No. 99-1408

IN THE SUPREME COURT OF THE UNITED STATES

GAIL ATWATER, et al.,
Petitioners,
v.

CITY OF LAGO VISTA, et al.,

Respondents.

BRIEF OF THE NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL GOVERNORS' ASSOCIATION, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, COUNCIL OF STATE GEOVERNMENTS, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS AMICI CURIAE SUPPORTING RESPONDENTS

Filed November 1st, 2000

QUESTION PRESENTED

Whether the Fourth Amendment prohibits warrantless arrests for "fine only" traffic offenses committed in the arresting officer's presence.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] *Amici* have a compelling interest in the legal issue presented in this case: whether the Constitution prohibits police officers from making warrantless arrests for "fine only" traffic offenses committed in the presence of the arresting officer. *Amici* filed a brief on a similar issue when it was presented in *Ricci v. Arlington Heights*, 523 U.S. 613 (1998) (dismissing cert. as improvidently granted).

There are many recurring situations in which state and local government law enforcement officers must have the authority to make warrantless arrests for traffic offenses committed in their presence, even if the penalty for the offense is a fine rather than imprisonment. *See, e.g.,* Cal. Penal Code §§ 853.6(i)(5), (7) (warrantless arrests authorized when, *inter alia*, driver fails to provide satisfactory identification or "[t]here [is] a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested"). Such arrest authority is essential

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[1] The parties have consented to the filing of this brief *amicus curiae*. A blanket consent to the filing of *amicus* briefs in support of either party has been filed with the Clerk of the Court by counsel for petitioners and counsel for respondents. Pursuant to Rule 37.6, *amici* state that no counsel for a party has authored this brief in whole or in part, and that no person or entity, other than *amici* or their members, has made a monetary contribution to the preparation or submission of this brief.

if the law is to be enforced and the public safety protected.

Numerous States, including Texas, regard their mandatory seat belt laws as essential exercises of the police power that are designed to protect the safety not only of the driver and any passengers (including young children), but also other innocent motorists and pedestrians. *See, e.g., State v. West*, 20 S.W.3d 867, 872 (Tex. Ct. App. 2000) (the "Texas seat belt law serves the public safety and welfare by enhancing a driver's ability to maintain control of his vehicle, and by reducing injuries not only to himself, but also to others") (citation omitted); *State v. Hartog*, 440 N.W.2d 852, 857 (Iowa 1989) ("an unrestrained front seat passenger can interfere with the ability of a driver to respond to a collision"), *cert. denied*, 493 U.S. 1005 (1989); *id.* at 858 (the seat belt law also "promotes the public interest [by] reducing the public costs associated with serious injuries and deaths caused by automobile accidents"). Adoption by this Court of the varied constitutional proposals urged by petitioners and their *amici*—which are unworkable as well as inconsistent—"would constitute an intolerable burden for legitimate law enforcement." *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975).

Because of the importance of the question presented to the protection of the public safety and health on the nation's highways and roads, *amici* submit this brief to assist the Court in the resolution of this case.

STATEMENT OF THE CASE

1. This Court has long recognized the States' "'vital interest' in highway safety and the various programs that contribute to that interest." *New York v. Class*, 475 U.S. 106, 112 (1986) (quoting *Delaware v. Prouse*, 440 U.S. 648, 658 (1979)). "The state legislatures plainly have great leeway in providing safety regulations for all vehicles—interstate as well as local." *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 530 (1959).

It is a misdemeanor under Texas law for a driver to fail to wear a seat belt while operating a motor vehicle. Tex. Transp. Code Ann. § 545.413(a). *See Bridgestone/Firestone, Inc., v. Glyn-Jones*, 878 S.W.2d 132, 134 (Tex. 1994) (seat belt statute "was enacted to mandate the use of seat belts and to provide a criminal penalty for the failure to wear a seat belt"). There are separate criminal offenses for permitting children under the age of fifteen to ride in the front seat of a motor vehicle without a seat belt. Tex. Transp. Code Ann. §§ 545.412(a); 545.413(b). Under Texas law, a police officer "may arrest without warrant a person found committing" any of these traffic offenses in the officer's presence. *Id.* § 543.001. *See, e.g., Spence v. State*, 1996 Tex. App. LEXIS 3810, at *11 (Tex. Ct. App. 1996); *Palmer v. State*, 1994 Tex. App. LEXIS 2605, at *3 (Tex. Ct. App. 1994).[2]

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[2] Under Texas law, not every traffic offense committed in the presence of an officer subjects the offender to the possibility of a warrantless arrest; citations are mandatory for certain legislatively-specified traffic offenses, including speeding. *See* Tex. Transp. Code § 543.004.

