, stored in a national database, that can be used to track where you go. Unfortunately, it gets worse.

Law enforcement agencies across the country flag “hot plates” of vehicles that are targets of investigation—for instance, if

the car is reported stolen, is used as the getaway vehicle in a bank robbery, or has expired registration. License plate photos sit idle in the database until there is a “hit”—when an ALPR “detects” a hot plate. When police receive notification of the hit, they can enter the LEARN database to retrieve the license plate photo and associated metadata of when and where the photo was taken. This information allows police to “see what cars passed by that area at the relevant time and to whom those vehicles are registered.” Last month, ALPRs in Illinois recorded 200,161,762 detections and 5,747,483 hits.

### [Scholl and Bednarz v. Illinois State Police](#)

So all law enforcement needs for the system to start searching this database for plates is to ‘flag’ them? Yes, there are plenty of reasons for law enforcement to legitimately search for a license plate, but there are plenty of legitimate reasons for them to search for anything. However, in this country, those searches must be reasonable. That usually means the government must get a warrant, not for searching the “LEARN” database.

Under the Expressway Camera Act, an Illinois State Police officer may retrieve a license plate photo from the database to investigate “any offenses involving vehicular hijacking, aggravated vehicular hijacking, terrorism, motor vehicle theft, or any forcible felony, including, but not limited to, offenses involving the use of a firearm[.]” ... They may also retrieve a photo “to detect expressway hazards and highway conditions; and to facilitate highway safety and incident management.” By statute, “[a]ll images from the cameras shall be deleted” from the LEARN database “within 120 days, unless the images are relevant to an ongoing investigation or pending criminal trial.”

### [Scholl and Bednarz v. Illinois State Police](#)

Again, if law enforcement has probable cause to search the

database, why not get a warrant? Probably because a warrant would limit the scope of law enforcement's search to the data relevant to the case they were investigating.

Plaintiffs in this case challenge the Expressway Camera Act and Illinois's warrantless use of ALPRs, claiming they violate the Fourth Amendment's protections against unreasonable searches and warrant requirements. They asked the court for a preliminary injunction, preventing respondents from accessing ALPR data without a warrant. Defendants moved for dismissal due to a lack of jurisdiction.

## **Standing**

In order for a case to be heard in federal court, the plaintiffs or petitioners have to have "standing." The court explained this in their decision.

Article III "confines" federal jurisdiction "to 'Cases' and 'Controversies.'" ... One aspect of the Case or Controversy requirement is the doctrine known as "standing." Standing requires a plaintiff to "have a 'personal stake' in the case." ... This "irreducible constitutional minimum . . . contains three elements." ... Those elements are an "injury in fact, a causal connection between the injury and the defendant's conduct, and likely redressability through a favorable decision." ... "The party invoking federal jurisdiction bears the burden of establishing these elements."

## [Scholl and Bednarz v. Illinois State Police](#)

While this is the standard the court has established, it's not established by the Constitution. In fact, the very idea that I must actually suffer harm before I can seek redress of a bad law, violates the First Amendment.

Congress shall make no law ... abridging ... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## [U.S. Constitution, Amendment I](#)

When a government entity passes a law that violates the rights of the people, is that not a sufficient grievance? Should I not seek to redress before I jeopardize my future with an encounter with law enforcement?

### **Privacy**

The first request made by the plaintiffs is to prevent the use of ALPRs.

First, plaintiffs seek to enjoin the warrantless use of ALPRs to photograph motorists' license plates. As alleged, plaintiffs "regularly drive[] on the expressways in Cook County and the surrounding area, almost always using the same personal vehicle, including commuting from [their] home[s] in Cook County to work in the Chicago suburbs, as well as regular other trips by car in areas covered by Illinois' ALPR system." ... With "some 300 ALPR cameras across every expressway in Cook County," ..., one can reasonably infer that those cameras will photograph plaintiffs' license plates.

## [Scholl and Bednarz v. Illinois State Police](#)

The problem with this argument is that when you are in public you have no reasonable expectation of privacy, but that does not mean that the government has a right to collect data about you.

Indeed, courts routinely hold that the subjects of government surveillance have standing to challenge that surveillance. .... "Whether or not such claims prevail on the merits, [plaintiffs] surely have standing to allege injury from the collection, and maintenance in a government database, of records relating to them."

## [Scholl and Bednarz v. Illinois State Police](#)

So, while courts have recognized your right not to be

surveilled on your own property, that does not extend to being in public. If that were true, not only would all security cameras, including the one you may have on your doorbell, would be illegal. That would also preclude you from taking a picture or capturing video in public as well, but that doesn't mean there isn't a problem with ALPRs.

## **Unreasonable Searches**

Yes, you can be recorded in public, with or without your permission. What about searching those records though?

Second, plaintiffs seek to enjoin the warrantless use of the LEARN database.

### [Scholl and Bednarz v. Illinois State Police](#)

After all, the Fourth Amendment is supposed to protect us from unreasonable searches. What is the reasonable justification for an exception to the warrant requirement? Is it just because law enforcement has already collected this data? Once again, the courts place the desires of law enforcement above the rights of the people.

However, the complaint does not allege any facts indicating a "substantial risk" that police will soon retrieve plaintiffs' license plate information from the database.

### [Scholl and Bednarz v. Illinois State Police](#)

So it's OK if the police infringe on your rights, as long as there were no facts presented that there was a substantial risk they'd do so beforehand? I don't know if the judge was simply obtuse or outright biased, but her explanation of his "substantial risk" is laughable.

