

LAWn Signs: A Fourth Amendment for Constitutional Curmudgeons

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I. INTRODUCTION

What is the constitutional significance of the proverbial “keep off the grass” sign? This question—asked by curmudgeonly neighbors everywhere—has been given new currency in a recent decision by the United States Supreme Court. Indeed, *Florida v. Jardines*¹ might have bestowed constitutional curmudgeons with significant new Fourth Amendment protections. By expressing expectations regarding—and control over—access to property, “the people” may be able to claim greater Fourth Amendment protections not only for their homes, but also for their persons, papers, and effects.² This article launches a constitutionally grounded, but lighthearted campaign of citizen education and empowerment: Fourth Amendment LAWn signs. With every stake in the ground, ordinary citizens can proclaim their expectations and remind everyone that the Fourth Amendment is meant to apply to ordinary people in everyday circumstances.

II. *FLORIDA V. JARDINES*: WHAT TO DO WHEN FRANKY COMES

Picture in your mind’s eye a home: single-family, white picket fence, a path leading to the front porch. It is not unlike the homes owned by many judges who must regularly proclaim the Fourth Amendment expectations for others, including those living in far less idyllic settings. This homestead—the most private and inviolate of our constitutional spaces³—has remarkably little external Fourth

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¹ *Florida v. Jardines*, 133 S. Ct. 1409, 1417 (2013).

² The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . . and

amend. IV.

³ “The Fourth Amendment indicates with some precision the places and things encompassed by its protections: persons, houses, papers, and effects. . . . But when it comes to the Fourth Amendment, the home is first among equals.” *Jardines*, 133 S. Ct. at 1414 (quotation marks and citations omitted).

Amendment protection. Sure, what happens inside remains relatively private.⁴ But, what happens outside, including within the pickets, can be publicly observed by all.⁵ Police can unlatch the gate and knock on the front door just to chat; in fact, the police may pound on the door and yell for attention.⁶ Depending upon the size of the yard, police might be allowed to trespass on the lawn and crawl under the bushes.⁷ Police can fly helicopters and planes overhead in order to see what is happening behind tall, opaque fences.⁸ And, police can do all of this, says the Supreme Court, without Fourth Amendment restraint.

What police cannot do after *Florida v. Jardines* is enter the “curtilage” of the house with a trained drug-detecting dog.⁹ In *Jardines*, the Miami-Dade Police Department received a tip that marijuana was being grown in the home of Joelis Jardines.¹⁰ Officers thereafter watched the home for a period of fifteen minutes and, seeing no activity, walked a drug-detecting canine named Franky to the front door.¹¹ When the “wild” and “erratic” Franky “alerted,” meaning the dog paced, spun, and ultimately sat—thereby indicating the scent of illegal drugs—to a bare majority of the Supreme Court, that unlicensed physical invasion was a Fourth

⁴ See *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (holding that police use of a thermal imager to detect heat emanating from a home constitutes a Fourth Amendment search so long as the device is not in general public use); *Berger v. New York*, 388 U.S. 41, 64 (1967) (holding that wiretapping of an office phone—and thus also a home phone—constitutes a Fourth Amendment search).

⁵ “The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares.” *California v. Ciraolo*, 476 U.S. 207, 213 (1986).

⁶ *Kentucky v. King*, 131 S. Ct. 1849, 1854 (2011) (holding the Fourth Amendment not implicated when officers “banged on [an] apartment door as loud as [they] could and announced ‘This is the police’ or ‘Police, police, police.’”) (internal quotation marks omitted). *But see* Stephen E. Henderson & Kelly Sorensen, *Search, Seizure, and Immunity: Second-Order Normative Authority and Rights*, 32 CRIM. JUST. ETHICS 108 (2013) (criticizing this holding).

⁷ See *Oliver v. United States*, 466 U.S. 170, 178 (1984) (defining so-called “open fields” that receive no Fourth Amendment protection, a misnomer if there ever was one since they need neither be “open” nor be “fields”).

⁸ See *Ciraolo*, 476 U.S. at 215 (holding airplane overflight did not constitute a Fourth Amendment search); *Florida v. Riley*, 488 U.S. 445, 452 (1989) (holding helicopter overflight did not constitute a Fourth Amendment search).

