No. 16-1027

In The
Supreme Court of the United States

RYAN COLLINS,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Virginia

BRIEF OF INSTITUTE FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The Institute for Justice ("IJ") is a nonprofit, public-interest law center committed to defending the essential foundations of a free society and securing the constitutional protections necessary to ensure individual liberty. A central pillar of IJ's mission is to protect private property rights, both because an individual's control over his own property is a tenet of personal liberty and because property rights are inextricably linked to all other civil rights. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993) ("Individual freedom finds tangible expression in property rights.").

The Institute's work in this regard includes challenging programs that permit government officials to trespass against private property without first securing a warrant based on individualized probable cause. *See, e.g.*, *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013); *Black v. Vill. of Park Forest*, 20 F. Supp. 2d 1218 (N.D. Ill. 1998). It has also challenged government requirements that food truck owners install and operate GPS tracking devices on their vehicles as a condition of licensure. *See LMP Services, Inc. v. City of Chicago*, No. 16-3390 (Ill. App. Ct. filed Apr. 4, 2017). In addition, IJ has filed *amicus* briefs in numerous Fourth Amendment cases before this Court, including in *City of Los Angeles v. Patel*, 576 U.S. ___, 135

[1] All parties have consented to the filing of this brief. *Amicus* affirms that no counsel for any party authored this brief in whole or in part and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

S. Ct. 2443 (2015), and *Florida v. Harris*, 568 U.S. 237 (2013).

SUMMARY OF ARGUMENT

In recent years this Court has reaffirmed that property rights are central to the interpretation of the Fourth Amendment. This case provides an opportunity to apply that important principle. That is because the government in this case committed two trespasses, one against the *real* property where Petitioner resided, the second against an *effect* – the covered motorcycle – on that property. The government committed both trespasses without a warrant. Petitioner rightly argues that these trespasses occurred on the curtilage of his home.

But regardless of the curtilage issue, the "open fields" doctrine cannot save the Commonwealth's actions in this case. As *Amicus* discusses in greater detail below, the doctrine turns on a dubious and ahistorical reading of English common law. Moreover, this Court's narrow reading of the Fourth Amendment term "house," in justifying the doctrine, stands in stark contrast with its other decisions, which have extended Fourth Amendment protection to commercial buildings despite their being outside the original understanding of that term. And, even putting those flaws aside, this Court has never used the open fields doctrine to justify anything but an observational search, separate from the search of any person, house, paper,

or effect. Given the long history of common law protection of effects against trespass, the Fourth Amendment protects against warrantless searches of effects on private property just as it protects against warrantless searches of the other items enumerated in the Fourth Amendment. Furthermore, the vehicle exception to the warrant requirement does not apply. The warrantless search in this case violated the Fourth Amendment and the judgment of the Virginia Supreme Court should be reversed.

ARGUMENT

The Court should not apply the "open field doctrine" or the "automobile exception" to this case. If the Court does so, it could subject all vehicles, and even other effects, on private property to warrantless searches. Petitioner has already addressed why the automobile exception should not apply, Br. of Pet'r at 10-39, and other *amici* will as well. This brief instead primarily addresses why the open fields doctrine does not justify the warrantless search at issue. It explains how the doctrine rests on weak foundations and has never been used by this Court to justify the search of an *effect*, as opposed to a search of an open field. It should not do so in this case either.

The importance of this case can be seen in the following example. A farmer parks his egg-delivery truck beside his chicken coop, on his own private property, and far away from the property line, but some distance

from his house. He then retires to his house for the evening. The police want to search the inside of the truck at night, without the farmer's knowledge, including in areas not in plain view through the windows. Under what *Amicus* expects the Commonwealth to argue, that search would not require a warrant because it concerns an automobile located in an "open field."

Longstanding principles of trespass law, however, tell us that the police's plan would constitute trespasses, both to the land where the truck rests and to the truck itself. *Amicus* explains below why those trespasses mean such a warrantless search would violate the Fourth Amendment, the open fields doctrine notwithstanding. The doctrine does not justify the warrantless search of an effect on private property not open to the public. This Court should rule for Petitioner, and make clear that searches of vehicles and other effects on private property require a warrant.

