SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

YUKIKO ANN UMEMOTO, SARAH MOORE, LEAH NELSON, and LORA NELSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

WESTCHESTER COUNTY, NEW YORK; the WESTCHESTER COUNTY DEPARTMENT OF PUBLIC SAFETY aka the WESTCHESTER COUNTY POLICE DEPARTMENT; TERRANCE RAYNOR, in his official capacity as Commissioner of the Westchester County Department of Public Safety aka Commissioner of the Westchester County Police Department; and JAMES LUCIANO, in his official capacity as Chief of Department of Public Safety aka Chief of the Westchester County Police Department.

Defendants.

Index No.
65935/2026

Hon. Walter Rivera, J.S.C.

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

This civil rights action alleges that the Westchester County Police Department's ("WCPD") suspicionless, warrantless, and unauthorized tracking of millions of drivers throughout the county violates the New York State Constitution.

First, Plaintiffs allege that WCPD's operation of its Vehicle Surveillance System violates their reasonable expectation of privacy protected by Article 1, Section 12 of the New York State Constitution. WCPD collects and retains over two years of their location information through its System of over 500 Automated License Plate Reader ("ALPR") cameras that blanket Westchester and artificial intelligence ("AI") software that analyzes location information to deem certain travel routes as "suspicious." Defendants argue that Westchester drivers have no reasonable expectation of privacy on public roads against this indiscriminate mass surveillance. But this argument has been decisively rejected by recent New York Court of Appeals and U.S. Supreme Court jurisprudence on modern surveillance technology. This precedent recognizes that individuals have a reasonable expectation of privacy in their travel patterns even on public roads. Plaintiffs have plausibly alleged that their expectations of privacy have been intruded upon through the capture and retention of over two years of their movements by WCPD, giving law enforcement unparalleled views into their lives.

Second, Plaintiffs have alleged that WCPD is operating this surveillance system *ultra vires* and that any statute that could be arguably interpreted to provide a basis for operating the system violates the constitutional non-delegation doctrine. Defendants respond by identifying two decades-old laws that broadly provide WCPD with traditional policing powers. But neither law expressly authorizes indiscriminate, suspicionless tracking of millions of drivers. Such a system exceeds what could have been imagined when the county legislature enacted those laws. To the extent those laws do authorize the System, their lack of guardrails creates a non-delegation problem.

Plaintiffs ask this Court to deny Defendants' motion and allow the case to proceed.

FACTS

Millions of law-abiding drivers in Westchester County are being tracked by one of the largest and most technologically sophisticated surveillance systems in the country. (NY St Cts Elec Filing [NYSCEF] Doc No. 1, complaint ¶ 20 ["Comp."].) WCPD's Vehicle Surveillance System records the travel patterns, daily habits, and intimate information of motorists with hundreds of specialized cameras known as ALPRs, a searchable database that retains vast amounts of data collected by the ALPRs for at least two years; and analytical software, including software powered by AI. (*Id.* ¶ 21.)

WCPD runs the Vehicle Surveillance System out of its Real Time Crime Center, which gives almost 40 local Westchester police departments immediate access to information derived from the system. (*Id.* ¶ 22.) WCPD also provides federal, regional, and out of state law enforcement access to the System's data. (*Id.* ¶¶ 23, 58.)

The System has expanded from 36 ALPRs in 2013 to at least 575 today, allowing WCPD to collect millions of vehicle reads per week. (*Id.* ¶¶ 25, 40.) Each time a vehicle drives past an ALPR, it takes a high-resolution photograph and records a video of the vehicle and its occupants. (*Id.* ¶ 34.) Information collected by the System is processed using licensed software known as Rekor Scout. (*Id.* ¶ 33.) Within seconds, Rekor Scout processes the captured media and encodes metadata about the exact location of the vehicle and the time of the recording. (*Id.* ¶ 34.)

The System retains these data in a database for at least two years. (*Id.* ¶ 41.) Law enforcement officers can search the database using a wide variety of terms. (*Id.* ¶ 45.) WCPD also utilizes Rekor Scout's AI capabilities, including "common vehicle analysis," "convoy analysis," and "interdiction analysis." *(Id.* ¶ 47.) These tools comb through the data to reconstruct and analyze the travel patterns of drivers. (*Id.*) Law enforcement do not obtain a warrant before accessing,

querying, or analyzing the data. (*Id.* ¶ 55.)

The named plaintiffs in this putative class action are all politically involved, New York residents and taxpayers whose travel patterns are tracked by the System. Plaintiff Ann Umemoto's vehicle has been captured at least 1,134 times over two-plus years. (*Id.* ¶¶ 75, 80.) Plaintiff Sarah Moore's vehicle has been tracked at least hundreds of times. (*Id.* ¶92.) Plaintiff Leah Nelson's vehicles have been captured at least 897 times over two-plus years. (*Id.* ¶103.) Plaintiff Lora Nelson's vehicle has been tracked at least 2,439 times over two-plus years. (*Id.* ¶112.)

WCPD operates its Vehicle Surveillance System without legislative authorization. (*Id.* ¶ 62.) WCPD is spending public funds to implement its unconstitutional and unauthorized System through a combination of state, county, and federal funds. (*Id.* ¶ 70.)

Plaintiffs filed the complaint on June 9, 2026, alleging: (1) violation of Article I, Section 12; (2) unauthorized agency action; and (3) in the alternative, violation of the separation of powers and non-delegation doctrine. (*Id.* ¶¶ 128-147.) Defendants moved to dismiss all claims. (NYSCEF Doc No. 30, Defendants' Mem of Law in Support of Defendants' Mot to Dismiss ["MTD"].)