Indeed, plaintiffs do not allege that they will soon commit (or be victims of) any of the offenses enumerated in the Expressway Camera Act—namely, "vehicular hijacking, aggravated vehicular hijacking, terrorism, motor vehicle theft, or any

forcible felony[.]”

### [Scholl and Bednarz v. Illinois State Police](#)

The purpose of the warrant requirement is NOT to justify a reasonable search, but to prevent an unreasonable one. I’m sure if the plaintiffs were victims of a hijacking or vehicle theft, they would find it reasonable to search the ALPR database for their vehicle. But what about searches for other reasons? Say an abusive husband or boyfriend trying to track down their victim? Or an officer, on a hunch or vendetta, that wants to surveil a suspect, but cannot get a warrant? Couldn’t they use the ALPR database to grab pictures wherever the suspect’s vehicle travels? After all, couldn’t an officer simply list them as a “hot plate” without any probable cause?

The court went on to make a rather interesting argument about searches.

“The Supreme Court has developed two distinct paths to identify a search[.]” *United States v. Tuggle*, ... First, “[u]nder the property-based approach, a search occurs when an officer enters a constitutionally protected area . . . for the purpose of gathering evidence against the property owner.” ... “Alternatively, under the privacy-based approach, courts ask whether a person has a legitimate expectation of privacy in a given situation.” ... Because plaintiffs do not argue that the ALPR program involves a physical intrusion on their property, the court will examine their Fourth Amendment challenge under the privacy-based approach.

### [Scholl and Bednarz v. Illinois State Police](#)

The court, apparently in an attempt to justify this violation of your rights, points out that since ALPRs do not physically intrude on your vehicle, you have no expectation of privacy, as defined by the courts. They seem to ignore the fact that, when an officer enters a “hot plate” into the database, the government is searching for the effects of a private

individual for the sole purpose of determining where this person might logically be.

## **Mass Surveillance**

And what about this mass collection of data?

As alleged, defendants are “holding onto . . . mass surveillance data in case one day some police officer decides to target Plaintiffs for specific investigation.”

### [Scholl and Bednarz v. Illinois State Police](#)

Should the government be allowed to surveil the public without any reasonable suspicion, then hold onto that data in case they want to use it in the future?

While “one day” need not be today or tomorrow, it must be some ascertainable time. See Lujan, 504 U.S. at 565 (explaining that “‘some day’ intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the ‘actual or imminent’ injury that our cases require”). Because their alleged constitutional injuries are not sufficiently imminent, plaintiffs lack standing to enjoin the warrantless use of the LEARN database.

### [Scholl and Bednarz v. Illinois State Police](#)

What about evidence from the past? The entire purpose of ALPRs is to collect data in case the police need it “some day.” To say that the fact you cannot point to a specific instance in the future when this might happen to a specific person when there is clear evidence that it is happening to people everyday, is as childish as blaming the cat for wetting the bed. Evidence in this very case shows that almost 6,000,000 “hits” were recorded in a single month in the State of Illinois. While a specific individual may be searched “some day,” this case shows that on average someone is flagged



almost 200,000 times a day.

## **Sovereign Immunity**

In their defense, the defendants claim they have “sovereign immunity.”

Next, defendants move to dismiss plaintiffs’ claims on sovereign immunity grounds. Sovereign immunity “bars actions in federal court against a state, state agencies, or state officials acting in their official capacities” ... Suits against state officials in their official capacity amount to suits against the state itself.

### [Scholl and Bednarz v. Illinois State Police](#)

Except the entire idea of “sovereign immunity” is antithetical to a nation of laws, not men. People are fond of the idea that no one is above the law, but that is exactly what sovereign immunity claims.

Sovereign immunity is a judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. The doctrine stems from the ancient English principle that the monarch can do no wrong.

### [Sovereign Immunity – The Free Legal Dictionary](#)

If the sovereign, in this argument the government, can do no wrong, then they are above the law. This not only abrogates the concept of a limited government, but violates the Constitution as well.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

### [Supremacy Clause, U.S. Constitution, Article VI, Clause 2](#)

Since the Constitution is the supreme law of the land, not the government of Illinois, they cannot claim to be the sovereign.

SOVEREIGN. A ruler supreme power; one possessing sovereignty. (q.v.) It is also applied to a king or other magistrate with limited powers.

2. In the United States the sovereignty resides in the body of the people.

### [Sovereign – The Free Legal Dictionary](#)

Since in this country sovereignty resides in We the People, not the government, neither the state nor any of its agents can claim sovereign immunity.

### **Conclusion**

Sadly, it appears once again the courts have placed the desires of the government above the rights of the people.

Defendants' motion to dismiss, is granted. Because plaintiffs fail to state a claim, they have not demonstrated that they are likely to succeed on the merits. ... Thus, plaintiff's motion for a preliminary injunction, is denied.

### [Scholl and Bednarz v. Illinois State Police](#)

The only reason the court believes the plaintiffs won't win is because they have placed their thumbs on the scales of justice by requiring they prove they have already been harmed by this illegal practice.

I agree with the court that vehicle owners have no reasonable expectation of privacy while on public roads, and therefore the license plate readers themselves do not violate the Fourth Amendment. However, allowing the police to search through the effects, arguably the property of those license plates they have captured without a warrant, makes that an unreasonable search. The fact that the court cannot conceive that the police would conduct illegal searches points to the myopic

view so many judges have of their fellow government employees.

Personally, I think judge Pacold should be ashamed of herself. While she may have based her decision on the flawed and unconstitutional decisions of her predecessors, she alone is responsible for this violation of justice and basic human rights. I think it's about time we hire presidents who appoint judges based on their fidelity to their oath to support the Constitution than their political predilections.

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