

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,
Respondent on Review.

v.

DAVID FRANK LANE,

Defendant-Appellant,
Petitioner on Review,

Marion County Circuit Court
Case No. 20CR47352

Oregon Court of Appeals A183592

Oregon Supreme Court No.
S072813

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION OF OREGON, AND OREGON
CRIMINAL DEFENSE LAWYERS ASSOCIATION**

Review of the decision of the Court of Appeals
on an appeal from a judgement of the Circuit Court for Marion County
Honorable Daniel J. Wren, Judge

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Author of Opinion: JOYCE, J.
Concurring Judges: Ortega, Presiding Judge, and Hellman, Judge

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INTERESTS OF *AMICI CURIAE*

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The American Civil Liberties Union of Oregon (ACLU of Oregon) is the Oregon state affiliate of the national ACLU with nearly 53,000 members and donor-supporters statewide. Since its founding in 1920, the ACLU has frequently appeared before the U.S. Supreme Court and other state and federal courts in numerous cases implicating Americans' right to privacy in the digital age, including as counsel in *Carpenter v. United States*, 585 US 296, 138 S Ct 2206, 201 L Ed 2d 507 (2018) and *Moore v. United States*, 143 S Ct 2494 (2023), and as amicus in *State v. Pittman*, 367 Or 498, 479 P3d 1028 (2021), *State v. Turay*, 371 Or 128, 532 P3d 57 (2023), *State v. Simons*, 375 Or 70, 587 P3d 311 (2026), *Chatrie v. United States*, 609 US ___, 146 S Ct 2193, 225 L Ed 2d 793 (2026), *People v. Tafoya*, 494 P3d 613 (Colo 2021), and *Commonwealth v. Mora*, 150 NE 3d 297, 301 (2020). The ACLU of Oregon frequently advocates for the rights guaranteed by the Fourth Amendment to the U.S. Constitution and Article I, section 9, of the Oregon Constitution. *See, e.g., Pittman*, 367 Or 498; *Turay*, 371 Or 128; *Simons*, 375 Or 70; *United States v. Mohamud*, 843 F3d 420 (9th Cir 2016), and *United States v. Pineda-Moreno*, 688 F3d 1087 (9th Cir 2012).

The Oregon Criminal Defense Lawyers Association (OCDLA) is a nonprofit organization based in Eugene, Oregon that represents Oregon’s criminal defense community. OCDLA’s mission statement is “[c]hampioning justice, promoting individual rights and supporting the legal defense community through education and advocacy.” Its members are lawyers, investigators, law students, and legal professionals dedicated to defending individuals who are accused of crimes. OCDLA serves the defense community by providing continuing legal education, public education, and networking. OCDLA is concerned with legal issues presenting a substantial statewide impact to defendants in criminal cases.

INTRODUCTION

Law enforcement agents, acting without a warrant, surreptitiously installed surveillance cameras on two telephone poles near Petitioner’s home and used them to record the activities at and around his home and curtilage over an uninterrupted monthlong period. Pet. Br. at 1. Police could manipulate the cameras from afar to get a full picture not only of Petitioner’s comings and goings from his property but of who visited the home, when, and for how long. *See id.* at 39.

It is common sense—and judicially recognized—that “[a]wareness that the government may be watching chills associational and expressive freedoms.” *United States v. Jones*, 565 US 400, 416, 132 S Ct 945, 1818 L Ed 2d 911 (2012) (Sotomayor, J., concurring). Yet the State’s position is that it can continuously watch

our most private spaces—our homes—with no judicial oversight. Failing to recognize weeksworth of pole-camera surveillance as a search would leave Oregonians subject to constant, intrusive monitoring for any reason or no reason at all. Police might use a pole camera to monitor a local activist’s routine, a local priest’s visitors, or an ex-girlfriend’s new life. And they might then put up pole cameras aimed at any of those people’s neighbors—or *everyone*, since neither the federal nor state constitutions would provide any check on this intrusive and pervasive surveillance. The simple and time-tested way to safeguard individual privacy against arbitrary state intrusion is to require a warrant.

Amici respectfully submit that a warrant was required before police conducted the extensive pole-camera surveillance here. Modern pole cameras reveal deeply private information of a quantity and quality unthinkable at the time of the Founding or when Oregon’s Constitution was drafted. Technological advancements in cameras themselves as well as the software used to process and analyze the footage have drastically transformed law enforcement capabilities in ways that threaten to undermine longstanding constitutional protections and the longstanding balance between the powers of the police and the privacy of the people. Recent federal and state precedent makes clear that courts must rigorously analyze novel technologies’ power to encroach on privacy and ensure that individual rights remain intact in the

digital age. That analysis here, under both the state and federal constitutions, makes plain that the pole-camera surveillance conducted here was a search.

ARGUMENT

I. Pole-camera surveillance of a home significantly encroaches upon traditional spheres of privacy historically protected from government intrusion.

