

IN THE SUPREME COURT OF IOWA

STATE OF IOWA

Plaintiff-Appellee,

v.

CHARLES HOPWOOD

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR DES MOINES COUNTY
HONORABLE EMILY DEAN (MOTION TO SUPPRESS)
HONORABLE TY ROGERS (TRIAL AND SENTENCING)

**BRIEF OF AMICUS CURIAE
AMERICAN CIVIL LIBERTIES UNION OF IOWA
IN SUPPORT OF DEFENDANT-APPELLANT**

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STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Iowa (the ACLU of Iowa) was founded in 1935 and is the fifth-oldest state affiliate of the American Civil Liberties Union, a nationwide, nonprofit, nonpartisan organization made up of more than 500,000 members dedicated to the principles of liberty and equality. The ACLU of Iowa works in the courts, legislature, and through public education to defend and advance civil liberties and rights for all Iowans. The ACLU of Iowa has appeared both as direct counsel and as amicus curiae in cases before this Court, as well as the Eighth Circuit Court of Appeals and federal and state district courts, for over 90 years.

The ACLU of Iowa has long worked to safeguard the rights of Iowans guaranteed under the Fourth Amendment and the Iowa Constitution's article I, section 8, to be free from warrantless search and secure in the privacy of their persons and effects. For example, in March 2026, the ACLU of Iowa submitted an amicus brief in the Eighth Circuit case of *Uwazurike v. Jobes*, No. 25-3303 (8th Cir. appeal docketed Nov. 19, 2025), arguing against the warrantless collection of historical location data and advanced Fourth Amendment principles that the United States Supreme Court soon after reaffirmed in *Chatrue v. United States*, 146 S. Ct. 2193 (2026), a case cited by Appellant in his briefing. The ACLU of Iowa has consistently been a part of landmark and ongoing legal battles to ensure constitutional protections against search and seizure are not eroded by time, technology, or police misconduct. For all these reasons, the

proper resolution of this matter is of substantial interest to the ACLU of Iowa and its members.

RULE OF APPELLATE PROCEDURE 6.906(4)(d) STATEMENT

Neither party nor their counsel participated in the drafting of this brief, in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief. The drafting of this brief was performed pro bono publico.

ARGUMENT

In *United States v. Handley*, the Eighth Circuit recently recognized that a drug dog poking his snout through the open window of a vehicle to sniff is a search under the Fourth Amendment. 186 F.4th 563, 568 (8th Cir. 2026). Property-based protections of the Fourth Amendment proceed independently of privacy-based protections, such that a trespass to obtain information is a search regardless of whether it is an invasion of reasonable expectations of privacy. *See Chatrue v. United States*, 146 S. Ct. 2193, 2204–05, 2205 n.5 (2026) (holding the privacy-based approach to the Fourth Amendment supplements—not displaces—longstanding property-based approaches, though the two often align in result). That is why a free air, exterior dog sniff that involves neither a trespass nor an invasion of privacy has been held not to be a search under the Fourth Amendment, *Illinois v. Caballes*, 543 U.S. 405, 409 (2005), but a dog sniff crossing the plane of an open vehicle window or the curtilage of a home is. *Handley*, 186 F.4th at 568; *see also Florida v. Jardines*, 569 U.S. 1, 10–11 (2013) (holding search occurred when law enforcement “physically intrud[ed] on Jardines’ property to gather evidence”). “The test is objective” and simple: “all that matters is whether ‘the [g]overnment physically occupied private property for the purpose of obtaining information.’” *Handley*, 186 F.4th at 568 (quoting *United States v. Jones*, 565 U.S. 400, 404 (2012)).

Under this Court’s recent cases, *State v. Mumford*, 14 N.W.3d 346 (Iowa 2024), and *State v. Bauler*, 8 N.W.3d 892 (Iowa 2024), the outcome under the property-based approach to the Iowa Constitution’s article I, section 8 is far less simple. In *Mumford*,

this Court held that an interior dog sniff was “of no constitutional import” under the Iowa Constitution’s article I, section 8. *Mumford*, 14 N.W.3d at 353. These decisions contrast with the Court’s recent decision in *Wright* which reaffirmed and strengthened its own longstanding, independently derived property-based approach to article I, section 8. *State v. Wright*, 961 N.W.2d 396, 412–15 (Iowa 2021) (citing local ordinance as positive law basis to find no abandonment of property had occurred, holding warrant was required); *but see State v. Amble*, 22 N.W.3d 265, 273 (Iowa 2025) (recognizing the state legislature had subsequently superseded the local ordinance that underpinned *Wright*’s application of the constitutional principle to garbage placed curbside).

