

Warrantless Arrests Based on Probable Cause and Subsequent Searches Incident to Those Arrests Do Not Violate the Fourth Amendment: *Virginia v. Moore*

UNITED STATES – CONSTITUTIONAL LAW – FOURTH AMENDMENT – SEARCH AND SEIZURE – The Supreme Court held that an individual’s Fourth Amendment rights were not violated when police officers made a probable cause based arrest of the individual and subsequently performed a search incident to that arrest, even though Virginia law prohibited the making of that specific arrest.

Virginia v. Moore, 128 S. Ct. 1598 (2008).

On February 20, 2003, respondent, David Lee Moore, was arrested for the misdemeanor of driving on a suspended license.¹ After making the arrest, the officers searched Moore and found that he was in possession of crack cocaine.² Moore was subsequently tried on drug charges.³

At the pretrial stage, Moore filed a motion to suppress the evidence⁴ obtained from the arrest search, arguing that under Virginia law, driving on a suspended license is generally not an arrestable offense, and that rather than arresting Moore, the officers should have simply issued him a summons.⁵ Moore further argued that the Fourth Amendment required suppression of the evidence, and therefore, the officers violated Moore’s Fourth Amendment rights with their search.⁶ The trial court denied Moore’s motion, declining to suppress the evidence on Fourth Amendment grounds.⁷ Moore, tried before the bench, was found guilty of possessing cocaine with the intent to distribute.⁸

Moore appealed to a panel of judges from the Virginia Court of Appeals, which reversed the conviction on the grounds that Moore’s rights under the Fourth Amendment had been

1. *Virginia v. Moore*, 128 S. Ct. 1598, 1601 (2008). Two City of Portsmouth police officers stopped a vehicle being driven by Moore. *Moore*, 128 S. Ct. at 1601. The officers were told via police radio that a person known as “Chubs” was driving with a suspended license. *Id.* One of the officers knew Moore by that nickname, and subsequently stopped his vehicle after locating him. *Id.* It was determined that Moore’s license was indeed suspended, and the officers then arrested him for the misdemeanor of driving on a suspended license. *Id.*

2. *Moore*, 128 S. Ct. at 1601. The search yielded sixteen grams of crack cocaine and \$516 in cash. *Id.*

3. *Id.* at 1602.

4. Suppression of evidence is “a trial judge’s ruling that evidence offered by a party should be excluded because it was illegally acquired.” BLACK’S LAW DICTIONARY 1481 (8th ed. 2004).

5. *Moore*, 128 S. Ct. at 1602. Under Virginia law, driving on a suspended license, is not an arrestable offense “except as to those who ‘fail or refuse to discontinue’ the violation, and those whom the officer reasonably believes to be likely to disregard a summons, or likely to harm themselves or others.” *Id.* (citing VA. CODE ANN. § 19.2-74 (2004)).

6. *Moore*, 128 S. Ct. at 1602. The Fourth Amendment to the U.S. Constitution provides: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

7. *Moore*, 128 S. Ct. at 1602.

8. *Id.* Moore was sentenced to a five-year prison term, with one year and six months of the sentence suspended. *Id.*

violated.⁹ The conviction, however, was reinstated by the intermediate court sitting en banc.¹⁰ The Virginia Supreme Court reversed the conviction once again, holding that the arrest search violated Moore's Fourth Amendment rights.¹¹ The United States Supreme Court granted certiorari to resolve the issue of whether a police officer violates the Fourth Amendment when making a warrantless arrest that is based on probable cause, but prohibited by state law, and subsequently performs a search incident to that arrest.¹²

The United States Supreme Court reversed the decision of the Virginia Supreme Court, holding that a police officer does not violate the Fourth Amendment when making a warrantless arrest based on probable cause and subsequently performing a search incident to that arrest, even though state law prohibits the making of that specific arrest.¹³ The Supreme Court also held that the exclusion of evidence obtained by arresting officers as a result of search incident to a constitutionally permissible arrest is not required by the Fourth Amendment.¹⁴

