

# A Case for Restricting Routine Vehicle Roadblocks in Iowa

*Joshua Winters\**

*ABSTRACT: Iowa law enforcement agencies use routine vehicle roadblocks for a variety of purposes, some of which should no longer be permitted. This Note examines the history of Fourth Amendment analysis and the pertinent caselaw validating the use of routine vehicle roadblocks as a policing tactic. It further explores the use of routine vehicle roadblocks in Iowa and the relationship between Iowa’s courts and legislature on the matter. It presents data gathered from newspaper articles across the state to shed light on the issue. Further, this Note argues that the accessible data shows that the current construction of Iowa Code section 321K.1 is not restrictive enough to appropriately balance the interests of individuals and society. Thus, the Iowa Legislature should amend the first subsection of Iowa Code section 321K.1 to appropriately balance these interests.*

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\* J.D. Candidate, The University of Iowa College of Law, 2023; B.A., Briar Cliff University, 2014.

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INTRODUCTION

Imagine on the way to pick up your daughter from afterschool care you pass a sign that indicates “safety checkpoint ahead” and that “all vehicles must stop.” As you proceed, you are stopped by a law enforcement officer who instructs you to get in line so the officers can conduct a safety check of your vehicle. You heed the instructions and wait to be examined, hoping not to be held up longer than necessary. After a few minutes you hear an officer tell you to pull ahead into an open parking spot. When you park, an officer approaches your window and demands to inspect your license and registration. While

fetching the registration papers from your glove box, you see another officer walking around the passenger side of your vehicle with a trained narcotics K-9 performing a drug sniff. The officer asks if you have been drinking today and asks if you have any illegal substances in the vehicle. To show you have nothing to hide, you consent to a further search, and the officers look through your entire vehicle. Following the search through your child's toy bag and elsewhere, the officers tell you they could not find anything . . . *this time*.

Although this situation may seem like a “hallmark of regimes far different from ours,”<sup>1</sup> it is legal in Iowa. Both the U.S. and Iowa Supreme Courts justify routine vehicle roadblocks, as they do many administrative searches, by prioritizing the goals of “collective security” over an individual’s right to be secure.<sup>2</sup> To promote the interests of the state, namely, “highway safety,”<sup>3</sup> law enforcement agencies are permitted to conduct routine vehicle roadblocks like the one illustrated above.<sup>4</sup> The theory is that indiscriminately seizing and inspecting law-abiding citizens makes motorways safer. An unproven increase in roadway safety is not worth indiscriminately seizing and inspecting hundreds, and in some cases, thousands,<sup>5</sup> of unsuspecting individuals in a matter of hours.

This Note argues that the Iowa Legislature should restrict the use of routine vehicle roadblocks by revising Iowa Code section 321K.1(1)(a)–(d).<sup>6</sup> That section of the code permits law enforcement to seize and inspect law-abiding citizens while checking drivers licenses, vehicle registrations, vehicle safety equipment, and compliance with fish and game laws.<sup>7</sup> Part I of this Note briefly discusses the Fourth Amendment and its interpretation, which is fundamental to understanding the issue of routine vehicle roadblocks. Part II details the development of routine vehicle roadblock precedent and statutory law in Iowa. Part III explains how law enforcement agencies use routine vehicle roadblocks in Iowa as understood from publicly available data. Part IV considers why the U.S. Supreme Court’s analysis of routine vehicle roadblocks is problematic. It further contemplates why the Iowa Supreme Court’s analysis is unsatisfactory and expresses concern over the improbability of finding a routine vehicle roadblock illegal in the future. Finally, Part V provides a solution designed to limit the use of routine vehicle roadblocks by law enforcement agencies in Iowa through the Iowa Legislature.

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1. Mich. Dep’t of State Police v. Sitz, 496 U.S. 444, 468–69 (1990) (Stevens, J., dissenting).

2. Thomas K. Clancy, *The Fourth Amendment Right as a Collective Right*, 43 TEX. TECH L. REV. 255, 279–80 (2010). See generally State v. Day, 528 N.W.2d 100 (Iowa 1995) (upholding the use of a routine vehicle roadblock); State v. Loyd, 530 N.W.2d 708 (Iowa 1995) (also upholding the use of a routine vehicle roadblock).

3. Sitz, 496 U.S. at 467 (Stevens, J., dissenting).

4. See Clancy, *supra* note 2, at 279–80.

5. See Laura Bird, *203 Warnings, 74 Citations Issued at Checkpoint*, GLOBE GAZETTE (Mason City, Iowa), Aug. 7, 2011, NewsBank.

6. IOWA CODE § 321K.1(1)(a)–(d) (2022).

7. *Id.*

## I. ROUTINE VEHICLE ROADBLOCKS UNDER THE FOURTH AMENDMENT

This Part discusses the development of search and seizure law in the United States as it pertains to routine vehicle roadblocks. As a brief introduction, this Part explains how routine vehicle roadblocks became lawful in the United States. The first Section is dedicated to illuminating the development of the Fourth Amendment as it pertains to this Note. As discussed further below, this history will likely become more pertinent in future search and seizure jurisprudence in Iowa.<sup>8</sup> The second Section contemplates how the reasonableness test has shaped federal routine vehicle roadblock jurisprudence.

### A. THE HISTORICAL AND TEXTUAL COMPOSITION OF THE FOURTH AMENDMENT

This Section focuses briefly on the development and text of the Fourth Amendment. The first Subsection provides the reader with a cursory understanding of the historical context which shaped the amendment. The second Subsection explains that a “seizure” encompasses the stopping of a vehicle at a routine vehicle roadblock. The third Subsection sheds light on the theoretical evolution in “unreasonableness” interpretation prior to its use in the routine vehicle roadblock context.

#### 1. The Fountainhead of the Fourth Amendment

The Fourth Amendment to the U.S. Constitution provides, in relevant part, that the people have a right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”<sup>9</sup> Search and seizure law has a deep and abiding history stretching back to English law.<sup>10</sup> In colonial history, general writs of assistance<sup>11</sup> were issued by colonial courts to customs officials in American port cities.<sup>12</sup> These general writs of assistance allowed customs agents “to search houses, vessels, warehouses, shops, and all other places for uncustomed goods.”<sup>13</sup> Customs agents used them “in a largely

8. See *infra* Section II.D.

9. U.S. CONST. amend. IV.

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 person or things to be seized.

*Id.*

10. See WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 1.1(a) (6th ed. 2020).

11. “The general writs of assistance were so named because the customs officials to whom they were issued ‘possessed the legal authority to command the assistance of a peace officer and the assistance, if necessary, of all nearby subjects, in [their] execution of the writ.’” PHILLIP A. HUBBART, MAKING SENSE OF SEARCH AND SEIZURE LAW: A FOURTH AMENDMENT HANDBOOK 24 (2d ed. 2015) (alteration in original) (quoting LEONARD LEVY, ORIGINS OF THE BILL OF RIGHTS 156 (reprt. 2001)).

12. *Id.* at 23.

13. *Id.*

unsuccessful effort to enforce these import duties by ostensibly helping crown officials locate uncustomed goods that had been smuggled into the colonies.”<sup>14</sup> The approval and issuance of general writs of assistance required “[n]o evidentiary showing” and no specific description of the place agents would search or the things or persons they planned to seize.<sup>15</sup> In essence, general writs of assistance were a formality and provided colonists little protection against government officials’ search of property.<sup>16</sup>

Colonists held deep resentment toward the British over this continued invasion of their shops, vessels, and homes.<sup>17</sup> Some say such general writs were “one of the leading causes of the American Revolution.”<sup>18</sup> Post-Revolutionary War, the Fourth Amendment was adopted “to end the abuse of general exploratory searches wrought by the general writs of assistance regime by constitutionalizing the special writs or special warrants practice of the common law.”<sup>19</sup> However, the Framers were not merely concerned with the abuse of general warrants; their “bedrock concern” was the right to privacy.<sup>20</sup> This “sacred right” to privacy was not restricted to their homes but extended to “their persons, businesses, and other private premises.”<sup>21</sup>

14. *Id.*

15. *Id.* An example of a general writ of assistance, issued by Chief Justice Thomas Hutchinson to Charles Paxton, a Boston customs officer, (1761) provides in relevant part:

Therefore we strictly Injoin and Command you and every one of you that, all excuses apart, you and every one of you permit the said Charles Paxton . . . as well by night as by day from time to time to enter and go on board any Ship Boat or other Vessel riding lying or being within or coming to the said Port of Boston . . . then and there found to search and oversee . . . and also . . . in the day time to enter and go into the vaults cellars warehouses shops and other places where any prohibited goods wares or merchandizes or goods wares or merchandizes for which the customs or other duties shall not have been duly and truly satisfied . . . to inspect and oversee and search for the said goods wares and merchandizes . . .

*Id.* at 407–08 (emphasis omitted) (quoting 2 LEGAL PAPERS OF JOHN ADAMS 144–47 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965)). Note the difference in today’s warrant requirement, which demands (1) “probable cause, supported by Oath,” and (2) particularity of a place or person to be seized. U.S. CONST. amend. IV.

16. HUBBART, *supra* note 11, at 24. Interestingly, general writs of assistance, once issued, were valid until six months after the death of whichever king occupied the throne at time of issuance. *Id.* at 26.

17. *See id.* at 24 n.7 (quoting LEVY, *supra* note 11, at 150).

18. *Id.* (“British attempts to enforce tax measures by general searches also occasioned deeply felt resentments that damaged relations between England and the American colonies and provoked anxious concerns that later sought expression in the Fourth Amendment.” (quoting LEVY, *supra* note 11, at 150)).

19. *Id.* at 77. Another reason cited by the author is “to empower the federal courts to enforce the Fourth Amendment as a legal guarantee.” *Id.*

20. WILLIAM J. CUDDIHY, THE FOURTH AMENDMENT: ORIGINS AND ORIGINAL MEANING 602–1791, at 766 (2009).

21. HUBBART, *supra* note 11, at 79.

## 2. Seizure of Persons

The first phrase of the Fourth Amendment protects “persons, houses, papers, and effects against unreasonable . . . seizures.”<sup>22</sup> The Framers envisioned the seizure of persons as including only an arrest of an individual.<sup>23</sup> However, what constitutes a seizure has evolved in the last two hundred years.<sup>24</sup> Now, “seizures” encompass a much lesser degree of government restraint on individual movement than a full arrest.<sup>25</sup>

The evolution likely began in 1968 with *Terry v. Ohio*, where a police officer suspected three men of planning to commit a crime, one of which was Terry.<sup>26</sup> The officer confronted the three men, which ultimately led the officer to confront Terry and pat down the outside of his clothes in search of a weapon.<sup>27</sup> Although the Court upheld the search and seizure as reasonable, the Court clarified the understanding of seizure, reasoning that Terry was seized because “whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.”<sup>28</sup> Thus, to constitute a seizure, a full arrest is unnecessary.<sup>29</sup>

The Court further clarified the scope of seizures in *California v. Hodari D.* in 1991.<sup>30</sup> The Court provided that a seizure “requires *either* physical force . . . *or*, where that is absent, *submission* to [an] assertion of authority.”<sup>31</sup> In either case, two elements must be present to establish a seizure.<sup>32</sup> In the physical touch context, there must be physical contact and an objective intent of the law enforcement agent to seize the individual.<sup>33</sup> Additionally, a seizure occurs if there is “a show of authority and submission.”<sup>34</sup> For example, under the show

22. U.S. CONST. amend. IV (emphasis added).

23. See Clancy, *supra* note 2, at 264.

24. See *id.*

25. See *id.* at 263–70 (discussing the development of seizure analysis).

26. See *Terry v. Ohio*, 392 U.S. 1, 5–8 (1968).

27. See *id.* at 6–8.

28. *Id.* at 16, 30; see Clancy, *supra* note 2, at 264.

29. *Terry*, 392 U.S. at 16.

30. *California v. Hodari D.*, 499 U.S. 621, 625–27 (1991).

31. *Id.* at 626.

32. See Clancy, *supra* note 2, at 265.

33. *Id.* at 265. Fourth Amendment seizures can occur in a variety of situations, such as:

when police physically detain a person for the purpose of ascertaining the person’s identity, or intentionally shoot and hit a fleeing suspect, or intentionally set up and physically stop a fleeing suspect in a vehicle that crashes into a police roadblock; or ramming a police car into a vehicle fleeing from police in order [to] terminate the fleeing vehicle’s freedom of movement.

HUBBART, *supra* note 11, at 125 (footnotes omitted) (first citing *Brown v. Texas*, 443 U.S. 47 (1979); then citing *Tennessee v. Garner*, 471 U.S. 1 (1985); then citing *Brower v. County of Inyo*, 489 U.S. 593 (1989); and then citing *Scott v. Harris*, 550 U.S. 372 (2007)).

34. Clancy, *supra* note 2, at 265 (citing THOMAS K. CLANCY, *THE FOURTH AMENDMENT: ITS HISTORY AND INTERPRETATION* § 5.1.4 (2008)).

of authority test, a Fourth Amendment seizure of the person transpires whenever “police direct an automobile to stop at a highway checkpoint or roadblock, the driver complies and does not turn around or attempt to leave the area.”<sup>35</sup>

### 3. Defining Unreasonableness

The first clause of the Fourth Amendment only protects against *unreasonable* seizures.<sup>36</sup> The initial decision to seize as well as the seizure’s scope are measured by reasonableness.<sup>37</sup> At the time of the drafting of the Fourth Amendment, the reasonableness of a search or seizure was connected to the common law tort of trespass.<sup>38</sup>

In 1886, the U.S. Supreme Court in *Boyd v. United States* began interpreting the Fourth Amendment through the lens of property rights, which became known as the trespass theory.<sup>39</sup> In that case, Boyd contested a statute, which essentially compelled production of inculpatory evidence, as a violation of the Fourth Amendment.<sup>40</sup> The Court held that the forced production of papers was an unreasonable search and seizure.<sup>41</sup> The Court reasoned that unlike stolen goods or untaxed property, which the government was entitled to possess, the government was not entitled to possess Boyd’s personal papers.<sup>42</sup> The reasoning in that case was “premised on whether the government had a superior interest in the thing to be searched or seized.”<sup>43</sup> Later, the Court “readily permitted an intrusion when the government or another party had a superior property interest in the object.”<sup>44</sup> Thus, the reasonableness of a search or seizure was determined in part by who held superior property rights. The analysis of “reasonableness” changed drastically beginning in the 1960s, when the U.S. Supreme Court began using additional reasonableness frameworks.<sup>45</sup>

35. HUBBART, *supra* note 11, at 127 (first citing *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444 (1990); then citing *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); and then citing *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)) (recognizing a routine vehicle roadblock as a seizure).

36. U.S. CONST. amend. IV.

37. THOMAS K. CLANCY, *THE FOURTH AMENDMENT: ITS HISTORY AND INTERPRETATION* 676 (3d. ed. 2017).

38. *See* Clancy, *supra* note 2, at 259–60.

39. *See* *Boyd v. United States*, 116 U.S. 616, 627–28 (1886).

