

# Indiana high court denies right to resist unwanted police entry

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Executive Editor

A May 12 Indiana Supreme Court ruling that state residents have no right to resist an illegal police entry—overturning Fourth Amendment precedent and Common Law that dates back to the Magna Carta of 1215—is causing a stir that has far-reaching legal and political implications.

Writing for the court's 3-2 majority, Justice Steven David, who was nominated to the court by Gov. Mitch Daniels, seen by some as a possible Republican presidential contender in 2012, said if a police officer wanted to enter a home for any reason—or for no reason—homeowners could do nothing to block the officer's entry.

"We believe ... a right to resist an unlawful police entry into a home is against public policy and is incompatible with modern Fourth Amendment jurisprudence," David wrote, according to the *Northwest Indiana Times*.

"We also find that allowing resistance unnecessarily escalates the level of violence and therefore the risk of injuries to all parties involved without preventing the arrest."

He said persons arrested after an illegal police entry are still entitled to post bail and can seek remedies through the legal system. However, some see the potentially costly post-arrest legal remedy approach as incompatible with traditional Fourth Amendment protections.

The ruling quickly produced significant comment on such websites as Volokh.com, with comments divided over the rightness and wrongness of the decision, and talk show host Mike Church, citing a court spokeswoman, said that the Indiana Supreme Court decision had catalyzed a number of phone and email threats to members of the court.

One commentator suggested that the decision written by a Daniels appointee to the state court could help to scuttle the higher elective ambitions.

The ruling stems from a case (*Barnes v. State of Indiana*) involving an argument between a husband and wife that took place outside of their apartment. When police arrived, they both went back inside and the husband told officers they weren't needed.

When one officer tried to enter the apartment the husband attempted to block him. An officer entered anyway and the husband then shoved him against a wall, prompting a second officer to use a stun gun on the husband and arrest him.

Ivan Bodensteiner, a professor at the Valparaiso University School of Law, said he agreed with the court's decision, according to the *Northwest Indiana Times* and other reports.

"It's not surprising that they would say there's no right to beat the hell out of the officer," he told the paper. "The court is saying we would rather opt on the side of saying if the police act wrongfully in entering your house your remedy is under law, to bring a civil action against the officer."

However, Justices Robert Rucker and Brent Dickson dissented, saying the ruling violates the US Constitution's Fourth Amendment.

"In my view the majority sweeps with far too broad a brush by essentially telling Indiana citizens that government agents may now enter their homes illegally—that is, without the necessity of a warrant, consent or exigent circumstances. I disagree," Rucker wrote in his dissent.

The decision has legal weight in Indiana only, at present, but the implications are broader than some, even in the legal community, might expect. Commentary on the Volokh website makes it

clear that even law professors have some misgivings about the Indiana high court's decision.

As just two examples of what could develop as a result of the ruling, within 72 hours of the decision, Newton County, IN, Sheriff Don Hartman Sr. reportedly said random house-to-house searches are now possible.

When asked three separate times about a decision that appeared to trample the inherent natural rights of Americans, the Indiana sheriff emphatically indicated that he would use random house-to-house searches, adding he felt people will welcome random searches if it means capturing a criminal.

Speaking under the condition of anonymity to the Smoking Argus Daily website, a local city police chief with 30 years experience in law enforcement directly contradicted the Newton County Sheriff, saying such searches would be unconscionable and that his allegiance is to the Indiana and federal Constitutions respectively. However, he also concurred that the ruling does now allow for police to randomly search homes should a department be under order by state or federal officials or under a department's own accord.

Meanwhile, a western Indiana school district wants to give its bus drivers the authority to search students for weapons or drugs.

The *Tribune-Star* reported that a Vigo County School Corporation proposal would allow the drivers to search a student and the student's belongings if there is an immediate threat of harm or danger to those on the bus.

Ray Azar, director of student services, said the Terre Haute-based district wants its drivers to have the authority to conduct searches in case they are on the road and must immediately respond to an emergency situation. That would include scenarios where a student might be in possession of a dangerous drug or a weapon.

Drivers would have to first get permission from the transportation office and/or student services.

HOUSE-TO-HOUSE  
SEARCHES.

Are they  
getting the  
country  
ready for  
enactment  
of the  
"Small  
arms  
Treaty"  
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