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Counsel's Office, White House

Rao, Neomi

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W	20	24	4	3	10169	23032	6127	6326

Folder Title:

Steroid Use - Proposals

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	FW: HR1862 Drug Free Sports Act, as Ordered... - To: Neomi Rao - From: Jonathan Mitchell	3	06/16/2005	P5;
002	Email	FW: HR2565 - To Reauthorize the Office of National... - To: Neomi Rao - From: Jonathan Mitchell	3	06/16/2005	P5;
003	Email	RE: DOJ Opinion on Steroid Legislation - To: Allyson Ho - From: Neomi Rao	6	05/24/2005	P5;
004	Email	Fw: DOJ Opinion on Steroid Legislation - To: Neomi Rao - From: Allyson Ho	5	05/24/2005	P5;
005	Email	RE: Latest Copy of Davis/Waxman Steroid Bill -- Close Hold - To: Brian Blake, et al. - From: Neomi Rao	2	05/18/2005	P5;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Rao, Neomi

FOLDER TITLE:
Steroid Use - Proposals

FRC ID:
10169

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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006	Email	Latest Copy of Davis/Waxman Steroid Bill -- Close Hold - To: Tevi Troy, et al. - From: Brian Blake	2	05/17/2005	P5;
007	Draft	[Draft Legislation with Comments]	8	05/18/2005	P5;
008	Report	ONDCP Position on Davis-Waxman Anti-Doping Legislation	5	04/29/2005	P5;
009	Handwritten Note	Steroid Use Meeting	1	05/13/2005	P5;

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Jonathan Mitchell

514 1763

Rao, Neomi J.

From: Drummond, Michael
Sent: Monday, June 13, 2005 10:02 AM
To: Rao, Neomi J.
Subject: FW: LRM JAW111 - - OMB Request for Views on HR1862 Drug Free Sports Act

From: Weinberg, Jeffrey A.
Sent: Monday, June 13, 2005 9:46 AM
To: 'COMMERCE'; 'HHS'; 'JUSTICE'; 'LABOR'; DL-ONDCP-LRM; DL-OSTP-LRM
Cc: DL-WHO-WHGC-LRM; Rhinesmith, Alan B.; Lyon, Randolph M.; Cain, Patricia L.; Vaeth, Matthew; Kuncaitis, Sara E.; Jukes, James J.; Green, Richard E.; Kesselman, Marc; Knepper, John G.; Aitken, Steven D.; Luczynski, Kimberley S.
Subject: LRM JAW111 - - OMB Request for Views on HR1862 Drug Free Sports Act

Please provide views on HR 1862 by 2PM June 16.

Attached is the text of the substitute approved by House Energy and Commerce Subcommittee.

=====
LRM ID: JAW111
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, June 13, 2005

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey A. Weinberg
E-Mail: Jeffrey_A_Weinberg@omb.eop.gov
PHONE: (202)395-3457 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR1862 Drug Free Sports Act

DEADLINE: 2PM Thursday, June 16, 2005

6/13/2005

=====

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS:

DISTRIBUTION LIST

AGENCIES:

025-COMMERCE - Michael A. Levitt - (202) 482-3151
052-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7773
061-JUSTICE - William E. Moschella - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
089-Office of National Drug Control Policy - David Rivait - (202) 395-5505
095-Office of Science and Technology Policy - Heidi Tringe - (202) 456-6124

EOP:

WHGC LRM

Alan B. Rhinesmith
Randolph M. Lyon
Patricia L. Cain
Matthew Vaeth
Sara E. Kuncaitis
James J. Jukes
Richard E. Green

LRM ID: JAW111 SUBJECT: OMB Request for Views on HR1862 Drug Free Sports Act

=====

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

____ (Telephone)

_____ FAX RETURN of _____ pages, attached to this response sheet

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1862
OFFERED BY MS. SCHAKOWSKY

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Drug Free Sports
3 Act”.

4 SEC. 2. DEFINITIONS.

5 As used in this Act—

6 (1) the term “Secretary” refers to the Sec-
7 retary of Commerce; and

8 (2) the term “professional sports associations”
9 means Major League Baseball, the National Basket-
10 ball Association, the National Football League, the
11 National Hockey League, Major League Soccer, the
12 Arena Football League, and any other league or as-
13 sociation that organizes professional athletic com-
14 petitions as the Secretary may determine.

15 SEC. 3. RULES REQUIRING MANDATORY TESTING FOR ATH-
16 LETES.

17 Not later than 270 days after the date of enactment
18 of this Act, the Secretary shall issue regulations requiring



1 professional sports associations operating in interstate
2 commerce to adopt and enforce policies and procedures for
3 testing athletes who participate in their respective associa-
4 tions for the use of performance-enhancing substances.
5 Such policies and procedures shall, at minimum, include
6 the following:

7 (1) TIMING AND FREQUENCY OF RANDOM TEST-
8 ING.—Each athlete shall be tested a minimum of
9 twice each year that such athlete is participating in
10 the activities organized by the professional sports as-
11 sociation. Tests shall be conducted at random inter-
12 vals throughout the entire year, during both the sea-
13 son of play and the off-season, and the athlete shall
14 not be notified in advance of the test.

15 (2) APPLICABLE SUBSTANCES.—The Secretary,
16 in consultation with the Food and Drug Administra-
17 tion, shall, by rule, prescribe the substances for
18 which each athlete shall be tested, which shall
19 include—

20 (A) substances that are—

21 (i) determined by the World Anti-
22 Doping Agency to be prohibited sub-
23 stances; and

24 (ii) determined by the Secretary, to be
25 performance-enhancing substances for any



1 particular sport and for which testing is
2 reasonable and practicable; and

3 (B) such additional substances that the
4 Secretary may determine to be performance-en-
5 hancing substances for any particular sport and
6 for which testing is reasonable and practicable.

7 (3) THERAPEUTIC AND MEDICAL USE EXEMP-
8 TIONS.—The Secretary shall establish criteria by
9 which professional sports associations may provide
10 an athlete with an exemption for a particular sub-
11 stance, if such substance has a legitimate medical or
12 therapeutic use, and if such use is for a documented
13 medical condition of such athlete.

14 (4) METHOD OF TESTING AND ANALYSIS.—
15 Tests shall be administered by an independent party
16 not affiliated with the professional sports associa-
17 tion.

18 (5) PENALTIES.—Subject to the determination
19 made pursuant to an appeal as described in para-
20 graph (6), a positive test shall result in the following
21 penalties:

22 (A) SUSPENSION.—

23 (i) An athlete who tests positive shall
24 be suspended from participation in the pro-



1 professional sports association for a minimum
2 of 2 years.

3 (ii) An athlete who tests positive, hav-
4 ing once previously violated the policies
5 concerning performance enhancing sub-
6 stances, shall be permanently suspended
7 from participation in the professional
8 sports association.

9 All suspensions shall include a loss of pay for
10 the period of the suspension.

11 (B) DISCLOSURE.—The name of any ath-
12 lete having a positive test result resulting in
13 suspension shall be disclosed to the public.

14 (C) EXCEPTIONAL CIRCUMSTANCES.—The
15 Secretary shall establish criteria by which pro-
16 fessional sports associations may reduce the pe-
17 riod of suspension for an athlete who has tested
18 positive for a prohibited substance but who es-
19 tablishes that he or she bears no fault or neg-
20 ligence or no significant fault or negligence for
21 the violation. In establishing such criteria, the
22 Secretary shall consider the policies and prac-
23 tices of the World Anti-Doping Agency regard-
24 ing reduced penalties for exceptional cir-
25 cumstances.

1 (6) APPEALS PROCESS.—

2 (A) HEARING AND FINAL ADJUDICA-
3 TION.—An athlete who tests positive and is
4 subject to penalty under paragraph (5) shall be
5 afforded an opportunity for a prompt hearing
6 and a right to appeal. Such athlete shall file an
7 appeal with the professional sports association
8 within 5 days after learning of the positive test.
9 The association shall hold a hearing before an
10 arbiter established under subparagraph (B) and
11 such arbiter shall reach a final adjudication not
12 later than 30 days after receiving notice of the
13 appeal. The penalties specified in paragraph (5)
14 shall be stayed pending an appeal and final ad-
15 judication.

16 (B) ARBITER.—The arbiter of the appeals
17 process described in subparagraph (A) shall be
18 agreed upon mutually by the professional sports
19 association and the athletes who participate in
20 the activities of such professional sports asso-
21 ciation (or the representatives of such athletes),
22 and shall be approved by the Secretary, and
23 such approval shall not be unreasonably with-
24 held.



1 **SEC. 4. NONCOMPLIANCE.**

2 Beginning 1 year after the date on which the final
3 rules required by section 3 are issued, the Secretary may
4 fine any professional sports association that fails to adopt
5 and enforce testing policies and procedures consistent with
6 such regulations. An initial fine for failing to adopt or en-
7 force such policies and procedures under this Act shall be
8 \$5,000,000 and may be increased by the Secretary by
9 \$1,000,000 for each day of noncompliance. The Secretary
10 may reduce the fines specified in this section upon finding
11 such fines to be unduly burdensome on a professional
12 sports association.

13 **SEC. 5. REPORTS.**

14 (a) REPORT ON EFFECTIVENESS OF REGULA-
15 TIONS.—Not later than 2 years after the date of enact-
16 ment of this Act and every 2 years thereafter, the Sec-
17 retary shall transmit to the Committee on Energy and
18 Commerce of the House of Representatives and the Com-
19 mittee on Commerce, Science, and Transportation of the
20 Senate, a report describing the effectiveness of the regula-
21 tions prescribed pursuant to this Act, the degree to which
22 professional sports associations have complied with such
23 regulations, and any significant examples of noncompli-
24 ance.

25 (b) STUDY ON COLLEGE AND SECONDARY SCHOOL
26 TESTING POLICIES AND PROCEDURES.—

1 (1) STUDY.—The Comptroller General shall
2 conduct a study on the use of performance-enhanc-
3 ing substances by college and secondary school ath-
4 letes. The study shall examine the prohibited sub-
5 stance policies and testing procedures of—

6 (A) intercollegiate athletic associations;

7 (B) college and university athletic depart-
8 ments; and

9 (C) secondary schools and State and re-
10 gional interscholastic athletic associations.

11 (2) REPORT.—Not later than 1 year after the
12 date of enactment of this Act, the Comptroller Gen-
13 eral shall transmit a report to the Committee on En-
14 ergy and Commerce of the House of Representatives
15 and the Committee on Commerce, Science, and
16 Transportation of the Senate. The report shall as-
17 sess the adequacy of such testing policies and proce-
18 dures in detecting and preventing the use of per-
19 formance-enhancing substances, and shall include
20 any recommendations to Congress regarding expand-
21 ing the application of the regulations issued pursu-
22 ant to this Act to such intercollegiate and inter-
23 scholastic athletic associations.



1 **SEC. 6. RULES OF CONSTRUCTION.**

2 (a) PRE-EXISTING POLICIES.—Nothing in this Act
3 shall be construed to prohibit a professional sports asso-
4 ciation from continuing to enforce policies and procedures
5 governing the use of performance-enhancing substances
6 that were in effect on the date of enactment of this Act.

7 (b) MORE STRINGENT POLICIES.—Nothing in this
8 Act shall be construed to prohibit a professional sports
9 association and its athletes (or the representatives of its
10 athletes) from negotiating and agreeing upon policies and
11 procedures governing the use and testing of performance-
12 enhancing substances that are more stringent than those
13 required by this Act.



