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Whether Narcotics Discovered in a Trash Pull, Standing Alone, Can Form Probable Cause to Search a Home

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WHETHER NARCOTICS DISCOVERED IN A TRASH PULL, STANDING ALONE, CAN FORM PROBABLE CAUSE TO SEARCH A HOME.

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I. INTRODUCTION

Currently, the federal courts of appeals are split over whether and under what circumstances narcotics discovered in a trash pull, standing alone, can establish probable cause to search a home.[1] Four circuits have addressed this issue, which has resulted in three separate answers. This Article will attempt to give finality to this question by providing the circumstances when narcotics discovered in a trash pull, standing alone, can establish probable cause to search a home.

Part I will discuss the Fourth Amendment's history. Specifically, this part will examine the developments that led to the Amendment's formation including *Semayne's Case*, the *Writs of Assistance* case, *Wilkes v. Woods*, *Entick v. Carrington*, and the Townsend Act of 1767. Part II will examine the adoption of the Fourth Amendment. This part will also discuss the text of the Amendment, as well as the clauses contained within its text. Part III discusses why the circuit split is significant and ripe for Supreme Court intervention. Part IV will then analyze the cases from the four federal courts of appeals that have addressed this issue and that compose the split. This part not only examines the facts and procedural history of these cases, but also the rationales underlying the courts' rulings. Part V provides an in-depth analysis of this issue and answers this constitutional question. This part will clearly identify the reasons why courts should find narcotics discovered in a trash pull, standing alone, can never establish probable cause to search a home. In coming to this conclusion, this part will also provide the situations when trash pull evidence, coupled with other factors, can form probable cause to search a home.

II. THE FOURTH AMENDMENT'S HISTORY

A. A Quick Discussion of the Fourth Amendment's History

"Few provisions of the Bill of Rights grew so directly out of the experience of the colonials as the Fourth Amendment, embodying as it did the protection against the utilization of the 'writs of assistance.'"[2] The Fourth Amendment, effective December 15, 1791, was our nation's answer to Great Britain's use of general warrants and writs of assistance ("writs").[3]

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1. *See* United States v. Abernathy, 843 F.3d 243, 252 (6th Cir. 2016).

2. GOV'T PRINTING OFF., FOURTH AMENDMENT: SEARCH AND SEIZURE, 1199 (2002), http://origin.www.gpoaccess.gov/constitution/pdf/con015.pdf. Some portions of the following sub-sections were previously published by this author in: M. Jackson Jones, *The Fourth Amendment and Search Warrant Presentment: Is a Man's House Always His Castle?*, 35 AM. J. TRIAL ADVOC. 525 (2012).

3. *See* Jones, *supra* note 2, at 528–29.

Although writs and general warrants are often used interchangeably, they differ in several respects.[4] Writs received their name because they required government agents to aid in their execution.[5] Writs served two main purposes. First, they were used to search for uncustomed goods.[6] Second, they were used to prevent the American colonies from trading with anyone except the British Empire.[7]

General warrants, in contrast, only permitted government searches for specific illegal acts.[8] "Thus, while both a writ and a general warrant failed to specify the place to be searched and things to be seized, a writ provided even more discretion to the officer since a search under it did not have to be connected to a specific instance of misconduct."[9]

Writs and general warrants also differed in the length of time that they were valid. The issuing sovereign dictated the term of a writ and writs were valid throughout the term.[10] General warrants, however, were only valid until the warrant was executed.[11]

1. Semayne's Case (1603)

Semayne's Case was not directly related to the issuance of writs or general warrants; however, the court's holding had important implications on their use.[12] In fact, *Semayne*'s *Case* was one of the first cases to discuss a citizen's right to be free from an illegal government search. More specifically, in *Semayne's Case*, the King's Bench "recognized the right of the homeowner to defend his house against unlawful entry even by the King's agents."[13] The court noted, however, that the King's agents could lawfully enter a person's home to perform an arrest or serve process.[14]

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4. *See* Barry Jeffrey Stern, *Warrants Without Probable Cause*, 59 BROOK. L. REV. 1385, 1390 n.16 (1994).

5. Chris K. Visser, Comment, *Without a Warrant, Probable Cause, or Reasonable Suspicion: Is There Any Meaning to the Fourth Amendment While Driving a Car?*, 35 HOUS. L. REV. 1683, 1700 (1999).

6. *See* Stern, *supra* note 4, at 1390 n. 16.

7. *See* Visser, *supra* note 5, at 1700.

8. Stern, *supra* note 4, at 1390 n.16.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Semayne's Case*, (1604) 5 COKE REP. 91 (K.B.). This case involved an execution of process by the King's agents. *Id.*

13. GOV'T PRINTING OFF., *supra* note 2, at 1199.

14. *Id.*

2. Writs of Assistance Case (1761)

Unlike *Semayne's Case*, the Writs of Assistance case actually addressed the government's use of writs. The Writs of Assistance case was decided in 1761 after a Boston Superior Court judge granted Charles Paxton's request for a writ.[15] Paxton, a Boston customs official, requested the writ allow him "to break open any receptacle or package" to "search, at their will wherever they suspected uncustomed goods to be."[16] Subsequently, "customs officers obtained writs of assistance on request as routine accessories to their commissions, without alleging illegal activity as a pretext for them, without judicial superintendence, and without the possibility of refusal."[17]

In 1760, King George II died and "[u]pon [his death], the writs expired, and before new writs were issued, their validity was challenged."[18] The following year, James Otis, a colonial attorney, represented several Massachusetts merchants who challenged Paxton's use of writs and asked the Boston Superior Court to not reissue them.[19] Otis had a deep hatred for writs and even described them as "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book."[20]

Otis believed that writs not only provided government agents with too much power, but also violated the British Constitution and English common law.[21] More specifically, he believed writs violated the law "because they 'infringed natural rights that were inherent, inalienable, and indefeasible by [anything] which man could devise and were wrought into the English Constitution as fundamental laws.'"[22] In addition, Otis argued that writs allowed government agents to "enter our houses when they please . . . break locks, bars and every thing in their way."[23] Moreover, Otis took significant issue with the ease at which the Government could obtain writs.[24] For instance he

15. *See* Jon Eldredge, *National Perspective, Detainment of United States Citizens as Enemy Combatants Under a Fourth Amendment Historical Analysis*, 6 J.L. & SOC. CHALLENGES 19, 24 (2004).

16. Michael Longyear, Note, *To Attach or Not to Attach: The Continued Confusion Regarding Search Warrants and the Incorporation of Supporting Documents*, 76 FORDHAM L. REV. 387, 391 (2007).