Below, *Amicus* first briefly discusses the Court's recent turn toward a property-rights understanding of the Fourth Amendment, and why that understanding directly applies to this case. *Amicus* then turns to the open fields doctrine. The doctrine rests on flawed premises and does not comport with this Court's recent protections against common law trespass by the government. It also has never been used by this Court to justify a search of an *effect* in an open field, and should not be used to justify the search in this case. Finally, *Amicus* briefly discusses why the automobile exception also does not justify the search in this case.

I. This Court's Recent Rulings in *Jones* and *Jardines* Demonstrate Why a Property-Rights Interpretation of the Fourth Amendment Should Control in This Case.

The Fourth Amendment has entered a property-rights renaissance. As this Court is well aware, its original touchstone for whether a search occurred turned on the government's actions – specifically whether the government had physically trespassed upon private property for the purpose of acquiring information. But technological developments soon showed the limitations of that approach, *see Olmstead v. United States*, 277 U.S. 438, 471 (1928) (Brandeis, J., dissenting), and eventually led this Court to articulate a second, independent ground for determining whether a search had occurred – the "reasonable expectation of privacy" test laid out in *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). Although that alternate formulation solved some problems, it created others, particularly when the government sought information that, while not reasonably being thought of as private, could only be acquired by gaining physical access to the object of surveillance.

This Court recognized that lower courts had erringly viewed *Katz* as being the exclusive way to determine if a Fourth Amendment search had occurred. And so, beginning earlier this decade, this Court began to disabuse lower courts of that notion. Its first step in that project occurred in *United States v. Jones*, 565 U.S. 400 (2012), where this Court held that the government's manipulation of an effect (in *Jones*, placing a

GPS device on a motor vehicle) in order to gain information gave rise to Fourth Amendment scrutiny. One year later, this Court extended the reasoning of *Jones* to real property, holding in *Florida v. Jardines*, 569 U.S. 1 (2013), that the government's taking of its drug-sniffing dog onto a person's front porch also constituted a Fourth Amendment search because its actions were outside the implied license that people enjoy when entering upon someone's homestead.

The facts presented by this case implicate the holdings of both *Jones* and *Jardines*. Here, an officer of the law who was looking for a motorcycle entered onto the property where Mr. Collins lived. Rather than simply walk to the front porch, knock on the door, and talk to Mr. Collins – an investigative matter that raises no constitutional scrutiny unless the implied license has been revoked, *see United States v. Carloss*, 818 F.3d 988, 1003 (10th Cir. 2016) (Gorsuch, J., dissenting) (concluding that numerous "No Trespassing" signs should have served to revoke the implied license) – the officer walked past the path to the back of the driveway to instead inspect a motorcycle parked immediately next to the home. And when a cover, snugly wrapped around that motorcycle, obscured the officer's view, he engaged in a second, independent search by removing that cover without permission so he could inspect the bike's serial number.

Both of these searches trigger Fourth Amendment scrutiny, yet the government now attempts to escape this Court's holding in *Katz* that "searches conducted outside the judicial process, without prior approval by

judge or magistrate, are per se unreasonable under the Fourth Amendment." 389 U.S. at 357. It primarily does so by claiming that the automobile exception first laid out in *Carroll v. United States*, 267 U.S. 132 (1925), alleviates any need for a warrant. And, although the question presented concerns the automobile exception, the Commonwealth may also contend to this Court that the officer's actions are of no constitutional moment because although they occurred in the driveway immediately next to Mr. Collins' home, this area should be viewed as an "open field," a portion of private property which this Court's Fourth Amendment jurisprudence leaves unprotected. At the petition stage, the Commonwealth notably refused to concede that the motorcycle was located on the curtilage when it was searched. Br. in Opp'n to Pet. for Writ of Certiorari, No. 16-1027, 33-36.

This Court should reject the application of the open fields doctrine to this case. As *Amicus* explains in more detail below, the doctrine, which serves to reduce the scope of Americans' constitutional rights, rests on dubious constitutional footing. Moreover, because the open fields doctrine only allows officials to enter certain areas of private property from which to observe, it cannot serve to excuse the officer's second search, the removal of the cover and inspection of the motorcycle. Because the Virginia Supreme Court's ruling is emblematic of an unwarranted and liberty-reducing departure from this Court's property rights and Fourth Amendment jurisprudence, this Court should reverse.

