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Recent Developments: Vernonia School Dist. 47J v. Acton: Random Drug Testing of Student Athletes Not Violative of Their Fourth Amendment Right against Unreasonable Searches

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Vernonia School Dist. 47J v. Acton:

RANDOM DRUG TESTING OF STUDENT ATHLETES NOT VIOLATIVE OF THEIR FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCHES.

In *Vernonia School District 47J v. Acton*, 115 S. Ct. 2386 (1995), the Supreme Court of the United States held that a public school district's student athlete drug policy, which provided for random drug testing prior to participation in a sport, did not violate the student's Fourth Amendment right against unreasonable searches. In so holding the Court has broadened the scope of acceptable bodily intrusions on students by the government without individualized suspicion.

In response to a high level of drug use reaching epidemic proportions, Vernonia School District 47J ("District") instituted a policy of random urinalysis drug testing for its student athletes prior to their participation in the schools' sports programs. The testing on athletes was instituted, in part, because athletes had been found to be leading the school's drug culture, and also because athletes who used drugs had a higher rate of serious injury. James Acton ("Acton"), a seventh grader in Vernonia, Oregon, signed up to play football in the fall of 1991. Acton and his parents refused to sign the urine testing consent form, a prerequisite to participation. Subsequently, Acton and his parents filed suit in the United States District Court for the District of Oregon, seeking declaratory and injunctive relief on the grounds that it violated Acton's Fourth Amendment right against unreasonable searches, and Article I, section 9 of the Oregon Constitution. Following a bench trial, the district court upheld the constitutionality of the District's policy and dismissed the case. Acton appealed to the United States Court of Appeals for the Ninth Circuit, which reversed the district court's decision. The Supreme Court of the United States granted the District's petition for certiorari.

The Court began its analysis by reiterating that state compelled collection and testing of urine constituted a search and was subject to Fourth Amendment scrutiny. *Acton*, 115 S. Ct. at 2390 (citing *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 617 (1989)). The Court explained that "the ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" *Id.* Thus, whether a search is reasonable under the Fourth Amendment is determined by "'balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.'" *Id.* (quoting *Skinner*, 489 U.S. at 619). Justice Scalia, speaking for the Court, opined that since a warrant was not required to establish reasonableness in all government searches, probable cause was also not required "'when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" *Id.* at 2391 (quoting *Griffin v. Wisconsin*, 483 U.S. 873 (1987)). Because

the warrant requirement would "unduly interfere" with teachers' and school administrators' ability to maintain order and discipline within the school setting, and since the public school system had been found to have such special needs in the past, the Court concluded that a warrant was not required by the Fourth Amendment in this situation. *Id.* (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985)). Furthermore, while school searches based on suspicion had been approved, individualized suspicion itself was not a Fourth Amendment requirement, so long as the search met the reasonableness standard. *Id.*

In determining the reasonableness of such a warrantless search, the Court began by looking to the nature of the privacy interest upon which the search intruded. *Id.* Since the Fourth Amendment only protects those expectations of privacy that society recognizes as legitimate, Justice Scalia reasoned that a schoolchild placed in the temporary custody and care of the State acting as a schoolmaster did not have such a reasonable expectation. *Id.* at 2391-92. As support for this lessened expectation of privacy, Justice Scalia noted that schoolchildren are required to have physical examinations and to have been vaccinated before attending public schools. *Id.* Student athletes, in particular, have even less of a legitimate privacy expectation, as locker rooms are not known for their privacy, and students must undergo physicals prior to playing. *Id.* at 2392-93.

The Court next addressed the character of the intrusion. *Id.* at 2393. While recognizing that the collection of urine intruded upon "'an excretory function traditionally shielded by great privacy,'" the degree of intrusion depended upon the method and monitoring of the collection. *Id.* (quoting *Skinner*, 489 U.S. at 626). In the instant case, the process and method of obtaining the urine samples was nearly identical to those conditions found in a public rest room. *Id.* Furthermore, because the test screened only for drugs and the results were given only to a limited number of school personnel, the Court held that the invasion of the student athlete's privacy was not significant. *Id.* at 2393-94.

Lastly, the Court addressed "the nature and immediacy of the governmental concern at issue . . . and the efficacy of this means for meeting it." *Id.* at 2394. The Fourth Amendment does not require the least intrusive means available for a warrantless search to be legitimate. *Id.* at 2396. Therefore, the District's method and process of testing was not unreasonable in light of the district court's finding that the students were in a state of rebellion due to drug and alcohol abuse. *Id.* at 2395-96. The Court thus concluded that the District's policy satisfied the requirement of reasonableness and was therefore constitutional. *Id.* at 2396. It warned, however, that suspicionless drug testing in other contexts would most likely not pass constitutional muster, thereby narrowing the scope of its decision. *Id.*

In dissent, Justice O'Connor, joined by Justices Stevens and Souter, argued that the majority had dispensed with the requirement of individualized suspicion. *Id.* at 2397. Looking to the intent of the Framers, the dissent argued that the Warrant Clause was drafted to curb the abuse of all general searches, infamous during colonial times, and not to impose an "evenhandedness requirement" now being instituted in a balancing test. *Id.* at 2399. The Framers attempted to prevent the overuse and misuse of general searches by raising the required level of individualized suspicion to objective probable cause. *Id.* Thus, in the criminal context, mass suspicionless searches, even if evenhandedly conducted, were per se unreasonable where the search was more than minimally intrusive. *Id.* at 2400.

Justice O'Connor particularly disagreed with Justice Scalia's characterization of the degree of intrusion that the District used in the collection of the specimen. *Id.* She emphasized that, though not the most intrusive of searches, the collection of urine was still "'particularly destructive of privacy and offensive to personal dignity.'" *Id.* (quoting *Treasury Employees v. Von Raab*, 489 U.S. 656,

680 (1989)). The dissent also noted that such a test intruded upon the freedom from searches of the person, one of the four specific categories of searches named in the Constitution and, as such, should be viewed with particular scrutiny. *Id.*

The dissent next argued that because such a blanket search would involve literally millions of children, as opposed to only thousands under a suspicion-based testing program, such a scheme would be "*significantly* less intrusive," and as an established rule of law should not easily be cast aside in the name of policy. *Id.* at 2403 (emphasis in original). The dissent lastly argued that the majority's decision was of serious consequence to students' individual rights under the Constitution, *id.* at 2404 (citing *Tinker v. Des Moines Ind. Comm. School Dist.*, 393 U.S. 503, 506 (1969) (holding that students do not "shed their constitutional rights . . . at the schoolhouse gate," in the context of free speech)), and that the District's suspicionless policy of testing all student athletes randomly selected swept too broadly and imprecisely to be reasonable under the Fourth Amendment. *Acton*, 115 S. Ct. at 2407.

In *Vernonia School District 47J v. Acton*, the Supreme Court of the United States held that warrantless, random, blanket drug tests on student athletes were not unreasonable in the totality of the circumstances, and therefore not violative of their Fourth Amendment right against unreasonable searches. The differing views of the majority and the dissent can be seen as primarily based on their respective view of schoolchildren, the rights guaranteed to them as such under the U.S. Constitution, and the "reasonableness" of random testing. Thus, the question is one of degree, with the majority balancing the government's interest in drug free schools over students' rights to freedom from searches of their person absent reasonable suspicion. In so holding, the Court has furthered the fight against drugs at the cost of students' rights against warrantless bodily intrusions previously guaranteed by the U.S. Constitution.

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