17. Eldredge, *supra* note 15, at 24.

18. Longyear, *supra* note 16, at 391.

19. *See* David E. Steinberg, *The Original Understanding of Unreasonable Searches and Seizures*, 56 FLA. L. REV. 1051, 1066 (2004).

20. Boyd v. United States, 116 U.S. 616, 625 (1886).

21. *See* Eldredge, *supra* note 15, at 24.

22. Eldredge, *supra* note 15, at 24.

23. Harold J. Krent, *The Continuity Principle, Administrative Constraint, and the Fourth Amendment*, 81 NOTRE DAME L. REV. 53, 58 (2005).

24. *Id.*

noted that "no man, no court can inquire—bare suspicion without oath is sufficient [to issue a writ]."[25] Hence, Otis essentially recognized that the government could request that a court issue a writ without putting forth any real evidence supporting that request.[26] Instead, the courts would continue to issue the writs on a routine basis without questioning government officials on the lack of evidence they were using to try to obtain them.[27]

The court disagreed and reissued the writs.[28] However, Otis's arguments were not completely ignored.[29] For instance, after the *Writs of Assistance* case, the Massachusetts colonial legislature made it significantly harder for the government to obtain writs.[30]

3. Wilkes v. Wood (1763)

John Wilkes was arrested under the authority of a general warrant because he described the British government as "wretched puppets" and "the tools of corruption and despotism."[31] He made these statements in an anonymous letter published in the North Briton newspaper.[32] As a result of Wilkes's statements, Lord Halifax, Great Britain's Secretary of State, issued a general warrant that allowed government agents "to make strict and diligent search for the authors, printers and publishers of a seditious and treasonable paper, intitled [sic], the North Briton, No. 45 . . . and them, or any of them, having found, to apprehend and seize, together with their papers."[33] This single warrant was used to arrest over forty people, search at least five homes, arrest Wilkes, and seize a number of Wilkes's personal papers.[34] Wilkes sued the government for trespass and the court ruled in his favor.[35] It held "such general warrants violated common law."[36]

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25. *Id.*
26. *Id.*
27. Eldredge, *supra* note 15, at 24.
28. *See* Eldredge, *supra* note 15, at 24.
29. *See* Krent, *supra* note 23, at 58.
30. *Id.*
31. *Id.*
32. *See* David E. Steinberg, *High School Drug Testing and the Original Understanding of the Fourth Amendment*, 30 HASTINGS CONST. L.Q. 263, 273 (2003). Although the letters were published anonymously, the British government learned that Wilkes authored them. *Id.*
33. Krent, *supra* note 23, at 58–59.
34. *Id*.
35. *See id.* at 59.
36. Eldredge, *supra* note 15, at 26. In addition, he sued the Secretary of State and won. *See* NELSON B. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 43–45 (1937). Wilkes received a judgment totaling £ 5000 from the two lawsuits. *Id.*

4. Entick v. Carrington (1765)

Two years later, a British court addressed the use of another general warrant in *Entick v. Carrington*.[37] In *Entick*, government agents, acting under the orders of a general warrant, forcibly entered the home of John Entick.[38] These agents had "broken into his house, broken into locked desks and boxes, and seized many printed charts, pamphlets and the like."[39] Entick sued the agents for trespass.[40] He won his case and received a judgment of £ 300.[41] The verdict was upheld by the Court of Common Pleas. The court wrote:

> Our law holds the property of every man so sacred that no man can set his foot upon his neighbour's close without his leave. If he does, he is a trespasser. . . . The defendants have no right to avail themselves of the usage of these warrants. . . . We can safely say there is no law in this country to justify the defendants in what they have done; if there was, it would destroy all the comforts of society.[42]

The court also used this opinion as an opportunity to express more disdain with the use of general warrants.[43] It stated, "the issuance of a warrant for the seizure of all of a person's papers rather than only those alleged to be criminal in nature [is] 'contrary to the genius of the law of England.'"[44]

After *Entick*, the British House of Commons passed two resolutions that substantially limited the use of general warrants.[45] The first resolution limited the use of general warrants to libel cases.[46] The second resolution condemned the use of general warrants for any purpose.[47]

5. Townsend Act of 1767

The Townsend Act was one of the significant legal acts that led to the formation of the Fourth Amendment. Under this Act, "Parliament reauthorized the use of the general writ for customs searches in the American Colo-

37. *See* GOV'T PRINTING OFF., *supra* note 2, at 1199–1200.
38. *Id.*
39. *Id.*
40. *See* Longyear, *supra* note 16, at 392.
41. *See id.*
42. Susan W. Brenner, *The Fourth Amendment In An Era of Ubiquitous Technology*, 75 MISS. L.J. 1, 6–8 (2005).
43. *See* GOV'T PRINTING OFF., *supra* note 2, at 1200.
44. *Id.*
45. *See* Stanford v. Texas, 379 U.S. 476, 484 (1965).
46. *See id.*
47. *See id.*

nies."[48] Hence, the purpose of the Townsend Act was to help British officials enforce customs laws.[49] The Act also authorized the highest court in every colony to issue writs.[50]

The Townsend Act was met with a significant amount of protest.[51] For instance, one person declared, "Our houses and even our bed chambers are exposed to be ransacked, our boxes, chests, and trunks broke open, ravaged and plundered by wretches . . ."[52] Another citizen recognized that, under the Townsend Act, "a petty officer has power to cause the doors and locks of any man to be broke open, to enter his most private cabinet, and thence to take and carry away, whatever he shall in his pleasure deem uncustomed goods."[53]

Many colonial judges agreed with these concerns and refused requests to issue writs, even though the Townsend Act allowed for their continued use.[54]

The nexus between the Townsend Act and the Fourth Amendment is easy to discern. As Professor Davies notes:

> The memory of Parliament's 1767 reauthorization of general warrants for customs searches of houses was the principal stimulus for the adoption of bans against general warrants in the state declarations of rights adopted between 1776 and 1784, and for the anti-Federalist calls for a federal ban against general warrants during the constitutional ratification debates of 1787-88.

Indeed, the actions of colonial judges in the Townshend controversy "signified the beginnings of a dialogue on the writs and of a consensus against general warrants by the American judiciary." Resistance to the Townshend writs "was something more than a local question and with such a widespread legal discussion it is hardly to be wondered if a fourth amendment was proposed for the American Constitution."[55]

Governmental abuses associated with general warrants and writs were the main reasons our Founding Fathers developed the Fourth Amendment.[56]

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48. Eldredge, *supra* note 15, at 26.