Justice Scalia, writing on behalf of the majority, delivered the opinion of the Court.¹⁵ The majority began by examining the statutes and common law of the founding era¹⁶ to aid in its determination of whether a search or seizure is unreasonable.¹⁷ In doing so, the majority rejected Moore's argument that the Fourth Amendment was meant to integrate subsequently enacted statutes that placed limits on search and seizure.¹⁸ The Court found no authority to support Moore's contention, and dismissed the argument accordingly.¹⁹

After finding no historical basis for Moore's Fourth Amendment claim, the Court applied a general standard of reasonableness to the issue of search and seizure.²⁰ In doing so, Justice Scalia balanced the extent to which a search and seizure infringes upon one's right to privacy against the necessity of a search and seizure in furthering the best interests of government and society.²¹ The majority acknowledged that the Supreme Court has historically held arrests to be

9. *Id.* (See *Moore v. Virginia*, 609 S.E.2d 74, 76 (Va. App. 2005)).

10. *Moore*, 128 S. Ct. at 1602.; *Moore*, 622 S.E.2d at 260. The legal term "en banc" means "with all judges present and participating; in full court." BLACK'S LAW DICTIONARY 568.

11. *Moore*, 128 S. Ct. at 1602.; *Moore*, 636 S.E.2d at 400. The Virginia Supreme Court reasoned that because the officers should have issued Moore a citation rather than arresting him, and a search incident to citation is not permitted under the Fourth Amendment, the search incident to arrest violated the Fourth Amendment. *Moore*, 128 S. Ct. at 1602.

12. *Id.*

13. *Id.* at 1608

14. *Id.*

15. *Id.* at 1601.

16. "Founding-era" refers to the period of time surrounding the framing of the U.S. Constitution.

17. *Moore*, 128 S. Ct. at 1602. The Court looked to the common law to determine that the Fourth Amendment was not intended to be a redundant guarantee of whatever limits on search and seizure legislatures might have enacted. *Id.* The Court cited the following cases as support for its determination: *Boyd v. U.S.*, 6 S. Ct. 524 (1886); *Payton v. New York*, 100 S. Ct. 1371 (1980); *Wilson v. Arkansas*, 115 S. Ct. 1914 (1995); *Wyoming v. Houghton*, 119 S. Ct. 1297 (1999). *Id.* at 1602-03.

18. *Id.* at 1603. The Court stated, "We are aware of no historical indication that those who ratified the Fourth Amendment understood it as a redundant guarantee of whatever limits on search and seizure legislatures might have enacted." *Id.* at 1602. The Court also pointed out that: "No early case or commentary . . . suggested the Amendment was intended to incorporate subsequently enacted statutes." *Id.* at 1603.

19. *Id.* at 1604. The majority explained: "[T]his is 'not a case in which the claimant can point to 'a clear answer [that] existed in 1791 and has been generally adhered to by the traditions of our society ever since.'"
Id. (quoting *Atwater v. City of Lago Vista*, 121 S. Ct. 1536 (2001)).

20. *Moore*, 128 S. Ct. at 1604.

21. *Id.*

both reasonable and constitutional when probable cause leads a police officer to believe an individual has committed a crime in his presence.²² In such circumstances, the majority asserted that the societal interests in justifying the search and seizure outweigh the individual's interest in privacy.²³ Rejecting Moore's argument that a state with policies against arrest for certain crimes has no interest in arrest, the majority explained that arrests still best serve important societal interests.²⁴

The Court further reasoned that although individual states have the freedom to impose stricter standards on searches and seizures than those minimally imposed by the Constitution, such stricter standards do not modify the contents of the Fourth Amendment.²⁵ Justice Scalia explained that incorporating state limitations on arrests into the Constitution would make Fourth Amendment protections unnecessarily complex and they would vary from state to state.²⁶ In this respect, the majority concluded that the societal interests in maintaining readily administrable rules outweigh the individual's interest in privacy.²⁷

Moore further argued that the Constitution prohibited the arresting officers from searching him, even if the Constitution did allow for his arrest.²⁸ The Court rejected this argument as well, stating that officers making reasonable, constitutional arrests may perform searches incident to those arrests.²⁹ The Court noted that this policy best serves the interests justifying search and seizure, as it allows arresting officers to safeguard evidence and maintain their own safety.³⁰ The majority admitted that the issuance of a citation does not grant the officer the same authority to search and seize.³¹ However, as the Court pointed out, the officers in this case arrested Moore, and therefore were entitled to perform a search incident to the arrest.³² The majority concluded that although the officers violated a Virginia state law regarding arrest, the officers did not violate the Fourth Amendment, as their arrest was based on probable cause.³³

22. *Id.* The arrest is constitutionally reasonable even when the individual has committed a minor crime. *Id.*

23. *Id.* at 1604-05.

