SUPREME COURT OF THE UNITED STATES

No. 01–332

BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY, ET AL., PETITIONERS *v.* LINDSAY EARLS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 27, 2002]

JUSTICE THOMAS delivered the opinion of the Court.

The Student Activities Drug Testing Policy implemented by the Board of Education of Independent School District No. 92 of Pottawatomie County (School District) requires all students who participate in competitive extracurricular activities to submit to drug testing. Because this Policy reasonably serves the School District's important interest in detecting and preventing drug use among its students, we hold that it is constitutional.

I

The city of Tecumseh, Oklahoma, is a rural community located approximately 40 miles southeast of Oklahoma City. The School District administers all Tecumseh public schools. In the fall of 1998, the School District adopted the Student Activities Drug Testing Policy (Policy), which requires all middle and high school students to consent to drug testing in order to participate in any extracurricular activity. In practice, the Policy has been applied only to competitive extracurricular activities sanctioned by the Oklahoma Secondary Schools Activities Association, such

as the Academic Team, Future Farmers of America, Future Homemakers of America, band, choir, pom pon, cheerleading, and athletics. Under the Policy, students are required to take a drug test before participating in an extracurricular activity, must submit to random drug testing while participating in that activity, and must agree to be tested at any time upon reasonable suspicion. The urinalysis tests are designed to detect only the use of illegal drugs, including amphetamines, marijuana, cocaine, opiates, and barbituates, not medical conditions or the presence of authorized prescription medications.

At the time of their suit, both respondents attended Tecumseh High School. Respondent Lindsay Earls was a member of the show choir, the marching band, the Academic Team, and the National Honor Society. Respondent Daniel James sought to participate in the Academic Team.[1] Together with their parents, Earls and James brought a 42 U. S. C. §1983 action against the School District, challenging the Policy both on its face and as applied to their participation in extracurricular activities.[2] They alleged that the Policy violates the Fourth Amendment as incorporated by the Fourteenth Amendment and requested injunctive and declarative relief. They also argued that the School District failed to identify a special

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[1] The District Court noted that the School District's allegations concerning Daniel James called his standing to sue into question because his failing grades made him ineligible to participate in any interscholastic competition. See 115 F. Supp. 2d 1281, 1282, n. 1 (WD Okla. 2000). The court noted, however, that the dispute need not be resolved because Lindsay Earls had standing, and therefore the court was required to address the constitutionality of the drug testing policy. See *ibid.* Because we are likewise satisfied that Earls has standing, we need not address whether James also has standing.

[2] The respondents did not challenge the Policy either as it applies to athletes or as it provides for drug testing upon reasonable, individualized suspicion. See App. 28.

need for testing students who participate in extracurricular activities, and that the "Drug Testing Policy neither addresses a proven problem nor promises to bring any benefit to students or the school." App. 9.

Applying the principles articulated in *Vernonia School Dist. 47J* v. *Acton,* 515 U. S. 646 (1995), in which we upheld the suspicionless drug testing of school athletes, the United States District Court for the Western District of Oklahoma rejected respondents' claim that the Policy was unconstitutional and granted summary judgment to the School District. The court noted that "special needs" exist in the public school context and that, although the School District did "not show a drug problem of epidemic proportions," there was a history of drug abuse starting in 1970 that presented "legitimate cause for concern." 115 F. Supp. 2d 1281, 1287 (2000). The District Court also held that the Policy was effective because "[i]t can scarcely be disputed that the drug problem among the student body is effectively addressed by making sure that the large number of students participating in competitive, extracurricular activities do not use drugs." *Id.*, at 1295.

The United States Court of Appeals for the Tenth Circuit reversed, holding that the Policy violated the Fourth Amendment. The Court of Appeals agreed with the District Court that the Policy must be evaluated in the "unique environment of the school setting," but reached a different conclusion as to the Policy's constitutionality. 242 F. 3d 1264, 1270 (2001). Before imposing a suspicionless drug testing program, the Court of Appeals concluded that a school "must demonstrate that there is some identifiable drug abuse problem among a sufficient number of those subject to the testing, such that testing that group of students will actually redress its drug problem." *Id.*, at 1278. The Court of Appeals then held that because the School District failed to demonstrate such a problem existed among Tecumseh students participating in com-

petitive extracurricular activities, the Policy was unconstitutional. We granted certiorari, 534 U. S. 1015 (2001), and now reverse.