49. *See* Krent, *supra* note 23, at 59.

50. *See* Brian D. Walsh, Note, *Illinois v. Wardlow: High Crime Areas, Flight, and the Fourth Amendment*, 54 ARK. L. REV. 879, 886 n.73 (2002).

51. *See* Krent, *supra* note 23, at 59–60.

52. *Id.* at 59.

53. *Id.*

54. *See id*.

55. Tracey Maclin, *Let Sleeping Dogs Lie: Why the Supreme Court Should Leave Fourth Amendment History Unabridged*, 82 B.U. L. REV. 895, 961 (2002) (citing Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV., 547, 642 (1999)).

56. *See* Stanford v. Texas, 379 U.S. 476, 481 (1965).

III. ADOPTION OF THE FOURTH AMENDMENT

A. The Fourth Amendment: An Answer to General Warrants and Writs of Assistance

When our Founding Fathers created the Fourth Amendment, "[v]ivid in [their memories] were those general warrants known as writs of assistance under which officers of the Crown had so bedeviled the colonists."[57] The Fourth Amendment's first draft, authored by James Madison,[58] stated:

> The rights of the people to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.[59]

This initial draft went through numerous revisions and eventually became the Fourth Amendment that is currently found in our federal Constitution.[60]

The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[61]

The amendment was designed to prevent many of the abuses associated with general warrants and writs. In fact, the newly adopted Fourth Amendment not only identified the requirements for a valid search warrant, but it also provided citizens with protection from unreasonable government searches and seizures.[62]

B. A Quick Analysis of the Fourth Amendment's Text

The Fourth Amendment is composed of two separate clauses: 1) the Reasonableness Clause and 2) the Warrants Clause.[63] The Reasonableness

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57. *Id*.
58. *See* Lasson, *supra* note 36, at 100–03.
59. *Id*. at 100 n.77.
60. *See id*. at 100–03.
61. U.S. CONST. amend. IV.
62. *See id.*
63. *See id.*

Clause protects citizens from unreasonable searches and seizures.[64] The Warrants Clause identifies the constitutional requirements for authorizing a search warrant.[65] "The two clauses do not stand alone. A search that satisfies the Warrants Clause will generally, but not invariably, satisfy the Reasonableness Clause."[66]

1. The Reasonableness Clause

"The Fourth Amendment says nothing specific about formalities in exercising a warrant's authorization."[67] Instead, the amendment addresses the legality of a search "in terms of the right to be 'secure . . . against unreasonable searches and seizures.'"[68] Under the Reasonableness Clause, all individuals, homes, papers, and effects are protected against unreasonable searches and seizures.[69] In other words, the Reasonableness Clause mandates that any government search be conducted in a reasonable manner.[70] Courts look at the totality of the circumstances when determining if a search was conducted in a reasonable manner.[71] In this determination, the courts "have consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry."[72]

A violation of the Reasonableness Clause could result in the suppression of evidence.[73] If a court finds a violation of the Reasonableness Clause, it must then determine whether the exclusionary rule requires suppression of the evidence.[74] If the exclusionary rule mandates suppression, the evidence will be suppressed.[75]

2. The Warrants Clause

The Warrants Clause mandates that search warrants meet specific requirements that general warrants lacked.[76] This clause requires search warrants to be issued upon a showing of "probable cause, [be] supported by

64. *See id.*
65. *See id.*
66. Baranski v. Fifteen Unknown Agents of the Bureau of Alcohol, Tobacco and Firearms, 452 F.3d 433, 438 (6th Cir. 2006).
67. United States v. Banks, 540 U.S. 31, 35 (2003).
68. *Id.*
69. *See* U.S. CONST. amend. IV.
70. *See* United States v. Thompson, 667 F. Supp. 2d 758, 763 (S.D. Ohio 2009).
71. *See Banks*, 540 U.S. at 35–36.
72. *Id.* (citing Ohio v. Robinette, 519 U.S. 33, 39 (1996)).
73. *See Thompson*, 667 F. Supp. 2d at 765.
74. *See id*.
75. *See id*.
76. *See* U.S. CONST. amend. IV.

Oath or affirmation, and particularly describ[e] the place to be searched, and the persons or things to be seized."[77] In contrast, general warrants did not have to be supported by probable cause or identify the property to be searched or seized.[78]

Violations of the Warrants Clause are either fundamental or technical.[79] First, a "fundamental" violation of the clause occurs when "the search [is] unconstitutional under the traditional fourth amendment standards."[80] An example of a "fundamental" violation would be a government agent executing a warrant that lacks probable cause or particularity.[81] "Fundamental" violations completely negate the government's search.[82] The remedy for a "fundamental" violation of the Warrants Clause is suppression of any evidence found during the search.[83]

Unlike a "fundamental" violation, a "technical" violation of the Warrants Clause does not automatically result in the suppression of evidence.[84] Instead, "technical violations require suppression only if the defendant was prejudiced or there was a deliberate disregard of the [Warrants Clause]."[85]

IV. SIGNIFICANCE OF THE CIRCUIT SPLIT

A split among the circuits regarding whether narcotics discovered in a trash pull, standing alone, are sufficient to establish probable cause to search the home is significant for two main reasons. First, it exposes the federal courts' varying interpretations of the Warrants Clause. For example, currently, the Eighth Circuit and the Tenth Circuit have determined that narcotics found in a trash pull, standing alone, can establish probable cause to search a home, and therefore, the search would be reasonable.[86] Probable cause is found whether or not the narcotics are discovered with any items connecting the trash to the place being searched.[87] Similarly, the Seventh Circuit has held that narcotics found in a trash pull can establish probable cause to

77. *Id*.

78. *See* State v. Brown, 840 N.E.2d 411, 418 (Ind. Ct. App. 2006) (citing Lasson, *supra* note 36, at 26–27).

79. *See* State v. Malloy, 34 P.3d 611, 614 (N.M. Ct. App. 2001) (citing United States v. Negrete-Gonzales, 966 F.2d 1277, 1283 (9th Cir. 1992)).

80. *See* United States v. Johnson, 660 F.2d 749, 753 (9th Cir. 1981).

81. *See* U.S. CONST. amend. IV.

82. *See Malloy*, 34 P.3d at 614 (citing United States v. Negrete-Gonzales, 966 F.2d 1277, 1283 (9th Cir. 1992)).

83. *See id.*

84. *See id.*

85. *Id.*

86. *See* United States. v. Colonna, 360 F.3d 1169, 1175 (10th Cir. 2004), *overruled in part by* United States v. Little, 829 F.3d 1177 (10th Cir. 2016); United States v. Briscoe, 317 F.3d 906, 908 (8th Cir. 2003).