⁹ *Florida v. Jardines*, 133 S. Ct. 1409, 1417–18 (2013). At least this is the most plausible reading of a confusing opinion. Some might counter that the dog may visit, but may not sniff (would regular breathing count?): “We consider whether *using* a drug-sniffing dog on a homeowner’s porch to investigate the *contents of the home* is a ‘search’ within the meaning of the Fourth Amendment.” *Id.* at 1413 (emphasis added). Or, that the dog may enter if the handler does not mean for the animal to so sniff: “[W]hether the officer’s conduct was an objectively reasonable search . . . depends upon the purpose for which they entered.” *Id.* at 1417.

¹⁰ *Id.* at 1413.

¹¹ *Id.*

Amendment search.¹² The three concurring justices agreed, but also would have held such actions violate a reasonable expectation of privacy.¹³ The four dissenting justices disagreed on both counts, arguing that the law of trespass is rather fond of dogs,¹⁴ and that it is not reasonable to expect privacy against drug-sniffing dogs that join their police owners on a stroll to the front porch.¹⁵

The key to the Court's holding, and our good news for curmudgeons, turns on the concept of "license." Did Mr. Jardines give license to a police officer to bring a drug sniffing dog to his porch? Has our hypothetical judge-as-homeowner? Have you, as a reasonable homeowner? Probably like you, Mr. Jardines had not provided a clue, so the Supreme Court had to divine the answer by parsing less obvious constitutional markers such as the presence of door knockers,¹⁶ the habits of girl scouts,¹⁷ and the sketchy behavior of strangers with binoculars.¹⁸

Justice Scalia, writing for the majority, begins with an analysis of the purpose of door knockers.¹⁹ He teaches us that first principles of architectural design hold that a knocker on the door may give license for a "hawker" or "peddler" to approach, but it is a limited license:²⁰

This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge;

¹² *Id.* "The officers were gathering information in an area belonging to Jardines and immediately surrounding his house—in the curtilage of the house, which we have held enjoys protection as part of the home itself. And they gathered that information by physically entering and occupying the area to engage in conduct not explicitly or implicitly permitted by the homeowner." *Id.* at 1414.

¹³ *Id.* at 1418 (Kagan, J., concurring).

¹⁴ *Id.* at 1424 (Alito, J., dissenting) ("[T]he common law allowed even unleashed dogs to wander on private property without committing a trespass.").

¹⁵ *Id.* at 1420.

¹⁶ *Id.* at 1415.

¹⁷ *Id.*

¹⁸ *Id.* at 1416 n.3. *See also id.* at 1418 (Kagan, J., concurring) (evaluating a "stranger . . . carrying super-high-powered binoculars").

¹⁹ *Id.* at 1415. For those not knowing what a door knocker is, one figures prominently in Charles Dickens' 1843 *A Christmas Carol*. *See* CHARLES DICKENS, *A CHRISTMAS CAROL* 15–16 (1843).

²⁰ "We have accordingly recognized that 'the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds.'" *Jardines*, 133 S. Ct. at 1415 (quoting *Breard v. Alexandria*, 341 U.S. 622, 626 (1951)).

it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters.²¹

By overstaying or otherwise exceeding this implicit license, police overstep constitutional bounds:

To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police.²²

The key again is that the scope of the license, “express or implied,” can be limited by both area and purpose.²³ It is plausible to read the opinion as declaring all this constitutional interpretation to arise merely from a door knocker that likely came with the house. But presumably, if pressed, the Court would point to other architectural features of the front yard, perhaps in conjunction with common social knowledge regarding the practices of the pesticide-guy and the evangelism of the Jehovah's Witnesses and the Mormons.

Justice Alito, in dissent, agreed that what is critical are “custom[s] and the appearance of things.”²⁴ But he challenged the Court's license conclusion by pointing out the accepted custom of mail carriers, package deliverers, solicitors, and even investigating police officers to stand on the front porch just like the police did in *Jardines*' case.²⁵ While “license has certain spatial and temporal limits” (stay on the path, do not show up at midnight, do not stay too long), to Alito, such license has never turned on the presence of a dog, nor the intention of the police officer to investigate crime.²⁶ After all, if police can knock on your door and ask you questions, then why cannot police go to the same physical space with Franky in tow (or, given Franky's temperament, why cannot Franky bring his officers to that spot)?²⁷

So, to review the current Fourth Amendment doctrine governing approach to our homes, we have the following three rules. First, physical intrusion plus a

²¹ *Id.*

²² *Id.* at 1416.

