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,

- against -

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

Defendants.

Index No.
65935/2026

Assigned Justice:
Hon. Walter Rivera, J.S.C.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Date: White Plains, New York
September 11, 2026

JOHN M. NONNA
Westchester County Attorney
Counsel for Respondents
Michaelian Office Building
148 Martine Avenue, Room 600
White Plains, New York 10601

Sean T. Carey
Associate County Attorney, of Counsel

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... **ii**
I. PRELIMINARY STATEMENT **1**
II. PROCEDURAL POSTURE **1**
III. RELEVANT ALLEGATIONS **2**
IV. STANDARDS OF REVIEW **3**
A. CPLR 3211(a)(3) 3
B. CPLR 3211(a)(5) 3
C. CPLR 3211(a)(7) 3
V. DISCUSSION **4**
A. Cause of Action No. 1: Constitutional Tort 4
1. Condition Precedent 4
2. Failure to State a Cause of Action 5
B. Causes of Action Nos. 2 & 3: Separation of Powers 12
1. Standing 12
a. Common Law Standing *12*
b. Common-Law Taxpayer Standing *13*
c. State Finance Law §123-b *13*
d. General Municipal Law §51 ..... *15*
2. Statute of Limitation 15
3. Failure to State a Cause of Action 17
a. Introduction *17*
b. Cause of Action No. 2: Express Violation *19*
c. Cause of Action No. 3: Excessive Delegation *20*
C. Attorney's Fees 22
VI. CONCLUSION **24**

TABLE OF AUTHORITIES

CASES

Boreali v Axelrod,
71 NY2d 1 (1987) 17, 19, 20

Bronx Freedom Fund v City of New York,
2025 NY Slip Op 32714(U) (Sup Ct, NY County 2025) 12

Budin v Davis,
172 AD3d 1676 (3d Dept 2019) 15

Carpenter v United States,
585 US 296 (2018) ..... passim

Chaney v City of Albany,
No. 16-CV-1185 (NAM),
2019 WL 3857995, 2019 U.S. Dist. LEXIS 143055 (ND NY, Aug. 16, 2019) 9

Chatrie v United States,
609 US __, 225 L Ed 2d 793 (2026) 6, 7, 8, 10

Columbus 95th St. LLC v New York State Div. of Hous. & Community Renewal,
2009 NY Slip Op 32791(U) (Sup Ct, NY County 2009),
affd 81 AD3d 269 (1st Dept 2010) 22

Commisso v. Meeker,
8 NY2d 109 (1960) 18

Fauvell v Miglino,
111 AD3d 596 (2d Dept 2013) 13, 15

Garber v Board of Trustees of State Univ. of N.Y.,
38 AD3d 833 (2d Dept 2007) 14

Gawrych v Astoria Fed. Sav. & Loan,
148 AD3d 681 (2d Dept 2017) 2

Godfrey v Spano,
13 NY3d 358 (2009) 14, 15

Golden Jubilee Realty, LLC v Castro,
196 AD3d 680 (2d Dept 2021) 3

Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn.,
25 NY3d 600 (2015) 17, 20

Guberman v Ruder,
85 AD3d 683 (1st Dept 2011) 15

Jobon v Solow,
91 NY2d 457 (1998) 22

Kassapian v City of New York,
155 AD3d 851 (2d Dept 2017) 4

Katz v United States,
389 US 347 (1967) 7

Krasnow v Ctania,
219 AD3d 1324 (2d Dept 2023) 23

Kravets v Striano,
229 AD3d 613 (2d Dept 2024) 3

Lang v Zlotnick,
236 AD3d 635 (2d Dept 2025) 22

Lesczynski v Bloomberg,
2005 NY Misc LEXIS 3532 (Sup Ct, NY County 2005) 12

Lessoff v 26 Ct. St. Assoc., LLC,
58 AD3d 610 (2d Dept 2009) 3

Liotti v Rice,
2007 NY Misc LEXIS 4904 (Sup Ct, Nassau County 2007) 14

Matter of Abrams v New York City Tr. Auth.,
39 NY2d 990 (1976) 14

Matter of Boss v Kelly,
3 Misc 3d 936 (Sup. Ct., NY County 2004),
affd 17 AD3d 269 (1st Dept 2005) 20

Matter of Lawyers for Children v New York State Off of Children & Family Servs.,
2026 NY Slip Op 03218 (2026) 12

Matter of LeadingAge N.Y., Inc. v Shah,
32 NY3d 249 (2018) 17, 19, 20, 22

Matter of New York State Superfund Coalition, Inc. v New York State Dept. of Envtl. Conservation,
18 NY3d 289 (2011) 17, 19

Matter of Nonhuman Rights Project, Inc. v Stanley,
49 Misc 3d 746 (Sup Ct, NY County 2015) 6, 10

Matter of NYC C.L.A.S.H., Inc. v New York State Off. of Parks, Recreation & Historic Preserv.,
27 NY3d 174 (2016) 17

Matter of Owner Operator Ind. Drivers Assn., Inc. v New York State Dept. of Trans.,
40 NY3d 55 (2023) 5

Matter of Quigley v Town of Ulster,
66 AD3d 1295 (3d Dept 2009) 14

Matter of Save the Pine Bush v City of Albany,
70 NY2d 193 (1987) 15

Matter of Stevens v New York State Div. of Criminal Justice Servs.,
40 NY3d 505 (2023) 12, 19

Matter of Tze Chun Liao v New York State Banking Dept.,
74 NY2d 505 (1989) 19

Mendik v Incorporated Vil. of Lattingtown,
76 AD3d 616 (2d Dept 2010) 4

Mesivta of Forest Hills Inst. v City of New York,
58 NY2d 1014 (1983) 15

Mirro v City of New York,
159 AD3d 964 (2d Dept 2018) 4

New York Ins. Assn., Inc. v State of New York,
145 AD3d 80 (3d Dept 2016) 15, 16, 17

New York v Class,
475 US 106 (1986) 7, 11

Nostrom v County of Suffolk,
100 AD3d 974 (2d Dept 2012) 4

Oyster Bay Assoc. L.P. v Town of Oyster Bay,
2013 NY Slip Op 52292(U) (Sup Ct, Suffolk County 2013) 2

Pearce v Stephens,
18 App Div 101 (2d Dept 1897) 18

People v Arthur,
175 Misc 2d 742 (Sup Ct, NY County 1997) 5, 10

People v Bryant,
65 AD2d 333 (2d Dept 1978) 19

People v Bushey,
29 NY3d 158 (2017) 6, 7, 8, 10

People v De Bour,
40 NY2d 210 (1976) 21

People v Gordon,
36 NY3d 420 (2021) 6

People v Hernandezz,
40 AD3d 777 (2d Dept 2007) 13

People v Keta,
165 AD2d 172 (2d Dept 1991),
revd on other grounds sub nom. People v Scott,
79 NY2d 474 (1992) 5, 6, 10

