**Beat: Politics**

# Maryland DNA Law Debated by Justices in the United States Supreme Court

**Alito: Most important case in decades.**

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**USPA NEWS -** Maryland´s law that permits police to collect DNA samples from individuals arrested and charged with having committed a violent crime or having attempted to commit a violent crime was the subject of debate Tuesday in the United States Supreme Court.

Maryland is one of 28 states that allow pre-conviction collection of DNA, however, the specifics of collection and use vary widely by state.

This case has dawn nearly 100 friend-of-the-court briefs from groups ranging from states to civil liberties organizations, each arguing passionately their side of the case. Advocates from states, police unions and groups, and sexual assault victims groups have all urged the court to uphold the warrantless DNA collection law as written, while groups representing defense attorneys, forensic scientists, and civil liberties organizations are urging the court to strike down such laws and declare them unconstitutional.

The Supreme Court is reviewing the decision by the Maryland Court of Appeals, which ruled that warrantless collection of DNA on arrest is unconstitutional in every imaginable circumstance. The only time that it would be constitutional according to the Maryland Court is when the police have no other means of obtaining the arrestee´s identity.

The originating case Alonzo Jay King, Jr. vs. State of Maryland was heard last year in Maryland´s highest court.

Justice Samuel Alito, Jr. characterized this case as “the most important criminal procedure case that this court has heard in decades,“ Justice Alito went on to state that swabbing an arrestee´s cheek for DNA is no more invasive than the collecting of fingerprints, a practice the high court has found constitutional for hundreds of years.

Justice Sonia Sotomayor disagreed with her colleague Justice Alito and likened the collection of an arrestee´s DNA to that of a warrantless search of their home, which absent an emergency or other narrowly defined circumstances, is a violation of the Fourth Amendment of the United States Constitution.

“How far do we let that state go?“ asked Justice Sotomayor, stating, “There is something inherently dangerous in DNA collection“

Maryland Attorney General Douglas Gansler deferred to his Chief Deputy, Katherine Winfree, to argue this case before the nations highest court. Gansler has successfully argued a case before the U.S. Supreme Court in the past, but stated he felt Winfree had more expertise in this area and would be the best person to argue on behalf of Maryland.

In her argument, Winfree contended that the state court´s ruling should be overturned. She argued that DNA collection at time of arrest helps law enforcement officials achieve the “compelling goal“ of knowing the true identity of the person(s) they have in custody, and whether these individuals have committed other crimes. She went on to say that the Constitution does not bar the collection of DNA from arestees, who have been handcuffed and searched for weapons, as they have a “reduced expectation of privacy“ under the Fourth Amendment of the United States Constitution.

Kannon Shanmugam, representing the respondent, Alonzo Jay King, Jr. is a partner at Williams and Connolly, LLP in Washington, D.C. Her firm is arguing this case pro bono for the Maryland Public Defenders Office.

In her argument before the Court, Ms. Shanmugam argues that warrantless DNA collection is “presumptively unconstitutional“ when used for the purpose of investigating the detainee´s potential involvement in other crimes. The practice raises “profound privacy concerns“ because DNA contains “a great deal of personal information.“

Shanmugam went on to contend that “the governments response to that is essentially the “¨just trust us´ defense.“ This is simply not acceptable.

Chief Justice John Roberts questioned whether an arrestee or anyone, for that matter, has a reasonable expectation of privacy in their DNA. “It is left wherever you happen to have been,“ Roberts said. “We disclose all of our personal information when we take a drink of water and leave the glass behind.“

Justice Scalia said that warrantless collection of DNA might be going too far. “The purpose is to catch the bad guys,“ Scalia said. “Sometimes the Fourth Amendment stands in the way.“

Justice Stephen Breyer said DNA collection works both ways “insofar as it can link arestees to crimes or exonerate them. DNA collection is “no more intrusive than fingerprinting,“ Breyer said. “It´s more accurate.“

The Supreme Court is expected to render its decision in Maryland v. King, No. 12-207, by the end of its term, late this summer.

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