40. *See id.* at 621–22.

41. *See id.* at 638.

42. *See id.* at 623–24.

43. CLANCY, *supra* note 37, at 680.

44. *Id.* (first citing *Davis v. United States*, 328 U.S. 582, 588–89 (1946); then citing *United States v. Jeffers*, 342 U.S. 48, 53–54 (1951); then citing *Harris v. United States*, 331 U.S. 145, 154 (1947), *overruled by* *Chimel v. California*, 395 U.S. 752 (1969); and then citing *Carroll v. United States*, 267 U.S. 132, 143 (1925)).

45. From 1791 to 2014, the U.S. Supreme Court decided a total of 433 cases on matters concerning the Fourth Amendment. *See* HUBBART, *supra* note 11, at 13 & n.46. Hubbard notes that

One such framework is a reasonableness balancing test, which courts use to “balanc[e] the degree of the intrusion into personal privacy or security represented by the search or seizure in question as against the gravity of the governmental need for such action, together with some showing indicating that such search or seizure is not arbitrary in nature.”<sup>46</sup> In *Camara v. Municipal Court of City and County of San Francisco*, the Court used this balancing test to “validate[] the issuance of search warrants to inspect residences for health, fire, and housing code violations on an area-wide basis, rejecting any requirement of individualized suspicion for believing that violations existed at a particular building.”<sup>47</sup> This standard was utilized a year later in *Terry*<sup>48</sup> in determining whether the officer’s conduct in searching Terry was reasonable.<sup>49</sup> Finally, the test was applied to seizures in *United States v. Brignoni-Ponce*, where the Burger Court proposed “the reasonableness of such seizures depends on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.”<sup>50</sup>

B. THE U.S. SUPREME COURT’S INTERPRETATION OF SEIZURE AND UNREASONABLE  
IN THE ROUTINE VEHICLE ROADBLOCK CONTEXT

For the first time, in 1976, the Court applied the balancing test to the vehicle roadblock seizure context in *United States v. Martinez-Fuerte*.<sup>51</sup> In that

“[t]he count . . . includes some older wiretapping, electronic eavesdropping, and search warrant execution cases which have Fourth Amendment implications but technically were decided under federal statutes.” *Id.* at 13 n.46. Merely five of these cases were decided before 1900. *Id.* at 13. From 1961 to 2014, the U.S. Supreme Court rendered decisions on over three hundred Fourth Amendment cases. *Id.* One likely cause of this dramatic increase is the Court’s expansion in *Mapp v. Ohio* of the exclusionary rule to states. *Mapp v. Ohio*, 367 U.S. 643, 655–57 (1961) (holding that the exclusionary rule applied to state criminal trials). Other causes contributing to the increase in Fourth Amendment cases heard by the Court could include: (1) courts having fewer federal criminal statutes to enforce in the nineteenth century; (2) Congress has increasingly passed federal criminal statutes since the beginning of the twentieth century; and (3) the Court’s decision in *Gideon v. Wainwright* expanding the right to counsel for state felony cases to indigent individuals. See HUBBART, *supra* note 11, at 13–15; see also *Gideon v. Wainwright*, 372 U.S. 335, 343–45 (1963) (holding that the right to counsel was extended to the states by the Fourteenth Amendment).

46. HUBBART, *supra* note 11, at 97. A few variations of the general test are used. See generally *Arizona v. Hicks*, 480 U.S. 321 (1987) (balancing the defendant’s possessory interest in property and the government’s interest in repossessing stolen goods); *Tennessee v. Garner*, 471 U.S. 1 (1985) (balancing defendant’s interest in not being shot with the government’s interest in capturing an alleged unarmed burglar); *Graham v. Connor*, 490 U.S. 386 (1989) (balancing defendant’s interest in limiting risk of harm to himself to the government’s interest in limiting risk to the general public).

47. CLANCY, *supra* note 37, at 708.

48. See *supra* notes 26–29 and accompanying text.

49. See *Terry v. Ohio*, 392 U.S. 1, 20–21 (1968).

50. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

51. *United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976) (“In delineating the constitutional safeguards applicable in particular contexts, the Court has weighed the public interest against the Fourth Amendment interest of the individual . . .” (citations omitted)). Note



case, the Court considered whether permanent immigration checkpoints violated the Fourth Amendment as unreasonable searches or seizures.<sup>52</sup> In that case, the checkpoints were located on U.S. highways about 60 to 90 miles from the U.S.-Mexico border.<sup>53</sup> At the roadblocks, border agents would slow vehicles “to a virtual, if not a complete, halt” while inspecting and deciding whether they wanted to direct motorists to a secondary area for further inspection.<sup>54</sup> The Court agreed that stopping the vehicles at the roadblock constituted a seizure under the Fourth Amendment.<sup>55</sup> Using the balancing test, the Court determined that the government’s interest in protecting U.S. borders outweighed the individual’s right to personal security.<sup>56</sup> The justices noted the importance of maintaining border integrity, the impracticability of requiring reasonable suspicion to make the seizures because of traffic flow, and the minimal “intrusion on the interests of motorists.”<sup>57</sup> Specifically, the Court found that “the generating of concern or even fright on the part of lawful travelers—is appreciably less in the case of a checkpoint stop” than when motorists are stopped by roving patrols.<sup>58</sup> The Court found the seizures of vehicles to be reasonable.<sup>59</sup>

In 1979, the U.S. Supreme Court, in a case about roving police stops, again contemplated routine vehicle roadblocks.<sup>60</sup> The Court, in *Delaware v. Prouse*, considered whether roving law enforcement agents could pull over motorists, absent reasonable suspicion, to check drivers’ licenses and vehicle registrations.<sup>61</sup> The Court agreed these stops were seizures under the Fourth Amendment.<sup>62</sup> The Court held the practice unconstitutional, primarily because of the “standardless and unconstrained discretion” of law enforcement agents making the stops.<sup>63</sup> Moreover, the Court cited “alternative mechanisms available” to accomplish the same ends.<sup>64</sup> However, Justice White suggested in dicta that

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that *Almeida-Sanchez v. United States* addressed roving patrols. *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973). Also note that *United States v. Ortiz* addressed searches, not seizures. *United States v. Ortiz*, 422 U.S. 891, 897 n.3 (1975).

52. *Martinez-Fuerte*, 428 U.S. at 545.

53. *Id.* at 545–50.

54. *Id.* at 546.

55. *Id.* at 556.

56. *Id.* at 561–64.

57. *Id.* at 562.

58. *Id.* at 558. “As the Court concedes, the checkpoint stop involves essentially the same intrusions as a roving-patrol stop, yet the Court provides no principled basis for distinguishing checkpoint stops.” *Id.* at 570 (Brennan, J., dissenting) (citation omitted).

59. *See id.* at 566 (majority opinion).

60. *See Delaware v. Prouse*, 440 U.S. 648, 650–51 (1979).

61. *See id.* at 650.

62. *See id.* at 653.

63. *Id.* at 661.

64. *Id.* at 659. Alternative mechanisms mentioned include the “annual [vehicle safety] inspection requirement in Delaware,” periodical issuance of licenses to evidence sufficient driving ability, and Delaware’s “registration requirement.” *Id.* at 658.

“[q]uestioning of all oncoming traffic at roadblock-type stops”<sup>65</sup> would be upheld under the Fourth Amendment analysis, because “the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed.”<sup>66</sup>

In 1990, in *Michigan Department of State Police v. Sitz* the Court upheld the constitutionality of “sobriety checkpoints” whereby officers briefly stopped motorists while looking “for signs of intoxication.”<sup>67</sup> If motorists exhibited “signs of intoxication,” law enforcement diverted them to a secondary location for further assessment.<sup>68</sup> The Court used the reasonableness balancing test<sup>69</sup> to uphold the DUI routine vehicle roadblock as constitutional because of the great public interest in eradicating the drunk driving problem.<sup>70</sup> The Court determined the public’s interest in highway safety outweighed the individual’s right to personal security and noted that the 1.6 percent efficiency rate bested the 0.5 percent rate in *Martinez-Fuerte*.<sup>71</sup> Therefore, the seizures were reasonable.<sup>72</sup>

For the first time, in 2000, the Court departed from the reasonableness balancing test when analyzing a routine vehicle roadblock. Instead, Justice O’Connor, writing for the majority in *City of Indianapolis v. Edmond*, based her analysis on “the primary purpose of the Indianapolis checkpoint program,” which was deemed “ultimately indistinguishable from the general interest in crime control.”<sup>73</sup> This ushered in a new concept of what courts should consider

65. *Id.* at 663.

66. *Id.* at 658.

The Court holds, in successive sentences, that absent an articulable, reasonable suspicion of unlawful conduct, a motorist may not be subjected to a random license check, but that the States are free to develop “methods for spot checks that . . . do not involve the unconstrained exercise of discretion,” such as “[q]uestioning . . . all oncoming traffic at roadblock-type stops . . . .” Because motorists, apparently like sheep, are much less likely to be “frightened” or “annoyed” when stopped en masse, a highway patrolman needs neither probable cause nor articulable suspicion to stop *all* motorists on a particular thoroughfare, but he cannot without articulable suspicion stop *less* than all motorists.

*Id.* at 664 (Rehnquist, J., dissenting) (alterations in original) (citation omitted).

67. Mich. Dep’t of State Police v. Sitz, 496 U.S. 444, 447 (1990).

68. *Id.*

69. Note that the Court uses the verbiage established in *Brown v. Texas* rather than that used in *Martinez-Fuerte*, but the two tests are substantially the same. *Id.* at 455; *Brown v. Texas*, 443 U.S. 47, 50–51 (1979); *United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976). The test in *Brown* was framed as “weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” *Brown*, 443 U.S. at 50–51. The analysis in *Martinez-Fuerte* seems to simply be weighing the public interest against the Fourth Amendment interest of the individual. *Martinez-Fuerte*, 428 U.S. at 555, 562.

70. See *Sitz*, 496 U.S. at 451, 455.

71. *Id.* at 455 (citing *Martinez-Fuerte*, 428 U.S. at 554).

72. *Id.*

73. *City of Indianapolis v. Edmond*, 531 U.S. 32, 48 (2000).

when deciding whether a roadblock violates the Fourth Amendment, namely, the *purpose* underlying the roadblock. Despite the “minimal intrusion” and great public interest in interdicting drug trafficking,<sup>74</sup> the Court ruled roadblocks for the purpose of “detect[ing] evidence of ordinary criminal wrongdoing” unconstitutional.<sup>75</sup> The dissenters were confused as to why the majority abandoned the reasonableness balancing test in favor of a new analysis which had no basis in prior decisions.<sup>76</sup> Chief Justice Rehnquist indicated that under the reasonableness balancing test, the routine vehicle roadblocks to detect narcotics should have been deemed reasonable seizures.<sup>77</sup> Nevertheless, the seizures were held unreasonable because of their purpose to control crime generally.<sup>78</sup>

The latest roadblock case granted certiorari by the U.S. Supreme Court was *Illinois v. Lidster* in 2005.<sup>79</sup> There, the Court addressed whether police could use a roadblock to stop “motorists to ask them for information about a recent hit-and-run accident.”<sup>80</sup> At the roadblock, Lidster was seized and arrested for driving under the influence of alcohol.<sup>81</sup> The Court elected to first deploy the *Edmond* “primary purpose” standard and found that the primary purpose of the stop was “to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others.”<sup>82</sup> Under the *Edmond* primary purpose test, the Court concluded the stops were reasonable, because—among other things—they were not designed to control crime generally but, rather, were designed to discover information regarding a specific crime committed in the area a week earlier.<sup>83</sup> In addition to the primary purpose standard, the Court utilized the reasonableness balancing test to further find that the public concern, and the seizures in furtherance of that concern, outweighed the infringement of Lidster’s Fourth Amendment rights.<sup>84</sup> Thus, the seizures were reasonable.<sup>85</sup>

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74. *Id.* at 48 (Rehnquist, C.J., dissenting).

75. *Id.* at 41 (majority opinion). Justice Thomas disagreed with the Court’s analysis. *Id.* at 56 (Thomas, J., dissenting) (“I am not convinced that *Sitz* and *Martinez-Fuerte* were correctly decided. Indeed, I rather doubt that the Framers of the Fourth Amendment would have considered ‘reasonable’ a program of indiscriminate stops of individuals not suspected of wrongdoing.”).

76. *See id.* at 48–50 (Rehnquist, C.J., dissenting).

77. *See id.* at 52–56.

78. *See id.* at 48 (majority opinion).

79. *See Illinois v. Lidster*, 540 U.S. 419, 422–23 (2004).

80. *Id.* at 421.

81. *See id.* at 422.

82. *Id.* at 423.

83. *Id.* at 423–28.

84. *Id.* at 427–28. *But see id.* at 428–30 (Stevens, J., concurring in part and dissenting in part) (stating a remand was proper because the trial court did not conduct the multifactor test and the record needed to be developed further due to the unlikely prospects of the questioning producing a positive result for the police and the alarming nature of an unpublicized roadblock at midnight).

85. *See id.* 427–28 (majority opinion).

## II. IOWA'S ROUTINE VEHICLE ROADBLOCK LAW

This Part focuses on the law of routine vehicle roadblocks in Iowa. Like other states, Iowa law enforcement agencies have a history of using routine vehicle roadblocks. The Iowa Supreme Court first considered their legality in 1980.<sup>86</sup> Iowa law enforcement agencies have attempted to use routine vehicle roadblocks to catch vandals and intercept drunk drivers, among other things.<sup>87</sup> The first Section discusses relevant court cases prior to the passing of Iowa Code section 321K.1.<sup>88</sup> The second Section examines the Iowa Legislature's attempt to restrict routine vehicle roadblocks by passing Iowa Code section 321K.1. The third Section reviews the Iowa Supreme Court's interpretation and effective nullification of Iowa Code section 321K.1. Finally, the fourth Section explores the Iowa Supreme Court's recent use of the trespassory test for reasonableness under the Iowa Constitution.

### A. IOWA COURTS' SYNTHESIS AND APPLICATION OF PRECEDENT REGARDING ROUTINE VEHICLE ROADBLOCKS CIRCA 1980–1985

The first case in which the Iowa Supreme Court considered the validity of a routine vehicle roadblock was in *State v. Hilleshiem*.<sup>89</sup> In *Hilleshiem*, the court considered whether law enforcement in Oelwein could conduct vehicle stops in a park “pursuant to an assistant chief’s ‘directive’” absent probable cause, reasonable suspicion, or a violation of vehicle laws.<sup>90</sup> In that case, a city park in Oelwein was experiencing “a wave of vandalism” and two police officers were trying to find the perpetrators.<sup>91</sup> To accomplish this, the officers planned to stop and question all “vehicles in the park after dark.”<sup>92</sup> This plan was foiled, however, because the officers found it impossible to seize cars going in the opposite direction while they were tied up with another stop.<sup>93</sup> As Hilleshiem and his passengers were visiting the park, they were pulled over, questioned, and eventually searched.<sup>94</sup> Upon finding open beer cans and marijuana cigarettes in the car, “Hilleshiem was . . . charged with possession of a controlled substance.”<sup>95</sup> At trial, the defendants argued that the evidence should be

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86. See *State v. Hilleshiem*, 291 N.W.2d 314, 315–16 (Iowa 1980) (considering the legality of roadblocks in Iowa).