People v Scott,
79 NY2d 474 (1992) 6

People v Weaver,
12 NY3d 433 (2009) 6, 7

Pierce v Village of Horseheads Police Dept.,
107 AD3d 1354 (3d Dept 2013) 4

Rinaldi v Sylvester,
No. 24-CV-272 (KMK),
2025 WL 2682691, 2025 U.S. Dist. LEXIS 187115 (SD NY, Sept. 19, 2025) 8, 9, 10, 11

Sage Sys., Inc. v Liss,
39 NY3d 27 (2022) 22

Schmidt v City of Norfolk,
819 F Supp 3d 492 (ED Va 2026) 9

Smith v Arkansas State Highway Employees,
441 US 463 (1979) 21

Smith v Maryland,
442 US 735 (1979) 6

Society of Plastic Indus. v County of Suffolk,
77 NY2d 761 (1991) 12

St. Hillaire v Torres,
229 AD3d 476 (2d Dept 2024) 3

Stony Brook Envtl. Conservancy, Inc. v State Univ. of N.Y.,
101 AD3d 849 (2d Dept 2012) 14

Tesciuba v Koch,
215 AD2d 222 (1st Dept 1995) 4

Thomas v New York City Dept. of Educ.,
151 AD3d 412 (1st Dept 2017) 15

Tilcon, N.Y., Inc. v Town of New Windsor,
172 AD3d 942 (2d Dept 2019) 13

United States v Harry,
130 F4th 342 (2d Cir 2025) 10

United States v Jones,
565 US 400 (2012) 7, 11

United States v Knotts,
460 US 276 (1983) 6, 7, 10, 11

Vucetovic v Epsom Downs, Inc.,
10 NY3d 517 (2008) 21

Watts v City of New York,
186 AD3d 1577 (2d Dept 2020) 4

Westchester County Civ. Serv. Empls. Assn. v Del Bello,
70 AD2d 604 (2d Dept, O'Connor, J., dissenting),
revd for reasons stated in dissenting opn at 47 NY2d 886 (1979) 18

WFB Realty, LLC v R & W Brokerage, Inc.,
219 AD3d 1469 (2d Dept 2023) 23

Williams v State of New York,
2024 NY Slip Op 30872(U) (Sup Ct, Kings County 2024) 14

STATUTES

County Law §52 4
County Law §650 18
CPLR 909 22
CPLR 3211 ..... 2, 3, 23
CPLR article 78 ..... 15, 16
General Municipal Law §50-e 4
General Municipal Law §50-i 4
General Municipal Law §51 15
State Finance Law §123-b 13, 14

Minnesota Statutes §13.824 21
New Hampshire Revised Statutes §261-75-b 21

CONSTITUTIONAL PROVISIONS

NY Const, art I, § 12 ..... 1, 5, 6, 12
US Const, 4th Amend ..... passim

OTHER AUTHORITIES

Laws of Westchester County § 167.121 21
Laws of Westchester County § 173.01 ..... 17, 18
Laws of Westchester County § 273.31 ..... 17, 18, 19
Laws of Westchester County § 273.51 ..... 17, 18
Problems Relating to Home Rule and Local Government, 1938 Rep of NY Constitutional Convention Comm, ch 6 19
Westchester County Local Law No. 13-1983 (Dec. 5, 1983) 17, 18
Westchester County Local Law No. 7-1979 (July 20, 1978) 17, 18

I. PRELIMINARY STATEMENT

Plaintiffs ask this Court to create new law, extending a provision of the State Constitution farther than the Court of Appeals has ever done, to invalidate a commonplace, and constitutional, police practice. Plaintiffs also ask this Court to direct that police cannot use investigatory or data-gathering techniques without express micromanagement by legislatures regarding those techniques. Neither request has a basis in law. As set forth herein, the Court of Appeals and United States Supreme Court have spoken, and Plaintiffs' claims should be dismissed.

II. PROCEDURAL POSTURE

On June 9, 2026, Yukiko Ann Umemoto, Sarah Moore, Leah Nelson, and Lora Nelson (collectively, "Plaintiffs") commenced this action against Westchester County, New York (the "County"), the Westchester County Department of Public Safety aka Westchester County Police Department ("DPS"), DPS Commissioner/Sheriff Terrance Raynor, and DPS Chief James Luciano, both in their official capacity (collectively, "Defendants") (NYSCEF Doc 1 ["Complt."] at 1). Plaintiffs' Complaint sets forth three causes of action:

- A tort cause of action for Defendants' alleged violation of Article I, Section 12 of the New York State Constitution ("One Twelve") by operating a network of specialized cameras and license plate readers (the "Vehicle Surveillance System") (the "Constitutional Tort Claim") (*id.* ¶¶1, 128–33);
- A declaratory judgment cause of action for Defendants' alleged violation of the separation-of-powers doctrine by operating the Vehicle Surveillance System without an express grant of authority from either the Westchester County Board of Legislators (the "BOL") or the New York State Legislature (the "Express Violation Claim") (*id.* ¶¶134–40); and

- A declaratory judgment cause of action that the BOL's broad grant of authority to DPS violated the nondelegation doctrine (the "Excessive Delegation Claim") (*id.* ¶¶64–65, 141–47).

Plaintiffs also seeking class certification and attorney's fees (*id.* ¶¶117–24 & pp. 40–41).

Defendants move to dismiss the Complaint for lack of standing, failure to comply with the relevant statute of limitations, and/or failure to state a cause of action pursuant to CPLR 3211(a)(3), (5), and (7). Defendants also move to dismiss Plaintiffs' demand for attorney's fees, to the extent it is not premised upon Plaintiffs' anticipated class action. Defendants address the Express Violation and the Excessive Delegation Claims together, as they are two sides of the same coin (*see* §V[B], *infra*).

III. RELEVANT ALLEGATIONS

The following allegations—deemed true only for this motion (*Gawrych v Astoria Fed. Sav. & Loan*, 148 AD3d 681, 682 [2d Dept 2017])—are drawn from the Complaint and matters subject to judicial notice, including local laws (*Oyster Bay Assoc. L.P. v Town of Oyster Bay*, 2013 NY Slip Op 52292[U], *8 [Sup Ct, Suffolk County 2013]).