II. This Court Should Not Allow the "Open Fields" Doctrine to Influence the Protection an "Effect" Receives Under the Fourth Amendment.

Petitioner rightly argues that the search occurred in the curtilage of his home. Br. of Pet'r at 31-36. But even if the motorcycle was in an "open field," as *Amicus* expects the Commonwealth to argue, the searching of Mr. Collins' effect still required a warrant. The open field doctrine adds nothing to the constitutionality of the search, and any application of the doctrine in this case should be rejected.

The doctrine is deeply problematic from a historical and constitutional perspective. Its conclusion that certain pieces of private property lose all constitutional protection is inconsistent with this Court's precedents. And, because the open fields doctrine only allows officials to enter onto private property for observational purposes, its invocation would still require this Court to wrestle with thorny Fourth Amendment issues regarding the arresting officer's manipulation of effects, i.e., the motorcycle and the cover. The Fourth Amendment's, and the common law's, protection of effects has a long history that does not justify jettisoning the warrant requirement when an effect is searched. This Court should therefore reject any argument that this case does not implicate its holding in *Jardines* because of the location of the effect.

A. The Open Fields Doctrine Has No Historical Justification and Rests on an Error Made, and Then Compounded, by This Court.

The open fields doctrine only exists because of an error that this Court made in the prohibition era. In *Hester v. United States*, 265 U.S. 57 (1924), authored by Justice Holmes, the Court reviewed the conviction of a man who was running a whisky still on a farm. The officers trespassed onto a field and, concealed "fifty to one hundred yards away," saw whisky jugs being exchanged outside a house. *Id.* at 58. This evidence then led to the defendant's conviction. In rejecting the defendant's attempt to suppress the evidence, the Court stated that "the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields. The distinction between the latter and the house is as old as the common law." *Id.* at 59. The sole citation to support this historical assertion was to three pages of Blackstone's *Commentaries*. *Id.* (citing 4 Blackstone, *Commentaries* *223, *225-26).

The problem with Justice Holmes' citation is that in those pages, Blackstone was not talking about open fields, officers of the law, or even trespass. Instead, he was discussing the elements of burglary. Blackstone simply lays out the rule that to commit burglary, among other elements, the burglar must break into a home, and do it at night. 4 Blackstone, *Commentaries* *223-26. Blackstone contrasts a nighttime home invasion both with invasions of the home during the day,

and invasions of other structures, including a "barn, warehouse, or the like. . . ." *Id.* at *225. He does not even mention "fields," let alone "open" ones. He also places no special emphasis on curtilage, only that if an outbuilding, such as a barn, is attached to a house, or "within the curtilage," then the entering of the barn, at night, could be burglary. *Id.*

Thus, all Blackstone said in the pages *Hester* cited was that at common law an uninvited stranger who entered a home at night committed burglary, but a thief who enters a home during the day, or a barn or a warehouse, did not. The thief still committed a crime, of course, when committing these other various trespasses, just not the specific crime of burglary.

Yet, *Hester* took this distinction between burglary and other crimes and gave it constitutional significance by applying it to an area – an open field – that Blackstone does not even address. By the same, ill-founded reasoning, *Hester* could have stated that the Fourth Amendment does not apply to the government entering homes *during the day*, or entering buildings such as barns and warehouses *at all*, all areas Blackstone contrasted to a break-in of the home at night. But that is the logical conclusion once the citation to Blackstone is actually examined. In short, the citation to Blackstone did nothing to support the Court's refusal to apply the Fourth Amendment to an "open field."

Therefore, with all due respect to Justice Holmes and the Court in *Hester*, the open fields doctrine, as articulated there, had no historical or jurisprudential

basis. And given the very brief reasoning of the opinion, that means the doctrine had no justification at all.

This Court did not reexamine the open fields doctrine again for 60 years, until *Oliver v. United States*, 466 U.S. 170 (1984). There the Court gave a lengthier justification, although it mostly depended on *Hester* and whether there exists a "legitimate expectation of privacy" in an open field under the *Katz* standard.[2] *Id.* at 177-181. It did not discuss whether the common law protected against trespassers in open fields or other property not within a home or its curtilage.