87. *Id.* at 315; *Roadblock Yields Several Citations*, HAWK EYE (Burlington, Iowa), May 25, 2002; *Safety Checkpoint Slated Near Preston Friday*, MAQUOKETA SENTINEL-PRESS (Sept. 26, 2018), [https://www.maqnews.com/news/local/safety-checkpoint-slated-near-preston-friday/article\\_10026f72-c1a1-11e8-85a7-17fcfedbe7b9.html](https://www.maqnews.com/news/local/safety-checkpoint-slated-near-preston-friday/article_10026f72-c1a1-11e8-85a7-17fcfedbe7b9.html) [<https://perma.cc/GW8A-94L8>].

88. See IOWA CODE § 321K.1 (2022).

89. See *Hilleshiem*, 291 N.W.2d at 315–16.

90. See *id.*

91. *Id.* at 315.

92. *Id.*

93. *Id.*

94. See *id.* at 315–16.

95. See *id.*

suppressed because it was obtained in violation of the Fourth Amendment and article I, section 8 of the Iowa Constitution, but the motion to suppress was overruled.<sup>96</sup> The State, pointing to Justice White’s dicta in *Prouse*, argued that the officers were not precluded from “[q]uestioning . . . all oncoming traffic at roadblock-type stops.”<sup>97</sup> Rejecting this argument, the Iowa Supreme Court distilled minimum requirements for police roadblocks absent probable cause, consent, or reasonable suspicion.<sup>98</sup> The court held that, to constitute a reasonable seizure under the Fourth Amendment, these stops required:

- (1) a checkpoint or roadblock location selected for its safety and visibility to oncoming motorists;
- (2) adequate advance warning signs, illuminated at night, timely informing approaching motorists of the nature of the impending intrusion;
- (3) uniformed officers and official vehicles in sufficient quantity and visibility to “show . . . the police power of the community;” and
- (4) a predetermination by policy-making administrative officers of the roadblock location, time, and procedures to be employed, pursuant to carefully formulated standards and neutral criteria.<sup>99</sup>

The court concluded that the above requirements were not met because (1) the roadblock was randomly positioned “by officers in the field”<sup>100</sup> not “by administrative officers”<sup>101</sup>; (2) they merely used “the red lights on their vehicles and flashlight signals” despite it being dark<sup>102</sup>; (3) no “illumination designed to disclose the officers’ uniforms” were used<sup>103</sup>; and (4) there was no systematic strategy for “maintain[ing] the roadblock for a significant period.”<sup>104</sup> Moreover, the court said the stops failed the reasonableness balancing test.<sup>105</sup>

In 1985, the Iowa Court of Appeals stated in dicta that roadblocks to check for intoxication could be constitutional under the *Hilleshiem* requirements.<sup>106</sup> In *State v. Riley*, the defendant was stopped at a vehicle roadblock set up by State Highway Patrol “on the South Omaha Bridge Road

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96. *Id.* at 316.

97. *Id.* at 318 (quoting *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)).

98. *Id.* It should be noted that these requirements were distilled from other cases as well, not necessarily just U.S. Supreme Court cases. *See id.* at 317–318 (first citing *United States v. Maxwell*, 565 F.2d 596 (9th Cir. 1977); then citing *United States v. Vasquez-Guerrero*, 554 F.2d 917 (9th Cir. 1977), *cert. denied*, 434 U.S. 865 (1977); then citing *United States v. Sandoval-Ruano*, 436 F. Supp. 734 (S.D. Cal. 1977); and then citing *State v. Olgaard*, 248 N.W.2d 392 (S.D. 1976)).

99. *Id.* at 318–19 (alteration in original) (quoting *Prouse*, 440 U.S. at 657).

100. *Id.* at 318.

101. *Id.*

102. *Id.* at 318–19.

103. *Id.*

104. *Id.* at 319.

105. *Id.*

106. *See State v. Riley*, 377 N.W.2d 242, 243–44 (Iowa Ct. App. 1985).

near the border.”<sup>107</sup> Riley contested the fourth requirement set out by the *Hilleshiem* court, on the basis that the roadblock was held in a different location than originally planned by administrative officials.<sup>108</sup> The court disagreed, stating that “[t]he fact that [the Sergeant] selected a location different than the one originally planned is not material when he made the change for safety reasons and the site selected was similar to the original site.”<sup>109</sup> Riley further argued that the primary purpose of the vehicle checkpoint “was to catch drunk drivers.”<sup>110</sup> To this, the court noted that “[t]he four requirements set out in *Hilleshiem* do not specifically refer to motivation.”<sup>111</sup> The court went on to state that even if the law enforcement’s primary purpose was to catch drunk drivers, they have a greater interest in irradicating drunk driving than merely removing motorists from the road with no license.<sup>112</sup> This was again a direct reference to Justice White’s dicta in *Prouse*, and the court refused to find unconstitutional a roadblock that served a more important purpose (preventing drunk driving) than the hypothetical purpose approved of in *Prouse* (ensuring motorists were licensed).<sup>113</sup>

B. ATTEMPTED INTERVENTION BY THE IOWA LEGISLATURE IN PASSING  
IOWA CODE SECTION 321K.1

Nine months after the *Riley* decision, in May of 1986, the Iowa Legislature passed Iowa Code section 321K.1 regarding Iowa law enforcement’s use of roadblocks.<sup>114</sup> This Act focused on “criminal penalties arising from the operation of motor vehicles.”<sup>115</sup> But this Act’s target was more specific than general enforcement of traffic laws. It aimed at regulating the operation of motor vehicles for persons under the influence of drugs or alcohol.<sup>116</sup> In section 321K.1(2), the Iowa Legislature essentially codified the Iowa Supreme Court’s distillation of minimum requirements for routine vehicle roadblocks set out in *Hilleshiem*.<sup>117</sup> However, section 321K.1(1) was novel and restricted, among

107. *Id.* at 242.

108. *See id.* at 243.

109. *Id.*

110. *Id.*

111. *Id.* (citation omitted). Note that this case was decided before *City of Indianapolis v. Edmond*, where the primary purpose test was tacked on to the routine vehicle roadblock Fourth Amendment analysis by Justice O’Connor as discussed above. *See supra* Section I.B.

112. *See Riley*, 377 N.W.2d at 243.

113. *See id.*; *Delaware v. Prouse*, 440 U.S. 648, 658 (1979) (“[T]he States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed.”).

114. Act of May 27, 1986, ch. 1220, 1986 Iowa Acts 336.

115. *Id.*

116. *Id.* § 2, 1986 Iowa Acts at 336–38.

117. *See* IOWA CODE § 321K.1(2).

other things, the purposes for which Iowa law enforcement agencies could utilize “routine vehicle roadblocks.”<sup>118</sup> Law enforcement agencies could conduct roadblocks “to enforce compliance with the law regarding any of the following:

- a. The licensing of operators of motor vehicles.
- b. The registration of motor vehicles.
- c. The safety equipment required on motor vehicles.
- d. The provisions of [state fish and wildlife regulations].”<sup>119</sup>

Interestingly, in an act regulating the operation of motor vehicles while under the influence, the Iowa Legislature did not bless the use of routine vehicle roadblocks for the purpose of catching drunk drivers.<sup>120</sup>

From this omission one could infer the Iowa Legislature tried to provide Iowans with greater protection from roadblock seizures than the U.S. Supreme Court eventually would in *Sitz*.<sup>121</sup> Iowa Code section 321K.1 was last revised in March of 2003 when the Iowa Legislature added subsection (3) permitting law enforcement to compel drivers to provide proof of adequate “financial liability coverage” as required by the State of Iowa.<sup>122</sup> Since that time, the statute has remained unchanged.

C. *THE IOWA SUPREME COURT’S INTERPRETATION OF IOWA CODE*  
SECTION 321K.1

Despite the statutory protections provided to Iowans by section 321K.1(1), the Iowa Supreme Court essentially nullified those protections in two 1995

(2) Any routine vehicle roadblock conducted under this section shall meet the following requirements:

- a. The location of the roadblock, the time during which the roadblock will be conducted, and the procedure to be used while conducting the roadblock, shall be determined by policymaking administrative officers of the law enforcement agency.
- b. The roadblock location shall be selected for its safety and visibility to oncoming motorists, and adequate advance warning signs, illuminated at night or under conditions of poor visibility, shall be erected to provide timely information to approaching motorists of the roadblock and its nature.
- c. There shall be uniformed officers and marked official vehicles of the law enforcement agency or agencies involved, in sufficient quantity and visibility to demonstrate the official nature of the roadblock.
- d. The selection of motor vehicles to be stopped shall not be arbitrary.
- e. The roadblock shall be conducted to assure the safety of and to minimize the inconvenience of the motorists involved.

*Id.*

118. *Id.* § 321K.1(1).

119. *Id.* § 321K.1(2).

120. *Id.* § 321K.1.

121. *See* Mich. Dep’t of State Police v. Sitz, 496 U.S. 444, 455 (1990).

122. Act of March 24, 2003, ch. 6, § 4, 2003 Iowa Acts 4, 5.

decisions by upholding a roadblock arguably designed to interdict drunk driving.<sup>123</sup> *State v. Day* and *State v. Loyd* both involved the same routine vehicle roadblock conducted on Highway 34 near Burlington in June of 1993.<sup>124</sup> These cases presented the Iowa Supreme Court with an opportunity to interpret the language of Iowa Code section 321K.1(1).<sup>125</sup>

In the face of significant evidence, the court in *Day* and *Loyd* decided as a matter of law that law enforcement agents did not conduct a routine vehicle roadblock to catch drunk drivers.<sup>126</sup> In *Day*, officers operated a roadblock from about 3:00 to 5:00 a.m. to catch westbound traffic from “Gulfport, Illinois, which is directly across the Mississippi river from Burlington.”<sup>127</sup> The officer who arrested the defendant, Day, for operating while intoxicated admitted to knowing Gulfport’s reputation for having numerous drinking establishments and the extended drinking hours in Illinois.<sup>128</sup> Day argued the roadblock violated Iowa Code section 321K.1 because the purpose “was to detect and arrest drunk drivers.”<sup>129</sup> However, the officer testified that the decision to only stop westbound traffic was due to insufficient personnel and safety concerns, as opposed to catching drunk drivers coming back to Iowa after a night in Gulfport.<sup>130</sup> In addition, the court noted that “[t]hree officers involved in the roadblock specialized in trucking matters, and they checked log books and inspected the trucks.”<sup>131</sup> For these reasons, the Iowa Supreme Court declined to hold “that the true purpose of the roadblock was to apprehend drunk drivers.”<sup>132</sup>

The second case to arise from the Saturday morning roadblock in Burlington was *Loyd*.<sup>133</sup> The court declined to humor Loyd on her request for statutory review, because the *Day* decision had already held the routine vehicle roadblock complied with the requirements in Iowa Code section 321K.1<sup>134</sup>; however, the court did address Loyd’s constitutional claims. In so doing, the court noted that “we interpret the scope and purpose of the state constitutional clause to be coextensive with federal interpretations of the

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123. See *State v. Day*, 528 N.W.2d 100, 103 (Iowa 1995); *State v. Loyd*, 530 N.W.2d 708, 713–14 (Iowa 1995).

124. See *Day*, 528 N.W.2d at 101; *Loyd*, 530 N.W.2d at 710.

125. See *Day*, 528 N.W.2d at 102; *Loyd*, 530 N.W.2d at 711, 713.

126. See *Day*, 528 N.W.2d at 103; *Loyd*, 530 N.W.2d at 713.

127. *Day*, 528 N.W.2d at 103.

128. See *id.*

129. *Id.* at 102.

130. *Id.* at 103.

131. *Id.*

132. *Id.* The court never stated a purpose for which the roadblock was held, just that it was not to catch drunk drivers. *Id.* The court also referred to the fact that “[t]here was truck traffic and commuter traffic to jobs in Burlington at the time of the roadblock.” *Id.* However, the court failed to consider that the roadblock was held on a Saturday morning and that “check[ing] log books” is not an approved purpose under section 321K.1(1). *Id.*

133. See *State v. Loyd*, 530 N.W.2d 708, 710 (Iowa 1995).

134. *Id.* at 711.



Fourth Amendment.”<sup>135</sup> The court detailed how the roadblock satisfied the requirements set out in *Hilleshiem* and codified in Iowa Code section 321K.1(2).<sup>136</sup> Although the court mentioned the reasonableness balancing test set out in *Brown v. Texas* when analyzing the constitutionality of the routine vehicle roadblock, the court focused almost exclusively on whether the roadblock complied with the *Hilleshiem* requirements.<sup>137</sup> By favoring the state in these cases, the Iowa Supreme Court signified that they would likely uphold routine vehicle roadblocks as lawful unless law enforcement conceded they conducted a roadblock for an improper purpose.

*D. THE IOWA SUPREME COURT’S RECENT EMPHASIS ON THE TRESPASSORY INTERPRETATION OF ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION*

Article I, section 8 of the Iowa Constitution mimics the U.S. Constitution, providing, “[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated.”<sup>138</sup> Regarding the Iowa Constitution, the Iowa Supreme Court “is the final arbiter of” its interpretation.<sup>139</sup> This is true even though the Fourth Amendment to the U.S. Constitution and article I, section 8 of the Iowa Constitution “contain nearly identical language and have the same general scope, import, and purpose.”<sup>140</sup> Therefore, the Iowa Supreme Court asks “what the [Iowa Constitution] means and how it applies to the case at hand”<sup>141</sup> rather than “whether the Iowa Constitution should be interpreted more stringently or less stringently than its federal counterpart.”<sup>142</sup>

135. *Id.* (citing *State v. Strong*, 493 N.W.2d 834, 835 (Iowa 1992)).

136. *Id.* at 711–12. The focus in this case, as in *State v. Riley*, was whether law enforcement complied with the fourth *Hilleshiem* requirement. *Id.* at 711. The court “disagree[d] with Loyd’s argument that the roadblock was unconstitutional because it was not conducted pursuant to a written plan.” *Id.* at 712. Despite acknowledging that some states do require a written plan, the court was satisfied that Iowa law enforcement was compliant with section 321K.1 without a written plan. *Id.* at 712–13.

137. *See id.* at 711–13; *Brown v. Texas*, 443 U.S. 47, 50 (1979); *see also supra* note 69 (discussing similarities between the *Brown* and *Martinez-Fuerte* tests).

138. IOWA CONST. art. I, § 8.

139. *State v. Wright*, 961 N.W.2d 396, 402 (Iowa 2021).

140. *Id.* at 403 (quoting *State v. Brooks*, 888 N.W.2d 406, 410–11 (Iowa 2016); *see also State v. Ingram*, 914 N.W.2d 794, 799 (Iowa 2018) (“Although the Iowa and United States Constitutions have similarly worded search and seizure provisions, that does not mean the two regimes and the cases under them may be conflated.”). *Compare* IOWA CONST. art. I, § 8 (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches shall not be violated . . . .”), with U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .”).