STANDARD OF REVIEW

Under CPLR 3211 [a] [7], a party may move to dismiss on the ground that "the pleading fails to state a cause of action." On a motion to dismiss, "the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Courts must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference" and are bound to determine only whether the facts as alleged fit within a cognizable legal theory. (*Id*.)

ARGUMENT

I. PLAINTIFFS PLAUSIBLY ALLEGE THAT WCPD'S SUSPICIONLESS SURVEILLANCE OF THEIR TRAVEL PATTERNS VIOLATES THEIR REASONABLE EXPECTATION OF PRIVACY UNDER ARTICLE I, SECTION 12 OF THE NEW YORK CONSTITUTION.

A. Plaintiffs' Article 1, Section 12 Claim Falls Within the Public Interest Exception to the Notice of Claim Requirement.

Defendants erroneously argue that Plaintiffs' Article 1, Section 12 claim must be dismissed for the failure to file a notice of claim. (MTD at 4.) This argument fails, as actions like Plaintiffs' that seek to vindicate the public interest are exempt from this requirement.[1] (*Mills v County of Monroe*, 59 NY2d 307 [1983].) An action seeks to vindicate the public interest if it is brought to enforce an important right, seeks relief for a similarly situated class of people, and, if successful, would directly affect rights of that class or group. (*See Union Free Sch. Dist. No. 6 of Towns of Islip & Smithtown v New York State Human Rights Appeal Bd.,* 35 NY2d 371, 379-380 [1974] [finding a teacher's discrimination claim fell within the public interest exemption where the "relief granted below . . . [would] . . . benefit [ ] other teachers similarly situated"].)

Here, Plaintiff's Article 1, Section 12 claim falls within this exemption because it is brought on behalf of a class of drivers who are seeking a class-wide injunction against Defendants' operation of the Vehicle Surveillance System. (Comp. ¶117.) The cases Defendants rely on, (MTD at 4), are inapposite as they involve claims by individuals seeking to recover personal damages or individualized injunctive relief. (*See Pierce v Vil. of Horseheads Police Dept.*, 107 AD3d 1354 [3d Dept 2013] [individual action for damages and violation of constitutional rights during a police search]; *Mirro v City of New York*, 159 AD3d 964 [2d Dept 2018] [individual action to recover

[1] Defendants also cite County Law §52[1] for the notice of claim requirement. (MTD at 4.) By its terms, this law incorporates the notice of claim requirement contained in GML §50-e and thus the public interest exemption equally applies.

damages for age discrimination pursuant to New York City Human Rights Law]; *see Kassapian v City of New York,* 155 AD3d 851 [2d Dept 2017] [same].)[2]

B. Plaintiffs Have Plausibly Alleged that Westchester's Vehicle Surveillance System Violates Their Rights Under Article I, Section 12.

Defendants' substantive argument for dismissal rests on a mischaracterization of Plaintiffs' Article I, Section 12 claim. (MTD at 10.) Plaintiffs assert that they have reasonable expectations of privacy in their *travel patterns*, not photographs of their license plates. Plaintiffs have plausibly alleged that WCPD has violated these reasonable expectations of privacy by operating a technologically advanced surveillance system that collects, stores, and analyzes a database of over two years of those travel patterns without suspicion or judicial warrants. (Comp. ¶¶2, 4, 9, 12-15, 20, 46, 81, 90, 92, 104, 112-113, 130.)

1. New Yorkers have a reasonable expectation of privacy over their travel patterns on public roads.

Article I, Section 12 provides broad protection "against unreasonable searches and seizures." While the Fourth Amendment to the United States Constitution and Article 1, Section 12 "contain similar language [and] share a common history" (*People v Harris*, 77 NY2d 434, 438-439 [1991]), they are distinct, and there is "an independent body of state law in the area of search and seizure" that "provide[s] greater protections" than the Fourth Amendment. (*People v Weaver*, 12 NY3d 433, 445 [2009].)

"[T]he existence of a privacy interest" under Article 1, Section 12 "depend[s] upon whether the individual asserting the interest has demonstrated a subjective expectation of privacy and

[2] If this Court were to conclude otherwise, Plaintiffs request that it exercise its discretion to permit them leave to file a notice of claim now under GML § 50-e [5] (*see Mills*, 59 NY2d at 311–12). Doing so would "not exceed the time limit for commencement of the action," since Plaintiffs allege ongoing and future harm, Defendants have had "knowledge of the relevant facts," since they engaged in the conduct complained of, and Defendants would not experience any "prejudice," which they have not even attempted to assert (*id.* at 312).

whether that expectation would be accepted as reasonable by society." (*Weaver*, 12 NY3d at 439.) Both federal and state constitutional law recognize a reasonable expectation of privacy over ones' travel patterns on public roads that prevents law enforcement from intruding on that privacy without a warrant. (*See Carpenter v United States*, 585 US 296, 304 [2018] [recognizing the Fourth Amendment embodies a "special solicitude for location information"]; *Weaver*, 12 NY3d at 444.)

