SUPREME COURT OF THE UNITED STATES

No. 99–1132

ILLINOIS, PETITIONER *v.* CHARLES MCARTHUR

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

[February 20, 2001]

JUSTICE STEVENS, dissenting.

The Illinois General Assembly has decided that the possession of less than 2.5 grams of marijuana is a class C misdemeanor. See Ill. Comp. Stat., ch. 720, §550/4(a) (1998). In so classifying the offense, the legislature made a concerted policy judgment that the possession of small amounts of marijuana for personal use does not constitute a particularly significant public policy concern. While it is true that this offense– like feeding livestock on a public highway or offering a movie for rent without clearly displaying its rating[1]– may warrant a jail sentence of up to 30 days, the detection and prosecution of possessors of small quantities of this substance is by no means a law enforcement priority in the State of Illinois.[2]

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[1] See Ill. Comp. Stat., ch. 605, §5/9–124.1 (1998) (making feeding livestock on a public highway a class C misdemeanor); Ill. Comp. Stat., ch. 720, §§395/3–395/4 (1998) (making it a class C misdemeanor to sell or rent a video that does not display the official rating of the motion picture from which it is copied). Other examples of offenses classified as Class C misdemeanors in Illinois include camping on the side of a public highway, Ill. Comp. Stat., ch. 605, §5/9–124 (1998), interfering with the "lawful taking of wild animals," Ill. Comp. Stat., ch. 720, §125/2 (1998), and tattooing the body of a person under 21 years of age, Ill. Comp. Stat., ch. 720, §5/12–10 (1998).

[2] Nor in many other States. Under the laws of many other States, the maximum penalty McArthur would have faced for possession of 2.3

Because the governmental interest implicated by the particular criminal prohibition at issue in this case is so slight, this is a poor vehicle for probing the boundaries of the government's power to limit an individual's possessory interest in his or her home pending the arrival of a search warrant. Cf. *Segura* v. *United States*, 468 U. S. 796 (1984) (seven Justices decline to address this issue because case does not require its resolution). Given my preference, I would, therefore, dismiss the writ of certiorari as improvidently granted.

Compelled by the vote of my colleagues to reach the merits, I would affirm. As the majority explains, the essential inquiry in this case involves a balancing of the "privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable." *Ante*, at 4. Under the specific facts of this case, I believe the majority gets the balance wrong. Each of the Illinois jurists who participated in the decision of this case placed a higher value on the sanctity of the ordinary citizen's home than on the prosecution of this petty offense. They correctly viewed that interest— whether the home be a humble cottage, a secondhand trailer, or a stately mansion— as one meriting the most serious constitutional protection.[3]

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grams of marijuana would have been less than what he faced in Illinois. See, *e. g.*, Cal. Health & Safety Code Ann. §11357(b) (West 1991) ($100 fine); Colo. Rev. Stat. §18–18–406(1) (1999) ($100 fine); Minn. Stat. §152.027(4) (2000) ($200 fine and drug education); Miss. Code Ann. §41–29–139(c)(2)(A) (Supp. 1999) ($100–$250 fine); Neb. Rev. Stat. §28–416(13) (1995) ($100 fine and drug education); N. M. Stat. Ann. §30–31–23(B) (1997) ($50–$100 fine and 15 days in jail); N. Y. Penal Law §221.05 (McKinney 2000) ($100 fine); Ore. Rev. Stat. §475.992(4)(f) (Supp. 1998) ($100 fine).

[3] Principled respect for the sanctity of the home has long animated this Court's Fourth Amendment jurisprudence. See, *e. g.*, *Wilson* v. *Layne*, 526 U. S. 603, 610 (1999) ("The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home");

Following their analysis and the reasoning in our decision in *Welsh* v. *Wisconsin*, 466 U. S. 740 (1984) (holding that some offenses may be so minor as to make it unreasonable for police to undertake searches that would be constitutionally permissible if graver offenses were suspected), I would affirm.

Payton v. *New York*, 445 U. S. 573, 601 (1980) (emphasizing "the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic"); *Mincey* v. *Arizona*, 437 U. S. 385, 393 (1978) ("[T]he Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law").