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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	FW: HR1862 Drug Free Sports Act, as Ordered... - To: Neomi Rao - From: Jonathan Mitchell	3	06/16/2005	P5;

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THE CLEAN SPORTS ACT OF 2005

Chairman Tom Davis and Ranking Member Henry Waxman are today introducing "The Clean Sports Act of 2005" with companion legislation in the Senate to be introduced by Senator John McCain. The Davis-Waxman legislation would amend the Office of National Drug Control Policy Act with the following key provisions:

Strict, Uniform Performance-Enhancing Drug Standards for Professional Sports. The legislation requires that Major League Baseball, the National Football League, the National Basketball Association, and the National Hockey League adopt standards that are consistent with, and at least as stringent as, the Olympic standard established by the U.S. Anti-Doping Agency.

Minimum Testing Requirements. At a minimum, each league must adopt the list of prohibited performance-enhancing drugs included in the Olympic Anti-Doping Code. This list includes steroids, amphetamines and other illegal stimulants, illegal hormones, and "illegal methods," such as blood or gene doping. At minimum, each league must test each player, on an unannounced basis at least three times during the regular season and at least twice during the off-season. The testing policies and procedures must be independently administered.

Penalties for Players. Each professional league must adopt the same stringent penalties for positive tests as the Olympic standard: a two-year ban for the first violation, and a lifetime ban for the second.

Fairness to Players. The legislation guarantees that players who test positive receive their due process rights, including the right to notice, a fair, timely, and expedited hearing, the right to be represented by counsel, and the right to appeal. The legislation also allows penalties to be reduced for a positive test if the athlete establishes that he did not know or suspect, and could not reasonably have known or suspected, that he had used the prohibited substance.

Role of the ONDCP Director. The ONDCP Director is given the authority to require that additional professional sports leagues, or NCAA Division I and II sports, meet the same stringent standards as MLB, the NFL, the NBA, and the NHL. The Director may also modify the standards for individual leagues for exceptional circumstances, provided that these modifications do not reduce the effectiveness of the standards.

Commission on High School and College Athletics and GAO Report. The legislation establishes a Commission to report on the use of performance-enhancing drugs in high school and college athletics, and to provide recommendations for reducing their use. The legislation also requires GAO to conduct a study on the use of performance-enhancing substances by college athletes and examine existing prohibited substance policies and testing procedures.

Statement of Principles

The use of performance-enhancing drugs by professional athletes damages the credibility of their sports, endangers their health and safety, and sets a dangerous example for America's young people. In his 2004 State of the Union Address, President Bush called for "team owners, union representatives, coaches, and players to take the lead, to send the right signal, to get tough, and to get rid of steroids now." Since the President's call, great voluntary progress has been made by the leagues as a result of the collective public pressure from the government, the media, and Americans at large. Despite these results, Congress is now prematurely proposing legislation that would force the leagues to adopt a uniform anti-doping policy regulated by the Federal government.

The Administration position on any legislation that Congress passes seeking to regulate the control of performance-enhancing drugs in professional sports is based on the following principles:

- Leagues should be given time to remedy their problems with performance-enhancing drugs before the government should seek to regulate the leagues.
- Legislation cannot conflict with 4th Amendment protections guaranteed under the Constitution. Legislation designating any government or quasi-government agency responsible for testing for performance-enhancing drugs, including the Department of Commerce, the Federal Trade Commission, the Office of National Drug Control Policy, or the United States Anti-Doping Agency, could result in Constitutional problems.
- America's private professional sports leagues are solely responsible for ensuring their athletes compete free of the influence of performance-enhancing drugs, and should voluntarily improve their testing policies to accomplish this end.
- Leagues should be responsible for all costs associated with ensuring their players are competing without the assistance of performance-enhancing drugs, including drug testing their athletes.

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536 U.S. 822, 122 S.Ct. 2559, 153 L.Ed.2d 735, 70 USLW 4737, 166 Ed. Law Rep. 79, 02 Cal. Daily Op. Serv. 5761, 2002 Daily Journal D.A.R. 7275, 15 Fla. L. Weekly Fed. S 483

Briefs and Other Related Documents

Supreme Court of the United States
BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE
COUNTY, et al., Petitioners,

v.

Lindsay EARLS et al.

No. 01-332

Argued March 19, 2002.

Decided June 27, 2002.

High school students challenged constitutionality of school's suspicionless urinalysis drug testing policy. The United States District Court for the Western District of Oklahoma, David L. Russell, Chief Judge, 115 F.Supp.2d 1281, upheld school's policy, and students appealed. The United States Court of Appeals for the Tenth Circuit, Stephen H. Anderson, Circuit Judge, 242 F.3d 1264, reversed. After granting certiorari, the Supreme Court, Justice Thomas, held that policy requiring all students who participated in competitive extracurricular activities to submit to drug testing was a reasonable means of furthering the school district's important interest in preventing and deterring drug use among its schoolchildren, and therefore did not violate Fourth Amendment.

Reversed.

Justice Breyer, filed concurring opinion.

Justice O'Connor, filed dissenting opinion in which Justice Souter joined.

Justice Ginsburg, filed dissenting opinion in which Justice Stevens, Justice O'Connor, and Justice Souter joined.

West Headnotes

[1] KeyCite Notes

345 Schools

345II Public Schools

345II(L) Pupils

345k169.5 k. Searches and Seizures. Most Cited Cases

Searches by public school officials, such as the collection of urine samples, implicate Fourth Amendment interests. U.S.C.A. Const.Amend. 4.

[2] KeyCite Notes

349 Searches and Seizures

349I In General

349k36 Circumstances Affecting Validity of Warrantless Search, in General

349k36.1 k. In General. Most Cited Cases

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. U.S.C.A. Const.Amend. 4.

[3] KeyCite Notes



345 Schools

345II Public Schools

345II(L) Pupils

345k169.5 k. Searches and Seizures. Most Cited Cases

School board's policy requiring all students who participated in competitive extracurricular activities to submit to drug testing was a reasonable means of furthering the school district's important interest in preventing and deterring drug use among its schoolchildren, and therefore did not violate Fourth Amendment; students affected by policy had a limited expectation of privacy, degree of intrusion caused by policy was negligible given the method of collection of urine samples, and the only consequence of a failed drug test was to limit student's privilege of participating in extracurricular activities. U.S.C.A. Const.Amend. 4.

****2560 *822 Syllabus [FN*]**

FN* 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, 26 S.Ct. 282, 50 L.Ed. 499.

The Student Activities **Drug Testing** Policy (Policy) adopted by the Tecumseh, Oklahoma, **School District** (**School District**) requires all middle and high **school** students to consent to urinalysis **testing for drugs** 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 (OSSAA). Respondent high **school** students and their parents brought this 42 U.S.C. § 1983 action for equitable relief, alleging that the Policy violates the Fourth Amendment. Applying Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564, in which this Court upheld the suspicionless **drug testing of school** athletes, the District Court granted the **School District** summary judgment. The Tenth Circuit reversed, holding that the Policy violated the Fourth Amendment. It concluded that before imposing a suspicionless **drug testing** program a **school** must demonstrate some identifiable **drug** abuse problem among a sufficient number of those **tested**, such that **testing** that group will actually redress its **drug** problem. The court then held that the **School District** had failed to demonstrate such a problem among Tecumseh students participating in competitive extracurricular activities.

Held: Tecumseh's Policy is a reasonable means of furthering the **School District's** important interest in preventing and deterring **drug** use among its schoolchildren and does not violate the Fourth Amendment. Pp. 2564-2569.

(a) Because searches by public **school** officials implicate Fourth Amendment interests, see, e.g., ****2561 Vernonia**, 515 U.S., at 652, 115 S.Ct. 2386, the Court must review the Policy for "reasonableness," the touchstone of constitutionality. In contrast to the criminal context, a probable-cause finding is unnecessary in the public school context because it would unduly interfere with maintenance of the swift and informal disciplinary procedures that are needed. In the public school context, a search may be reasonable when supported by "special needs" beyond the normal need for law enforcement. Because the "reasonableness" inquiry cannot disregard ***823** the schools' custodial and tutelary responsibility for children, *id.*, at 656, 115 S.Ct. 2386, a finding of individualized suspicion may not be necessary. In upholding the suspicionless drug testing of athletes, the Vernonia Court conducted a fact-specific balancing of the intrusion on the children's Fourth Amendment rights against the promotion of legitimate governmental interests. Applying Vernonia's principles to the somewhat different facts of this case demonstrates that Tecumseh's Policy is also constitutional. Pp. 2564-2565.

(b) Considering first the nature of the privacy interest allegedly compromised by the drug testing, see Vernonia, 515 U.S., at 654, 115 S.Ct. 2386, the Court concludes that the students affected by this Policy have a limited expectation of privacy. 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 *Vernonia* athletes. This distinction, however, was not essential in *Vernonia*, which depended primarily upon the school's custodial responsibility and authority. See, e.g., *id.*, at 665, 115 S.Ct. 2386. 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. Some of these clubs and activities require occasional off-campus travel and communal undress, and all of them have their own rules and requirements that do not apply to the student body as a whole. Each of them must abide by OSSAA rules, and a faculty sponsor monitors students for compliance with the various rules dictated by the clubs and activities. Such regulation further diminishes the schoolchildren's expectation of privacy. Pp. 2565-2566.

(c) Considering next the character of the intrusion imposed by the Policy, see *Vernonia*, 515 U.S., at 658, 115 S.Ct. 2386, the Court concludes that the invasion of students' privacy is not significant, given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put. The degree of intrusion caused by collecting a urine sample depends upon the manner in which production of the sample is monitored. 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 to guard against tampered specimens and ensure an accurate chain of custody. This procedure is virtually identical to the "negligible" intrusion approved in *Vernonia*, *ibid.* The Policy clearly requires that test results be kept in confidential files separate from a student's other records and released to school personnel only on a "need to know" basis. Moreover, the test results are not turned over to any law enforcement authority. Nor do the test *824 results lead to the imposition of discipline or have any academic consequences. Rather, the only consequence of a failed drug test is to limit the student's privilege of participating in extracurricular activities. Pp. 2566-2567.

(d) Finally, considering 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, 115 S.Ct. 2386, the Court concludes that the Policy effectively serves the School District's interest in protecting its students' safety and health. Preventing drug use by schoolchildren is an important governmental concern. See *id.*, at 661-662, 115 S.Ct. 2386. The health and safety **2562 risks identified in *Vernonia* apply with equal force to Tecumseh's children. The School District has also presented specific evidence of drug use at Tecumseh schools. Teachers testified that they saw students who appeared to be under the influence of drugs and heard students speaking openly about using drugs. A drug dog found marijuana near the school parking lot. Police found drugs or drug paraphernalia in a car driven by an extracurricular club member. And the school board president reported that people in the community were calling the board to discuss the "drug situation." Respondents consider the proffered evidence insufficient and argue that there is no real and immediate interest to justify a policy of drug testing nonathletes. But a demonstrated drug abuse problem is not always necessary to the validity of a testing regime, even though some showing of a problem does shore up an assertion of a special need for a suspicionless general search program. *Chandler v. Miller*, 520 U.S. 305, 319, 117 S.Ct. 1295, 137 L.Ed.2d 513. The School District has provided sufficient evidence to shore up its program. Furthermore, this Court has not required a particularized or pervasive drug problem before allowing the government to conduct suspicionless drug testing. See, e.g., *Treasury Employees v. Von Raab*, 489 U.S. 656, 673-674, 109 S.Ct. 1384, 103 L.Ed.2d 685. The need to prevent and deter the substantial harm of childhood drug use provides the necessary immediacy for a school testing policy. 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. Pp. 2567-2569.

242 F.3d 1264, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and SCALIA, KENNEDY, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, *post*, p. 2569. O'CONNOR, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 2571. GINSBURG, J., filed a dissenting *825 opinion, in which STEVENS, O'CONNOR, and SOUTER, JJ., joined, *post*, p. 2571.