The Court of Appeals has been particularly attuned to preserving New Yorkers' privacy in the face of "insidiousness of electronic surveillance." (*People v Washington*, 46 NY2d 116, 121 [1978].) Accordingly, in *Weaver*, it held that the placement and monitoring of a tracking device on a defendant's vehicle over two months was a search under Article I, Section 12. (*Weaver*, 12 NY3d at 445.) In reaching its holding, the Court recognized that modern surveillance technology is different in kind and degree in that it is "easily and cheaply deployed . . . and [has] remarkably precise tracking capability," allowing for practically unlimited recording. (*Id.* at 441.) Importantly, the Court rejected the argument that driving on public roads eliminates this expectation of privacy, reasoning that New Yorkers do not—merely by driving on public roads—consent to law enforcement creating a detailed profile of their travel, and the inferences that come from that travel. (*Id.* at 443.)

Several years later, in *Carpenter*, the Supreme Court held that law enforcement accessing historical cell-site location information (CSLI) constitutes a search because individuals have a reasonable expectation of privacy in "the whole of their physical movements." (585 US at 310.) CSLI "provides a 'detailed' and 'encyclopedic' portrait of a person's whereabouts…and, with that, 'an intimate window in a person's life,'" allowing the government to access CSLI contravened a reasonable expectation of privacy. (*Id.* at 311.) The Court recognized that location-based surveillance technologies allow the government to reconstruct "a person's movements" and

"retrace a person's whereabouts" in ways that were previously impossible. (*Id.* at 312).

The Fourth Circuit applied *Carpenter* to strike down Baltimore's warrantless aerial surveillance system that used cameras to track prolonged public movements of individuals (*Leaders of a Beautiful Struggle v Baltimore Police Dept.*, 2 F4th 330, 341 [4th Cir 2021].) Although the cameras captured the movements of individuals only in public areas, the court held that the system constituted an unconstitutional surveillance dragnet because it "enable[d] police to deduce from the whole of individuals' movements." (*Id*. at 333.)

Likewise, in *Chatrie v United States*, the Supreme Court extended *Carpenter* to find that individuals have reasonable expectations of privacy in historical location records derived from cell phones because that information creates a "fine-tuned picture of a person's movements," and it "allows police officers to reconstruct 'retrospective[ly],' and with no real effort, people's comings and goings in any area." (609 US 605, 625 [2026].) The Court noted that even short-term surveillance of an individual's location could violate their reasonable expectation of privacy. (*Id*. at 629.)

2. The Plaintiffs' Plausibly Allege that Their Travel Patterns Have Been Captured by the Westchester Vehicle Surveillance System.

Weaver, *Carpenter*, and *Chatrie* collectively demonstrate that Article 1, Section 12 protects a reasonable expectation of privacy over the Plaintiffs' travel patterns on public roads. These can be prolonged travel patterns like in *Weaver* and *Carpenter* or, in some cases, short-term travel as recognized by the Court in *Chatrie*. Here, Plaintiffs have plausibly alleged that WCPD violates their expectations of privacy through the suspicionless tracking of their vehicles with hundreds of ALPRs, the suspicionless retention of up to thousands of precise location information for over two years, and the warrantless use of that location information for AI-assisted analysis.

In *Schmidt v City of Norfolk,* the Eastern District of Virginia denied a motion to dismiss a lawsuit alleging that police in Norfolk violated the Fourth Amendment by collecting a plaintiff's

travel patterns without a warrant through its ALPR system. (2025 WL 410080 [ED Va, Feb. 5, 2025, No. 2:24-cv-621].) The court found that the plaintiff had plausibly alleged that their "reasonable expectation of privacy" was violated because Norfolk's ALPR system, which employed 172 cameras and retained information for at least 30 days, created "a drag-net system of surveillance that effectively tracks the whole of Plaintiffs' physical movements." (*Id.* at *1; *7).

Post-*Chatrie,* in *United States v Kyle*, the Northern District of Oklahoma found that Tulsa law enforcement violated a driver's Fourth Amendment rights by accessing "an entire month's worth of location data tied to the license plate on [the defendant's] car, including more than fifty sightings across multiple states." (2026 WL 2958728, *13 [ND Okla, Oct. 1, 2026, No. 26-CR-00189-SEH].) The court recognized that while the ALPR data in that case did not create as fine-tuned a level of detail as information derived from cell phones, it was still "indiscriminate mass surveillance." (*Id.*)

The surveillance alleged here exceeds that at issue in *Schmidt* and *Kyle*. Plaintiffs have alleged that at least 575 ALPR cameras blanket Westchester and dozens of mobile cameras affixed to officers' vehicles expanding the System's coverage, compared to the 172 in *Schmidt.* (Comp. ¶¶25-27; 29.) And in *Kyle*, a search of the ALPR system produced 50 captures of the defendant's vehicle whereas WCPD's system contained 2,439 captures of Plaintiff Lora Nelson's vehicle. (Comp. ¶¶112.)

Plaintiffs have also alleged that the retention period for the information far exceeds the one month of location data at issue in *Schmidt* and *Kyle*. WCPD's system retains information for over two years (Comp. ¶4), granting law enforcement retrospective access to a trove of location data from which police can reconstruct the whole of an individual's movements through a category of information "otherwise unknowable" without this technology. (*Carpenter*, 585 US at 312.) Two years of location data also eclipses the seven-day period in *Carpenter* (*id*. at 302), and two hours in *Chatrie* (609 U.S. at 637-638).