141. *Wright*, 961 N.W.2d at 403–04 (alteration in original) (quoting Hans A. Linde, *E Pluribus—Constitutional Theory and State Courts*, 18 GA. L. REV. 165, 179 (1984)).

142. *Id.* at 403.

Despite no obligation to interpret article I, section 8 in lockstep with the U.S. Supreme Court's understanding of the Fourth Amendment, the Iowa Supreme Court began to do so after the incorporation of the Fourth Amendment to the states by the Fourteenth Amendment.<sup>143</sup> Consequently, the Iowa Supreme Court's search and seizure "jurisprudence changed rather dramatically," along with the U.S. Supreme Court's jurisprudence, which "moved away from the original understanding of the Fourth Amendment."<sup>144</sup> As stated above,<sup>145</sup> that shift was a departure from a traditional interpretation of the Fourth Amendment through a trespassory lens.<sup>146</sup> But lately, the Iowa Supreme Court started returning to a historical interpretation of article I, section 8.<sup>147</sup>

Most recently, in *State v. Wright*, the Iowa Supreme Court finally conceded that "it is no longer tenable to follow federal precedents in lockstep."<sup>148</sup> In the 2021 decision, the court acknowledged that "article I, section 8's prohibition against unreasonable searches and seizures was tied to common law trespass."<sup>149</sup> The court held that a police officer investigating general criminal activity acts unreasonably when they "trespass against a citizen's house, papers, or effects without first obtaining a warrant" under article I, section 8.<sup>150</sup> In so doing, the court found "an unreasonable search and seizure . . . when [an officer] acted without a search warrant and removed opaque trash bags from waste bins set out for collection behind a residence, took possession of the trash bags, . . . and searched through the contents."<sup>151</sup> Further, the court held the officer's "conduct violated article I, section 8, because it violated a reasonable expectation of privacy."<sup>152</sup> This ruling likely contradicts *California v. Greenwood*, a case where the U.S. Supreme Court found that "the Fourth Amendment does not 'prohibit[] the warrantless search and seizure of garbage left for collection outside the curtilage of a home.' . . . [because] an expectation of privacy in garbage bags left outside the curtilage of a home was not objectively reasonable . . . ."<sup>153</sup> As explained further below, despite the Iowa Supreme Court's willingness to interpret the Iowa Constitution independently of the

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143. *Id.* at 407.

144. *Id.*

145. *See supra* Section I.A.3.

146. *Id.*; *see* *Katz v. United States*, 389 U.S. 347, 353 (1967).

147. *See Wright*, 961 N.W.2d at 409.

148. *Id.* at 411–12.

149. *Id.* at 412.

150. *Id.* In footnote 5, the court clarified that they meant to include trespass as it is understood now, not merely trespass as it was understood at the time of the founding. *Id.* at 412 n.5.

151. *Id.* at 420.

152. *Id.* at 417–18.

153. *Id.* at 418 (first alteration in original) (quoting *California v. Greenwood*, 486 U.S. 35, 37 (1988)). Other states rejecting *Greenwood* via state constitutional interpretation include New Hampshire, New Jersey, Vermont, and Washington. *See State v. Goss*, 834 A.2d 316, 319 (N.H. 2003); *State v. Hempele*, 576 A.2d 793, 814 (N.J. 1990); *State v. Morris*, 680 A.2d 90, 96 (Vt. 1996); *State v. Boland*, 800 P.2d 1112, 1116–17 (Wash. 1990).

U.S. Constitution, its interpretation is unlikely to provide greater individual protections in the routine vehicle roadblock context.

### III. INEFFECTIVENESS OF ROUTINE VEHICLE ROADBLOCKS IN IOWA

Hard data on routine vehicle roadblocks in Iowa is elusive. Routine vehicle roadblocks, however, are not the only law enforcement activity that lack reporting requirements in Iowa.<sup>154</sup> Although Iowa's 2010 criminal justice bill improved reporting on crimes, Iowa law enforcement agencies are not required to report initial stops.<sup>155</sup> This lack of transparency leads to mistrust and ultimately the Iowa Legislature "can't fix what [it doesn't] know."<sup>156</sup> Nonexistent data, especially regarding routine vehicle roadblocks, leaves one with many questions about their prevalence, location, type, purpose, and efficacy.

What can be gleaned from relevant newspaper articles is that the use of routine vehicle roadblocks is surprisingly impactful. By scouring thousands of newspaper articles written since 1992, one can determine that Iowa law enforcement agencies have conducted at least forty routine vehicle roadblocks over the last thirty years.<sup>157</sup> This estimate is likely conservative, considering many of the reported safety checkpoints were held in the same counties.<sup>158</sup> For example, only about twenty-one percent of Iowa's sheriff departments are

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154. See Perry Beeman, *Expert: Iowa Should Share More Data on Traffic Stops to Fight Police Bias*, IOWA CAP. DISPATCH (Aug. 10, 2020, 4:19 PM), <https://iowacapitaldispatch.com/2020/08/10/expert-iowa-should-share-more-data-on-traffic-stops-to-fight-police-bias> [<https://perma.cc/3GC6-D9KQJ>]. See generally GOVERNOR'S TRAFFIC SAFETY BUREAU, IOWA DEP'T OF PUB. SAFETY, ANN. EVALUATION REP. – FFY 2017 (2017) [hereinafter 2017 EVALUATION REP.], [https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/iowa\\_ffy2017\\_ar.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/iowa_ffy2017_ar.pdf) [<https://perma.cc/74YT-ZLMF>] (providing limited data on traffic safety enforcement actions). This report is similar to the other on the Iowa Governor's Traffic Safety Bureau website. See generally GOVERNOR'S TRAFFIC SAFETY BUREAU, IOWA DEP'T OF PUB. SAFETY, ANN. EVALUATION REP. – FFY 2018 (2018), [https://dps.iowa.gov/sites/default/files/commissioners-office/governors-traffic-safety/Publications/FFY\\_2018\\_Annual\\_Report.pdf](https://dps.iowa.gov/sites/default/files/commissioners-office/governors-traffic-safety/Publications/FFY_2018_Annual_Report.pdf) [<https://perma.cc/RTZ4-987G>] (also providing annual data on traffic safety in Iowa). The 2017 report is especially salient because a newspaper article regarding a routine vehicle roadblock indicates the Iowa Governor's Traffic Safety Bureau provided funding for the checkpoint. Mike McWilliams, *Police Checkpoints Catch Drunken Drivers*, IOWA CITY PRESS-CITIZEN, Aug. 3, 2004, at A3. There is no mention of this in the report. See 2017 EVALUATION REP., *supra* at 1–63. Two important conclusions can be drawn from this assessment: (1) Vehicle roadblocks may be unreported and undocumented, especially in the public record, and (2) the Iowa Governor's Traffic Safety Bureau likely provides local law enforcement agencies with funding to use at their discretion. See McWilliams, *supra* at A3.

155. See Beeman, *supra* note 154.

156. *Id.* (noting that "[twenty-one] states are requiring officers to collect extensive data on traffic stops").

157. See *infra* Appendix I. Several other routine vehicle roadblocks were discovered but could not be corroborated by reliable sources.

158. This is likely due in part to limited access to newspaper databases across Iowa. For example, despite *State v. Day* and *State v. Lloyd* both involving a routine vehicle roadblock taking place in 1993 and eventually argued before the Iowa Supreme Court, no articles discussing those cases were found in the newspaper databases. *State v. Day*, 528 N.W.2d 100, 101 (Iowa 1995); *State v. Lloyd*, 530 N.W.2d 708, 710 (Iowa 1995). The total then, is closer to forty-two with at least two additional drunk driving arrests.

represented by the data set.<sup>159</sup> Ultimately, nearly seventy state and local agencies participated in at least one routine vehicle roadblock since 1992.<sup>160</sup> Some of the more intriguing agencies to participate in routine vehicle roadblocks in Iowa were: (1) the Department of Immigration Customs Enforcement (“ICE”)<sup>161</sup>; (2) the Minnesota Department of Natural Resources<sup>162</sup>; (3) the Lee County Narcotics Task Force<sup>163</sup>; and (4) the K-9 unit from the Iowa State Penitentiary.<sup>164</sup>

Iowa’s routine vehicle roadblocks overall are not terribly efficient. Of the forty routine vehicle roadblocks identified, only twenty-two provided local newspapers with useful data.<sup>165</sup> Those twenty-two routine vehicle roadblocks reported stopping an average of about six hundred vehicles, for a total of 13,209 seizures.<sup>166</sup> Also among those twenty-two roadblocks, law enforcement reported thirty-two DUI arrests/OWI investigations (0.24 percent of seizures);<sup>167</sup> forty-six narcotics arrests/drug arrests/possession of a controlled substance discoveries (0.35 percent of seizures); and 374 citations (2.8 percent of seizures).<sup>168</sup> The most reported action from law enforcement agencies for the twenty-two roadblocks were unspecified/equipment/registration/insurance warnings, with a total of 1,829 (13.8 percent of stops).<sup>169</sup> Admittedly, it is difficult to compare this efficiency to that of roving patrols in Iowa because,

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159. This percentage was calculated by dividing the total number of sheriff’s departments that participated in a routine vehicle roadblock, according to the discovered newspaper articles (twenty-one), by the total number of sheriff’s departments in Iowa (ninety-nine). See *infra* Appendix II; see *Welcome to the Official ISSDA Website*, IOWA STATE SHERIFFS’ & DEPUTIES’ ASS’N, <http://www.issda.org> [<https://perma.cc/S788-4FWU>].

160. See *infra* Appendix II.

161. Bird, *supra* note 5.

162. *Id.*

163. See *Law Enforcement Report Results of FM Checkpoint*, FORT MADISON DAILY DEMOCRAT (May 14, 2009), [https://www.mississippivalleypublishing.com/daily\\_democrat/news/law-enforcement-report-results-of-fm-checkpoint/article\\_a576aa22-1305-5c78-86a6-f8623e52bd57.html](https://www.mississippivalleypublishing.com/daily_democrat/news/law-enforcement-report-results-of-fm-checkpoint/article_a576aa22-1305-5c78-86a6-f8623e52bd57.html) [<https://perma.cc/54Q4-DC6Q>].

164. *Lee County Checkpoint Nets Citations*, HAWK EYE (Burlington, Iowa), June 21, 2014, at 7B.

165. See *infra* Appendix I. In this context, “useful data” is considered data that at a minimum includes the total number of vehicles seized at the routine vehicle roadblock.

166. See *infra* Appendix I. If the average number of stops per routine vehicle roadblock is extrapolated to the remaining identified routine vehicle roadblocks which did not report useful data, the total reaches about 24,000 seizures since 1992.

167. See *id.* This data is comparable to that of other states. See *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 461 (1990) (Stevens, J., dissenting) (citing data on routine vehicle roadblocks held in Maryland). Note that only the useful data were used in this calculation, so the remaining three DUI arrests reflected in Appendix I were not included.

168. See *id.* Again, note that only the citations from the useful data were used in the computations, thus the seventy-one warning citations reflected in Appendix I were not included.

169. See *id.*

as discussed above, law enforcement agencies are not required to report the number of traffic stops they make annually.<sup>170</sup>

Some interesting articles and statistics help illuminate the purposes for which routine vehicle roadblocks are conducted. First, thirty-two news reports included the day of the week the safety checkpoints was conducted.<sup>171</sup> Friday and Saturday evenings and the early hours of Saturday and Sunday mornings accounted for twenty-one of the thirty-two discernable days on which routine vehicle roadblocks were conducted.<sup>172</sup> Of the remaining eleven routine vehicle roadblocks conducted on discernable days, one was conducted on July 3, 2008, and one was conducted on March 17, 2009.<sup>173</sup> In 2002, *The Hawk Eye*—a newspaper reporting out of Burlington, reported that authorities indicated the goal of their safety checkpoint was in part to “remove drunken drivers from the roads.”<sup>174</sup> Another noteworthy article in the *Maquoketa Sentinel-Press* from 2018 indicated that “law enforcement agencies will target underage drinking during a special traffic enforcement effort on Friday . . . from 8 to 10 p.m.”<sup>175</sup> Further, in 2017, the Henry County Sheriff stated that “[o]ur entire checkpoint is for safety equipment and impaired drivers.”<sup>176</sup>

Though this data set is limited, and the stories are anecdotal, together they do shed some light on the mindset Iowa law enforcement agencies have when conducting safety checkpoints. The big picture shows that the type of roadblock conducted in *Day* was not an isolated incident. Safety checkpoints

170. See generally JOHNSON CNTY. SHERIFF’S OFF., 2019 ANN. REP. (2019), <https://www.johnsoncountyia.gov/sites/default/files/2021-07/Sheriff%20Annual%20Report%202019.pdf> [https://perma.cc/NN9G-7DP7] (showing an example where no statistics were made available on the number of stops made by the department).

171. See *infra* Appendix I. At least one news article indicated law enforcement would conduct safety checkpoints in various locations in and around the Iowa City area after Hawkeye football games, though there is no indication on what day the games were played. See *Think Before You Drink 2011 Initiatives*, PRESS-CITIZEN (Iowa City, Iowa), Aug. 31, 2011, at A9. These were left out of the calculation here, though one could presume most of those routine vehicle roadblocks were conducted on Saturdays.

172. See *infra* Appendix I. For purposes of this sentence “evening” is considered any time after 6:00 p.m. and “early morning” is considered any time before 6:00 a.m. on the day in question. It appears the law enforcement agencies challenged in *Day v. State* and *Lloyd v. State* are not alone in the opinion that the best time to run a safety checkpoint is in the dead of night. See *State v. Day*, 528 N.W.2d 100, 103 (Iowa 1995); *State v. Loyd*, 530 N.W.2d 708, 711 (Iowa 1995).

173. See *Local Briefs*, TEL. HERALD (Dubuque, Iowa), July 15, 2008, at C5 (describing stop on Thursday, July 3, 2008); *Multi-Agency Enforcement Effort Conducted*, NEWTON DAILY NEWS (Newton, Iowa), Mar. 27, 2009, NewsBank (describing stop on St. Patrick’s Day); see *infra* Appendix I.

174. *Roadblock Yields Several Citations*, *supra* note 87. This is the same locale as the routine vehicle roadblock challenged in *State v. Day* and *State v. Lloyd*. See *Day*, 528 N.W.2d at 101; *Loyd*, 530 N.W.2d at 710. Monitoring drunk drivers is a purpose impliedly forbidden by the Iowa Legislature in section 321K.1 through *expressio unius est exclusio alterius*. See IOWA CODE § 321K.1.

175. *Safety Checkpoint Stated Near Preston Friday*, *supra* note 87.