In 2013, DPS initiated the Vehicle Surveillance System (Complt. ¶25). Plaintiffs claim the system "is comprised of: (1) hundreds of specialized surveillance cameras known as "Automated License Plate Readers" [("LPRs")]; (2) a searchable database that retains vast amounts of data collected by the [LPRs] for at least two years; and (3) analytical software, including software powered by AI" (*id.* ¶21).

In 2017, DPS created the Real Time Crime Center ("RTC"), which runs the Vehicle Surveillance System and "gives law enforcement officers throughout Westchester County, including almost 40 local police departments, immediate access to current and historical information maintained and derived from [the] Vehicle Surveillance System" (*id.* ¶22). Plaintiffs allege the system began with 36 LPRs, but now has 575 (*id.* ¶25).

Plaintiffs are residents of the lower Hudson Valley who have been driving through the Vehicle Surveillance System for at least two years (*id.* ¶¶75, 80, 85, 92, 96, 103, 108, 112). They are also each activists (*id.* ¶81, 85, 94, 97, 99–101, 104–05, 109, 113–15).

Plaintiffs allege that they suffer the same injuries as all New York State citizens who drive through the geographical limits of the County of Westchester (*id.* ¶¶1, 26, 117).

IV. STANDARDS OF REVIEW

A. CPLR 3211(a)(3)

"A party may move for judgment dismissing one or more causes of action on the ground that the party asserting the cause of action lacks legal capacity to sue" (*Village of Islandia v County of Suffolk*, 162 AD3d 715, 717 [2d Dept 2018], citing CPLR 3211[a][3]). On such a motion, "the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing" (*Golden Jubilee Realty, LLC v Castro*, 196 AD3d 680, 682 [2d Dept 2021] [internal quotation marks and citation omitted]).

B. CPLR 3211(a)(5)

"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) on the ground that the statute of limitations has expired, the moving defendant must establish, prima facie, that the time in which to commence the action has expired" (*Kravets v Striano*, 229 AD3d 613, 613 [2d Dept 2024] [internal quotation marks and citation omitted]). Thereafter, the plaintiff must "aver evidentiary facts establishing that the action was timely or . . . raise an issue of fact as to whether the action was timely" (*Lessoff v 26 Ct. St. Assoc., LLC*, 58 AD3d 610, 611 [2d Dept 2009]) or "whether the statute of limitations is tolled or is otherwise inapplicable" (*St. Hillaire v Torres*, 229 AD3d 476, 477 [2d Dept 2024] [internal quotation marks and citation omitted]).

C. CPLR 3211(a)(7)

On a motion to dismiss for failure to state a claim, "the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every

favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory" (*Watts v City of New York*, 186 AD3d 1577, 1578 [2d Dept 2020]).

V. DISCUSSION

A. Cause of Action No. 1: Constitutional Tort

1. Condition Precedent

i. Relevant Law

In advance of bringing, *inter alia*, a state constitutional tort claim, a litigant must serve the county with a notice of claim (County Law §52[1]; General Municipal Law §50-e; *Pierce v Village of Horseheads Police Dept.*, 107 AD3d 1354, 1358 [3d Dept 2013]; *see also Mirro v City of New York*, 159 AD3d 964, 966 [2d Dept 2018] [applying General Municipal Law §50-e to a cause of action alleging violations of the State Constitution]; *Kassapian v City of New York*, 155 AD3d 851, 854 [2d Dept 2017] [same])). Moreover, the complaint must affirmatively allege that the litigant complied (General Municipal Law §50-i[1][b]). These requirements apply to both county departments and county employees acting in their official capacities (*Pierce*, 107 AD3d at 1358 [applying County Law §52 to a department]; *Tesciuba v Koch*, 215 AD2d 222, 222 [1st Dept 1995] [applying notice-of-claim requirements to employees sued in their official capacity]).

ii. Analysis

Plaintiffs fail to allege compliance with the applicable notice-of-claim requirements or that an exception applies (*see generally* Complt.). Plaintiffs' constitutional tort claim should therefore be dismissed for failing to comply with County Law §52 (*Nostrom v County of Suffolk*, 100 AD3d 974, 975 [2d Dept 2012]; *Mendik v Incorporated Vil. of Lattingtown*, 76 AD3d 616, 617 [2d Dept 2010]).

2. Failure to State a Cause of Action

i. Relevant Law

Constitutional Provisions

One Twelve provides in relevant part that:

> 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.

(NY Const, art I, §12, ¶1). One Twelve substantively mirrors the US Constitution's Fourth Amendment (the "Fourth Amendment") (*compare id. with* US Const, 4th Amend). While these provisions share a common phrasing, at times New York courts have interpreted One Twelve "to provide greater protections when circumstances warrant and have developed an independent body of state law in the area of search and seizure" but only "when necessary to assure that out State's citizens are adequately protected from unreasonable governmental intrusions" (*Matter of Owner Operator Ind. Drivers Assn., Inc. v New York State Dept. of Trans.*, 40 NY3d 55, 62 [2023] [internal quotation marks and citations omitted]).

The authority to broaden One Twelve beyond the Fourth Amendment's scope rests solely with the Court of Appeals (*People v Arthur*, 175 Misc 2d 742, 748 [Sup Ct, NY County 1997] ["A trial court is constrained not to announce new, noninterpretative, policy-driven constructions of the State Constitution, for to do so would impinge upon the policy and rule-making function traditionally perceived as the exclusive domain of the Court of Appeals."] [internal quotation marks and citations omitted]; *see also People v Keta*, 165 AD2d 172, 177–78 [2d Dept 1991], *revd on other grounds sub nom. People v Scott*, 79 NY2d 474 [1992] ["Where, as here, 'noninterpretative', State-wide policy considerations govern, in part, any inquiry into the existence of enhanced protection by the State Constitution . . . , we must temper our actions with restraint in deference to the Court of Appeals' role as the State's

policy-making tribunal."]; *Matter of Nonhuman Rights Project, Inc. v Stanley*, 49 Misc 3d 746, 772 [Sup Ct, NY County 2015] [citing *Keta* for the proposition that the Court of Appeals is "the State's policy-making tribunal"]).