3. The Cases Relied on by Defendants Are Inapposite.

Defendants' arguments that Plaintiffs do not have protected Article 1, Section 12 privacy interests implicated by WCPD's surveillance of their travel fail. First, Defendants reliance on *United States v Knotts*, 460 US 276 [1983], for the proposition that there is no reasonable expectation of privacy while driving on public roads, (MTD at 6-7), is not good law concerning Article 1, Section 12. In *Weaver*, the Court of Appeals expressly declined to extend *Knotts'* analysis of the reasonable expectation of privacy to Article 1, Section 12 (12 NY3d at 440-441). Further, in *Carpenter* and *Chatrie*, the Supreme Court soundly rejected arguments based on *Knotts* that by traveling on public roads individuals give up their expectation that their aggregate movements will not be surveilled by technologically advanced law enforcement (*see* supra B.2.).

Similarly, Defendants' reliance on *People v Bushey,* 29 NY3d 158 [2017], to argue that there is no reasonable expectation of privacy over license plate information is misplaced (MTD at 7-8). *Bushey* concerned only whether a defendant had an expectation of privacy "in information provided to the DMV concerning his or her registration of a vehicle operated on a public roadway" (29 NY3d at 161) and not the collection and retention of a driver's travel patterns through surveillance technology. For the same reasons, *Chaney v City of Albany,* 2019 WL 3857995 [ND NY, Aug. 16, 2019, No. 6:16-cv-1185], is inapposite. While that case did involve license plate reader data, the court considered individuals' expectation of privacy in their license plate information for identification purposes, not their travel patterns.

Next, Defendants rely on *Rinaldi*, and the summary judgment opinion in *Schmidt*, to argue that ALPR surveillance does not constitute a search under Article 1, Section 12. (MTD at 9-10.) These cases do not support this argument.

Defendants' reliance on *Schmidt* at this early stage of litigation is misplaced. Critically, the Plaintiffs in *Schmidt* survived a motion to dismiss based on allegations weaker than what Plaintiffs have alleged here. (*See supra* B.3.) Only after extensive discovery did the court determine that the "number and location of ALPR cameras vis-à-vis the size and miles of roadway in Norfolk" did not reach a scope and breadth of surveillance to constitute a search. (*Schmidt v City of Norfolk*,

819 F Supp 3d 492, 511 [ED Va 2026].) The *Schmidt* court's summary judgment decision—prior to *Chatrie*—was based on a full factual record post-discovery and was specific to that system. Here, as in *Schmidt*, Plaintiffs' allegations state a claim for relief and the court should have the benefit of a full factual record to determine if Westchester's System violates the constitution.

Rinaldi is also distinguishable. The court emphasized that it "does not intend to suggest that the use of LPRs can *never* violate the Fourth Amendment. It is possible that a more extensive network of LPRs might infringe a reasonable expectation of privacy under *Katz*." (*Rinaldi v Sylvester*, 2025 WL 2682691, *18 [SD NY, Sept. 19, 2025, No. 24-cv-272] [cleaned up] [emphasis in original].) *Rinaldi*'s Fourth Amendment holding was thus limited to the factual allegations at issue—that the defendant had "accessed [the plaintiff's] LPR location information approximately 111 times." (*Id*.) Absent were any allegations regarding the size and scope of system or the total number of location captures of that plaintiff.

Defendants' reliance on *Rinaldi*'s comparison between the capabilities of ALPRs and the CLSI at issue in *Carpenter* is also unavailing. (MTD at 11.)[3] *Carpenter* does not set the floor for the level of detail necessary to establish a reasonable expectation of privacy, particularly post-*Chatrie.* (*See Andrews v Baltimore City Police Dept.*, 2026 WL 2872021, *8 [4th Cir, Sept. 24, 2026, No. 18-1953] [finding a reasonable expectation of privacy in "only a snapshot" of location information because "[t]he Supreme Court in *Chatrie* made clear that the duration of the incursion does not impact the reasonableness of an individual's expectation of privacy."])

II. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT WCPD'S OPERATION OF ITS MASS VEHICLE SURVEILLANCE SYSTEM IS ULTRA VIRES AND VIOLATES SEPARATION OF POWERS.

Plaintiffs' second claim plausibly alleges that WCPD lacks statutory authority to operate the System because an executive agency only can act "pursuant to specific grants of authority"

[3] *United States v Harry*, 130 F4th 342 [2d Cir 2025] is also inapposite as it involved surveillance from a single stationary pole camera (*id.* at 348), not WCPD's System of over 500 fixed and mobile ALPRs that with the assistance of AI—allow officers to reconstruct drivers' movements.

from the Legislature. (*Matter of LeadingAge N.Y., Inc. v Shah*, 32 NY3d 249, 260 [2018].) The third claim plausibly alleges that even if some statute can be construed to grant such authority, it necessarily constitutes an excessive delegation of legislative authority, because no statute gives guidance as to standards for a system of mass surveillance. (*See Boreali v Axelrod*, 71 NY2d 1, 9 [1987] [holding the "legislative branch of government cannot cede its fundamental policy-making responsibility to an administrative agency"].)

A. WCPD Lacks Statutory Authority to Operate the Vehicle Surveillance System

In arguing that WCPD has statutory authority, Defendants identify statutes adopted in 1979 and 1950, (MTD at 17-18), neither of which remotely convey the requisite authority to operate a mass surveillance system. (*See Matter of A'Hearn v Committee on Unlawful Practice of Law of N.Y. County Lawyers' Assn.*, 23 NY2d 916, 918 [1969] [stating agencies may not undertake a "general inquisition" into people's affairs "solely on the prospect of possible violations of law being discovered"]; *People v Scott*, 79 NY2d 474, 490 [1992] [rejecting notion that police possess an "unbridled license" to search for incriminating evidence as "repugnant to the most basic notions of fairness"].)

