

# Divided Supreme Court Upholds Motorists' Privacy Rights

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December 2000

The U.S. Supreme Court's November 28 (6 to 3) decision in *City of Indianapolis v. Edmond* (No. 99-1030) found unconstitutional, on Fourth Amendment grounds, a "highway checkpoint program whose primary purpose is the discovery and interdiction of illegal narcotics." In so doing, the Court declined to extend, and perhaps limited, its decisions in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (upholding highway sobriety checkpoints) and *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (upholding suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens).

This decision may have importance beyond its specific facts in showing there is a majority within the Supreme Court willing to support some privacy rights at the constitutional level. It could foretell how the Justices will line up in *Ferguson v. City of Charleston*, argued October 4, which involves Fourth Amendment privacy rights of public hospital patients.

*Edmond* arose from a class action suit by two motorists who had been stopped, which they brought "on behalf of themselves and the class of motorists who had been stopped or were subject to being stopped in the future." The District Court certified the class but denied plaintiffs' motion for preliminary injunction. On appeal, a divided panel of the U.S. Court of Appeals for the Seventh Circuit reversed, holding that the checkpoints contravened the Fourth Amendment. The Supreme Court affirmed the appellate court's decision.

## New "Primary Purpose" Test

Justice O'Connor's majority opinion reasoned from the undisputed propositions that the "Fourth Amendment requires that searches and seizures be reasonable" and a "search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." The majority determined that the validity of a checkpoint program relying on suspicionless seizures should be assessed in terms of the program's "primary purpose," which here was "interdicting illegal narcotics." Reporting that the Court has "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing," as distinct from "policing the border" or "ensuring roadway safety," the majority went on to conclude that the Indianapolis program's primary purpose "is to uncover evidence of ordinary criminal wrongdoing," and, consequently, "the program contravenes the Fourth Amendment." The majority made express its concern that without "drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life."

### Three Justices Dissent

Chief Justice Rehnquist (joined by Justices Thomas and Scalia (in part)) rejected the majority's "primary purpose" test as improperly "lifted from a different area of Fourth Amendment jurisprudence relating to the *searches* of homes and businesses." The dissenters argued that one's "expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy in one's residence" (quoting *Martinez-Fuerte*). This "lowered expectation of privacy in one's automobile," when "coupled with the limited nature of the intrusion," warrants applying a different standard.

In that context, the dissenters contended that the constitutionality of a seizure turns upon "a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty" (quoting *Brown v. Texas*, 443 U.S. 47, 50-51 (1979)). They asserted that the present "case follows naturally from *Martinez-Fuerte* and *Sitz*" and passes the *Brown* test.

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