87. *See Colonna*, 360 F.3d at 1175; *Briscoe*, 317 F.3d at 908.

search a home as long as the "drugs were contained in trash bags bearing sufficient indicia of residency."[88] So the search would be reasonable only under certain circumstances.[89] In contrast, the Sixth Circuit has held the discovery of narcotics, standing alone, does not necessarily establish probable cause to search a home.[90] In the Sixth Circuit, a search following discovery of narcotics in a trash pull, standing alone, would likely be unreasonable under the Fourth Amendment.

Second, this split is significant because it directly contradicts two central purposes of the Constitution—equality and consistency. Varying interpretations of this issue have led to disparate treatment of citizens solely dependent on where they live. For instance, a person living in the states that comprise the Eighth or Tenth Circuits could have his or her house searched merely based on the police finding any amount of narcotics in that person's trash.[91] This same person would not have his or her home subject to a search if he or she lived in the Seventh Circuit.[92] This same person would not necessarily have his or her home subject to search in the Sixth Circuit.[93]

V. CIRCUITS COMPOSING THE SPLIT

A. Majority View—Narcotics Discovered in a Trash Pull, Standing Alone, Can Form Probable Cause to Search a Home.

1. Eighth Circuit—United States v. Briscoe*, 317 F.3d 906 (8th Cir. 2003)*

A Cedar Rapids Police Department intelligence analyst received a tip from one of Gary Briscoe's neighbors that Briscoe was suspected of being responsible for several burglaries that occurred in the neighborhood.[94] After receiving this information, the police analyst detailed the allegations levied against Briscoe in a memorandum.[95] Specifically, the analyst wrote that the "caller" observed "'a heavy amount of short term visitors to [Briscoe's] home."[96] The memorandum also alleged Briscoe was possibly selling narcotics.[97]

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88. United States v. Leonard, 884 F.3d 730, 734 (7th Cir. 2018).
89. *Id.*
90. *See* United States v. Abernathy, 843 F.3d 243, 256–57 (6th Cir. 2016).
91. *See Colonna*, 360 F.3d at 1175; *Briscoe*, 317 F.3d at 908.
92. *See Leonard*, 884 F.3d at 734.
93. *See Abernathy*, 843 F.3d at 256–57.
94. *See Briscoe*, 317 F.3d at 907.
95. *See id.*
96. *Id.* "Caller" refers to the neighbor, who made the allegation in person, not by phone. *Id.*
97. *See id*. The neighbor never suggested Briscoe sold narcotics. *Id.*

The police did not immediately search Briscoe's property after receiving the tip.[98] Instead, they waited until around nine weeks later.[99] At that point, the "police searched the garbage left outside Briscoe's residence" and discovered twenty-five marijuana stems and forty marijuana seeds.[100]

Following the trash pull, the police obtained a search warrant for Briscoe's home.[101] The warrant was executed five days later and police discovered a gun, ammunition, cash, and drug paraphernalia at Briscoe's residence.[102]

Briscoe filed a motion to suppress the evidence discovered at his home, which was denied by the district court.[103] In his motion, Briscoe "attacked the paragraph in the search warrant application derived from the intelligence analyst's report."[104] Specifically, Briscoe argued that the analyst's belief that Briscoe was distributing narcotics was not based on probable cause, because "the neighbor's suspicion had only been that Briscoe was involved in the burglaries."[105] Following the denial of his motion, Briscoe entered a conditional guilty plea and received ninety-six months imprisonment.[106] He then appealed.[107]

The Eighth Circuit affirmed the district court's denial of Briscoe's motion to suppress.[108] It found that the search warrant was valid because "the marijuana seeds and stems in Briscoe's garbage were sufficient stand-alone evidence to establish probable cause" to search his home.[109]

The court's decision was based on prior circuit precedent, as well as federal and state statutory law.[110] First, in *United States v. Gregg*, the Eighth Circuit held that telex communications, standing alone, found in the trash provided sufficient probable cause to issue a search warrant.[111] In *Briscoe*, the court believed the evidence found in Briscoe's trash was substantially stronger than that in *Gregg* because "the presence of discarded marijuana stems and seeds reasonably suggest that ongoing marijuana consumption or trafficking is occurring within the premises."[112] Second, the court also noted

98. *See id.*
99. *See id.*
100. *Briscoe*, 317 F.3d at 907.
101. *See id.*
102. *See id.*
103. *See id.*
104. *Id*.
105. *Id.*
106. *See Briscoe*, 317 F.3d at 906.
107. *Id.* at 907.
108. *See id.* at 909.
109. *Id*. at 907–908.
110. *See id.* at 908.
111. *See id.* (citing United States v. Gregg, 829 F.2d 1430, 1433–34 (8th Cir. 1987)).
112. *Briscoe*, 317 F.3d at 908.

that both the federal government and state of Iowa prohibited the possession of marijuana seeds.[113] Thus, it ruled that the police obtained probable cause to search Briscoe's home as soon as the marijuana seeds were discovered in the trash because possessing the seeds was illegal.[114]

In *Briscoe*, the Eighth Circuit ruled that narcotics, standing alone, could establish probable cause to search a home.[115] As a result, in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, police can obtain a search warrant solely based on narcotics found in the trash regardless of whether the narcotics were found with any items connecting them to the place being searched.[116]

Interestingly, the court acknowledged there was significant Eighth Circuit precedent establishing how drugs, *along* with corroborating information, could establish probable cause to search a home.[117] Instead of following this precedent, the court used the *Briscoe* decision to expand it by holding that the discovery of narcotics in a trash pull, without corroborating evidence, established probable cause to obtain a warrant for the search of a home.[118]

2. *Tenth Circuit* –United States v. Colonna*, 360 F.3d 1169 (10th Cir. 2004)*

In June 2000, the Salt Lake County Sheriff's Office obtained a search warrant for Jack Colonna's home.[119] The application for the warrant was supported with various statements about the sheriff's office investigation into Colonna's narcotics dealing and noted the sheriff's office had conducted a trash pull of garbage left in front of Colonna's home.[120] As a result of that pull, the police had "discovered two burnt roach ends of suspected marijuana cigarettes, a 'twist' torn from the corner of a plastic baggie, a plastic

113. *Id.* at 907 (citing, 21 U.S.C. § 802(16); IOWA CODE § 124.101.17 (2019)).

114. *Id.* at 908–09.

115. *Id.*

116. *Id.* at 908.