II

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Searches by public school officials, such as the collection of urine samples, implicate Fourth Amendment interests. See *Vernonia*, *supra,* at 652; cf. *New Jersey* v. *T. L. O.,* 469 U. S. 325, 334 (1985). We must therefore review the School District's Policy for "reasonableness," which is the touchstone of the constitutionality of a governmental search.

In the criminal context, reasonableness usually requires a showing of probable cause. See, *e.g.*, *Skinner* v. *Railway Labor Executives' Assn.,* 489 U. S. 602, 619 (1989). The probable-cause standard, however, "is peculiarly related to criminal investigations" and may be unsuited to determining the reasonableness of administrative searches where the "Government seeks to *prevent* the development of hazardous conditions." *Treasury Employees* v. *Von Raab,* 489 U. S. 656, 667–668 (1989) (internal quotation marks and citations omitted) (collecting cases). The Court has also held that a warrant and finding of probable cause are unnecessary in the public school context because such requirements "'would unduly interfere with the maintenance of the swift and informal disciplinary procedures [that are] needed.'" *Vernonia*, *supra,* at 653 (quoting *T. L. O.*, *supra,* at 340–341).

Given that the School District's Policy is not in any way related to the conduct of criminal investigations, see Part II–B, *infra*, respondents do not contend that the School District requires probable cause before testing students for drug use. Respondents instead argue that drug testing

must be based at least on some level of individualized suspicion. See Brief for Respondents 12–14. It is true that we generally determine the reasonableness of a search by balancing the nature of the intrusion on the individual's privacy against the promotion of legitimate governmental interests. See *Delaware* v. *Prouse,* 440 U. S. 648, 654 (1979). But we have long held that "the Fourth Amendment imposes no irreducible requirement of [individualized] suspicion." *United States* v. *Martinez-Fuerte,* 428 U. S. 543, 561 (1976). "[I]n certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion." *Von Raab*, *supra,* at 668; see also *Skinner*, *supra,* at 624. Therefore, in the context of safety and administrative regulations, a search unsupported by probable cause may be reasonable "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) (quoting *T. L. O., supra,* at 351 (Blackmun, J., concurring in judgment)); see also *Vernonia*, *supra,* at 653; *Skinner*, *supra,* at 619.

Significantly, this Court has previously held that "special needs" inhere in the public school context. See *Vernonia*, *supra,* at 653; *T. L. O., supra,* at 339–340. While schoolchildren do not shed their constitutional rights when they enter the schoolhouse, see *Tinker* v. *Des Moines Independent Community School Dist.,* 393 U. S. 503, 506 (1969), "Fourth Amendment rights . . . are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." *Vernonia*, *supra,* at 656. In particular, a finding of individualized suspicion may not be necessary when a school conducts drug testing.

In *Vernonia*, this Court held that the suspicionless drug testing of athletes was constitutional. The Court, however, did not simply authorize all school drug testing, but rather conducted a fact-specific balancing of the intrusion on the children's Fourth Amendment rights against the promotion of legitimate governmental interests. See 515 U. S., at 652–653. Applying the principles of *Vernonia* to the somewhat different facts of this case, we conclude that Tecumseh's Policy is also constitutional.

A

We first consider the nature of the privacy interest allegedly compromised by the drug testing. See *id.*, at 654. As in *Vernonia*, the context of the public school environment serves as the backdrop for the analysis of the privacy interest at stake and the reasonableness of the drug testing policy in general. See *ibid.* ("Central . . . 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"); see also *id.*, at 665 ("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"); *ibid.* ("[W]hen the government acts as guardian and tutor the relevant question is whether the search is one that a reasonable guardian and tutor might undertake").