²³ *Id.*

²⁴ *Id.* at 1422 (Alito, J., dissenting) (quoting *Crown Cork & Seal Co. v. Kane*, 213 Md. 152, 159 (1957)).

²⁵ *Id.* at 1420, 1422.

²⁶ *Id.* at 1422–23.

²⁷ The handling officer “testified that he needed to give the dog [Franky] ‘as much distance as I can’ . . . so that he would not ‘get knocked over’ when the dog was ‘spinning’ around trying to find the source.” *Id.* at 1413.

police dog (without permission) is a search probably requiring a warrant. A “police dog” is one specially trained to do things our own lovable dogs typically do not. Justice Alito took pains to remind us that “[d]ogs have been domesticated for about 12,000 years,”²⁸ so presumably not all dogs are constitutionally problematic—at least if neighbors walk dogs to neighbors’ front porches. Second, physical intrusion without a police dog (and without a technological equivalent) is not a search so long as police stick to the path and, it seems, come at a reasonable hour—at least if you have a door knocker. Third, physical intrusion with a police dog, but with permission, is not a search. Or perhaps it is a constitutionally reasonable one. The concurring justices, by contrast, would find that the whole case is resolved by a clear expectation of privacy in a typical front yard to be free from nosy police dogs. Such is the riddle of “license.” The justices know it when they see it (or at least five of them do), but maybe they are all just living in different metaphorical neighborhoods.

Given this muddle, is there something we can do to clarify this concept of implied license? Can we all become constitutional curmudgeons, Oscar-the-Grouch-izing suburban America? Can it work in urban environments far from our hypothetical judge’s house?

III. A PROPOSAL: PUT UP THE LAWN SIGN

Here is our simple Fourth Amendment LAWN Signs proposal: develop and post explicit “license” expectations for our homes. If Mr. Jardines desired that police officers and others who might interfere with his home’s privacy and seclusion not enter his property, he could articulate this with a constitutional LAWN sign. Why parse the meaning of pre-installed door knockers, when a clear statement of explicit license could replace the guesswork about girl scouts, aluminum-siding salesmen, and police investigators?²⁹ Just as many houses routinely post security signs for alarm companies to ward off burglars, so a Fourth Amendment LAWN sign could broadcast an assertion of constitutional security.

The Fourth Amendment protects our right to be secure against “unreasonable searches and seizures”—indeed, that right “shall not be violated.” Yet as interpreted by the Court, surprisingly often whether police conduct is permissible is dependent upon *us*, the citizens it is designed to protect. For example, when obtaining consent for a search, and thereby evading otherwise applicable Fourth Amendment protections, police need not explain that you have a right not to grant consent.³⁰ When the police engage a law professor in conversation, this can work just fine (although many might be surprised how few law professors understand the intricacies of Fourth Amendment law). How can this conversation work when

²⁸ *Id.* at 1420 (Alito, J., dissenting).

²⁹ *Cf. id.* at 1422.

³⁰ *Schneckloth v. Bustamonte*, 412 U.S. 218, 232–33 (1973).

police engage the less tutored? Or, what happens when you are not even present to say anything? For example, what if you are at the office when police approach or attempt to enter your home? How about when your very purpose in invoking your right is to avoid that conversation?

The answer? A Fourth Amendment LAWn sign carefully crafted by expert criminal procedure professors having a penchant for mischief and public education. The sign(s), strategically placed around the customary pathway apparently recognized by the Supreme Court, would alert all visitors—deviously cute girl scouts and investigating police alike—about the inhabitants' expectations for their property. The LAWn signs would provide the explicit non-consent that was missing in *Jardines*, could display an objective message to stay off the property, and can counteract those alluring door knockers.

The LAWn signs need not be big, or fancy, but merely must articulate a clear statement of the explicit license (or non-license) granted by the inhabitant. Sample language might read, with footnotes included on the sign (yes, we know, but we *are* law professors):

No Entry.

This is My Home.³¹

No Consent to Entry.³²

No Exceptions.³³

I **Assert** My 4th Amendment Rights.³⁴

If a homeowner were impressed by Justice Alito's knowledge of historical dog-rearing, she might include that homes date back to when people were just beginning to domesticate dogs, over 10,000 years ago.³⁵ Or, a less pedantic homeowner might forego the footnotes entirely and use something like these:

Fourth Amendment Protected Home

No Entry

No Trespassing

³¹ The land surrounding the home—so-called curtilage—is protected just like the home's interior. *Florida v. Jardines* (US 2013).