117. *See id*. (emphasis added). The court cites *United States v. Reinholz*, 245 F.3d 765, 776 (8th Cir. 2003) (brass pipe with cocaine residue and twenty syringes (four with methamphetamine residue) found in trash, coupled with occupant's prior drug conviction, established probable cause for search warrant); *United States v. Gonzalez-Rodriguez*, 239 F.3d 948, 950–51 (8th Cir. 2001) (crack pipe, baggies, and foil with methamphetamine residue found in trash, coupled with informant's tip, established probable cause for search warrant); and *United States v. Hohn*, 8 F.3d 1301, 1302, 1306–07 (8th Cir. 1993) (baggie and sno-seals with methamphetamine residue found in trash, coupled with informant's tip, established probable cause for search warrant)).

118. *Briscoe*, 317 F.3d at 908.

119. United States. v. Colonna, 360 F.3d 1169, 1173 (10th Cir. 2004), *overruled in part by* United States v. Little, 829 F.3d 1177 (10th Cir. 2016).

120. *Id.* at 1172–73.

baggie with a corner torn from it, and an empty container of Zig Zag cigarette papers."[121]

The sheriff's office executed the warrant soon after it was granted.[122] While executing the warrant, officers discovered a marijuana pipe, marijuana, guns, and ammunition in Colonna's home.[123] Colonna was subsequently indicted for possession of these items.[124] Following his indictment, Colonna filed a motion to suppress the evidence found as a result of the search.[125] His motion was denied by the district court.[126]

Colonna was found guilty at trial.[127] "He was sentenced to 46-months imprisonment followed by three years supervised release."[128] Colonna appealed the denial of his motion to suppress.[129] On appeal, Colonna argued that the "evidence found in the trash cover indicates only personal use of marijuana by someone in the residence, and that personal use alone does not justify the search of a home."[130] The Tenth Circuit disagreed.[131]

In rejecting Colonna's argument, the court stated, "the Supreme Court has held that all that is required for a valid search warrant is a 'fair probability that contraband or evidence of a crime will be found in a particular place.'"[132] Here, the court believed the discovery of the suspected marijuana cigarettes, standing alone, was sufficient to establish an inference that there were additional narcotics in the home.[133]

Furthermore, the Tenth Circuit noted the quantity of marijuana discovered in the trash pull was irrelevant to its analysis.[134] It wrote, "Mr. Colonna has cited no authority to support the proposition that 'mere personal use' of controlled substances in violation of the criminal laws is insufficient for a search warrant to issue."[135] The Tenth Circuit held that the discovery of narcotics in a trash pull, irrespective of quantity or size, can establish probable cause to search a home.[136]

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121. *Id*. at 1173.
122. *See id.*
123. *See id.*
124. *See id.*
125. *Colonna,* 360 F.3d at 1173.
126. *See id.*
127. *See id.* at 1172.
128. *Id*.
129. *See id.*
130. *Id*. at 1175.
131. *See Colonna*, 360 F.3d at 1175.
132. *Id*. (citing Illinois v. Gates*,* 462 U.S. 213, 238 (1983)).
133. *See id.*
134. *See id.*
135. *Id*.
136. *See id.*

B. Minority View—Under Certain Circumstances, Narcotics Discovered in a Trash Pull, Standing Alone, Can Form Probable Cause to Search a Home

1. Sixth Circuit—United States v. Abernathy*, 843 F.3d 243 (6th Cir. 2016)*

On April 26, 2013, two Nashville Police Department detectives searched the trash cans outside the home of Jimmy Jail Abernathy.[137] In the trash cans, detectives found several marijuana roaches and vacuum-packed, heat-sealed bags as well as certified mail addressed to Abernathy.[138]

Following the pull, the police applied for a warrant to search Abernathy's home.[139] In the search warrant affidavit, the police noted that a search of Abernathy's trash resulted in the discovery of the aforementioned items.[140] This evidence discovered in the trash pull was the sole basis of probable cause for the warrant.[141] On April 28, 2013, a judge granted the search warrant.[142] It was executed a few days later, on May 3, 2013.[143] When police searched Abernathy's home they found "large quantities of cash, marijuana, cocaine, and firearms."[144] In January 2014, a grand jury indicted Abernathy for various weapon and drug offenses.[145]

Abernathy filed a motion to suppress the evidence obtained as a result of the search warrant; however, it was denied by the district court judge.[146] In denying the motion, the judge found that the trash pull evidence, standing alone, established probable cause to search Abernathy's home.[147] Following the denial of his motion, Abernathy pled guilty to the indictment and received a term of 131 months imprisonment.[148] He then appealed.[149]

On appeal, Abernathy "argue[d] that the Warrant was not supported by probable cause, because the marijuana roaches and T2-laced plastic bags the police recovered from [the] garbage were insufficient to create a fair proba-

137. *See* United States v. Abernathy, 843 F.3d 243, 246 (6th Cir. 2016). Abernathy shared this home with his girlfriend. *Id.*
138. *Id.* The trash can also contained mail addressed to Abernathy's girlfriend. *Id.*
139. *Id.* at 247.
140. *See id.*
141. *See id.*
142. *Abernathy*, 843 F.3d at 248.
143. *See id.*
144. *Id*.
145. *See id.*
146. *See id.*
147. *See id.* at 248–49.
148. *See Abernathy*, 843 F.3d at 249.
149. *See id.*

bility that drugs would be found in [his] home."[150] The Sixth Circuit agreed and reversed the district court's denial of the motion to suppress.[151] The court's rationale was based on two reasons.[152] First, it believed ruling against Abernathy would be inconsistent with its decision in *McPhearson*.[153] In *McPhearson*, the Sixth Circuit held the police did not have probable cause to search McPhearson's home after his arrest for possession of narcotics on his home's porch.[154] The court disapproved of the search of McPhearson's home, because his possession of narcotics, standing alone, was not "indisputable proof that drugs had recently been inside [his] residence."[155] Hence, the Sixth Circuit did not think that police established a nexus between the recovered drugs and McPhearson's home prior to conducting a search of the home.[156]

Similarly, in *Abernathy*, the Sixth Circuit found the police failed to establish a nexus between the narcotics found in the trash pull and Abernathy's home.[157] In fact, it noted two ways the search warrant failed to connect the narcotics to Abernathy's home.[158] First, the police failed to state if the trash came from Abernathy's home.[159] Second, the police did not state if the narcotics had been in Abernathy's home recently.[160] Without this information, the court was unable to determine who the trash belonged too or how long the narcotics had been in the home.[161] It wrote, "[d]epending on the household, the trash pull evidence could have been put in the garbage anywhere from one day to several weeks earlier."[162] Since the police could not identify when the narcotics were in the home, they could not infer that narcotics were presently in the home.[163] These deficiencies made the search warrant invalid under the court's holding *McPhearson*, as well as the Fourth Amendment.[164]