Petitioners' concern that Texas police who enforce traffic laws "have the unfettered discretion to arrest anyone for even the slightest criminal infraction," Pet. Br. 33, and petitioners' reference to "the literally millions of traffic stops that occur every year," *id.* at 45, obviously overlook this fundamental state law limitation on the arrest authority of police officers in Texas.

State seat belt laws are classic exercises of the police power. Texas law is unequivocal that the purpose of its seat belt laws is to serve the public safety and health, not merely "to protect an individual from his own conduct." *State v. West*, 20 S.W.3d at 872. The "Texas seat belt law serves the public safety and welfare by enhancing a driver's ability to maintain control of his vehicle, and by reducing injuries not only to himself, but also to others." *Id.* (citing *Richards v. State,* 743 S.W.2d 747, 749 (Tex. Ct. App. 1987), *pet. ref'd*, 757 S.W.2d 723 (Texas Crim. App. 1988)). In addition to protecting the public's safety, the law also "directly affects the state's economic welfare." *Richards*, 743 S.W.2d at 749. *Cf. Prouse*, 440 U.S. at 658 (1979) ("we are aware of the danger to life and property posed by vehicular traffic and of the difficulties that even a cautious and an experienced driver may encounter") (footnote omitted). These cases and those from other States cited in footnote 3 below flatly refute petitioners' contention that "[s]eat belt laws . . . are readily distinguishable from most laws that further highway safety" because "they are 'designed to protect a specific individual from his own conduct, conduct which poses no threat to the public at large.'" Pet. Br. 30 (quoting opinion of court of appeals panel, Pet. App. 37a).[3]

[3] *See also State v. Hartog*, 440 N.W.2d at 857 ("seat belt use enhances a driver's ability to maintain control of the car and avoid injuries not only to the driver but to others. . . . an unrestrained front seat passenger can interfere with the ability of a driver to respond to a collision"); *id.* at 858 (the seat belt law also "promotes the public interest [by] reducing the public costs associated with serious injuries and deaths caused by automobile accidents"); *State v. Kohrig,* 498 N.E.2d 1158, 1165 (Ill. 1986) ("children and other occupants who are wearing safety belts are less likely to distract the driver"), *app. dismissed*, 479 U.S. 1073 (1987); *State v. Swain*, 374 S.E.2d 173, 174 (N.C. Ct. App. 1988). *Cf. Simon v. Sargent*, 346 F.Supp. 277, 279 (D. Mass. 1972) (three-judge panel) (upholding State's motorcycle helmet law and reasoning that "the consequences of . . . injuries are [not] limited to the individual who sustains the injury" but extend to family and community; "[w]e do not understand a state of mind that permits plaintiff to think that only he himself is concerned"), *aff'd,* 409 U.S. 1020 (1972).

The vital public purposes served by mandatory seat belt laws are fully operative when an unbelted driver is driving alone. *See West,* 20 S.W.2d at 872; *Richards*, 743 S.W.2d at 749. They are of even greater public importance when young children are standing in the front seat of the vehicle without seat belts in violation of Tex. Transp. Code Ann. §§ 545.412(a); 545.413(b). This is both because of the risk to the children themselves, and the potential of the children to distract the driver, thereby endangering others. *See Kohrig*, 498 N.E.2d at 1165; *Safety of Child Passengers in Motor Vehicles: Hearing Before the Subcomm. on the Consumer of the Senate Comm. on Commerce, Science, and Transportation,* 101st Cong., 2d Sess. 9 (1990) (statement of Jerry Ralph Curry, Administrator, NHTSA) ("For 1988, . . . we estimate that the lives of about 250 children under the age of 5 were saved by child safety seats or safety belts. If all such children were properly restrained by seats or belts, . . . another 200 to 300 could be saved each year."); *id.* at 81 (statement of Frederick Locker, Juvenile Products Mfgs. Assn.) ("When you get in that car with your child it should be second nature to you to buckle your child up and then to buckle yourself up and make a point of telling the child that it is important. . . .

[D]on't cave in to the crying and wiggling of a child who wants to get out of their seat.").

2. On March 26, 1997, Lago Vista Police Officer Bart Turek stopped Gail Atwater because she was driving while her two children, Mac, three years old at the time, and Anya, aged five, were standing on the front seat of her Dodge Ram Pickup truck. Pet. Br. 2; Jonathan Ringel, *Police Power, Business Cases Top the Docket*, Legal Times, Sept. 25, 2000, at 12 (Atwater reported as having said that she had "agreed to let her kids stand on the seat to look out the window" for a toy that had fallen from the truck). "[A] few weeks before," Pet. Br. 35 n.17, Officer Turek had stopped Ms. Atwater "for allowing her son to ride on the front seat arm rest," Pet. App. 30a, although he did not issue a citation at that time because Mac's seat belt was fastened. *Id.*

