# *Chatrie* and the Roberts Court's New *Katz*

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In *Chatrie v. United States*, the Supreme Court held that the government conducted a "search" by acquiring, through a geofence warrant, Okello Chatrie's Location History information from Google.[1] The majority described the result largely as an application of its 2018 holding in *Carpenter v. United States*, finding that the considerations supporting protection for historical cell-site location information (CSLI) in that case "appl[y] as well or better" to Location History.[2] Commentary published the next day echoed the majority's self-description, calling the decision "primarily a modest and incremental expansion of *Carpenter*."[3]

That account is hard to square with what *Chatrie* made of the questions *Carpenter* left open. *Carpenter* described the constitutionally protected interest as in the "whole of [a person's] physical movements,"[4] held that accessing seven days' worth of CSLI invaded that interest,[5] and reserved whether the government might obtain a shorter period of CSLI without triggering the Fourth Amendment.[6] *Chatrie*, however, held that an individual has a reasonable expectation of privacy in his Location History information, which the government invades by accessing *any* amount of it.[7] *Carpenter* also declined to extend the third-party doctrine, relying in part on CSLI being automatically generated and on the practical necessity of carrying a cell phone.[8]

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[1] Chatrie v. United States, 146 S. Ct. 2193, 2199 (2026).

[2] *Id.* at 2208; Carpenter v. United States, 585 U.S. 296 (2018).

[3] Michael Dreeben, *Unpacking the Supreme Court's* Chatrie *Decision*, JUST SEC. (June 30, 2026), https://www.justsecurity.org/145214/chatrie-fourth-amendment-supreme-court/.

[4] *Carpenter*, 585 U.S. at 313.

[5] *Id.* at 310.

[6] *Id.* at 310 n.3.

[7] *Chatrie*, 146 S. Ct. at 2199, 2206.

[8] *Carpenter*, 585 U.S. at 315.

But *Chatrie* declined to do so even though Chatrie's Location History was on Google's servers because he had activated an optional service.[9] To reach those outcomes, *Chatrie* made significant decisions about which of *Carpenter*'s features were limitations and which were evidence of broader rationales. On every question that mattered, the majority chose the latter. *Chatrie* is no doubt a "blockbuster."[10]

But *Chatrie* is not a jurisprudential bolt from the blue, and it does not read to me "more like a decision from the Warren Court heyday of 1966 than the Roberts Court of 2026."[11] On the contrary, *Chatrie* is the clearest expression to date of a project that is overwhelmingly the Roberts Court's own.

For a quarter century, the Court has confronted several older precedents decided under *Katz's* "reasonable expectation of privacy" standard,[12] some of which contain categorical rules that successive majorities have concluded should not mechanically extend to new contexts.[13]

Roughly three methodological approaches have taken shape—in majority, concurring, and dissenting opinions—as candidates for navigating that tension. The first is to work within the *Katz* framework, extending constitutional protections while narrowing or recontextualizing earlier precedents and the doctrines associated with them.[14] The second, articulated in *Jones* and *Jardines*, routes around those precedents by applying a parallel "common-law trespassory test" in cases where the government "physically intrud[es] on a constitutionally protected area[.]"[15] The third encompasses various proposals to replace *Katz* entirely with an analysis anchored in sources such as the Amendment's text, history, property, or positive law.[16]

*Chatrie* is best understood as a settlement around the first of those approaches, accompanied by a subtle but potentially seismic shift in

[9] *Chatrie*, 146 S. Ct. at 2213–14.

[10] Orin S. Kerr, *The Fourth Amendment After Chatrie*, 101 Notre Dame L. Rev. (forthcoming), https://ssrn.com/abstract=7238178.

[11] *Id.*

[12] Katz v. United States, 389 U.S. 347 (1967).

[13] *See infra* Part III.

[14] *Id.*

[15] United States v. Jones, 565 U.S. 400, 406 n.3 (2012); Florida v. Jardines, 569 U.S. 1, 7 (2013). *See also infra* Part III.

[16] *See infra* Part III.

the Court's account of *Katz*'s reasonable expectation of privacy inquiry. Most notably, *Carpenter* and now *Chatrie* describe that inquiry as being guided by Founding-era principles: securing the "privacies of life" against "arbitrary power" and placing "obstacles in the way of a too permeating police surveillance."[17] And they characterize a subset of protective decisions (nearly all the Roberts Court's own) as evidence of that approach in practice.[18] While *Carpenter* had already given that project much of its shape, its self-limitations and reservations left open whether its approach was a single data point or a harbinger of something more.[19] Indeed, one swallow does not make a spring. *Chatrie* clarifies that what might have been mistaken for mere rhetoric was instead the deliberate selection of a particular methodology.

*Chatrie*'s implications thus run far broader than its independently significant doctrinal contributions. It informs how courts decide whether to extend earlier *Katz*-based precedents to new contexts, indicating that such precedents may be extended only insofar as they serve the "guidepost" principles. More broadly, the Court's insistence that *Katz*'s reasonable expectation of privacy test effectuates those principles is implicitly but profoundly at odds with treating *Katz*, as its critics have often claimed, as a license to balance "the value of privacy in a particular setting" against "society's interest in combating crime."[20] That reconceptualization may very well reflect a compromise under which *Katz* is formally preserved in a form more palatable to justices who are broadly concerned about open-ended judicial balancing.[21]

I am sympathetic to much of what *Chatrie* achieves, including the results it reaches and methodological shift it entrenches. One puzzle, however, is the majority's insistence that this is all business as usual. On the Court's telling, *Katz* has always been understood in

[17] *Compare* Carpenter v. United States, 585 U.S. 296, 305 (2018) (quoting Boyd v. United States, 116 U.S. 616, 630 (1886); and United States v. Di Re, 332 U.S. 581, 595 (1948)), *with Chatrie*, 146 S. Ct. at 2205 (same).

[18] *Compare Carpenter*, 585 U.S. at 305, *with Chatrie*, 146 S. Ct. at 2205–06.

[19] *See infra* Part III.

[20] *Carpenter*, 585 U.S. at 393 (Gorsuch, J., dissenting).

[21] *See* William Baude, *Fear of Balancing*, 2024 Sup. Ct. Rev. 169, 172–173 (noting that a "pivotal phalanx of Justices" currently on the Court is openly opposed to "judicial 'balancing' in constitutional adjudication").

light of the "guidepost" principles,[22] and it has simply "faithfully applied *Katz* for some 60 years."[23] But that account has the effect of obscuring just how much of a methodological shift *Carpenter* and *Chatrie* represent. Because that shift is described as mere continuity, it is more challenging for lower courts, litigants, etc., to get a handle on its shape and implications, to assess it on the merits, or to detect what open questions now need answering. While I do not doubt that the Court is faithfully applying *Katz* as a majority of justices believe it should be applied, that understanding seems to me less a historical retrieval than a substantial revision.[24]

More fundamentally, the Court's effort to repair *Katz* with *Katz* may prove too vexing without further refinements to its methodology.[25] Although *Chatrie* provides a clear directional signal as to which principles guide the *Katz* inquiry, lower courts must still close the gulf between those principles and their application to particular cases. The *Katz* inquiry continues to fill that gap with a nonexhaustive list of considerations and sources of law, while the Court declines to give any one of them determinative force. By leaving that open-ended analysis intact, the Court risks recreating the very problems it appears intent on repairing. We will have to wait to see whether the new *Katz*'s principles can be given lasting and coherent effect while the old *Katz*'s eclecticism is still doing the work on the ground.

Part I provides a brief background of *Chatrie* and its path to the Court. Part II shows what *Chatrie* did with *Carpenter*, including the major doctrinal choices through which the majority read *Carpenter*'s reservations as scaffolding rather than limits. Part III shows that *Chatrie* confirms the Court's settlement on a specific methodological approach over available alternatives. Part IV assesses that settlement, including what it leaves unanswered.

[22] *Chatrie*, 146 S. Ct. at 2205 (stating that "[w]hether an expectation of privacy counts as legitimate" is the result of "'guideposts' stretching back to the Fourth Amendment's beginnings").

