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## Supreme Court Imposes New Limits on Police Searches: Rules Residents have Equal Right to Deny Entry

By Charles Lane, Washington Post

WASHINGTON – The Supreme Court narrowed police search powers yesterday, ruling that officers must have a warrant to look for evidence in a couple’s home unless both of the partners present agree to let them in.

The 5-to-3 decision sparked a sharp exchange among the justices. The majority portrayed the decision as striking a blow for privacy rights and gender equality; dissenters said it could undermine police efforts against domestic violence, the victims of which are often women.

The ruling upholds a 2004 decision of the Georgia Supreme Court, but still makes a significant change in the law nationwide, because most other lower federal and state courts had said police could search with the consent of one of two adults living together.

Now, officers must first ask a judicial officer for a warrant in such cases. Quarrels between husbands and wives or boyfriends and girlfriends keep police nationwide busy; in Washington, for example, almost half of the 39,000 violent crime calls officers answered in 2000 involved allegations of domestic violence.

In the majority opinion, Justice David H. Souter said the consent of one partner is inadequate because of “widely shared social expectations” that adults living together each have veto power over who can enter their shared living space. That makes a warrantless search based on only one partner’s consent “unreasonable” and, therefore, unconstitutional.

“(T)here is no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another, whether the issue is the color of the curtains or invitations to outsiders,” Souter wrote.

Chief Justice John G. Roberts Jr., writing his first dissent since joining the court, said the ruling’s “cost” would be “great.”

Roberts wrote that the ruling made no sense, given that the court had previously said it is constitutional for police to enter a house with the permission of one partner when the other is asleep or absent. Those rulings were unchanged by yesterday's decision.

Just by agreeing to live with someone else, a co-tenant surrenders a good deal of the privacy that the Constitution's Fourth Amendment was designed to protect, Roberts said. "The majority's rule apparently forbids police from entering to assist with a domestic dispute if the abuser whose behavior prompted the request for police assistance objects," he wrote.

But Souter called that argument a "red herring," saying that police would still have legal authority to enter homes where one partner was truly in danger.

"[T]his case has no bearing on the capacity of the police to protect domestic victims," Souter wrote. "No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists. . . ."

Souter said Roberts was guilty of declaring that "the centuries of special protection for the privacy of the home are over."

Souter's opinion was joined by Justices John Paul Stevens, Anthony M. Kennedy, Ruth Bader Ginsburg, and Stephen G. Breyer.

The case arose out of a 2001 quarrel over child custody at the home of Janet and Scott Randolph in Americus, Ga. When officers arrived, she told them where they could find cocaine.

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