Second, the Sixth Circuit noted that police could not logically infer that Abernathy's home contained additional narcotics based on the small amount

150. *Id*. at 251.
151. *See id.* at 246.
152. *See id.* at 254.
153. *See id.*
154. *See Abernathy*, 843 F.3d at 252.
155. *Id*. at 254.
156. *See id.* at 254–55.
157. *See id.*
158. *See id.*
159. *See id*.
160. *See Abernathy*, 843 F.3d at 254–55.
161. *See id.*
162. *Id*. at 255.
163. *See id.*
164. *See id.*

of marijuana found in the trash pull.[165] It stated, "[a]lthough the trash pull evidence certainly suggested that someone in the residence had smoked marijuana recently, that fact alone does not create an inference that the residence contained additional drugs."[166] The court emphasized that it was not holding that narcotics, standing alone, could *never* form probable cause to search a home.[167] Instead, in *Abernathy*, the court said it was solely ruling the drugs in Abernathy's trash did not form probable cause to search Abernathy's home.[168]

Judge Kethledge dissented from the court's opinion.[169] He believed the narcotics and paraphernalia in the trash pull established probable cause to search Abernathy's home because the narcotics were found with letters identifying Abernathy's address.[170] Judge Kethledge wrote, "[t]he address on the mail was the address of the house later searched, which is reason enough to think the roaches and baggies came from that same house."[171]

Additionally, Judge Kethledge believed the Sixth Circuit's prior precedent would have supported finding the police had probable cause to search Abernathy's home.[172] For example, in *United States v. Lawrence*, the Sixth Circuit ruled that the "discovery of plastic bags containing cocaine residue in the defendant's trash was enough to establish probable cause."[173]

The Sixth Circuit did not use the *Abernathy* decision to establish a *per se* rule for whether trash pull evidence could form probable cause to search a home.[174] Instead, the court narrowed its opinion to identify a situation when trash pull evidence could not form probable cause to conduct a search.[175]

Although the *Abernathy* decision is fact specific, it does provide a bit of insight into this issue. For instance, the opinion clearly identifies the reasons why the discovery of a small amount of narcotics should not and can-

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165. *See id.*

166. *Abernathy*, 843 F.3d at 255.

167. *See id.* at 255–57. The Sixth Circuit recognized this point in two separate parts of its majority opinion. *Id.*

168. *See id.* at 256 n.4. Interestingly, while discussing the limitations of its opinion, the Sixth Circuit actually acknowledged its agreement with the *Briscoe* court's holding that a large quantity of narcotics could lead to the inference additional narcotics would be located in a home. *Id.*

169. *See id*. at 258 (Kethledge, J., dissenting).

170. *See id.*

171. *Id*.

172. *See Abernathy*, 843 F.3d at 258.

173. *Id*. (citing United States v. Lawrence, 308 F.3d 623, 627 (6th Cir. 2002)). The majority did not believe *Lawrence* was applicable to this case because *Lawrence* "did not discuss or even mention the quantity of drug paraphernalia recovered from the defendant's garbage." *Id.*

174. *See id.* at 255–56.

175. *See id.* at 256 n.4.

not form probable cause to search a home.[176] Additionally, this same opinion reiterates the *Briscoe* holding that the single recovery of a large amount of narcotics, standing alone, could form probable cause to search a home.[177]

C. Minority View—Narcotics Discovered in a Trash Pull, Standing Alone, can Form Probable Cause to Search a Home as Long as the Narcotics are Found with an Indicator of Residency

1. Seventh Circuit—United States v. Leonard*, 884 F.3d 730 (7th Cir. 2018)*

"A confidential source alerted Rock Island, Illinois, police that Courtney Watson was selling illegal drugs from the home she shared with her husband, defendant Stephen Leonard."[178] After receiving this information, police conducted two separate searches of "sealed trash bags left in a public alley outside the [Leonard] home."[179] The trash bags not only "tested positive for cannabis," but also contained an "indicia of residency."[180] Based on this information, the police obtained a search warrant for Leonard's home.[181] While executing the warrant, police found drugs and a semi-automatic handgun, which Leonard admitted belonged to him.[182]

Leonard filed a motion to suppress that was denied by the district court.[183] In denying Leonard's motion, the court ruled that "the two positive cannabis tests were enough, standing alone, to support the warrant."[184] Following denial of his motion, Leonard entered a conditional guilty plea and received a term of imprisonment.[185] He then appealed.[186]

The Seventh Circuit acknowledged that it had never "addressed whether trash pulls *by themselves* may establish probable cause to search a residence."[187] However, it noted persuasive precedent from other federal circuits

176. *See id.* at 255–56.
177. *See id.* at 256 n.4.
178. United States v. Leonard, 884 F.3d 730, 732 (7th Cir. 2018).
179. *Id*. These two trash pulls were done one week apart from each other. *Id.*
180. *Id*. The court did not identify the specific "indicia of residency" found in the trash. *Id.*
181. *See id.*
182. *See id.*
183. *See id.*
184. *Leonard*, 884 F.3d at 732. Leonard also asked the court to suppress the evidence because the search warrant was not presented to him prior to the search. The court rejected this argument and stated, "[N]othing in the [Fourth Amendment] requires that the warrant be shown to the person whose premises are to be searched." *Id*. at 733 (citing United States v. Sims, 553 F.3d 580, 584 (7th Cir. 2009)).
185. *Id*. at 732.
186. *Id.*
187. *Id*. at 734.

that had examined this issue.[188] For example, in *Briscoe*, the Eighth Circuit found that marijuana seeds and stems, in a person's trash, established probable cause to search a home.[189] In contrast, the Sixth Circuit had ruled in *Abernathy* that the presence of marijuana paraphernalia, from a single trash pull, could not form probable cause to search a home.[190]

The Seventh Circuit did not feel it had to distinguish Leonard's case from either *Briscoe* or *Abernathy* because both cases would maintain finding that the warrant used to search Leonard's home was supported by probable cause.[191] Specifically, it found that these decisions supported finding probable cause to search a home when the discovery of narcotics in a trash pull suggested additional drugs could be located in the home.[192] Furthermore, the Eighth and Sixth Circuits believe continued presence of additional drugs in the home could be established whether narcotics were found in a large quantity in a single trash pull or in smaller amounts over separate pulls.[193] Either situation would establish probable cause to search a home, because both situations suggested the continued presence of drugs in the home.[194]