[23] *Id*. at 2205 n.5.

[24] *See infra* Part IV.A.

[25] *See infra* Part IV.B.

## I. *Chatrie*'s Path to the Court

On May 20, 2019, a man robbed a credit union in Midlothian, Virginia, displaying a gun and leaving on foot with $195,000.[26] Security cameras captured him approaching while holding "what appeared to be . . . a cell phone to the side of his face."[27] Weeks of investigation produced no suspect.[28] With the footage suggesting the robber had been using a cell phone, a detective sought a geofence warrant directed at Google.[29]

The geofence warrant targeted Location History, an optional service tied to a user's Google account.[30] Once a user switched the service on, it logged the device's location roughly every two minutes and fixed each location point to about 20 meters.[31] Google stored the records in a centralized repository called Sensorvault, which held every enrolled user's Location History going back years.[32] The district court later described Location History as "the most sweeping, granular, and comprehensive tool" in existence for collecting location data.[33]

As the use of geofence warrants proliferated, Google worked with law enforcement to develop a three-step protocol for responding.[34] It had "no firm policy," however, as to how much narrowing must occur between steps.[35] The warrant at issue in *Chatrie* was based on that template. Law enforcement drew a circle with a 150-meter radius centered on the credit union, which included the building itself, the church next door and its parking lot, and a nearby wooded area. Step One required Google to produce anonymized location data for every device inside the circle between 4:20 and 5:20 p.m., a half hour on either side of the robbery. Step Two authorized officers to obtain selected devices' movements over a two-hour window, with

[26] *Chatrie*, 146 S. Ct. at 2202; *see also* United States v. Chatrie, 590 F. Supp. 3d 901, 905–06 (E.D. Va. 2022).

[27] *Chatrie*, 590 F. Supp. 3d at 917.

[28] *Chatrie*, 146 S. Ct. at 2202.

[29] *Id.*

[30] *Id.* at 2200–01.

[31] *Id.* at 2200; *Chatrie*, 590 F. Supp. 3d at 908.

[32] *Chatrie*, 590 F. Supp. 3d at 907–08.

[33] *Id.* at 907 (emphasis omitted).

[34] *Chatrie*, 590 F. Supp. 3d at 914–16; *Chatrie*, 146 S. Ct. at 2202.

[35] *Chatrie*, 590 F. Supp. 3d at 916.

no geographic limitation.[36] Step Three required Google to produce identifying information for a further subset of devices.[37] On how officers would make those selections, the warrant said only that they would "attempt to narrow down" the list.[38] It otherwise required no narrowing, supplied no criteria, set no numerical limit, and did not require officers to return to a magistrate between steps.[39]

Step One identified 19 devices inside the geofence during the hour.[40] The detective then requested Step Two and Step Three data for all 19, "in an effort to rule out possible co-conspirators."[41] Google objected.[42] The detective narrowed his Step Two request to nine accounts and at Step Three obtained subscriber information for three.[43] When he came back for more (the district court found the officer "incorrectly tried to add a Step 4"), Google refused.[44] Chatrie was one of the three users identified.[45] His Location History placed him inside the geofence about 10 minutes before the robbery and showed him heading toward a residential area afterward.[46] He was ultimately charged with robbery and related firearms offenses.[47]

The district court declined to resolve whether Chatrie had a reasonable expectation of privacy in Location History but held that the warrant "plainly violate[d]" the Fourth Amendment.[48] The court reasoned that the warrant was issued without probable cause, and that Steps Two and Three left the executing officers with "unbridled discretion" rather than "any semblance of objective criteria."[49]

[36] *Chatrie*, 146 S. Ct. at 2202–03.

[37] *Id.* at 2203.

[38] *Chatrie*, 590 F. Supp. 3d at 919; *see also Chatrie*, 146 S. Ct. at 2216 (quoting the warrant).

[39] *Chatrie*, 146 S. Ct. at 2216; *id.* at 2217–18 (Jackson, J., concurring).

[40] *Chatrie*, 590 F. Supp. 3d at 921.

[41] *Id.* at 921 (citation omitted).

[42] *Id.*; *see also Chatrie*, 146 S. Ct. at 2218 (Jackson, J., concurring).

[43] *Chatrie*, 146 S. Ct. at 2203 (majority opinion).

[44] *Chatrie*, 590 F. Supp. 3d at 927, 934 n.44.

[45] *Chatrie*, 146 S. Ct. at 2203.

[46] *Id.*

[47] *Id.*; Petition for Writ of Certiorari at 12, Chatrie v. United States, 146 S. Ct. 2193 (2026) (No. 25-112) [hereinafter Pet. for Cert.].

[48] *Chatrie*, 590 F. Supp. 3d at 905, 927; *see also Chatrie*, 146 S. Ct. at 2203.

[49] *Chatrie*, 590 F. Supp. 3d at 927, 934.

Noting that Chatrie had switched Location History on at 12:09 a.m. on July 9, 2018, the court stated, "a user simply cannot forfeit the protections of the Fourth Amendment for years of precise location information by selecting 'YES, I'M IN' at midnight while setting up Google Assistant."[50] The court nonetheless denied suppression under the good-faith exception,[51] and Chatrie entered a conditional plea.[52]

A divided panel of the Fourth Circuit affirmed on a different ground, reasoning that no "search" had occurred.[53] According to the panel, accessing two hours of location data resembled the limited public surveillance at issue in *Knotts* more than the comprehensive record described in *Carpenter*, and that regardless, Chatrie had voluntarily shared his information with Google under *Miller* and *Smith*.[54] The Fourth Circuit went *en banc* and affirmed in a single sentence *per curiam*, deadlocking over whether a "search" had occurred, while a majority of judges voted to deny suppression under the good-faith exception.[55] Chief Judge Albert Diaz, who declined to decide the "search" question, lamented that "[i]nstead of a Fourth Amendment compass, we've gifted law enforcement (and the public) a labyrinth of—by my count, nine—advisory opinions, many pointing in different directions."[56]

Chatrie's petition for certiorari presented two questions: whether the warrant's execution violated the Fourth Amendment, and whether the good-faith exception to the exclusionary rule applied.[57] Chatrie framed the questions as a package deal, insisting that "if the good-faith exception applies, any opinion issued by this Court would be advisory."[58] The Court nonetheless granted certiorari limited to the first question.[59]

[50] *Id.* at 936–41.

[51] *Id.* at 936–41.

[52] Pet. for Cert. at 13.

[53] United States v. Chatrie, 107 F.4th 319, 325 (4th Cir. 2024).

[54] *Id.* at 330–32.

[55] United States v. Chatrie, 136 F.4th 100, 101 (4th Cir. 2025) (en banc) (per curiam); *Chatrie*, 146 S. Ct. at 2203; Pet. for Cert. at 14.

[56] *Chatrie*, 136 F.4th at 108–09 (Diaz, C.J., concurring).

[57] Pet. for Cert. at i.

[58] *Id.* at 35.

[59] *See Chatrie*, 146 S. Ct. at 2199, 2204–05.

The Court ruled for Chatrie on June 29, 2026.[60] Justice Elena Kagan's opinion for the majority—joined by Chief Justice John Roberts and Justices Sonia Sotomayor, Brett Kavanaugh, and Ketanji Brown Jackson—held that the government conducted a "search" when it accessed Chatrie's Location History and left to the Fourth Circuit on remand whether each step of the warrant satisfied probable cause and particularity.[61]

Justice Jackson, joined by Justice Sotomayor, concurred and would have gone further, concluding that the warrant failed at Steps Two and Three for lack of probable cause and particularity.[62]

Justice Neil Gorsuch concurred in the judgment alone, applying what he described as a "more traditional approach."[63] Gorsuch reasoned that Location History was Chatrie's personal property—and thus his "effect" under the Amendment's text—which the government "searched" under the word's ordinary meaning.[64]

Justice Samuel Alito's dissent drew different justices to different parts.[65] Justice Clarence Thomas joined only the portion arguing that the Court should have dismissed the petition as improvidently granted, and that the Court instead issued "an advisory opinion concerning a now-obsolete 'geofence' procedure."[66] Justice Amy Coney Barrett joined only the portions concluding that the execution of the geofence warrant did not infringe on Chatrie's reasonable expectation of privacy under the Court's precedents, including *Carpenter*.[67] Writing for himself, Alito predicted that the majority's "unshackling of *Carpenter*" will unleash "upheaval in Fourth Amendment law."[68]

Finally, Justice Barrett's one-paragraph dissent clarified that although she had "no quarrel with *Carpenter* . . . Chatrie had no reasonable expectation of privacy in data about his public movements that he voluntarily disclosed to Google."[69]

[60] *Chatrie*, 146 S. Ct. at 2199.