A. Pole-camera surveillance of a home reveals deeply private information.

Modern pole cameras and the software used to analyze their footage radically transform law enforcement’s ability to peer into individuals’ private lives. Pole-camera surveillance of the home and curtilage reveals “a mosaic of intimate details of the [resident’s] private life and associations.” *State v. Jones*, 903 NW 2d 101, 110 (SD 2017); accord *Commonwealth v. Mora*, 150 NE 3d 297, 311 (Mass 2020); *Tafoya*, 494 P3d at 622–23. A pole camera trained on a home records the patterns and timing of residents’ movements to and from home, the items they carry with them when they leave and arrive, the people who visit them, and how long those visitors stay. Watching a resident leave home on Sunday morning with a hymnal, Saturday morning with a prayer shawl, or mid-day Friday with a prayer rug reveals details of religious observance. Leaving with a protest sign suggests political activity, while carrying an oversized X-ray film envelope indicates medical travails. A visitor arriving at the house on a weekend evening with flowers could reveal a romantic liaison, while that visitor spending the night might disclose an affair. In

short, watching the comings and goings at a home can permit law enforcement to chart out a detailed picture of the occupant's private life and associations.

“[T]he sum total of all visible activities that take place [at the home] * * * can be even more revealing than the sum total of one's movements while out and about, given the nature of what transpires in front of the home.” *United States v. Moore-Bush*, 36 F4th 320, 336 (1st Cir 2022) (Barron, C.J., concurring); accord *United States v. Salaman*, 742 F Supp 3d 221, 230 (D Conn 2024) (“[N]on-stop pole-camera surveillance of someone's home is even more intrusive than tracking their various locations outside the home.”).

Prior cases involving pole-camera surveillance demonstrate just how much intimate activity takes place in the area immediately surrounding one's home. In one case involving 24 days of surveillance, the pole camera “captured [the defendant's] husband naked and her son relieving himself against a tree.” *United States v. Anderson-Bagshaw*, 509 F App'x 396, 401 (6th Cir 2012). And in every case, prolonged pole-camera surveillance allows police to learn “who is in the home, and with whom the residents of the home meet, when, and for how long.” *Mora*, 150 NE 3d at 309. “No casual observer who is merely passing by can observe (let alone instantly recall and present for others to observe) the aggregate of the months of moments between relatives, spouses, partners, and friends that uniquely occur in front of one's home.” *Moore-Bush*, 36 F 4th at 336 (Barron, C.J., concurring). It is

precisely because these details and patterns reveal a great deal of information that police seek to record it in the first place.

B. Technological developments enhance the surveillance capabilities of pole cameras.

Unlike the classic “stakeout” of yore, pole-camera surveillance “is remarkably easy, cheap, and efficient compared to traditional investigative tools,” enabling a heretofore incredibly costly and resource intensive kind of monitoring “at practically no expense.” *Carpenter*, 585 US at 311. “[P]rior to the digital age,” it would have been prohibitively “difficult to conduct a stakeout that could effectively and perfectly capture all that visibly occurs in front of a person’s home over the course of months—and in a manner that makes all of the information collected readily retrievable at a moment’s notice.” *Moore-Bush*, 36 F4th at 333–34 (Barron, C.J., concurring) (internal quotation marks and citation omitted). Police could have staked out a home for a limited period, but society reasonably expected them to lack the resources, strength, and stealth to watch a home 24-hours a day for weeks on end, unceasingly, with perfect recall, and without detection. Prolonged and continuous surveillance of the home would have required a perfectly concealed officer (or a “very tiny constable”) “with incredible fortitude and patience.” See *Jones*, 565 US at 420 n 3 (Alito, J., concurring in the judgment). Thus, it is an understatement to say that the “continuous, twenty-four-hour nature of the surveillance is an

enhancement of what reasonably might be expected from the police.” *Mora*, 150 NE 3d at 312 (internal quotation marks and citation omitted).

“[T]raditional” police surveillance tools also “cannot accumulate the vast array of information that targeted, long-term video surveillance can capture.” *State v. Jones*, 903 NW 2d at 110. Today’s cameras can already capture detailed images of faces and license plates from hundreds of feet away.¹ No text message, pamphlet, or prescription is protected from the camera’s unblinking eye and an officer’s scrutiny. And, as in this case, law enforcement can often manipulate pole cameras from afar to pan, zoom, and tilt, giving them a wide range of perspectives that a stakeout lacks.