³² I explicitly revoke what might otherwise be the societally implied consent to approach.

³³ The *sole* exception is in the case of an actual police, fire, or medical *emergency*. *Brigham City v. Stuart* (US 2006).

³⁴ US Constitution Article IV.

³⁵ See Richard Alleyne, *Oldest House in Britain Discovered to be 11,500 Years Old*, TELEGRAPH (Aug. 10, 2010), <http://www.telegraph.co.uk/news/uknews/7937240/Oldest-house-in-Britain-discovered-to-be-11500-years-old.html>. Despite the headline, the home is apparently 10,500 years old, since it dates to 8,500 B.C. *Id.*; Martin Wainwright, *Britain's Oldest House Found in North Yorkshire*, GUARDIAN (Aug. 10, 2010), <http://www.theguardian.com/science/2010/aug/10/britains-oldest-home>. We know—maths (especially sums?!) are hard.

No Consent to Entry
 I Assert My 4th Amendment Rights

Private Property
 Protected by the 4th Amendment
 No Entry
 No Consent to Entry
 No Exceptions
STAY OUT

Or, inspired by Felix Cohen's famous definition of property:³⁶

To the world: **Stay Out.**
 YES, THIS INCLUDES YOU, OFFICER.
Fourth Amendment Protected Home
 Signed: Private Citizen
 Endorsed: The 4th Amendment

Appropriate modifications could be made depending on the level of hospitality, distrust of police, dislike of girl scouts or the equivalent. As fitting for a public constitutional education project, official signs would also bear the inscription of the text of the Fourth Amendment and the stamp of "Fourth Amendment Security" (a trademark that might also have the unintended benefit of scaring off constitutionally illiterate burglars).

Deciding on the placement of these signs presents a minor constitutional difficulty. The Supreme Court in *Oliver* has held that "open fields"—even those protected by "no trespassing" signs—have no constitutional protection,³⁷ so the LAWN signs might need to be placed near the protected "curtilage." Though this area is not easily mapped in practice—it encompasses that space in which the "intimate activity associated with the 'sanctity of a [person's] home and the privacies of life'" take place³⁸—LAWN signs thus might have a correlative benefit of at least marking what regions the homeowner so considers. (Justice Scalia

³⁶ "Suppose we say, that is property to which the following label can be attached:
 To the world: Keep off X unless you have my permission, which I may grant or withhold.
 Signed: Private citizen
 Endorsed: The state." Felix S. Cohen, *Dialogue on Private Property*, 9 RUTGERS L. REV. 357, 374 (1954).

³⁷ *Oliver v. United States*, 466 U.S. 170, 177 (1984).

³⁸ *Id.* at 180 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)).

apparently found those boundaries already clear,³⁹ but recall how much he could discern from a simple door knocker.) While a reviewing court would still need to parse several factors,⁴⁰ having the homeowner's own estimation of curtilage might help with the analysis.⁴¹ After all, in the olden days, the homeowner had to build the curtilage wall, so why not make modern homeowners stake out their claim of property protection?⁴²

Return to picturing that hypothetical judge's home, the one with a white picket fence. Now add a bold red-white-and-blue LAWn sign expressing Fourth Amendment protections. Imagine a neighborhood filled with such signs. What would be the result? Perhaps, if our theory holds, these signs could produce a marginal improvement in the security of individual homes. But, more importantly, such a project would produce a major improvement in public education about constitutional rights. Currently, Americans know next to nothing about the Fourth Amendment,⁴³ and who can blame them when cases come down to the rather arbitrary musings of custom, license, and curtilage. A LAWn sign public education campaign will engage citizens to ask why we have these protections, how citizens can assert them, and whether they should assert them. Every stake in the ground will be a little constitutional reminder that the Fourth Amendment applies in the real world to everyday people.

Beyond private property protection and public education, the LAWn sign concept has another, more diffuse, benefit: it opens the door to a fundamental reshaping of Fourth Amendment power. Outside of the minds of five justices, citizens do not know what licenses homeowners should expect or what expectations of privacy are reasonable. But, with LAWn signs, "the people" regain—or at least try to regain—a measure of control. Instead of guessing how a judge might decide, or studying 18th (or 21st) century trespass law, citizens can stake out their own claim to security. A homeowner may not be correct, ultimately being "overruled" by a judge, but at least the homeowner will be a part of the

³⁹ *Florida v. Jardines*, 133 S. Ct. 1409, 1415 (2013) ("[T]he boundaries of the curtilage are generally clearly marked.") (internal quotation marks omitted).