[61] *Id.* at 2199–2200, 2217.

[62] *Id.* at 2217–18 (Jackson, J., concurring).

[63] *Id.* at 2220–22 (Gorsuch, J., concurring in the judgment).

[64] *Id.*

[65] *See id.* at 2222 (Alito, J., dissenting).

[66] *Id.* at 2223.

[67] *Id.* at 2222, 2228–30.

[68] *Id.* at 2232.

[69] *Id.* at 2234 (Barrett, J., dissenting).

## II. The Court's Holding

Extending *Carpenter* required the majority to make significant doctrinal decisions, illustrated most clearly by the two places where the government pressed at what appeared to be the edges of *Carpenter*'s reasoning. First, the government argued that accessing two hours of Location History did not implicate Chatrie's reasonable expectation of privacy in the "whole of his physical movements." Second, it argued that Chatrie had voluntarily exposed Location History to Google by activating an optional service, thus falling squarely within the so-called third-party doctrine.

The majority began its analysis by defining what Chatrie had a constitutionally protected interest in, rejecting the government's durational and third-party doctrine arguments, and turning to the question of the warrant's validity.

### *A. Defining the Constitutionally Protected Interest*

The majority began by defining what, if anything, Chatrie had a reasonable expectation of privacy in.[70] It is easy to miss just how much work this relatively brief section of analysis does in the opinion. As discussed further in II.B and II.C below, the Court's characterization of the protected interest dooms the government's durational argument and reappears when the Court declines to extend the third-party doctrine.

The Court starts by observing that "in their relationship to personal privacy," the resemblances between CSLI and Location History "practically leap off the page."[71] The Court focuses on two considerations drawn from *Carpenter* and a third, new addition.[72] The first is precision. CSLI placed Carpenter somewhere within a sector "ranging from one-eighth to four square miles"; Location History placed Chatrie within about 20 meters, and it can estimate elevation, distinguishing a doctor's office on the first floor from an apartment on the 10th.[73] Second is retrospectivity. As with CSLI, the government need not decide in advance who or where to monitor.[74] Whoever a suspect

[70] *Id.* at 2207 (majority opinion).

[71] *Id.* at 2207–08.

[72] *Id.* at 2208–09.

[73] *Id.* (quoting *Carpenter*, 585 U.S. at 312).

[74] *Id.*; *Carpenter*, 585 U.S. at 312.

turns out to be or wherever the location of interest, the government can retrospectively access a record that already exists with the "click of a button."[75]

Third, and distinctive to *Chatrie*, the Court deemed Location History records to be "more the individual's own."[76] The Court said that such records serve as a "personal journal of a user's movements," which they can access, consult, and edit.[77] Accordingly, the records resemble "other private material" such as "emails, documents, photographs, or calendars" that a user "reasonably views as his own" despite being stored on Google's servers.[78] This open reliance on property-tinged reasoning within the reasonable expectation of privacy analysis is striking.[79] The majority notes elsewhere that property law is "often informative" in "determining which expectations of privacy are legitimate," but that statement originates in the context of the Court *minimizing* property law's influence within the *Katz* framework.[80] As discussed more in Parts II.C and IV below, the introduction of this consideration is more consequential than a single unassuming paragraph might suggest.[81]

These points all sound rather straightforward. But recall that *Carpenter*'s holding was that an individual has a reasonable expectation of privacy in the "whole of his physical movements," which the government invaded by accessing seven days' worth of CSLI.[82] *Chatrie* shifts that framing. The majority reconceptualizes what the constitutionally protected interest is in from the "whole of one's physical movements" to one's Location History information.[83] But are these two formulations compatible? A person may have a protected interest in both at once, and *Chatrie* does not reject *Carpenter*'s formulation. On that read, *Carpenter*'s formulation is something like an initial, cautious description—that *at the very least*, a person has

[75] *Chatrie*, 146 S. Ct. at 2207 (quoting *Carpenter*, 585 U.S. at 311).

[76] *Id.* at 2208.

[77] *Id.* at 2209.

[78] *Id.* (citing Brief for Google LLC as Amicus Curiae in Support of Neither Party at 8, 10, Chatrie v. United States, 146 S. Ct. 2193 (2026)).

[79] *See infra* Parts II.C, IV.B.

[80] *Chatrie*, 146 S. Ct. at 2205 n.5 (quoting *Carpenter*, 585 U.S. at 304 n.1).

[81] *See infra* Parts II.C, IV.

[82] *Carpenter*, 585 U.S. at 310 n.3, 313.

[83] *Chatrie*, 146 S. Ct. at 2206–08.

a protected interest in the whole of his physical movements, which leaves open the possibility of a protected interest in something more granular. Regardless of the relationship between those formulations, *Chatrie*'s analysis effectively regrounds *Carpenter* by clarifying that individuals have a reasonable expectation of privacy in historical CSLI as a type of record.[84]

The majority's description of the protected interest does double duty in its discussion of the government's arguments. If individuals have a reasonable expectation of privacy in Location History itself, it is hard to see how the government could obtain *any* of that information without implicating the Fourth Amendment. Similarly, having an interest in Location History records implicitly rejects the premise that the records are entirely or fundamentally Google's, which bears directly on the Court's third-party doctrine analysis.

### *B. The Government's Durational Argument and* Knotts

The majority notes that the government does not generally dispute the similarities between Location History and CSLI, and it turns to the government's argument that accessing only two hours of Location History did not count as a Fourth Amendment "search."[85] According to the government, a person's "short-term" movements "reveal[ ] little about the details of [his] personal life."[86] The Court rather forebodingly characterizes the government's argument as a request for "a Fourth Amendment grace period of some number of hours."[87]

Duration's potential relevance, however, was not the government's invention. The Court's 1983 decision in *Knotts* held that a person traveling on public roads has no reasonable expectation of privacy in movements "voluntarily conveyed to anyone who wanted to look."[88] That proposition is on its face categorical; nothing about it turns on the duration of surveillance. But in *Jones*, five justices across two concurring opinions distinguished *Knotts* on the ground that "longer term GPS monitoring" invaded a reasonable expectation of privacy,

[84] *See id.* at 2207–09.

[85] *Id.* at 2209.

[86] *Id.* (quoting Brief for United States at 12, 20, Chatrie v. United States, 146 S. Ct. 2193 (2026) (No. 25-112)).

[87] *Id.*

[88] United States v. Knotts, 460 U.S. 276, 281 (1983).

implicitly rejecting the categorical reading.[89] *Carpenter* then drew on the overlap between those concurring opinions to hold that individuals have a reasonable expectation of privacy in the "whole of their physical movements," which accessing seven days' worth of CSLI invaded.[90] So, by *Chatrie*, distinguishing *Knotts* plausibly required longer-term surveillance or access to a large enough quantity of location information.

The Court began by rejecting the premise that "short-term location information" is incapable of "reveal[ing] private matters," relying in large part on Justice Sotomayor's *Jones* concurrence.[91] The Court observed that even short-term surveillance can reveal "a wealth of detail about [a person's] familial, political, professional, religious, and sexual associations."[92] And unlike a GPS device, Location History allows officers to focus precisely on certain locations, such that even two hours is enough to "target one-off events of potential interest: a gun show, say, or a political rally."[93]

The Court's "more fundamental[ ]" answer was that the Amendment's protections do not "kick[ ] in only once an intrusion 'goes too far.'"[94] Rather, where the Amendment applies, it applies "regardless of 'the quality or quantity of information' the government obtains."[95] Note how much heavy lifting the Court's preceding characterization of the protected interest does in this analysis. Because individuals have a reasonable expectation of privacy in Location History information, two hours or seven days merely involve different quantities of constitutionally protected information.[96]

Rejecting the durational line "makes all the more sense," the Court added, in light of the technological infrastructure at issue.[97] As officials can select place- and time-specific information from an all-encompassing database, linking protection to the amount of

[89] *Jones*, 565 U.S. at 430 (Alito, J., concurring in the judgment); *id.* at 415 (Sotomayor, J., concurring).

