

Vernonia School District v. Acton (1995)

515 U.S. 646

Motivated by the discovery that athletes were leaders in the student drug culture and the concern that drug use increases the risk of sports related injury, School District 47J in the logging town of Vernonia, Oregon, adopted in the fall of 1989 the Student Athlete Drug Policy, which authorized random urinalysis drug testing of students who participated in its athletic programs. In the fall of 1991, Wayne Acton, a seventh-grade student, was denied participation in the school's football program when he and his parents refused to consent to the drug testing. They filed suit, seeking declaratory and injunctive relief on the grounds that the school district's policy violated the Fourth and Fourteenth Amendments and the Oregon Constitution. The U.S. District Court denied their claims, but the Court of Appeal for the Ninth Circuit reversed, holding that the school district's policy violated both the Federal and State Constitutions. The Supreme Court granted certiorari.

Opinion of the Court: Scalia, Breyer, Ginsburg, Kennedy, Rehnquist, Thomas.

Concurring opinion: Ginsburg.

Dissenting opinion: O'Connor, Souter, Stevens.

MR. JUSTICE SCALIA delivered the opinion of the Court.

The Student Athlete Drug Policy adopted by School District 47J in the town of Vernonia, Oregon, authorizes random urinalysis drug testing of students who participate in the District's school athletics programs. We granted certiorari to decide whether this violates the Fourth and Fourteenth Amendments to the United States Constitution.

The Policy applies to all students participating in interscholastic athletics. Students wishing to play sports must sign a form consenting to the testing and must obtain the written consent of their parents. Athletes are tested at the beginning of the season for their sport. In addition, once each week of the season the names of the athletes are placed in a "pool" from which a student, with the supervision of two adults, blindly draws the names of 10 percent of the athletes for random testing. Those selected are notified and tested that same day, if possible.

The student to be tested completes a specimen control form which bears an assigned number. Prescription medications that the student is taking must be identified by providing a copy of the prescription or a doctor's authorization. The student then enters an empty locker room accompanied by an adult monitor of the same sex. Each boy selected produces a sample at a urinal, remaining fully clothed with his back to the monitor, who stands approximately 12 to 15 feet behind the student. Monitors may (though do not always) watch the student while he produces the sample, and they listen for normal sounds of urination. Girls produce samples in an enclosed bathroom stall, so that they can be heard but not observed. After the sample is produced, it is given to the monitor, who checks it for temperature and tampering and then transfers it to a vial.

The samples are sent to an independent laboratory, which routinely tests them for amphetamines, cocaine, and marijuana. Other drugs, such as LSD, may be screened at the request of the District, but the identity of a particular student does not determine which drugs will be tested. The laboratory's procedure are 99.94 percent accurate. The District follows strict

procedures regarding the chain of custody and access to test results. The laboratory does not know the identity of the students whose samples it tests. It is authorized to mail written test reports only to the superintendent and to provide test results to District personnel by telephone only after the requesting official recites a code confirming his authority. Only the superintendent, principals, vice-principals, and athletic directors have access to test results, and the results are not kept for more than one year.

If a sample tests positive, a second test is administered as soon as possible to confirm the result. If the second test is negative, no further action is taken. If the second test is positive, the athlete's parents are notified, and the school principal convenes a meeting with the student and his parents, at which the student is given the option of (1) participating for six weeks in an assistance program that includes weekly urinalysis, or (2) suffering suspension from athletics for the remainder of the current season and the next athletic season. The student is then retested prior to the start of the next athletic season for which he or she is eligible. The Policy states that a second offense results in automatic imposition of option (2); a third offense in suspension for the remainder of the current season and the next two athletic seasons....

The Fourth Amendment to the United States Constitution provides that the Federal Government shall not violate “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, . . .” We have held that the Fourteenth Amendment extends this constitutional guarantee to searches and seizures by state officers, *Elkins v. United States*, 364 U.S. 206, 213 (1960), including public school officials, *New Jersey v. T. L. O.*, 469 U.S. 325, 336-337 (1985). In *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 617 (1989), we held that state-compelled collection and testing of urine, such as that required by the Student Athlete Drug Policy, constitutes a “search” subject to the demands of the Fourth Amendment. See also *Treasury Employees v. Von Raab*, 489 U.S. 656, 665 (1989).

As the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a governmental search is “reasonableness.” At least in a case such as this, where there was no clear practice, either approving or disapproving the type of search at issue, at the time the constitutional provision was enacted, whether a particular search meets the reasonableness standard ““is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.”” Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, this Court has said that reasonableness generally requires the obtaining of a judicial warrant. Warrants cannot be issued, of course, without the showing of probable cause required by the Warrant Clause. But a warrant is not required to establish the reasonableness of *all* government searches; and when a warrant is not required (and the Warrant Clause therefore not applicable), probable cause is not invariably required either. A search unsupported by probable cause can be constitutional, we have said, “when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.” *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987).