Standards

The Fourth Amendment's application depends on whether the person invoking its protection can claim a reasonable or legitimate expectation of privacy (*Chatrie v United States*, 609 US __, 225 L Ed 2d 793, 801 [2026]). "When an individual 'seeks to preserve something as private,' and his [or her] expectation of privacy is 'one that society is prepared to recognize as reasonable,' [then] official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause" (*Carpenter v United States*, 585 US 296, 304 [2018], quoting *Smith v Maryland*, 442 US 735, 740 [1979]; *see also Chatrie*, 225 L Ed 2d at 807 [quoting same]). This standard presents two related inquires, first, "'whether the individual asserting the interest has demonstrated a subjective expectation of privacy'"; and second, "'whether that expectation would be accepted as reasonable by society" (*People v Bushey*, 29 NY3d 158, 161 [2017], quoting *People v Weaver*, 12 NY3d 433, 439 [2009]).

The standard for One Twelve is the same (*People v Gordon*, 36 NY3d 420, 432 [2021] ["The touchstone of the constitutional protection for privacy under article I, §12 of the State Constitution, is whether a person has a reasonable expectation of privacy."]; *People v Scott*, 79 NY2d 474, 482 [1992] [applying the two-step analysis to a matter arising only under One Twelve]).

Expectation of Privacy on Public Roads

In *United States v Knotts*, 460 US 276 (1983), the US Supreme Court permitted law enforcement agencies to use a surveillance technology to monitor vehicles traversing public roads (*id.* at 285). There, the Minnesota state police installed a beeper inside a container that a suspect subsequently loaded into his vehicle (*id.* at 278). The police followed the vehicle by monitoring signals from the beeper (*id.*).

In upholding the practice, the Court held:

- "A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another" (*id.* at 281);
- "Visual surveillance from public places along [the] route . . . would have sufficed to reveal all of [the relevant] facts to the police" (*id.* at 282);
- "Nothing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancements as science and technology afforded them in this case" (*id.*).

As recently as this year, the Court has reaffirmed this view (*Chatrie*, 225 L Ed 2d at 814 [discussing *Knotts*]; *see also, e.g.*, *United States v Jones*, 565 US 400, 412 [2012] ["Th[e] Court has to date not deviated from the understanding that mere visual observation does not constitute a search."]; *New York v Class*, 475 US 106, 114 [1986] ["The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a 'search.'"]).

Thirty-four years after *Knotts*, the Court of Appeals considered the constitutionality of license-plate searches in New York (*Bushey*, 29 NY3d at 160). There, a defendant challenged a police officer's warrantless search of the Department of Motor Vehicles ("DMV") database for the defendant's license plate number without first observing the defendant violating any traffic laws (*id.* at 160). The Court began its analysis "with the premise that 'since *Katz* [*v United States*, 389 US 347 (1967)], the existence of a privacy interest within the Fourth Amendment's protective ambit has been understood to depend upon whether the individual asserting the interest has demonstrated a subjective expectation of privacy and whether that expectation would be accepted as reasonable by society'" (*id.* at 161, quoting *Weaver*, 12 NY3d at 439 [alteration accepted]; *see also Katz*, 389 US at 361 [Harlan, J. concurring]). The Court thereafter concluded:

- "a driver does not have any reasonable expectation of privacy in the license plate number itself" and no such expectation would "be recognized as reasonable by society" (*id.* at 161-62);
- "[b]ecause the purpose of a license plate is to readily facilitate the identification of the registered owner of the vehicle for the administration of public safety, a person has no reasonable expectation of privacy in the information acquired by the State for this purpose and contained in a law enforcement or DMV database" (*id.* at 163);
- "[a]n officer's observation of that which is publicly displayed and the use of the information relative thereto contained in the DMV database does not violate defendant's Fourth Amendment rights, nor any provision of our New York State Constitution" (*id.*); and
- "[a]s defendant did not have any reasonable expectation of privacy in either his license plate or the information lawfully obtained and accessible through the DMV database, there was no search or seizure cognizable under federal or state law" (*id.* at 163–64).

Surveillance Body of Caselaw

One year after the Court of Appeals decided *Bushey*, the US Supreme Court—in *Carpenter v United States*, 585 US 296 (2018)—extended its Fourth Amendment jurisprudence into what has been termed "the surveillance body of caselaw" (*Rinaldi v Sylvester*, No. 24-CV-272 [KMK], 2025 WL 2682691, 2025 U.S. Dist. LEXIS 187115, *47 [SD NY, Sept. 19, 2025] [summarizing the development]). This body of caselaw neither subsumed nor modified cases concerning one's expectation of privacy on public roads, dealing instead with observation "beyond public thoroughfares and into private residences" (*Carpenter*, 585 US at 311; *Chatrie*, 225 L Ed 2d at 814 [same]).

In *Carpenter*, a defendant challenged the warrantless collection of cell-site location information ("CSLI")—*i.e.*, time-stamped records of every instance in which his cellphone accessed the nearest

cell site (585 US at 300–02). That information allowed the prosecution to ascertain his physical location and movements (*id.*). The data obtained spanned a more than 127-day period, totaling "12,898 location points cataloguing [defendant's] movements [at] an average of 101 data points per day" (*id.* at 302).

The Court held that "an individual maintains a legitimate expectation of the privacy in the record of his physical movements as captured through CSLI" based on CSLI's ability to "chronicle" a person's movements through encyclopedic "tracking [that] partakes many of the [same] qualities of . . . GPS monitoring" (*id.* at 309–10). The Court noted that CSLI: (i) "provides an all-encompassing record of the holder's whereabouts"; (ii) "provides an intimate window into a person's life"; (iii) reveals a person's "particular movements"; and (iv) reveals that person's "familial, political, professional, religious, and sexual associations" (*id* at 311 [internal quotation marks and citation omitted]). Thus, "when the Government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user" (*id.* at 311–12). As a result "[t]he Government's acquisition of the [CSLI] . . . was a search under [the Fourth] Amendment" (*id.* at 320).

Post-*Carpenter*, "[f]ederal and state courts analyzing [LPR] claims have almost uniformly concluded that neither taking photos of the license plate of a vehicle on a public roadway nor maintaining and querying a database of [LPR] photos constitute a warrantless 'search'" (*Schmidt v City of Norfolk*, 819 F Supp 3d 492, 497 [ED Va 2026]; *see also Rinaldi*, 2025 U.S. Dist. LEXIS 187115, *49–50 & n 13 [collecting cases]; *Chaney v City of Albany*, No. 16-CV-1185 [NAM], 2019 WL 3857995, 2019 U.S. Dist. LEXIS 143055, *25–26 [ND NY, Aug. 16, 2019]). The *Rinaldi* court concluded that—to state a claim for an improper LPR search—a litigant would need to allege sufficient facts to infer that "the LPR database reveals the same 'depth, breadth, and comprehensive reach' of information such as CSLI" (*Rinaldi*, 2025 U.S. Dist. LEXIS 187115, *50, citing *Carpenter*, 585 US at 320).