On this second occasion, Officer Turek began by reminding Ms. Atwater of the earlier incident. He then placed her under arrest for violating Texas' laws that require both adults and children riding in the front seat to have their seat belts fastened. Pet. App. 52a-54a (opinion of district court).[4] Officer Turek

[4] *Amici* respectfully submit that the prior incident only a few weeks before is a critical fact in the context of the arrest. Officer Turek had, after all, very recently stopped Ms. Atwater on suspicion that her three-year old son was riding unbelted on top of the truck's front-seat armrest. This gave Officer Turek ample grounds to believe that yet another warning or even a citation would be insufficient to cause Atwater to cease the endangerment of her young children once he had left the scene.

As Officer Turek approached her vehicle, apparently Ms. Atwater told her children that "they were 'wrong' for not wearing their seat belts and the police officer was just 'doing his job.'" Pet. Br. 29. Even if Ms. Atwater also made similar statements to Officer Turek, it is obvious that a police officer has no obligation to accept the assurances of offenders that they will henceforth cease the offense in question.

denied Ms. Atwater's request to take her children to a nearby friend's house; instead, Ms. Atwater's friend came to the truck and took the children to her house for safekeeping. *Id.* at 52a. Officer Turek did not search or interrogate Ms. Atwater, but handcuffed her and took her to the Lago Vista jail, "where she spent approximately one hour." *Id.* "Atwater concedes that she and her children were not physically harmed in any way during the incident, either at the time of the stop, at the time of the handcuffing, during the transportation to the jail, or during her stay at the jail." *Id.* at 53a. Ms. Atwater then appeared before a magistrate and was released after posting bond of $ 310. Pet. App. 2a; Pet. Br. 5.[5]

[5] Ms. Atwater alleges that her arrest and detention for one hour was "particularly invasive and extreme." Pet. Br. 28. This, however, is an overstatement, as the circumstances and one-hour duration of her arrest were minimally intrusive. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (probable cause determination within 48 hours of custodial arrest is constitutionally reasonable) (citing *Gerstein*, 420 U.S. at 113).

As just noted, Ms. Atwater conceded that she was not physically harmed in any way. Pet. App. 52a. In addition, rather than engage in the potentially problematic practice of a male officer searching or patting down a female arrestee at the scene of an arrest, Turek limited his self-protective activity to handcuffing Ms. Atwater, which is standard police arrest practice.

> Every arresting officer should assume, for his own safety, that the person to be arrested is armed and will take the officer's life if given a chance. This rule holds true whether the person is being arrested for a minor misdemeanor, or for a felony. It also holds true regardless

Following her arrest, Ms. Atwater and her husband (as next friend of their children) filed suit in state court against the City of Lago Vista, Officer Turek, and Lago Vista Police Chief Frank Miller. The defendants removed the case to federal district court. The plaintiffs asserted 10 causes of action and sought class certification. Pet. App. 54a-55a.

SUMMARY OF ARGUMENT

A. This Court has emphasized that because the primary purpose of the Fourth Amendment is to regulate the police in their day-to-day law enforcement activities, it is essential that Fourth Amendment rules "'be expressed in terms that are readily applicable by the police in the context of . . . law enforcement.'" *New York v. Belton*, 453 U.S. 454, 458 (1981) (citation omitted). For this reason, the Court has designated probable cause as the Constitution's measure of the permissibility of an arrest in all but the rarest of cases. *Gerstein v. Pugh*,

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of whether the offender is a man or a woman, or an old or a young person. . . .

[When it is not possible for a female officer to search a female arrestee at the time of the arrest,] the officer should be guided by his own good sense in insuring his safety and well-being while taking his prisoner in. Most officers have found that handcuffing the woman, with her hands in back of her, is the next best thing when she cannot be carefully searched.

Raymond E. Clift, *A Guide to Modern Police Thinking* 189, 191-92 (3d ed. 1970).

Officer Turek's use of handcuffs was particularly prudent in view of the fact that Texas has among the more permissive handgun laws in the country. *See* Handgun Control, Inc., "Texas Firearm Laws," <http://www.handguncontrol.org/stateleg/statelaws.asp>.

420 U.S. 103, 111-12 (1975); *Whren v. United States*, 517 U.S. 806, 817 (1996). Commission of—and admitting to—criminal offenses in the presence of the arresting officer is the strongest possible case of probable cause. Custodial arrests made under such circumstances are therefore constitutional under the Fourth Amendment, absent egregiously invasive arrest procedures not remotely present here.