The *Oliver* Court also made the textual argument that because open fields are not mentioned in the Fourth Amendment, they do not receive the provision's protection, unlike persons, houses, papers, or effects. Yet, the Court did not square this with how the Fourth Amendment had been interpreted to protect other items not enumerated in its text, such as commercial property, and it has not since. This Court has found the Fourth Amendment to protect a warehouse, *See v. City of Seattle*, 387 U.S. 541 (1967), an electrical and plumbing business, *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), and a furniture store, *Michigan v. Tyler*, 436 U.S. 499 (1978), for example. It has even found some degree of protection for "closely regulated industries," such as automobile junkyards. *New York v. Burger*, 482 U.S. 691 (1987) (holding that although a warrant was not required to search, the search still must be

[2] With *Jones*, of course, we know now that *Katz* is only one way the government can violate the Fourth Amendment.

reasonable). None of these items of property have been held to be "persons, houses, papers, or effects," but this Court has held they all receive at least some protection from the Fourth Amendment. Indeed, the meaning of "house" when the Amendment was adopted does not seem to have included commercial property, any more than it does today. *See, e.g.*, Samuel Johnson, *Dictionary of the English Language* (1785, 6th ed.) (defining "house" to mean "1. a place wherein a man lives; a place of human abode 2. Any place of abode 3. Places in which religious or studious persons live in common") (unpaginated). This practice of nevertheless protecting commercial property stands in contrast to open fields, which this Court has determined receive no protection at all.

B. Because This Court's Jurisprudence Only Authorizes Officials to Observe When in an Open Field, It Cannot Form a Basis for the Arresting Officer's Warrantless Inspection of the Cover and Motorcycle.

The weak history and textual analysis that underlies the open fields doctrine is reason enough not to apply it in this case. But even aside from those weaknesses, the doctrine is still incapable of resolving the dispute at the heart of this case: whether a warrant was required for the search of the motorcycle. That is because the open fields doctrine only extends to entry and observation from those fields, not to searches of any effects that may be found within them.

It is critical to remember that Officer Rhodes did not just enter onto Mr. Collins' property to get a better look at the motorcycle parked alongside the house. As the record demonstrates, the motorcycle was not just sitting in the open, but was instead protected from the elements by a large vehicle cover that wrapped around the entire bike. Br. of Pet'r at 5. The officer removed that cover so that he could learn the motorcycle's vehicle identification number. *Id.*

Even if the motorcycle was not in the curtilage, this action – taken by the officer in order to gather information as part of his criminal investigation – takes the facts of this case outside of the open fields doctrine. Accordingly, the officer's warrantless search of Mr. Collins' personal property can only comport with the Fourth Amendment upon other grounds separate from the open fields doctrine.

i. This Court has never applied the open fields doctrine to the inspection of effects on private property.

Since *Oliver* the Court has not had much occasion to apply the open fields doctrine, but it has implied that an effect *in* an open field is entitled to Fourth Amendment protection, unlike the "field" itself, and that the doctrine only applies to observations, and nothing more. In *United States v. Dunn*, 480 U.S. 294 (1987), the Court held that officers were allowed to look into the window of a barn that was located in an open field, and found it significant that the officers did

not enter the barn or disturb its contents without a warrant. *Id.* at 304. It also briefly explained in *Jones* and *Jardines* that open fields are not protected because they are not enumerated in the text of the Fourth Amendment – but contrasted that to effects. *Jones*, 565 U.S. at 411 ("The Government's physical intrusion on [an open field] – unlike its intrusion on the 'effect' at issue here – is of no Fourth Amendment significance."); *Jardines*, 569 U.S. at 6. And in *Jones*, of course, it squarely held that a trespass on an effect – in that case a car in a public parking lot – is a search under the Fourth Amendment. *Jones*, 565 U.S. at 410. Therefore, an effect *in* an open field is still an "effect," and is still textually protected by the Fourth Amendment. The doctrine has nothing to say about effects, wherever they may be.

ii. A warrant is required for a search of an effect on private property, just as one is required for searches of people, houses, and papers.