⁴⁰ *See United States v. Dunn*, 480 U.S. 294, 302–03 (1987) (articulating and applying four factors to determine curtilage).

⁴¹ *See, e.g., Catherine Hancock, Justice Powell's Garden: The Ciraolo Dissent and Fourth Amendment Protection for Curtilage-Home Privacy*, 44 SAN DIEGO L. REV. 551, 557 (2007) (contrasting different justices' assumptions about homeowner expectations).

⁴² *See Andrew Guthrie Ferguson, Personal Curtilage: Fourth Amendment Security in Public*, 55 WM. & MARY L. REV. 1283, 1290 (2014).

⁴³ Christopher Slobogin, *More Essential Than Ever: The Fourth Amendment in the Twenty-First Century*. By Stephen J. Schulhofer, 91 TEX. L. REV. 403, 403 (2012) ("To the average American, the Fourth Amendment probably brings to mind a jumbled notion of warrants, probable cause, and exclusion of illegally seized evidence. Compared to the First Amendment, *Miranda's* right to remain silent, the jury trial guarantee, and the Equal Protection Clause's prohibition on racial discrimination, the right to be secure from unreasonable searches and seizures is not well understood by most of the populace, either in its precise scope or its rationale.").

conversation that ultimately defines constitutional rights. Further, if enough homeowners express their constitutional expectations by displaying LAWN signs, the customs themselves will evolve. Neighbor after neighbor, constitutional curmudgeon after constitutional curmudgeon, new Fourth Amendment protections will be staked out for all to see.

IV. A FEW POSSIBLE OBJECTIONS

Hopefully this makes you eager to invest in the Fourth Amendment Security LAWN Sign Company and public education project, or at least to be an early customer. But a few brief objections might be raised.

First, do the LAWN signs guarantee Fourth Amendment security? No. If we have learned anything from centuries of living under the Fourth Amendment, it is that expectations, protections, and even theories change with the make-up of the Supreme Court. For example, in 1928, Fourth Amendment protections were tied to physical intrusion or trespass,⁴⁴ but in 1967, the Court abandoned that framework for one based upon “reasonable expectations of privacy.”⁴⁵ Or at least that is what everyone thought until 2012, when the trespass theory was unexpectedly invoked once again.⁴⁶ We are one case away from either vitiating or constitutionalizing the LAWN sign idea, and with Justice Scalia’s passing, resolution might depend upon a single vote. But for better or worse, we are always subject to the view of five Justices.

Second, even under existing precedent, is placing a LAWN sign outside a house merely a “subjective expectation of privacy” that will be held objectively unreasonable, and therefore constitutionally ineffective?⁴⁷ It might be, but the issue of license, general custom, and consent may be analytically distinct from the *Katz* reasonable expectation of privacy test. Thus, in *Jardines*, Justice Scalia entirely avoided the reasonable expectation of privacy issue asserted by the concurrence. And if enough homeowners post signs, how can the reasonable expectation not change?

Third, if successful, might the project create fortress-like, anti-social neighborhoods? Perhaps, as the Court is unlikely to permit persons to express legally-meaningful assertions solely against the State. This is not to say, of course, that homeowners cannot permit certain known persons to enter, but forbid approach by all others: most of us choose just such an arrangement in that we select particular others to live in our shared home. But for the homeowner wanting

⁴⁴ *Olmstead v. United States*, 277 U.S. 438, 466 (1928) (holding there is no Fourth Amendment restraint on non-trespassory wiretapping).

⁴⁵ *Katz v. United States*, 389 U.S. 347, 359 (1967) (reversing *Olmstead*).

⁴⁶ *United States v. Jones*, 132 S. Ct. 945, 952 (2012) (resurrecting the *Olmstead* test).