This case presents the opportunity to clarify the trespassory protections afforded by the Fourth Amendment and independently by article I, section 8 through the exclusionary rule. *See, e.g., State v. Burns*, 988 N.W.2d 352, 360 (Iowa 2023) (“[I]f a federal interpretation of the Fourth Amendment is not consistent with the text and history of section 8, we may conclude that the federal interpretation should not govern our interpretation of section 8.”); *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010) (“The degree to which we follow United States Supreme Court precedent, or any other precedent, depends solely upon its ability to persuade us with the reasoning of the decision.”); *State v. Cline*, 617 N.W.2d 277, 285 (Iowa 2000) (“[T]he court is free to interpret our constitution as providing *greater* protection for our citizens’ constitutional rights.”). In *Handley*, though a warrantless search occurred, the evidence was nevertheless admitted under the Fourth Amendment’s good faith exception to the

exclusionary rule. 186 F.4th at 570. Even though this Court has long since disavowed any such good-faith exception under article I, section 8, *Cline*, 617 N.W.2d at 293, *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601, 606 n.2 (Iowa 2001), the district court in this case appeared to interpret *Bauler/Mumford* as endorsing the exception under article I, section 8. (Ruling on Mot. to Supp., at 5–6 (D0019)). But as the Court has said before, no “principle of constitutional law” allows it to “elevate the goals of law enforcement above our citizens’ constitutional rights.” *Cline*, 617 N.W.2d at 293. This case provides the Court with an important opportunity to realign article I, section 8 analysis with these principles.

I. THE USE OF A DRUG DOG TO SNIFF THE INTERIOR OF A VEHICLE—EVEN MOMENTARILY—IS A SEARCH.

The Fourth Amendment is broad enough to protect both property and privacy. *Chatrue*, 146 S. Ct. at 2204–05. When the government invades either a reasonable expectation of privacy or a possessory interest in property to collect information, a search occurs; the privacy-based and trespass-based approaches are not mutually exclusive and they often align. *Id.* at 2205 n.5 (“And when such an alignment of the two approaches occurs, then all the better.”). This Court has also indicated it will preserve both interests under its independent interpretation of article I, section 8 of the Iowa Constitution. *See Amble*, 22 N.W.3d at 273–74 (considering constitutionality of trash pull under both property-based and privacy-based approaches).

A line of dog sniff cases, however, have misplaced privacy above property. As noted by the dissent in *Mumford*, a majority of this Court would have found a trespass-based search occurred when a K9 unit clambered upon the exterior of the vehicle. 14 N.W.3d at 361–62 (McDermott, J., dissenting); *Bauler*, 8 N.W.3d at 906 (plurality opinion) (“So we think Officer Rohmiller (both personally and via the dog) technically committed a common law trespass here. If *Wright* is applied, the dog sniff here does not survive.”); *id.* at 926–27 (McDermott, J., dissenting) (“When the police officer guided the dog to enable it to climb onto the side of the vehicle to sniff, the officer ‘intermeddled’ with Bauler’s personal property and thus committed a trespass to chattel.” (quoting Restatement (Second) of Torts § 217 cmt. *e*, at 419 (Am. L. Inst. 1965))). But, by rejecting the property-based challenge in an attempt to ensure it did not “subject Iowa law enforcement to two different standards of conduct, depending on whether the case has landed in federal or state court,” and in light of *Handley*, 186 F.4th at 568, exactly that has occurred. *Bauler*, 8 N.W.3d at 907 (plurality opinion).

In deciding this case, the Court should reaffirm the applicability of the property-based approach to search and seizure doctrine, including dog sniffs. This does not mean either the Fourth Amendment or article I, section 8 have foregone their privacy-based protections, but rather that the two proceed independently to provide the greatest protection possible against warrantless searches. In reaffirming the property-based approach, the Court should clarify what factors should be used to determine whether a trespassory search occurred. While positive law and founding-era common law each

have their respective role to play, ultimately the principles of article I, section 8 must govern.

A. The Constitutional Protections of Property, Privacy, and Security Reinforce One Another.

When the U.S. Supreme Court famously declared “the Fourth Amendment protects people, not places,” *Katz v. United States*, 389 U.S. 347, 351 (1967), and Justice Harlan wrote in his concurring opinion on the “constitutionally protected reasonable expectation of privacy,” *id.* at 360–61 (Harlan, J., concurring), the Court “did not abandon a property-rights theory, but instead added a component of privacy onto existing Fourth Amendment doctrine.” *Ochoa*, 792 N.W.2d at 276; *see Jones*, 565 U.S. at 409 (stating protections under “reasonable-expectation-of-privacy test [have] been *added to*, not *substituted for*, the common-law trespassory test”); *Soldal v. Cook County*, 506 U.S. 56, 64 (1992) (explaining “shift in emphasis” to privacy did not “snuff[] out the previously recognized protection for property”). Recent U.S. Supreme Court cases emphasize this historical “Fourth Amendment jurisprudence . . . was tied to common-law trespass.” *Jones*, 565 U.S. at 405.