24. *Id.* at 1605. The majority explained that an arrest "will still ensure a suspect's appearance at trial, prevent him from continuing his offense, and enable officers to investigate the incident more thoroughly." *Id.*

25. *Moore*, 128 S. Ct. at 1604-05. The Court explained that "A State is free to prefer one search-and-seizure policy among the range of constitutionally permissible options, but its choice of a more restrictive option does not render the less restrictive ones unreasonable, and hence unconstitutional." *Id.* at 1606. *See also* *California v. Greenwood*, 108 S. Ct. 1625 (1988) (asserting that whether a search is reasonable within the meaning of the Fourth Amendment has never depended on the law of the particular State in which the search occurs).

26. *Moore*, 128 S. Ct. at 1606-07. The Court explained that "Even at the same place and time, the Fourth Amendment's protections might vary if federal officers were not subject to the same statutory constraints as state officers." *Id.* at 1607.

27. *Id.* at 1606.

28. *Id.* at 1607.

29. *Id.* This rule pertains to any lawful arrest. *Id.* Arresting officers have the authority to perform searches incident to constitutionally permissible arrests so that they may ensure their own safety and safeguard evidence. *Id.*

30. *Id.*

31. *Moore*, 128 S. Ct. at 1608. Officers issuing citations do not face the same dangers as arresting officers, thus they do not have the same authority to search. *Id.*

32. *Id.*

33. *Id.* The Court stated, "[T]he arrest rules that the officers violated were those of state law alone, and as we have just concluded, it is not the province of the Fourth Amendment to enforce state law." *Id.*

Justice Ginsburg wrote a concurring opinion.³⁴ Justice Ginsburg agreed with the majority holding that although Moore's arresting officers violated Virginia law, the officers did not violate the Fourth Amendment.³⁵ However, Justice Ginsburg disagreed with the majority's claim that there is no historical record which supports Moore's Fourth Amendment position.³⁶ While the majority referenced a long line of cases holding that all warrantless arrests based on probable cause are constitutionally reasonable for crimes committed in the arresting officer's presence, Justice Ginsburg claimed that she was unaware of such a line of cases.³⁷

Justice Ginsburg, in agreeing with the majority's conclusion and reasoning, took aim at Moore's position.³⁸ She criticized Moore for ignoring the limited consequences that the State of Virginia places on police officers who fail to adhere to the state's summons-only policy for certain offenses.³⁹ Justice Ginsburg reiterated the point that the State of Virginia does require the suppression of evidence obtained by an arresting officer when that officer violated the state's citation laws.⁴⁰

The current state of the law, in which probable cause justifies a police officer's making of a warrantless arrest, was imported into the American legal system from the King's Bench in England.⁴¹ In *Beckwith v. Philby*⁴², the King's Bench declared that a warrantless arrest is justified upon a showing by the arresting officer that he had a reasonable ground, or probable cause, to suspect that a felony had been committed, even if no felony had actually occurred.⁴³ Without the requirement of a definite felony charge upon the suspect, this decision provided police officers with a greater degree of freedom and discretion for making warrantless arrests of individuals who were guilty only of a misdemeanor.⁴⁴

The American courts first adopted this standard of probable cause for warrantless arrests by police officers in the landmark case *Russell v. Shuster*.⁴⁵ The Supreme Court of Pennsylvania

34. *Id.* (Ginsburg, J., concurring).

35. *Id.* at 1609. The majority ruled that the officers violated Virginia law when they arrested Moore for the misdemeanor of driving on a suspended license. *Id.* at 1607 (majority opinion). However, the Fourth Amendment grants police officers the right to arrest any individual whom the officers have probable cause to believe has committed even a minor crime in the officers' presence. *Id.*

36. *Moore*, 198 S. Ct. at 1608.