Petitioners and their *amici* are rightly exercised at the prospect of limitless grants of arrest authority to the police, but this case poses no risk of such boundless police discretion. When, as in this case, a citizen not only commits three criminal offenses in the presence of an officer but admits to the officer that she is committing the offenses, a "'law-abiding citizen[]'" is not left "'at the mercy of the officers' whim or caprice.'" *Gerstein*, 420 U.S. at 112 (citation omitted).

The fact that Ms. Atwater's offenses were "fine only" traffic offenses does not alter the applicable constitutional analysis. Indeed, the facts of this case have much in common with those of *Whren*, in which the officers had observed the plaintiff commit a traffic violation. Despite the ubiquity of such offenses, the *Whren* Court emphasized that it was "aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly violated that the infraction itself can no longer be the ordinary measure of the lawfulness of enforcement." 517 U.S. at 818.

Petitioners and their *amici* strenuously argue that the arrest was inappropriate because the seat belt offenses in question are punishable by a fine, rather than incarceration, thereby suggesting that the police need not take them seriously. This argument is both

erroneous as a matter of policy and inconsistent with this Court's repeated recognition of the importance of fines as criminal sanctions. Although traffic offenses are so common that it would plainly be impracticable to make them all incarcerable in the first instance, that in no way diminishes their importance to the health, safety and welfare of the citizenry.

B. Affirmance of the judgment below will not result in "the very sort of unbridled [police] discretion," Pet. Br. 7, which petitioners assert was condoned by the court of appeals. In fact, the authority to make warrantless arrests for traffic offenses and other misdemeanors is intensively regulated by the States and limited as a practical matter by systemic constraints and the oversight of the political branches of government.

Every State has laws that address the authority of law enforcement officers to make warrantless arrests. Police officers must have express statutory authority to make warrantless arrests for traffic infractions, including those punishable by a fine. For example, Cal. Penal Code § 853.6(i) encourages the use of citations for traffic offenses; it does not, however, prohibit custodial arrests. Indeed, it enumerates several situations in which the police are authorized to make arrests, rather than simply cite and release the offender. These include situations in which the offender is intoxicated, is unable to care for their own safety, fails to provide adequate identification, or, of greatest relevance to this case, when there is "a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested." *Id.* § 853.6(i)(7).

Moreover, both police officers and the elected officials who oversee them are well aware that arrests are costly and time-consuming for law enforcement officers. This creates an extremely powerful disincentive to arrest except where necessary for important law enforcement purposes. *See* Br. *Am. Cur.* Institute on Criminal Justice and Eleven Leading Experts on Law Enforcement and Corrections Administration and Policy 11.

Finally, and perhaps most important, a categorical constitutional rule along the lines urged by petitioners and their *amici* would be unworkable. Even if such a prohibition were desirable, it could not be formulated in a manner that could be fairly applied by police officers on the beat. This Court has made it absolutely clear that police officers require clear rules of straightforward application that they can feasibly and fairly apply under the stressful conditions of day-to-day policing. *See Belton*, 453 U.S. at 458.

The fact that any categorical constitutional prohibition would be unworkable and pose major obstacles to legitimate law enforcement is demonstrated by the fact that the relevant model codes fail to contain such a rule. Moreover, neither petitioners nor their *amici* have been able to devise a workable rule, or even to agree upon what such a rule should be. Given the extensive regulation of warrantless arrests already in place in every State, the powerful systemic disincentives against costly and time-consuming arrests unless they serve important law enforcement purposes, and the existence of extensive political oversight of the police, no further intervention by this Court is needed.

ARGUMENT

THE FOURTH AMENDMENT DOES NOT PROHIBIT WARRANTLESS ARRESTS FOR "FINE ONLY" TRAFFIC OFFENSES COMMITTED IN THE ARRESTING OFFICER'S PRESENCE

A. Probable Cause Is The Constitution's Measure Of The Permissibility Of An Arrest And Commission Of An Offense In The Arresting Officer's Presence Is The Strongest Possible Case Of Probable Cause

Petitioners and their *amici* rightly decry the prospect that the police be given "extravagant grant[s] of discretionary authority." ACLU Br. *Am. Cur.* 6.[6] In this regard the ACLU observes that "[i]t is by now familiar history that the framers' dismay at statutes granting such general prerogatives was one of the principal motivating factors, both for the Revolution and the creation of the Fourth Amendment itself." *Id.* at 6-7 (citing Nelson B. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* 13-78 (1937)).[7]

[6] The ACLU bases its position at least in part on a misunderstanding of Texas law. According to the ACLU, "Texas law delegates to every peace officer the power to arrest . . . any person who has committed any infraction of its traffic code." ACLU Br. at 6. This statement of the law is erroneous. *See* note 2, *supra* (citing Tex. Transp. Code § 543.004, which prohibits arrests for specified offenses, including speeding).

