Newsweek

# How Chicago Keeps Tabs on Its Food Trucks and Destroys the Fourth Amendment

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Imagine that it's your first day at a new job.

As you endure the tedious onboarding process, an interesting tidbit catches your attention; among the perks of your new position, you will be issued a company car and cell phone.

"Sweet!" you exclaim, now more confident than ever of having made the right career move.

But your enthusiasm drops precipitously as you learn that GPS devices have been installed on both the car and phone, allowing the company to continuously track your location.

And your shock turns to horror when you are informed that the (mandatory) use of these items requires that you consent to the police having unfettered access to the resulting information, thus waiving your Fourth Amendment rights.

While commenting on what a huge mistake accepting the position was on your way out the door, HR drops perhaps the biggest bombshell of all: "Sorry you feel that way, but it's the city's rule, not ours, and every other company in the field has the exact same rules… so good luck finding another job!"

Incredibly, such a dystopian scenario could become commonplace if the City of Chicago has its way.

LMP Services is a company owned by Laura Pekarik, who has operated the "Cupcakes for Courage" food truck since 2011. About a year after starting her business, Chicago passed ordinances requiring food trucks to install GPS trackers and to refrain from operating within 200 feet of established restaurants.

LMP then sued to prevent enforcement of these laws—and is capably represented by our friends at the Institute for Justice.

While this case ostensibly involves food trucks in Chicago, if the Fourth Amendment fails to protect against laws like these, then there is very little to prevent cities and states across the country from extending similar regulations to virtually any other disfavored economic activity.

In erroneously ruling that these requirements don't involve an unreasonable search and don't intrude on any liberty interests, the Illinois Appellate Court employed two lines of reasoning.

First, the court found that there was no Fourth Amendment "search" because there was no physical intrusion by the government. But this ignores the well-established rule that compelling a private party to carry out the equivalent of a search rather than conducting the search itself does not allow the government to avoid constitutional scrutiny.

That's precisely the situation here, as Chicago tried to shirk constitutional limitations by forcing food-truck owners to install the tracking devices and then having the information sent to a private company rather than to the government itself.

Second, the court found that there was no search because being allowed to operate a food truck is subject to a revocable license. Because the government isn't required to issue such licenses, it's supposedly free to condition issuance on the vendor's consent to the placement of the GPS device.

But under this rationale, what's to prevent a state from conditioning (for example) a commercial driver's license on drivers' consenting to random police searches? While anyone with even a passing familiarity with the Fourth Amendment would find this absurd, there is no principled basis for preventing such measures under the court's reasoning.

One might logically ask why on earth Chicago would have enacted these restrictions in the first place. The most plausible answer comes when examining the other ordinance at issue—the "200-foot rule" that prevents food trucks from operating close to other businesses that prepare and sell food to the public.

As even the city's representatives have admitted, this is a purely protectionist measure designed to shield brick-and-mortar restaurants from competition. The Appellate Court didn't merely turn a blind eye toward such favoritism; it specifically endorsed it by finding that favoring one class of merchants over another was justified by the city's need to "strike a balance" between higher-tax-paying restaurants and lower-tax-paying food trucks.

Needless to say, conditioning a party's rights on the amount of taxes it pays is a dangerous precedent indeed.

Finally, these protectionist measures have achieved predictable results, with the already-low total of 120-130 licensed food trucks in 2012 dropping to only 70 as of last year. That's not exactly a win for hungry consumers who want reasonably priced snacks!

Because these measures are detrimental to Chicago's consumers and entrepreneurs—and indeed all residents' constitutional rights—Cato has joined the Illinois Food Truck Owners Association and National Food Truck Association on an amicus brief supporting LMP Services' appeal of the Appellate Court's erroneous judgment.

The Illinois Supreme Court should hear this case and rule that overtly advantaging market competitors and forcing merchants to forego Fourth Amendment protections cannot be

countenanced as just another cost of doing business. Instead, this is a disgraceful abuse of power that's repugnant to a free and open society.

Perhaps most importantly, when you think of all the great culinary delicacies that Chicago is known for – regardless whether deep-dish pizza is pizza, it's delicious – it would be a crying shame to deprive the city of food trucks.

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