A student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety. Schoolchildren are routinely required to submit to physical examinations and vaccinations against disease. See *id.,* at 656. Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults. See *T. L. O.*, *supra,* at 350 (Powell, J., concurring) ("Without first establishing discipline and

maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern").

Respondents argue that because children participating in nonathletic extracurricular activities are not subject to regular physicals and communal undress, they have a stronger expectation of privacy than the athletes tested in *Vernonia*. See Brief for Respondents 18–20. This distinction, however, was not essential to our decision in *Vernonia*, which depended primarily upon the school's custodial responsibility and authority.[3]

In any event, students who participate in competitive extracurricular activities voluntarily subject themselves to many of the same intrusions on their privacy as do athletes.[4] Some of these clubs and activities require occasional off-campus travel and communal undress. All of

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[3]JUSTICE GINSBURG argues that *Vernonia School Dist. 47J* v. *Acton,* 515 U. S. 646 (1995), depended on the fact that the drug testing program applied only to student athletes. But even the passage cited by the dissent manifests the supplemental nature of this factor, as the Court in *Vernonia* stated that "[l]egitimate privacy expectations are *even less* with regard to student athletes." See *post*, at 5 (citing *Vernonia*, 515 U. S., at 657) (emphasis added). In upholding the drug testing program in *Vernonia*, we considered the school context "[c]entral" and "[t]he most significant element." 515 U. S., at 654, 665. This hefty weight on the side of the school's balance applies with similar force in this case even though we undertake a separate balancing with regard to this particular program.

[4]JUSTICE GINSBURG'S observations with regard to extracurricular activities apply with equal force to athletics. See *post*, at 4 ("Participation in such [extracurricular] activities is a key component of school life, essential in reality for students applying to college, and, for all participants, a significant contributor to the breadth and quality of the educational experience").

them have their own rules and requirements for participating students that do not apply to the student body as a whole. 115 F. Supp. 2d, at 1289–1290. For example, each of the competitive extracurricular activities governed by the Policy must abide by the rules of the Oklahoma Secondary Schools Activities Association, and a faculty sponsor monitors the students for compliance with the various rules dictated by the clubs and activities. See *id.*, at 1290. This regulation of extracurricular activities further diminishes the expectation of privacy among schoolchildren. Cf. *Vernonia*, *supra,* at 657 ("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" (internal quotation marks omitted)). We therefore conclude that the students affected by this Policy have a limited expectation of privacy.

B

Next, we consider the character of the intrusion imposed by the Policy. See *Vernonia*, *supra,* at 658. Urination is "an excretory function traditionally shielded by great privacy." *Skinner*, 489 U. S., at 626. But the "degree of intrusion" on one's privacy caused by collecting a urine sample "depends upon the manner in which production of the urine sample is monitored." *Vernonia*, *supra,* at 658.

Under the Policy, a faculty monitor waits outside the closed restroom stall for the student to produce a sample and must "listen for the normal sounds of urination in order to guard against tampered specimens and to insure an accurate chain of custody." App. 199. The monitor then pours the sample into two bottles that are sealed and placed into a mailing pouch along with a consent form signed by the student. This procedure is virtually identical to that reviewed in *Vernonia*, except that it additionally protects privacy by allowing male students to produce

their samples behind a closed stall. Given that we considered the method of collection in *Vernonia* a "negligible" intrusion, 515 U. S., at 658, the method here is even less problematic.

In addition, the Policy clearly requires that the test results be kept in confidential files separate from a student's other educational records and released to school personnel only on a "need to know" basis. Respondents nonetheless contend that the intrusion on students' privacy is significant because the Policy fails to protect effectively against the disclosure of confidential information and, specifically, that the school "has been careless in protecting that information: for example, the Choir teacher looked at students' prescription drug lists and left them where other students could see them." Brief for Respondents 24. But the choir teacher is someone with a "need to know," because during off-campus trips she needs to know what medications are taken by her students. Even before the Policy was enacted the choir teacher had access to this information. See App. 132. In any event, there is no allegation that any other student did see such information. This one example of alleged carelessness hardly increases the character of the intrusion.