Yet the Court has been equally emphatic that Fourth Amendment protections tied to reasonable expectations of privacy remain strong. *Id.* at 411 (refusing to “make trespass the exclusive test”); *see Carpenter v. United States*, 585 U.S. 296, 304 n.1 (2018) (noting the Court has “repeatedly emphasized that privacy interests do not rise or fall with property rights”). The dual approaches coexist and cover each other’s gaps; thus a

person has a constitutionally protected reasonable expectation of privacy in cell phone location information, even if their property rights in that information are unclear. *Chatrue*, 146 S. Ct. at 2214–15. While the Court has shown a renewed appreciation for property rights, they are a “baseline,” not a ceiling. *Jardines*, 569 U.S. at 11.

This Court, too, has placed a renewed emphasis on property in its article I, section 8 doctrine. *See Wright*, 961 N.W.2d at 412. At the same time, it recognizes that section 8 protects against intrusions upon people’s reasonable expectations of privacy. *See Burns*, 988 N.W.2d at 367 (explaining section 8 protects both property and privacy); *see also State v. Gaskins*, 866 N.W.2d 1, 16 (Iowa 2015) (“The protections of article I, section 8 against warrantless searches . . . are meant to protect individual citizens and their reasonable expectations of privacy.”); *Ochoa*, 792 N.W.2d at 274–75, 284–85 (discussing contemporaneous writings and early cases emphasizing security of private homes).

In short, under both the Fourth Amendment and article I, section 8, it is well-established that privacy rights did not displace property rights. *See Chatrue*, 146 S. Ct. at 2205 n.5 (noting “property law ‘naturally enough influence[s]’ our ‘shared societal expectations’ of what places and things count as private and should be free from governmental intrusion” (quoting *Georgia v. Randolph*, 547 U.S. 103, 111 (2006))); *Amble*, 22 N.W.3d at 273 (noting “positive law, such as a local ordinance, can define private property rights and thereby affect the constitutional analysis”). Each has their own

virtues, and the property-based approach has one that is very appealing: “it keeps easy cases easy.” *Jardines*, 569 U.S. at 11. This is, or should be, such a case.

B. The Trespassory Nature of Dog Sniffs Under the Property-Based Approach.

In this case, the State did not limit its use of the K9 unit to the free air on public property around the exterior of the vehicle; instead, the K9 unit was directed to jump upon the side of the truck to inspect the truck bed, before proceeding to the front of the driver’s side and jumping up once again to stick its head through the window and sniff the interior. (Appellant’s Br. at 11–14 (including images from law enforcement camera video admitted as Exhibits 1 through 3)). Because the truck was private property and the government occupied it for the purpose of gathering information, it was a search. *Handley*, 186 F.4th at 568. An easy case, easily decided under the property-based approach.

1. Privacy-Based and Property-Based Approaches to Dog Sniffs

The error in this case demonstrates the risk of treating jurisprudence governing the constitutional protection of privacy interests as supplanting that of property interests. This arises from overreading U.S. Supreme Court precedent applying a privacy-based approach to dog sniffing cases. In *Caballes*, the U.S. Supreme Court found the defendant could have no legitimate expectation of privacy in the possession of contraband, concluding “the use of a well-trained narcotics-detection dog—one that ‘does not expose noncontraband items that otherwise would remain hidden from public

view’—during a lawful traffic stop, generally does not implicate legitimate privacy interests.” 543 U.S. at 409 (citation omitted) (quoting *United States v. Place*, 462 U.S. 696, 707 (1983)). There is an understandable temptation to rely on this language and extend it. This is exactly the error of *United States v. Lyons*, where the Eighth Circuit held a K9 unit instinctively placing his head through the window of the vehicle to sniff was not a search because police had not directed the dog’s actions. 486 F.3d 367, 373 (8th Cir. 2007).

While the *Lyons* court did not actually mention privacy interests, the holding plainly grew from the *Caballes* Court’s rejection of a reasonable expectation of privacy in contraband. *Id.* at 374 (noting inevitability that K9 would follow the smell of contraband to its source). Crucially, however, in *Caballes*, the “the dog sniff was performed on the exterior of respondent’s car.” *Caballes*, 543 U.S. at 409. The government, through its instrumentality of the dog, did *not* intrude into the private space of the vehicle. 543 U.S. at 409; *United States v. Pulido–Ayala*, 892 F.3d 315, 318 (8th Cir. 2018) (“A drug dog is an instrumentality of the police, and the actions of ‘an instrument or agent’ of the government normally are governed by the Fourth Amendment.” (quoting *Skinner v. Ry. Lab. Execs.’ Ass’n*, 489 U.S. 602, 614 (1989))). By disregarding this critical factual distinction, the *Lyons* court applied a privacy-based approach when a property-based approach would have been appropriate.

