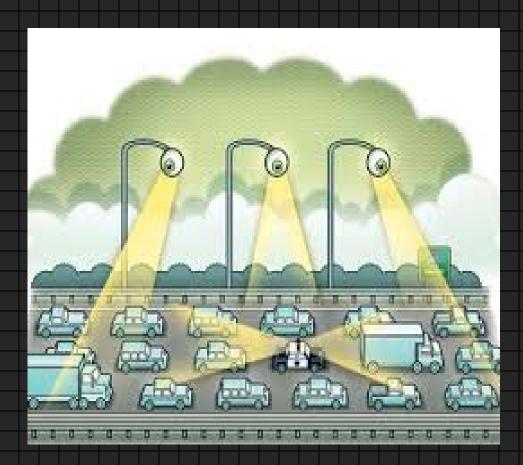# AUTOMATIC LICENSE PLATE READERS: AN EFFECTIVE TOOL FOR LAW ENFORCEMENT OR BIG BROTHER'S LATEST TOOL FOR MASS SURVEILLANCE?

Governance of Emerging Technologies: Law, Policies & Ethics,

May 27, 2014

Today's Topics

- **What is ALPR?**

- **Proliferating use & growing privacy concerns**

- **Constitutional implications**

- **Current regulation**

- **Suggested legislative guidelines**

What is ALPR Technology?

Proliferating use

- **75% of U.S. police departments now use.**

- **Regional databases are growing.**

- **Growing number of private collectors & databases.**

- **DHS recently sought to create national database.**

Growing Privacy Concern

- **Civil liberty advocates & media have sounded the alarm about the surveillance capabilities of ALPR.**

Constitutional implications

- **Fourth Amendment search issues.**

- **First Amendment freedom of speech and association issues.**

Fourth Amendment Issues

1. Is government photographing of license plate numbers a "search"?

2. Is accessing ALPR databases a "search"?

3. Is ALRP technology similar to GPS technology such that it implicates <u>U.S. v. Jones</u>?

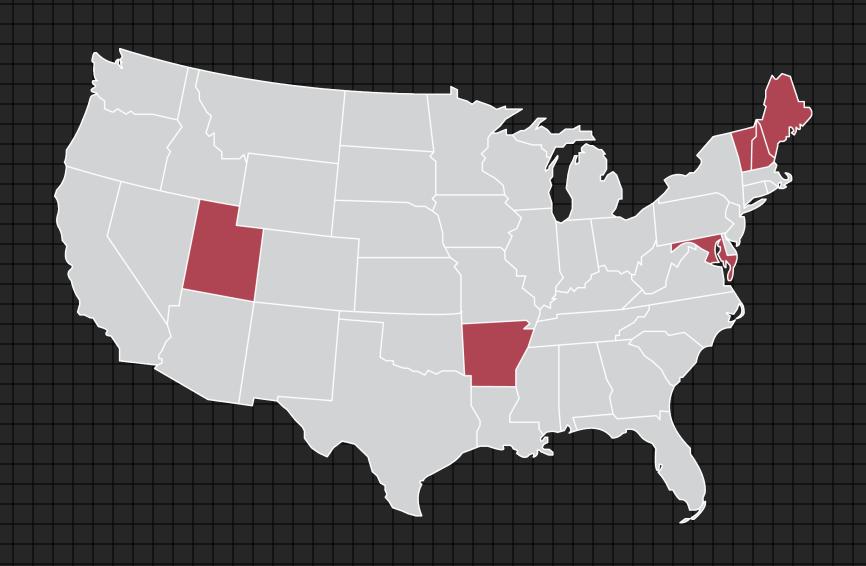4. Will the DC Circuit's "mosaic theory" apply to ALPR?

First Amendment Issues

1. Does widespread use of ALPR chill free speech and association?

2. Do private ALPR collectors have First Amendment interests?

3. Is mining ALRP data protected speech?

4. What is impact of <u>Sorrell v. IMS Health</u>
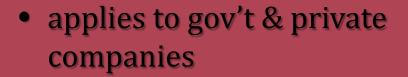
ALPR Regulation

H.R. 2644

"Reasonable Policies on Automated License Plate Readers Act."

6 States Regulate ALPR use

- applies to gov't & private companies
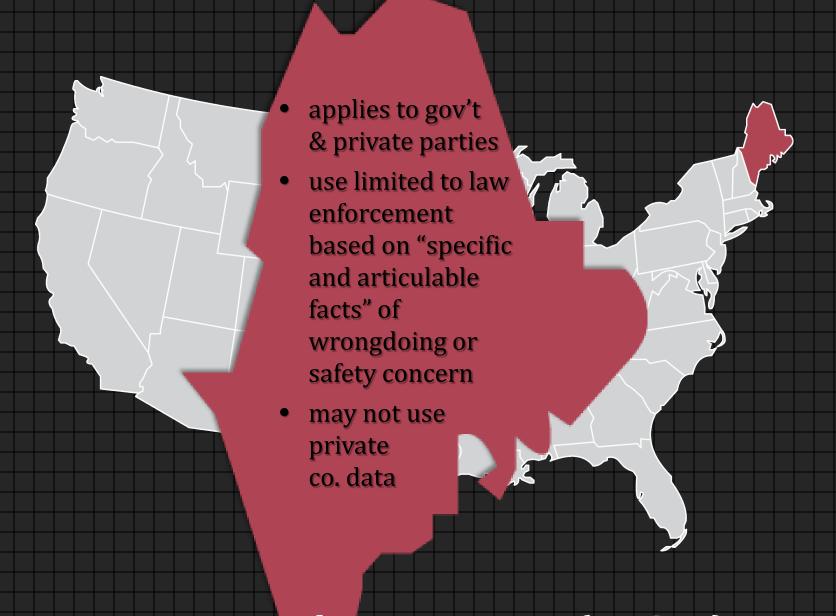- use only by law enforcement
- data deleted after 150 days
- data may not be sold
- mandates adoption of policies
- data classified as private