Linda M. Meoli, Oklahoma City, OK, for petitioners.

Paul T. Clement, Atlanta, GA, for the United States as amicus curiae, by special leave of the Court, supporting the petitioners.

Graham A. Boyd, New Haven, CT, for respondents.

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.

***826 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 ****2563** America, Future Homemakers of America, band, choir, pom-pom, 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. [FN1] Together with their parents, Earls and James brought a Rev. ***827** Stat. § 1979, 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. [FN2] 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 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.

FN1. 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 (W.D.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.

FN2. 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.

Applying the principles articulated in *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (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 ***828** 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 ****2564** participating in competitive extracurricular activities, the Policy was unconstitutional. We granted certiorari, 534 U.S. 1015, 122 S.Ct. 509, 151 L.Ed.2d 418 (2001), and now reverse.

II

[1]  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, 115 S.Ct. 2386; cf. *New Jersey v. T.L.O.*, 469 U.S. 325, 334, 105 S.Ct. 733, 83 L.Ed.2d 720 (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, 109 S.Ct. 1402, 103 L.Ed.2d 639 (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, 109 S.Ct. 1384, 103 L.Ed.2d 685 (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 ***829** procedures [that are] needed." *Vernonia, supra*, at 653, 115 S.Ct. 2386 (quoting *T.L.O., supra*, at 340-341, 105 S.Ct. 733).

[2]  [3]  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, 99 S.Ct. 1391, 59 L.Ed.2d 660 (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, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (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, 109 S.Ct. 1384; see also *Skinner, supra*, at 624, 109 S.Ct. 1402. 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, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) (quoting *T.L.O., supra*, at 351, 105 S.Ct. 733 (Blackmun, J., concurring in judgment)); see also *Vernonia, supra*, at 653, 115 S.Ct. 2386; *Skinner, supra*, at 619, 109 S.Ct. 1402. Significantly, this Court has previously held that "special needs" inhere in the public school context. See *Vernonia, supra*, at 653, 115 S.Ct. 2386; *T.L.O., supra*, at 339-340, 105 S.Ct. 733. While schoolchildren do not shed their constitutional rights when they enter the schoolhouse, see ****2565** *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), "Fourth ***830** Amendment rights ... are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." *Vernonia*, 515 U.S., at 656, 115 S.Ct. 2386. 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 *id.*, at 652-653, 115 S.Ct. 2386. 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, 115 S.Ct. 2386. 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, 115 S.Ct. 2386 ("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 ***831** against disease. See *id.*, at 656, 115 S.Ct. 2386. Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults. See *T.L.O.*, 469 U.S., at 350, 105 S.Ct. 733 (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. [FN3]

FN3. Justice GINSBURG argues that *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (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 2574 (quoting *Vernonia*, 515 U.S., at 657, 115 S.Ct. 2386) (emphasis added). In upholding the drug testing program in *Vernonia*, we considered the school context "[c]entral" and "[t]he most significant element." *Id.*, at 654, 665, 115 S.Ct. 2386. 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.

In any event, students who participate in competitive extracurricular activities ****2566** voluntarily subject themselves to many of the same intrusions on their privacy as do athletes. [FN4] ***832** Some of these clubs and activities require occasional off-campus travel and communal undress. All of 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, 115 S.Ct. 2386 ("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.

FN4. Justice GINSBURG's observations with regard to extracurricular activities apply with equal force to athletics. See *post*, at 2573 ("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").

B

Next, we consider the character of the intrusion imposed by the Policy. See *Vernonia, supra*, at 658, 115 S.Ct. 2386. Urination is "an excretory function traditionally shielded by great privacy." *Skinner*, 489 U.S., at 626, 109 S.Ct. 1402. 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, 115 S.Ct. 2386.

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 *833 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, 115 S.Ct. 2386, 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 ~~**2567 to the imposition of discipline or have any academic consequences.~~ Cf. *Vernonia, supra*, at 658, and n. 2, 115 S.Ct. 2386. 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 *834 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, 115 S.Ct. 2386. This Court has already articulated in detail the importance of the governmental concern in preventing drug use by schoolchildren. See *id.*, at 661-662, 115 S.Ct. 2386. 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. [FN5] 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, 115 S.Ct. 2386. The health and safety risks identified in *Vernonia* apply with equal force to Tecumseh's children. Indeed, the nationwide drug epidemic makes the war against drugs a pressing concern in every school.

FN5. 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).

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 ***835** 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 ****2568** up an assertion of special need for a suspicionless general search program." *Chandler v. Miller*, 520 U.S. 305, 319, 117 S.Ct. 1295, 137 L.Ed.2d 513 (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, 109 S.Ct. 1384. 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, 109 S.Ct. 1384; cf. *Skinner*, 489 U.S., at 607, and n. 1, 109 S.Ct. 1402 (noting nationwide ***836** 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, 109 S.Ct. 1402, or "extraordinary safety and national security hazards," *Von Raab*, *supra*, at 674, 109 S.Ct. 1384, 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 ***837** 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 2564, 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 ****2569** 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, 115 S.Ct. 2386 (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, 96 S.Ct. 3074; see also *Skinner*, *supra*, at 624, 109 S.Ct. 1402 ("[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 ***838** 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, 115 S.Ct. 2386; cf. *id.*, at 684-685, 115 S.Ct. 2386 (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.

Justice BREYER, concurring.

I agree with the Court that *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995), governs this case and requires reversal of the Tenth Circuit's decision. The **school's drug testing** program addresses a serious national problem by focusing upon demand, avoiding the use of criminal or disciplinary sanctions, and relying upon professional counseling and treatment. See App. 201-202. In my view, this program does not violate the Fourth Amendment's prohibition of "unreasonable searches and seizures." I reach this conclusion primarily for the reasons given by the Court, but I would ***839** emphasize several underlying considerations, which I understand to be consistent with the Court's opinion.

I

In respect to the school's need for the drug testing program, I would emphasize the following: First, the drug problem in our Nation's schools is serious in terms of size, the kinds of drugs being used, and the consequences of that use both for our children and the rest of us. See, e.g., White House Nat. Drug Control Strategy 25 (Feb.2002) (drug abuse leads annually to about 20,000 deaths, \$160 billion in economic costs); Department of Health and Human Services, L. Johnston et al., Monitoring the Future: National Results on ****2570** Adolescent Drug Use, Overview of Key Findings 5 (2001) (Monitoring the Future) (more than one-third of all students have used illegal drugs before completing the eighth grade; more than half before completing high school); *ibid.* (about 30% of all students use drugs *other than marijuana* prior to completing high school (emphasis added)); National Center on Addiction and Substance Abuse, Malignant Neglect: Substance Abuse and America's Schools 15 (Sept.2001) (Malignant Neglect) (early use leads to later drug dependence); Nat. Drug Control Strategy, *supra*, at 1 (same).

Second, the government's emphasis upon supply side interdiction apparently has not reduced teenage

use in recent years. Compare R. Perl, CRS Issue Brief for Congress, Drug Control: International Policy and Options CRS-1 (Dec. 12, 2001) (supply side programs account for 66% of the federal drug control budget), with Partnership for a Drug-Free America, 2001 Partnership Attitude Tracking Study: Key Findings 1 (showing increase in teenage drug use in early 1990's, peak in 1997, holding steady thereafter); 2000-2001 PRIDE National Summary: Alcohol, Tobacco, Illicit Drugs, Violence and Related Behaviors, Grades 6 thru 12 (Jul. 16, 2002), <http://www.pridesurveys.com/main/supportfiles/natsum00.pdf>, p. 15 (slight rise in high school drug use in *840 2000-2001); Monitoring the Future, Table 1 (lifetime prevalence of drug use increasing over last 10 years).

Third, public school systems must find effective ways to deal with this problem. Today's public expects its schools not simply to teach the fundamentals, but "to shoulder the burden of feeding students breakfast and lunch, offering before and after school child care services, and providing medical and psychological services," all in a school environment that is safe and encourages learning. Brief for National School Boards Association et al. as *Amici Curiae* 3-4. See also *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 681, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986) (Schools "prepare pupils for citizenship in the Republic [and] inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation") (quoting C. Beard & M. Beard, *New Basic History of the United States* 228 (1968)). The law itself recognizes these responsibilities with the phrase *in loco parentis*-- a phrase that draws its legal force primarily from the needs of younger students (who here are necessarily grouped together with older high school students) and which reflects, not that a child or adolescent lacks an interest in privacy, but that a child's or adolescent's school-related privacy interest, when compared to the privacy interests of an adult, has different dimensions. Cf. *Vernonia, supra*, at 654-655, 115 S.Ct. 2386. A public school system that fails adequately to carry out its responsibilities may well see parents send their children to private or parochial school instead--with help from the State. See *Zelman v. Simmons-Harris*, *ante*, 536 U.S. 639, 122 S.Ct. 2460, 153 L.Ed.2d 604.

Fourth, the program at issue here seeks to discourage demand for drugs by changing the school's environment in order to combat the single most important factor leading schoolchildren to take drugs, namely, peer pressure. Malignant Neglect 4 (students "whose friends use illicit drugs are more than 10 times likelier to use illicit drugs than those whose friends do not"). It offers the adolescent a nonthreatening *841 reason to decline his friend's drug-use invitations, namely, that he intends to play baseball, participate in debate, join the band, or engage in any one of half a dozen useful, interesting, and important activities.

II

In respect to the privacy-related burden that the drug testing program imposes upon students, I would emphasize the following: First, not everyone would agree **2571 with this Court's characterization of the privacy-related significance of urine sampling as "negligible." *Ante*, at 2566 (quoting *Vernonia*, 515 U.S., at 658, 115 S.Ct. 2386). Some find the procedure no more intrusive than a routine medical examination, but others are seriously embarrassed by the need to provide a urine sample with someone listening "outside the closed restroom stall," *ante*, at 2566. When trying to resolve this kind of close question involving the interpretation of constitutional values, I believe it important that the school board provided an opportunity for the airing of these differences at public meetings designed to give the entire community "the opportunity to be able to participate" in developing the drug policy. App. 87. The board used this democratic, participatory process to uncover and to resolve differences, giving weight to the fact that the process, in this instance, revealed little, if any, objection to the proposed testing program.

Second, the testing program avoids subjecting the entire school to testing. And it preserves an option for a conscientious objector. He can refuse testing while paying a price (nonparticipation) that is serious, but less severe than expulsion from the school.

Third, a contrary reading of the Constitution, as requiring "individualized suspicion" in this public school context, could well lead schools to push the boundaries of "individualized suspicion" to its outer limits, using subjective criteria that may "unfairly target members of unpopular groups," *ante*, at 2568-2569, or leave those whose behavior is slightly abnormal *842 stigmatized in the minds of others. See Belsky, *Random vs. Suspicion-Based Drug Testing in the Public Schools--A Surprising Civil Liberties Dilemma*, 27 Okla. City U.L.Rev. 1, 20-21 (forthcoming 2002) (listing court-approved factors justifying suspicion-based drug testing, including tiredness, overactivity, quietness, boisterousness, sloppiness, excessive meticulousness, and tardiness). If so, direct application of the Fourth

Amendment's prohibition against "unreasonable searches and seizures" will further that Amendment's liberty-protecting objectives at least to the same extent as application of the mediating "individualized suspicion" test, where, as here, the testing program is neither criminal nor disciplinary in nature.

* * *

I cannot know whether the school's drug testing program will work. But, in my view, the Constitution does not prohibit the effort. Emphasizing the considerations I have mentioned, along with others to which the Court refers, I conclude that the school's drug testing program, constitutionally speaking, is not "unreasonable." And I join the Court's opinion.

Justice O'CONNOR, with whom Justice SOUTER joins, dissenting.