176. Adam Sullivan, *Checkpoint Provokes Internet Ire*, GAZETTE (Oct. 13, 2017, 9:53 AM), <https://www.thegazette.com/staff-columnists/checkpoint-provokes-internet-ire> [https://perma.cc/6P XG-84DH].

may be used to interdict drunk driving, to detect narcotics,<sup>177</sup> and in some cases to catch undocumented immigrants,<sup>178</sup> among other purposes, despite the restrictions of Iowa Code section 321K.1. However, it is unlikely any defendant could overcome the extensive burden the Iowa Supreme Court requires to show that the routine vehicle roadblock was, in fact, conducted in violation of Iowa Code section 321K.1.<sup>179</sup>

#### IV. AN ARGUMENT TO LIMIT ROUTINE VEHICLE ROADBLOCKS IN IOWA

This Part explores the justifications for routine vehicle roadblocks and advocates for restricting their use. The first Section, under the framework of the U.S. Supreme Court's Fourth Amendment reasonableness balancing test, argues that routine vehicle roadblocks are more unreasonable than the Court suggests. The second Section explores why the "purposes" test used by both the U.S. Supreme Court and Iowa Code section 321K.1 is futile. The third Section contends that, notwithstanding the Iowa Supreme Court's recent decision in *Wright*, the court will not have the opportunity to meaningfully reshape routine vehicle roadblock jurisprudence without overruling prior cases.

##### A. THE U.S. SUPREME COURT OVERLOOKS IMPORTANT CONSIDERATIONS WHEN USING THE REASONABLENESS BALANCING TEST

One should wonder how the Framers, after fighting a war inspired in part by their abhorrence for the King's use of general writs of assistance to indiscriminately seize individuals and property, meant to bless the seizures occurring today.<sup>180</sup> The U.S. Supreme Court prioritizes collective security over individuals' rights.<sup>181</sup> To do this, the Court uses the reasonableness balancing test.<sup>182</sup> In this context, the test allows the Court to advocate for collective security, ignoring the Fourth Amendment's predilection towards individual rights signified by the warrant preference and the individualized suspicion requirement.<sup>183</sup> However, not all legal minds think the Framers would celebrate the use of routine vehicle roadblocks. In his *Edmond* dissent, Justice Thomas stated, "I rather doubt that the Framers of the Fourth Amendment would have considered 'reasonable' a program of indiscriminate stops of individuals not

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177. See *Law Enforcement Report Results of FM Checkpoint*, *supra* note 163.

178. See *Cedar Rapids*, GAZETTE (Cedar Rapids, Iowa), May 18, 2008, at 1B. The Department of Immigration Customs Enforcement participated in at least one other routine vehicle roadblock. See *Bird*, *supra* note 5.

179. See *Day*, 528 N.W.2d at 102-03; see also *Loyd*, 530 N.W.2d at 713 (also setting a high bar for defendants to show the true purpose of a routine vehicle roadblock).

180. "The general writs of assistance were so named because the customs officials to whom they were issued 'possessed the legal authority to command the assistance of a peace officer and the assistance, if necessary, of all nearby subjects, in [their] execution of the writ.'" HUBBART, *supra* note 11, at 24 (alteration in original) (quoting LEVY, *supra* note 11, at 156).

181. See Clancy, *supra* note 2, at 280.

182. *Brown v. Texas*, 443 U.S. 47, 50-51 (1979); Clancy, *supra* note 2, at 274.

183. Clancy, *supra* note 2, at 274.

suspected of wrongdoing.”<sup>184</sup> This Section embraces and furthers Thomas’s sentiment, focusing primarily on how the Court tips the scale in favor of the government<sup>185</sup> by: (1) overstating the public concern served by routine vehicle roadblocks, (2) miscalculating the degree to which the seizure advances the public interest, and (3) undervaluing the impact routine vehicle roadblocks have on individuals.<sup>186</sup>

### 1. The Gravity of Public Concern Served by the Seizure Is Overstated

The first prong of the reasonableness balancing test requires the “weighing of the gravity of the public concerns served by the seizure . . . .”<sup>187</sup> There is clearly an important public interest in maintaining safe roadways. Ideally all Iowans can leave the house in the morning confident they will return safely each evening. As the Court in *Sitz* makes very clear, “[n]o one can seriously dispute the magnitude of the drunken driving problem or the States’ interest in eradicating it.”<sup>188</sup> However, the Court unjustifiably adds a finger to the public concern side of the scale in two ways.<sup>189</sup>

First, the Court often construes the public concern broadly by focusing on the opening clause of the prong rather than the concluding clause. Typically, the Court will point to *the general public concern* and not the extent to which the public concern is *served by the seizure*. For example, in *Prouse*, the Court focused their inquiry on whether law enforcement agencies could conduct random stops of individuals at the officers’ discretion.<sup>190</sup> When weighing the public concern, the Court analyzed whether the intrusion on the individual outweighed “public safety.”<sup>191</sup> When framing the issue in these terms, one individual’s right can hardly outweigh the public’s need for safety. Surprisingly, the *Prouse* Court did invalidate the roving discretionary stops.<sup>192</sup> Individual rights outweighed the public safety served by the seizures in part because the tactic was inefficient and more efficient alternative means existed.<sup>193</sup> Instead, the Court went on to suggest the use of routine vehicle roadblocks to effectuate the desired outcome of promoting public safety.<sup>194</sup> By failing to narrow its focus on the public concern *most directly served by the seizure*, the Court opened the door for the use of routine vehicle roadblocks to promote the public

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184. *City of Indianapolis v. Edmond*, 531 U.S. 32, 56 (2000) (Thomas, J., dissenting).

185. Clancy, *supra* note 2, at 277.

186. *See Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 450–51 (1990).

187. *Brown*, 443 U.S. at 50–51.

188. *Sitz*, 496 U.S. at 451.

189. Clancy, *supra* note 2, at 277.

190. *See Delaware v. Prouse*, 440 U.S. 648, 653–55 (1979).

191. *See id.* at 658.

192. *See id.* at 661.

193. *See id.* at 559.

194. *See id.* at 663. But routine vehicle roadblocks seem to be an ineffective policing tactic as well. *See supra* Part III.

safety.<sup>195</sup> A tighter framing of the public concern on, say, the enforcement of license, registration, and insurance requirements seems to weigh less than public safety generally. Framed this way, the public concern may not outweigh thousands of individuals' rights to be free from surprise, suspicionless seizures in one routine vehicle roadblock event.

A second way the Court overcharacterizes the public concern served by the seizure is statistical aggregation.<sup>196</sup> For example, in *Sitz*, the Court cites that “[d]runk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage.”<sup>197</sup> These seem to be national data figures, rather than figures from the locality which conducted the sobriety checkpoint in that case, or even from the state of Michigan.<sup>198</sup> When using national statistics to measure the gravity of the public concern served by the seizure, the public concern side of the scale is filled with lead while the individual liberty side is filled with feathers.<sup>199</sup> The analysis becomes: prevent 25,000 annual deaths, \$1 million in personal injuries, and \$5 billion in property damage by stopping one person for a few minutes or prevent law enforcement from interfering with an individual's day for a few minutes and suffer significant damage nationally. As shown below, the routine vehicle roadblocks conducted in Iowa are much more invasive than the Court recognizes.<sup>200</sup> A better analysis can be achieved by tightening the framing of the public concern served by the seizure and using nonaggregated statistics.

## 2. The Degree to Which the Seizure Advances the Public Interest Is Minimal

The second prong of the reasonableness balancing test requires the “weighing of the . . . degree to which the seizure advances the public interest.”<sup>201</sup> In analyzing this prong, courts tend to pass over the words *the degree to which* while focusing on *advances the public interest*. This results in greenlighting routine vehicle roadblocks merely because they advance the public interest, even if not to a significant degree.

The degree to which routine vehicle roadblocks advance the public interest is minimal for three reasons. First, routine vehicle roadblocks in Iowa have a

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195. See *State v. Riley*, 377 N.W.2d 242, 243 (Iowa Ct. App. 1985); see also *supra* Section II.A (providing further discussion of the *Riley* decision).

196. Clancy, *supra* note 2, at 278 & n.184.

197. *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 451 (1990) (footnote omitted) (quoting 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT, § 10.8(d) (2d ed. 1987)); Clancy, *supra* note 2, at 278.

198. *Sitz*, 496 U.S. at 451; *id.* at 460 n.2 (Stevens, J., dissenting).

199. *Id.* at 451 n.\* (majority opinion) (discussing statistics from U.S. Department of Transportation National Highway Traffic Safety Administration).

200. See *infra* Section IV.A.3.

201. *Brown v. Texas*, 443 U.S. 47, 50-51 (1979).



low success rate, even compared to some of those upheld by the U.S. Supreme Court. Second, the type of roadblocks Iowa law enforcement agencies use do not meaningfully advance the public's interest in safe roadways. Finally, while conducting routine vehicle roadblocks, law enforcement agencies could be abandoning a more efficient way to advance the public's interest in safe roadways.

To begin, in *Martinez-Fuerte*, the Court found it sufficient that only 0.12 percent of vehicles passing through a temporary immigration checkpoint harbored undocumented immigrants.<sup>202</sup> Similarly, the *Sitz* Court considered a 1.6 percent hit rate on drunk drivers at the DUI checkpoint adequate because it beat the rate in *Martinez-Fuerte*.<sup>203</sup> However, the *Sitz* Court fails to mention that in *Martinez-Fuerte* the checkpoint was organized so many of the cars that passed through were allowed to roll through the stop and were not subjected to inquiry "or close visual" inspection.<sup>204</sup> By refocusing the statistical analysis on the cars that were *actually seized*,<sup>205</sup> that is, those vehicles that did not just roll through the checkpoint, it is apparent that law enforcement discovered undocumented immigrants in about twenty percent of vehicles subjected to a stop, questioning, and visual inspection.<sup>206</sup> Those seizures interfered with individual liberty to the same degree as the routine vehicle roadblocks used in Iowa. This indicates a twenty percent success rate is a better standard than the 0.12 percent success rate computed based on the number of cars allowed to roll through the checkpoint.

In Iowa, when considering the statutorily permitted purposes for which law enforcement agencies can conduct routine vehicle roadblocks, they prove significantly less effective than the twenty percent efficiency threshold in *Martinez-Fuerte*. Only 0.45 percent of stops resulted in discovering a driver without a valid license (barred, restricted, expired, or no license at all).<sup>207</sup> Only eight registration warnings were reported.<sup>208</sup> Merely 0.33 percent were seemingly cited for equipment violations, and 4.9 percent were given warnings for equipment violations.<sup>209</sup> Only three Department of Natural Resources fish and wildlife infractions were reported.<sup>210</sup> These rates fall well short of the standard that should have been adopted from *Martinez-Fuerte* and do not justify making at least of 13,209 seizures in Iowa over the last thirty years.<sup>211</sup>

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202. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976).

203. *Sitz*, 496 U.S. at 455.

204. *Martinez-Fuerte*, 428 U.S. at 546.

205. There was dispute between the parties as to whether the vehicles allowed to "roll through" the checkpoint without being escorted to a secondary inspection area were seized. *Id.* at 546 n.1.

206. *Id.* at 564 n.17. Law enforcement in that case discovered 725 undocumented immigrants in 171 of the 820 vehicles seized for a temporary stop, visual inspection, and questioning. See *id.* at 554.

207. See *infra* Appendix I.

208. See *id.*

209. See *id.*

210. See *id.*

211. See *id.*

Second, the limited purposes for which Iowa law enforcement agencies can conduct routine vehicle roadblocks do not meaningfully advance the public's interest in safe roadways.<sup>212</sup> As stated earlier, Iowa law enforcement agencies can, in theory, only conduct routine vehicle roadblocks to check licenses, registrations, safety equipment, and fish and wildlife enforcement.<sup>213</sup> This leaves out some of the most significant contributors to unsafe roadways in Iowa, including alcohol-impaired driving fatalities which accounted for about twenty-six percent of roadway deaths in 2016.<sup>214</sup> Law enforcement agencies are also unlikely to interdict some of the other leading contributors to dangerous roadways like speeding (twenty-four percent of fatalities in Iowa in 2016),<sup>215</sup> distracted driving (nine percent of fatalities nationally in 2016),<sup>216</sup> and drowsy driving (just over two percent of national fatalities in 2015).<sup>217</sup> Clearly expired registrations are not a leading cause of highway fatalities. Admittedly, a significant percentage (thirteen percent in 2012) of fatal accidents in the United States involve a driver with an invalid license.<sup>218</sup> But invalid licenses do not directly *cause* accidents in the same way distracted driving, speeding, or drunk driving do. Further, Iowa routine vehicle roadblocks are largely inefficient at finding drivers with an invalid license, since only 0.45 percent of stops result in the discovery of an invalid license.<sup>219</sup> Of the remaining purposes for which law enforcement agencies in Iowa are permitted to conduct routine vehicle roadblocks (checking registrations, safety equipment, and fish and wildlife regulation compliance),<sup>220</sup> only faulty safety equipment seems to logically contribute to roadway danger. The data collected on routine vehicle roadblocks in Iowa reveal that safety equipment violations pose little danger, as most non-commercial violators were given mere warnings (ninety-four percent) and presumably allowed to drive away.<sup>221</sup> If the types of safety equipment violations law enforcement check at routine vehicle roadblocks significantly contributed to

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212. See IOWA CODE § 321K.1(1).

213. *Id.* Of course, their objectives are much more expansive than what is permitted by statute. See *supra* note 87 and accompanying text.

214. See 2017 EVALUATION REP., *supra* note 154, at 2, 5. According to the report, there were 106 alcohol-impaired driving fatalities and 402 total traffic fatalities in Iowa in 2016. *Id.*

215. See *id.* at 2, 6. According to the report, there were ninety-five speeding-related fatalities and 402 total traffic fatalities in Iowa in 2016. *Id.*

216. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., TRAFFIC SAFETY FACTS: DISTRACTED DRIVING 2016 1 (2018), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517> [<https://perma.cc/3WXZ-99Q9>].

217. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., TRAFFIC SAFETY FACTS: DROWSY DRIVING 2015 1 (2017), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812446> [<https://perma.cc/HRC5-DZXC>].

218. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., TRAFFIC SAFETY FACTS: DRIVER LICENSE COMPLIANCE STATUS IN FATAL CRASHES 2 (2014), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812046> [<https://perma.cc/JMSU-MPWV>].

219. See *infra* Appendix I.

220. See IOWA CODE § 321K.1(1).

221. See *id.*

roadway danger, one would not expect them to allow drivers to drive away without first fixing the violation.