Additionally, the ability to set up an unattended camera and “travel back in time” months later to review thousands of hours of historical footage “[w]ith just the click of a button” fundamentally alters the nature of the intrusion. *Carpenter*, 585 US at 312; see *Chatrie*, 146 S Ct at 2207. Video analytics software allows police to

¹ See Stu Waters, *The Ultimate Buying Guide for Long Range Security Cameras 2026*, Coram (Apr. 4, 2025), <https://www.coram.ai/post/long-range-security-cameras>; *Guide to Identifying or Recognizing a Face: Resolution, Focal Length, and Megapixels*, SCW, <https://www.getscw.com/guide-to-identifying-a-face>; *The Rabbit – Covert Pole Camera for Police & Law Enforcement*, Boundless Security Systems, Inc., <https://boundlesssecurity.com/documents/BoundlessSecurity-The-Rabbit-The-First-Anywhere-Outdoor-CAM-Battery-Powered-Outdoor-Covert-Pole-Camera-flyer.pdf>; see also *First Eyes on Scene for Safer Outcomes*, Flock Safety, <https://www.flocksafety.com/products/flock-dfr> (advertising that Flock Alpha, a drone equipped with a surveillance camera, “reads license plates from up to 2,000 feet away”).

“[r]eview hours of video in minutes” and avoid “[e]xtended review sessions [that] can lead to fatigue and declining accuracy, even for the most experienced investigators.”²

Those capabilities are only getting more robust, and new ones are being developed every day. A new drone surveillance system reportedly uses facial recognition, gait analysis, and body-shape matching to identify individuals from 1,000 meters away.³ And many police departments already use facial recognition software in combination with security camera footage to attempt to identify individuals.⁴ Where these types of biometric identification systems are used in conjunction with pole-camera surveillance, police might attempt to identify every person who enters and exits a home. And police may use object-recognition software to attempt to identify anything carried to or from the home.⁵ Pole cameras may also use thermal imaging to record infrared radiation emitting from people and objects—

² *How Video Analytics Enhance Law Enforcement Performance*, Milestone, <https://www.milestonesys.com/articles/video-analytics-law-enforcement/>.

³ Chase Codewell, *New Drone System Identifies Individuals at Long Range Using Biometric Data*, NewsTarget (May 22, 2026), <https://www.newstarget.com/2026-05-22-drone-system-identifies-individuals-long-range-biometric-data.html>.

⁴ See, e.g., Paige Gross, *Facial Recognition in Policing Is Getting State-by-State Guardrails*, Oregon Capital Chronicle (Feb. 8, 2025), <https://oregoncapitalchronicle.com/2025/02/08/facial-recognition-in-policing-is-getting-state-by-state-guardrails/>.

⁵ See *Object Recognition*, Intelion, <https://intelion.isid.com/ai-video-tecnologies-for-law-enforcement/>.

a capability no human officer has.⁶ And because pole-camera footage may be “subject to indefinite retention for the government’s endless inspection and review,” *Salaman*, 742 F Supp 3d at 230, analytical tools that have yet to be developed may be applied to footage that is being collected now.

Additionally, companies that provide surveillance technologies to police departments increasingly funnel the data collected by their products back to the company’s own servers.⁷ This centralization makes it trivially easy for police departments at the local, state, and federal level to share surveillance data with each other. For example, Flock—a company primarily known for its automated license plate readers that also sells other types of surveillance cameras—allows police to conduct *nationwide* searches of surveillance data, including on behalf of other police departments or federal agencies.⁸ Under this model, modern pole cameras could serve not only as the superhuman, unblinking eyes of the officers who install them,

⁶ See, e.g., *Next-Gen Pole Cameras Bring New Attributes to Police and Tactical Teams*, Police1 (Sep. 18, 2023), <https://www.police1.com/police-products/technology/pole-cameras/articles/next-gen-pole-cameras-bring-new-attributes-to-police-and-tactical-teams-6nijnLczlE7vj6FO/>.

⁷ Jay Stanley & Lauren Yu, *Surveillance, Profits, and the Police*, ACLU, at 5 (June 24, 2026), <https://assets.aclu.org/live/uploads/2026/06/ACLU-White-paper-Surveillance-Profits-and-the-Police-June-2026.pdf>.

⁸ Jay Stanley, *Flock’s Aggressive Expansions Go Far Beyond Simple Driver Surveillance*, ACLU (Aug. 18, 2025), <https://www.aclu.org/news/privacy-technology/tracking-alpr-cameras/flock-roundup>.

but also as the eyes of any law enforcement agent anywhere in the country who is granted access.

As the U.S. Supreme Court recently explained, “[a] new technology should not transform what individuals had reasonably thought they could withhold from the Government.” *Chatrie*, 146 S Ct at 2206-07. In assessing whether the government’s use of a certain technology threatens to “shrink the realm of guaranteed privacy,” *Kyllo v. United States*, 533 US 27, 34, 121 S Ct 2038, 150 L Ed 29 94 (2001), a court “must take account of more sophisticated systems that are already in use or in development,” *Carpenter*, 585 US at 313 (quoting *Kyllo*, 533 US at 36). Otherwise the law “would leave the homeowner at the mercy of advancing technology.” *Kyllo*, 533 US at 35.