Similarly, in June, the US Supreme Court reaffirmed *Carpenter* with respect to cell phone location history (*Chatrie*, 225 L Ed 2d at 810 ["The resemblances between CSLI and Location History, in their relationship to personal privacy, practically leap off the page"]), while distinguishing it from (and reaffirming) *Knotts*. The Court noted the clear distinction: in *Carpenter* and *Chatrie*, the data was "not limited to public streets," but in *Knotts*, "the surveillance . . . was confined to public roads" as "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy . . . because the car is always in plain view" (*id.* at 814 [internal quotation marks and citation omitted]).

ii. Analysis

Plaintiffs "d[o] not have any reasonable expectation of privacy in either [their] license plate[s] or the information lawfully obtained and accessible through the DMV database" (*Bushey*, 29 NY3d at 163–64). Their constitutional tort claim should therefore be dismissed.

To the extent Plaintiffs seek a decision expanding their rights under the New York Constitution, this Court lacks the authority to grant it (*Keta*, 165 AD2d at 177; *Matter of Nonhuman Rights*, 49 Misc 3d at 772; *Arthur*, 175 Misc 2d at 748).

To the extent Plaintiffs seek to claim that the Surveillance Body of Caselaw establishes an expectation of privacy in public, they are mistaken. The *Carpenter* holding was "a narrow one" (*Carpenter*, 585 US at 316; *see also United States v Harry*, 130 F4th 342, 350 [2d Cir 2025]). It "'d[id] not . . . call into question conventional surveillance techniques and tools, such as security cameras" (*Harry*, 130 F4th at 350, quoting *Carpenter*, 585 US at 316 [alterations in original, emphasis omitted]). Rather, "[w]hen modern technology enhances law enforcement's traditional surveillance capabilities, . . . a Fourth Amendment search [is recognized] only when law enforcement uses particularly invasive forms of technological surveillance" (*Harry*, 130 F4th at 349–50). That is not the case here.

In *Rinaldi*, the SDNY examined the Village of Ossining's LPR system (*Rinaldi*, 2025 U.S. Dist. LEXIS 187115, *1, 5), and granted a motion to dismiss, finding that:

- the pleading alleged "only that the LPR helps pinpoint a vehicle's *specific* whereabouts at a *specific* time, and that [defendant] accessed [plaintiff's] location information approximately 111 times" (*id.* at * 50 [internal quotation marks and citation omitted, alteration accepted, emphasis in original]);
- "[u]nlike the vast amount of CSLI collected in *Carpenter*—nearly 13,000 data points [over 100 per day]—the SAC is devoid of allegations suggesting that the LPR is capable of 'near perfect surveillance' that could create 'an all-encompassing record' of [plaintiff's] whereabouts or provide an 'intimate window' into her life" (*id.*, quoting *Carpenter*, 585 US at 311–12);
- "the data collected here, as alleged, appeared to consist of discrete data points with considerable stretches of obscurity in between" (*id.* at * 51 [internal quotation marks and citation omitted]);
- the data "thus provided no more information than what could have been obtained through police surveillance" (*id.* [internal quotation marks and citation omitted]).

Given the similarities between the circumstances in *Rinaldi* and this case, the Court here should arrive at the same result (*Rinaldi*, 2025 U.S. Dist. LEXIS 187115, *51 [holding that "Plaintiffs have not plausibly alleged that the use of LPRs here violated any reasonable expectation of privacy"]). Such a decision would be consistent with decades of decisional law and with settled expectations (*see, e.g.*, *Jones*, 565 US at 412; *Class*, 475 US at 114; *Knotts*, 460 US at 282).

Nor do Plaintiffs' conclusory allegations about the supposed breadth of the Vehicle Surveillance System get them over the hurdle. The most extensive allegations are that Lora Nelson's car was recorded "at least 2,439 times" over "more than two years." (Complt. ¶112). That is equivalent to just over three snapshots a day, far less than what was identified in *Carpenter*, and certainly not sufficient to essentially reconstruct all the movements of a person's life.

B. Causes of Action Nos. 2 & 3: Separation of Powers

1. Standing

a. Common Law Standing

i. Relevant Law

A plaintiff "challenging agency action can demonstrate standing by alleging an 'injury in fact' that falls within the 'zone of interests of concerns sought to be promoted or protected by the statutory provision under which the [government] has acted'" (*Matter of Lawyers for Children v New York State Off. of Children & Family Servs.*, 2026 NY Slip Op 03218, *2 [2026] [alteration in original], quoting *Matter of Stevens v New York State Div. of Criminal Justice Servs.*, 40 NY3d 505, 515 [2023]). Courts have recognized that the "requirement of injury in fact for standing purposes is closely aligned with [the] policy not to render advisory opinions" (*Society of Plastic Indus. v County of Suffolk*, 77 NY2d 761, 773 [1991]).

ii. Analysis

Plaintiffs do not have standing to raise their separation of powers claim if they have not properly stated a claim for a violation of a constitutional right, as that is the basis for their "injury in fact" required for standing. As set forth above, Plaintiffs have failed to state a claim for a violation of a constitutional right (*see* §V[A][2], *supra*) and therefore lack standing to raise their separation-of-powers claims (*see, e.g.*, *Bronx Freedom Fund v City of New York*, 2025 NY Slip Op 32714[U], *6 [Sup Ct, NY County 2025] [plaintiff could not allege "a 'seizure' within the meaning of" One Twelve and therefore "cannot establish an injury in fact, that falls within the zone of interests sought to be protected by this constitutional right"] [internal quotation marks and citation omitted]; *Leszynski v Bloomberg*, 2005 NY Misc LEXIS 3532, *6 [Sup Ct, NY County 2005] [holding that plaintiff's "alleged injury-in-fact must be more than conjectural" and observing that plaintiff "may not assume to act as the guardian or protector of the community's social, cultural or aesthetic conscience"] [internal quotation marks and citations omitted]).

b. *Common-Law Taxpayer Standing*

i. Relevant Law

"[T]o establish 'common-law taxpayer standing,' a plaintiff must demonstrate that he or she is 'personally aggrieved by those actions in a manner different in kind and degree from the community generally' and that 'the failure to accord [him or her] standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action'" (*Fauvell v Miglino*, 111 AD3d 596, 597 [2d Dept 2013] [alteration in original], quoting *Matter of Seidel v Prendergast*, 87 AD3d 545, 546 [2d Dept 2011]).