Finally, when considering whether routine vehicle roadblocks significantly advance the public interest, one must acknowledge that law enforcement resources are limited and could be allocated to more productive roadway safety tactics.<sup>222</sup> Indeed, the record in *Sitz* “indicate[d] that the net effect of sobriety checkpoints on traffic safety is infinitesimal and possibly negative.”<sup>223</sup> Almost all the discovered routine vehicle roadblocks conducted in Iowa over the last thirty years have involved more than one law enforcement agency.<sup>224</sup> Commonly, law enforcement agencies from surrounding localities work together to conduct a routine vehicle roadblock.<sup>225</sup> At times, even state and federal agencies pitch in.<sup>226</sup> The data reveal that about thirty-nine law enforcement officers were needed to conduct a single routine vehicle roadblock for about 3.9 hours.<sup>227</sup> This technique of enforcement seems highly taxing on law enforcement resources for little return. As articulated by Justice Stevens, “it seems inconceivable that a higher arrest rate could not have been achieved by more conventional means.”<sup>228</sup> In fact, a more recent news article indicates that a checkpoint in California seized almost fourteen hundred vehicles with no arrests and another conducted in Ohio yielded the same results.<sup>229</sup> The same article suggests that routine vehicle roadblocks can cost taxpayers between eight thousand and ten thousand dollars for a single event.<sup>230</sup>

Occasionally, departments are awarded funding by the Iowa Governor’s Traffic Safety Bureau to operate overtime efforts and special safety projects like routine vehicle roadblocks.<sup>231</sup> But surely other methods of enforcement

222. Regardless, the American Beverage Institute contends that “roving patrols would more effectively and more affordably stop drunken driving” than an increase in roadblocks would. Patrick Marley, *Group Opposes Checkpoints*, AM. BEVERAGE INST. (Oct. 29, 2008), <https://abionline.org/in-the-news/59> [<https://perma.cc/CE36-JY9T>].

223. Mich. Dep’t of State Police v. *Sitz*, 496 U.S. 444, 460 (1990) (Stevens, J., dissenting).

224. See, e.g., Bird, *supra* note 5; *Authorities Conduct Checkpoint on U.S. 18*, TEL. HERALD (Dubuque, Iowa), Sept. 13, 2007, at D4.

225. See, e.g., *Picture: 330 Vehicles Stopped During Fayette Sting*, WATERLOO-CEDAR FALLS COURIER, Sept. 21, 2009, NewsBank; *Aug. 24 Traffic Checkpoint Results Announced*, DAILY DEMOCRAT (Fort Madison, Iowa), Aug. 31, 2012, NewsBank.

226. See, e.g., Bird, *supra* note 5; Dave Rasdal, *Surprise Checkpoint Near Brandon Nets 247 Citations*, GAZETTE (Cedar Rapids, Iowa), May 23, 1995, at 3B.

227. See *infra* Appendix I.

228. *Sitz*, 496 U.S. at 462 (Stevens, J., dissenting).

229. Sarah Longwell, *Get-Tough OWI Measures Too Tough on Social Drinkers*, TEL. HERALD (Dubuque, Iowa), June 30, 2016, at A4.

230. *Id.*

231. See 2017 EVALUATION REP., *supra* note 154, at 15–31; *Central Iowa Traffic Safety Task Force (CITSTF)*, CITY OF ANKENY, <https://www.ankenyiowa.gov/304/Central-Iowa-Traffic-Safety-Task-Force-C> [<https://perma.cc/QJ2P-3YPE>].

are more efficient.<sup>232</sup> One such program with success is Iowa's Special Traffic Enforcement Program ("STEP").<sup>233</sup> That program calls for specific enforcement efforts throughout the year that coincide with statistically dangerous times on Iowa's roadways.<sup>234</sup> During those increased enforcement periods, law enforcement agencies use "saturation patrols"<sup>235</sup> by escalating their number of roving patrols and enforcing existing traffic laws more stringently.<sup>236</sup> These efforts produce meaningful results without utilizing "random, unannounced investigatory seizures."<sup>237</sup> "Overall, measured in arrests per hour, a dedicated saturation patrol is the most effective method of apprehending offenders."<sup>238</sup> Determining whether an agency is advancing the public interest requires a measuring of "profits by counting gross receipts . . . [against] expenses."<sup>239</sup> Mere discovery of minor infractions is not sufficient evidence of advancing the public interest without an accounting for the number of serious infractions agencies miss by using valuable resources to conduct routine vehicle roadblocks.

### 3. The Severity of the Interference with Individual Liberty Is More Significant Than the Court Contemplates

The final prong of the reasonableness balancing test requires the "weighing of the . . . severity of the interference with individual liberty."<sup>240</sup> When amassing interference with individual liberties to include on the opposite side of the scale, the Court seems to muster only the interest of the one person seized or

232. As Justice Stevens detailed in his dissent for *Sitz*:

Maryland had conducted a study comparing traffic statistics between a county using checkpoints and a control county. The results of the study showed that alcohol-related accidents in the checkpoint county decreased by ten percent, whereas the control county saw an eleven percent decrease; and while fatal accidents in the control county fell from sixteen to three, fatal accidents in the checkpoint county actually doubled from the prior year.

Mich. Dep't of State Police v. *Sitz*, 496 U.S. 444, 462 (1990) (Stevens, J., dissenting) (quoting *Sitz v. Dep't of State Police*, 429 N.W.2d 180, 184 (Mich. Ct. App. 1988)).

233. *Step Program*, COMM'R'S OFFICE, IOWA DEP'T OF PUB. SAFETY, <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety/step-program> [<https://perma.cc/2NHW-R7XD>]. The efficacy of roving patrols and checkpoints is hotly debated. Dustin Lemmon & Thomas Geyer, *Police: Safety Checks Do Job - but Others Contend That Roving Patrols Are More Effective*, QUAD-CITY TIMES, July 15, 2007, at A1.

234. *Step Program*, *supra* note 233.

235. *Saturation Patrols*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 22, 2022), <https://www.cdc.gov/transportationsafety/calculator/factsheet/patrols.html> [<https://perma.cc/4Q4Y-RLG6>].

236. *Step Program*, *supra* note 233.

237. *Sitz*, 496 U.S. at 462 (Stevens, J., dissenting); see *Wisconsin Puts Up Roadblock to Sobriety Checkpoints*, AM. BEVERAGE INST. (Dec. 20, 2008), <https://abionline.org/in-the-news/422> [<https://perma.cc/64UG-SFG4>] (contending that roving patrols are more effective than checkpoints).

238. Jeffery W. Greene, *Battling DUI: A Comparative Analysis of Checkpoints and Saturation Patrols*, FBI L. ENF'T BULL., Jan. 2003, at 1, 4.

239. *Sitz*, 496 U.S. at 469 (Stevens, J., dissenting).

240. *Brown v. Texas*, 443 U.S. 47, 50-51 (1979).

searched before the Court.<sup>241</sup> From this vantage point, seizing an individual for two to three minutes in an effort to eradicate the estimated 38,680 traffic deaths in 2020 is reasonable.<sup>242</sup> A better representation is derived from aggregating all the interferences of individual liberty of the seized. But there are other ways courts have shaped the issue which deemphasize the interference with the individual.

One such way is the Court's decision to frame "the right . . . to be secure"<sup>243</sup> in terms of individual liberty as opposed to one of many alternatives, like loss of dignity.<sup>244</sup> This results in routine vehicle roadblocks being primarily an issue of freedom of movement, when in actuality the infringement runs much deeper. When herded "like sheep"<sup>245</sup> for their close inspections, law-abiding citizens and communities subjected to this guilty until proven innocent law enforcement tactic suffer a loss of human dignity. This is the same loss of human dignity, different only in degree, not kind, that the Framers experienced and abhorred. This "unsettling show of authority"<sup>246</sup> is a reminder to citizens that the government can implicate individuals even when they have done nothing wrong. Plainly, roadblocks cut against the underlying impetus of the Fourth Amendment's resolve to abolish the use of general writs of assistance.

Another way the Court overlooks the impact on individuals is the surprise and anxiety one may feel when encountering a temporary routine vehicle roadblock.<sup>247</sup> Important to the majority's justification and upholding of routine vehicle roadblocks in *Martinez-Fuerte* was that they produce less fright than roving patrols.<sup>248</sup> Permanent roadblocks have fixed locations and they typically operate during daylight hours.<sup>249</sup> These factors could theoretically help minimize the amount of surprise and anxiety individuals may feel upon approaching fixed checkpoints. But the Court in *Sitz* ignored these factors and upheld as constitutional the use of temporary sobriety checkpoints held "during the hours of darkness on weekends."<sup>250</sup> A key to conducting a successful temporary routine vehicle roadblock is the element of surprise, which serves to increase the anxiety law-abiding citizens experience approaching them.<sup>251</sup> Surely, temporary routine

241. Clancy, *supra* note 2, at 278.

242. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., TRAFFIC SAFETY FACTS: EARLY ESTIMATE OF MOTOR VEHICLE TRAFFIC FATALITIES IN 2020 (2021), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813115> [<https://perma.cc/VT95-ADG2>].

243. U.S. CONST. amend. IV.

244. Clancy, *supra* note 2, at 260 ("[T]he Court has variously stated that the Fourth Amendment protects liberty, reasonable expectations of privacy, individual freedom, personal dignity, bodily integrity, the 'inviolability of the person,' the 'sanctity of the person,' and the right of free movement.").

245. *Delaware v. Prouse*, 440 U.S. 648, 664 (1979) (Rehnquist, J., dissenting).

246. *Id.* at 657 (majority opinion).

247. *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 463 (1990) (Stevens, J., dissenting).

248. *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976).

249. *Sitz*, 496 U.S. at 465 (Stevens, J., dissenting).

250. *Id.* at 464.

251. *Id.* at 463.

vehicle roadblocks signify to the community that this is not “business as usual” and “that the police have made a discretionary decision to focus their law enforcement efforts upon [you] and others who pass.”<sup>252</sup>

Further, the Court minimizes the stress individuals experience from interacting with the police, regardless of the setting.<sup>253</sup> This may be due to their vantage point, not as law-abiding citizens, but as Supreme Court Justices; however, not all citizens share their experience. Many individuals belonging to minority groups in the United States often suffer greater anxieties and distresses when interacting with law enforcement.<sup>254</sup> Increased anxiety causes even innocent individuals to exhibit signs of guilt to law enforcement officers.<sup>255</sup> Notwithstanding a person’s innocence, individuals have other noncriminal privacies that, once uncovered by law enforcement, cause them to exude mannerisms of guilt. As Justice Stevens stated in his *Sitz* dissent, “[t]o be law abiding is not necessarily to be spotless . . . . Unwanted attention from the local police need not be less discomforting simply because one’s secrets are not the stuff of criminal prosecutions.”<sup>256</sup> If, instead of displaying signs of guilt, a person expresses frustration with the whole ruse, officers may assume they are a “jerk” or even a criminal.<sup>257</sup>

A final way the Court overlooks the impact on individuals is a tactic that pairs the use of routine vehicle roadblocks with narcotics detection K-9s. Since conducting a drug sniff around the outside of a vehicle, without more, is not considered a search under Fourth Amendment analysis,<sup>258</sup> law enforcement agencies are free to perform drug sniffs on every vehicle that enters a routine vehicle roadblock. This loophole allows law enforcement agencies to force cars to stop absent reasonable suspicion and then perform a narcotics sniff, a tactic not permitted in the context of roving patrols.<sup>259</sup> The number of law enforcement agencies who use narcotics detection K-9s during routine vehicle roadblocks is not negligible.<sup>260</sup> Four routine vehicle roadblocks deployed narcotics K-9s who performed ninety-eight drug sniffs.<sup>261</sup> In addition, dogs, like humans, are imperfect. Drug dogs are least effective when performing

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252. *Id.*

253. *See Martinez-Fuerte*, 428 U.S. at 558 (“[T]he generating of concern or even fright on the part of lawful travelers—is appreciably less in the case of a checkpoint stop.”); Clancy, *supra* note 2, at 285–86.

254. Cynthia J. Najdowski, Bette L. Bottoms & Phillip Atiba Goff, *Stereotype Threat and Racial Differences in Citizens’ Experiences of Police Encounters*, 39 LAW & HUM. BEHAV. 463, 463–64 (2015).

255. *Id.* at 464.

256. *Sitz*, 496 U.S. at 465 (Stevens, J., dissenting).

257. *Behind the Badge: Mehlin: Drivers Were Cooperative at Safety Checkpoint*, DAILY NONPAREIL (Council Bluffs, Iowa), Oct. 9, 2007, NewsBank (“One of the sergeants said that he worked the line the entire four hours and only one jerk got mouth about the police and what they were doing.”).

258. *Illinois v. Caballes*, 543 U.S. 405, 409–10 (2005).

259. *Id.*

260. *See infra* Appendix I.

261. *See infra* Appendix I.

sniffs of vehicles.<sup>262</sup> When sniffing vehicles outside, K-9s give correct indications only sixty-four percent of the time.<sup>263</sup> They also incorrectly indicate the presence of drugs twenty-two percent of the time.<sup>264</sup> This inefficiency leads to law enforcement agencies conducting wholesale vehicle searches like the one in the introduction to this Note.<sup>265</sup> According to the data, of the ninety-eight drug sniffs, only seven resulted in a narcotics arrest.<sup>266</sup> In reality, little information exists about the prevalence of the drug sniffs conducted during routine vehicle roadblocks in Iowa and what safeguards are used to prevent unnecessary and impactful interferences with individual liberty.

Ultimately, the Court habitually aggregates the government's interest when conducting the reasonableness test.<sup>267</sup> "[I]t is not the interest involved in the specific case before the Court; instead, it is the totality of the harm to be combated that is placed on the government's side of the scale."<sup>268</sup> When posited this way, it is no wonder the Court finds such instrumentalities, especially those used in administrative searches, reasonable.<sup>269</sup> Truly, when the Court uses the balancing test "the result is not hard to predict."<sup>270</sup> In most cases heard by the Court, government interests, and thus the collective security, are considered weightier than individual rights.<sup>271</sup> This is no different in the routine vehicle roadblock context, as the Court routinely finds that public safety outweighs the impact of a two to three minute seizure and inspection of one individual.<sup>272</sup>

*B. A PURPOSES ANALYSIS IS EASILY SKIRTED AND ACTS AS A SHIELD FOR  
ALTERNATIVE PURPOSES*

Analyzing the validity of routine vehicle roadblocks under a "purposes" test is messy and provides no real protection against interference with individual liberty. There is a reason courts do not factor in the motivation of law

262. See Tadeusz Jeziernski et al., *Efficacy of Drug Detection by Fully-Trained Police Dogs Varies by Breed, Training Level, Type of Drug and Search Environment*, 237 FORENSIC SCI. INT'L 112, 115 (2014).

263. *Id.*

264. *Id.*

265. See *supra* Introduction.

266. See *infra* Appendix I.

267. Clancy, *supra* note 2, at 278.

268. *Id.*

269. See *id.*

270. *Id.* at 277-78.

271. *Id.* at 278 (identifying numerous categories of government intrusions on individual rights justified by using the reasonableness test, "including searches of prison inmates and detainees and their cells, . . . detentions of persons during the execution of search warrants, entries onto property to combat and investigate fires, and inventory searches of possessions validly in police custody"); see *Scott v. Harris*, 550 U.S. 372, 381 (2007) (justifying police use of deadly force to end car chase); *Maryland v. King*, 569 U.S. 435, 440, 449 (2013) (justifying buccal swabs of arrestees to determine whether DNA was left at other crime scenes).

