



Groups warn high court of big government intrusion in GPS case

By Sarah Peters - 10/16/11 05:34 AM ET

The American Civil Liberties Union, a Muslim-American group and gun-rights activists are urging the Supreme Court to rule against the government in a case involving law enforcement and privacy rights.

The high court will decide whether warrant-less GPS tracking by law enforcement is a violation of Fourth Amendment protections from unreasonable search and seizure. The *U.S. vs. Jones* case is scheduled for argument in early November.

The ACLU, Council on American-Islamic Relations and Gun Owners of America have all filed friend-of-the-court briefs in support of Jones in the case, along with other organizations.

With an expired warrant that applied only to the District of Columbia, police officers installed a GPS tracker on nightclub owner Antoine Jones's vehicle when it was parked in a public lot in Maryland. The information they obtained from tracking Jones, whom they suspected of involvement in a cocaine-distribution operation, over the course of a month allowed them to trace Jones's movements to a house in Maryland. Police reportedly found cocaine, crack and cash inside the residence.

Civil liberties advocates argue that the searches were a violation of Jones's Fourth Amendment rights and that a ruling in favor of the government in this case could result in broad government overreach, threatening other constitutional protections.

Arthur Spitzer, legal director of the ACLU in Washington, D.C., said the high court should apply the underlying value of the Fourth Amendment – the protection of private lives against the government – to define what constitutes a search under the amendment.

“The court should apply those values so that as technology becomes more and more powerful, those values can be preserved, not erased,” Spitzer told The Hill. “If the Fourth Amendment is to have any continuing meaning, we think the court needs to recognize that just because technology makes something possible, it doesn’t mean it should be allowed.”

Spitzer said the ruling will also have “strong implications” on whether or not the government needs a warrant to track people using their cell phones.

The Center on Administration of Criminal Law supports the government’s position, claiming that the use of GPS in public places does not violate the Fourth Amendment. In its brief, the center argued that the use of GPS is an important law enforcement tool, adding that relying on new technology for this purpose is not unconstitutional.

The Council on American-Islamic Relations (CAIR) wrote in its brief that prolonged warrant-less GPS tracking can be especially detrimental to American Muslims, who have been subjected to religious profiling. Such unrestricted tracking could have a chilling effect on American Muslims’ First Amendment association rights, CAIR argues.

Gun Owners of America Executive Director Larry Pratt told The Hill that the Fourth Amendment is linked to the protection of the Second Amendment, because warrant-less searches often result in the harassment of gun owners. Pratt said that a ruling in favor of the government would allow police officers to search whatever they want, whether they have probable cause or not.

In its brief, Gun Owners of America disagreed with the court’s prior ruling in *Warden v. Hayden*, in which it abandoned Fourth Amendment rulings based on property rights in favor of a “reasonable expectation of privacy” test for searches and seizures.

“We’re basically asking for a return to the proper understanding of the Fourth Amendment and to get away from this very unconstitutional notion that the court is bound by whatever stupid decision preceded it,” Pratt said. “This is always a good time to say ‘Let’s get it right now.’”

Gun Owners of America contends that the high court should overturn its ruling in *Warden v. Hayden* and re-adopt its “mere evidence” rule, which holds that police can only seize contraband or instruments used to commit a crime and not mere evidence. Pratt attacked the argument that a return to the mere evidence rule will make it more difficult for law enforcement to do its job.

“What they’re saying is that the government doesn’t want to be bound by the Constitution. The Constitution was set up precisely to bind the government,” Pratt said.

Trevor Burrus, legal associate at the Cato Institute, said that one issue with the “reasonable expectation of privacy” standard in general is its subjectivity. The Cato Institute also filed a brief in support of Jones.

“It is a problem that what the government does can determine whether or not your expectation of privacy is reasonable,” Burrus said. “If the government regulates something heavily, they have a lower threshold of being able to search it, which seems rather odd.”

Other groups who filed briefs in support of Jones include the Electronic Privacy Center, the Owner-Operator Independent Drivers Association and the National Motorists Association.

No member of Congress has filed a brief in the case.

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