⁴⁷ *Fernandez v. California*, 134 S. Ct. 1126, 1136 (2014); see generally Orin Kerr, *Katz Has Only One Step: The Irrelevance of Subjective Expectations*, 82 U. CHI. L. REV. 113, 113–14 (2015).

to hear from the girl scouts and the aluminum-siding salesman, she might also have to choose to hear from the (dog-free) police officer. Nonetheless, even this coarse citizen choice is better than one made by a Court trying to read the “architectural intent” of homes. And, like the outdated door knocker, in many neighborhoods door-to-door solicitation may in fact be generally and genuinely unwelcome, a relic of a very different (text-message-free) era.⁴⁸

Fourth and relatedly, might the successful project weaken Fourth Amendment protections for those who opt-out? If everyone in your neighborhood has explicit statements of Fourth Amendment security around their homes, and you choose not to, have you implicitly consented to police entry? At what point does your failure to stake out a claim of security imply your acceptance of a general license to approach your home? Fortunately, the odds of this project being so successful are rather slim, and should society reach such a tipping point, we will address it then.⁴⁹

A final objection might arise from dicta in *Fernandez v. California*, in which the Court dismisses the idea of posting expressions of non-consent.⁵⁰ The Court rejects the idea that a non-consenting homeowner could preemptively deny consent to search by placing a “sign in the front of the house.”⁵¹ This claim creates some tension with *Jardines*, as acknowledged in Justice Scalia’s concurrence in *Fernandez*.⁵² But its context was quite different—namely, how police are to respond when two co-tenants provide conflicting permissions. Even if consent cannot be preemptively denied, license can be affirmatively expressed. Thus, police officers confronting a constitutional LAWn sign might not be bound by the non-consent when they have a contrary permission from a present homeowner, but would be informed of the customary license typically expected by the homeowner.

V. WHAT ABOUT DRONES? ROOF SIGNS AND MORE PRACTICAL FARE

The impending increase in domestic drone flight presents unresolved constitutional issues, including fleshing out the interdependence of First and

⁴⁸ See Sean Daly, *Jehovah’s Witnesses Going Door-to-Door in Closed-Door World*, WASH. TIMES (June 7, 2015), <http://www.washingtontimes.com/news/2015/jun/7/jehovahs-witnesses-going-door-to-door-in-closed-do/>.

⁴⁹ How? By writing another insightful article explaining the significance of such changing expectations, of course.

⁵⁰ “Could an objection be made pre-emptively? Could a person like Scott Randolph, suspecting that his estranged wife might invite the police to view his drug stash and paraphernalia, register an objection in advance? Could this be done by posting a sign in front of the house? Could a standing objection be registered by serving notice on the chief of police?” *Fernandez*, 134 S. Ct. at 1136.

⁵¹ *Id.*

⁵² *Id.* at 1137 (struggling with the relevance of potential property and thus trespass law).

Fourth Amendment rights.⁵³ But whatever their constitutional significance, drones—controlled by companies, governments, and teenagers—will soon be flying over our homes. Congress has mandated the integration of drones into the national airspace,⁵⁴ and the Federal Aviation Administration [FAA] is taking steps in that direction.⁵⁵ Much of this traffic will be far from our homes over agricultural fields, and along pipelines and other utilities. Yet, when you see promotional video for the cute personal drone “Lily,” it is easy to understand why drones are also coming to our neighborhoods.⁵⁶ The size of a laptop, Lily is a video drone that autonomously tracks your movements, responds to simple arm commands, can be submerged in water, and takes off when you toss her into the air. In short, Lily and her friends will be moving in soon.

So, can you inform the inevitable police drone that you would like it to not linger overhead? Sure. The Fourth Amendment Security Company can print a roof sign large enough to be visible to police and Santa Claus alike.⁵⁷ For constitutional curmudgeons, an explicit assertion can replace what otherwise is at best a muddled implied license over and around our homes.

VI. WHY STOP THERE? LAWN SIGNS FOR YOUR PERSON, SPACES, AND EFFECTS

The Fourth Amendment vagaries are certainly not limited to homes. So, why stop at lawn (and roof) signs? Why not create markers to express licenses in other contexts?

Imagine you are driving late at night and you need to make a phone call or pull up a map. Wanting to do so safely, you pull into an empty parking lot.⁵⁸ A short time thereafter, a police car enters the lot and comes to a stop behind you. The officer exits, walks to your driver’s window, knocks on that window, and makes a “roll down” motion indicating that you should lower the window (yes, we know modern car windows do not crank down, but apparently this is still adequate sign language⁵⁹).

⁵³ See Marc Jonathan Blitz et al., *Regulating Drones Under the First and Fourth Amendments*, 57 WM. & MARY L. REV. 49, 142 (2015).

