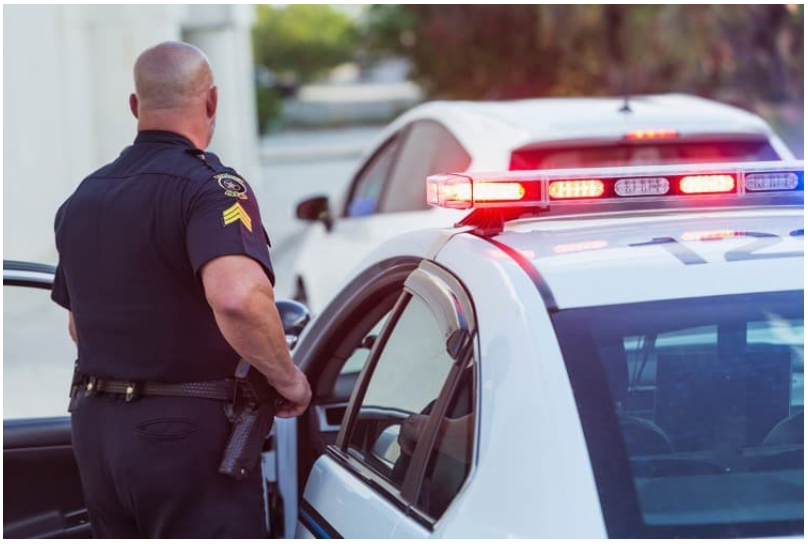
Written by **Joe Wolverton, II, J.D.** on February 21, 2023

New Hampshire Bill Would Ban No-knock Warrants



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New Hampshire's state Legislature is considering a bill that would ban "no-knock" warrants in the Granite State.

House Bill 135, currently pending before the House's Criminal Justice and Public Safety Committee, is co-sponsored by a bipartisan trio of legislators: Representatives Kristina Schultz (D), Matthew Santonastaso (R), and Glenn Bailey (R).

The text of the measure makes its purpose very clear: "No law enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant." In the text of the bill, a no-knock warrant is defined as "a warrant authorizing a law enforcement officer to enter a premises to execute a warrant without first knocking or announcing his or her presence."

For those not familiar with no-knock warrants, the New Hampshire bill defines them pretty succinctly, but the definition is not the issue. The biggest problem with this tactic — one so egregiously used that several states have curtailed or prohibited its use by law enforcement — is how often no-knock warrants have been used by police to devastating effect.

The first and most important thing to remember considering the controversy surrounding these raids by law enforcement is the black letter text of the Fourth and Fifth Amendments.

The Fourth Amendment reads:

> 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.

And the Fifth Amendment reads, in relevant part:

> No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The deprivation by local law enforcement of the fundamental rights protected by these amendments is becoming increasingly common. There is nothing more fundamental to the pursuit of justice than due process, and there is no principle suffering from more sustained attacks on all fronts.

This amendment is a protection of a timeless principle of liberty and justice. In fact, due process as a check on monarchical power was included in the Magna Carta.

In 1354, the phrase "due process of law" appeared for the first time. The Magna Carta, as amended in 1354, says: "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."

This fundamental restraint on the royal presumption of the power to lop off heads on command was incorporated by our Founders in the Bill of Rights, particularly in the Fifth Amendment.

In his book *Overkill: The Rise of Paramilitary Police Raids in America*, Radley Balko reports that more than 40,000 such operations are conducted every year. He also points out that these almost always involve police busting into someone's home, thus destroying centuries of Anglo-American protections from government abuse of power:

> Explicit protections against such invasions of a man's home have been present in English law since at least 1604 when an English court ruled in the case known as *Semayne's Case* that: "That the house of every one is to him as his Castle and Fortress as well for defence against injury and violence, as for his repose; and although the life of man is precious and favoured in law…."
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> Nearly 160 years after the ruling in *Semayne's Case*, an English court in the case of *Huckle v. Money* (1763) expressed the preeminence of the so-called Castle Doctrine: "To enter a man's house by virtue of a nameless warrant, in order to procure evidence, is worse than the Spanish Inquisition; a law under which no Englishman would wish to live an hour."
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> Britons and Americans have long adhered to this legal maxim, but its sanctity is certainly under attack when police use no-knock raids.

In his book, Balko argues, "The [no-knock] tactic is appropriate in a few limited situations, such as when hostages or fugitives are involved, or where the suspect poses an immediate threat to community safety. But increasingly, this highly confrontational tactic is being used in less volatile situations, most commonly to serve routine search warrants for illegal drugs."

"In the real world, the exigent-circumstances exceptions have been so broadly interpreted since *Wilson* [the 1995 *Wilson v. Arkansa*s case], they've overwhelmed the rule. No-knock raids have been justified on the flimsiest of reasons, including that the suspect was a licensed, registered gun owner (NRA, take note!), or that the mere presence of indoor plumbing could be enough to trigger the 'destruction of evidence' exception," Balko writes.

In a story covering the bill prohibiting no-knock warrants in New Hampshire, the Tenth Amendment Center provided a summary of the *Wilson* case, as well as other Supreme Court opinions on the subject of no-knock raids and how they should be viewed through a constitutional lens:

> The SCOTUS eliminated this blanket exception in *Richards v. Wisconsin* (1997) requiring police to show why a specific individual is a threat to dispose of evidence, commit an act of violence or flee from police. But even with the opinion, the bar for obtaining a no-knock warrant remains low.
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> "In order to justify a 'no-knock' entry, the police must have a **reasonable suspicion** that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." [Emphasis in original.]

> Reasonable suspicion is an extremely low legal bar to meet. Through this exception, police can justify no-knock entry on any warrant application. In effect, the parameters in the SCOTUS ruling make no-knock the norm instead of the exception.
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> A third Supreme Court ruling effectively eliminated the consequences for violating the "knock and announce" requirement even without a no-knock warrant. In *Hudson v. Michigan* (2006), the High Court held that evidence seized in violation of knock and announce was not subject to the exclusionary rule. In other words, police could still use the evidence in court even though they technically gathered it illegally.
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> Significantly, were it not for the dubious "incorporation doctrine" made up by the Supreme Court based on the 14th Amendment that purportedly empowers the federal government to apply the Bill of Rights to the states, these cases would have never gone to federal court and we wouldn't have these blanket rules.
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> Without specific restrictions from the state, police officers generally operate within the parameters set by the High Court. By passing restrictions on no-knock warrants, states set standards that go beyond the Supreme Court limits and in effect, nullify the SCOTUS opinion.

Where the police were once the servants of the people and the law, often these officers wield weapons that are more at home on a battlefield than a boulevard, and they are employing tactics more appropriate to prosecuting a war than serving a warrant.

On Friday, February 24, HB 135 will move on to an executive session, determining whether the bill can proceed to the next step toward becoming the law in New Hampshire.