Moreover, the test results are not turned over to any law enforcement authority. Nor do the test results here lead to the imposition of discipline or have any academic consequences. Cf. *Vernonia*, *supra,* at 658, and n. 2. Rather, the only consequence of a failed drug test is to limit the student's privilege of participating in extracurricular activities. Indeed, a student may test positive for drugs twice and still be allowed to participate in extracurricular activities. After the first positive test, the school contacts the student's parent or guardian for a meeting. The student may continue to participate in the activity if within five days of the meeting the student shows proof of receiving drug counseling and submits to a second drug test

in two weeks. For the second positive test, the student is suspended from participation in all extracurricular activities for 14 days, must complete four hours of substance abuse counseling, and must submit to monthly drug tests. Only after a third positive test will the student be suspended from participating in any extracurricular activity for the remainder of the school year, or 88 school days, whichever is longer. See App. 201-202.

Given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put, we conclude that the invasion of students' privacy is not significant.

C

Finally, this Court must consider the nature and immediacy of the government's concerns and the efficacy of the Policy in meeting them. See *Vernonia*, 515 U. S., at 660. This Court has already articulated in detail the importance of the governmental concern in preventing drug use by schoolchildren. See *id*., at 661–662. The drug abuse problem among our Nation's youth has hardly abated since *Vernonia* was decided in 1995. In fact, evidence suggests that it has only grown worse.[5] As in *Vernonia*, "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." *Id.,* at 662. The health and safety risks identified in *Vernonia* apply with equal force to Tecumseh's children. Indeed, the

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[5] For instance, the number of 12th graders using any illicit drug increased from 48.4 percent in 1995 to 53.9 percent in 2001. The number of 12th graders reporting they had used marijuana jumped from 41.7 percent to 49.0 percent during that same period. See Department of Health and Human Services, Monitoring the Future: National Results on Adolescent Drug Use, Overview of Key Findings (2001) (Table 1).

nationwide drug epidemic makes the war against drugs a pressing concern in every school.

Additionally, the School District in this case has presented specific evidence of drug use at Tecumseh schools. Teachers testified that they had seen students who appeared to be under the influence of drugs and that they had heard students speaking openly about using drugs. See, *e.g.*, App. 72 (deposition of Dean Rogers); *id.*, at 115 (deposition of Sheila Evans). A drug dog found marijuana cigarettes near the school parking lot. Police officers once found drugs or drug paraphernalia in a car driven by a Future Farmers of America member. And the school board president reported that people in the community were calling the board to discuss the "drug situation." See 115 F. Supp. 2d, at 1285–1286. We decline to second-guess the finding of the District Court that "[v]iewing the evidence as a whole, it cannot be reasonably disputed that the [School District] was faced with a 'drug problem' when it adopted the Policy." *Id.*, at 1287.

Respondents consider the proffered evidence insufficient and argue that there is no "real and immediate interest" to justify a policy of drug testing nonathletes. Brief for Respondents 32. We have recognized, however, that "[a] demonstrated problem of drug abuse . . . [is] not in all cases necessary to the validity of a testing regime," but that some showing does "shore up an assertion of special need for a suspicionless general search program." *Chandler* v. *Miller,* 520 U. S. 305, 319 (1997). The School District has provided sufficient evidence to shore up the need for its drug testing program.

Furthermore, this Court has not required a particularized or pervasive drug problem before allowing the government to conduct suspicionless drug testing. For instance, in *Von Raab* the Court upheld the drug testing of customs officials on a purely preventive basis, without any documented history of drug use by such officials. See 489

U. S., at 673. In response to the lack of evidence relating to drug use, the Court noted generally that "drug abuse is one of the most serious problems confronting our society today," and that programs to prevent and detect drug use among customs officials could not be deemed unreasonable. *Id.*, at 674; cf. *Skinner*, 489 U. S., at 607, and n. 1 (noting nationwide studies that identified on-the-job alcohol and drug use by railroad employees). Likewise, the need to prevent and deter the substantial harm of childhood drug use provides the necessary immediacy for a school testing policy. Indeed, it would make little sense to require a school district to wait for a substantial portion of its students to begin using drugs before it was allowed to institute a drug testing program designed to deter drug use.

