

National Security

Federal appeals court says tire-chalking by parking enforcement officers is unconstitutional

By Fred Barbash

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The age-old parking enforcement practice of tire-chalking is unconstitutional, a federal appeals court ruled Monday, saying it violated the Fourth Amendment's bar on unreasonable searches.

The U.S. Court of Appeals for the 6th Circuit, [in a first-of-its-kind decision](#), ruled that marking a car's tires to gather information is a form of trespass requiring a warrant, similar to police attaching a GPS to a vehicle to track a suspected drug dealer.

Parking attendants across the country have been chalking tires with big white lines for decades in zones without meters to enforce of time limits and issue tickets. It's a substantial source of revenue for many cities.

The decision, while undoubtedly bringing joy to parking scofflaws everywhere, could cost some cities money, either from lost revenue or having to install meters where none exist.

On the other hand, as Fourth Amendment expert Orin Kerr of the University of Southern California law school [tweeted](#), it "seems easy enough these days for parking enforcers to just take a photo of the car, or even just a close-up photo of the tire, rather than chalk it. . . . No 4A issues then."

The 6th Circuit covers the states of Kentucky, Michigan, Ohio and Tennessee; the court sits in Cincinnati.

The case came from Saginaw, Mich., where lawyer Philip Ellison engaged in a Facebook rant in 2016 after his law partner, sitting in his chalked car, got ticketed while the two talked on the phone.

Ellison said a friend, Alison Taylor, saw the Facebook post and got in touch to complain about her 15th ticket in two years. She, as plaintiff, and he, as lawyer, filed a civil rights suit against Saginaw and a named parking enforcement officer who Ellison claims "issues more than 95 percent of the tickets."

"We made a federal case out of tire-chalking," said Ellison, who is seeking refunds for his client and others caught by chalking. He acknowledged some surprise at his victory, as he could find no comparable chalking precedents.

The Fourth Amendment to the U.S. Constitution bars "unreasonable searches." But a U.S. District Court in Bay City, Mich., had dismissed the lawsuit, concluding that chalking, while a type of search, was not at all unreasonable.

7/3/2018 Federal appeals court says the chalking by parking enforcement officers is unconstitutional. The Washington Post
People have a lesser expectation of privacy in their cars than, for example, in their homes, the district court ruled. Plus, the lower court said, the Supreme Court has carved out a “community caretaker” exception to warrant requirements for routine parking and traffic enforcement so police can control the hazards of clogged streets.

Appeals court Judge Bernice Bouie Donald, writing for a unanimous three-judge panel, reversed.

She said traditional law on searches of vehicles had been upended by the Supreme Court’s 2012 decision restricting the powers of police to use GPS devices to track criminal suspects.

In *United States v. Jones*, Justice Antonin Scalia, writing for the majority, said that attaching the tracking device was a form of trespass on private property by police that requires a warrant.

Donald said the chalking of Taylor’s car was just like the GPS installation, a trespass for the purpose of gathering incriminating information and therefore a Fourth Amendment violation when done without a warrant.

She dismissed the “caretaker” exception, saying that Taylor’s vehicle posed no safety risk. The city was trying to raise revenue, not “mitigate [a] public hazard,” she wrote.

A lawyer for Saginaw did not immediately respond to a request for comment.

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Fred Barbash has been with The Washington Post for 30 plus years in a multitude of roles including but not limited to Supreme Court reporter, National editor, London bureau chief and founding editor of The Post's Morning Mix. He has covered all three branches of government and courts on every level and has written widely on Constitutional history. Follow



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