[7] Petitioners' argument that the custodial arrest of Ms. Atwater was unconstitutional because the Fourth Amendment limits warrantless arrests to felonies and misdemeanors involving breaches of the peace, Pet. Br. 13-20, is without merit for three reasons.

First, the court of appeals unequivocally held that petitioners have waived this argument. *See* Pet. App. 4a-5a n.3. Second, this Court has repeatedly rejected the contention that its Fourth Amendment decisions have " 'simply frozen into constitutional law those enforcement practices that existed at the time of the Fourth Amendment's passage.' " *Steagald v. United States*, 451 U.S. 204, 217 n. 10 (1981) (quoting *Payton v. New York*, 445 U.S. 573, 591 n. 33 (1980)). Finally, even if warrantless arrests were limited to misdemeanors constituting "breaches of the peace," Ms. Atwater's offenses would satisfy that standard. *See City of Boerne v. Flores*, 521 U.S. 507, 539-40 (1997) (Scalia, J., dissenting) (in eighteenth-century English and American law, "keeping 'peace' and 'order' seems to have meant, precisely, obeying the laws") (collecting cases and other authorities).

More to the point, however, "[t]here is no historical evidence that the Framers or proponents of the Fourth Amendment, outspokenly opposed to the infamous general warrants and writs of assistance, were at all concerned about warrantless arrests by local constables and other peace officers." *United States v. Watson*, 423 U.S. 411, 429 (1976) (Powell, J., concurring) (citing Lasson, *supra*, at 79-105). Indeed, "the Second Congress' passage of an Act authorizing such arrests so soon after the adoption of the Fourth Amendment itself underscores the probability that the constitutional provision was intended to restrict entirely different practices." *Id.* at 429-30 (footnote omitted). *See also id.* at 420-21 (majority opinion); *Long v. Ansell*, 293 U.S. 76, 83 (1934) ("When the Constitution was adopted, arrests in civil suits were still common in America.").

The Fourth Amendment responds to the potential for unbounded police discretion to arrest by its requirement of probable cause. To allow arrest on some lesser basis than probable cause would " 'leave law-abiding citizens at the mercy of the officers' whim or caprice,' " *Gerstein*, 420 U.S. at 112 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)), the precise evil posed by the infamous writs of

assistance so understandably (but irrelevantly) criticized by petitioners and their *amici*. *See also Whren v. United States*, 517 U.S. 806, 817 (1996) ("*probable cause*" is the "*traditional justification*" for "police intrusion"). Thus, *Gerstein* explains,

> The standard for arrest is probable cause, defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.' This standard, like those for searches and seizures, represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime.

420 U.S. at 111-12 (quoting *Beck v. Ohio,* 379 U.S. 89, 91 (1964) (other citations omitted)). Under this standard, "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest." *Id.* at 113-14.

In this case, a citizen not only commited three offenses in the presence of an officer but admitted to the officer that she had committed the offenses. *See* Pet. Br. 29; *see also* Ringel, *supra,* at 12 ("Atwater says she knew she'd get a ticket for not buckling her kids' seat belts"). Ms. Atwater was thus not a " 'law-abiding citizen[]' " who was left " 'at the mercy of the officers' whim or caprice.' " *Gerstein*, 420 U.S. at 112 (quoting *Brinegar,* 338 U.S. at 176). On the contrary, Ms. Atwater's admission to Officer Turek that she was in the course of committing three offenses presented the strongest possible case of probable cause and rendered her arrest constitutionally permissible.

While "in principle every Fourth Amendment case, since it turns upon a 'reasonableness' determination,

involves a balancing of all relevant factors. . . [w]ith rare exceptions . . . the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren*, 517 U.S. at 817. In *Whren* the Court elaborated on the "rare exceptions" that require such balancing:

> Where probable cause has existed, the only cases in which we have found it necessary actually to perform the 'balancing' analysis involved searches or seizures conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests—such as, for example, seizure by means of deadly force, unannounced entry into a home, entry into a home without a warrant, or physical penetration of the body[.]

Id. at 818 (citations omitted).

This case does not remotely resemble any of these "rare exceptions." As discussed *supra* at 7 & n. 5, Ms. Atwater conceded that her arrest caused no physical harm to her or her children. It was also minimally intrusive, of short duration, and fully consistent with accepted police practice for custodial arrests. *See id.* Indeed, the facts of this case have much in common with those of *Whren* itself, in which officers had observed the plaintiff commit a "civil traffic violation." 517 U.S. at 808.