I dissented in *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995), and continue to believe that case was wrongly decided. Because *Vernonia* is now this Court's precedent, and because I agree that petitioners' program fails even under the balancing approach adopted in that case, I join Justice GINSBURG's dissent.

Justice GINSBURG, with whom Justice STEVENS, JUSTICE O'CONNOR, and Justice SOUTER join, dissenting.

Seven years ago, in *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995), this Court determined that a school *843 district's policy of randomly testing the urine of its student athletes for illicit drugs did not violate the Fourth Amendment. In so ruling, the Court emphasized that drug use "increase[d] the risk of sports--related injury" and that Vernonia's athletes were the "leaders" of an aggressive local "drug culture" that had reached " 'epidemic proportions.' " *Id.*, at 649, 115 S.Ct. 2386. Today, **2572 the Court relies upon *Vernonia* to permit a school district with a drug problem its superintendent repeatedly described as "not ... major," see App. 180, 186, 191, to test the urine of an academic team member solely by reason of her participation in a nonathletic, competitive extracurricular activity--participation associated with neither special dangers from, nor particular predilections for, drug use.

"[T]he legality of a search of a student," this Court has instructed, "should depend simply on the reasonableness, under all the circumstances, of the search." *New Jersey v. T.L.O.*, 469 U.S. 325, 341, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). Although " 'special needs' inhere in the public school context," see *ante*, at 2564 (quoting *Vernonia*, 515 U.S., at 653, 115 S.Ct. 2386), those needs are not so expansive or malleable as to render reasonable any program of student drug testing a school district elects to install. The particular testing program upheld today is not reasonable; it is capricious, even perverse: Petitioners' policy targets for testing a student population least likely to be at risk from illicit drugs and their damaging effects. I therefore dissent.

I

A

A search unsupported by probable cause nevertheless may be consistent with the Fourth Amendment "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, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) (internal quotation marks omitted). In *Vernonia*, this Court made clear that "such 'special needs' ... exist in the public school context." *844 515 U.S., at 653, 115 S.Ct. 2386 (quoting *Griffin*, 483 U.S., at 873, 107 S.Ct. 3164). The Court observed:

"[W]hile children assuredly do not 'shed their constitutional rights ... at the schoolhouse gate,' *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), the nature of those rights is what is appropriate for children in school Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." 515 U.S., at 655-656, 115 S.Ct. 2386 (other citations omitted).

The *Vernonia* Court concluded that a public school district facing a disruptive and explosive drug abuse problem sparked by members of its athletic teams had "special needs" that justified suspicionless testing of district athletes as a condition of their athletic participation.

This case presents circumstances dispositively different from those of *Vernonia*. True, as the Court stresses, Tecumseh students participating in competitive extracurricular activities other than athletics share two relevant characteristics with the athletes of *Vernonia*. First, both groups attend public schools. "[O]ur decision in *Vernonia*," the Court states, "depended primarily upon the school's custodial responsibility and authority." *Ante*, at 2565; see also *ante*, at 2570 (BREYER, J., concurring)

(school districts act *in loco parentis*). Concern for student health and safety is basic to the school's caretaking, and it is undeniable that "drug use carries a variety of health risks for children, including death from overdose." *Ante*, at 2568 (majority opinion).

Those risks, however, are present for *all* schoolchildren. *Vernonia* cannot be read to endorse invasive and suspicionless drug testing of all students upon any evidence of drug use, solely because drugs jeopardize the life and health of those who use them. Many children, like many adults, engage ***845** in dangerous activities on their own time; that the children are enrolled in school scarcely allows government to monitor all ****2573** such activities. If a student has a reasonable subjective expectation of privacy in the personal items she brings to school, see *T.L.O.*, 469 U.S., at 338-339, 105 S.Ct. 733, surely she has a similar expectation regarding the chemical composition of her urine. Had the *Vernonia* Court agreed that public school attendance, in and of itself, permitted the State to test each student's blood or urine for drugs, the opinion in *Vernonia* could have saved many words. See, e.g., 515 U.S., at 662, 115 S.Ct. 2386 ("[I]t must not be lost sight of that [the Vernonia School District] program is directed ... 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.").

The second commonality to which the Court points is the voluntary character of both interscholastic athletics and other competitive extracurricular activities. "By choosing to 'go out for the team,' [school athletes] voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally." *Id.*, at 657, 115 S.Ct. 2386. Comparably, the Court today observes, "students who participate in competitive extracurricular activities voluntarily subject themselves to" additional rules not applicable to other students. *Ante*, at 2565-2566.

The comparison is enlightening. While extracurricular activities are "voluntary" in the sense that they are not required for graduation, they are part of the school's educational program; for that reason, the petitioner (hereinafter School District) is justified in expending public resources to make them available. Participation in such 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. See Brief for Respondents 6; Brief for American Academy of Pediatrics et al. as *Amici Curiae* 8-9. Students ***846** "volunteer" for extracurricular pursuits in the same way they might volunteer for honors classes: They subject themselves to additional requirements, but they do so in order to take full advantage of the education offered them. Cf. *Lee v. Weisman*, 505 U.S. 577, 595, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992) ("Attendance may not be required by official decree, yet it is apparent that a student is not free to absent herself from the graduation exercise in any real sense of the term 'voluntary,' for absence would require forfeiture of those intangible benefits which have motivated the student through youth and all her high school years.").

Voluntary participation in athletics has a distinctly different dimension: Schools regulate student athletes discretely because competitive school sports by their nature require communal undress and, more important, expose students to physical risks that schools have a duty to mitigate. For the very reason that schools cannot offer a program of competitive athletics without intimately affecting the privacy of students, *Vernonia* reasonably analogized school athletes to "adults who choose to participate in a closely regulated industry." 515 U.S., at 657, 115 S.Ct. 2386 (internal quotation marks omitted). Industries fall within the closely regulated category when the nature of their activities requires substantial government oversight. See, e.g., *United States v. Biswell*, 406 U.S. 311, 315-316, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972). Interscholastic athletics similarly require close safety and health regulation; a school's choir, band, and academic team do not.

In short, *Vernonia* applied, it did not repudiate, the principle that "the legality of a search of a student should depend simply on the reasonableness, *under all the circumstances*, of the search." *T.L.O.*, 469 U.S., at 341, 105 S.Ct. 733 (emphasis added). Enrollment in a public school, and election to participate in school activities beyond the bare minimum that the curriculum requires, are indeed factors relevant ****2574** to reasonableness, but they do not on their own justify intrusive, suspicionless searches. *Vernonia*, accordingly, did not rest upon these ***847** factors; instead, the Court performed what today's majority aptly describes as a "fact-specific balancing," *ante*, at 2565. Balancing of that order, applied to the facts now before the Court, should yield a result other than the one the Court announces today.

B

Vernonia initially considered "the nature of the privacy interest upon which the search [there] at issue intrude[d]." 515 U.S., at 654, 115 S.Ct. 2386. The Court emphasized that student athletes' expectations of privacy are necessarily attenuated:

"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.... [T]here is an element of communal undress inherent in athletic participation." *Id.*, at 657, 115 S.Ct. 2386 (internal quotation marks omitted).

Competitive extracurricular activities other than athletics, however, serve students of all manner: the modest and shy along with the bold and uninhibited. Activities of the kind plaintiff-respondent Lindsay Earls pursued--choir, show choir, marching band, and academic team--afford opportunities to gain self-assurance, to "come to know faculty members in a less formal setting than the typical classroom," and to acquire "positive social supports and networks [that] play a critical role in periods of heightened stress." Brief for American Academy of Pediatrics et al. as *Amici Curiae* 13.

On "occasional out-of-town trips," students like Lindsay Earls "must sleep together in communal settings and use *848 communal bathrooms." 242 F.3d 1264, 1275 (C.A.10 2001). But those situations are hardly equivalent to the routine communal undress associated with athletics; the School District itself admits that when such trips occur, "public-like restroom facilities," which presumably include enclosed stalls, are ordinarily available for changing, and that "more modest students" find other ways to maintain their privacy. Brief for Petitioners 34. [FN1]

FN1. According to Tecumseh's choir teacher, choir participants who

chose not to wear their choir uniforms to school on the days of competitions could change either in "a rest room in a building" or on the bus, where "[m]any of them have figured out how to [change] without having [anyone] ... see anything." 2 Appellants' App. in No. 00-6128 (CA10), p. 296.

After describing school athletes' reduced expectation of privacy, the *Vernonia* Court turned to "the character of the intrusion ... complained of." 515 U.S., at 658, 115 S.Ct. 2386. Observing that students produce urine samples in a bathroom stall with a coach or teacher outside, *Vernonia* typed the privacy interests compromised by the process of obtaining samples "negligible." *Ibid.* As to the required pretest disclosure of prescription medications taken, the Court assumed that "the School District would have permitted [a student] to provide the requested information in a confidential manner--for example, in a sealed envelope delivered to the testing lab." *Id.*, at 660, 115 S.Ct. 2386. On that assumption, the Court concluded that Vernonia's athletes faced no significant invasion of privacy.

In this case, however, Lindsay Earls and her parents allege that the School District handled personal information collected under the policy carelessly, with little regard for its confidentiality. Information about **2575 students' prescription drug use, they assert, was routinely viewed by Lindsay's choir teacher, who left files containing the information unlocked and unsealed, where others, including students, could see them; and test results were given out to all activity sponsors whether or not they had a clear "need to know." See *849 Brief for Respondents 6, 24; App. 105-106, 131. But see *id.*, at 199 (policy requires that "[t]he medication list shall be submitted to the lab in a sealed and confidential envelope and shall not be viewed by district employees").

In granting summary judgment to the School District, the District Court observed that the District's "[p]olicy expressly provides for confidentiality of test results, and the Court must assume that the confidentiality provisions will be honored." 115 F.Supp.2d 1281, 1293 (W.D.Okla.2000). The assumption is unwarranted. Unlike *Vernonia*, where the District Court held a bench trial before ruling in the School District's favor, this case was decided by the District Court on summary judgment. At that stage, doubtful matters should not have been resolved in favor of the judgment seeker. See *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962) (*per curiam*) ("On summary judgment the inferences to be drawn from the underlying facts contained in [affidavits, attached exhibits, and depositions] must be viewed in the light most favorable to the party opposing the motion."); see also 10A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2716, pp. 274-277 (3d ed.1998).

Finally, the "nature and immediacy of the governmental concern," *Vernonia*, 515 U.S., at 660, 115 S.Ct. 2386, faced by the Vernonia **School** District dwarfed that confronting Tecumseh administrators. Vernonia initiated its **drug testing** policy in response to an alarming situation: "[A] large segment of the student body, particularly those involved in interscholastic athletics, was in a state of rebellion ... fueled by alcohol and **drug** abuse as well as the student[s'] misperceptions about the **drug** culture." *Id.*, at 649, 115 S.Ct. 2386 (internal quotation marks omitted). Tecumseh, by contrast, repeatedly reported to the Federal Government during the period leading up to the adoption of the policy that "types of **drugs** [other than alcohol and tobacco] including controlled dangerous substances, are present [in the **schools**] but have not identified themselves as major problems at this time." 1998-1999 Tecumseh ***850 School's** Application for Funds under the Safe and **Drug-Free Schools** and Communities Program, reprinted at App. 191; accord, 1996-1997 Application, reprinted at App. 186; 1995-1996 Application, reprinted at App. 180. [FN2] As the Tenth Circuit observed, "without a demonstrated **drug** abuse problem among the group being **tested**, the efficacy of the District's solution to its perceived problem is ... greatly diminished." 242 F.3d, at 1277.

FN2. The Court finds it sufficient that there be evidence of *some drug* use in Tecumseh's **schools**: "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.'" *Ante*, at 2568. One need not establish a bright-line "constitutional quantum of **drug** use" to recognize the relevance of the superintendent's reports characterizing **drug** use among Tecumseh's students as "not ... [a] major proble[m]," App. 180, 186, 191.