The error was revealed by *Jones*. 565 U.S. at 409. In *Jones*, while the instrumentality was not a K9, but an electronic tracking device, a physical intrusion upon private

property for the purpose of obtaining information occurred. *Id.* at 404–05. Applying a property-based approach, the Court rejected the government’s premise that because Jones had no reasonable expectation of privacy in the vehicle no search occurred—which controlled the outcome in *Lyons*—“because Jones’s Fourth Amendment rights do not rise or fall with the *Katz* formulation.” *Jones*, 565 U.S. at 406.

Remaining questions about dog sniffs were resolved in *Jardines*. There, the Court concluded that a dog sniff conducted on the porch of the home was a search under the property-based approach. 569 U.S. at 7–10. Like in *Jones*, the expectation of privacy was unnecessary to consider. *Id.*; *Jones*, 565 U.S. at 406. What mattered was the physical intrusion for the purpose of obtaining information. *Jardines*, 569 U.S. at 10–11.

Thus, the inevitable repudiation of *Lyons* followed in *Handley*. 186 F.4th at 568. The Eighth Circuit, presented with substantially the same facts as in *Lyons*, had to reconsider it in light of the Court’s renewed emphasis on the property-based approach. *Id.* It found that *Lyons* did not “hold[] up.” *Id.* “Taken together, *Jones* and *Jardines* make clear that when the government, including its dogs, trespasses onto private property for the purpose of gathering information, a search occurs.” *Id.*

2. *Revisiting Bauler and Mumford*

In *Bauler*, this Court was presented with a dog sniff at the side of the vehicle. 8 N.W.3d at 896. A majority still held that for purposes of the Fourth Amendment, it was bound by *Caballes*’s allowance of roadside dog sniffs. *Id.* at 902; *but see id.* at 923–24

(Oxley, J., dissenting) (finding *Caballes* inapplicable to property-based Fourth Amendment violation). The Court has split on the question of how article I, section 8 protects privacy and property interests. The Court first split on whether the property-based approach applies at all to dog sniffs. *Compare id.* at 906 (plurality opinion) (finding property-based approach does not apply), *with id.* at 926 (McDermott, J., dissenting) (finding property-based approach applies). Then, members split on whether, under the property-based approach, an unreasonable search occurred. *Compare id.* at 906 (plurality opinion) (finding common law trespass occurred and constituted unreasonable search regardless of private right of action), *and id.* at 926–27 (McDermott, J., dissenting) (same), *with id.* at 911–13 (McDonald, J., specially concurring) (finding warrantless search permissible absent such a right of action).

In the follow-up *Mumford* case, the dog sniff again encroached on the car door, and now also involved sniffing through the open car window. 14 N.W.3d at 348–49. But the same result held. *Id.* at 352–53 (concluding “a drug dog’s momentary breach into the cabin of a vehicle through an open window of a legally stopped vehicle does not require suppression of evidence under either the Fourth Amendment or article I, section 8”).

The case presented by Appellant Hopwood is this Court’s *Handley* moment. Revisiting and reviewing the rationales underlying these splits in opinion, subsequent authority, including the *Handley* case itself, suggest the Court, like the Eighth Circuit, ought to take another look.

a. *Whether the Property-Based Approach Applies*

First, a plurality of this Court in *Bauler* distinguished *Jones*'s Fourth Amendment precedent on the basis that the tracker installed would not just reveal illegal, but also legal activity. 8 N.W.3d at 900. This was the same reason given for why *Wright*'s property-based approach should not apply under article I, section 8. *Id.* at 906. However, the controlling factor of *Caballes*—the ability of the search to reveal only contraband—is a privacy-based concept out of place in the property-based approach. *See Handley*, 186 F.4th at 568 (“[A]ll that matters is whether ‘the [g]overnment physically occupied private property for the purpose of obtaining information.’” (quoting *Jones*, 565 U.S. at 404)); *Bauler*, 8 N.W.3d at 915–18 (Oxley, J., dissenting) (“The fact that a drug dog can only detect contraband played no part in the [*Jones/Jardine*] Court’s analysis because the defendant’s expectations of privacy are simply irrelevant to *Jones*’s property-based approach.” (footnote omitted)).