II. Warrantless pole-camera surveillance of a person’s home violates the Oregon and U.S. Constitutions.

Amici respectfully contend that the “answer to the question of what police must do before” conducting pole-camera surveillance of a home is simple and familiar: “get a warrant.” See *Riley v. California*, 573 US 373, 403, 134 S Ct 2473, 189 L Ed 2d 430 (2014). This is true under the Fourth Amendment, and under Oregon’s Constitution, which provides even stronger protections.

Any other rule would fail to “secure the ‘privacies of life’ against the exercise of ‘arbitrary power.’” *Chatrie*, 146 S Ct at 2205 (quoting *Boyd v. United States*, 116 US 616, 630, 6 S Ct 524, 29 L Ed 746 (1886)). If pole-camera surveillance were not

a search, then police could blanket Oregon neighborhoods with these intrusive devices, constantly monitoring the comings and goings to and from every residence, tracking people’s most private activities at “any home, at any time, for any reason.” *Mora*, 150 NE 3d at 310. “In such a society, the traditional security of the home would be of little worth, and the associational and expressive freedoms it protects would be in peril.” *Id.*; accord *Jones*, 903 NW 2d at 113.

This Court should join the many state and federal courts that have recognized the intrusiveness of prolonged pole-camera surveillance and held that it was a search—even before the United States Supreme Court’s landmark decision in *Chatrue*, 146 S Ct 2193 (2026) (making clear that even short-term surveillance in one particular area can be a search). See, e.g., *Mora*, 150 NE 3d at 302; *Tafoya*, 494 P3d at 615 (Colo 2021); *Jones*, 903 NW 2d 101; *United States v. Cuevas-Sanchez*, 821 F2d 248 (5th Cir 1987); *United States v. Vargas*, No. CR-13-6025-EFS, 2014 WL 12982411, at *9 (ED Wash, Dec 15, 2014); *Shafer v. City of Boulder*, 896 F Supp 2d 915, 932 (D Nev 2012); see also *Moore-Bush*, 36 F 4th 320 (1st Cir 2022) (en banc) (Barron, C.J., concurring) (opinion for three members of equally divided six-member en banc court).⁹

⁹ Police in South Dakota have been required to obtain pole camera warrants since 2017, in Massachusetts since 2020, and in Colorado since 2021. *Jones*, 903 NW 2d 101; *Mora*, 150 NE 3d 297; *Tafoya*, 494 P3d 613. There is no sound reason why police operating in this state cannot do so as well. Nor is there reason to believe that abiding by constitutional requirements in these jurisdictions has undermined

A. Article I, Section 9, requires a warrant to conduct prolonged pole-camera surveillance of a home.

Around-the-clock pole-camera surveillance of a home is a search that, when conducted without a warrant, violates Article I, section 9, of the Oregon Constitution. *Cf. State v. Kennedy*, 295 Or 260, 262-65, 666 P 2d 1316 (1983) (explaining that this court decides state constitutional questions before deciding federal ones).

Article I, section 9, imposes “more stringent constraints than the federal constitution.” *State v. Lien/Wilverding*, 364 Or 750, 766, 441 P3d 185 (2019). It prohibits law enforcement behavior that “violate[s] the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search.” Or Const Art I, § 9. While the federal Fourth Amendment analysis often focuses on an individual’s expectation of privacy, “[r]ights under section 9 are defined not by the privacy one expects but by the privacy one has a right to expect *from the government*.” *State v. Tanner*, 304 Or 312, 321 n 7, 745 P 2d 757 (1987) (emphasis in original). As a result, the “primary focus” of a privacy inquiry under Article I, section 9, is the government’s conduct, rather than an individual’s expected level of privacy in society more broadly. *Simons*, 375 Or at 80.

law enforcement objectives. Particularly where prolonged surveillance is planned, there will rarely be any exigencies requiring immediate surveillance, and where there are genuine exigencies, the exigent circumstances exception would apply, as with all other searches.

This court has explained what that principle means in practice: “[T]he fundamental question underlying an Article I, section 9, challenge [is] * * * whether the government’s conduct, ‘if engaged in wholly at the discretion of the government, will significantly impair “the people’s” freedom from scrutiny.’” *Id.* (quoting *State v. Campbell*, 306 Or 157, 171, 759 P2d 1040, 1048 (1988)). This is measured by “social and legal norms of behavior.” *Id.*

By these measures, law enforcement engages in a search when it uses a pole camera to constantly surveil a home for a month. Oregonians’ “freedom from scrutiny,” *Campbell*, 306 Or at 171, is “significantly impair[ed],” *Simons*, 375 Or at 80, by the use of concealed, unblinking government eyes watching and recording them every time they step outside their home.