[90] *Carpenter*, 585 U.S. at 310, 313.

[91] *Chatrie*, 146 S. Ct. at 2209–10 (citing *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)).

[92] *Id.* at 2210 (citation omitted).

[93] *Id.*

[94] *Id.* (quoting Pa. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922)).

[95] *Id.* (quoting Kyllo v. United States, 533 U.S. 27, 37 (2001)).

[96] *Id.*; *see supra* Part II.A.

[97] *Chatrie*, 146 S. Ct. at 2210.

information accessed does "little to address" concerns about "a too permeating police surveillance."[98] The Court observes that being able to specify which sliver of Location History information it wants to access is thus "more a practical benefit to the government than a limit on its intrusive powers."[99] Accepting the government's request for a "grace period," the Court continued, would create line-drawing problems.[100]

The Court saved *Knotts* for last. Rather than distinguish the case based on the duration of surveillance, the Court emphasized *Knotts*'s own reservation that "different constitutional principles" might apply to more sophisticated surveillance.[101] The Court stated that the beeper at issue in *Knotts* allowed "rudimentary tracking" rather than "remote monitoring" or other "sweeping modes of surveillance," observed that it had twice already distinguished *Knotts* on that basis, and said it would do so once again.[102] The majority also observed that *Knotts* involved movements confined to public roads, unlike Location History.[103] The distinction is fair enough, but I am not sure how much work it really does. The *Jones* concurrences distinguished *Knotts* even though the GPS monitoring at issue there also tracked movements confined to public roads.[104]

The Court concluded that the government invaded Chatrie's reasonable expectation of privacy by accessing his Location History, even though the "time period scrutinized was only two hours."[105]

### *C. The Government's Third-Party Argument Under* Miller *and* Smith

The government's second argument, as the Court framed it, was that by "authoriz[ing] Google to collect, retain, and use" his Location History, Chatrie "lost his legitimate expectation of privacy . . . regardless of whether it was for two hours, two weeks,

[98] *Id.* (quoting *Di Re*, 332 U.S. at 595).

[99] *Id.*

[100] *Id.* at 2210 n.9.

[101] *Id.* at 2211 (quoting *Knotts*, 460 U.S. at 284).

[102] *Id.* (quoting *Carpenter*, 585 U.S. at 306).

[103] *Id.*; *see Knotts*, 460 U.S. at 281–82.

[104] *See Jones*, 565 U.S. at 429–30 (Alito, J., concurring in the judgment); *see id.* at 415 (Sotomayor, J., concurring).

[105] *Chatrie*, 146 S. Ct. at 2215.

or two years."[106] In other words, even rejecting the government's durational argument, the third-party doctrine offered the government a separate path to victory. Just as "*Carpenter* refused to apply the third-party doctrine to CSLI," however, the Court found "no good reason . . . to reach a different result for Location History."[107]

The Court recaps that the third-party doctrine traces to *Miller* and *Smith*. In *Miller*, the Court held a bank depositor lacked a reasonable expectation of privacy in checks and deposit slips "voluntarily conveyed to the bank[ ] and exposed to [its] employees in the ordinary course of business."[108] The Court reasoned that Miller had "take[n] the risk, in revealing his affairs to another," that the information would reach the government.[109] In *Smith*, the Court held a telephone subscriber had "voluntarily conveyed" the numbers he dialed to the phone company, and "so relinquished his Fourth Amendment right."[110] Pinning down what exactly the third-party doctrine *is* can be challenging, as two different rationales are often conflated within it. *Miller*, for example, rested both on characterizing the documents as the bank's records rather than Miller's private papers and on the voluntary exposure of those records.[111] But to say that the records always belonged to the bank is to say Miller never had a protected interest in them; to say he assumed the risk by revealing his affairs to another is to presuppose an interest that he nevertheless relinquished. One cannot relinquish an interest one does not have. Yet, the third-party doctrine encompasses both rationales, and each has been treated as categorical reasons why a third party's possession of information ends the Fourth Amendment inquiry.

*Carpenter* declined to extend the doctrine to historical CSLI, and in doing so changed its character. The Court acknowledged that a cell phone user "continuously reveals his location" to his carrier but held that CSLI is both "qualitatively different" from the records in *Miller* and *Smith* and is "not truly 'shared.'"[112] What was formerly treated

[106] *Id.* at 2212 (quoting Brief for United States at 15, Chatrie v. United States, 146 S. Ct. 2193 (2026) (No. 25-112)).

[107] *Id.*

[108] United States v. Miller, 425 U.S. 435, 442 (1976).

[109] *Id.* at 443.

[110] *Chatrie*, 146 S. Ct. at 2212 (quoting Smith v. Maryland, 442 U.S. 735, 744 (1979)).

[111] *See Miller*, 425 U.S. at 440, 442–43.

[112] *Carpenter*, 585 U.S. at 309, 315.

as a categorical rule thus became an inquiry turning on the nature of the relevant information and whether exposure was "voluntary" in a "meaningful sense."[113] *Chatrie* formalizes those considerations. The differences between CSLI and the records in *Miller* and *Smith*, according to *Chatrie*, "fell along two axes" that apply "equally or better to Location History."[114]

The first axis concerns the "nature" of the information. The Court's discussion is brief for reasons that are telling. The Court had largely established the nature of Location History in analyzing whether Chatrie had a reasonable expectation of privacy in it. The Court cites that analysis *three times* in a single paragraph as evidence relevant to the first axis.[115]

The second axis is voluntariness, whether information was "truly 'shared' as one normally understands the term."[116] *Carpenter*'s reasoning was that cell phones are "such a pervasive and insistent part of daily life" that carrying one is "indispensable" to participating in modern society, and that CSLI is generated without any "affirmative act" beyond turning on a cell phone.[117] *Chatrie* expands the rationale in two ways. The Court interprets "not truly shared" to mean "in the normal sense of wanting a third party to see or use it," giving content to "sharing" by reference to a person's intention rather than mere exposure.[118] And instead of asking whether exposure to a third party is the consequence of using an "indispensable" service, *Chatrie* asks whether the exposure was "merely what happens when a user avails himself of one of the services on his cell phone . . . it is the automatic price of conventional cell-phone usage."[119]

The government's argument focused on that second axis, voluntariness. The Court's initial response is to describe the Location History enrollment practice, during which Google prompts users repeatedly, sometimes warns that devices will not function properly without enrollment, and does not disclose anything about the recording's

[113] *Id.* at 315.

[114] *Chatrie*, 146 S. Ct. at 2212–13.

[115] *Id.* at 2213 (citing *Carpenter*, 585 U.S. at 315); *see supra* Part II.A.

[116] *Chatrie*, 146 S. Ct. at 2213 (quoting *Carpenter*, 585 U.S. at 315).

[117] *Carpenter*, 585 U.S. at 315 (citation omitted).

[118] *Chatrie*, 146 S. Ct. at 2213 (citation omitted).

[119] *Id.*

frequency or precision, or that it might end up in the hands of the government.[120] The Court reasoned that opting in via such a process can hardly be probative of whether a user wanted Google to see or use anything.[121] The Court also declined to rely on enrollment percentages, noting that they are not probative of someone's conscious decision to assume the risk of disclosure, and that doing so would invite "app-by-app, feature-by-feature" line-drawing problems.[122]

The Court concluded that the government invaded Chatrie's reasonable expectation of privacy in his Location History information even though that information was obtained from a third-party tech company.[123]

*D. The Geofence Warrant and a Remand to the Fourth Circuit*

Having concluded that a Fourth Amendment "search" occurred, the Court observed that "reasonableness" generally requires that the government obtain a valid warrant from "a neutral and detached magistrate," issued based on probable cause and with particularity.[124] As relevant here, the Court explained, particularity typically looks to matters including the "geographic and durational expanse of the search," and must take account of "particular factual contexts," including the nature of any technology being used.[125] Notably, as "durational expanse" is a consideration, the quantity of location information the government seeks to access becomes a question for the magistrate rather than a reason that no "search" occurred in the first place.