In *Bauler*, much of the Court was also persuaded that the encroachment on the vehicle and, in *Mumford*, the interior sniff, were not “an extended physical occupation or physical intrusion akin to that in *Jones*.” *Bauler*, 8 N.W.3d at 900 (plurality opinion); *Mumford*, 14 N.W.3d at 353 (noting the “drug dog’s fleeting touch of the passenger door and *de minimis* intrusion into the vehicle cabin”). The U.S. Supreme Court has now given the response: the length of the intrusion has no relevance. *See Chatrpie*, 146 S. Ct. at 2210 (“We have never understood Fourth Amendment protections as kicking in only once an intrusion ‘goes too far.’ Where the Fourth Amendment applies, it applies—

regardless of ‘the quality or quantity of information’ the government obtains.” (citations omitted) (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) & *Kyllo v. United States*, 533 U.S. 27, 37 (2001)); see also *Bauler*, 8 N.W.3d at 916 (Oxley, J., dissenting) (noting “[t]he length of the surveillance” was not a distinguishing basis in *Jones*).

The *Bauler* Court also reasoned that dog sniffs were not around at the time of the drafters. *Bauler*, 8 N.W.3d at 907. But *Jones* itself rejected this argument when it came to GPS tracking devices. See *Jones*, 565 U.S. at 406 n.3 (stating it is “irrelevant whether there was an 18th-century analog” to an investigatory technique); see also *Kyllo*, 533 U.S. at 40 (use of thermal imaging device was a “search”). The task is, “*at a minimum*, . . . to decide whether the action in question would have constituted a ‘search’ within the original meaning of the Fourth Amendment,” meaning simply whether “the Government obtains information by physically intruding on a constitutionally protected area.” *Jones*, 565 U.S. at 406 n.3.¹

A final factor the Court relied on was that the dog sniff was of a vehicle, not a home. *Mumford*, 14 N.W.3d at 353; *Bauler*, 8 N.W.3d at 900–01. However, the Fourth

¹The Texas Court of Appeals considered a case with substantially similar facts, and persuasively rejected the argument that a drug dog’s intrusion into vehicle’s window “was not a search . . . because Appellee had no reasonable expectation of privacy in contraband,” as expectations of privacy are unnecessary under a property-based approach. *State v. Organ*, 726 S.W.3d 346, 363 (Tex. Ct. Crim. App. 2025). It reasoned that in addition to this language in *Jones*, there is also this guidance from older Supreme Court precedent: “[I]nherent Fourth Amendment rights are not inevitably measurable in terms of ancient niceties of tort or real property law,” but are “based upon the reality of an actual intrusion into a constitutionally protected area.” *Id.* at 362 (quoting *Silverman v. United States*, 365 U.S. 505, 511–12 (1961)).

Amendment and article I, section 8 share a key feature: they “‘indicate[] with some precision the places and things encompassed by its protections’: persons, houses, papers, and effects.” *Jardines*, 569 U.S. at 6 (quoting *Oliver v. United States*, 466 U.S. 170, 176 (1984)); see Iowa Const., art. I, § 8. Such is the limitation of the property-based approach; for example, investigations in “‘open fields’—even if those fields are privately owned” are permitted because they are not persons, houses, papers, or effects. *Jardines*, 569 U.S. at 6 (citing *Hester v. United States*, 265 U.S. 57, 59 (1924)). But if enumerated, the property should be protected. *Mumford*, 14 N.W.3d at 362 (McDermott, J., dissenting). Yes, the home, including its curtilage, is “first among equals.” *Jardines*, 569 U.S. at 6. But this heightens the protection due the home—it does not lessen the protection afforded to papers or effects. See *Jones*, 565 U.S. at 404 (“It is beyond dispute that a vehicle is an ‘effect’ as that term is used in the Amendment.”). And while there may be a “reduced expectation of privacy” in vehicles, *California v. Carney*, 471 U.S. 386, 393 (1985), that has no relevance to the property-based approach independent from privacy concerns. *Jones*, 565 U.S. at 406.

In summary, the applicability of the property-based approach is not limited to the ability of the intrusion to reveal legal or only illegal activity, the length of the intrusion, the presence or absence of an exact 18th-century analog to the instrumentality used to facilitate the intrusion, or whether the intrusion is into a home or a vehicle. It applies whenever the government, for the purpose of obtaining information, intrudes into a constitutionally protected space. *Handley*, 186 F.4th at 568.

b. Whether the Property-Based Approach is Limited by Positive Law

Having concluded the property-based approach applies, the next question is how best to apply it. *Wright* was controlled by the fact that officers committed a trespass by violating positive law—an anti-scavenging ordinance—to conduct the search. 961 N.W.2d at 416–17. However, the Court did not limit article I, section 8 to statutory violations, and explained that article I, section 8 sets a baseline protection against trespass. *Id.* at 417. The Court has applied both “positive law theory” and “trespass theory” theory in subsequent cases. *Burns*, 988 N.W.2d at 366 (finding no unreasonable search because officers did not violate statute); *id.* at 367 (finding officers did not commit a common law trespass, because property was abandoned).