We have found such “special needs” to exist in the public-school context. There, the warrant requirement “would unduly interfere with the maintenance of the swift and informal disciplinary procedures [that are] needed,” and “strict adherence to the requirement that searches be based upon probable cause” would undercut “the substantial need of teachers and administrators for freedom to maintain order in the schools.” The school search we approved in *T. L. O.*, while not based on probable cause, *was* based on individualized *suspicion* of wrongdoing. As we explicitly acknowledged, however, “the Fourth Amendment imposes no irreducible requirement of such

suspicion.” We have upheld suspicion-less searches and seizures to conduct drug testing of railroad personnel involved in train accidents; to conduct random drug testing of federal customs officers who carry arms or are involved in drug interdiction; and to maintain automobile checkpoints looking for illegal immigrants and contraband and drunk drivers.

The first factor to be considered is the nature of the privacy interest upon which the search here at issue intrudes. The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as “legitimate.” What expectations are legitimate varies, of course, with context, depending, for example, upon whether the individual asserting the privacy interest is at home, at work, in a car, or in a public park. In addition, the legitimacy of certain privacy expectations vis-à-vis the State may depend upon the individual's legal relationship with the State. For example, ... although a “probationer's home, like anyone else's, is protected by the Fourth Amendmen[t],” the supervisory relationship between probationer and State justifies “a degree of impingement upon [a probationer's] privacy that would not be constitutional if applied to the public at large.” Central, in our view, to the present case is the fact that the subjects of the Policy are (1) children, who (2) have been committed to the temporary custody of the State as schoolmaster....

Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere; the “reasonableness” inquiry cannot disregard the school's custodial and tutelary responsibility for children. For their own good and that of their classmates, public school children are routinely required to submit to various physical examinations, and to be vaccinated against various diseases.... In the 1991—1992 school year, all 50 States required public-school students to be vaccinated against diphtheria, measles, rubella, and polio. Particularly with regard to medical examinations and procedures, therefore, “students within the school environment have a lesser expectation of privacy than members of the population generally.”

Legitimate privacy expectations are even less with regard to student athletes. School sports are not for the bashful. They require “suing up” before each practice or event, and showering and changing afterwards. Public-school locker rooms, the usual sites for these activities, are not notable for the privacy they afford. The locker rooms in Vernonia are typical: no individual dressing rooms are provided; shower heads are lined up along a wall, unseparated by any sort of partition or curtain; not even all the toilet stalls have doors....

There is an additional respect in which school athletes have a reduced expectation of privacy. By choosing to “go out for the team,” they voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally. In Vernonia's public schools, they must submit to a preseason physical exam (James testified that his included the giving of a urine sample, App. 17), they must acquire adequate insurance coverage or sign an insurance waiver, maintain minimum grade point average, and comply with any “rules of conduct, dress, training hours and related matters as may be established for each sport by the head coach and athletic director with the principal's approval.” Somewhat like adults who choose to participate in a “closely regulated industry,” students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy.

Having considered the scope of the legitimate expectation of privacy at issue here, we turn next to the character of the intrusion that is complained of. We recognized in *Skinner* that collecting the samples for urinalysis intrudes upon “an excretory function traditionally shielded

by great privacy." We noted, however, that the degree of intrusion depends upon the manner in which production of the urine sample is monitored. Under the District's Policy, male students produce samples at a urinal along a wall. They remain fully clothed and are only observed from behind, if at all. Female students produce samples in an enclosed stall, with a female monitor standing outside listening only for sounds of tampering. These conditions are nearly identical to those typically encountered in public restrooms, which men, women, and especially school children use daily. Under such conditions, the privacy interests compromised by the process of obtaining the urine sample are in our view negligible.

The other privacy-invasive aspect of urinalysis is, of course, the information it discloses concerning the state of the subject's body, and the materials he has ingested. In this regard it is significant that the tests at issue here look only for drugs, and not for whether the student is, for example, epileptic, pregnant, or diabetic. Moreover, the drugs for which the samples are screened are standard, and do not vary according to the identity of the student. And finally, the results of the tests are disclosed only to a limited class of school personnel who have a need to know; and they are not turned over to law enforcement authorities or used for any internal disciplinary function....

Finally, we turn to consider the nature and immediacy of the governmental concern at issue here, and the efficacy of this means for meeting it.... That the nature of the concern is important—indeed, perhaps compelling—can hardly be doubted. Deterring drug use by our Nation's schoolchildren is at least as important as enhancing efficient enforcement of the Nation's laws against the importation of drugs.... or deterring drug use by engineers and trainmen.... School years are the time when the physical, psychological, and addictive effects of drugs are most severe. "Maturing nervous systems are more critically impaired by intoxicants than mature ones are; childhood losses in learning are lifelong and profound"; "children grow chemically dependent more quickly than adults, and their record of recovery is depressingly poor." And of course the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted. In the present case, moreover, the necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction. Finally, it must not be lost sight of that this program is directed more narrowly to drug use by school athletes, where the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high. Apart from psychological effects, which include impairment of judgment, slow reaction time, and a lessening of the perception of pain, the particular drugs screened by the District's Policy have been demonstrated to pose substantial physical risks to athletes....