The 1979 legislation says only that "[a]ll the law enforcement and police powers, duties and obligations presently or hereafter granted or imposed on the Sheriff by the law shall be continued and vested in the Division of the Westchester County Police of the Department of Public Safety," (LWC § 273.31), and that WCPD "shall perform all duties and functions required by law and regulations of competent authority, including all duties and functions heretofore performed by the elected Sheriff[.]" (LWC § 173.01.)[4] This latter authority traces back to the 1950 statute cited

[4] Defendants also point to the language that WCPD "may adopt" but WCPD has not adopted any such rules or regulations and Defendants point to none.

by Defendants, County Law § 650, which states only that the county sheriff "shall perform the duties prescribed by law as an officer of the court and conservator of the peace within the county" and "such additional and related duties as may be prescribed by law and directed by the board of supervisors or the county legislature." (County Law § 650 [1].) Section 650 created no new police powers.

Defendants do not claim their authority is explicit in the statutes; instead, they find it implicit in the statutes (*see* MTD at 19-21.) According to Defendants, the "law enforcement and police powers, duties and obligations" that the Sheriff possessed encompass the System. They insist, "[it] is difficult to imagine how that grant, standing alone, could exclude the authority to purchase and mount security cameras, to create a database, and to contract with a software provider." (*Id*. at 19.) "[T]he conduct of a police investigation," they explain, "is necessarily left to the discretion of the police." (*Id.* [quoting *People v Bryant*, 65 AD2d 333, 338 [2d Dept 1978]].)

In making this argument, Defendants fail to focus on the allegations in the complaint. This case does not involve "a police investigation." Rather, the Vehicle Surveillance System is a wholesale mass-surveillance system. Seeking to minimize what is at stake, Defendants claim the challenged System merely involves the purchase and mounting of cameras, a database, and software. To say that is to focus on trees while missing the forest. WCPD's "software" is more accurately described as a wide-ranging digital dragnet driven by AI. (*See supra* Facts).

B. The Legislature Never Intended for WCPD to Operate a Mass Surveillance System, and Could Not Have, Because It Was Unimaginable at the Time of Enactment.

Where statutes do not textually convey express powers, it is necessary to trace the claimed powers to something the Legislature—while not saying so explicitly—nonetheless *intended* to convey. (*See Matter of New York State Health Facilities Assn. v Axelrod*, 77 NY2d 340, 346 [1991]

["[A]n administrative officer has no power to declare through administrative fiat that which was never contemplated or delegated by the Legislature."].) New York courts consistently refuse to construe broad grants of police authority the Legislature did not confer. (*See Matter of B. T. Prods. v Barr*, 44 NY2d 226, 232 n 1, 236 [1978] [Organized Crime Task Force could not obtain search warrants, despite a grant of "broad investigatory powers;" "as a creature of the State, [it could have] no power other than that given it by the Legislature"); *Bus Depot Holding Corp. v Valentine*, 288 NY 115, 122-124 [1942] [broad grant of authority to regulate traffic did not authorize police to impose restrictions beyond those contemplated by the Legislature].)

Defendants do not even try to establish that the Legislature intended to convey the claimed authority, because it cannot be done. The Vehicle Surveillance System they are operating was inconceivable in the 1950s and 1970s. Modern surveillance technology is "vastly different and exponentially more sophisticated and powerful" than that was around half a century ago. (*Weaver,* 12 NY3d at 441-445.) Location-based technologies facilitate exhaustive surveillance for a practically unlimited period (*Id.* at 441.) Defendants' argument that the Legislature somehow authorized the dragnet surveillance at issue "fails to contend with the seismic shifts in digital technology" that made the creation of the Vehicle Surveillance System possible. (*Carpenter*, 585 US at 313.) As *Carpenter* noted, "[t]he question we confront today is how to apply the Fourth Amendment *to a new phenomenon*: the ability to chronicle a person's past movements" (*Carpenter*, 585 US at 309 [emphasis added].)

What a legislative body could not contemplate, it also could not intend. An agency cannot be authorized to do something unless the legislative branch intended it: "The key question in all cases is what did the Legislature intend?" (*Matter of Consolidated Edison Co. of N. Y. v Department of Envtl. Conservation*, 71 NY2d 186, 193 [1988]; *see also Matter of New York*

Statewide Coalition of Hispanic Chambers of Commmerce v New York City Dept. of Health & Mental Hygiene, 23 NY3d 681, 694–95 [2014] [invalidating rule issued by Department of Health, relying on legislative history and intent].) The Westchester legislature neither intended nor contemplated what WCPD is doing.

Not only are the statutes on which Defendants rely too old to have contemplated the System; they only authorize police powers that are even older. By its very terms, § 173.01, when adopted in 1979, authorized Defendants to perform duties that were already "required by law and regulations," and referred to "all duties and functions *heretofore performed* by the elected Sheriff." Worse yet, the authorities to which the 1979 legislation was referring were the powers of the Sheriff set out in the 1950 statute, some thirty years earlier. And as Defendants themselves point out, the authorities on which they rely are "broad and ancient." (MTD at 18.) There is justifiable pride in a rule of law that stretches back into the mists of "time immemorial," (MTD at 18 [quoting *Commisso v Meeker*, 8 NY2d 109, 122 [1960]]) but nothing in those historic mists remotely could authorize the Vehicle Surveillance System's 21st century system of pervasive location tracking powered by artificial intelligence.