This matters immensely now because, as the Court noted in *Bauler* and *Mumford*, touching a vehicle (or even putting a nose through the window) does not violate any statute. *See Mumford*, 14 N.W.3d at 353 (finding intrusion did not constitute “cognizable legal injury”); *Bauler*, 8 N.W.3d at 904 (“[T]here is no statute or ordinance that prohibits touching a car.”). It does, however, constitute a common law trespass. *See Bauler*, 8 N.W.3d at 905–06 (finding “intermeddling” by “intentionally bringing about a physical contact” constitutes a trespass to chattel (quoting Restatement (Second) of Torts § 217, at 417; *id.* § 217 cmt. *e*, at 419)).

Most recently, in *State v. Amble*, this Court explained that “positive law, such as a local ordinance, can define private property rights and thereby affect the constitutional analysis of whether a person’s papers and effects have been abandoned or not.” 22

N.W.3d at 273. Because a new statute expressly categorized property put out of for collection as abandoned, the positive law that in *Wright* was found to have created both a legal prohibition against the search and a reasonable expectation of privacy in the searched material, was preempted. *Id.* As stated there, “positive law can make a difference” to the finding of a search, particularly by discrediting a claim of reasonable expectation of privacy. *Id.* This is exactly what the U.S. Supreme Court in *Chatrue* was explaining when it articulated the frequent alignment of the property-based and privacy-based approaches. 146 S. Ct. at 2205 n.5.

That does not mean, however, that positive law can be written to sink a person’s constitutional rights below the minimum of property-based, common-law trespass. *See Wright*, 961 N.W.2d at 417 (“Article I, section 8 precludes a peace officer from engaging in general criminal investigation that constitutes a trespass against a citizen’s house, papers, or effects. *No department of the government can circumvent this constitutional minimum.*” (emphasis added)); *see also Jones*, 565 U.S. at 406 & n.3 (describing protection against common law trespass a “minimum” guarantee that “[a]t bottom” must be preserved under the Fourth Amendment). Otherwise, a hypothetical legislature, within its authority to “enact laws that modify the common law,” *Burnett v. Smith*, 990 N.W.2d 289, 305 (Iowa 2023), could seek to revive the reviled “general warrant.” *See Ochoa*, 792 N.W.2d at 287 (rejecting claim of authority to search that was similar to “the despised general warrant”). Positive law can influence the outcome, but a violation of positive law is not a prerequisite to unreasonableness.

With respect to common law trespass, neither is it necessary that the trespassed-upon individual would also have a cause of action—as a majority of this Court would have held, with considerable support. *Bauler*, 8 N.W.3d at 905–06 (plurality opinion); *id.* at 927 (McDermott, J., dissenting); *see also State v. Dorff*, 526 P.3d 988, 996 (Idaho 2023) (“[W]hether a ‘trespass’ was *actionable* in the absence of damages at common law is beside the point . . . under the Fourth Amendment.”); Restatement (Second) of Torts § 217 cmt. *a*, at 417 (stating a trespass need not be actionable to have effects). Indeed, the property-based approach does not require a lengthy historical analysis. *See Wright*, 961 N.W.2d at 427–28 (Appel, J., concurring) (noting historical inquiry is often difficult to undertake and does not always provide clear answers); *see also Bauler*, 8 N.W.3d at 912 (noting law enforcement is “not charged with knowing and complying with the common law of England”); *Organ*, 726 S.W.3d at 362 (holding what matters is a physical intrusion, not the technicality of trespass law). The rule laid out by the property-based approach of the Fourth Amendment and article I, section 8 is entirely in line with its goal of “keep[ing] easy cases easy.” *Jardines*, 569 U.S. at 11. As stated by the Eighth Circuit: “The test is objective—all that matters is whether ‘the [g]overnment physically occupied private property for the purpose of obtaining information.’” *Handley*, 186 F.4th at 568 (quoting *Jones*, 565 U.S. at 404).

As a final point, the Court’s important caution to avoid, when possible, subjecting “Iowa law enforcement to two different standards of conduct, depending on whether the case has landed in federal or state court,” *Bauler*, 8 N.W.3d at 907, also

supports reforming the Court’s Fourth Amendment and article I, section 8 case law with respect to vehicle dog sniffs. The Eighth Circuit’s *Handley* case began in the Northern District of Iowa, and while the evidence was permitted under the Fourth Amendment’s good-faith exception because *Lyons* had not yet been explicitly overruled, it now has. 186 F.4th at 568–70. Law enforcement officers in Iowa can no longer reasonably rely on *Lyons*’s permissiveness toward “the instinctive actions of a trained canine.” *Id.* at 569–70. It would be unreasonable—and confusing—for them to rely instead upon *Bauler*’s conclusion that the property-based approach of *Wright* “does not apply to dog sniffs.” 8 N.W.3d at 906.