The **School** District cites *Treasury Employees v. Von Raab*, 489 U.S. 656, 673-674, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989), in which this Court permitted random **drug testing** of customs agents absent "any perceived **drug** problem among Customs employees," given that "**drug** abuse is one of the most serious problems confronting our society today." See also *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 607, and n. 1, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989) (upholding random **drug** and alcohol **testing** of railway employees based upon industry-***2576** wide, rather than railway-specific, evidence of **drug** and alcohol problems). The **tests** in *Von Raab* and *Railway Labor Executives*, however, were installed to avoid enormous risks to the lives and limbs of others, not dominantly in response to the health risks to users invariably present in any case of **drug** use. See *Von Raab*, 489 U.S., at 674, 109 S.Ct. 1384 (**drug** use by customs agents involved in **drug** interdiction creates "extraordinary safety and national security hazards"); *Railway Labor Executives*, 489 U.S., at 628, 109 S.Ct. 1402 (railway operators "discharge duties fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences"); see ***851** also *Chandler v. Miller*, 520 U.S. 305, 321, 117 S.Ct. 1295, 137 L.Ed.2d 513 (1997) ("*Von Raab* must be read in its unique context").

Not only did the Vernonia and Tecumseh districts confront drug problems of distinctly different magnitudes, they also chose different solutions: Vernonia limited its policy to athletes; Tecumseh indiscriminately subjected to testing all participants in competitive extracurricular activities. Urging that "the safety interest furthered by drug testing is undoubtedly substantial for all children, athletes and nonathletes alike," *ante*, at 2568, the Court cuts out an element essential to the *Vernonia* judgment. Citing medical literature on the effects of combining illicit drug use with physical exertion, the *Vernonia* Court emphasized that "the particular drugs screened by [Vernonia's] Policy have been demonstrated to pose substantial physical risks to athletes." 515 U.S., at 662, 115 S.Ct. 2386; see also *id.*, at 666, 115 S.Ct. 2386 (GINSBURG, J., concurring) (*Vernonia* limited to "those seeking to engage with others in team sports"). We have since confirmed that these special risks were necessary to our decision in *Vernonia*. See *Chandler*, 520 U.S., at 317, 117 S.Ct. 1295 (*Vernonia* "emphasized the importance of deterring drug use by schoolchildren and the risk of injury a drug-using student athlete cast on himself and those engaged with him on the playing field"); see also *Ferguson v. Charleston*, 532 U.S. 67, 87, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001) (KENNEDY, J., concurring) (Vernonia's policy had goal of " '[d]eterring drug use by our Nation's schoolchildren,' and particularly by student-athletes, because 'the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high' ") (quoting *Vernonia*, 515 U.S., at 661-662, 115

S.Ct. 2386).

At the margins, of course, no policy of *random* drug testing is perfectly tailored to the harms it seeks to address. The School District cites the dangers faced by members of the band, who must "perform extremely precise routines with heavy equipment and instruments in close proximity to other students," and by Future Farmers of America, who *852 "are required to individually control and restrain animals as large as 1500 pounds." Brief for Petitioners 43. For its part, the United States acknowledges that "the linebacker faces a greater risk of serious injury if he takes the field under the influence of drugs than the drummer in the halftime band," but parries that "the risk of injury to a student who is under the influence of drugs while playing golf, cross country, or volleyball (sports covered by the policy in *Vernonia*) is scarcely any greater than the risk of injury to a student ... handling a 1500-pound steer (as [Future Farmers of America] members do) or working with cutlery or other sharp instruments (as [Future Homemakers of America] members do)." Brief for United States as *Amicus Curiae* 18. One can demur to the Government's view of the risks drug use poses to golfers, cf. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 687, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001) ("golf is a low intensity activity"), for golfers were surely as marginal among the linebackers, sprinters, and basketball players targeted for testing in *Vernonia* as steer-handlers are among the choristers, musicians, and academic-team members **2577 subject to urinalysis in *Tecumseh*. [FN3] Notwithstanding nightmarish images of out-of-control flatware, livestock run amok, and colliding tubas disturbing the peace and quiet of *Tecumseh*, the great majority of students the School District seeks to test in truth are engaged in activities that are not safety sensitive to an unusual degree. There is a difference between imperfect tailoring and no tailoring at all.

FN3. Cross-country runners and volleyball players, by contrast, engage in substantial physical exertion. See *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 663, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995) (describing special dangers of combining drug use with athletics generally).

The *Vernonia* district, in sum, had two good reasons for testing athletes: Sports team members faced special health risks and they "were the leaders of the drug culture." *Vernonia*, 515 U.S., at 649, 115 S.Ct. 2386. No similar reason, and no other tenable justification, explains *Tecumseh*'s decision to target *853 for testing all participants in every competitive extracurricular activity. See *Chandler*, 520 U.S., at 319, 117 S.Ct. 1295 (drug testing candidates for office held incompatible with Fourth Amendment because program was "not well designed to identify candidates who violate antidrug laws").

Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers. See, e.g., N. Zill, C. Nord, & L. Loomis, *Adolescent Time Use, Risky Behavior, and Outcomes* 52 (1995) (tenth graders "who reported spending no time in school-sponsored activities were ... 49 percent more likely to have used drugs" than those who spent 1-4 hours per week in such activities). Even if students might be deterred from drug use in order to preserve their extracurricular eligibility, it is at least as likely that other students might forgo their extracurricular involvement in order to avoid detection of their drug use. *Tecumseh*'s policy thus falls short doubly if deterrence is its aim: It invades the privacy of students who need deterrence least, and risks steering students at greatest risk for substance abuse away from extracurricular involvement that potentially may palliate drug problems. [FN4]

FN4. The Court notes that programs of individualized suspicion, unlike those using random testing, "might unfairly target members of unpopular groups." *Ante*, at 2568-2569; see also *ante*, at 2571 (BREYER, J., concurring). Assuming, *arguendo*, that this is so, the School District here has not exchanged individualized suspicion for random testing. It has installed random testing in addition to, rather than in lieu of, testing "at any time when there is reasonable suspicion." App. 197.

To summarize, this case resembles *Vernonia* only in that the School Districts in both cases

conditioned engagement in activities outside the obligatory curriculum on random subjection to urinalysis. The defining characteristics of the two programs, however, are entirely dissimilar. The Vernonia district sought to test a subpopulation of students distinguished by their reduced expectation of privacy, their special ***854** susceptibility to drug-related injury, and their heavy involvement with drug use. The Tecumseh district seeks to test a much larger population associated with none of these factors. It does so, moreover, without carefully safeguarding student confidentiality and without regard to the program's untoward effects. A program so sweeping is not sheltered by *Vernonia*; its unreasonable reach renders it impermissible under the Fourth Amendment.

II

In *Chandler*, this Court inspected "Georgia's requirement that candidates for state office pass a drug test"; we held that the requirement "d[id] not fit within the closely guarded category of constitutionally permissible suspicionless searches." 520 U.S., at 309, 117 S.Ct. 1295. Georgia's testing prescription, the record showed, ****2578** responded to no "concrete danger," *id.*, at 319, 117 S.Ct. 1295, was supported by no evidence of a particular problem, and targeted a group not involved in "high-risk, safety-sensitive tasks," *id.*, at 321-322, 117 S.Ct. 1295. We concluded:

"What is left, after close review of Georgia's scheme, is the image the State seeks to project. By requiring candidates for public office to submit to drug testing, Georgia displays its commitment to the struggle against drug abuse The need revealed, in short, is symbolic, not 'special,' as that term draws meaning from our case law." *Ibid.*

Close review of Tecumseh's policy compels a similar conclusion. That policy was not shown to advance the "'special needs' [existing] in the public school context [to maintain] ... swift and informal disciplinary procedures ... [and] order in the schools," *Vernonia*, 515 U.S., at 653, 115 S.Ct. 2386 (internal quotation marks omitted). See *supra*, at 2573-2574, 2575-2577. What is left is the School District's undoubted purpose to heighten awareness of its abhorrence of, and strong stand against, drug abuse. But the desire to augment communication ***855** of this message does not trump the right of persons--even of children within the schoolhouse gate--to be "secure in their persons ... against unreasonable searches and seizures." U.S. Const., Amdt. 4.

In *Chandler*, the Court referred to a pathmarking dissenting opinion in which "Justice Brandeis recognized the importance of teaching by example: 'Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.'" 520 U.S., at 322, 117 S.Ct. 1295 (quoting *Olmstead v. United States*, 277 U.S. 438, 485, 48 S.Ct. 564, 72 L.Ed. 944 (1928)). That wisdom should guide decisionmakers in the instant case: The government is nowhere more a teacher than when it runs a public school.

It is a sad irony that the petitioning School District seeks to justify its edict here by trumpeting "the schools' custodial and tutelary responsibility for children." *Vernonia*, 515 U.S., at 656, 115 S.Ct. 2386. In regulating an athletic program or endeavoring to combat an exploding drug epidemic, a school's custodial obligations may permit searches that would otherwise unacceptably abridge students' rights. When custodial duties are not ascendant, however, schools' tutelary obligations to their students require them to "teach by example" by avoiding symbolic measures that diminish constitutional protections. "That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 637, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943).

* * *

For the reasons stated, I would affirm the judgment of the Tenth Circuit declaring the testing policy at issue unconstitutional.

U.S., 2002.

Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls
536 U.S. 822, 122 S.Ct. 2559, 153 L.Ed.2d 735, 70 USLW 4737, 166 Ed. Law Rep. 79, 02 Cal. Daily Op. Serv. 5761, 2002 Daily Journal D.A.R. 7275, 15 Fla. L. Weekly Fed. S 483

Briefs and Other Related Documents (Back to top)

- [2002 WL 485032](#), 70 USLW 3612 (Oral Argument) Oral Argument (Mar. 19, 2002)
- [2002 WL 377656](#) (Appellate Brief) PETITIONER'S REPLY BRIEF (Mar. 06, 2002)
- [2002 WL 243578](#) (Appellate Brief) BRIEF OF RESPONDENTS (Feb. 07, 2002)
- [2002 WL 206367](#) (Appellate Brief) Brief of Amici Curiae American Academy of Pediatrics, National

Education Association, American Public Health Association, National Association of Social Workers, NASW-Oklahoma Chapter, National Council on Alcoholism and Drug Dependence, Center for Law and Education, Loyola Child Law Center, and Lawyers for Children, Inc., In Support of Respondents (Feb. 06, 2002)

- [2002 WL 206374](#) (Appellate Brief) BRIEF OF JEAN BURKETT ET AL. AS AMICI CURIAE IN SUPPORT OF RESPONDENTS (Feb. 06, 2002)
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- [2002 WL 215602](#) (Appellate Brief) BRIEF AMICUS CURIAE OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS, THE CATO INSTITUTE, AND COMMON SENSE FOR DRUG POLICY IN SUPPORT OF RESPONDENTS (Feb. 06, 2002)
- [2002 WL 215611](#) (Appellate Brief) Brief Amicus Curiae of the Rutherford Institute in Support of Respondents (Feb. 06, 2002)
- [2002 WL 257541](#) (Appellate Brief) Brief of Juvenile Law Center; Advocates for Children of New York; Children & Family Justice Center; Education Law Center-Nj; Education Law Center-PA; Justice Policy Institute; Juvenile Justice Project of Louisiana; Juvenile Rights Advocacy Project; National Center for Youth Law; the Sentencing Project; University of the District of Columbia, Juvenile Law Clinic; Youth Law Center; and Law Professors Theresa Glennon, Martin Guggenheim, Randy Hertz, Wallace J. Mlyniec, Francine Sherman & Joseph Tu (Feb. 06, 2002)
- [2001 WL 1673415](#) (Appellate Brief) BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS (Dec. 26, 2001)
- [2001 WL 1692467](#) (Appellate Brief) BRIEF OF AMICI CURIAE NATIONAL SCHOOL BOARDS ASSOCIATION, ET AL., IN SUPPORT OF RESPONDENTS (Dec. 26, 2001)
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- [2001 WL 1819195](#) (Appellate Brief) BRIEF OF PETITIONERS (Dec. 21, 2001)
- [2001 WL 34093961](#) (Joint Appendix) (Dec. 21, 2001)
- [2001 WL 34092066](#) (Appellate Petition, Motion and Filing) Brief in Opposition (Sep. 24, 2001)

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520 U.S. 305, 137 L.Ed.2d 513

1³⁰⁵ Walker L. CHANDLER,
et al., Petitioners,

v.