C. If Defendants' Statutes Authorized the Vehicle Surveillance System, They Contravene the Non-Delegation Doctrine.

Even if the Legislature had delegated dragnet surveillance authority, its failure to prescribe meaningful standards would render the delegation constitutionally infirm. (*See Packer Coll. Inst. v University of State of N.Y.,* 298 NY 184, 189-192 [1948] [invalidating delegation that failed to prescribe standards governing the subject matter, purposes, or limits of an administrative official's regulatory authority].) "It is a well-established principle of administrative law that to prevent an unlawful delegation of power, it is incumbent upon the legislative authority to set forth standards to indicate to the agency the limits of its power[.]" (*Matter of Sullivan County Harness Racing*

Assn. v Glasser, 30 NY2d 269, 276 [1972].)

The difficulty is that the statutes Defendants rely upon provide *no* standards "to indicate to the agency the limits of its power." (*Id.)* Although a lack of specification may not prove problematic when police are exercising powers long held and well understood, such language cannot provide the necessary guidance for a thoroughly modern and far-reaching system of indiscriminate surveillance.

The four factors set out by the Court of Appeals in *Boreali* support Plaintiffs' authorization and non-delegation claims. Defendants cite the *Boreali* factors for their non-delegation argument (MTD at 21-22) but, the *Boreali* factors go to statutory authorization, not non-delegation.[5] Nonetheless, the authorization and delegation arguments are the flip side of one another, and both ultimately get to the central point here, which is that the Legislature never authorized the Vehicle Surveillance System and provided absolutely no standards that guide its use. The *Boreali* factors are in Plaintiffs' favor.

The first factor asks whether WCPD "made 'value judgments entail[ing] difficult and complex choices between broad policy goals' to resolve social problems." (*Matter of NYC C.L.A.S.H., Inc. v New York State Off. of Parks, Recreation & Historic Preserv.*, 27 NY3d 174, 180 [2016].) WCPD has done this. Here, Defendants make the extraordinary claim that the "only countervailing cost it needs to weigh is budgetary" and that it "is not faced with value judgments or difficult and complex choices between broad policy goals to resolve social problems." (MTD at 21.) However, it is plain there are profound "value judgments" and "difficult and complex policy choices" involved in the use of tools like the Vehicle Surveillance System. Controversy over mass

[5] *Boreali* concluded "we cannot say that the broad enabling statute in issue is itself an unconstitutional delegation of legislative authority." (*Id.* at 9–10.) It reached this conclusion, in part, because the Court of Appeals previously had upheld the delegation. (*Id.* at 10–11.) So, instead it turned to the question of authorization. (*Id.* at 11–14.)

vehicle surveillance has been front and center throughout the country. (*See, e.g.*, Drew Harwell et al., *Americans Have Turned Against Police Cameras That Track License Plates, New Survey Shows*, WASH POST, Aug. 28, 2026). Defendants' claim that "there is no allegation" that it "balances personal privacy considerations when carrying out its public-safety mandate." (MTD at 21.) Such balancing is implicit in establishing a mass surveillance system; if WCPD did not, it is because either it was not authorized to create the System, or because the delegation failed to identify appropriate decision-making factors.

The second factor asks whether the agency "filled in details" based on legislative guidance or if it "wrote on a clean slate," (*see NYC C.L.A.S.H., Inc.*, 27 NY3d at 180), which cuts against Defendants here. WCPD necessarily wrote on a clean slate, because there was no guidance. The only difference between this case and *Boreali* is that, not only did WCPD write on a clean slate, it did not promulgate any rules at all in doing so. WCPD's System is operating in the absence of *any* legal guardrails. Plaintiffs' precise complaint is that there is no authorization. Had there been legislative guidance, guardrails would almost certainly have put in place.

The third factor asks whether WCPD acted in an area where "'the legislature has unsuccessfully tried to reach agreement on the issue.'" (*Id.*) Again, this supports the Plaintiffs. Although the Westchester Legislature has not addressed vehicle surveillance systems, the New York State Legislature – which could set rules for the entire state –has failed to reach consensus. (*See, e.g.*, 2025 NY Assembly Bill A907; 2023 NY Assembly Bill A4157.)

The final factor looks to whether WCPD "'used special expertise or competence in the field to develop the challenged regulation.'" (*NYC C.L.A.S.H., Inc.*, 27 NY3d at 180.) This factor fails them too. WCPD may have expertise in what will aid it in identifying criminality, but WCPD is altogether lacking in any expertise about whether to put in place an AI-powered, dragnet

surveillance system that makes suspects of all. WCPD disclaimed this very expertise in its analysis of the first *Boreali* factor, denying there was even any social question to consider. (MTD at 21.)

D. Plaintiffs' Authorization and Nondelegation Claims are Not Time Barred.

1. Plaintiffs' Claims Are Properly Brought as a Declaratory Judgment Action, Not an Article 78 Proceeding Subject to a Four-Month Limitations Period.