Despite the commonness of traffic offenses, the *Whren* Court emphasized that it was "aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly violated that infraction itself can no longer be the ordinary measure of the lawfulness of enforcement." *Id.* at 818. Moreover, the Court has held that if even if it "could identify such exorbitant codes, we do not

know by what standard (or what right) we would decide, as petitioners would have us do, which particular provisions are sufficiently important to merit enforcement." *Id.* at 818-19.[8]

Petitioners and their *amici* strenuously argue that an arrest was inappropriate because the three seat belt offenses in question are punishable only by a fine, rather than by incarceration, thereby signifying that they are not to be taken seriously by law enforcement officers. This argument is both erroneous as a matter of policy and inconsistent with this Court's repeated recognition of the importance of fines as criminal sanctions. *See Mayer v. City of Chicago*, 404 U.S. 189, 197 (1971) ("The practical effects of conviction of even petty offenses . . . are not to be minimized. A fine may bear as heavily on an indigent accused as forced confinement."). *See also Tate v. Short*, 401 U.S. 395, 399 (1971) (the State has a "valid interest in enforcing payment of fines"); *Welsh v. Wisconsin*, 466 U.S. 740, 760 (1984) (White, J., dissenting) (how a State chooses to classify criminal offenses results from "a variety of social, cultural, and political reasons").

[8] As discussed *infra* at 21-25, it is at best unclear that workable constitutional standards for warrantless arrests, beyond the existence of probable cause, can even be devised. *See New York v. Belton*, 453 U.S. 454, 458 (1981) (Fourth Amendment " 'is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged' ") (quoting Wayne R. LaFave, *'Case-by-Case Adjudication' Versus 'Standardized Procedures': The Robinson Dilemma*, 1974 Sup. Ct. Rev. 127, 141).

Because traffic offenses occur so often, it would not be feasible to make all or even many traffic offenses mandatorily incarcerable in the first instance. This in no way diminishes the importance of the enforcement of the traffic laws to the health, safety, and welfare of the citizenry. Given the fact that their two young children were standing in the front seat of the truck at the time of the stop, it is patently irresponsible of petitioners to argue that Texas' interest in the enforcement of the laws concerning the wearing of seat belts by children under the age of 15 "is relatively slight." Pet. Br. 32. *See Safety of Child Passengers in Motor Vehicles, supra*, at 9.

Whren also disposes of the contention that unless the judgment below is reversed, police officers will abuse their authority in order to engage in large numbers of unconstitutional pretextual arrests. *See* ACLU Br. *Am. Cur.* 8. Where probable cause exists for an arrest—such as when, as here, three offenses are committed and admitted to in the presence of the arresting officer, the Court has been "unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers." *Whren*, 517 U.S. at 813.

Ms. Atwater's commission, and admission to Officer Turek, of three separate seat belt offenses—that involving herself and, of even greater seriousness, those of allowing her three and five year old children to stand, unbelted, in the front seat of her pickup truck while she was driving—epitomize probable cause and obviate the need for any further Fourth Amendment analysis in this case.

B. A Holding That The Fourth Amendment Prohibits Warrantless Arrests For "Fine Only" Traffic Offenses Is Unnecessary And Would Intolerably Handicap Legitimate Law Enforcement

If the Court declines to adopt a Fourth Amendment rule along the lines advocated by petitioners, the result will not be "the very sort of unbridled [police] discretion," Pet. Br. 7, which they assert was condoned by the court of appeals. In fact, the authority to make warrantless arrests for traffic offenses and other misdemeanors is intensively regulated by the States and is limited as a practical matter by systemic constraints and oversight of the police by the political branches of government.

Every State has laws that address the authority of law enforcement officers to make warrantless arrests. *See* Appendix to Br. *Am. Cur.* of the United States, *Ricci v. Village of Arlington Heights*, No. 97-501 (filed March 1998), *cert. dismissed,* 523 U.S. 613 (1998). Police officers in every jurisdiction must have express statutory authority in order to make warrantless arrests for traffic infractions, including those punishable by a fine. This point is graphically made by Cal. Penal Code § 853.6(i). While Section 853.6(i) encourages the use of citations when possible, it does not prohibit custodial arrests. Indeed, it specifies numerous situations in which the police are authorized to make arrests, rather than simply cite and release the offender. These include instances in which the offender is intoxicated, is unable to care for their own safety, has failed or refused to provide adequate identification, or refused to sign a notice to appear. *See id.* §§ 853.6(i)(1), (2), (5), (7), (8). *See also Gustafson v. Florida*, 414 U.S. 260, 265 (1973)

(upholding warrantless arrest for driving without driver's license in one's possession).

Of particular relevance to this case, California law expressly authorizes arrest for fine-only traffic offenses when there is "a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested." *Id.* § 853.6(i)(7). *See also* American Bar Association, *Standards for Criminal Justice* § 10.2-1 (2d ed. 1980), History of Standard (custodial arrests permissible when necessary "to protect the accused or others where his continued liberty would constitute a risk of immediate harm") (citation omitted) (quoted in Br. *Am. Cur.* Institute on Criminal Justice and Eleven Leading Experts on Law Enforcement and Corrections Administration and Policy 22 (hereinafter "Br. Eleven Leading Experts")).