Zell D. MILLER, Governor
of Georgia, et al.
No. 96-126.

Argued Jan. 14, 1997.

Decided April 15, 1997.

Candidates for high office in Georgia brought action challenging constitutionality of statute requiring candidates to submit to and pass drug test to qualify for state office. The United States District Court for the Northern District of Georgia, Orinda D. Evans, J., denied relief, and candidates appealed. The Eleventh Circuit Court of Appeals, 73 F.3d 1543, affirmed, and certiorari was granted. The Supreme Court, Justice Ginsburg, held that Georgia's requirement that candidates for state office pass drug test did not fit within closely guarded category of constitutionally permissible suspicionless searches.

Reversed.

Chief Justice Rehnquist filed dissenting opinion.

1. Searches and Seizures ⇨37

Fourth Amendment's restraint on government conduct generally bars officials from undertaking search and seizure absent individualized suspicion. U.S.C.A. Const.Amend. 4.

2. Searches and Seizures ⇨78

Georgia's requirement that candidates for state office pass drug test did not fit within closely guarded category of constitutionally permissible suspicionless searches. U.S.C.A. Const.Amend. 4; O.C.G.A. § 21-2-140.

3. Federal Courts ⇨13.20

Action challenging constitutionality of Georgia statute requiring candidates for state office to pass drug test was not rendered moot after election from which action

arose was held, where one of the candidates challenging statute represented that he planned to run again. O.C.G.A. § 21-2-140.

4. Searches and Seizures ⇨78

Georgia's drug testing requirement for candidates for state office, imposed by law and enforced by state officials, effected "search" within meaning of Fourth and Fourteenth Amendments. U.S.C.A. Const. Amends. 4, 14; O.C.G.A. § 21-2-140.

See publication Words and Phrases for other judicial constructions and definitions.

5. Searches and Seizures ⇨78

Government-ordered collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable; these intrusions are searches under the Fourth Amendment. U.S.C.A. Const.Amend. 4.

6. Searches and Seizures ⇨23

To be reasonable under the Fourth Amendment, search ordinarily must be based on individualized suspicion of wrongdoing. U.S.C.A. Const.Amend. 4.

7. Searches and Seizures ⇨23

Particularized exceptions to rule requiring search to be supported by individual suspicion of wrongdoing are sometimes warranted based on special needs, beyond normal need for law enforcement. U.S.C.A. Const. Amend. 4.

8. Searches and Seizures ⇨23

When special needs—concerns other than crime detection—are alleged in justification of Fourth Amendment intrusion, courts must undertake context-specific inquiry, examining closely competing private and public interests advanced by parties. U.S.C.A. Const.Amend. 4.

9. States ⇨47

States enjoy wide latitude to establish conditions of candidacy for state office, but in setting such conditions, they may not disregard basic constitutional protections.

10. States ⇨47

State's power to establish qualifications for state offices under Tenth Amendment

does not diminish constraints on state action imposed by Fourth Amendment. U.S.C.A. Const.Amend. 4, 10.

11. Searches and Seizures ⇐78

Drug testing method described in Georgia statute requiring candidates for state office to pass drug test was not excessively intrusive, for purposes of Fourth Amendment analysis; statute permitted candidate to provide urine specimen in office of his or her private physician, and results of test were first given to candidate, who controlled further dissemination. U.S.C.A. Const.Amend. 4; O.C.G.A. § 21-2-140.

12. Searches and Seizures ⇐78

Proffered special need for drug testing must be substantial—important enough to override individual's acknowledged privacy interests, sufficiently vital to suppress Fourth Amendment's normal requirement of individualized suspicion. U.S.C.A. Const.Amend. 4.

13. Searches and Seizures ⇐78

Alleged incompatibility of unlawful drug use with holding high state office did not establish special need for drug testing of candidates for state office as required to depart from Fourth Amendment's requirement of individualized suspicion for search; there was no evidence of drug problem among state's elected officials, those officials typically did not perform high-risk, safety-sensitive tasks, and required certification immediately aided no interdiction effort. U.S.C.A. Const.Amend. 4; O.C.G.A. § 21-2-140.

14. Searches and Seizures ⇐23

Where risk to public safety is substantial and real, blanket suspicionless searches calibrated to risk may rank as "reasonable" for Fourth Amendment purposes. U.S.C.A. Const.Amend. 4.

15. Searches and Seizures ⇐37

Where public safety is not genuinely in jeopardy, Fourth Amendment precludes sus-

picionless search, no matter how conveniently arranged. U.S.C.A. Const.Amend. 4.

Syllabus *

A Georgia statute requires candidates for designated state offices to certify that they have taken a urinalysis drug test within 30 days prior to qualifying for nomination or election and that the test result was negative. Petitioners, Libertarian Party nominees for state offices subject to the statute's requirements, filed this action in the District Court about one month before the deadline for submission of the certificates. Naming as defendants the Governor and two officials involved in the statute's administration, petitioners asserted, *inter alia*, that the drug tests violated their rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution. The District Court denied petitioners' motion for a preliminary injunction and later entered final judgment for respondents. Relying on this Court's precedents sustaining drug-testing programs for student athletes, *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 650, 665-666, 115 S.Ct. 2386, 2396-2397, 132 L.Ed.2d 564, Customs Service employees, *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 659, 109 S.Ct. 1384, 1387, 103 L.Ed.2d 685, and railway employees, *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 608-613, 109 S.Ct. 1402, 1408-1411, 103 L.Ed.2d 639, the Eleventh Circuit affirmed. The court accepted as settled law that the tests were searches, but reasoned that, as was true of the drug-testing programs at issue in *Skinner* and *Von Raab*, the statute served "special needs," interests other than the ordinary needs of law enforcement. Balancing the individual's privacy expectations against the State's interest in the drug-testing program, the court held the statute, as applied to petitioners, not inconsistent with the Fourth and Fourteenth Amendments.

Held: Georgia's requirement that candidates for state office pass a drug test does not fit within the closely guarded category of

* 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, 26 S.Ct. 282, 287, 50 L.Ed. 499.

constitutionally permissible suspicionless searches. Pp. 1300–1305.

(a) It is uncontested that Georgia's drug-testing requirement, imposed by law and enforced by state officials, effects a search within the meaning of the Fourth and Fourteenth Amendments. The pivotal question here is whether the searches are reasonable. To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing. See *Vernonia*, 515 U.S., at 652–653; 115 S.Ct., at 2391. But particularized exceptions to the main rule are sometimes ³⁰⁶warranted based on “special needs, beyond the normal need for law enforcement.” See *Skinner*, 489 U.S., at 619, 109 S.Ct., at 1414. When such “special needs” are alleged, courts must undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties. See *Von Raab*, 489 U.S., at 665–666, 109 S.Ct., at 1390–1391. In evaluating Georgia's ballot-access, drug-testing statute—a measure plainly not tied to individualized suspicion—the Eleventh Circuit sought to balance the competing interests in line with this Court's precedents most immediately in point: *Skinner*, *Von Raab*, and *Vernonia*. Pp. 1300–1302.

(b) These precedents remain the guides for assessing the validity of the Georgia statute despite respondents' invitation to apply a framework extraordinarily deferential to state measures setting conditions of candidacy for state office. No precedent suggests that a State's sovereign power to establish qualifications for state offices diminishes the constraints on state action imposed by the Fourth Amendment. Pp. 1302–1303.

(c) Georgia's testing method is relatively noninvasive; therefore, if the “special need” showing had been made, the State could not be faulted for excessive intrusion. However, Georgia has failed to show a special need that is substantial—important enough to override the individual's acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion. Respondents contend that unlawful drug use is incompatible with holding high state office because such

drug use draws into question an official's judgment and integrity; jeopardizes the discharge of public functions, including antidrug law enforcement efforts; and undermines public confidence and trust in elected officials. Notably lacking in respondents' presentation is any indication of a concrete danger demanding departure from the Fourth Amendment's main rule. The statute was not enacted, as respondents concede, in response to any fear or suspicion of drug use by state officials. A demonstrated problem of drug abuse, while not in all cases necessary to the validity of a testing régime, see *Von Raab*, 489 U.S., at 673–675, 109 S.Ct., at 1395, would shore up an assertion of special need for a suspicionless general search program, see *Skinner*, 489 U.S., at 606–608, 109 S.Ct., at 1407–1408; *Vernonia*, 515 U.S., at 662–663, 115 S.Ct., at 2390. In contrast to the effective testing regimes upheld in *Skinner*, *Von Raab*, and *Vernonia*, Georgia's certification requirement is not well designed to identify candidates who violate antidrug laws and is not a credible means to deter illicit drug users from seeking state office. The test date is selected by the candidate, and thus all but the prohibitively addicted could abstain for a pretest period sufficient to avoid detection. Respondents' reliance on this Court's decision in *Von Raab*, which sustained a drug-testing³⁰⁷ program for Customs Service officers prior to promotion or transfer to certain high-risk positions, despite the absence of any documented drug abuse problem among Service employees, 489 U.S., at 660, 109 S.Ct., at 1388, is misplaced. Hardly a decision opening broad vistas for suspicionless searches, *Von Raab* must be read in its unique context. Drug interdiction had become the agency's primary enforcement mission. The covered posts directly involved drug interdiction or otherwise required Customs officers to carry firearms, the employees would have access to vast sources of valuable contraband, and officers had been targets of and some had succumbed to bribery by drug smugglers. Moreover, it was not feasible to subject the Customs Service employees to the kind of day-to-day scrutiny that is the norm in more traditional office environments. In telling contrast, the day-

to-day conduct of candidates for public office attracts attention notably beyond the norm in ordinary work environments. What is left, after close review of Georgia's scheme, is that the State seeks to display its commitment to the struggle against drug abuse. But Georgia asserts no evidence of a drug problem among the State's elected officials, those officials typically do not perform high-risk, safety-sensitive tasks, and the required certification immediately aids no interdiction effort. The need revealed is symbolic, not "special." The Fourth Amendment shields society from state action that diminishes personal privacy for a symbol's sake. Pp. 1303-1305.

(d) The Court expresses no opinion on medical examinations designed to provide certification of a candidate's general health or on financial disclosure requirements, and it does not speak to drug testing in the private sector, a domain unguarded by Fourth Amendment constraints. P. 1305.

73 F.3d 1543, reversed.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. REHNQUIST, C.J., filed a dissenting opinion, *post*, p. 1305.

Walker L. Chandler, petitioner pro se.

Patricia Guilday, Asst. Atty. Gen., Atlanta, Ga., for respondents.

For U.S. Supreme Court briefs, see:

1996 WL 656352 (Pet.Brief)

1996 WL 708930 (Resp.Brief)

1996 WL 739254 (Reply.Brief)

[³⁰⁸Justice GINSBURG delivered the opinion of the Court.