272. *United States v. Martinez-Fuerte*, 428 U.S. 543, 566 (1976); *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990)

enforcement officers in other Fourth Amendment contexts.<sup>273</sup> The analysis would be quickly muddied and, ultimately, a subjective motivation would be easily rebutted by testimony of the officers involved. Thus, the move from the reasonableness balancing test used in *Martinez-Fuerte* and *Sitz* to the purposes test used in *Edmond* is perplexing. A court is unlikely to find the purpose for which a routine vehicle roadblock is invalid absent a concession from law enforcement that their purpose was prohibited.<sup>274</sup>

Despite evidence that law enforcement conducted the routine vehicle roadblock as a sobriety checkpoint in *Day* and *Loyd*, the Iowa Supreme Court validated the roadblock.<sup>275</sup> In Iowa, law enforcement agents can merely check licenses at routine vehicle roadblocks to comply with section 321K.1, leaving the remaining police activities immaterial to the analysis.<sup>276</sup> Under current precedent, there is no questioning of the “true purpose” of the roadblock.<sup>277</sup> This leaves law enforcement agencies, while behind the shield of license checks, essentially unrestricted to conduct a routine vehicle roadblock for any purpose, at any time, and in any place. Theoretically, they could conduct license checks in high crime areas while performing drug sniffs or use the same process near the Iowa-Illinois or Iowa-Minnesota border postlegalization of marijuana in those states.<sup>278</sup> They could choose to conduct license checks near a factory and have ICE agents present “just in case.”<sup>279</sup> They may wish to check licenses near the local bar from 1:00 to 3:00 a.m. In some instances, agencies conduct ruse drug checkpoints where they erect signs along the road indicating DRUG CHECKPOINT AHEAD to catch individuals attempting to circumvent the roadblock by exiting early.<sup>280</sup>

Additionally, the primary purposes analysis and structure of section 321K.1 serve as a shield for discretionary targeting of certain communities. One of the U.S. Supreme Court’s main justifications for suggesting law enforcement use routine vehicle roadblocks was law enforcement’s lack of

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273. See *Graham v. Connor*, 490 U.S. 386, 397 (1989) (noting that law enforcement officer’s underlying motivations or intent are not to be considered); *Whren v. United States*, 517 U.S. 806, 813 (1996) (also noting that the officer’s motive was not to be considered).

274. See *supra* Section II.C.

275. See *State v. Day*, 528 N.W.2d 100, 103 (Iowa 1995); *State v. Loyd*, 530 N.W.2d 708, 711–13 (Iowa 1995).

276. See IOWA CODE § 321K.1(1).

277. See *Day*, 528 N.W.2d at 102–03; see also *Loyd*, 530 N.W.2d at 711 (refraining from questioning the true purpose of the roadblock).

278. Increased enforcement is certainly on the minds of law enforcement agencies on the eastern side of the state. See Kate Payne, *Iowa Law Enforcement Keeping an Eye on Recreational Pot in Illinois*, IOWA PUB. RADIO (Jan. 7, 2020, 5:46 PM), <https://www.iowapublicradio.org/ipr-news/2020-01-07/iowa-law-enforcement-keeping-an-eye-on-recreational-pot-in-illinois> [<https://perma.cc/F5NW-SUTE>].

279. See Bird, *supra* note 5 (noting ICE participated in a roadblock).

280. See Patrick Hogan, *Drug Checkpoint Nets 11 Arrests at I-80 Rest Stop*, GAZETTE (Apr. 22, 2012, 4:20 PM), <https://www.thegazette.com/news/drug-checkpoint-nets-11-arrests-at-i-80-rest-stop> [<https://perma.cc/VKE6-ZRLR>].



“unconstrained exercise of discretion.”<sup>281</sup> This was likewise the reason the *Prouse* Court determined that officers were not permitted to randomly pull over vehicles without reasonable suspicion.<sup>282</sup> Law enforcement’s discretion is not as unchecked as the Court makes out, however. When law enforcement agencies use fixed checkpoints, say at the airport or the entrance to a government building or a weigh station, they are void of discretion.<sup>283</sup> In those situations, law enforcement agencies cannot change the location of the airport entrance to inspect whoever they want and individuals expect the confrontation. This is not true for temporary routine vehicle roadblocks utilized in Iowa. Law enforcement agencies retain much discretion, not necessarily in *who* to stop, but *when* and *where* to conduct a routine vehicle roadblock.

When law enforcement agencies are deciding when and where to conduct routine vehicle roadblocks, one would expect they look to maximize their contacts with individuals they anticipate are engaged in unlawful activity. The data in Appendix I is consistent with decisions to maximize this engagement, especially the day, time, and places of many routine vehicle roadblocks.<sup>284</sup> For instance, in other states law enforcement agencies use routine vehicle roadblocks in high-crime areas with the hope of deterring drug trafficking.<sup>285</sup>

Overall, section 321K.1 (1) was meant to limit the purposes for which law enforcement could conduct routine vehicle roadblocks, but as written, it does not meaningfully do so. Paired with the Iowa Supreme Court rulings in *Day* and *Loyd*, citizens are left with no way to challenge the use of routine vehicle roadblocks as violative of the statute.<sup>286</sup> Ultimately, the primary purpose test is useless in restricting the use of routine vehicle roadblocks in any meaningful way.

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281. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

282. *See id.*

283. *See Clancy, supra* note 2, at 279–81, 280 n.198.

284. *See infra* Appendix I; *see, e.g., Mike McWilliams, Police Checkpoints Catch Drunken Drivers, PRESS-CITIZEN* (Iowa City, Iowa), Aug. 3, 2004, at A3; Tom McMahon, *Officer Injured, Four Arrested During Sunday Checkpoint, DAILY NONPAREIL* (Council Bluffs, Iowa), Sept. 21, 2004, NewsBank.

285. *See United States v. McFayden*, 865 F.2d 1306, 1308 (D.C. Cir. 1989).

286. *See State v. Day*, 528 N.W.2d 100, 102–03 (Iowa 1995); *see also State v. Loyd*, 530 N.W.2d 708, 712–13 (Iowa 1995) (upholding a roadblock without adequately considering the true purpose of the roadblock). An additional hurdle this Note cannot solve is that the exclusionary rule does not necessarily apply in cases where law enforcement agents have obtained evidence in violation of a state statute. *See Virginia v. Moore*, 553 U.S. 164, 178 (2008) (holding that the Fourth Amendment does not require exclusion of evidence where a police search is predicated on probable cause, but the search occurs after an arrest in violation of state law). Thus, despite being the first judiciary to apply the exclusionary rule to wrongful searches and seizures, evidence obtained at routine vehicle roadblocks in violation of Iowa Code 321K.1 (1) may not be excluded from trial if section 321K.1 (1) affords more protection than what constitutes a reasonable seizure under the Fourth Amendment and Article I, Section 8 of the Iowa Constitution. *See State v. Sheridan*, 96 N.W. 730, 732 (Iowa 1903) (holding that evidence obtained illegally should be excluded).

C. *A TRESPASSORY INTERPRETATION OF ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION WILL NOT ADEQUATELY RESTRICT THE USE OF ROUTINE VEHICLE ROADBLOCKS*

The Iowa Supreme Court is unlikely to restrict the use of routine vehicle roadblocks, notwithstanding the court's willingness to interpret Article I, Section 8 of the Iowa Constitution apart from the U.S. Supreme Court's Fourth Amendment interpretation. First, a renaissance of a trespassory understanding of Article I, Section 8 will not necessarily provide individuals with more protection. Under the trespassory theory, a seizure of a person is limited to an arrest.<sup>287</sup> This significantly furthers the point in police interactions when one is seized as compared to the current understanding under Fourth Amendment jurisprudence as discussed above.<sup>288</sup> Under the current understanding, an individual is seized if there is "a show of authority and submission."<sup>289</sup> Thus, analyzed under the trespassory theory, routine vehicle roadblocks would not likely amount to a seizure. Obviously, Iowans would still enjoy the current protection of individual rights granted by the U.S. Supreme Court's analysis of Fourth Amendment seizure law. But the Iowa Supreme Court's newfound openness to original interpretation provides no comfort for those seeking respite from routine vehicle roadblocks.

V. *THE IOWA LEGISLATURE SHOULD FURTHER RESTRICT THE USE OF ROUTINE VEHICLE ROADBLOCKS*

The most effective, and perhaps only, way to restrict routine vehicle roadblocks in Iowa is through the legislature. Both federal and state courts seem unwilling to restrict routine vehicle roadblocks to a pre-*Martinez-Fuerte* era, barring an overruling of *Sitz*, *Loyd*, and *Day*. This is unlikely to happen. The Court itself has recognized it is not in the position to determine which law enforcement tactics best promote the goals of the state.<sup>290</sup> Further, the *Sitz* Court suggests that such determinations should come from "politically accountable officials."<sup>291</sup> Public pressure is inadequate as well, although some law enforcement agencies have gained the ire of the public using routine vehicle roadblocks.<sup>292</sup> Law enforcement agencies are incentivized to conduct routine vehicle roadblocks, because they are often funded by the Iowa Traffic Safety Bureau as a special project and provide overtime pay.<sup>293</sup>

This seems to leave the Iowa Legislature as the body best suited to restrict the use of routine vehicle roadblocks, much like they seemingly attempted to do in

287. See Clancy, *supra* note 2, at 264.

288. See *supra* Section I.A.2.

289. Clancy, *supra* note 2, at 265 (citing CLANCY, *supra* note 34, § 5.1.4).

290. See *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 453 (1990).

291. *Id.*

292. See Sullivan, *supra* note 176.

293. McWilliams, *supra* note 284, at A3.

1986.<sup>294</sup> By amending section 321K.1(1), which allows law enforcement agencies to conduct *routine* vehicle roadblocks, they can maintain law enforcement's ability to utilize roadblocks in emergency situations. The statute would read as follows:

**321K.1 Roadblocks conducted by law enforcement agencies.**

1. The law enforcement agencies of this state may conduct *emergency* vehicle roadblocks in response to immediate threats to the health, safety, and welfare of the public.
2. Any emergency vehicle roadblock conducted under this section shall meet the following requirements:
  - a. The roadblock shall be temporary and shall not last longer than reasonably necessary to resolve the emergency.
  - b. The location of the roadblock, the time during which the roadblock will be conducted, and the procedure to be used while conducting the roadblock shall be determined by policymaking administrative officers of the law enforcement agency.
  - c. The roadblock location shall be selected for its safety and visibility to oncoming motorists and adequate advance warning signs, illuminated at night or under conditions of poor visibility, shall be erected to provide timely information to approaching motorists of the roadblock and its nature.
  - d. There shall be uniformed officers and marked official vehicles of the law enforcement agency or agencies involved in sufficient quantity and visibility to demonstrate the official nature of the roadblock.
  - e. The selection of motor vehicles to be stopped shall not be arbitrary.
  - f. The roadblock shall be conducted to assure the safety of and to minimize the inconvenience of the motorists involved.

Restricting routine vehicle roadblocks to the degree suggested above will produce several positive outcomes without adding negatives. First, it will prevent law enforcement agencies from using pretextual stops to effectuate their true purpose. The changes would promote trust and transparency between citizens and law enforcement. The alternations would certainly support the likely original goal of section 321K.1: preventing law enforcement agencies in Iowa from conducting sobriety checkpoints. Second, these changes will prevent law enforcement agencies from using their discretion to target populations

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294. See Act of May 27, 1986, ch. 1220, 1986 Iowa Acts 336.

they perceive most likely to harbor offenders. Third, the modifications would force law enforcement agencies to use more effective and less intrusive methods of policing. By focusing efforts on more effective policing tactics, Iowa's roadways would ultimately be safer. The changes could also lead to a more efficient use of taxpayer dollars. For these reasons the Iowa Legislature should amend Iowa Code section 321K.1 to allow for law enforcement agencies to use vehicle roadblocks for emergency purposes only.

Such changes are not unprecedented. Two states have similar statutes to the one proposed by this Note. Other jurisdictions are not quite as restrictive but have additional statutory safeguards in place to protect individual rights.<sup>295</sup> The two states with statutes most comparable to the one suggested above are Wyoming and Idaho.<sup>296</sup> Both statutes are similar in construction. Wyoming's statute reads:

Peace officers may establish, in their respective or adjacent jurisdictions, temporary roadblocks upon the highways within this state for the purpose of apprehending persons reasonably believed by the officers to be wanted for violation of the laws of this or any other state, or of the United States, and who are using any highway within the state.<sup>297</sup>

Both statutes are accompanied by sections comparable to section 321K.1(2) requiring certain procedures for public safety purposes.<sup>298</sup> These statutes not only restrict the use of routine vehicle roadblocks to instances where law enforcement agents are seeking specific individuals—officers must also have a reasonable belief that that the individuals have violated the law.<sup>299</sup> These statutory requirements reflect “[t]he warrant preference and individualize suspicion models” for determining reasonableness under the Fourth Amendment and therefore provide greater protection for individuals.<sup>300</sup> The proposed revision of section 321K.1 would be similar by limiting the use of routine vehicle roadblocks for emergency purposes, such as when law enforcement is trying to catch a fleeing criminal suspect.

295. See CAL. VEH. CODE § 2814.1 (West 2015) (requiring approval from county boards of supervisors); N.H. REV. STAT. ANN. § 265:1-a (2014) (requiring review and approval from the superior court); UTAH CODE ANN. § 77-23-104 (LexisNexis 2017) (requiring written approval of a magistrate).

296. See IDAHO CODE §§ 19-621 to -622 (2017); WYO. STAT. ANN. §§ 7-17-102 to -103 (2021).

297. WYO. STAT. ANN. § 7-17-102.

298. IDAHO CODE § 19-622; WYO. STAT. ANN. § 7-17-103.

299. WYO. STAT. ANN. § 7-17-102 (“Peace officers may establish . . . roadblocks . . . for the purpose of apprehending persons reasonably believed by the officers to be wanted for violation of the laws of this or any other state . . . .”); IDAHO CODE § 19-621 (“[S]heriffs . . . are hereby authorized to establish . . . temporary road blocks upon the highways of this state or city streets for the purpose of apprehending persons reasonably believed by such officers to be wanted for violation of the laws of this state . . . .”).

300. Clancy, *supra* note 2, at 275–76.

## CONCLUSION

The available data show that, in Iowa, routine vehicle roadblocks are not likely the most effective way to make roadways safer. The data also tend to show that law enforcement agencies use routine vehicle roadblocks for purposes other than those permitted purposes laid out in Iowa Code section 321K.1. The gravity of public concern is overstated by generalizing the concern as one of “public safety” rather than focusing on the public concern that is served by the seizure. Public concern is also overstated through use of statistical aggregation.<sup>301</sup> At the same time, the degree to which these seizures advance the public interest is minimal, because routine vehicle roadblocks are an inefficient policing method while more efficient tactics could be utilized. The interference with individual liberty is more significant than is recognized, as individuals often experience greater fear and anxiety than is acknowledged. Finally, Iowans are not likely to find increased protections of individual liberties through the Iowa court system, despite the recent ruling in *Wright*.

The Iowa Legislature is best positioned to restrict the use of routine vehicle roadblocks and doing so is not unprecedented. The Iowa Legislature should do so by amending section 321K.1(1)(a)–(d) and provide for use of routine vehicle roadblocks in emergency situations only. The proposed restrictions would provide individuals with greater protection while permitting the use of vehicle roadblocks when necessary. This strikes a better balance between individual and communal interests.