Constant surveillance impairs freedom from scrutiny in any context, but it is especially onerous at a home. Oregonians’ privacy interests are at their height in and around the home, because of the intimate nature of home life. *See, e.g., State v. Fair*, 353 Or 588, 600, 302 P3d 417 (2013). Other courts have aptly explained the scrutiny pole-camera surveillance of a home imposes: “If the home is a ‘castle,’ a home that is subject to continuous, targeted surveillance is a castle under siege. Although its walls may never be breached, its inhabitants certainly could not call themselves secure.” *Mora*, 150 NE 3d at 309; *see also Salaman*, 742 F Supp 3d at 230 (finding that a pole camera “burdens a person’s right to retreat to their home if the government

tracks their every entry and exit as well as all others whom they may invite to their home”).

The sheer volume of information that pole cameras capture and store, especially when paired with the level of detail they record, subjects individuals to government scrutiny in a way that was previously unthinkable. And the nature of the information is profoundly personal. In *Lien/Wilverding*, this Court held that the state violated Oregonians’ Article I, section 9, rights when its agents warrantlessly seized and searched defendants’ curbside household garbage, in part because garbage can reveal “financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests,” as well as “eating, reading, and recreational habits” and “intimate details about sexual practices, health, and personal hygiene.” 364 Or at 762, 782 (quoting *California v. Greenwood*, 486 US 35, 50, 108 S Ct 1625, 100 L Ed 2d 30 (1988) (Brennan, J., dissenting)). That is true of constant home surveillance, too, which as discussed above, can reveal private religious, romantic, and political details of a person’s life.

Social norms confirm that constant government video surveillance of Oregonians’ homes interferes with their privacy. In *Lien*, this Court emphasized that “most Oregonians would * * * deem it highly improper for others—curious neighbors, ex-spouses, employers, opponents in a lawsuit, journalists, and government officials, to name a few—to take away their garbage bin and scrutinize

its contents.” 364 Or at 761. The same principle applies here. It is safe to say that the typical Oregonian would strenuously object to a curious neighbor, an ex-spouse, or an employer filming their home twenty-four hours a day and every single day of the week, zooming and panning as convenient, and storing the data in perpetuity. Indeed, Oregonians have loudly and publicly criticized warrantless dragnet police surveillance in many contexts. For example, in 2025, Oregonians came out in droves to oppose expanded police drone usage.¹⁰ And over the last year, Oregonians have expressed outrage at law enforcement’s use of Flock’s automated license plate readers to monitor drivers, with at least nine Oregon cities and counties ending their Flock contracts, turning off their cameras, or deinstalling the camera systems entirely.¹¹

¹⁰ In 2025, a bill that would have expanded warrantless drone usage drew 1,101 testimony submissions throughout the legislative session, 98% of which were in opposition. *See* SB 238 Testimony, Oregon Legislature, <https://olis.oregonlegislature.gov/liz/2025R1/Measures/Testimony/SB238>; Report: Oregon’s 2025 Legislative Session at 6, ACLU of Oregon (Jul. 3, 2025), <https://www.aclu-or.org/publications/report-oregons-2025-legislative-session/>. The few testimonies submitted in support of the bill primarily came from law enforcement. The bill failed to pass but is expected to return, backed by the Eugene-based Law Enforcement Drone Association (LEDA) and companies like Flock, one of LEDA’s highest level funders.

¹¹ Amici are aware that Flock contracts and/or camera usage has been paused or ended in the counties of Benton, Josephine, Lane, and Washington, as well as the cities of Albany, Bend, Eugene, Springfield, Talent, Winston, and Woodburn. *See, e.g.*, Chris Lehman “Eugene and Springfield both announce end of Flock camera usage,” OPB (Dec. 6, 2025), <https://www.opb.org/article/2025/12/06/eugene-springfield-end-flock-cameras/>; Dianne Lugo, “Woodburn confirms removal of

The cases on which the Court of Appeals relied do not demonstrate that warrantless pole-camera surveillance of a home is permissible. *See State v. Lane*, 347 Or App 229, 232-33, 586 P3d 1276, *rev allowed*, 375 Or 395 (2026). It relied on *State v. Ainsworth*, which involved a helicopter flyover of a property, 310 Or 613, 615, 801 P2d 749 (1990); *State v. Wacker*, which involved use of a nighttime camera scope, 317 Or 419, 427, 856 P2d 1029 (1993); and *State v. Louis*, which involved use of a zoom lens, 296 Or 57, 61, 672 P2d 708 (1983). But in each of those cases, police used technology that they operated in person, and in real time, to aid their own time-bound, human observations. *See Ainsworth*, 310 Or at 615; *Wacker*, 317 Or at 427; *Louis*, 296 Or at 61. None of those cases involved technology that recorded perpetually and automatically, stored that footage indefinitely, and could readily be revisited and reviewed. An automated 24/7 recording of someone’s home for a month more significantly impairs their freedom from scrutiny than does an old-fashioned stakeout that is slightly augmented by technology. That distinction is

Flock license plate reader cameras,” Statesman Journal (June 24, 2026). Additionally, in the 2026 short legislative session, an amendment to a public safety bill that initially focused on pre-trial release permitted ALPR usage and data retention without a warrant even when completely unrelated to an ongoing court proceeding or criminal investigation. *See* SB 1516, Section 4(3)(a). The legislature passed this bill over hundreds of opposition testimonies submitted on a short timeline and with little notice. A decision from this court providing clear constitutional limits and ensuring the opportunity for judicial oversight is necessary, given the reality that police technology and surveillance laws will likely continue to be pushed through the legislative process.

enhanced when the captured video footage is used in connection with systems that employ facial recognition, contain large troves of location data, or engage in predictive behavior analyses.