ii. Analysis

None of the Plaintiffs has alleged that she is personally aggrieved by Defendants' actions in a manner different in kind and degree from the community generally (*see generally* Complt.; *cf. id.* ¶¶40, 46 [alleging that the Vehicle Surveillance System has the same effect on every Westchester driver]). Nor do Plaintiffs allege that the failure to accord them standing would erect an impenetrable barrier to any judicial scrutiny of legislative action (*see generally id.*; *cf. People v Hernandez*, 40 AD3d 777, 778 [2d Dept 2007] [evidencing that a criminal defendant can challenge the legality of police conduct on a motion to suppress]). As a result, Plaintiffs cannot make out a claim for common-law taxpayer standing (*see, e.g.*, *Tilcon, N.Y., Inc. v Town of New Windsor*, 172 AD3d 942, 946 [2d Dept 2019]; *Fauvell*, 111 AD3d at 598).

c. *State Finance Law §123-b*

i. Relevant Law

State Finance Law provides that "any person, who is a citizen taxpayer . . . may maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds

or state property, . . ." (State Finance Law §123-b[1]). By its terms, the statute is limited to state funds and state property (*id.*; *Matter of Quigley v Town of Ulster*, 66 AD3d 1295, 1297 [3d Dept 2009]. "The statute is narrowly construed as a grant of 'standing to correct clear illegality of official action,' but does not allow the interposition of 'litigating plaintiffs and the courts into the management and operation of public enterprises'" (*Garber v Board of Trustees of State Univ. of N.Y.*, 38 AD3d 833, 834 [2d Dept 2007], quoting *Matter of Abrams v New York City Tr. Auth.*, 39 NY2d 990, 992 [1976]). The court must "distinguish between cases that present a challenge to the expenditure of money . . . and those that use the expenditure of money . . . as a pretense to challenge a governmental decision" (*Stony Brook Envtl. Conservancy, Inc. v State Univ. of N.Y.*, 101 AD3d 849, 850 [2d Dept 2012]).

ii. Analysis

Plaintiffs allege that DPS uses state, federal, and county funds for its Vehicle Surveillance System (Complt. ¶70). With respect to the state funds, Plaintiffs allege that DPS received a 2023–2024 grant from the State Division of Criminal Justice Services and "spent approximately $435,263 . . . on its Vehicle Surveillance System" (*id.* ¶70[a]). Plaintiffs conclude that DPS's "use of these public funds to operate its unconstitutional and unauthorized Vehicle Surveillance System constitutes illegal official acts and illegal expenditures" (*id.* ¶74).

Plaintiffs' allegations of illegality are bare legal conclusions not entitled to consideration (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Garber*, 38 AD3d at 834). And this argument is premised upon their fundamental disagreement with DPS's policy decision—not the expenditure itself (Complt. ¶74). Plaintiffs make no allegation that the grant funds did not permit the expenditure. This type of argument cannot confer standing under State Finance Law §123-b (*see, e.g.*, *Stony Brook*, 101 AD3d at 850; *Williams v State of New York*, 2024 NY Slip Op 30872[U], *15 [Sup Ct, Kings County 2024]; *Liotti v Rice*, 2007 NY Misc LEXIS 4904, *4 [Sup Ct, Nassau County 2007]).

d. General Municipal Law §51

i. Relevant Law

"A taxpayer suit under General Municipal Law §51 'lies only when the acts complained of are fraudulent, or a waste of public property in the sense that they represent a use of public property or funds for entirely illegal purposes'" (*Godfrey*, 13 NY3d at 373, quoting *Mesivta of Forest Hills Inst. v City of New York*, 58 NY2d 1014, 1016 [1983]; *see also Fauvell*, 111 AD3d at 597 [quoting same]). A plaintiff asserting such a claim must therefore allege fraud or an entirely illegal purpose (*Thomas v New York City Dept. of Educ.*, 151 AD3d 412, 413 [1st Dept 2017]).

ii. Analysis

Plaintiffs do not allege that any of the Defendants committed fraud or wasted public resources within the meaning of General Municipal Law §51 (*see generally* Complt.). Plaintiffs also fail to allege that any of the Defendants intended to deceive or committed a deception (*see generally id.*). Consequently, Plaintiffs cannot assert standing under General Municipal Law §51 (*Budin v Davis*, 172 AD3d 1676, 1677 [3d Dept 2019]; *Thomas*, 151 AD3d at 413).

2. Statute of Limitation

i. Relevant Law

"In order to determine the Statute of Limitations applicable to a particular declaratory judgment action, the court must examine the substance of that action to identify the relationship out of which the claim arises and the relief sought" (*Matter of Save the Pine Bush, Inc. v City of Albany*, 70 NY2d 193, 202 [1987] [internal quotation marks and citation omitted]). "Where, as here, governmental activity is being challenged, the immediate inquiry is whether the challenge could have been advanced in a CPLR article 78 proceeding" (*New York Ins. Assn., Inc. v State of New York*, 145 AD3d 80, 87–88 [3d Dept 2016] [internal quotation marks and citation omitted]).

Where the challenge is that an official or department "acted arbitrarily and capriciously or in excess of their authority," the claim "could have been advanced in a CPLR article 78 proceeding" and the proper statute of limitations is four months (*id.* at 88). That period begins to run at the time of the challenged action. Where the challenge is that legislation unconstitutionally delegates legislative authority to another body, the appropriate statute of limitation is six years "which began to run upon the enactment of the challenged statutory provisions" (*id.* at 88–89).

ii. Analysis

Plaintiffs' second cause of action is subject to the four-month Article 78 statute of limitations (*see, e.g.*, *id.* at 88). There, Plaintiffs assert that DPS acted beyond the scope of its authority by establishing and maintaining the LPR system (Complt. ¶¶134–40). However, Plaintiffs' own allegations place them well outside the statute of limitations:

- DPS created the Vehicle Surveillance System in 2013 (*id.* ¶25);
- DPS "runs the Vehicle Surveillance System out of its Real Time Crime Center," which was "[c]reated in 2017" (*id.* ¶22);
- "[f]rom 2022 to 2024, [DPS] provided nearly half a million dollars in public funds . . . related to the hardware, software, installation, supplies, and ongoing maintenance of the Vehicle Surveillance System" (*id.* ¶71);
- in 2023 and 2024, the Vehicle Surveillance System collected "millions of vehicle reads per week" (*id.* ¶¶2, 40, 118).

Each of these occurred more than four months prior to the commencement of this action, and therefore the second cause of action is time barred.

The third cause of action asserts that the enabling statute that created DPS violates the nondelegation doctrine (Complt. ¶¶141–47), while admitting that statute was enacted in 1979 (*id.*

¶137). The six-year statute of limitations thus ran more than 40 years ago (*New York Ins. Assn., Inc.*, 145 AD3d at 88–89), and is now time barred.