37. *Id.* at 1609. Justice Ginsburg stated that in those cases referred to by the majority, state law authorized the arrests. *Id.* In the principle case, Virginia law did not authorize the arrest of Moore for the misdemeanor of driving on a suspended license. *Id.* at n.3.

38. *Id.* at 1609.

39. *Id.* Justice Ginsburg stated, "[Moore] emphasizes Virginia's classification of driving on a suspended license as a nonarrestable misdemeanor. Moore would have us ignore, however, the limited consequences Virginia attaches to a police officer's failure to follow the Commonwealth's summons-only instruction." *Id.*

40. *Id.*

41. Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 636 (1999).

42. 108 Eng. Rep. 585 (1827).

43. *Beckwith*, 108 Eng. Rep. at 586.

44. *Id.*

45. *Russell v. Shuster*, 8 Watts & Serg. 308 (Pa. 1844). The defendants, Russell and Downer, were constables who arrested the plaintiff, Shuster, after a reasonable suspicion that Shuster's trunk contained certain burglary tools. *Russell*, 8 Watts & Serg. at 308. Shuster sued the defendants for trespass after the constables' search resulted in no formal charges being brought against Shuster. *Id.* The trial court did not allow the defendants to admit the evidence regarding Shuster's truck, and thus returned a verdict for Shuster. *Id.* The Supreme Court of

concluded that a reasonable cause for suspicion by itself will justify a constable's arrest of another person.⁴⁶ Six years later, the Supreme Court of Massachusetts made a similar ruling in the case of *Rowan v. Sawin*.⁴⁷ Citing the King's Bench's ruling in *Beckwith*⁴⁸ as direct authority, the court held that a constable, under a reasonable suspicion that a felony has occurred, is justified in making a warrantless arrest of the suspected felon, even though no felony has actually occurred.⁴⁹

The United States Supreme Court first addressed the issue of whether probable cause justified the warrantless arrest of individuals guilty of a misdemeanor, rather than a felony, in the 1925 case *Carroll v. U.S.*⁵⁰ Three federal agents and a state officer arrested the defendants with probable cause, based on their belief that the defendants were violating the National Prohibition Act.⁵¹ The defendants in *Carroll* argued that an officer may make a warrantless arrest of an individual guilty of a misdemeanor only if the misdemeanor was committed in the presence of the arresting officer.⁵² The Supreme Court addressed this argument by stating that the common-law rule is only sometimes expressed in the manner in which the defendants argue.⁵³ The majority went on to distinguish the English common-law from the American law under the federal statutes at that time, stating that the difference in punishment between felonies and misdemeanors is not as great under our federal statutes.⁵⁴ In so doing, the majority suggested that there is not a significant distinction between felony and misdemeanor in the United States.⁵⁵ The Court ultimately ruled in favor of the arresting officers, holding that the confiscated liquor was not improperly seized, as the officers had probable cause to believe the defendants were illegally transporting liquor in their vehicle.⁵⁶

Pennsylvania reversed the lower court's decision, holding that the evidence regarding Shuster's truck should have been offered as evidence based on the issue of probable cause. *Id.* at 310.

46. *Id.* at 309. The court stated, "A constable may justify an arrest for reasonable cause of suspicion alone; and in this respect he stands on more favourable ground than a private person, who must show, in addition to such cause, that a felony was actually committed." *Id.*

47. *Rowan v. Sawin*, 59 Mass. 281 (1850). The defendant, a constable of the city of Boston, made a warrantless arrest of the plaintiff on the grounds of reasonable suspicion for theft. *Rowan*, 59 Mass. at 281. No charge was prosecuted against the plaintiff, who in turn brought a trespass action of false imprisonment against the defendant. *Id.* The trial court ruled in favor of the plaintiff, asserting that a reasonable suspicion of theft alone is not enough to justify a warrantless arrest. *Id.* The Supreme Court of Massachusetts reversed this ruling, holding that "[p]eace officers without warrant may arrest suspected felons." *Id.* at 284.

48. *Beckwith*, 108 Eng. Rep. at 585.

49. *Rowan*, 59 Mass. at 284. The court stated, "The case of *Beckwith v. Philby* . . . is a direct authority, that a constable, having reasonable cause to suspect that a felony has been actually committed, is justified in arresting the party suspected, although it afterwards appear that no felony has been committed." *Id.*

50. *Carroll v. U.S.*, 45 S. Ct. 280 (1925).