The court in *Leonard* affirmed the district court and upheld the validity of the search and warrant.[195] It wrote, "[s]o long as the drugs were contained in trash bags bearing sufficient indicia of residency, this is all that is necessary to establish probable cause and obtain a search warrant."[196] In *Leonard*, the Seventh Circuit put forth a basic rule to determine if trash pull evidence, standing alone, could establish probable cause to search a home: narcotics discovered in a trash pull can establish probable cause to search a home if the narcotics are found with an "indicia of residency."[197] Additionally, the court tried to frame its decision as consistent with *Briscoe* and *Abernathy*.[198] However, the narcotics found in *Briscoe* would have been suppressed using the *Leonard* rule, because there was not any indication the narcotics were found with an "indicia of residency."[199] Hence, under *Leonard*, this would have made the search of Briscoe's home unconstitutional.[200] In contrast, the drugs found in *Abernathy* might have been admissible since they were found

188. *See id.*
189. *See id.* (citing United States v. Briscoe, 317 F.3d 906 (8th Cir. 2003)).
190. *Leonard*, 884 F.3d at 734 (citing United States v. Abernathy, 843 F.3d 243 (6th Cir. 2016)).
191. *See id.* at 734–35.
192. *See id.*
193. *See id.*
194. *See id.*
195. *See id.* at 735.
196. *Leonard*, 884 F.3d at 734.
197. *Id*.
198. *See id.*
199. *Id.*; *see also* United States v. Briscoe, 317 F.3d 906, 907 (8th Cir. 2003).
200. *See Leonard*, 884 F.3d at 734.

with an "indicia of residency."[201] Nevertheless, the Seventh Circuit may have had an issue with the police conducting only one trash pull prior to obtaining the warrant used to search Abernathy's home.[202]

VI. ANALYSIS

A. The Fourth Amendment and Nexus

Under the Fourth Amendment, a search warrant must meet certain requirements.[203] First, the warrant must be supported by probable cause.[204] Second, it must be "supported by oath or affirmation."[205] Third, it must describe the place being searched, as well as the person or things being seized.[206] Last, the search warrant must be issued by a neutral and detached magistrate.[207]

Whether narcotics discovered in a trash pull, standing alone, can establish probable cause to search a home implicates the first and third requirements of the Warrants Clause. Specifically, in discussing this issue, a court must determine whether narcotics found in a trash pull not only establishes probable cause to search a home, but also establishes "a nexus between the place to be searched [a home] and the evidence sought [additional narcotics]."[208]

B. Can the Police Search Trash Without a Warrant?

As an initial matter, it should be noted that the Supreme Court has long ruled that police can search trash without a search warrant.[209] In *California v. Greenwood*, the Supreme Court held that the right to privacy did not extend to an individual's trash "placed in a public alley or on a curbside."[210] Consequently, the police are free to search, seize, or photograph any trash "placed in a public alley or on a curbside" even if the police do not have probable cause or a search warrant allowing them to do it.[211]

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201. *Id.*; *see also* United States v. Abernathy, 843 F.3d 243, 246 (6th Cir. 2016).
202. *See Abernathy*, 843 F.3d at 246.
203. U.S. CONST. amend. IV.
204. *Id.*
205. *Id.*
206. *Id.*
207. *See* Shadwick v. Tampa, 407 U.S. 345, 349–50 (1972).
208. United States v. Carpenter, 360 F.3d 591, 594 (6th Cir. 2004).
209. *See* United States v. Leonard, 884 F.3d 730, 734 (7th Cir. 2018).
210. *Id.* (citing California v. Greenwood, 486 U.S. 35, 39–40 (1988)).
211. *Id*.

C. Under What Circumstances Can Narcotics Found in a Trash Pull, Standing Alone, Establish Probable Cause to Search a Home?

Narcotics discovered in a trash pull, standing alone, should not and cannot establish probable cause to search a home. Instead, narcotics found in trash pulls should be sufficient to establish probable cause to search a home in two situations. First, probable cause is established if the narcotics are found "in trash bags bearing sufficient indicia of residency" and of a quantity that suggests additional narcotics will be found in the home being searched.[212]

Second, if the amount of narcotics is minute or indicates solely personal use, then the narcotics could form probable cause to search a home only if the narcotics were discovered during separate trash pulls conducted close in time indicating the likelihood that additional narcotics are within the home.[213] Narcotics discovered in separate trash pulls should also be discovered along with indicators of residency tying the narcotics to the place being searched.[214]

1. Quantity Plus Proof of Residency

The police can infer the presence of additional narcotics in a home if a trash pull uncovers a substantial amount of narcotics.[215] The Eighth Circuit was the first circuit to discuss this issue in the context of quantity.[216] In *Briscoe*, the court believed that forty marijuana seeds and twenty-five marijuana stems were a good indicator of "ongoing marijuana consumption or trafficking . . . within the premises."[217]

The *Briscoe* rule, centered on the amount of narcotics found in a single trash pull, would satisfy the Fourth Amendment's requirements if it required that the trash pull evidence was found with an indicator of residency.[218] Hence, narcotics found in a trash pull could be sufficient to establish a nexus to search a home if the prerequisites of quantity and residency are met.[219] For example, a nexus to search a defendant's home could be established if the police discovered a pound of discarded marijuana in a defendant's trash along with a letter or document connecting the trash to the defendant's

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212. *Id.*
213. *See id.* at 734–35. "Close in time" means the narcotics are discovered in either consecutive trash pulls or pulls conducted within a week or two of each other. *Id.*
214. *See id.*
215. *See* United States v. Briscoe, 317 F.3d 906, 907–08 (8th Cir. 2003).
216. *See id.*
217. *Id.* at 908.
218. *See Leonard*, 884 F.3d at 734–35.
219. *See id.*

home.[220] Likewise, a nexus could be established if police found twenty-eight grams of cocaine in a defendant's trash along with a letter or document connecting the trash to the defendant's home.[221]

In both examples, the quantity of narcotics is so substantial that police could logically infer there are additional drugs in the home.[222] Moreover, the indicator of residency would dispel any potential Fourth Amendment particularity issues, because the police could link the narcotics with the place to be searched.[223]

2. Multiple Trash Pulls Done Close in Time Plus Proof of Residency

Multiple trash pulls conducted either on consecutive days or within a short time of each other would indicate the likelihood of the presence of narcotics being located in a home. For instance, in *Leonard*, the police conducted two separate trash pulls that each "contained indicia of residency and tested positive for cannabis."[224] As the *Leonard* court noted, the presence of narcotics, on two separate trash pulls done close in time, "suggest[] repeated and ongoing drug activity in the residence" and "create[] a fair probability that more drugs remain in the home."[225]

