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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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CITY OF ONTARIO, CALIFORNIA, ET AL. *v.* QUON
ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 08–1332. Argued April 19, 2010—Decided June 17, 2010

Petitioner Ontario (hereinafter City) acquired alphanumeric pagers able to send and receive text messages. Its contract with its service provider, Arch Wireless, provided for a monthly limit on the number of characters each pager could send or receive, and specified that usage exceeding that number would result in an additional fee. The City issued the pagers to respondent Quon and other officers in its police department (OPD), also a petitioner here. When Quon and others exceeded their monthly character limits for several months running, petitioner Scharf, OPD’s chief, sought to determine whether the existing limit was too low, *i.e.*, whether the officers had to pay fees for sending work-related messages or, conversely, whether the overages were for personal messages. After Arch Wireless provided transcripts of Quon’s and another employee’s August and September 2002 text messages, it was discovered that many of Quon’s messages were not work related, and some were sexually explicit. Scharf referred the matter to OPD’s internal affairs division. The investigating officer used Quon’s work schedule to redact from his transcript any messages he sent while off duty, but the transcript showed that few of his on-duty messages related to police business. Quon was disciplined for violating OPD rules.

He and the other respondents—each of whom had exchanged text messages with Quon during August and September—filed this suit, alleging, *inter alia*, that petitioners violated their Fourth Amendment rights and the federal Stored Communications Act (SCA) by obtaining and reviewing the transcript of Quon’s pager messages, and that Arch Wireless violated the SCA by giving the City the transcript. The District Court denied respondents summary judgment on the

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constitutional claims, relying on the plurality opinion in *O'Connor v. Ortega*, 480 U. S. 709, to determine that Quon had a reasonable expectation of privacy in the content of his messages. Whether the audit was nonetheless reasonable, the court concluded, turned on whether Scharf used it for the improper purpose of determining if Quon was using his pager to waste time, or for the legitimate purpose of determining the efficacy of existing character limits to ensure that officers were not paying hidden work-related costs. After the jury concluded that Scharf's intent was legitimate, the court granted petitioners summary judgment on the ground they did not violate the Fourth Amendment. The Ninth Circuit reversed. Although it agreed that Quon had a reasonable expectation of privacy in his text messages, the appeals court concluded that the search was not reasonable even though it was conducted on a legitimate, work-related rationale. The opinion pointed to a host of means less intrusive than the audit that Scharf could have used. The court further concluded that Arch Wireless had violated the SCA by giving the City the transcript.

Held: Because the search of Quon's text messages was reasonable, petitioners did not violate respondents' Fourth Amendment rights, and the Ninth Circuit erred by concluding otherwise. Pp. 7–17.

(a) The Amendment guarantees a person's privacy, dignity, and security against arbitrary and invasive governmental acts, without regard to whether the government actor is investigating crime or performing another function. *Skinner v. Railway Labor Executives' Assn.*, 489 U. S. 602, 613–614. It applies as well when the government acts in its capacity as an employer. *Treasury Employees v. Von Raab*, 489 U. S. 656, 665. The Members of the *O'Connor* Court disagreed on the proper analytical framework for Fourth Amendment claims against government employers. A four-Justice plurality concluded that the correct analysis has two steps. First, because "some [government] offices may be so open . . . that no expectation of privacy is reasonable," a court must consider "[t]he operational realities of the workplace" to determine if an employee's constitutional rights are implicated. 480 U. S., at 718. Second, where an employee has a legitimate privacy expectation, an employer's intrusion on that expectation "for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances." *Id.*, at 725–726. JUSTICE SCALIA, concurring in the judgment, would have dispensed with the "operational realities" inquiry and concluded "that the offices of government employees . . . are [generally] covered by Fourth Amendment protections," *id.*, at 731, but he would also have held "that government searches to retrieve work-related materials or

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to investigate violations of workplace rules—searches of the sort that are regarded as reasonable and normal in the private-employer context—do not violate the . . . Amendment,” *id.*, at 732. Pp. 7–9.

(b) Even assuming that Quon had a reasonable expectation of privacy in his text messages, the search was reasonable under both *O'Connor* approaches, the plurality’s and JUSTICE SCALIA’s. Pp. 9–17.

(1) The Court does not resolve the parties’ disagreement over Quon’s privacy expectation. Prudence counsels caution before the facts in this case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations of employees using employer-provided communication devices. Rapid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior. At present, it is uncertain how workplace norms, and the law’s treatment of them, will evolve. Because it is therefore preferable to dispose of this case on narrower grounds, the Court assumes, *arguendo*, that: (1) Quon had a reasonable privacy expectation; (2) petitioners’ review of the transcript constituted a Fourth Amendment search; and (3) the principles applicable to a government employer’s search of an employee’s physical office apply as well in the electronic sphere. Pp. 9–12.

(2) Petitioners’ warrantless review of Quon’s pager transcript was reasonable under the *O'Connor* plurality’s approach because it was motivated by a legitimate work-related purpose, and because it was not excessive in scope. See 480 U. S., at 726. There were “reasonable grounds for [finding it] necessary for a noninvestigatory work-related purpose,” *ibid.*, in that Chief Scharf had ordered the audit to determine whether the City’s contractual character limit was sufficient to meet the City’s needs. It was also “reasonably related to the objectives of the search,” *ibid.*, because both the City and OPD had a legitimate interest in ensuring that employees were not being forced to pay out of their own pockets for work-related expenses, or, on the other hand, that the City was not paying for extensive personal communications. Reviewing the transcripts was an efficient and expedient way to determine whether either of these factors caused Quon’s overages. And the review was also not “excessively intrusive.” *Ibid.* Although Quon had exceeded his monthly allotment a number of times, OPD requested transcripts for only August and September 2002 in order to obtain a large enough sample to decide the character limits’ efficaciousness, and all the messages that Quon sent while off duty were redacted. And from OPD’s perspective, the fact that Quon likely had only a limited privacy expectation lessened the risk that the review would intrude on highly private details of Quon’s life. Similarly, because the City had a legitimate reason for the search

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and it was not excessively intrusive in light of that justification, the search would be “regarded as reasonable and normal in the private-employer context” and thereby satisfy the approach of JUSTICE SCALIA’s concurrence, *id.*, at 732. Conversely, the Ninth Circuit’s “least intrusive” means approach was inconsistent with controlling precedents. See, *e.g.*, *Vernonia School Dist. 47J v. Acton*, 515 U. S. 646, 663. Pp. 12–16.

(c) Whether the other respondents can have a reasonable expectation of privacy in their text messages to Quon need not be resolved. They argue that because the search was unreasonable as to Quon, it was also unreasonable as to them, but they make no corollary argument that the search, if reasonable as to Quon, could nonetheless be unreasonable as to them. Given this litigating position and the Court’s conclusion that the search was reasonable as to Quon, these other respondents cannot prevail. Pp. 16–17.

529 F. 3d 892, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, THOMAS, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined, and in which SCALIA, J., joined except for Part III–A. STEVENS, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in part and concurring in the judgment.