This case is instead like *Campbell*, in which this court held that Article I, section 9, prohibited the warrantless placement of a radio transmitter on an individual's car. 306 Or at 172. The transmitter allowed "police to locate, with little delay" the car "from anywhere that [the transmitter's] signal can be received." *Id.* at 166. The court there rejected the argument that the Court of Appeals embraced in this case—that no search occurred because any member of the public could observe what police recorded: "The issue is not whether what the police learned by using the transmitter in this case was 'exposed to public view,' but whether using the transmitter is an action that can be characterized as a search." *Id.* at 167.

The answer to that question is a resounding "yes." The government scrutiny at issue here—unmanned, constant video surveillance capturing and indefinitely retaining weeks' worth of footage of a home—is a search. Like in *Campbell*, the device used here cannot be "equated with visual tracking." *Id.* at 171-72. While police could theoretically shift-cycle officers to constantly watch an individual suspect's home,¹² the limitations of memory, human biological needs and

¹² Even a first-year Portland police officer with no education or certifications costs \$84,052 per year in salary alone—not including benefits. *See Join PPB: Wages and Benefits*, <https://www.joinportlandpolice.com/wages-benefits/>. Officers work four

restrictions, visibility of the presence of a human being, and the decision *not* to prioritize finite human resources to engage in human-driven observation all differentiate the pole-camera surveillance here from visual tracking. Rather, just like in *Campbell*, “the government’s ability to scrutinize the affairs of ‘the people’ has been enhanced by technological and organizational developments” that were unforeseen at the time of the passage of Article I, section 9, or even at the time *Campbell* was decided in 1988. *Id.* at 171.

Just like the radio transmitter at issue in *Campbell*, a pole camera permits police to conserve human resources while constantly collecting data for a period of days (or weeks as in this case) about a person and their visitors, enabling the police to quickly locate, identify, and scrutinize them, all while being completely undetectable. That type of invasive information gathering about a person’s activities

shifts of ten hours per week. See *Join PPB: Frequently Asked Questions*, <https://www.joinportlandpolice.com/faq/#anchor-career-questions>. Thus, to ensure a home is being monitored by even just one, inexperienced officer (who takes no bathroom breaks and is never distracted) for a monthlong period would cost a *minimum* of \$29,416. *Cf. State v. Jones*, 903 NW 2d 101, 112 (S D 2017) (A pole camera “does not grow weary, or blink, or have family, friends, or other duties to draw its attention”). A standard pole camera, in contrast, might cost as little as \$200. See, e.g., Matthew Tokson, *Telephone Pole Cameras Under Fourth Amendment Law*, 83 Ohio St L J 977, 984 (2022) (identifying pole cameras sold for between \$200 and \$5,000, and explaining that once a law enforcement agency owns a pole camera, ongoing operational costs are low).

is a search because it requires Oregonians to “assume that they are the objects of government scrutiny” every time they come and go from their home. *Id.* at 172.

For similar reasons, the Court of Appeals’ invocation of doorbell cameras also missed the mark. *See State v. Lane*, 347 Or App at 236. The court “question[ed]” whether continuous government pole-camera surveillance violates social norms, in part because of “the proliferation of doorbell cameras, video recording features on smart phones, and other types of cameras.” *Id.* But the fact that people may choose to record *their own* actions on *their own* property does not mean they consent to have that property surveilled by anyone else. Buying a Ring doorbell camera for your own home is one thing; installing it in *your neighbor’s* doorbell would be something else entirely.

And however people use Ring cameras for their own purposes, there is no norm of law enforcement access to footage. *Cf. Lien/Wilverding*, 364 Or at 764 (societal practice of leaving garbage curbside did not translate to norm of police access). In fact, after Amazon aired a Super Bowl ad showing its Ring doorbell cameras using artificial intelligence to scan for a missing pet, there was so much backlash that the company cancelled its plan to partner with Flock—which would have facilitated the sharing of Ring doorbell footage with police.¹³

¹³ *See, e.g.,* Franco Faraudo, *Ring’s Surveillance Backlash Is a Warning Shot for Commercial Real Estate*, Propmodo (Feb. 18, 2026), <https://propmodo.com/rings->

Judicial oversight of pole-camera surveillance is particularly crucial in light of this court’s recognition that interpretations of Article I, section 9, must account for “technological and organizational developments” that enhance the “government’s ability to scrutinize the affairs of ‘the people.’” *Campbell*, 306 Or at 171. Because pole cameras allow officers to capture first and look later—including with the help of digital analytical tools—warrantless pole-camera surveillance of people’s homes in this technological day and age would “render privacy a historical footnote.” *Simons*, 375 Or at 82. The court should avoid such a dangerous result and hold that the Oregon Constitution requires police to obtain a warrant prior to mounting video cameras that surveil Oregonians’ homes around the clock.