Two or more positive trash pulls would establish probable cause to search a home regardless of the quantity of drugs found.[226] In other words, police would have probable cause to search a home whether it found two pounds of marijuana or one ounce of marijuana on separate occasions.[227] Both scenarios suggest the home being searched has additional narcotics within it because the separate pulls conducted close in time to the other resulted in the discovery of narcotics.[228]

In contrast, a single trash pull resulting in the discovery of a miniscule amount of narcotics or an amount that suggests personal use should be insufficient to form probable cause to search a home.[229] The primary problem with the single discovery of a small amount of narcotics is that the amount cannot be used to infer that additional narcotics will be located in the home.[230] Since the discovered amount is small, it would tend to indicate per-

220. *See id.*
221. *See id.*
222. *See id.*
223. *See* U.S. CONST. amend. IV.
224. *Leonard*, 884 F.3d at 732. The trash pulls were done one week apart. *Id.*
225. *Id*. at 734.
226. *See id.*
227. *See id.*
228. *See id.*
229. *See id.*
230. *See Leonard*, 884 F.3d at 734.

sonal use or a single use of those narcotics.[231] Personal use or single use of narcotics does not indicate the continued presence of narcotics in a home.[232] Instead, it merely indicates the presence of narcotics in the home on a single occasion sometime in the past.[233]

Similarly, a small amount of narcotics does not help the police determine when the narcotics were placed in the trash.[234] As the Sixth Circuit acknowledged, "[d]epending on the household, the trash pull evidence could have been put in the garbage anywhere from one day to several weeks earlier. The inability to determine when drugs were last in the home diminishes any inference that drugs are still in the home."[235]

3. Establishing a Nexus Between the Trash Pull and the Home

"Generally, some evidence establishing a nexus between drug evidence discovered in a garbage bag and a residence to be searched is necessary to support the conclusion that the drug evidence came from the home."[236] Otherwise, the search warrant could not satisfy the Warrants Clause requirement that a warrant "particularly describ[e] the place to be searched."[237] An "indicia of residency" or indicators of residency are typically used to establish the nexus between the trash in which narcotics were discovered and the place being searched as a result of that discovery.[238]

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231. *See id.*

232. *See id.*

233. *See* United States v. Abernathy, 843 F.3d 243, 255 (6th Cir. 2016).

234. *See id.*

235. *Id.* The ability for the government to search a home would depend on not only the quantity of narcotics or the amount of times narcotics were found in the trash, but also the type of narcotic itself. For example, several states and the District of Columbia have either legalized or decriminalized the possession of marijuana. In Massachusetts, a person can legally possess up to one ounce of marijuana. *See* MASS. GEN. LAWS ch. 94G, § 7 (2017). To search a Massachusetts home for marijuana, the government would have to believe the home is either illegally distributing it or contains an amount in excess of the legal limit. These issues would not be necessary for allegations involving drugs like heroin, crack, or cocaine, which are illegal regardless of quantity.

236. State v. Hicks, 147 P.3d 1076, 1089 (Kan. 2006).

237. U.S. CONST. amend. IV.

238. *See* United States v. Leonard, 884 F.3d 730, 734–35 (7th Cir. 2018). Examples of indicators of residency or "indicia of residency" could be a utility bill (electric, gas, heat, oil, or water) showing the address being searched, a cellular phone bill showing the address being searched, a driver's license or any form of state identification showing the address being searched, a bank or credit card statement showing the address being searched, or a tax bill showing the address being searched. Overall, to establish the constitutional requirement of nexus, the indicator of residency has to have the address identifying the place the government would like to search with a warrant.

For instance, the warrants in the Seventh Circuit and Sixth Circuit cases contained the constitutionally required proof of nexus.[239] As previously written, the trash pull in the Sixth Circuit case resulted in the discovery of not only drugs, but also "USPS certified mail receipts addressed to [the defendant]."[240] Similarly, the warrant from the Seventh Circuit case noted the narcotics from that trash pull were found with indicators of residency.[241] However, the search warrants from the Eighth and Tenth Circuit cases should fail constitutional scrutiny since the narcotics in those trash pulls were found without any indicators of residency.[242]

VII. CONCLUSION

Courts should be as uniform as possible when it comes to constitutional interpretation. However, circuits continue to be split over whether and under "what circumstances trash pull evidence, standing alone, can establish probable cause to search a home."[243] The Eighth and Tenth Circuits have held trash pull evidence can always form probable cause to search a home.[244] The Sixth Circuit has ruled it can form probable cause in certain circumstances.[245] Lastly, the Seventh Circuit determined trash pull evidence could establish probable cause to search a home if the evidence was also found with an indicator of residency.[246]

This Article has examined these cases and concluded that narcotics found in trash pulls can establish probable cause to search a home in two situations. First, the discovery of narcotics in a trash pull could establish probable cause if the narcotics were found in trash bags with an indicator of residency and of a quantity that suggests additional narcotics will be found in the home to be searched. The discovery of a large quantity of narcotics leads to an inference that additional drugs are located within the home. Second, probable cause could be formed if the narcotics were discovered during separate trash pulls conducted close in time, along with an indicator of residency tying the narcotics to the home.[247] The discovery of narcotics, on separate occasions, can also lead to the inference that additional drugs are located within the place to be searched.[248]

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239. *See id.* at 732; *see also Abernathy*, 843 F.3d at 247.
240. *Abernathy*, 843 F.3d at 246.
241. *See Leonard*, 884 F.3d at 732.
242. *See* United States v. Colonna, 360 F.3d 1169, 1173 (10th Cir. 2004); *see also* United States v. Briscoe, 317 F.3d 906, 907 (8th Cir. 2003).
243. *Abernathy*, 843 F.3d at 252.
244. *See Colonna*, 360 F.3d at 1175; *Briscoe*, 317 F.3d at 908.
245. *See Abernathy*, 843 F.3d at 256–57.
246. *See* United States v. Leonard, 884 F.3d 730, 734 (7th Cir. 2018).
247. *See Briscoe*, 317 F.3d at 908.
248. *See Leonard*, 884 F.3d at 734–35.

In conclusion, the Supreme Court needs to intervene and give finality and uniformity to this question of constitutional interpretation. In doing so, the Court would not only prevent the disparate treatment of people based upon the circuit in which he or she lives, but also provide a uniform interpretation of the Fourth Amendment's Warrants Clause.