51. *Carroll*, 45 S. Ct. at 280.

52. *Id.* at 286. In making this argument, the defendant's relied on Halsbury's Laws of England, which stated, in pertinent part, "In cases of misdemeanor, a peace officer like a private person has at common law no power of arresting without a warrant except when a breach of peace has been committed in his presence or there is reasonable ground for supposing that a breach of peace is about to be committed or renewed in his presence." *Id.* (quoting 9 HALSBURY, LAWS OF ENGLAND § 612 (1909)).

53. *Carroll*, 45 S. Ct. at 286.

54. *Id.* at 287. The majority stated, "In England at the common law the difference in punishment between felonies and misdemeanors was very great. Under our present federal statutes, it is much less important and Congress may exercise a relatively wide discretion in classing particular offenses as felonies or misdemeanors." *Id.*

55. *Id.*

56. *Id.* at 288-89.

Following the *Carroll* decision, the Supreme Court did not address the issue of warrantless arrests for misdemeanors based on probable cause again until 1976, when it decided *U.S. v. Watson*.⁵⁷ Although the issue in this case dealt more with warrantless arrests for felonies based on probable cause, the Court made it a point to acknowledge that a police officer is permitted to make a warrantless arrest for either a misdemeanor or a felony committed in the officer's presence so long as there is a reasonable ground, or probable cause, for making such an arrest.⁵⁸ The Justices made no further mention of warrantless arrests for misdemeanors based on probable cause, as it was not the central issue in the case.⁵⁹

In 2001, the Supreme Court made a significant ruling on the sole issue of whether a police officer has the authority under the Fourth Amendment to make warrantless arrests for minor criminal offenses, such as misdemeanors which do not amount to a breach of the peace.⁶⁰ In *Atwater v. City of Lago Vista*⁶¹, the petitioners, Atwater and her husband, brought an action against the City of Lago Vista, Texas, claiming that the arresting officer violated Atwater's Fourth Amendment right to be free from unreasonable seizure.⁶² The petitioners argued that the common law of the founding-era⁶³ limited a peace officer's⁶⁴ authority to make warrantless arrests for misdemeanors to cases involving a breach of the peace.⁶⁵

Justice Souter, writing on behalf of the majority, delivered the opinion of the Court.⁶⁶ The majority rejected the petitioners' argument, stating that the common law rules regarding an officer's warrantless misdemeanor arrest power, and statements addressing these common law rules, did not demonstrate any unanimity, and thus were more vague than the petitioners

57. *U.S. v. Watson*, 96 S. Ct. 820 (1976). The defendant, Watson, was arrested for possessing stolen mail, after an informant told the authorities that the defendant was in possession of a stolen credit card. *Watson*, 96 S. Ct. at 822. A search incident to the arrest revealed that Watson did not have any credit cards on his person. *Id.* After obtaining consent from the defendant to search his vehicle, the officer found an envelope containing two credit cards in the names of other persons. *Id.* at 822-23.

58. *Id.* at 824.

59. *Id.*

60. *Atwater v. City of Lago Vista*, 121 S. Ct. 1536, 1541 (2001). The legal term "breach of the peace" is defined as "the criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise." BLACK'S LAW DICTIONARY 201 (8th ed. 2004).

61. 121 S. Ct. 1536 (2001).

62. *Atwater*, 121 S. Ct. at 1542. In March 1997, petitioner Atwater was driving her truck in Lago Vista, Texas, with her young children riding in the front seat. *Id.* at 1541. Neither Atwater nor her passengers were wearing their safety belts, thus violating a Texas law which requires all front seat passengers to wear safety belts while traveling in a vehicle. *Id.* A Lago Vista police officer observed the safety belt violations, pulled Atwater's truck over, and arrested her for violating Texas' safety belt law. *Id.* at 1541-42. Atwater was charged with multiple offenses, including driving without her safety belt fastened, failing to secure her children in safety belts, driving without a license, and failing to provide proof of insurance. *Id.* at 1542. After being released on bond, Atwater pleaded no contest to the safety belt misdemeanors and paid a \$50 fine. *Atwater*, 121 S. Ct. at 1542. The other charges were all dismissed. *Id.*

63. "Founding-era" refers to the period of time surrounding the framing of the U.S. Constitution.