Some States, like Texas, expressly authorize warrantless arrests for seat belt violations. *State v. West,* 20 S.W.3d at 871; *Spence v. State,* 1996 Tex. App. LEXIS 3810 at *11-*12; *Palmer v. State*, 1994 Tex. App. LEXIS 2605 at *3 (Tex. Ct. App. 1994). *See also State v. Cook,* 530 N.W.2d 728, 732 (Iowa 1995) (officer's observation that motorist was not wearing seat belt "gave him probable cause to arrest" the motorist) (citing Iowa Code § 804.7(1)); *Kodani v. Snyder*, 89 Cal. Rptr. 2d 362, 366 n.7 (Cal. App. 1999) (since 1995 California law has authorized an officer to "stop [] or arrest [] a person for not wearing a seat belt" even if "the officer ha[s] no other cause to stop or seize the person other than for that violation"); *see also* Br. *Am. Cur.* ACLU at 25 n. 19 ("a number of states do seem to permit custodial arrests for a violation of a fine-only seat belt law"). Other States

prohibit arrests for seat belt violations alone. *See* S.C. Code Ann. §§ 56-5-6520, 56-5-6540; Tenn. Code Ann. § 55-9-603. While different States may reach different conclusions on the permissibility of custodial arrests for fine-only seat belt violations,[9] it is critical to the Court's decision in this case that the subject of warrantless arrests for misdemeanors is intensively regulated in every State.

Second, both police officers and the elected officials who oversee them are well aware that arrests are costly and time-consuming for law enforcement officers. This creates an extremely powerful disincentive to arrest except where necessary for important law enforcement purposes. The manner in which this disincentive operates is succinctly explained by petitioners' *amici*, who write that subjecting traffic offenders to custodial arrests creates

> serious problems for law enforcement. Short-term detainees such as Ms. Atwater cause significant management problems for jail administrators. They also burden the courts and magistrates with additional workload in the hours immediately following arrest. Moreover, arrests such as this remove the arresting officer from patrol duty, thus compromising public safety. . . . . Correctional professionals accordingly discourage the practice of arresting misdemeanor offenders, and encourage a reduction in the number of transient inmates brought to the jail.

Br. *Am. Cur.* Eleven Leading Experts 11, 14. The existence of these powerful practical constraints establishes that affirmance of the judgment below will not lead to the tidal wave of abusive arrests prophesied by petitioners.

Finally, and perhaps most important, a categorical constitutional rule along the lines urged by petitioners or their *amici* would be unworkable. As indicated above, and as is recognized in the laws of many States, there are simply too many varied and recurring situations in which the public interest requires that the police have the authority to make warrantless arrests of persons committing traffic offenses in the presence of an officer. Even though the offense (or at least the *first* offense) may be punishable only by a fine, a citation may not suffice to protect the public interest, or even the interest of the arrestee. *See, e.g.*, Cal. Penal Code § 853.6(i). For this reason, a categorical prohibition of warrantless arrests for fine only traffic offenses would be "an intolerable handicap for legitimate law enforcement." *Gerstein*, 420 U.S. at 113.

Moreover, *amici* respectfully submit that such a constitutional prohibition could not be formulated in a manner that would be workable for the police officers on the beat. This Court has made it abundantly clear that police officers require clear rules of straightforward application that they can feasibly and fairly apply under the stressful conditions of day-to-day policing.

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[9] The fact that some States authorize custodial arrests for seat belt violations while others do not simply illustrates the fundamental point made by the Fourth Circuit some years ago:

> The fourth amendment protects individuals from unfounded arrests by requiring reasonable grounds to believe a crime has been committed. The states are free to impose greater restrictions on arrests, but their citizens do not thereby acquire a greater federal right.

Street v. Surdyka, 492 F.2d 368, 372 (4th Cir. 1974).

As the Court explained in *Belton*, the Fourth Amendment

> "is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.' "

453 U.S. at 458 (quoting LaFave, *'Case-by-Case Adjudication' Versus 'Standardized Procedures,'* 1974 Sup. Ct. Rev. at 141). *Accord Illinois v. Lafayette*, 462 U.S. 640, 648 (1983). *Cf. id.* at 647 (reasonableness of arrest "does not necessarily or invariably turn on the existence of alternative 'less intrusive' means"); *United States v. Sharpe*, 470 U.S. 675, 686-87 (1985) (same).