⁵⁴ FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, § 332(a)(3), 126 Stat. 11, 73 (2012).

⁵⁵ See Blitz et al., *supra* note 53 at 56.

⁵⁶ See LILY ROBOTICS, INC., <https://www.lily.camera/> (last visited Jan. 6, 2016).

⁵⁷ Of course, technology might do one better. For reasons of safety, drones are increasingly “geo-fenced” from flying where they should not, such as near airports. Tom de Castella, *Where You Can and Can’t Fly a Drone*, BBC NEWS (Dec. 9, 2014), <http://www.bbc.com/news/magazine-30387107>. Thus, a database has already begun that will, much like the popular do-not-call lists, provide your name to developers—and potentially police—as one who does not wish to experience overflights. See NOFLYZONE, <https://www.noflyzone.org/> (last visited Jan. 6, 2016).

⁵⁸ These facts are derived from *Cty. of Grant v. Vogt*, 850 N.W.2d 253 (Wis. 2014).

⁵⁹ *Id.* at 255–57 (noting several assertions of this usage by an officer in 2011).

If you would appreciate the officer's help, this is a wonderful serendipity. But if you would rather decline, how might you appropriately and effectively express that refusal, and *without* engaging the officer in unwanted conversation? Or, relatedly but less admirably, if you are surrounded by evidentiary fumes, how can you refuse without revealing those odors? Surely you can't just engage the transmission and drive off. And besides, you are still figuring out that map. You need a sign.

What if you, like most Americans, share your home—and perhaps your car—with others: family members, lovers, or friends. Is there any way to express your refusal as to *your* spaces (room, closet, bathroom, drawer, glove compartment, trunk) and possessions (computers, cell phones, diaries, clothing) when you are not at home? This becomes especially important because the Supreme Court permits police to act upon *apparent* authority of one seemingly in control of property, even if that person in fact lacks that control.⁶⁰ And courts have been *very* generous in reading such authority, as when the Tenth Circuit decided that a 91-year-old father who answered the door in his pajamas had apparent authority over his live-in-son's computer that resided in that son's bedroom.⁶¹ In fact, the father did not know how to use the computer, had thus never used the computer, and did not know the necessary user name to gain access to that computer.⁶² The son needed a sign.

The insight of Fourth Amendment LAWn signs can thus be extended to bumper stickers, normal stickers, magnets, iPhone cases, t-shirts, and other markings to express assertions and customary expectations—or to override what would otherwise be customary expectations—between “the people” and the police. Here are a few examples suitable for one's cars, containers, computers, personal property, or persons. An informal survey of teenagers indicates a high demand for these items.⁶³

Cars

4TH AM PROTECTED VEHICLE

I do **not** consent to talk.

If you are still reading this,
you are violating my rights.

⁶⁰ Illinois v. Rodriguez, 497 U.S. 177, 186 (1990).

⁶¹ United States v. Andrus, 483 F.3d 711, 713 (10th Cir. 2007), *reh'g denied*, Reid v. Geico, 499 F.3d 1162 (10th Cir. 2007).

⁶² *Id.* at 715.

⁶³ Survey results on file with the authors. Actually, in truth, we just asked a few kids we know. Many constitutional curmudgeons start out as anti-social teenagers who post “Do not Enter” signs on bedroom doors. One surveyed posts a slight variant: “WARNING: No Stupid People Beyond This Point.” We are not sure what courts would make of that.

Containers

4TH AM PROTECTED CONTAINER

I **assert** my rights.I do **not** consent.Nobody else has **authority** to consent.

No exceptions.

No Opening.⁶⁴

No Consent to Opening.

No Exceptions.

I **Assert** My 4th Amendment Rights.

No Opening.⁶⁵No Shaking.⁶⁶No Squeezing.⁶⁷No Taking.⁶⁸

No Anything.

No Exceptions.

I **Assert** My 4th Amendment Rights.

Fourth Amendment Protected Property

No Opening

No Manipulating

No Consent

I Assert My 4th Amendment Rights

I have an

Expectation of Privacy

in this bag.

STAY OUT.

⁶⁴ Closed containers are protected by a Warrant Requirement. United States v. Chadwick (US 1977).

⁶⁵ Closed containers are protected by a Warrant Requirement. United States v. Chadwick (US 1977).