64. Peace officer is defined as "a civil officer (such as a sheriff or police officer) appointed to maintain public tranquility and order; esp., a person designated by public authority to keep the peace and arrest persons guilty or suspected of a crime." BLACK'S LAW DICTIONARY 1166 (8th ed. 2004).

65. *Atwater*, 121 S. Ct. at 1543. Petitioners claim that during the founding-era, a "breach of the peace" was understood narrowly as pertaining only to non-felony offenses which involved, or tended toward, acts of violence. *Id.*

66. *Id.* at 1541.

suggested.⁶⁷ Furthermore, the Court noted that the petitioners failed to cite any specific evidence that supports their position that those who framed the Fourth Amendment intended to restrict an officer's warrantless misdemeanor arrest power to those cases which involve an actual breach of the peace.⁶⁸ To the contrary, Justice Souter stated that many colonial and state legislatures of the founding-era routinely authorized local peace officers to make warrantless misdemeanor arrests without the condition of a breach of the peace as a prerequisite.⁶⁹

The Court further noted that nothing in the historical record that has unfolded since the founding-era serves to support the petitioners' claim.⁷⁰ Justice Souter pointed out that although the Supreme Court has said very little about the issue of warrantless misdemeanor arrest authority, the little amount that has been said tends to undermine the petitioners' argument.⁷¹ In addressing this issue, the Supreme Court has generally given more attention to the fact that the misdemeanor was committed in the officer's presence, while omitting any reference to a breach of the peace restriction.⁷² Justice Souter also noted that over the course of the last century, legal commentary has been nearly uniform in recognizing the constitutionality of extending warrantless arrest authority to misdemeanors without restriction to breaches of the peace.⁷³

The Supreme Court ultimately held that the common law does not limit an officer's authority to make warrantless arrests for misdemeanors to situations involving a breach of the peace, and the arrest did not violate the petitioner's Fourth Amendment right to be free from unreasonable seizure.⁷⁴ The majority concluded by stating that a police officer who has probable cause to believe that a person is guilty of committing even a very minor criminal offense in the officer's presence may arrest the suspect without violating the Fourth Amendment.⁷⁵

The majority opinion in *Moore* reflects a long established principle granting police officers broad latitude for making warrantless arrests, so long as the officer has probable cause to believe even a minor criminal offense has been committed in his or her presence.⁷⁶ As the Constitution is the supreme law of the land, the Court was correct in its finding that state-enacted laws are subordinate to the requirements under the Constitution.⁷⁷ If subsequently-enacted state laws were to be incorporated into the Constitution, we would be left with a chaotic legal system

67. *Id.* at 1543-47.

68. *Id.* at 1548. The majority further refuted the petitioners' position: "[A]nd our own review of the recent and respected compilations of framing-era documentary history has likewise failed to reveal any such design . . . Nor have we found in any of the modern historical accounts of the Fourth Amendment's adoption any substantial indication that the Framers intended such a restriction." *Id.*

69. *Id.* at 1548. During the founding-era, a number of states passed laws extending a peace officer's warrantless arrest authority to numerous nonviolent misdemeanors, thus acting very inconsistently with the petitioners' claims about the Fourth Amendment's object. *Id.* at 1549. The Court stated, "Given these early colonial and state laws, the fact that a number of States that ratified the Fourth Amendment generally incorporated common-law principles into their own constitutions or statutes . . . cannot aid *Atwater* here." *Id.* at n.9.

70. *Atwater*, 121 S. Ct. at 1550. Justice Souter stated, "The story, on the contrary, is of two centuries of uninterrupted (and largely unchallenged) state and federal practice permitting warrantless arrests for misdemeanors not amounting to or involving breach of the peace." *Id.*

71. *Id.*

72. *Id.* See e.g., *Watson*, 96 S. Ct. at 820; *Carroll*, 45 S. Ct. at 280; *Bad Elk v. United States*, 20 S. Ct. 729 (1900).

73. *Atwater*, 121 S. Ct. at 1552.