[1] The Fourth Amendment requires government to respect "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." This restraint on government conduct generally bars officials from undertaking a search or seizure absent individualized suspicion. Searches conducted without grounds for suspicion of particular individuals have been upheld, however, in "certain limited circumstances." See *Treasury Employees v. Von Raab*, 489 U.S. 656, 668, 109 S.Ct. 1384, 1392, 103 L.Ed.2d 685 (1989). These circumstances include brief stops for questioning or

observation at a fixed Border Patrol checkpoint, *United States v. Martinez-Fuerte*, 428 U.S. 543, 545-550, 566-567, 96 S.Ct. 3074, 3077-3079, 3086-3087, 49 L.Ed.2d 1116 (1976), or at a sobriety checkpoint, *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 447, 455, 110 S.Ct. 2481, 2483-2484, 2487-2488, 110 L.Ed.2d 412 (1990), and administrative inspections in "closely regulated" businesses, *New York v. Burger*, 482 U.S. 691, 703-704, 107 S.Ct. 2636, 2644-2645, 96 L.Ed.2d 601 (1987).

[2] Georgia requires candidates for designated state offices to certify that they have taken a drug test and that the test result was negative. Ga.Code Ann. § 21-2-140 (1993) (hereinafter § 21-2-140). We confront in this case the question whether that requirement ranks among the limited circumstances in which suspicionless searches are warranted. Relying on this Court's precedents sustaining drug-testing [³⁰⁹programs for student athletes, customs employees, and railway employees, see *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 650, 665-666, 115 S.Ct. 2386, 2389, 2396-2397, 132 L.Ed.2d 564 (1995) (random drug testing of students who participate in interscholastic sports); *Von Raab*, 489 U.S., at 659, 109 S.Ct., at 1387 (drug tests for United States Customs Service employees who seek transfer or promotion to certain positions); *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 608-613, 109 S.Ct. 1402, 1408-1411, 103 L.Ed.2d 639 (1989) (drug and alcohol tests for railway employees involved in train accidents and for those who violate particular safety rules), the United States Court of Appeals for the Eleventh Circuit judged Georgia's law constitutional. We reverse that judgment. Georgia's requirement that candidates for state office pass a drug test, we hold, does not fit within the closely guarded category of constitutionally permissible suspicionless searches.

The prescription at issue, approved by the Georgia Legislature in 1990, orders that "[e]ach candidate seeking to qualify for nomination or election to a state office shall as a condition of such qualification be required to

certify that such candidate has tested negative for illegal drugs." § 21-2-140(b). Georgia was the first, and apparently remains the only, State to condition candidacy for state office on a drug test.

Under the Georgia statute, to qualify for a place on the ballot, a candidate must present a certificate from a state-approved laboratory, in a form approved by the Secretary of State, reporting that the candidate submitted to a urinalysis drug test within 30 days prior to qualifying for nomination or election and that the results were negative. § 21-2-140(c). The statute lists as "[i]llegal drug[s]": marijuana, cocaine, opiates, amphetamines, and phencyclidines. § 21-2-140(a)(3). The designated state offices are: "the Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, ^[310]Commissioner of Agriculture, Commissioner of Labor, Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, district attorneys, members of the General Assembly, and members of the Public Service Commission." § 21-2-140(a)(4).

Candidate drug tests are to be administered in a manner consistent with the United States Department of Health and Human Services Guidelines, 53 Fed. Reg. 11979-11989 (1988), or other professionally valid procedures approved by Georgia's Commissioner of Human Resources. See § 21-2-140(a)(2). A candidate may provide the test specimen at a laboratory approved by the State, or at the office of the candidate's personal physician, see App. 4-5 (Joint Statement of Undisputed Facts). Once a urine sample is obtained, an approved laboratory determines whether any of the five specified illegal drugs are present, *id.*, at 5; § 21-2-140(c), and prepares a certificate reporting the test results to the candidate.

Petitioners were Libertarian Party nominees in 1994 for state offices subject to the requirements of § 21-2-140. The Party nominated Walker L. Chandler for the office of Lieutenant Governor, Sharon T. Harris for the office of Commissioner of Agriculture, and James D. Walker for the office of member of the General Assembly. In May 1994, about one month before the deadline for

submission of the certificates required by § 21-2-140, petitioners Chandler, Harris, and Walker filed this action in the United States District Court for the Northern District of Georgia. They asserted, *inter alia*, that the drug tests required by § 21-2-140 violated their rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution. Naming as defendants Governor Zell D. Miller and two other state officials involved in the administration of § 21-2-140, petitioners requested declaratory and injunctive relief barring enforcement of the statute.

^[311]In June 1994, the District Court denied petitioners' motion for a preliminary injunction. Stressing the importance of the state offices sought and the relative unintrusiveness of the testing procedure, the court found it unlikely that petitioners would prevail on the merits of their claims. App. to Pet. for Cert. 5B. Petitioners apparently submitted to the drug tests, obtained the certificates required by § 21-2-140, and appeared on the ballot. See Tr. of Oral Arg. 5. After the 1994 election, the parties jointly moved for the entry of final judgment on stipulated facts. In January 1995, the District Court entered final judgment for respondents.

A divided Eleventh Circuit panel affirmed. 73 F.3d 1543 (1996). It is settled law, the court accepted, that the drug tests required by the statute rank as searches. But, as was true of the drug-testing programs at issue in *Skinner* and *Von Raab*, the court reasoned, § 21-2-140 serves "special needs," interests other than the ordinary needs of law enforcement. The court therefore endeavored to "balance the individual's privacy expectations against the Government's interests to determine whether it [was] impractical to require a warrant or some level of individualized suspicion in the particular context." 73 F.3d, at 1545 (quoting *Von Raab*, 489 U.S., at 665-666, 109 S.Ct., at 1391).

Examining the state interests involved, the court acknowledged the absence of any record of drug abuse by elected officials in Georgia. Nonetheless, the court observed, "[t]he people of Georgia place in the trust of their elected officials . . . their liberty, their

safety, their economic well-being, [and] ultimate responsibility for law enforcement." 73 F.3d, at 1546. Consequently, "those vested with the highest executive authority to make public policy in general and frequently to supervise Georgia's drug interdiction efforts in particular must be persons appreciative of the perils of drug use." *Ibid.* The court further noted that "[t]he nature of high public office in itself demands the highest levels of honesty, clear-sightedness, and clear-thinking." *Ibid.* Reciting³¹² responsibilities of the offices petitioners sought, the Court of Appeals perceived those "positions [as] particularly susceptible to the 'risks of bribery and blackmail against which the Government is entitled to guard.'" *Ibid.* (quoting *Von Raab*, 489 U.S., at 674, 109 S.Ct., at 1395).

Turning to petitioners' privacy interests, the Eleventh Circuit emphasized that the tests could be conducted in the office of the candidate's private physician, making the "intrusion here . . . even less than that approved in *Von Raab*." 73 F.3d, at 1547. The court also noted the statute's reference to federally approved drug-testing guidelines. *Ibid.* The drug test itself would reveal only the presence or absence of indicia of the use of particular drugs, and not any other information about the health of the candidate. Furthermore, the candidate would control release of the test results: Should the candidate test positive, he or she could forfeit the opportunity to run for office, and in that event, nothing would be divulged to law enforcement officials. *Ibid.* Another consideration, the court said, is the reality that "candidates for high office must expect the voters to demand some disclosures about their physical, emotional, and mental fitness for the position." *Ibid.* Concluding that the State's interests outweighed the privacy in-

trusion caused by the required certification, the court held the statute, as applied to petitioners, not inconsistent with the Fourth and Fourteenth Amendments. *Ibid.*¹

Judge Barkett dissented. In her view, a balance of the State's and candidates' interests was not appropriate, for the State had failed to establish a special governmental need for the regime. "There is nothing so special or immediate about the generalized governmental interests involved here," she observed, "as to warrant suspension of the Fourth³¹³ Amendment's requirement of individualized suspicion for searches and seizures." *Id.*, at 1551.

[3] We granted the petition for certiorari, 518 U.S. 1057, 117 S.Ct. 38, 135 L.Ed.2d 1129 (1996), and now reverse.²

II

[4, 5] We begin our discussion of this case with an uncontested point: Georgia's drug-testing requirement, imposed by law and enforced by state officials, effects a search within the meaning of the Fourth and Fourteenth Amendments. See *Skinner*, 489 U.S., at 617, 109 S.Ct., at 1413; Tr. of Oral Arg. 36; Brief for United States as *Amicus Curiae* 10 (collection and testing of urine to meet Georgia's certification statute "constitutes a search subject to the demands of the Fourth Amendment" (internal quotation marks omitted)). As explained in *Skinner*, government-ordered "collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable." 489 U.S., at 617, 109 S.Ct., at 1413. Because "these intrusions [are] searches under the Fourth Amendment," *ibid.*, we focus on the question: Are the searches reasonable?

1. The court also rejected equal protection and free speech pleas made by petitioners. 73 F.3d, at 1547-1549. We hold § 21-2-140 incompatible with the Fourth and Fourteenth Amendments, and do not reach petitioners' further pleas.

2. The United States, as *amicus curiae* in support of respondents, suggests that this case may have become moot because there is no continuing controversy regarding the now-completed 1994 election, and petitioners, who did not sue on

behalf of a class, failed to assert in the courts below that they intended to run for a covered state office in a future election. See Brief for United States as *Amicus Curiae* 9-10, n. 4. We reject the suggestion of mootness. Petitioner Chandler represented, as an officer of this Court, that he plans to run again, and counsel for the State does not contest that representation. See Tr. of Oral Arg. 4-6, 27; see also 28 U.S.C. § 1653 (defective allegations of jurisdiction curable by amendment at trial or in appellate stages).

[6–8] To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing. See *Vernonia*, 515 U.S., at 652–653, 115 S.Ct., at 2390. But particularized exceptions to the main rule are sometimes warranted based on “special needs, beyond the normal need for law enforcement.” *Skinner*, 489 U.S., at 619, 109 S.Ct., at 1414 (internal quotation marks omitted). When such “special needs”—concerns other than crime detection—are alleged in justification of a Fourth Amendment intrusion, courts must undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties. See *Von Raab*, 489 U.S., at 665–666, 109 S.Ct., at 1390–1391; see also *id.*, at 668, 109 S.Ct., at 1392. As *Skinner* stated: “In limited circumstances, where the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion.” 489 U.S., at 624, 109 S.Ct., at 1417.

In evaluating Georgia’s ballot-access, drug-testing statute—a measure plainly not tied to individualized suspicion—the Eleventh Circuit sought to “balance the individual’s privacy expectations against the [State’s] interests,” 73 F.3d, at 1545 (quoting *Von Raab*, 489 U.S., at 665, 109 S.Ct., at 1391), in line with our precedents most immediately in point: *Skinner*, *Von Raab*, and *Vernonia*. We review those decisions before inspecting Georgia’s law.

A

Skinner concerned Federal Railroad Administration (FRA) regulations that required blood and urine tests of rail employees involved in train accidents; the regulations also authorized railroads to administer breath and urine tests to employees who violated certain safety rules. 489 U.S., at 608–612, 109 S.Ct., at 1408–1410. The FRA adopted the drug-testing program in response to evidence of drug and alcohol abuse by some railroad employees, the obvious safety hazards posed by such abuse, and the

documented link between drug- and alcohol-impaired employees and the incidence of train accidents. *Id.*, at 607–608, 109 S.Ct., at 1407–1408. Recognizing that the urinalysis tests, most conspicuously, raised evident privacy concerns, the Court noted two offsetting considerations: First, the regulations reduced the intrusiveness of the collection process, *id.*, at 626, 109 S.Ct., at 1418; and, more important, railway employees, “by reason of their participation in an industry that is regulated pervasively to ensure safety,” had diminished expectations of privacy, *id.*, at 627, 109 S.Ct., at 1418.