3. Failure to State a Cause of Action

a. Introduction

i. *Ultra Vires* Administrative Actions

Where an agency acts "beyond the power it was granted by the legislature, it usurps the legislative role and violates the doctrine of separation of powers" (*Matter of LeadingAge N.Y., Inc. v Shah*, 32 NY3d 249, 260 [2018], citing *Matter of NYC C.L.A.S.H., Inc. v New York State Off. of Parks, Recreation & Historic Preserv.*, 27 NY3d 174, 178 [2016] ["*Matter of CLASH*"], and *Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn.*, 25 NY3d 600, 608 [2015] ["Greater Taxi"]). These usurpations can be either:

(a) *Express Violations*: where an agency exceeds the express terms of its legislative grant of authority (*Matter of New York State Superfund Coalition, Inc. v New York State Dept. of Envtl. Conservation*, 18 NY3d 289, 294 [2011] ["*Matter of Superfund*"]); or

(b) *Excessive Delegations*: where the grant itself is overbroad and therefore invalid—meaning the agency's action, while within the grant's express ambit, exceeds its legal limit (*Boreali v Axelrod*, 71 NY2d 1, 16 [1987]).

In both circumstances, the agency action is unauthorized and *ultra vires*. Also in both circumstances, the analysis begins with the enabling legislation itself.

ii. Enabling Legislation

Here, the primary enabling legislation is Westchester County Local Law No. 7-1979 (July 20, 1978), as renumbered by Westchester County Local Law No. 13-1983 (Dec. 5, 1983), codified in relevant part at LWC §§173.01, 273.31, and 273.51 (collectively, the "Local Law") (Carey Aff, Ex A

[Local Law No. 7-1979], Ex C [Local Law No. 13-1983]; Carey Aff, Exs D–F [LWC §§173.01, 273.31, 273.51]; *see also* Carey Aff ¶¶8–18; Complt. ¶¶64–65). The Local Law provides that:

- DPS "shall perform all duties and functions required by law and regulations of competent authority, including all duties heretofore performed by the elected Sheriff" (LWC §173.01);
- DPS "may adopt and enforce rules and regulations for the operation, government, administration and discipline of [its] various divisions and units . . ." (*id.*); and
- "[a]ll the law enforcement and police powers, duties and obligations presently or hereafter granted or imposed on the Sheriff by law shall be continued and vested in [DPS's] Division of the Westchester County Police" (LWC §273.31).

The BOL adopted the Local Law for "the stated purpose of creating a new Department of Public Safety Services" by "merging the functions of the Westchester County Sheriff and Parkway Police . . . and delineating additional powers of the department" (*Westchester County Civ. Serv. Empls. Assn. v Del Bello*, 70 AD2d 604, 605 [2d Dept 1979, O'Connor, J., dissenting], *revd for reasons stated in dissenting opn at* 47 NY2d 886 [1979]). Thus, County Law §650 also applies (*see* LWC §273.31).

Pursuant to County Law §650, a county sheriff "shall perform the duties prescribed by law as a[] . . . *conservator of the peace* within the county" (*id.* [emphasis added]). This authority is broad and ancient:

> It is a matter of historical fact . . . , which has been recognized judicially . . . , and statutorily . . . , that the "historic, conventional duties of the centuries-old office of Sheriff" have from time immemorial included *police duties*. . . . "It is the duty of a sheriff to act as a conservator of the peace within his county . . . . His duties are, in a large measure, in kind the same as are imposed upon police officers and he necessarily exercises police powers . . . duties devolved upon him by the common law."

(*Commisso v. Meeker*, 8 NY2d 109, 122 [1960], quoting *Pearce v Stephens*, 18 App Div 101, 104–05 [2d Dept 1897] [emphasis in original]; *see also Problems Relating to Home Rule and Local Government*, 1938 Rep

of NY Constitutional Convention Comm, ch 6 at 124–38 [canvassing the history of sheriffs and police control]).

b. *Cause of Action No. 2: Express Violation*

i. Relevant Law

"'Administrative agencies, as creatures of the Legislature within the executive branch, can act only to implement their charter as it is written and as given to them'" (*Matter of Superfund*, 18 NY3d at 295, quoting *Matter of Tze Chun Liao v New York State Banking Dept.*, 74 NY2d 505, 510 [1989]). That said, "a legislature may enact a general statute that reflects its policy choice and grants authority to an executive agency to adopt and enforce regulations that expand upon the statutory text by filling in details consistent with that enabling legislation" (*Matter of LeadingAge*, 32 NY3d at 260). Where a general statute provides a broad grant of authority, an express violation is unlikely to be found (*id.* at 262–71 [analyzing a broad grant of authority through the excessive-delegation rubric]; *Boreali*, 71 NY2d at 9–14 [same]; *cf. Matter of Stevens*, 40 NY3d at 516 n 3 [analyzing a tailored grant of authority through the express-violation rubric]; *Matter of Tze Chun Liao*, 74 NY2d at 510–11 [same]).

ii. Analysis

The BOL granted DPS broad authority, which explicitly included "law enforcement and police powers, duties and obligations presently or hereafter granted or imposed on the Sheriff by law" (LWC §273.31). 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 (*cf.* Complt. ¶21). When considering the breadth and fundamental nature of this grant of authority, it is clear that it embraces the creation of the Vehicle Surveillance System. Indeed, "the conduct of a police investigation is necessarily left to the discretion of the police" (*People v Bryant*, 65 AD2d 333, 338 [2d Dept 1978]). The Commissioner "exercises broad discretion to manage the Police Department, necessarily including deployment of personnel" (*Matter of Boss v Kelly*, 3 Misc 3d 936, 938

[Sup. Ct., NY County 2004], *affd* 17 AD3d 269 [1st Dept 2005]). Therefore, the Commissioner must have discretion to deploy other resources, such as cameras, as part of the general police power. Plaintiffs' Express Violation claim should therefore be dismissed.