The Court then describes the warrant before it as "an uncommon, multistep one."[126] Moreover, the warrant said "very little" as to how officers would "pick the users subject to more intense scrutiny" at Steps Two and Three—"*In toto:* They would 'attempt to narrow down the list by reviewing the time stamped location information that is

[120] *Id.* (citation omitted); *see also Chatrie*, 590 F. Supp. 3d at 936; *Chatrie*, 136 F.4th at 128 (en banc) (Wynn, J., concurring in the judgment).

[121] *Chatrie*, 146 S. Ct. at 2213–14.

[122] *Id.* at 2214.

[123] *Id.* at 2215.

[124] *Id.* (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)).

[125] *Id.* at 2215–16 (citation omitted).

[126] *Id.* at 2216.

specific to this crime.'"[127] The Court acknowledged that the parties contested the legality of each step, and left for the Fourth Circuit on remand to decide whether the warrant was valid "at each step of the search process."[128] Justice Jackson's concurring opinion, joined by Justice Sotomayor, would have gone further to conclude that at least Steps Two and Three failed because the warrant supplied no criteria for the officers' narrowing decisions.[129]

## III. *Chatrie* as a Methodological Settlement

*Chatrie* would be significant if it contained *any* of the holdings discussed above, let alone all of them. This part argues that *Chatrie* is at least as significant for a reason that is easier to miss: Among competing approaches to navigating the collision between modern surveillance and older *Katz*-based precedents, the Court appears to have settled on one. For roughly 20 years, justices have experimented with different methods of addressing how to square the Fourth Amendment's protections, technologically enhanced surveillance, and the broad (often categorical) rules contained in *Katz*-based precedents that the Roberts Court inherited.

That challenge has produced roughly three different approaches. The first stays within the *Katz* framework, applying the Amendment to new legal interests and surveillance technology while narrowing, sometimes drastically, the reach of earlier *Katz*-based precedents rather than formally overruling them. The second, introduced and exemplified in *Jones*, allows the Court to route around those earlier precedents in situations involving physical intrusions on a protected interest. The third includes proposals to reject and replace *Katz* with an approach anchored in something perceived as more stable and constraining, including the Amendment's text, history, property, or positive law.[130] Section A traces how the competing methods took shape. Section B shows that while *Carpenter* synthesized the first approach into something with a real shape, it did so cautiously and with

[127] *Id.* (citation omitted).

[128] *Id.*

[129] *Id.* at 2217–18 (Jackson, J., concurring).

[130] *See, e.g.*, *Carpenter*, 585 U.S. at 342–61 (Thomas, J., dissenting); *id.* at 386–406 (Gorsuch, J., dissenting).

reservations. Section C argues that *Chatrie* represents a full-throated adoption of that approach as the Court's dominant methodology.

### *A. The Approaches on Offer: From* Kyllo *to* Jardines

*Kyllo v. United States* is effectively the beginning of the first approach. In an opinion authored by Justice Antonin Scalia, the Court held that using a thermal imager to learn details of a home's interior was a "search" even without a physical invasion.[131] Importantly, the Court reached that conclusion by applying *Katz*.[132] An unusual feature of the opinion is that despite the Court's invocation of *Katz*, the majority cataloged in detail several precedents decided under *Katz* that would seem to compel the opposite result. For example, the majority discusses *Ciraolo*'s holding that observation from a lawful public vantage point invades no reasonable expectation of privacy.[133] The Court nonetheless declined to apply that rule, instead emphasizing the sanctity of the home and that the government had used a sense-enhancing device "not in general public use."[134] When the dissent objected that the "general public use" rationale injected uncertainty into the Court's doctrine, the majority replied that the dissent's quarrel was "not with us but with this Court's precedent."[135] *Kyllo* exemplifies an effort to extend the Fourth Amendment's protections through *Katz*, while narrowing the reach of older *Katz*-based precedents.

Scalia went on to author the decision that introduced the second approach as well. In *United States v. Jones*, the government had attached a GPS device to the defendant's Jeep and monitored the vehicle for 28 days.[136] The majority concluded that the *Katz* test had been "added to, not substituted for," a common-law trespassory test.[137] Under the latter, the government's installation of the device was a "search" because it had physically occupied Jones's property for the purpose of obtaining information.[138] The majority openly advertised

[131] Kyllo v. United States, 533 U.S. 27, 34–35 (2001).

[132] *Id.* at 33.

[133] *Id.* at 32 (discussing California v. Ciraolo, 476 U.S. 207, 213 (1986)).

[134] *Id.* at 34, 37.

[135] *Id.* at 39 n.6.

[136] *Jones*, 565 U.S. at 402–03.

[137] *Id.* at 409.

[138] *Id.* at 404–05.

that one benefit of avoiding *Katz* is avoiding precedents decided under it—the Court could thus put to the side *Knotts*'s holding that "mere visual observation does not constitute a search."[139]

Justice Alito, writing for a total of four justices, would have decided the case under *Katz* and distinguished *Knotts*.[140] Writing separately, Justice Sotomayor joined the majority opinion but agreed with Alito that longer-term GPS monitoring "at the very least" invades a reasonable expectation of privacy, while faulting Alito for "discount[ing] altogether the constitutional relevance of the Government's physical intrusion."[141] She predicted, however, that in the absence of physical invasion, the majority's approach "may provide little guidance."[142] An overlapping set of five justices was thus prepared to distinguish *Knotts* while applying *Katz*. Notably, the concurrences did not acknowledge that doing so would implicitly reject *Knotts*'s categorical rule about "mere visual observation."[143]

*Jones* is thus the first case in which the first and second approaches were proposed as competing options for extending the Amendment's protections in the face of older *Katz*-based precedents. It would not be the last time that this sounded a bit like the duet from *Annie Get Your Gun*.[144]

*Florida v. Jardines* applied the physical trespass test again as an alternative to *Katz*. The Court held that bringing a drug-sniffing dog onto the curtilage of a home to gather information was an unlicensed physical intrusion and therefore a "search."[145] Writing for the majority once again, Scalia considered it a virtue of this approach that the Court could reach that conclusion while avoiding *Illinois v. Caballes*, which had applied *Katz* to hold that officers do not conduct a "search" by conducting a drug-dog sniff.[146] Justice Kagan, writing for three justices in total, concurred to write that she would have reached the same result under *Katz*: like the thermal imager in *Kyllo*,

[139] *Id.* at 412.

[140] *Id.* at 418–31 (Alito, J., concurring in the judgment); *see id.* at 429–30.

[141] *Id.* at 413–15 (Sotomayor, J., concurring).

[142] *Id.* at 415.

[143] *See id.* at 412 (majority opinion).

[144] *See* Irving Berlin, *Anything You Can Do*, *in* Annie Get Your Gun (1950).

[145] *Jardines*, 569 U.S. at 7.

[146] *Id.* at 10–11; *see* Illinois v. Caballes, 543 U.S. 405, 409–10 (2005).

the dog was a sense-enhancing device aimed into the home.[147] Kagan distinguished *Caballes* in a footnote as having to do with vehicles rather than the home.[148]

By 2013, then, one approach was to extend the Amendment's protections through *Katz* while, often implicitly, limiting the categorical rules contained in older *Katz* precedents. The second was to rely entirely on *Jones* where a physical invasion occurred, in large part because doing so offered a path around *Katz* precedents.