⁶⁶ Any movement of a closed container constitutes a search. Arizona v. Hicks (US 1987).

⁶⁷ Squeezing constitutes a search. Bond v. United States (US 2000).

⁶⁸ Any deprivation is a meaningful interference with my possessory interest. United States v. Jacobsen (US 1984).

Persons

Goodbye.

I DON'T TALK TO POLICE.

NO EXCEPTIONS.

If you are still here,
you have **seized** my person.

Hope you had

reasonable suspicion

for that.

If you are not here to

seize my person,⁶⁹

I hereby

TERMINATE THIS ENCOUNTER.

Goodbye.

VII. WHAT ABOUT CYBERSPACE? VIRTUAL LAWN SIGNS

If the customs of physical space are uncertain—requiring the reading of door knockers and other architectural intents—they seem crystal clear compared to those of cyberspace, which is perhaps not surprising given its relatively short existence. What constitutes unauthorized entry in internet space? Can you eliminate your browser cookies in order to continue reading newspaper articles without purchasing an online subscription?⁷⁰ Can you lie about your name or age in setting up an email or social media account? Can you guess at obscure URLs to obtain data available there? Can you use proxies and other means to mask your cyber or physical location? Can you check to see if “password” gets you through a password request? Is this equivalent to checking whether a key you found lets you into a neighboring door? What are the implied licenses in this virtual space?

Perhaps someday the Justices will read the cyber door knockers for us, but until then—and indeed even after—we need signs to assert our desired licenses. This is not to say, of course, that cyber signs are without major complications. For example, a user might “approach” from an unexpected port, causing the sign to go unseen.⁷¹ But just as most companies today use a login banner to obtain

⁶⁹ A seizure requires at least reasonable suspicion of criminality. *Terry v. Ohio* (US 1967).

⁷⁰ See Orin S. Kerr, *Norms of Computer Trespass*, 116 COLUM. L. REV. (forthcoming 2016) (noting a number of examples).

⁷¹ See *What is a Port?*, WHAT IS MY IP ADDRESS, <http://whatismyipaddress.com/port> (last visited Mar. 5, 2016).

monitoring consent and thereby avoid potential wiretap liability,⁷² the Fourth Amendment Security Company can provide virtual signs to assert expectations. And lest anyone think they should take the form of novella-length terms of service, we present a few examples.⁷³

4TH AMENDMENT PROTECTED SERVER

If you attempt access,
you are violating my rights.

Absolutely No Access.
This is a **Private** Web Server.
STAY OUT.

Fourth Amendment Protected Property.
No Viewing.
No Copying.
No Writing.
No Exceptions.
I **Assert** My Rights.

No Web Scraping or Bot Access of Any Kind.
This Server's Data Are For Human-Eye Consumption Only.

VIII. CONCLUSION

With this brief article we launch a public education campaign to support constitutional curmudgeons everywhere. Like James Otis, Thomas Paine, and that grouchy guy who lives on the corner, our challenge is simply to remake American liberty one lawn at a time.

Taking advantage of the surely unintentional opening in *Jardines*—namely the concept of license which should allow for society to change Fourth

⁷² See COMPUTER CRIME & INTELLECTUAL PROP. SECTION, CRIMINAL DIV., U.S. DEP'T OF JUSTICE, SEARCHING AND SEIZING COMPUTERS AND OBTAINING ELECTRONIC EVIDENCE IN CRIMINAL INVESTIGATIONS 170–72 (3d ed. 2009), <http://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/01/14/ssmanual2009.pdf>.

⁷³ As with drone overflight and geo-fencing, ideally some assertions can be expressed in agreed-upon, machine readable code, so as to be effective even without human-eye viewing.

Amendment outcomes—we launch Fourth Amendment Security (FourthAmendmentSecurity.com) and its LAWn Sign Project.⁷⁴ With one part law, one part snark,⁷⁵ and a dash of humor, perhaps we can better educate ordinary citizens about the substance of their Fourth Amendment rights and how they can assert or waive them, as they would like. And, somewhere on the margins, that assertion might just sway an individual officer on the beat or decide a courtroom proceeding.

⁷⁴ For the accompanying public education campaign, see FOURTH AMENDMENT SECURITY www.FourthAmendmentSecurity.com (last visited Mar. 5, 2016).

⁷⁵ A lot like sarcasm, only more hip. See *Snark*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=snark> (last visited Mar. 5, 2016).