Given the nationwide epidemic of drug use, and the evidence of increased drug use in Tecumseh schools, it was entirely reasonable for the School District to enact this particular drug testing policy. We reject the Court of Appeals' novel test that "any district seeking to impose a random suspicionless drug testing policy as a condition to participation in a school activity must demonstrate that there is some identifiable drug abuse problem among a sufficient number of those subject to the testing, such that testing that group of students will actually redress its drug problem." 242 F. 3d, at 1278. Among other problems, it would be difficult to administer such a test. As we cannot articulate a threshold level of drug use that would suffice to justify a drug testing program for schoolchildren, we refuse to fashion what would in effect be a constitutional quantum of drug use necessary to show a "drug problem."

Respondents also argue that the testing of nonathletes does not implicate any safety concerns, and that safety is a "crucial factor" in applying the special needs framework. Brief for Respondents 25–27. They contend that there

must be "surpassing safety interests," *Skinner*, *supra,* at 634, or "extraordinary safety and national security hazards," *Von Raab*, *supra,* at 674, in order to override the usual protections of the Fourth Amendment. See Brief for Respondents 25–26. Respondents are correct that safety factors into the special needs analysis, but the safety interest furthered by drug testing is undoubtedly substantial for all children, athletes and nonathletes alike. We know all too well that drug use carries a variety of health risks for children, including death from overdose.

We also reject respondents' argument that drug testing must presumptively be based upon an individualized reasonable suspicion of wrongdoing because such a testing regime would be less intrusive. See *id.*, at 12–16. In this context, the Fourth Amendment does not require a finding of individualized suspicion, see *supra*, at 5, and we decline to impose such a requirement on schools attempting to prevent and detect drug use by students. Moreover, we question whether testing based on individualized suspicion in fact would be less intrusive. Such a regime would place an additional burden on public school teachers who are already tasked with the difficult job of maintaining order and discipline. A program of individualized suspicion might unfairly target members of unpopular groups. The fear of lawsuits resulting from such targeted searches may chill enforcement of the program, rendering it ineffective in combating drug use. See *Vernonia*, 515 U. S., at 663–664 (offering similar reasons for why "testing based on 'suspicion' of drug use would not be better, but worse"). In any case, this Court has repeatedly stated that reasonableness under the Fourth Amendment does not require employing the least intrusive means, because "[t]he logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers." *Martinez-Fuerte,* 428 U. S., at 556–557, n. 12; see also *Skinner*, *supra,* at 624 ("[A]

showing of individualized suspicion is not a constitutional floor, below which a search must be presumed unreasonable").

Finally, we find that testing students who participate in extracurricular activities is a reasonably effective means of addressing the School District's legitimate concerns in preventing, deterring, and detecting drug use. While in *Vernonia* there might have been a closer fit between the testing of athletes and the trial court's finding that the drug problem was "fueled by the 'role model' effect of athletes' drug use," such a finding was not essential to the holding. 515 U. S., at 663; cf. *id.,* at 684–685 (O'CONNOR, J., dissenting) (questioning the extent of the drug problem, especially as applied to athletes). *Vernonia* did not require the school to test the group of students most likely to use drugs, but rather considered the constitutionality of the program in the context of the public school's custodial responsibilities. Evaluating the Policy in this context, we conclude that the drug testing of Tecumseh students who participate in extracurricular activities effectively serves the School District's interest in protecting the safety and health of its students.

III

Within the limits of the Fourth Amendment, local school boards must assess the desirability of drug testing schoolchildren. In upholding the constitutionality of the Policy, we express no opinion as to its wisdom. Rather, we hold only that Tecumseh's Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren. Accordingly, we reverse the judgment of the Court of Appeals.

It is so ordered.