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301. See *id.* at 278.

## APPENDIX

## I. Routine Vehicle Roadblock Data Set Collected from Newspaper Databases

Date and Location	Available Data	
September 2018 – Jackson County <sup>302</sup>	Day	Friday
	Time	8:00 pm to 10:00 pm
October 2017 – Henry County <sup>303</sup>	Vehicles Seized	(nearly) 600
	Drug Arrests	1
	Barred License Arrests	2
	Citations	22
	Warnings	171
	Drug Sniffs	15
	Number of Officers	39
June 2015 – Buchanan County <sup>304</sup>	Day	Friday
	Time	4:00 pm to 8:00 pm
August 2014 – Henry County <sup>305</sup>	Vehicles Seized	391
	Suspended Driver Arrest	1
	Narcotics Arrests	3
	Citations	13
	Warnings	77
	Commercial Vehicles Out of Service	3
	Day	Thursday
June 2014 – Lee County <sup>306</sup>	Vehicles Seized	677
	Tickets	23
	Warnings	221
	Commercial Vehicles Out of Service	1
	Day	Thursday
	Time	4:00 pm to 8:00 pm

302. *Safety Checkpoint Stated Near Preston Friday*, *supra* note 87.

303. Sullivan, *supra* note 176.

304. *Troopers to Hold Traffic Checkpoint in Buchanan Co.*, WATERLOO-CEDAR FALLS COURIER, June 10, 2015, NewsBank. This article announces the plan to conduct a routine checkpoint in the future. *Id.*

305. *Numerous Warnings Issued at Checkpoint*, HAWK EYE (Burlington, Iowa), Aug. 16, 2014, at 3A.

306. *Lee County Checkpoint Nets Citations*, *supra* note 164, at 7B.

October 2013 – Polk County <sup>307</sup>	None	
August 2013 – Lee County <sup>308</sup>	Vehicles Seized	943
	Traffic Citations	19
	Warnings	149
	Commercial Vehicles Out of Service	9
	Day	Friday
	Time	4:00 pm to 8:00 pm
August 2012 – Louisa County <sup>309</sup>	Day	Saturday
	Time	8:00 pm to 10:00 pm
August 2012 – Lee County <sup>310</sup>	Vehicles Seized	925
	Narcotics Arrests	3
	Warrant Arrests	2
	Traffic Citations	36
	Warnings	63
	Drug Sniffs	63
	Commercial Vehicles Out of Service	3
	Day	Friday
	Time	4:00 pm to 8:00 pm
June 2012 – Worth County <sup>311</sup>	Vehicles Seized	1,255
	DUI Arrests	1
	Narcotics Arrests	4
	Equipment Warnings	211
	Traffic Citations	76
	Day	Saturday
	Number of Officers	56
	Number of Volunteers	14

307. *Traffic Safety: GOP Unhappy with Checkpoints*, WHO 13: DES MOINES (Oct. 4, 2013, 6:21 PM), <https://who13.com/news/traffic-checkpoint-gop-unhappy-with-routine-stops> [<https://perma.cc/4TgV-H2SF>].

308. *Citations Issued in Traffic Check*, HAWK EYE (Burlington, Iowa), Aug. 27, 2013, at 3A.

309. *Motor Vehicle Safety Checkpoint Set for Saturday*, HAWK EYE (Burlington, Iowa), Aug. 28, 2012, at 4A. This article announces the plan to conduct a routine checkpoint in the future. *Id.*

310. *Aug. 24 Traffic Checkpoint Results Announced*, *supra* note 225.

311. *Arrests Made; Citations, Warnings Given at Checkpoint*, GLOBE GAZETTE (Mason City, Iowa), June 11, 2012, NewsBank.

September 2011 – Polk County <sup>312</sup>	None	
August 2011 – Worth County <sup>313</sup>	Vehicles Seized	1,115
	Drug Arrests	8
	Equipment Warnings	203
	Traffic Citations	74
	Day	Saturday
	Time	3:00 pm to 7:00 pm
	Number of Officers	56
	Number of Volunteers	14
August 2011 – Johnson County <sup>314</sup>	None	
September 2010 – Johnson County <sup>315</sup>	DUI Arrests	2
	Day	Saturday
May 2010 – Marion County <sup>316</sup>	Day	Saturday
	Time	4:00 pm to 8:00 pm
September 2009 – Fayette County <sup>317</sup>	Vehicles Seized	330
	Drug Arrests	2
	Citations	39
	Warning Citations	71
	Day	Friday
	Time	5:00 pm to 7:30 pm
	Number of Officers	35
May 2009 – Lee County <sup>318</sup>	Vehicles Seized	500
	Warrant Arrest	1
	Invalid License Arrest	1
	Drug Arrests	3
	Equipment Violations	32

312. *Drivers Will See Traffic Safety Checkpoint Today in Polk Co.*, DES MOINES REG., Sept. 16, 2011, NewsBank. This article announces the plan to conduct a routine checkpoint in the future. *Id.*

313. Bird, *supra* note 5.

314. *Think Before You Drink 2011 Initiatives*, *supra* note 171, at Ag. This article announces the plan to conduct a routine checkpoint in the future. *Id.*

315. Josh O'Leary, *Police Doled Out Citations Saturday*, PRESS-CITIZEN (Iowa City, Iowa), Sept. 12, 2010, ProQuest, Doc. No. 750426904.

316. *Sheriff's Office Plans Checkpoint May 22*, KNOXVILLE J. EXPRESS (Knoxville, Iowa), May 14, 2010, NewsBank. This article announces the plan to conduct a routine checkpoint in the future. *Id.*

317. *Picture: 330 Vehicles Stopped During Fayette Sting*, *supra* note 225.

318. *Law Enforcement Report Results of FM Checkpoint*, *supra* note 163.



	Citations	29
	Warnings	35
	Drug Sniffs	11
	Day	Friday
	Time	6:00 pm to 10:00 pm
	Number of Officers	30
March 2009 – Jasper County <sup>319</sup>	Vehicles Seized	225
	Stopped for Inspection	56
	Equipment Warnings	18
	Non-Moving Citations	4
	Non-Moving Warnings	10
	Day	Tuesday
July 2008 – Clayton County <sup>320</sup>	Vehicles Seized	250
	Driving While Suspended/Revocation Citations	4
	Drug Arrests	3
	DUI Arrests	1
	Driving w/o a License	2
	DNR Violations	3
	Registration Warnings	8
	Equipment Warnings	40
	No Insurance Warnings	27
	Day	Thursday
May 2008 – Buchanan & Black Hawk Counties <sup>321</sup>	Vehicles Seized	1,000
	DUI Arrests	1
	Narcotics Arrests	3-4
	Immigrant Arrests	7
	Day	Friday
	Number of Officers	70
May 2008 – Pottawattamie County <sup>322</sup>	Day	Friday
	Time	10:00 pm to 2:00 am
	Number of Officers	20

319. *Multi-Agency Enforcement Effort Conducted*, *supra* note 173.

320. *Local Briefs*, *supra* note 173, at C5.

321. *Cedar Rapids*, *supra* note 178, at 1B.

322. Chad Nation, *Officials Urge Motorists Use Caution*, DAILY NONPAREIL (Council Bluffs, Iowa), May 22, 2008, NewsBank. This article announces the plan to conduct a routine checkpoint in the future. *Id.*

October 2007 – Pottawattamie County <sup>323</sup>	Invalid License	5
	Equipment Violations	12
	Minor in Possession	2
	Citations	95
	Warnings	34
	Day	Saturday
	Time	8:00 pm to 12:00 am
September 2007 – Clayton County <sup>324</sup>	Vehicles Seized	380
	No License/Insurance Citations	10
	Equipment Warnings	40
	Drug Sniffs	9
	Day	Saturday
	Time	4:00 pm to 8:00 pm
	Number of Officers	28
September 2007 – Pottawattamie County <sup>325</sup>	Day	Saturday
	Time	8:00 pm to 12:00 am
	Number of Officers	25
August 2004 – Johnson County <sup>326</sup>	Vehicles Seized	710
	Driving While Barred	8
	No Insurance	7
	DUI Arrests	10
	Possession of Controlled Substances	4
	Non-Moving Violations	13
	Warnings	50
	Day	Friday
	Time	6:30 pm to 3:00 am
Officers	25	
	Vehicles Seized	191
	Invalid License	17
	Invalid Insurance	22

323. Dennis Friend, *Police Checkpoint Nets No Drunken Drivers*, DAILY NONPAREIL (Council Bluffs, Iowa), Oct. 2, 2007, NewsBank.

324. *Authorities Conduct Checkpoint on U.S. 18*, *supra* note 224, at D4.

325. Sunshine Dalton, *Agencies to Conduct Safety Checkpoint*, DAILY NONPAREIL (Council Bluffs, Iowa), Sept. 26, 2007, NewsBank. This article announces the plan to conduct a routine checkpoint in the future. *Id.*

326. McWilliams, *supra* note 284, at A3.

September 2004 – Pottawattamie County <sup>327</sup>	No Seatbelt	16
	OWI Investigations	10
	Open Containers	5
	Narcotics Arrests	4
	Day	Sunday
	Time	12:00 am to 4:30 am
August 2003 – Dallas County <sup>328</sup>	Number of Officers	6
July 2003 – Woodbury County <sup>329</sup>	DUI Arrests	1
	Day	Saturday
May 2002 – Des Moines County <sup>330</sup>	Vehicles Seized	162
	DUI Arrests	1
	Day	Friday
	Time	10:00 pm to 12:00 am
May 2001 – Black Hawk County <sup>331</sup>	Vehicles Seized	846
	Arrests	1
	Citations	33
	Verbal Warnings	177
	Written Warnings	33
	Day	Saturday
	Number of Officers	43
May 1999 – Des Moines County <sup>332</sup>	Day	Friday
	Time	10:30 pm to 2:30 am
October 1998 – Cedar County <sup>333</sup>	None	
July 1998 – Polk County <sup>334</sup>	None	

327. McMahon, *supra* note 284.

328. Bill Haglund, *Checkpoint Stops Net Five Arrests, 68 Violations*, TRIBUNE (Ames, Iowa), Aug. 27, 2003, NewsBank.

329. *South Sioux City Councilman to Stand Trial on OWI Charge*, SIOUX CITY J., July 18, 2003, NewsBank.

330. *Roadblock Yields Several Citations*, *supra* note 87.

331. Jeff Reinitz, *Memorial Day Motorists Flagged for Violations*, WATERLOO-CEDAR FALLS COURIER, May 31, 2001, NewsBank.

332. Umut Newbury, *Checkpoint 09*, HAWK EYE (Burlington, Iowa), May 12, 1999, NewsBank.

333. *State Patrol's Drug Stings Go Too Far: Judge*, GAZETTE (Cedar Rapids, Iowa), Jan. 22, 1999, at 2B.

334. *Id.*

November 1997 – Johnson County <sup>335</sup>	Vehicles Seized	207
	Day	Saturday
October 1997 – Johnson County <sup>336</sup>	None	
June 1997 – Dubuque County <sup>337</sup>	Vehicles Seized	97
	Invalid License	1
	DUI Arrests	2
	Warning Tickets	32
	Underage Drinking	3
	Endangering a Child	1
	Day Time	Sunday Early Morning
September 1996 – Des Moines County <sup>338</sup>	Vehicles Seized	200
	Warrant Arrest	1
	Open Container	1
	Traffic Citations	15
	Equipment Warnings	60
	Day Time	Friday 11:00 pm to 3:00 am
	June 1996 – Dubuque County <sup>339</sup>	Vehicles Seized
DUI Arrests		5
Open Container		1
Narcotics Arrests		2
Other Arrests		6
Moving/Traffic Violations		10
Warning Tickets		62
Seatbelt Violations		24
Day Time		Friday 11:00 pm to 3:00 am
	Vehicles Seized	(nearly) 2,000

335. Edward Walz, *Coralville Checks for Vehicle Safety*, GAZETTE (Cedar Rapids, Iowa), Nov. 30, 1997, at 15A.

336. *Id.*

337. *Stop Checkpoint Issues 32 Warnings*, TEL. HERALD (Dubuque, Iowa), June 9, 1997, at A8.

338. *Burlington Police 43*, HAWK EYE (Burlington, Iowa), Sept. 23, 1996, NewsBank.

339. Kathy Bergstrom, *Road Blocks Produce Drinking, Drug Arrests*, TEL. HERALD (Dubuque, Iowa), June 10, 1996, at A3.

May 1995 - Buchanan County <sup>340</sup>	Traffic Violations	19
	Driver's License Problems	14
	DUI Arrests	1
	Open Containers	4
	Narcotics Arrests	5
	Seatbelt Violations	5
	Equipment Violations	12
	Equipment Warnings	71
	Day	Friday
	Time	3:00 pm to 9:00 pm
	Number of Officers	60
February 1992 - Linn County <sup>341</sup>	Invalid License	1
	Driver's License Violations	3
	Tinted Windows	2
	Speeding Violations	4
	Seat-belt Violations	97
	Day	Thursday/Friday

## II. Agencies Participating in Iowa Routine Vehicle Roadblocks Since 1992

### County Sheriff Departments

Benton; Black Hawk; Buchanan; Cerro Gordo; Clayton; Dallas; Des Moines; Dubuque; Fayette; Floyd; Franklin; Grundy; Henry; Jackson; Jasper; Lee; Louisa; Marion; Pottawattamie; Winnebago; Worth

### Police Departments

Bellevue; Burlington; Cedar Rapids; Clear Lake; Coralville; Council Bluffs; Donnellson; Dubuque; Elkader; Forest City; Fort Madison; Hampton; Independence; Iowa City; Jesup; Keokuk; Maquoketa; Mar-Mac; Mason City; Monona; Newton; Oelwein; Postville; Sabula; Sioux City; Strawberry Point; University of Iowa Police Department; West Burlington; West Point; West Union

### Other Participating Agencies

Department of Immigration Customs Enforcement ("ICE")  
 Iowa Department of Natural Resources ("DNR")  
 Minnesota Department of Natural Resources ("Minn. DNR")  
 Iowa Department of Transportation ("DOT")

340. Rasdal, *supra* note 226, at 3B.

341. *Linn County 97 Nabbed for*, GAZETTE (Cedar Rapids, Iowa), Feb. 29, 1992, at 1.

Iowa Department of Public Safety Intelligence Bureau  
Worth County Emergency Management Services  
Iowa Governor's Traffic Safety Bureau  
Lake Mills Ambulance Service  
Cerro Gordo County Emergency Management  
Clear Lake Ambulance Service  
Iowa State Patrol  
Lee County Conservation  
Lee County Narcotics Task Force  
K-9 Unit from Henry County Sheriff's Office  
K-9 Unit from Iowa State Penitentiary  
Clayton County Conservation  
Postville K-9 Unit  
Clayton County K-9 Unit  
Dubuque Auxiliary Police  
Dubuque Park Ranger