Defendants argue that, notwithstanding the declaratory relief sought, Plaintiffs' authorization claim could have been brought under Article 78 and is thus subject to its four-month limitations period. (MTD at 15-17.) But Plaintiffs challenge Defendants' authority to operate a mass-surveillance regime, not a discrete administrative determination. Whereas particular administrative determinations are appropriately challenged under Article 78, declaratory judgment is the appropriate vehicle for challenging an ongoing governmental policy executive policymaking. (*See Matter of Kerri W.S. v Zucker*, 202 AD3d 143, 152 [4th Dept 2021] [holding that a challenge to an agency's statutory authority to promulgate regulations was "properly raised *only* in a declaratory judgment action]; *Matter of Rincon v Annucci*, 186 AD3d 1869, 1870 [3d Dept 2020].) Plaintiffs do not contend Local Law No. 7-1979 or County Law § 650 were facially unconstitutional when enacted; they challenge WCPD's later exercise of power, alleging it crossed the separation-of-powers boundary by assuming policymaking authority over modern mass surveillance.

2. Defendants Have Not Established that Plaintiffs' Claims Accrued Outside the Applicable Limitations Period.

Defendants also argue that Plaintiffs' claims are barred by a six-year statute of limitations (MTD at 16-17.) That is incorrect. First, Plaintiffs challenge the establishment of the Vehicle Surveillance System and its relentless expansion from a limited number of cameras to its current size. The harms Plaintiffs allege follow from the scope and capabilities of the System, which has

expanded dramatically year-by-year. New York courts distinguish "a single wrong that has continuous effects" from "a series of independent wrongs." (*J.A. v City of New York*, — AD3d — , 2026 NY Slip Op 02084, *5 [2d Dept 2026].) The continuing-wrong doctrine applies to the latter and "serves to toll the running of a period of limitations to the date of the commission of the last wrongful act." (*Garron v Bristol House, Inc.*, 162 AD3d 857, 858-859 [2d Dept 2018] [quotations omitted].) Second, Plaintiffs cannot be held responsible for lacking the knowledge to sue sooner over something WCPD has worked hard to keep secret. On a motion to dismiss, Defendants bear the burden of establishing that the claims accrued outside the limitations period. (*Christiana Trust v Barua*, 184 AD3d 140, 151 [2d Dept 2020].) Identifying when WCPD first created the System does not satisfy that burden; the question is when Defendants made their last decision regarding the scope of the System, and when Plaintiffs could have known all the facts essential to their claim.

At a minimum, Plaintiffs are entitled to discovery before dismissal, because facts essential to determining the accrual date—including when WCPD authorized expansions or new uses of the system—are uniquely within Defendants' possession. (*See Glassman v Catli*, 111 AD2d 744, 745 [2d Dept 1985] [discovery appropriate where necessary facts "may exist" and are within movant's "sole knowledge or possession"].) The complaint makes clear that significant aspects of how the Vehicle Surveillance System operates remain unknown. (Comp. ¶¶ 39, 42, 57-58.) Defendants alone possess this information.

III. TAXPAYER STANDING SERVES AS AN INDEPENDENT BASIS FOR PLAINTIFFS TO BRING THEIR CONSTITUTIONAL CLAIMS AGAINST WCPD'S VEHICLE SURVEILLANCE SYSTEM.

Plaintiffs have suffered injuries-in-fact sufficient to challenge Defendants' operation of the Vehicle Surveillance System as both ultra vires and an exercise of invalidly delegated legislative authority. Plaintiffs also have taxpayer standing under General Municipal Law ("GML") § 51,

State Finance Law ("SFL") § 123-b, and the common law, which all serve as independent bases for taxpayers to challenge illegal official acts or illegal expenditures of public funds.

A. Plaintiffs suffer concrete and particularized privacy injuries.

Plaintiffs have common law standing because they allege continuing injuries to their own privacy interests arising out of Defendants' collection and retention of their location information. (*See Matter of Stevens v New York State Div. of Criminal Justice Servs.*, 40 NY3d 505, 515-516 [2023]; Compl. ¶¶ 75-116.) Defendants argue that Plaintiffs lack standing because they have not "properly stated a claim for a violation of a constitutional right." (MTD at 12.) But this confuses whether Plaintiffs have standing to bring their authorization claims with whether those claims succeed on the merits.

B. Plaintiffs satisfy GML § 51.

GML § 51 authorizes suits by taxpayers to prevent any "illegal official act" or "waste or injury to" public funds. Plaintiffs must allege either an "illegal official act" "imperil[s] the public interests or [is] calculated to work public injury or produce some public mischief," or constitutes "waste or injury" to county funds or property. (*Korn v Gulotta*, 72 NY2d 363, 372 ([1988].)

Plaintiffs allege Defendants have engaged and continue to engage in illegal acts that imperil the public interest by operating WCPD's Vehicle Surveillance System without any particularized suspicion, meaningful guardrails, or legislative authorization. Plaintiffs also detail specific expenditures of county funds that Defendants have wasted in operating their unconstitutional system. (Compl. ¶¶ 69-74.) Plaintiffs do not allege "mere illegality" but rather use of public funds "for entirely illegal purposes." (*Fisher v Biderman*, 154 AD2d 155, 159 [1st Dept 1990].) On a motion to dismiss, these allegations are more than sufficient to demonstrate taxpayer standing under GML § 51. (*Mulé v County of Nassau*, Sup Ct, Nassau County, Apr. 1, 2026, Carlton, J.,

index No. 602642/2025; *Matter of Brandi v City of Saratoga Springs*, *N.Y.,* 2025 NY Slip Op 35476[U], *1 [Sup Ct, Saratoga County 2025] [standing where "Petitioner contends that the conduct complained of and seeking to stop is an impermissible expenditure of city resources, no[t] simply an unwise one"].)