### *B.* Carpenter*'s Synthesis*

*Carpenter* involved a context wherein *Jones* and *Jardines* were not viable paths. The government had collected historical CSLI that the wireless carriers had custody of, so there was no physical intrusion.[149] Indeed, Carpenter had not raised an argument under *Jones*.[150] The majority instead extended the Amendment's protection through *Katz*, drawing on the approach illustrated by the *Kyllo* majority, the *Jones* concurrences, and the *Jardines* concurrence. The majority implicitly rejected *Knotts*'s categorical rule and distinguished what remained of its holding on factual grounds; it declined to apply the categorical rules contained in *Miller* and *Smith*, distinguishing them on factual grounds as well.[151] However, the Court did more than invoke *Katz* while engaging with earlier precedents.

*Carpenter* introduced a subtle but consequential shift in the Court's account of *Katz* and the principles that guide its application. The Court began with the traditional understanding that *Katz* "expanded [the Court's] conception of the Amendment" beyond property rights.[152] Then it added something genuinely new: *Katz*'s reasonable expectation of privacy analysis is guided by the Amendment's function to secure "the privacies of life" against "arbitrary power," and to "place obstacles in the way of a too permeating police surveillance."[153]

[147] *Jardines*, 569 U.S. at 12–15 (Kagan, J., concurring).

[148] *Id.* at 14 n.1.

[149] *Carpenter*, 585 U.S. at 300–02.

[150] *See id.* at 406 (Gorsuch, J., dissenting) (noting the forfeiture of any property-based argument).

[151] *Id.* at 306–16 (majority opinion).

[152] *Id.* at 304.

[153] *Id.* at 305 (quoting *Boyd*, 116 U.S. at 630; and then *Di Re*, 332 U.S. at 595).

The Court then offers two cases—*Kyllo* and *Riley*—as illustrations of those "Founding-era understandings" being applied "to innovations in surveillance tools."[154] In those cases, the Court declined to interpret the Amendment "mechanical[ly]" or to extend a "general rule" beyond the force of its rationales.[155] The Court caps its conclusion by quoting Justice Louis Brandeis's *Olmstead* dissent—the heavy guns—for support that the Court is "obligated" to ensure that the "progress of science" does not erode Fourth Amendment rights.[156]

Much could be said about *Carpenter*'s account of *Katz*, but its greatest importance lies in two implications of its "guideposts."

First, *Boyd* and *Di Re* serve as a way to give the reasonable expectation of privacy inquiry a direction it is routinely criticized as lacking. The fundamental objection to *Katz*—the one that both Justice Thomas's and Justice Gorsuch's dissents raise in *Carpenter*—is that *Katz* is at bottom a "normative" question that licenses the Court to engage in "subjective policymaking instead of neutral legal decisionmaking," a process that "calls for the exercise of raw political will belonging to legislatures."[157] The guideposts purport to anchor the Amendment's protection in something objective and historical—the "degree of privacy against government that existed when the Fourth Amendment was adopted."[158] Second, the guideposts change the force of older precedents. If the reasonable expectation of privacy analysis serves Founding-era commitments, then *Knotts*, *Miller*, and *Smith* reach only as far as their rationales are compatible with those same commitments. This explains why the Court has repeatedly shrunk broad, categorical precedents down to their facts when the alternative would bring them into collision with advanced surveillance.

No property claim in the case meant no *Jones*, and no *Jones* meant that justices who refused to apply *Katz* had few options. Justice Thomas would have asked "whose property was searched" rather than whether an expectation of privacy was invaded.[159] Justice Gorsuch

[154] *Carpenter*, 585 U.S. at 305–06; *see also* Riley v. California, 573 U.S. 373 (2014).

[155] *Carpenter*, 585 U.S. at 305 (quoting *Kyllo*, 533 U.S. at 35).

[156] *Id.* at 320 (quoting Olmstead v. United States, 277 U.S. 438, 474 (1928) (Brandeis, J., dissenting)).

[157] *Id.* at 360 (Thomas, J., dissenting); *id.* at 393 (Gorsuch, J., dissenting).

[158] *Id.* at 305 (majority opinion) (quoting *Kyllo*, 533 U.S. at 34).

[159] *Id.* at 342 (Thomas, J., dissenting).

went further and sketched what is effectively a third approach—not *Katz*, not *Jones*—one beginning with the Amendment's terms, asking whether the thing searched is the person's "papers" or "effects," with an openness to positive law as a potential source of answers.[160] Gorsuch invited the argument in a future case.[161] The majority declined both challenges, responding that property rights are "often informative" but neither "fundamental" nor "dispositive."[162]

Despite all this, *Carpenter* limited its own influence. The Court called its decision "a narrow one."[163] It expressly reserved real-time CSLI, tower dumps, and shorter periods of surveillance for future cases.[164] And its voluntariness analysis leaned on features specific to CSLI—automatic generation, the practical necessities of carrying a phone—and explicitly preserved *Smith* and *Miller*.[165] That left open at least two plausible readings of *Carpenter*: as the Court's general approach to surveillance technology going forward, or as a one-off outcome based on a confluence of unusual factors.

### C. *Chatrie's* Settlement

*Chatrie* slams the door on the second reading. Not once does the majority describe its decision as "narrow."[166] As discussed in Part II.A–D above, the Court answers the questions that *Carpenter* reserved forcefully and more conclusively. And it left no reservations that might be confused for uncertainty.

*Chatrie* fully embraces *Carpenter*'s account of *Katz* as its own,[167] noting that whether an expectation of privacy is legitimate is informed by "'guideposts' stretching back to the Fourth Amendment's

[160] *Id.* at 386–406 (Gorsuch, J., dissenting); *see id.* at 405 (discussing "papers" and "effects").

[161] *See id.* at 406 (citing Byrd v. United States, 584 U.S. 395, 404 (2018)).

[162] *Id.* at 304 n.1 (majority opinion).

[163] *Id.* at 316.

[164] *Id.*; *see also id.* at 310 n.3.

[165] *See id.* at 313–16.

[166] *Compare id.* at 316, *with Chatrie*, 146 S. Ct. at 2199–217.

[167] The transmission of *Carpenter*'s approach also survived a change of personnel on the Court. As two members of the *Carpenter* majority (Justices Ginsburg and Breyer) were no longer on the Court, it was an open question whether there would be a majority to apply—let alone extend—its holding. It is thus significant that two of the three justices who joined the Court since 2018 (Justices Kavanaugh and Jackson) are in the *Chatrie* majority. *Compare id.* at 2199, *with Carpenter*, 585 U.S. at 300.

beginnings," once again citing *Boyd* and *Di Re*.[168] Now *Carpenter* appears alongside *Kyllo* and *Riley* in the illustrative canon.[169] Indeed, when Justice Alito's dissent characterizes the majority as relying primarily on *Carpenter*, the majority jauntily answers that "on that supposed offense, we plead guilty as charged."[170] The Court even echoes *Carpenter*'s choice of closing quotation, this time an even more potent line from Brandeis's *Olmstead* dissent: that the Fourth Amendment must protect against "every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed."[171] In every meaningful way, *Chatrie* is *Carpenter*'s synthesis formalized, amplified, and in full stride.

It is also telling how *Chatrie* characterized the alternatives it declined to apply. In *Carpenter*, the Court acknowledged that the *Jones* majority decided the case "based on the Government's physical trespass of the vehicle" under a test "tied to common-law trespass[.]"[172] And in the intervening years, there has been a robust debate over whether common-law "trespass" (and thus *Jones*) reaches further than physical invasions.[173] Yet, in a single sentence that is easy to pass over, *Chatrie* treats "trespassing" and "physically intruding" as interchangeable, suggesting that the Court's shifting account of *Katz* brings with it the more narrow understanding of *Jones*.[174] As for an alternative approach that would anchor analysis

[168] *Chatrie*, 146 S. Ct. at 2205 (citing *Boyd*, 116 U.S. at 630; and then *Di Re*, 332 U.S. at 595).

[169] *See id.* at 2205–06.

[170] *Id.* at 2207 n.7.

[171] *Id.* at 2216–17 (quoting *Olmstead*, 277 U.S. at 478 (Brandeis, J., dissenting)).

[172] *Carpenter,* 585 U.S. at 304.

