



## Supreme Court Could Set the Dogs on Your House

*Police are using man's best friend to throw the Fourth Amendment under the bus.*

By: Christopher Moraff – November 1<sup>st</sup>, 2012

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Yesterday, the Supreme Court heard oral arguments in a case that could have a profound effect on how far the government can stick its nose into your business. And I mean that literally.

It all started in Miami, Florida, in 2006, when police received an anonymous tip that a man named Joelis Jardines was conducting a marijuana grow operation out of his house. The police responded by sending some units, accompanied by federal agents, to the home for a look. When they didn't see anything out of the ordinary, they called for a drug-sniffing dog, which they proceeded to lead to the front door of Jardines's house. What happened next is not in dispute: The dog alerted to an odor coming from the house, a search warrant was issued, and inside Jardines's home, cops discovered 179 marijuana plants. He was charged with a first degree felony for trafficking, and with grand larceny for stealing the electricity he used to power his pot farm.

But defense attorneys didn't like the way the case smelled. At trial, they argued that introducing a drug-sniffing dog onto Jardines's property constituted an illegal search. The court agreed and ruled the evidence inadmissible, citing the Fourth Amendment.

Since then the case has been reversed more times than Mitt Romney's stance on abortion. An appeals court affirmed the constitutionality of the evidence, but the Florida Supreme Court agreed with the lower court that "given the special status accorded a citizen's home" the sniff test constituted "substantial government intrusion."

Concurring with the court's majority, Justice R. Fred Lewis wrote:

"We as Americans have an unwavering expectation that there will not be someone, or something, sniffing into every crack, crevice, window, or chimney of our homes ..."

While the nation's highest court has established the legality of using drug-sniffing dogs in cases involving automobiles, luggage and packages, this is the first time SCOTUS has been tasked with deciding if the same tactic can be used to sneak a peak inside a private residence.

For good reason, it's generally accepted that, minus a warrant, a cop can't snoop around your property; and police are barred from crossing the "curtilage" of a home—which is defined as the area immediately surrounding a residence that "harbors the intimate activity associated with the sanctity of a man's home and the privacies of life"—without probable cause.

Cops *are* allowed to peak through your windows using binoculars, but they are prohibited from using technology that enables them to see, hear or smell things they couldn't perceive with their own senses. But Florida prosecutors say dogs are different because they are not technological in nature. Well, I own a dog, and I can assure you dogs don't naturally smell around for drugs. I live in Kensington. If they did, I'm pretty sure I'd have quite a stash by now.

Plus, the drug-sniffing dog at your front door is not a marvel of nature, it's the result of lots of hard work and behavioral conditioning. Dogs undergo intensive training to detect contraband; the process could take months or even longer to perfect and even then they don't always get it right.

Doggy details aside, mostly I worry that giving police blanket authority to bring sensing equipment—whether it's covered in fur or not—onto private property could open a Pandora's Box, with cops conducting street-by-street sweeps using trained canine detection teams. However unlikely, if such a thing *should* come to pass, there's little doubt who would be the target of such a campaign. It takes far less effort to cover a block of rowhouses in the ghetto than it does to scan mansions in Gladwyne—and it can be done from a public sidewalk.

I'm certainly not alone in my concerns. The Cato Institute, The Rutherford Institute and more than 50 constitutional scholars filed briefs saying the Jardines search violates the spirit of the Fourth Amendment and calling on SCOTUS to use this opportunity to set solid precedent covering the use of drug dogs on private property. Here's hoping they listen.