As to the efficacy of this means for addressing the problem: It seems to us self-evident that a drug problem largely fueled by the "role model" effect of athletes' drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs. Respondents argue that a "less intrusive means to the same end" was available, namely, "drug testing on suspicion of drug use." We have repeatedly refused to declare that only the "least intrusive" search practicable can be reasonable under the Fourth Amendment. Respondents' alternative entails substantial difficulties—if it is indeed practicable at all. It may be impracticable, for one thing, simply because the parents who are willing to accept random drug testing for athletes are not willing to accept accusatory drug testing for all students, which transforms the process into a badge of shame. Respondents' proposal brings the risk that teachers

will impose testing arbitrarily upon troublesome but not drug-likely students. It generates the expense of defending lawsuits that charge such arbitrary imposition, or that simply demand greater process before accusatory drug testing is imposed. And not least of all, it adds to the ever-expanding diversionary duties of schoolteachers the new function of spotting and bringing to account drug abuse, a task for which they are ill prepared, and which is not readily compatible with their vocation.... In many respects, we think, testing based on “suspicion” of drug use would not be better, but worse.

Taking into account all the factors we have considered above—the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search—we conclude Vernonia's Policy is reasonable and hence constitutional.

We caution against the assumption that suspicionless drug testing will readily pass constitutional muster in other in this contexts. The most significant element in this case is the first we discussed: that the Policy was undertaken in furtherance of the government's responsibilities, under a public-school system, as guardian and tutor of children entrusted to its care....

The Ninth Circuit held that Vernonia's Policy not only violated the Fourth Amendment, but also, by reason of that violation, contravened Article I, ¶9 of the Oregon Constitution. Our conclusion that the former holding was in error means that the latter holding rested on a flawed premise. We therefore vacate the judgment, and remand the case to the Court of Appeals for further proceedings consistent with this opinion.

MS. JUSTICE O'CONNOR, with whom MR. JUSTICE STEVENS and JUSTICE SOUTER join, dissenting.

... For most of our constitutional history, mass, suspicionless searches have been generally considered *per se* unreasonable within the meaning of the Fourth Amendment. And we have allowed exceptions in recent years only where it has been clear that a suspicion-based regime would be ineffectual. Because that is not the case here, I dissent....

... [H]aving misconstrued the fundamental role of the individualized suspicion requirement in Fourth Amendment analysis, the Court never seriously engages the practicality of such a requirement in the instant case. And that failure is crucial because nowhere is it *less* clear that an individualized suspicion requirement would be ineffectual than in the school context. In most schools, the entire pool of potential search targets—is under constant supervision by teachers and administrators and coaches, be it in classrooms, hallways, or locker rooms.

The record here indicates that the Vernonia schools are no exception. The great irony of this case is that most (though not all) of the evidence the District introduced to justify its suspicionless drug-testing program consisted of first- or second-hand stories of particular, identifiable students acting in ways that plainly gave rise to reasonable suspicion of in-school drug use—and thus that would have justified a drug-related search under our *T. L. O.* decision....

In light of all this evidence of drug use by particular students, there is a substantial basis for concluding that a vigorous regime of suspicion-based testing (for which the District appears already to have rules in place) would have gone a long way toward solving Vernonia's school drug problem while preserving the Fourth Amendment rights of James Acton and other like him. And were there any doubt about such a conclusion, it is removed by indications in the record that suspicion-based testing could have been supplemented by an equally vigorous campaign to have

Vernonia's parents encourage their children to submit to the District's *voluntary* drug testing program. In these circumstances, the Fourth Amendment dictates that a mass, suspicion-less search regime is categorically unreasonable.

I recognize that a suspicion-based scheme, even where reasonably effective in controlling in-school drug use, may not be *as* effective as a mass, suspicion-less testing regime. In one sense, that is obviously true—just as it is obviously true that suspicion-based law enforcement is not as effective as mass, suspicion-less enforcement might be. “But there is nothing new in the realization” that Fourth Amendment protections come with a price. *Arizona v. Hicks*, 480 U.S. 321, 329 (1987). Indeed, the price we pay is higher in the criminal context, given that police do not closely observe the entire class of potential search targets (all citizens in the area) and must ordinarily adhere to the rigid requirements of a warrant and probable cause....

On this record, then, it seems to me that the far more reasonable choice would have been to focus on the class of students found to have violated published school rules against severe disruption in class and around campus—disruption that had a strong nexus to drug use, as the District established at trial. Such a choice would have two of the virtues of a suspicion-based regime: testing dramatically fewer students, tens as against hundreds, and giving students control, through their behavior, over the likelihood that they would be tested.