The Fourth Amendment specifically protects "persons, houses, papers, and effects." As explained above, in *Jones*, this Court made clear that "effects" receive the protection of the Fourth Amendment, just as persons, houses, and papers do. *Jones*, 565 U.S. at 404-05 (occupying an effect in order to obtain information constitutes a "search"). Further, the constitutional baseline for all searches – whether of persons, houses, papers, or effects – is that "searches conducted outside the judicial process, without prior approval by judge or

magistrate, are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions." *Katz*, 389 U.S. at 357. *See also Jones v. United States*, 357 U.S. 493, 499 (1958) ("The exceptions to the rule that a search must rest upon a search warrant have been jealously and carefully drawn. . . ."). This Court has never created a general exception to the warrant requirement for an effect just because it is an effect.

This makes eminent sense because, at common law, effects were fully protected from trespass. Trespass to chattels, replevin, and detinue are examples of actions used to recover chattels, or receive compensation for damage to chattels, if a person came onto private property and took or even touched an effect. *See, e.g.*, *Melville v. Brown*, 15 Mass. (Tyng) 82 (1818) (sheriff's seizure and sale of chattels could be a trespass because sheriff was under an obligation to return chattels to non-debtor plaintiff after satisfying judgement against the chattels' other owner); 3 Blackstone, *Commentaries* *145-46 (discussing replevin and detinue as actions to restore items of personal property to their rightful possessor); Sydney Hastings, *A Treatise on Torts and the Legal Remedies for Their Redress* 119 (H. Sweet & Sons, London, 1885) ("A trespass upon a chattel consists in the taking, removing, or inflicting any injury upon it, however slight (a), without the consent of the owner and without lawful excuse (b) . . . in trespass a party is liable if he takes the chattel only for an instant. . . ."); Theodore Plucknett, *A Concise History of the Common Law* 368 (5th ed., 1956) (discussing

Medieval cases of tenants bringing replevin actions to return stolen livestock). *Cf. Entick v. Carrington*, 19 Howell's State Trials 1029 (1765) ("By the laws of England, every invasion of private property, be it ever so minute, is a trespass."). What the officer did in this case – lift the cover on the motorcycle – would constitute trespass to chattels under these well-established principles. *See* 3 Blackstone, *supra*, *153-54 (recognizing actions for trespass to chattels even where there is no breach of the peace with limited injury).

To the extent there is any difference on an effect's protection under the Fourth Amendment depending on *where* the effect is, that difference might depend on whether the effect is in a public space or is on private property that is closed to the public. In a public space, of course, the officer would not *already* be trespassing before he lifted the cover, as he would in an open field or the curtilage (unless there is an implied license, such as to knock on the door of a home). There also is the possibility that an officer might legitimately think an effect has been abandoned if left unattended in a public space, or that there is an implied license to search the effect, such as a jacket or wallet, so its owner can be identified and it can be returned. *See, e.g.*, *Abel v. United States*, 362 U.S. 217, 225 (1960) (search of incriminating evidence found in trash can in vacated hotel room did not need a warrant because it was abandoned); *California v. Greenwood*, 486 U.S. 35, 40-42 (1988) (curbside trash not protected by Fourth Amendment).

But none of those issues – the lawful presence of the officer, abandonment, or an implied license – arise for effects on private property that is not open to the public.[3]

First, the officer is already trespassing, whether it be in an open field or upon the curtilage. An officer's trespass in an open field may not be a Fourth Amendment violation under current law, but it is still a common law trespass. The search of an effect – unless a purely plain-view examination – is *another* trespass. One trespass – even if it be a trespass this Court believes constitutional – should not justify another one. In this case, the officer was already trespassing when he stood beside the motorcycle. The lifting of the cover should not receive a lower standard than it otherwise would because of this first trespass.

Second, an effect on private land that is not open to the public is very unlikely to be abandoned. If a stranger – whether an officer or private citizen – thought an effect might be abandoned or lost he would know he should first check with the possessor of the real property before helping himself to it. Indeed, in this case the officer could have simply knocked on Collins' door to inquire about the motorcycle – a motorcycle he believed was evidence in a criminal investigation – instead of searching it without a warrant. And no one

[3] By "open to the public" *Amicus* means an area of private property where the owner has not given the public permission to enter.

could have reasonably believed that Collins had abandoned the motorcycle.