[173] *Compare* State v. Dorff, 526 P.3d 988, 996 (Idaho 2023) (citing Blackstone for support that a "trespass" in its "largest and most extensive sense, signifies any transgression or offense against the law of nature, of society, or of the country in which we live; whether it relate[s] to a man's person, or his property") *and* State v. Wright, 961 N.W.2d 396, 416 (Iowa 2021) (same) *and* Danielle D'Onfro & Daniel Epps, *The Fourth Amendment and General Law*, 132 Yale L.J. 910, 947 (2023) (observing that *Jones* "applied a much more general concept of 'trespass' that looks like an inquiry into general law"), *with* Orin S. Kerr, *The Two Tests of Search Law: What is the* Jones *Test, and What Does That Say About* Katz?, 103 Wash. U. L. Rev. 309, 312 (2025) (arguing that the "physical intrusion standard is the correct understanding of *Jones*" for historical and normative reasons).

[174] *Chatrie*, 146 S. Ct. at 2204 (describing the early doctrine as focusing on whether law enforcement "'obtain[ed] information by physically intruding'—that is, trespassing—on private property").

in positive or general law, the majority's deployment of property-like reasoning may suggest an interest in absorbing such considerations within *Katz* rather than treating them as true alternatives.[175]

## IV. Assessing the New *Katz*

This part assesses the methodological settlement that *Chatrie* represents. Section A begins with the majority's insistence that its approach is continuous with the Court's longstanding application of *Katz's* reasonable expectation of privacy test, which I argue is better understood as a principle-driven reconstruction and reorientation. Section B turns to whether that project can be accomplished in a lasting and coherent way without further refinements.

### *A. Continuity or Reconstruction?*

The majority's assertion that the Court has "faithfully applied *Katz* for some 60 years"[176] was offered in response to two distinct challenges made by Justices Alito and Gorsuch.

Alito argued in dissent that the Court had spent "much of the 20th century emphasizing the limits of *Katz*'s reach," including in *Knotts* and *Miller*, an approach in conflict with the majority's "maximalist extension of *Carpenter* today."[177] Gorsuch concurred in the judgment while criticizing the majority's reliance on *Katz* more generally, arguing that it left Fourth Amendment jurisprudence "about where the Court's obscenity doctrine stood in the 1960s: We know a 'reasonable expectation of privacy' (and an exception to the third party doctrine) when we see it."[178] Gorsuch proposed an alternative approach under which Chatrie's Location History was his "effect" and remained so in light of his agreement with Google, Virginia law, and the positive law of other jurisdictions.[179] Under that approach, the government conducts a "search" whenever it "look[s] over or through for the purpose of finding something," which includes

[175] *See infra* Part IV.B.

[176] *Chatrie*, 146 S. Ct. at 2205 n.5 (majority opinion). [177]

*Id.* at 2228 n.3 (Alito, J., dissenting).

[178] *Id.* at 2220 (Gorsuch, J., concurring in the judgment).

[179] *Id.* at 2220–22 (Gorsuch, J., concurring in the judgment) (citing Brief for Cato Institute as *Amicus Curiae* 14–15 & n.5).

when the government "enlists private parties" to do that searching.[180] Gorsuch concluded that the majority's *Katz* analysis—specifically in holding that a user reasonably understands Location History "as his own" and that it remains so despite being "stored on Google's servers"—contained "hints" of his own proposed approach.[181]

The Court's insistence that it has faithfully applied *Katz* for some 60 years may be understood in different senses, each of which is more or less effective as a response to those criticisms. In one sense, the majority is correct that the Court has invoked *Katz*'s reasonable expectation of privacy formulation for some 60 years. And to be sure, the Court has long characterized *Katz* as a vehicle for extending the Amendment's protections beyond physical invasions.[182] The majority's claim of continuity is clearly correct in these senses, but neither responds to Alito's and Gorsuch's arguments.

More likely, the majority is claiming continuity between its application of *Katz* and the Founding-era principles that it understands *Katz* to effectuate. If the reasonable expectation of privacy analysis is oriented toward securing the "privacies of life," guarding against "arbitrary power," and placing "obstacles in the way of a too permeating police surveillance," then declining to extend a precedent whose rationale would undermine those principles is fidelity of a sort.

The problem is that the majority's account of *Katz* has precisely eight years of history behind it. Of course, *Boyd* and *Di Re* predate *Katz*.[183] But *Carpenter* was the first time the Court insisted that the reasonable expectation of privacy test is guided by the principles

[180] *Id.* at 2222 (quoting N. Webster, An American Dictionary of the English Language 66 (1828)). I have written elsewhere that there is no historical basis for treating "search" as a term of art for purposes of Fourth Amendment analysis. *See* John G. Wrench, *The Original Meaning of "Searches,"* 29 U. Pa. J. Const. L. (forthcoming 2027), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6303338 (draft of Feb. 25, 2026). *See also* Brief for Institute for Justice as *Amicus Curiae* at 5–23, Chatrie v. United States, 146 S. Ct. 2193 (2026) (No. 25-112) (arguing that "the Founding-era public would have understood 'search' to carry its ordinary meaning when it entered the text of the Fourth Amendment"); Brief for Cato Institute, *supra* note 179, at 6 (observing that "Founding-era sources confirm that 'search' was understood in its ordinary sense").

[181] *Chatrie*, 146 S. Ct. at 2221–22 (Gorsuch, J., concurring in the judgment).

[182] *See Katz*, 389 U.S. at 351 (noting that "the Fourth Amendment protects people, not places").

[183] *Compare Boyd*, 116 U.S. at 630, *and Di Re*, 332 U.S. at 595, *with Katz*, 389 U.S. 347.

contained in those decisions—a novelty that Justice Gorsuch flagged as such in his *Carpenter* dissent.[184] Indeed, the test's most vehement critics and ardent defenders *agree* that open-ended flexibility has long been *Katz*'s core feature.[185]

That flexibility has always cut in both restrictive and protective directions. It is why the same test produced *Kyllo*,[186] *Carpenter*,[187] and *Chatrie*[188] alongside *Miller*,[189] *Smith*,[190] *Knotts*,[191] *Ciraolo*,[192] *Greenwood*,[193] *Place*,[194] and *Jacobsen*.[195] Justice Alito reads those restrictive precedents as the Court deliberately cabining *Katz*'s impact,[196] while they may simply be the consequences of an unexplained and potentially unexplainable methodology.[197] On either account, both lines of precedents are equally part of *Katz*'s legacy. The Court may believe that *Kyllo, Carpenter,* and now *Chatrie* reflect how the reasonable expectation of privacy test should be applied in light of Founding-era principles—and that precedents in tension with that understanding should be narrowed rather than extended. That strikes me as

[184] *Carpenter*, 585 U.S. at 395 (Gorsuch, J., dissenting) (noting the Court's introduction of "two special principles" to the *Katz* analysis).

[185] *Compare* Carpenter v. United States, 585 U.S. 296, 393 (2018) (Gorsuch, J., dissenting) (critiquing *Katz* because it "often calls for a pure policy choice" between "the value of privacy in a particular setting" and "society's interest in combating crime"), *with* Orin S. Kerr, *An Equilibrium-Adjustment Theory of the Fourth Amendment,* 125 Harv. L. Rev. 476, 515–16 (2011) (arguing that the reasonable expectation of privacy test's "open-ended aspect . . . became its strength"), *and id.* at 543 (asserting that Fourth Amendment law "resembles a zero-sum game" requiring courts to "balance enforcement of criminal prohibitions with the need to preserve civil liberties").

[186] Kyllo v. United States, 533 U.S. 27 (2001).

[187] Carpenter v. United States, 585 U.S. 296 (2018).

[188] Chatrie v. United States, 146 S. Ct. 2193 (2026).

[189] United States v. Miller, 425 U.S. 435 (1976).

[190] Smith v. Maryland, 442 U.S. 735 (1979).

[191] United States v. Knotts, 460 U.S. 276 (1983).

[192] California v. Ciraolo, 476 U.S. 207 (1986).

[193] California v. Greenwood, 486 U.S. 35 (1988).

[194] United States v. Place, 462 U.S. 696 (1983).