The fact that any categorical constitutional prohibition would be unworkable and pose insuperable obstacles to legitimate law enforcement is demonstrated by the fact that the relevant model codes fail to contain any such rule. For example, the American Law Institute, *Model Code of Pre-Arraignment Procedure* (1975)—which seeks to balance individual rights and the needs of law enforcement—expressly declines to adopt a rule prohibiting warrantless arrests for "petty misdemeanors" committed in the presence of the arresting officer. While stating a preference for the "maximum use of citations," *id.* § 120.2(4), the drafters of the Code nonetheless recognized that in many situations it will be "in the

public interest" that persons who commit such offenses be taken into custody rather than simply be cited and released. *Id.* The drafters concluded that "[i]t is extremely difficult in drafting a statute to make determinations that citations shall always be used for particular crimes." *Id.* commentary at 305.

The other model codes cited by petitioners' *amici* likewise decline to adopt a categorical rule prohibiting custodial arrests in cases involving fine only misdemeanors or traffic offenses. *See* Br. *Am. Cur.* Eleven Leading Experts 21-27 (citing American Bar Association, *Standards for Criminal Justice* §§ 10-2.1—10-2.2 (2d ed. 1980) (citations to be used "to the maximum extent consistent with the effective enforcement of the law" but recognizing numerous exceptions, including when "necessary to prevent imminent bodily harm to the accused or another" and enumerating four other exceptions to citation requirement); National Conference of Commissioners on Uniform State Laws, *Uniform Rules of Criminal Procedure* R. 211 (c) (1974) (recognizing four exceptions to citation rule, including when offense involves risk of bodily injury or arrestee will continue to commit offense); National District Attorneys Association, *National Prosecution Standards* § 10.2(B) (1st ed. 1977) (citations to be used "to the greatest degree consistent with public safety" but recognizing five exceptions)).[9]

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[9] Indeed, in the current edition of its prosecution standards, which is not cited by petitioners' *amici*, the NDAA substantially broadens the exceptions to its policy favoring the issuance of citations. *See* National District Attorneys Association, *National Prosecution Standards* § 45.2b(2)(c) (2d ed. 1991) (arrest permissible when "there is reason to believe the accused will commit another crime if released"); *id.* § 45.2b(2)(e) (arrest permissible "when the accused previously has failed

A final demonstration of the erroneousness of the position of petitioners and their *amici* is their own inability to devise a workable rule for the police, or even to agree upon what such a rule should be. According to petitioners, "[t]he Fourth Amendment prohibits custodial arrests for fine-only traffic offenses except when the arrest is necessary for enforcement of the traffic laws or when the offense would otherwise continue and pose a danger to others on the road." Pet. Br. 46. This inherently subjective test plainly fails the requirement of clarity required by *Belton* as even judges would frequently disagree as to its application.

Amicus ACLU proposes a standard that is likewise impossible for officers or courts to apply in a fair and consistent way: custodial arrests for "minor offenses" are permissible "whenever the individual arrest is reasonable in light of all of the facts—a case-by-case approach." Br. *Am. Cur.* ACLU 26.[10] Every misdemeanor arrest would be subject to judicial challenge under this amorphous standard, with resultant burdens on the police on the beat and in the litigation that would inevitably ensue.

The standard proposed by *amicus* Eleven Leading Experts (Br. at 28), while worded differently, is equally unworkable: "there may not be a custodial arrest in non-jailable misdemeanor cases absent exceptional cirumstances." Not only is it impossible

to appear in response to a citation for an offense," even if the prior offense is a parking violation).

[10] Under the ACLU "case-by-case approach," the police and the courts must "weigh the nature of the intrusion (including such facts as how many hours the suspect was actually held, whether handcuffs or shackles were used, whether the suspect was given food, etc.)." Br. *Am. Cur.* ACLU 26.

for the police and for the courts to give clear meaning to the "exceptional circumstances" standard, but applying the standard only to "non-jailable" offenses adds yet another element of unworkability. In every State the range of misdemeanors is too great for an officer to know whether every offense is "jailable" or not. Moreover, in many cases an offense may be "nonjailable" the first time it is committed but "jailable" if a repeat offense. *See Welsh*, 466 U.S. at 746; *Carroll v. United States*, 267 U.S. 154, 157 (1925). The officer is thereby caught in a no-win situation—failure to arrest could leave a repeat offender at large, while making an arrest could subject the officer to a lawsuit.

The inability of petitioners and their *amici* to agree on a single, workable rule for assessing the constitutional reasonableness of arrests for "fine only" offenses demonstrates that the effort to impose such a standard judicially will "intolerabl[y] handicap . . . legitimate law enforcement." *Gerstein*, 420 U.S. at 113. Further constitutional limits on police authority to arrest for "fine only" offenses, beyond the Constitution's requirement of probable cause, are therefore not warranted.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfuly submitted,

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