c. Cause of Action No. 3: Excessive Delegation

i. Relevant Law

"The separation of powers doctrine commands that the legislature make the primary policy decisions but does not require that the agency be given rigid marching orders" (*Matter of LeadingAge*, 32 NY3d at 260). "Administrative entities possess technical expertise and may be vested with considerable discretion to flesh out a policy broadly outlined by legislators" (*id.*). The Court of Appeals has "set out four 'coalescing circumstances' that are non-mandatory, somewhat-intertwined factors for courts to consider when determining whether an agency has crossed the hazy 'line between administrative rule-making and legislative policy-making'" (*Greater Taxi*, 25 NY3d at 610, quoting *Boreali*, 71 NY2d at 11). Those factors (the "*Boreali* Factors") include whether the agency: (i) made value judgments entailing difficult and complex choices between broad policy goals to resolve social problems; (ii) filled in details based on legislative guidance or if it wrote on a clean slate; (iii) acted in an area where the legislature has unsuccessfully tried to reach agreement on the issue; and (iv) used special expertise or competence in the field to develop the challenged practice (*Matter of LeadingAge*, 32 NY3d at 260–61). "[T]hese are not criteria that should be rigidly applied in every case but rather overlapping, closely related factors that, viewed together, may signal that an agency has exceeded its authority" (*id.* at 261 [internal quotation marks and citation omitted]). Crucially, "because it is not always possible to draw a clear line between the functions of the legislative and executive branches, common sense must prevail when determining whether an agency acted within its grant of authority" (*id.* at 260).

ii. Analysis

Each *Boreali* Factor weighs against a finding of Excessive Delegation.

First Factor: DPS is tasked with conserving the peace in Westchester County (*see supra*). The only countervailing cost it needs to weigh is budgetary (*see, e.g.*, LWC §167.121 [providing that county agencies must act within budgetary appropriations]).[1] DPS is not faced with value judgments or difficult and complex choices between broad policy goals to resolve social problems (*cf. Boreali*, 71 NY2d at 12). Plaintiffs assert that "[s]triking the proper balance between public safety and personal privacy is a uniquely legislative function" (Complt. ¶67). While this may be true, it is also irrelevant; there is no allegation that DPS balances personal privacy considerations when carrying out its public-safety mandate (*see generally id.*).

Plaintiffs also assert that "[i]n contrast to Westchester County, legislative bodies across the country, including in Minnesota, New Hampshire, and Washington, have expressly authorized vehicle surveillance systems in their jurisdictions via legislation" (*id.* ¶68 & n 8). First, the cited statutory schemes are *limitations* on LPRs, not authorizations (*id.*; *see also, e.g.*, Minn Stat §13.824 [limiting the type of data collected by LPRs]; N.H. Rev. Stat. §261-75-b [restricting the use of LPRs]). Second, the absence of such limitation is itself a choice by the legislature (*see, e.g.*, *Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 522 [2008] [discussing "statutory silence" and the legislature's obligation "to use specific and clear language" when intending a "derogation of the common law"]). Third, if Plaintiffs—each of whom are activists (Complt. ¶¶81, 85, 97, 109)—wish to advocate for such limitations, they are well within their rights to do so (*Smith v Arkansas State Highway Employees*, 441 US 463, 464 [1979]). Such advocacy should be directed are the legislatures themselves, not this Court (*Joblon v Solow*, 91 NY2d

[1] DPS must also operate within the bounds of the US and New York state constitutions; however, those documents present guiderails, not choices for DPS to weigh (*People v De Bour*, 40 NY2d 210, 215 [1976] [setting forth guiderails to which an officer must adhere]).

457, 465 n 2 [1998] ["Defendants' complaint . . . is better addressed to the Legislature. The Legislature can, of course, revise the statute to limit its reach if it so intends."]).

The First Factor weighs in Defendants' favor.

Second Factor: As explained above, the Vehicle Surveillance System represents only the details of the broader policy of maintaining public safety. DPS did not "wr[i]te on a clean slate" or "creat[e] its own comprehensive set of rules" (*Matter of LeadingAge*, 32 NY3d at 265). Thus, the Second Factor also weighs in Defendants' favor.

Third Factor: Plaintiffs do not allege that the BOL unsuccessfully tried to reach agreement on the issue (*see generally* Complt.). Nor is this office aware of any such attempts (*see* Carey Aff ¶19). The Third Factor therefore weighs in Defendants' favor.

Fourth Factor: DPS's role is to maintain public safety. The BOL gave DPS the discretion to determine how. Under those circumstances, the Fourth Factor is not shown (*see, e.g.*, *Columbus 95th St. LLC v New York State Div. of Hous. & Community Renewal*, 2009 NY Slip Op 32791[U], *17 [Sup Ct, NY County 2009], *affd* 81 AD3d 269 [1st Dept 2010]).

Thus, Plaintiffs' Excessive Delegation claim should be dismissed.

C. Attorney's Fees

i. Relevant Law

"'Under the American rule, attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule'" (*Lang v Zlotnick*, 236 AD3d 635, 636 [2d Dept 2025], quoting *Sage Sys., Inc. v Liss*, 39 NY3d 27, 30–31 [2022]).

ii. Analysis

To the degree that Plaintiffs seek attorney's fees pursuant to any agreement, statute or court rule—other than CPLR 909—Plaintiffs' request for this relief should be dismissed (*Krasnow v Catania*,

219 AD3d 1324, 1326 [2d Dept 2023] [dismissing a request for attorney's fees pursuant to CPLR 3211(a)(7)]; *WFB Realty, LLC v R & W Brokerage, Inc.*, 219 AD3d 1469, 1469 [2d Dept 2023] [same]).

[*Remainder of Page Intentionally Left Blank*]

VI. CONCLUSION

Based on the foregoing, Defendants respectfully request that the Complaint be dismissed in its entirety, and this Honorable Court grant such further relief as it deems just and proper.

DATED: White Plains, New York
September 11, 2026

JOHN M. NONNA
Westchester County Attorney
Attorney for Defendants

By: _____
Sean T. Carey
Associate County Attorney, of Counsel
Michaelian Office Building
148 Martine Avenue, Room 600
White Plains, New York 10601
(914) 995-2243
stca@westchestercountyny.gov

TO: All Counsel (*via NYSCEF*)

WORD COUNT CERTIFICATION

Pursuant to section 202.8-b of Title 22 of the New York Codes, Rules and Regulations, I hereby certify that the total number of words in the brief—as calculated by Microsoft Word's word count tool and exclusive of the caption, table of contents, table of authorities, and signature block—is 6,965 words (*cf.* 22 NYCRR §202.8-b [a] [i] ["[M]emoranda of law in chief shall be limited to 7,000 words each . . . ."]).

DATED: White Plains, New York
September 11, 2026

JOHN M. NONNA
Westchester County Attorney
Attorney for Defendants

By: _____
Sean T. Carey
Associate County Attorney, of Counsel
Michaelian Office Building
148 Martine Avenue, Room 600
White Plains, New York 10601
(914) 995-2243
stca@westchestercountyny.gov