[195] United States v. Jacobsen, 466 U.S. 109 (1984).

[196] *Chatrie*, 146 S. Ct. at 2228 (Alito, J., dissenting).

[197] *See Carpenter,* 585 U.S. at 357–58 (Thomas, J., dissenting) ("After 50 years, it is still unclear what question the *Katz* test is even asking."); *id.* at 397 (Gorsuch, J., dissenting) (arguing that "*Katz* has yielded an often unpredictable—and sometimes unbelievable—jurisprudence").

laudable. But continuity it is not. *Chatrie* represents a reenvisioning of the reasonable expectation of privacy inquiry that is best understood as a principle-driven reconstruction of the Court's Fourth Amendment jurisprudence.

Why the Court would undertake that project may have an answer beyond the Fourth Amendment. Across other areas of law, the Roberts Court has increasingly steered constitutional adjudication away from the sort of open-ended balancing long embodied by the reasonable expectation of privacy test, toward historically informed rules.[198] In *Bruen*, for example, the Court rejected an interest-balancing inquiry in the Second Amendment context in favor of a test rooted in "text, as informed by history"[199]—an approach it described as consistent with "how we protect other constitutional rights."[200] But while the Second Amendment context offers justices a "doctrinal blank slate" free from the "path dependence of numerous precedents,"[201] decades of Fourth Amendment decisions have generated an edifice that has proven stubborn to reform.[202] Against that backdrop, the settlement embodied in *Chatrie* may very well reflect an attempt to gradually reform *Katz* such that the Court's analysis turns on Fourth Amendment first principles rather than on a "case-by-case" assessment of whether its protections are *"really worth* insisting upon."[203]

Very little of that approach originated with *Chatrie*. The commitments the majority invokes have been circulating in the Court's Fourth Amendment decisions for two decades.[204] *Carpenter* synthesized them into an account of *Katz*.[205] And *Chatrie* demonstrates the

[198] *See* Baude, *supra* note 21, at 172–73 (noting that a "pivotal phalanx of Justices" on the Court is openly opposed to "judicial 'balancing' in constitutional adjudication").

[199] New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 19 (2022).

[200] *Id.* at 24.

[201] Baude, *supra* note 21, at 172.

[202] *See* Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468 (1985) (arguing that Fourth Amendment jurisprudence is "a mass of contradictions and obscurities that has ensnared" the justices such that "every effort to extract themselves only finds them profoundly more stuck").

[203] *Bruen*, 597 U.S. at 23 (quoting District of Columbia v. Heller, 554 U.S. 570, 634 (2008)).

[204] *See supra* Part III.

[205] *Id.*

Court settling on and amplifying that account.[206] While that may all fairly be described as a form of continuity within the Roberts Court's own jurisprudence, it is hardly the same *Katz* that we have known all along. It is instead a substantial revision of the reasonable expectation of privacy inquiry.

*B. Repair or Relapse?*

The Court's emphasis on Founding-era principles and the directional signal they provide is significant. *Carpenter* and *Chatrie* make considerably clearer what the Court believes the reasonable expectation of privacy analysis is oriented toward. And that signal has meaningful implications for precedent: *Chatrie* confirms that categorical propositions from older cases should not be carried into new contexts when doing so would undermine the principles the Court insists *Katz* effectuates.[207] The open question is whether that refinement, without more, is enough to achieve a lasting, coherent shift in Fourth Amendment jurisprudence.

The dilemma is that while the guidepost principles tell courts something important about the ends of the reasonable expectation of privacy inquiry, they offer considerably less about how those principles cash out in particular cases.

The distance between those principles and their application in particular cases is visible in *Chatrie*'s own path to the Court. The lower courts had the benefit of *Carpenter*, which had already invoked *Boyd* and *Di Re*, as relevant to the reasonable expectation of privacy analysis.[208] *Carpenter* had already emphasized the danger of mechanically applying precedent in a way that erodes Fourth Amendment protections.[209] *Carpenter* had already distinguished *Knotts*.[210] *Carpenter* had already declined to extend *Miller* and *Smith* to a different form of cell phone location information.[211] Yet, in attempting to square *Carpenter* with the Court's Fourth Amendment jurisprudence more

[206] *Id.*

[207] *Chatrie*, 146 S. Ct. at 2205–06.

[208] *Carpenter*, 585 U.S. at 305.

[209] *Id.*

[210] *Id.* at 306–07.

[211] *Id.* at 309–10.

broadly, the en banc Fourth Circuit fractured deeply.[212] To be sure, *Carpenter* had expressly reserved some of the thorny questions that *Chatrie* now answers.[213] But that confusion illustrates just how much doctrinal work needs to be done even after the Court identifies the principles that should guide the inquiry.

That challenge persists because the Court has not replaced the basic machinery through which the reasonable expectation of privacy inquiry operates. The Court has long drawn on a number of heterogeneous considerations to decide whether an expectation of privacy is legitimate. But the Court has not supplied a stable account of which considerations control, when they control, or how they relate when several are relevant. As discussed above, that open-endedness has always been one of *Katz*'s central features.[214] While *Chatrie* clarifies the ends of the *Katz* inquiry, that analysis continues to be informed by a plurality of unranked and nonexhaustive considerations. The challenges of that approach were perhaps less palpable in *Chatrie*, where the Court could stack considerations that each pointed in the same direction.[215] Future cases will likely require the Court to clarify how this approach will work when *Katz*'s many considerations do not line up so neatly.[216]

Justice Gorsuch flagged some of these concerns in his *Carpenter* dissent, where he expressed doubt that the "two special principles" derived from *Boyd* and *Di Re* would be enough to make *Katz* coherent or administrable.[217] Similarly, he was skeptical that the Court could

[212] United States v. Chatrie, 136 F.4th 100 (4th Cir. 2025) (en banc); *id.* at 109 (Diaz, C.J., concurring).

[213] *See supra* Part III.B.

[214] *See supra* note 195.

[215] *See supra* Part II.A.

[216] The majority's conclusion that Location History information is "more the individual's own" illustrates this problem concretely. *Chatrie*, 146 S. Ct. at 2208. The Court plainly treats Chatrie's relationship to the records as relevant, while noting that "privacy interests do not rise or fall with property rights." *Id.* at 2205 n.5. What happens when ownership points strongly toward protection within the *Katz* inquiry? Under *Jones*, one benefit of treating physical intrusion as sufficient to constitute a Fourth Amend-ment "search" is that such intrusions no longer have to compete with the other consid-erations that inform the reasonable expectation of privacy analysis. *Jones*, 565 U.S. at 412. *Chatrie* now applies property-shaped reasoning within *Katz*, but it is unclear what independent legal force it carries there.

[217] *Carpenter,* 585 U.S. at 395 (Gorsuch, J., dissenting).

meaningfully repair its Fourth Amendment jurisprudence, particularly in limiting *Smith* and *Miller*, while continuing to work through the same methodology that produced them.[218] I am slightly more optimistic about what the Court's principle-driven reorientation accomplishes. But Gorsuch's fundamental objection remains fair: How much coherence can these guiding principles really supply while the reasonable expectation of privacy inquiry draws on a nonexhaustive list of "incommensurable" and unranked considerations?[219]

That puzzle sharpens up what's unfinished about the Roberts Court's *Katz* project. *Carpenter* and *Chatrie* have given the reasonable expectation of privacy test a more intelligible constitutional purpose and clarified which precedents illustrate the application of those principles. Yet, the Court has largely left intact the open-ended inquiry through which the test actually operates. Whether the Court's approach succeeds likely turns on whether the principles it has identified can meaningfully discipline the *Katz* inquiry by explaining, for example, what sources of law should courts consult; what role do the resulting considerations play; and when, if ever, can one or some combination of them control the result? The Court surely has its work cut out for it. *Chatrie* marks the maturation of the Roberts Court's *Katz* project rather than its completion.

[218] *Id.* at 391 (Gorsuch, J., dissenting) (arguing that solving the third-party doctrine via *Katz* "risks returning us to its source: After all, it was *Katz* that produced *Smith* and *Miller* in the first place").

[219] *Id.* at 397.