For GML § 51 standing, Plaintiffs do not need to allege "fraud" or "deception." (MTD at 15.) The Court of Appeals has made clear that an allegation of fraud is necessary only to hold public officials personally liable, which Plaintiffs do not seek here. (*Stewart v Scheinert*, 47 NY2d 826, 827-828 [1979].) Defendants' cases do not disrupt this rule. (*See Godfrey v Spano*, 13 NY3d 358, 373 [2009] [explaining that plaintiffs can allege either "fraud" *or* "illegal dissipation of municipal funds"]; *Thomas v New York City Dept. of Educ.*, 151 AD3d 412, 413 [1st Dept 2017] [requiring "intent to deceive" for claim of fraudulent misrepresentation or bad faith, not taxpayer standing]; *Budin v Davis*, 172 AD3d 1676, 1677 [3d Dept 2019] [same].)

C. Plaintiffs satisfy SFL § 123-b [1].

SFL § 123-b [1] authorizes suits by taxpayers to challenge a specific illegal expenditure of state funds where a public official or agency "acted outside its authority" in expending the funds. (*See Matter of Transactive Corp. v New York State Dept. of Social Servs.*, 92 NY2d 579, 589 [1998].)

Defendants do not dispute that Plaintiffs have "clearly traced [] funds expended by the [county] to identifiable State funds." (*Matter of Schulz v Horseheads Cent. Sch. Dist. Bd. of Educ.*, 222 AD2d 819, 819 [3d Dept 1995].) And contrary to Defendants' characterizations (MTD at 14), Plaintiffs have pleaded in detail the "activity alleged to be unauthorized" as well as multiple ways in which Defendants have expended and continue to expend state "funds to engage in [the] activity." (*Gerdts v State*, 620 NYS2d 512, 515 [3d Dept 1994]; *see* Compl. ¶¶ 69-74.) Defendants

cite to inapposite cases addressing challenges to discretionary mismanagement of funds, not similar "illegality" of constitutional proportions. (*See Matter of Abrams v New York City Tr. Auth.*, 39 NY2d 990, 993 [1976]; *Liotti v Rice*, 2007 NY Misc LEXIS 4904, *4 [Sup Ct, Nassau County 2007].)

Defendants also suggest that Plaintiffs were required to allege that state "grant funds did not permit the expenditure." (MTD at 14.) But that suggestion is unfounded. Plaintiffs need only "claim that it is illegal to spend money *at all* for the questioned activity," and Plaintiffs' allegations of illegality rest not on violations of mere contractual terms but on violations of the New York Constitution. (*See Saratoga County Chamber of Commerce v Pataki,* 100 NY2d 801, 810 [2003] (granting standing to challenge Governor's authority to enter into a casino gambling compact without legislative approval and to seek an injunction against the use of state funds to implement it).) As New York taxpayers, Plaintiffs have an interest in ensuring that state funds are lawfully spent, and Defendants threaten that interest by expending state funds on their unconstitutional Vehicle Surveillance System.

D. Plaintiffs satisfy common-law taxpayer standing.

Finally, the common law permits suits by taxpayers where they would otherwise face an "impenetrable barrier" to judicial review of "important constitutional issue[s]" that are "fundamental and of immense public significance." (*Saratoga County.*, 100 NY2d at 814; *see also State Communities Aid Assn. v Regan*, 112 AD2d 681, 681-682 [3d Dept 1985] [referring to the "public interest" to determine whether standing exists].) Since Plaintiffs have pleaded both injury-in-fact standing and statutory taxpayer standing under GML § 51 and SFL § 123-b, the Court need not even reach common-law taxpayer standing. (*See Weimer v Bd. of Ed. of Smithtown Cent. Sch. Dist. No. 1*, 52 NY2d 148, 152 [1981] ("common-law principles govern" only "in matters not

covered by a statute" like SFL § 123-b or GML § 51).) Nevertheless, Defendants argue that Plaintiffs would be ineligible for common-law taxpayer standing because they have not alleged that they are "personally aggrieved by Defendants' actions in a manner different in kind and degree from the community generally." (MTD at 13.) But this has the law exactly backwards. Taxpayer standing exists to "excuse lack of personal aggrievement" where a plaintiff's lack of individualized injury would otherwise preclude adjudication of her claims. (*Seidel v Prendergast*, 87 AD3d 545, 546 [2d Dept 2011].) If the Court were to disagree with their other bases for standing, Plaintiffs would still have taxpayer standing under the common law.[6]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' motion to dismiss.

[6] Finally, Defendants' request to "dismiss" Plaintiffs' demand for attorneys' fees is premature. (*See* MTD at 22-23). Plaintiffs have not yet requested, though reserve the right to request, attorneys' fees and then the Court may determine the validity of any such request. (*See e.g.*, *Sternberg v Citicorp Credit Servs., Inc.*, 110 Misc 2d 804, 809 [Sup Ct Nassau County 1981].)

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Respectfully submitted,

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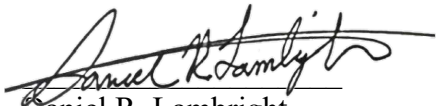
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CERTIFICATE OF COMPLIANCE WITH 22 NYCRR §202.8-b

I hereby certify that this brief complies with the word count limitation of 22 NYCRR § 202.8-b because the total word count of all printed text in the body of the brief, excluding the parts exempted by section 202.8-b, is 6,994 words according to the word-count function of Microsoft Word, the word processing program used to prepare this document.

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