II. THE IOWA CONSTITUTION’S ARTICLE I, SECTION 8, REQUIRES SUPPRESSION OF THE EVIDENCE OBTAINED THROUGH THE SNIFF.

This leaves a final question: what remedy is appropriate? Ordinarily, exclusion of the evidence applies in criminal cases. *See State v. McMickle*, 3 N.W.3d 518, 521 (Iowa 2024) (“The ‘exclusionary rule requires the suppression of evidence discovered as a result of illegal government activity.’” (quoting *State v. Watts*, 801 N.W.2d 845, 853 (Iowa 2011))). But in *Handley* and *Mumford*, that was not the result. *Handley*, 186 F.4th at 570; *Mumford*, 14 N.W.3d at 353. In *Handley*, the Eighth Circuit excused the officer’s conduct and admitted the evidence because, under *Lyons*, they had no reason to suspect that allowing the K9 unit to go through open windows was a problem. 186 F.4th at 570. In *Mumford*, for purposes of the Fourth Amendment, this Court similarly found the officers reasonably were conducting an exterior search pursuant to *Caballes*, and that the

K9 unit's actions past that point would not justify exclusion, citing the now-overruled *Lyons*. 14 N.W.3d at 353. One dissenting opinion disagreed on whether the good-faith exception to the Fourth Amendment applied. *Id.* at 360 (Oxley, J., dissenting). Another dissenting opinion argued that “no matter what the result under the Fourth Amendment, the good-faith exception clearly has no bearing on Mumford’s challenge under article I, section 8.” *Id.* at 363 (McDermott, J., dissenting).

But as discussed below, whether the property-based protections of article I, section 8 are employed by the courts should not depend on the severity of the trespass. *See, e.g., Chatrie*, 146 S. Ct. at 2210 (“Where the Fourth Amendment applies, it applies . . .”). Such an exception gives permission to violate article I, section 8 under the property-based approach, inconsistently with its principles.

**A. The Exclusionary Rule Protects the Integrity of the Courts,
Deters Police Misconduct, and Serves as a Remedy for Violations.**

This Court’s precedents answer both any hesitance to exercise the remedy offered by the exclusionary rule when the officer’s conduct may seem reasonable, *see, e.g., Bauler*, 8 N.W.3d at 906, and questions as to the exclusionary rule as a constitutional concept, *see Burns*, 988 N.W.2d at 376 (McDonald, J., concurring) (finding the exclusionary rule “is legal fiction”).

In *State v. Cline*, this Court traced the development of the exclusionary rule under both federal and Iowa caselaw. 617 N.W.2d at 283–88. With respect to the Fourth Amendment, the Court emphasized that while the exclusionary rule as a remedy was

not adopted until 1914 in *Weeks v. United States*, the rule itself was one found inherently in the Fourth Amendment’s guarantee of security against government intrusion. 232 U.S. 383, 384 (1914); see *Mapp v. Ohio*, 367 U.S. 643, 660 (1961) (noting the exclusionary rule “gives to the individual no more than that which the Constitution guarantees him”); *Weeks*, 232 U.S. at 393 (“If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.”); see also Thomas K. Clancy, *The Fourth Amendment’s Exclusionary Rule as a Constitutional Right*, 10 Ohio St. J. Crim. L. 357, 359–61 (2013) (“This view—that the exclusionary rule was constitutionally based—prevailed, unchallenged, for many years. Indeed, there was no dissent from that view.” (footnote omitted)). And this Court criticized the U.S. Supreme Court for having “distanced itself from these early cases.” *Cline*, 617 N.W.2d at 284. This Court noted that the U.S. Supreme Court’s adoption of a “good faith exception” was linked to the belief that the exclusionary rule is intended for—and limited by—its ability to deter law enforcement misconduct. See *id.* (“Accordingly, . . . when the Court considered whether a good faith exception to the exclusionary rule should be adopted, it started with the premise that the rule’s application should be limited to those situations in which it accomplished its deterrent effect.”).

