

# Supreme Court inaction allows people to videotape, record cops

By Radley Balko, Huffington Post

On Monday, the U.S. Supreme Court declined to review a decision by the 7th U.S. Circuit Court of Appeals blocking the enforcement of an Illinois eavesdropping law. The broadly written law – the most stringent in the country – makes it a felony to make an audio recording of someone without their permission, punishable by four to 15 years in prison.

Many states have similar “all-party consent” law, which mean one must get the permission of all parties to a conversation before recording it. But in all of those states – except for Massachusetts and Illinois – the laws include a provision that the parties being recorded must have a reasonable expectation of privacy for it to be a crime to record them.

The Illinois law once included such a provision, but it was removed by the state legislature in response to an Illinois Supreme Court ruling that threw out the conviction of a man accused of recording police from the back of a squad car. That ruling found that police on the job have no reasonable expectation of privacy.

The Illinois and Massachusetts laws have been used to arrest people who attempt to record on-duty police officers and other public officials. In one of the more notorious cases, Chicago resident Tiawanda Moore was arrested in 2010 when she attempted to use her cell phone to record officers in a Chicago police station.

Moore had come to the station to report an alleged sexual assault by a Chicago cop, and says she became frustrated when

internal affairs officers allegedly bullied her and attempted to talk her out of filing the report. Moore was eventually acquitted.

The lawsuit was filed by the American Civil Liberties Union, which is planning a police accountability project in Chicago that will involve recording police while they're on duty. The organization wanted to be sure its employees and volunteers wouldn't be charged with felonies.

The 7th Circuit Court found a specific First Amendment right to record police officers. It's the second federal appeals court to strike down a conviction for recording police. In August 2011, the U.S. Court of Appeals for the First Circuit ruled that a man wrongly arrested for recording cops could sue the arresting officers for violating his First Amendment rights.

That decision also found a broad First Amendment right to record on-duty government officials in public: "Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting 'the free discussion of governmental affairs.'" And in fact, in that it strips police who make such arrests of their immunity from lawsuits, it's an even stronger opinion. Of course, the police themselves rarely pay damages in such suits – taxpayers do.

The Supreme Court's refusal to grant certiorari in the case doesn't necessarily mean the justices endorse the lower court's ruling. But it does mean that at least six of the current justices weren't so opposed to the ruling that they felt the case needed to be heard.

The First and 7th circuit decisions mean that it is now technically legal to record on-duty police officers in every state in the country. Unfortunately, people are still being arrested for it. Police officers who want to make an arrest to

intimidate would-be videographers can always use broadly-written laws that prohibit public disorder, interfering with a police officer, or similar ordinances that give law enforcement wide discretion.

The charges are almost always either subsequently dropped or dismissed in court, but by then the innocent person has been illegally detained, arrested, sometimes jailed, and possibly paid expensive legal fees.

Journalist Carlos Miller, who has been arrested multiple times for recording police, documents such cases on a daily basis. He has also documented countless cases in which police officers have deleted incriminating video from cell phones – a crime in and of itself.