Therefore, the proper rule for the search of an effect on private land that is not open to the public should be that the police need a warrant to search the effect, absent some other exception (such as exigent circumstances). The open fields doctrine presents no reason to treat effects in "open fields" any differently than effects on the curtilage, or, indeed, in houses.[4] The doctrine therefore has no application to this case.

III. Under *California v. Carney*, the Vehicle Exception to the Warrant Requirement Does Not Apply in This Case.

Because the open fields doctrine cannot excuse the warrantless search of the motorcycle, the government must rely upon the automobile exception. But that, too, is unavailing, since the Virginia Supreme Court's ruling that the automobile exception authorized the government's actions directly conflicts with the plain language of *California v. Carney*, 471 U.S. 386 (1985). There, this Court explicitly held that the automobile exception applies only "[w]hen a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used

[4] In this case, *Amicus*'s proposed rule for the search of effects dovetails with the positive law model, where Fourth Amendment rules for the police mirror those for private parties. *Cf.* William Baude & James Y. Stern, *The Positive Law Model of the Fourth Amendment*, 129 Harv. L. Rev. 1821, 1825-26 (2016).

for residential purposes." *Id.* at 392. *Carney*'s "residential purposes" language therefore echoes this Court's previous decision in *Coolidge v. New Hampshire*, wherein a majority held that the automobile exception could not justify a warrantless search of a vehicle parked in Coolidge's driveway. 403 U.S. 443, 479 (1971) (stating that facts of the case – an unoccupied vehicle located on Coolidge's property – took it outside the scope of the automobile exception laid out in *Carroll*).

The Virginia Supreme Court ignored this language, wrongly holding that *Carney* only concerned whether the automobile exception applied to a "fully mobile motor home." Other courts have similarly given *Carney*'s "residential purposes" language a stilted and limited reading by saying that it goes only to whether Carney's mobile home was being used as a residence or as a means of transport. *United States v. Reis*, 906 F.2d 284, 290-91 (7th Cir. 1990); *see also Harris v. State*, 948 So. 2d 583, 592 (Ala. Crim. App. 2006) (stating that with *Carney*'s "residential purposes" language, "the Court was addressing only the inapplicability of the exception as to motor homes set up on a site and used as a residence").

But nothing about the structure or language of *Carney* supports such a crabbed reading, or casts doubt on this Court's general statement regarding the contours of the automobile exception. First, it is important to recognize that the "residential purposes" language does not appear in any discussion of motor homes or Mr. Carney's case specifically. Instead, it comes immediately after a general discussion about the history of

the exception and its justifications, which in context gives strong evidence that it was meant to be a summation of general principles.

Second, this narrow post-hoc interpretation of *Carney* ignores that opinion's clear language. Throughout the opinion, this Court repeatedly used the term "motor home" when discussing either Mr. Carney's vehicle or motor homes generally. *See, e.g.*, 471 U.S. at 388, 389, 393, 394. By contrast, when this Court was talking about the automobile exception generally, it consciously chose to use generic terms like "vehicles" or "a vehicle." *See, e.g.*, 471 U.S. at 390, 391, 392, 393. Therefore, it is notable that when articulating the scope of the exception, this Court used that generic phrase, stating that the exception applies "when *a vehicle* is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes." *Id*. at 392 (emphasis added). In other words, this Court was making a general pronouncement about the law that applies to *all* vehicles, rather than to just motor homes. Lower courts instead chose to misread that language so as to artificially narrow *Carney*'s scope. This Court should correct those errors, which have reduced the scope of protection guaranteed by the Fourth Amendment, by reaffirming its statement in *Carney* and making clear in no uncertain terms that the automobile exception does not apply when an automobile is parked on private residential property.

CONCLUSION

In considering whether a warrant was required for the search at issue in this case, this Court should not give the open field doctrine any weight. Further, *California v. Carney* makes clear that the automobile exception to the warrant requirement does not apply to an automobile parked on private residential property. Because neither the automobile exception nor the open field doctrine applies, this Court should conclude that the search of the motorcycle, as an effect on private property not open to the public, required a warrant.

Respectfully submitted,

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