This Court did not share this belief. The Court noted its role in “preserv[ing] the spirit of Iowa’s constitutional guarantee.” *Id.* at 285. This Court’s early cases embraced this obligation, being among the first to adopt the exclusionary rule (prior even than the U.S. Supreme Court in *Weeks*). *See id.*; *Reifsnyder v. Lee*, 44 Iowa 101, 102 (1876). The Court did so wholeheartedly, assuring a “broad and liberal interpretation [of the exclusionary rule] for the purpose of preserving the spirit of constitutional liberty.” *State v. Height*, 91 N.W. 935, 938 (Iowa 1902). Under article I, section 8, the exclusionary rule must be applied, for if the evidence were permitted, it would “emasculate the constitutional guaranty, and deprive it of all beneficial force or effect in preventing unreasonable searches and seizures.” *State v. Sheridan*, 96 N.W. 730, 731 (Iowa 1903).

Of course, there was a time in this Court’s history where the rule, as in so many other states, had fallen out of fashion. *See State v. Tonn*, 191 N.W. 530, 535–36 (Iowa 1923) (discarding the exclusionary rule and citing the “overwhelming weight of authority” from other states). Even when adopted again following *Mapp*, the Court’s “lockstep” era ensured the rule tracked the U.S. Supreme Court’s understanding. *See Cline*, 617 N.W.2d at 287 (noting Iowa did not have a state exclusionary rule until *Mapp*, and on the “few occasions to engage in an independent analysis” since, had “primarily quoted from and relied on decisions of the United States Supreme Court”). That ended in *Cline*.

In *Cline*, this Court revived its early precedent and held “the rule serves a purpose greater than simply deterring police misconduct.” *Id.* at 289. It also provides a remedy

for constitutional violations and protects the integrity of the courts. *See id.* Subsequent developments support these findings. For example, empirical research has confirmed “strong evidence that the exclusionary rule promotes judicial integrity, compared to the alternative of admitting illegally obtained evidence.” Matthew D. Kim, *The Exclusionary Rule and Judicial Integrity: An Empirical Study of Public Perceptions of the Exclusionary Rule*, 87 Mo. L. Rev. 1061, 1099 (2022) (finding 62.47 percent confidence in American courts when applying the exclusionary rule, compared to 46.49 percent confidence when not).

Meanwhile, the need for a remedy remains. For example, this Court has recently entertained and ultimately rejected the concept of a damages-based approach to “constitutional torts.” *See Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017), *overruled by Burnett*, 990 N.W.2d 289. It has similarly confronted its precedent on the common law doctrine of sovereign immunity and confirmed the ability of individual state employees to assert its protections. *Sikora v. State*, 23 N.W.3d 300, 304, 306 (Iowa 2025). Thus, the exclusionary rule is as essential to remedying violations of article I, section 8 as it was at the time it was first employed. *See Cline*, 617 N.W.2d at 291 (“There is simply no meaningful remedy available to one who has suffered an illegal search other than prohibiting the State from benefiting from its constitutional violation.”).

B. The Iowa Constitution Is Incompatible with an Exception for “Fleeting,” “De Minimis,” or “Brief” Searches.

The final lesson from *Cline* is its rejection of the good-faith exception to the exclusionary rule. As this Court stated then, “The reasonableness of a police officer’s

belief that the illegal search is lawful does not lessen the constitutional violation.” 617 N.W.2d at 292. Therefore, “the good faith exception is incompatible with the Iowa Constitution.” *Id.* at 292–93.

In *Handley*, the good-faith exception excused the warrantless search. 186 F.4th at 570. In *Bauler/Mumford*, the same result was achieved by an exception to the property-based search doctrine itself. *Mumford*, 14 N.W.3d at 353–54; *Bauler*, 8 N.W.3d at 906. And in Appellant Hopwood’s case, the results were, understandably, conflated, as despite the Appellant having made a challenge under the Iowa Constitution, the district court understood *Bauler* to permit the evidence because “Luna’s actions in touching the vehicle did not result from deliberate, reckless, or grossly negligent conduct by law enforcement.” (Ruling on Mot. to Supp., at 6 (D0019)).

This jurisprudential confusion must be clarified and corrected. Whether characterized as an exception from the property-based approach or from the exclusionary rule, an exception is “incompatible with the Iowa Constitution.” *Cline*, 617 N.W.2d at 292. Where article I, section 8 applies, so too does its remedy in criminal cases.

CONCLUSION

It appears undisputed in Appellant Hopwood’s case that the state, through its K9 unit, physically intruded into Appellant Hopwood’s vehicle for the purpose of obtaining information. Under the U.S. Supreme Court’s precedent and this Court’s

precedent—excepting *Bauler* and *Mumford*—that reality requires the exclusion of the evidence.

CERTIFICATE OF COST

I hereby certify the cost of printing this brief was \$0.00, paid in full by the ACLU
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I hereby certify that on September 22, 2026, a copy of the foregoing was served on all parties, through counsel, by EDMS.

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