74. *Id.* at 1557-58.

75. *Id.* at 1557.

76. *Moore*, 128 S. Ct. at 1609.

77. *Id.* at 1604-05.

in which our traditional protections under the Constitution would be rendered unnecessarily complex and ambiguous.

Throughout our nation's history, each state has taken the initiative of establishing its own state constitutions, as well as its own statutory regulations. In doing so, the states have enacted laws with the purpose of serving the best interests of its respective citizens. Naturally, each state has differing opinions on certain areas of the law, and how certain laws should be tailored in order to best serve the interests of its respective citizens. As a result, many states have enacted laws that conflict with the laws of several other states. Given this, it would be nearly impossible for the United States Constitution to incorporate into it subsequently-enacted state laws, as the potential for conflict among each state law would be extremely high. Such a conflict in laws within the Constitution would result in overall national confusion as to each citizen's traditional protections, as defined under the Constitution.

Furthermore, if subsequently-enacted state laws were to be incorporated into the Constitution, Congress would ultimately be left with the daunting task of deciding which states' laws should be incorporated therein – given the high level of conflict among state laws within certain areas, not every state would be able to incorporate its subsequently-enacted laws into the Constitution. Such action would require an inordinate amount of time and deliberation, thus detracting Congress from focusing on more pressing national concerns in which our country is currently faced with. Seeing as we already have long-standing, traditional protections under the Constitution in its current form, it would be both unnecessary and inefficient for Congress to concern itself with such activities.

Moreover, the Framers of the Constitution recognized a distinction between state and federal government to avoid the problem of having a federal government vested with too much power. Therefore, incorporating subsequently-enacted state laws into the federal Constitution would result in a system contrary to those original intentions.⁷⁸

While the majority is sound in its reasoning and analysis, it fails to take into account the potential for unreasonable arrests. The Supreme Court has asserted that arrests are both reasonable and constitutional when probable cause leads a police officer to believe an individual has committed a crime in the officer's presence.⁷⁹ The reasoning behind this, according to the Court, is that the societal interests in justifying search and seizure, namely that an arrest will ensure a suspect's appearance at trial and prevent the suspect from continuing the offense, outweigh the individual's interest in liberty and privacy.⁸⁰ In many cases involving minor criminal offenses, however, the societal interests do not appear to be as significant. For instance, in cases involving minor traffic violations, such as that seen in *Atwater v. City of Lago Vista*,⁸¹ an arrest of the offender does little to serve the best interests of society, especially when the societal interests in maintaining safe driving conditions can be adequately served with the issuance of a citation. In such circumstances, it cannot be said that an individual's interest in avoiding the

78. "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce...The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State." The Federalist No. 45 (James Madison).

79. *Id.* at 1604.

80. *Id.* at 1604-05.

81. *Atwater*, 121 S. Ct. 1536.

hardships associated with an arrest is clearly outweighed by society's interest in enforcing minor traffic laws.

Furthermore, the plain language of the Fourth Amendment explicitly requires that the arrest, and subsequent search incident to the arrest, be reasonable.⁸² To satisfy this requirement, the Court advocates the application of a general standard of reasonableness to each case that arises.⁸³ If the Court truly adhered to this general reasonableness test, it can be argued that the "reasonable person" would conclude that an arrest that does little to benefit society and that ultimately burdens the offender to a great and unnecessary extent is unreasonable. However, the Supreme Court has generally held on to the principle that *any* warrantless arrest based on probable cause is reasonable and constitutional, even in cases involving minor traffic offenses.⁸⁴ To this extent, it appears that the Supreme Court is more interested in following precedent than in actually applying to any given case the general standard of reasonableness in which the Court claims it relies upon.

It does not appear likely that the state of the law regarding warrantless arrests based on probable cause for even minor criminal offenses will change anytime in the foreseeable future. In fact, the Court's strict adherence to the precedential principle that all warrantless arrests based on probable cause are reasonable and constitutional makes it unlikely that a significant number of individuals will challenge this principle on constitutional grounds.

Brian Walsh

82. U.S. CONST. amend. IV.
83. *Moore*, 128 S. Ct. at 1604.
84. *See Atwater*, 121 S. Ct. 1536.