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[surveillance-backlash-is-a-warning-shot-for-commercial-real-estate/](#); Trevor Hughes, *Why Are People Disconnecting or Destroying Their Ring Cameras?*, USA Today (Feb. 10, 2026), <https://www.usatoday.com/story/news/nation/2026/02/10/ring-super-bowl-ad-dog-camera-privacy/88606738007/>; Jay Stanley, *Flock Can Share Driver-Surveillance Data Even When Police Departments Opt Out, and Other Flock Developments*, ACLU (Oct. 24, 2025), <https://www.aclu.org/news/privacy-technology/tracking-alpr-cameras/flock-massachusetts-and-updates#:~:text=Flock%20teams%20with%20Amazon%E2%80%99s>; Jay Stanley, *Ring Superbowl Ad Shows Americans How Powerful Surveillance Systems Have Become, Freaks Them Out* (Feb. 13, 2026), <https://www.aclu.org/news/privacy-technology/tracking-alpr-cameras/doorbell-camera-video-search>.

B. The Fourth Amendment requires a warrant to conduct prolonged pole-camera surveillance of a home.

The “basic purpose” of the Fourth Amendment is “to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Chatrue*, 146 S Ct at 2204 (quoting *Carpenter*, 585 US at 303). “That purpose is central to decisions about whether a Fourth Amendment ‘search’ has occurred.” *Id.*

When a person “seeks to preserve something as private, and his expectation of privacy is one that society is prepared to recognize as reasonable, * * * official intrusion into that private sphere generally qualifies as a search.” *Carpenter*, 585 US at 304 (cleaned up). When the government uses or exploits emerging technologies, the analysis of whether a Fourth Amendment “search” occurred takes account of whether the government’s conduct threatens to disrupt the traditional “relationship between citizen and government in a way that is inimical to democratic society.” *Jones*, 565 US at 416 (Sotomayor, J., concurring) (cleaned up). Indeed, as “[s]ubtler and more far-reaching means of invading privacy have become available to the Government,” courts are “obligated * * * to ensure that the ‘progress of science’ does not erode Fourth Amendment protections.” *Chatrue*, 146 S Ct at 2217 (quoting *Carpenter*, 585 US at 320).

Before the advent of modern technologies, people’s expectations of privacy were shaped by the reality that “[t]raditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken.” *Jones*, 565 US at

429 (Alito, J., concurring in judgment). Advancements in technology can remove practical impediments to long-term surveillance, increasing the ability to evade detection and obtain previously unobtainable information. But the Supreme Court of the United States has repeatedly “rejected * * * mechanical interpretation” of older Fourth Amendment rules to cases involving “the power of technology to shrink the realm of guaranteed privacy.” *Kyllo*, 533 US at 34-35.

In order to ““assure[] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted,”” *Chatrle*, 146 S Ct at 2205 (quoting *Kyllo*, 533 US at 34), police must obtain a warrant before setting up a pole camera to constantly surveil a person’s home. The use of a pole camera to monitor everything that occurs at a particular residence—all the people who enter or exit the house at all times of day or night, every pattern of staying or leaving, and every object that goes into or out of the house—plainly constitutes “a too permeating police surveillance” that would have been unthinkable to the Founders. *See Chatrle*, 146 S Ct at 2204 (quoting *United States v. Di Re*, 332 US 581, 595, 68 S Ct 222, 92 L Ed 210 (1948)).

“Whatever the form of an attempted incursion, the Fourth Amendment protects Americans’ long-held conviction that no government official should have free access to the most closely kept aspects of their lives.” *Chatrle*, 146 S Ct at 2205. Just this year, in *Chatrle*, the Supreme Court of the United States held that police

conduct a search when they access cell phone location data, even for a limited period of time. 146 S Ct at 2199. The records at issue there—Location History from Google—“can determine a cell phone’s location within 20 meters.” *Id.* at 2200. The Court reasoned that Location History “allows police officers to reconstruct ‘retrospective[ly],’ and with no real effort, people’s comings and goings in any area.” *Id.* at 2208. “[W]herever a location of interest turns out to be (whether a crime scene or a protest march *or even a private home*), it has effectively been surveilled for * * * boundless time.” *Id.* (emphasis added). Thus, the Court held that obtaining two hours of Location History constitutes a Fourth Amendment search. *Id.* at 2215.

