

# NEW YORK POST

## Supreme Court hears DUI case where blood sample was taken from unconscious man

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The Supreme Court is considering a Wisconsin law that allows police to draw blood without a warrant from unconscious drunken driving suspects, a move critics blast as a violation of the Fourth Amendment ban on unreasonable searches and seizures.

The case, *Wisconsin v. Gerald P. Mitchell*, was argued Tuesday in Washington DC and groups ranging from Mothers Against Drunk Driving to the libertarian Cato Institute have filed briefs on both sides of the issue, [the Milwaukee Journal Sentinel reports](#).

Prosecutors argue that the process of obtaining search warrants from judges is too inconvenient and that drivers have not withdrawn the state's "implied consent" laws to testing by getting behind the wheel, meaning that if a driver is suspected of impaired driving they must agree to a blood test or have their license revoked.

The closely watched case involves Mitchell, a 55-year-old Wisconsin man who was arrested in May 2013 on charges of operating while intoxicated after he was spotted staggering along a Lake Michigan beach in Sheboygan. Mitchell's blood-alcohol concentration on a preliminary breath test was found to be 0.24 percent, but breath test results cannot be used as evidence in Wisconsin.

Mitchell then passed out at times while at a jail, so he was taken to a nearby hospital, where he was unconscious and could not be awoken, prompting an officer to order that his blood be taken. The test showed Mitchell's BAC was 0.22, according to the newspaper.

Mitchell insisted that the blood test results were illegally obtained and tried to suppress the evidence, but a judge disagreed and he was convicted of a seventh DUI offense. He was later sentenced to three years in prison, which he appealed.

But the state's Supreme Court upheld the trial court's ruling, with three justices claiming that the law was similar to unannounced inspections within regulated industries, the Journal Sentinel reports.

While all 50 states have some form of implied consent laws, just 29 appear to extend to unconscious suspects. Of those, 20 are split on whether that's constitutional, according to a brief filed by Mitchell's attorney.