

The Fourth Amendment and Agriculture: Warrantless Access to Private Rural Lands

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“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.”



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NO TRESPASSING

ARTICLE

The Open Fields Doctrine Is Wrong

*Joshua Windham**

Abstract. This year marks the centennial of the Fourth Amendment “open fields” doctrine. That doctrine holds that the vast majority of private land in the United States receives zero Fourth Amendment protection—and thus government officials can enter any land they please and conduct unfettered surveillance. The Supreme Court has given two main justifications for the doctrine: the Fourth Amendment’s text does not mention land, and nobody can reasonably expect privacy on their land. This Article will argue that neither justification holds up. Even if “open” land deserves no protection, a contextual reading of the Fourth Amendment’s text and a proper application of the privacy test show that “closed” land—land people use and mark as private—does deserve protection. The open fields doctrine should be overruled.



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HUNTING, FISHING, TRAPPING OR
TRESPASSING FOR ANY PURPOSE
IS STRICTLY FORBIDDEN
VIOLATORS WILL BE PROSECUTED







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