The United States Supreme Court’s analysis in *Chatrpie* makes clear that using a pole camera to track all of “people’s comings and goings” at a residence is a search. *See id.* at 2208. Like Location History, a pole camera ceaselessly “tracks and tracks,” *id.* at 2200–2201, allowing law enforcement to “target one-off events of potential interest” and “to see, in a given time block, who shows up,” *id.* at 2210. Pole cameras, like Location History, allow law enforcement “to chart the movements of many individuals—or a few or one—within the vicinity * * * at the ‘click of a button.’” *Id.* at 2208 (quoting *Carpenter*, 585 US at 311). Indeed, during the *Chatrpie* oral argument, even the government conceded that “‘tracking [someone] into a private residence’—yes, even for two hours—would ‘probably’ be a search.” *Id.* at 2212 (quoting Tr Of Oral Arg 98, 134). The Court rejected any notion of a

“Constitution-free zone” for short-term monitoring, as “[e]ven short-term monitoring’ of a person’s physical movements can provide ‘a wealth of detail about [his] familial, political, professional, religious, and sexual associations.’” *Chatrpie*, 146 S Ct at 2210 (quoting *Jones*, 565 US at 415 (opinion of Sotomayor, J.)). And “[t]he sweep of the official invasion is not made less because the government, with the benefit of hindsight, can pinpoint exactly which few hours of movements it wants to review.” *Id.* at 2210.

Moreover, the home stands at the “very core” of the Fourth Amendment’s protections. *Florida v. Jardines*, 569 US 1, 6, 133 S Ct 1409, 185 L Ed 2d 495 (2013). And the same protection extends to the home’s curtilage, which “harbors the intimate activity associated with the sanctity of a [person]’s home and the privacies of life.” *United States v. Dunn*, 480 US 294, 300, 94 L Ed 2d 326 (1987) (cleaned up) (quoting *Oliver v. United States*, 466 US 170, 180, 104 S Ct 1735, 80 L Ed 2d 214 (1984)); accord *Jardines*, 569 US at 6 (curtilage is “part of the home itself for Fourth Amendment purposes”). “[T]here exist no ‘semiprivate areas’ within the curtilage where governmental agents may roam from edge to edge.” *Bovatt v. Vermont*, 592 US 1031, 1035, 141 S Ct 22, 208 L Ed 2d 240 (2020) (Gorsuch, J., respecting the denial of certiorari) (discussing *Jardines*).

Even when considering technologies more rudimentary than pole cameras, the Supreme Court has recognized that their use to surveil a *home* would constitute a

search. In “a private residence,” the Supreme Court has held “even beeper technology to count as a search because it could reveal ‘whether a particular article—or a person, for that matter’ was in the home ‘at a particular time.’” *Chatrle*, 146 S Ct at 2211 (quoting *United States v. Karo*, 468 US 705, 716, 104 S Ct 3296, 82 L Ed 2d 530 (1984)). The Court in *Chatrle* reasoned that, because Location History “can far more reliably show someone within a home,” accessing Location History “must also be a search.” *Id.* at 2211. A pole camera can even *more* reliably show when someone is in a home.

Round-the-clock recording of one’s activity at the threshold of the home eviscerates the right “to dwell in reasonable security and freedom from surveillance.” *Chapman v. United States*, 365 US 610, 615, 81 S Ct 776, 5 L Ed 2d 828 (1961).

The weekslong pole-camera surveillance of the home here therefore constitutes a search under the Fourth Amendment. In order to maintain the proper equilibrium of privacy protections under the Fourth Amendment, law enforcement must get a warrant to conduct long-term pole-camera surveillance.

“Any reasonable person would feel it to be immensely invasive if they learned that the government had installed a camera to surveil their home 24/7 for weeks or months on end.” *United States v. Salaman*, 742 F Supp 3d 221, 231 (D Conn 2024). And “society expects that law enforcement’s continuous and covert video

observation and recording of an individual's front yard must be judicially approved.”
United States v. Vargas, No. CR-13-6025-EFS, 2014 WL 12982411, at *5 (E D Wash
Dec 15, 2014). This court should recognize that expectation, and hold that a warrant
is necessary to conduct such persistent, intrusive surveillance of a home.

CONCLUSION

For the above reasons, this court should hold that a warrant is required to
conduct prolonged pole-camera surveillance of a person's home.

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word count limitation in ORAP 5.05(1)(b)(ii)(A) and that the word count is 6,259.

I certify that the size of the type in this brief is not smaller than 14-point for both the text of the brief and footnotes as required in ORAP 5.05(1)(d)(ii).

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CERTIFICATE OF FILING AND SERVICE

I certify that on the 26th day of August, 2026, I filed the foregoing with the Appellate Court Administrator by electronic filing, and electronically served upon the following persons by using the court's electronic filing system:

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