▪ 6 States Regulate ALPR use **(Arkansas)**

- applies to gov't & private parties
- use limited to law enforcement based on "specific and articulable facts" of wrongdoing or safety concern
- may not use private co. data

▪ 6 States Regulate ALPR use **(Maine)**

- law enforcement use only and only to identify
  1) outstanding traffic violations
  2) unregistered vehicles
  3) vehicles associated with a missing person or outstanding warrant
- data destroyed in 30 days
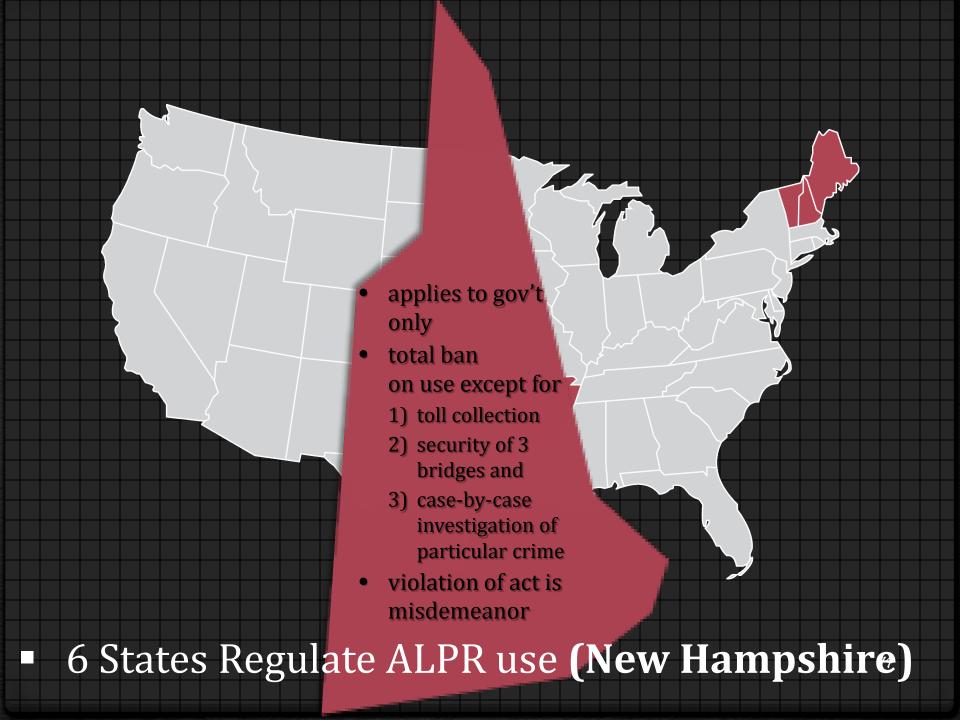
- 6 States Regulate ALPR use **(Vermont)**

- applies to gov't only
- total ban on use except for
    1) toll collection
    2) security of 3 bridges and
    3) case-by-case investigation of particular crime
- violation of act is misdemeanor
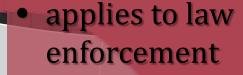
6 States Regulate ALPR use **(New Hampshire)**

- applies to gov't only
- limited to law enforcement purposes
- data deleted after 9 months
- allows sharing for law enforcement purposes
- may use private ALPR data if co. retains for <30 days

▪ 6 States Regulate ALPR use **(Utah)**

- applies to law enforcement
- use limited to crimes or search for terrorist or missing persons
- mandates adoption of policies & annual reports
- mandates model policy governing access & use of data

■ 6 States Regulate ALPR use **(Maryland)**

Suggested legislative principles

1. **clearly identify the interest to be protected or promoted by the regulation.**

2. **differentiate between collection and aggregation.**

3. **differentiate between govt. and private collection & use.**

Suggested legislative principles

4. **focus on what constitutes "proper" use of ALPR data not what constitutes "improper" use.**

5. **require law enforcement to obtain a warrant or a reasonable, particularized suspicion before accessing private databases.**

6. **set reasonable limits on how long data may be retained;**

Suggested legislative principles

7. **Classify the data as protected or private under state records laws;**

8. **require law enforcement to make annual reports and enact an auditing system.**

9. **require entities to adhere to industry best practices re: data management and security.**

Suggested legislative principles

10. **Require government to do an initial privacy assessment regarding the deployment of ALRP and data.**

11. **Consider penalties or other sanctions & private right of action to punish and deter abuse.**

QUESTIONS?

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