

# The Constitution and Blood Testing

PE-4 Police English  
The New York Times Editorial

Drunken driving kills someone every 53 minutes — 9,878 times in the United States in 2011. But the problem, however grave, should not be solved by policies that violate constitutional rights.

The Supreme Court was correct when it ruled Wednesday that a Missouri policy requiring a blood test, even without a search warrant, of anyone arrested on charges of driving under the influence of alcohol violated the Constitution's Fourth Amendment ban on unreasonable searches — unless circumstances demand immediate action and justify a warrantless test.

Justice Sonia Sotomayor, in an opinion joined by Justices Antonin Scalia, Ruth Bader Ginsburg, Elena Kagan and, for the most part, Anthony Kennedy, said that drawing blood to test its alcohol concentration is "an invasion of bodily integrity" that involves an individual's "most personal and deep-rooted expectations of privacy."

In Missouri v. McNeely, the police forced a driver to take a blood test at a hospital without a warrant, after he refused to take a breath test with a portable machine when he was stopped for erratic driving at 2:08 a.m.

The blood test showed that his blood alcohol content was 0.154 percent, or almost twice the state's legal limit.

The Missouri Supreme Court ruled that the warrantless blood test was an unreasonable search: there was no emergency that kept the police from getting a warrant in a timely manner, before the alcohol in the driver's blood dissipated.

It is this ruling that the Supreme Court, quite properly, has upheld.



Justice Sotomayor acknowledged that in some circumstances it is impractical for the police to get a warrant as soon as needed since the level of alcohol declines gradually when someone stops drinking.

But a majority of states let police or prosecutors apply for warrants quickly by phone, e-mail or video conferencing.

In this case, a prosecutor was on call to apply for a warrant and a judge to issue one.

The officer did not try to get one simply because he thought it was not required. The Supreme Court has said wisely that it was.