“[S]urpassing safety interests,” the Court concluded, warranted the FRA testing program. *Id.*, at 634, 109 S.Ct., at 1422. The drug tests could deter illegal drug use by railroad employees, workers positioned to “cause great human loss before any signs of impairment become noticeable to supervisors.” *Id.*, at 628, 109 S.Ct., at 1419. The program also helped railroads to obtain invaluable information about the causes of major train accidents. See *id.*, at 630, 109 S.Ct., at 1420. Testing without a showing of individualized suspicion was essential, the Court explained, if these vital interests were to be served. See *id.*, at 628, 109 S.Ct., at 1419. Employees could not forecast the timing of an accident or a safety violation, events that would trigger testing. The employee’s inability to avoid detection simply by staying drug free at a prescribed test time significantly enhanced the deterrent effect of the program. See *ibid.* Furthermore, imposing an individualized suspicion requirement for a drug test in the chaotic aftermath of a train accident would seriously impede an employer’s ability to discern the cause of the accident; indeed, waiting until suspect individuals could be identified “likely would result in the loss or deterioration of the evidence furnished by the tests.” *Id.*, at 631, 109 S.Ct., at 1421.

In *Von Raab*, the Court sustained a United States Customs Service program that made drug tests a condition of promotion or transfer to positions directly involving drug interdiction or requiring the employee to carry a firearm. 489 U.S., at 660–661, 667–677, 109

S.Ct., at 1387–1388, 1391–1397.³ While the Service's regime was not prompted by a demonstrated drug abuse problem, *id.*, at 660, 109 S.Ct., at 1387–1388, it was developed for an agency with an "almost unique mission," *id.*, at 674, 109 S.Ct., at 1395, as the "first line of defense" against the smuggling of illicit drugs into the United States, *id.*, at 668, 109 S.Ct., at 1392. Work directly involving drug interdiction and posts that require the employee to carry a firearm pose grave safety threats to employees who hold those positions, and also expose them to large amounts of illegal narcotics and to persons engaged in crime; illicit drug users in such high-risk positions might be unsympathetic to the Service's mission, tempted by bribes, or even threatened with blackmail. See *id.*, at 668–671, 109 S.Ct., at 1392–1394. The Court held that the Government had a "compelling" interest in assuring that employees placed in these positions would not include drug users. See *id.*, at 670–671, 109 S.Ct., at 1393–1394. Individualized suspicion would not work in this setting, the Court determined, because it was "not feasible to subject [these] employees and their work product to the kind of day-to-day scrutiny that is the norm in more traditional office environments." *Id.*, at 674, 109 S.Ct., at 1395.

Finally, in *Vernonia*, the Court sustained a random drug-testing program for high school students engaged in interscholastic athletic competitions. The program's context was critical, for a local government bears large "responsibilities, under a public school system, as guardian and tutor of children entrusted to its care." 515 U.S., at 665, 115 S.Ct., at 2396. An "immediate crisis," *id.*, at 663, 115 S.Ct., at 2405, caused by "a sharp increase in drug use" in the school district, *id.*, at 648, 115 S.Ct., at 2388, sparked installation of the program. District Court findings established that student athletes were not only "among the drug users," they were "leaders of the drug culture." *Id.*, at 649,

115 S.Ct., at 2388–2389. Our decision noted that "'students within the school environment have a lesser expectation of privacy than members of the population generally.'" *Id.*, at 657, 115 S.Ct., at 2392 (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 348, 105 S.Ct. 733, 746, 83 L.Ed.2d 720 (1985) (Powell, J., concurring)). We emphasized the importance of deterring drug use by schoolchildren and the risk of injury a drug-using student athlete cast on himself and those engaged with him on the playing field. See *Vernonia*, 515 U.S., at 662, 115 S.Ct., at 2395.

B

[9, 10] Respondents urge that the precedents just examined are not the sole guides for assessing the constitutional validity of the Georgia statute. The "special needs" analysis, they contend, must be viewed through a different lens because § 21–2–140 implicates Georgia's sovereign power, reserved to it under the Tenth Amendment, to establish qualifications for those who seek state office. Respondents rely on *Gregory v. Ashcroft*, 501 U.S. 452, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991), which upheld against federal statutory and Equal Protection Clause challenges Missouri's mandatory retirement age of 70 for state judges. The Court found this age classification reasonable and not barred by the federal legislation. See *id.*, at 473, 111 S.Ct., at 2407–2408. States, *Gregory* reaffirmed, enjoy wide latitude to establish conditions of candidacy for state office, but in setting such conditions, they may not disregard basic constitutional protections. See *id.*, at 463, 111 S.Ct., at 2402; *McDaniel v. Paty*, 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978) (invalidating state provision prohibiting members of clergy from serving as delegates to state constitutional convention); *Communist Party of Ind. v. Whitcomb*, 414 U.S. 441, 94 S.Ct. 656, 38 L.Ed.2d 635 (1974) (voiding loyalty oath as a condition of ballot access); *Bond v. Floyd*, 385 U.S. 116, 87

3. The Service's program also required tests for individuals promoted or transferred to positions in which they would handle "classified" material. 489 U.S., at 661, 109 S.Ct., at 1388. The Court agreed that the Government "ha[d] a compelling interest in protecting truly sensitive information." *Id.*, at 677, 109 S.Ct., at 1396–1397.

However, we did not rule on this aspect of the program, see *id.*, at 677–678, 109 S.Ct., at 1396–1397, because the record did not clarify "whether the category defined by the [regulation] encompass[ed] only those Customs employees likely to gain access to sensitive information." *Id.*, at 678, 109 S.Ct., at 1397.

S.Ct. 339, 17 L.Ed.2d 235 (1966) (Georgia Legislature could not exclude elected representative on ground that his antiwar statements cast doubt on his ability to take an oath). We are aware of no precedent suggesting that a State's power to establish qualifications for state offices—any more than its sovereign power to prosecute crime—diminishes the constraints on state action imposed by the Fourth Amendment. We therefore reject respondents' invitation to apply in this case a framework extraordinarily deferential to state measures³¹⁸ setting conditions of candidacy for state office. Our guides remain *Skinner*, *Von Raab*, and *Vernonia*.

[11] Turning to those guides, we note, first, that the testing method the Georgia statute describes is relatively noninvasive; therefore, if the "special needs" showing had been made, the State could not be faulted for excessive intrusion. Georgia's statute invokes the drug-testing guidelines applicable to the federal programs upheld in *Skinner* and *Von Raab*. See Brief for United States as *Amicus Curiae* 20-21; *Von Raab*, 489 U.S., at 661-662, n. 1, 109 S.Ct., at 1388, n. 1. The State permits a candidate to provide the urine specimen in the office of his or her private physician; and the results of the test are given first to the candidate, who controls further dissemination of the report. Because the State has effectively limited the invasiveness of the testing procedure, we concentrate on the core issue: Is the certification requirement warranted by a special need?

[12, 13] Our precedents establish that the proffered special need for drug testing must be substantial—important enough to override the individual's acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion. See *supra*, at 1300-1302. Georgia has failed to show, in justification of § 21-2-140, a special need of that kind.

Respondents' defense of the statute rests primarily on the incompatibility of unlawful drug use with holding high state office. The statute is justified, respondents contend, because the use of illegal drugs draws into question an official's judgment and integrity;

jeopardizes the discharge of public functions, including antidrug law enforcement efforts; and undermines public confidence and trust in elected officials. Brief for Respondents 11-18. The statute, according to respondents, serves to deter unlawful drug users from becoming candidates and thus stops them from attaining high state office. *Id.*, at 17-18. Notably lacking in respondents' presentation³¹⁹ is any indication of a concrete danger demanding departure from the Fourth Amendment's main rule.

Nothing in the record hints that the hazards respondents broadly describe are real and not simply hypothetical for Georgia's polity. The statute was not enacted, as counsel for respondents readily acknowledged at oral argument, in response to any fear or suspicion of drug use by state officials:

"QUESTION: Is there any indication anywhere in this record that Georgia has a particular problem here with State officeholders being drug abusers?"

"[COUNSEL FOR RESPONDENTS]: No, there is no such evidence, [and] to be frank, there is no such problem as we sit here today." Tr. of Oral Arg. 32.

See also *id.*, at 31 (counsel for respondents affirms absence of evidence that state officeholders in Georgia have drug problems). A demonstrated problem of drug abuse, while not in all cases necessary to the validity of a testing regime, see *Von Raab*, 489 U.S., at 673-675, 109 S.Ct., at 1395, would shore up an assertion of special need for a suspicionless general search program. Proof of unlawful drug use may help to clarify—and to substantiate—the precise hazards posed by such use. Thus, the evidence of drug and alcohol use by railway employees engaged in safety-sensitive tasks in *Skinner*, see 489 U.S., at 606-608, 109 S.Ct., at 1407-1408, and the immediate crisis prompted by a sharp rise in students' use of unlawful drugs in *Vernonia*, see 515 U.S., at 662-663, 115 S.Ct., at 2395-2396, bolstered the Government's and school officials' arguments that drug-testing programs were warranted and appropriate.

In contrast to the effective testing regimes upheld in *Skinner*, *Von Raab*, and *Vernonia*,

Georgia's certification requirement is not well designed to identify candidates who violate antidrug laws. Nor is the scheme a credible means to deter illicit drug users from seeking election to state office. The test date—to be scheduled by the candidate anytime within ³²⁰30 days prior to qualifying for a place on the ballot—is no secret. As counsel for respondents acknowledged at oral argument, users of illegal drugs, save for those prohibitively addicted, could abstain for a pretest period sufficient to avoid detection. See Tr. of Oral Arg. 44–46.⁴ Even if we indulged respondents' argument that one purpose of § 21–2–140 might be to detect those unable so to abstain, see *id.*, at 46, respondents have not shown or argued that such persons are likely to be candidates for public office in Georgia. Moreover, respondents have offered no reason why ordinary law enforcement methods would not suffice to apprehend such addicted individuals, should they appear in the limelight of a public stage. Section 21–2–140, in short, is not needed and cannot work to ferret out lawbreakers, and respondents barely attempt to support the statute on that ground.

Respondents and the United States as *amicus curiae* rely most heavily on our decision in *Von Raab*, which sustained a drug-testing program for Customs Service officers prior to promotion or transfer to certain high-risk positions, despite the absence of any documented drug abuse problem among Service employees. 489 U.S., at 660, 109 S.Ct., at 1387–1388; see Brief for Respondents 12–14; Brief for United States as *Amicus Curiae* 18; see also 73 F.3d, at 1546. The posts in question in *Von Raab* directly involved drug interdiction or otherwise required the Service member to carry a firearm. See 489 U.S., at 670, 109 S.Ct., at 1393 (“Government has a compelling interest in ensuring that front-line interdiction personnel are physically fit, and have unimpeachable integrity and judgment.”); *id.*, at 670–671, 109 S.Ct., at 1393–1394 (“[T]he public should not bear the risk that employees who may suffer from impaired perception and

judgment will be promoted to positions where they may need to employ deadly force.”).

³²¹Hardly a decision opening broad vistas for suspicionless searches, *Von Raab* must be read in its unique context. As the Customs Service reported in announcing the testing program: “Customs employees, more than any other Federal workers, are routinely exposed to the vast network of organized crime that is inextricably tied to illegal drug use.” *National Treasury Employees Union v. Von Raab*, 816 F.2d 170, 173 (C.A.5 1987) (internal quotation marks omitted), *aff’d* in part, vacated in part, 489 U.S. 656, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989). We stressed that “[d]rug interdiction ha[d] become the agency’s primary enforcement mission,” *id.*, at 660, 109 S.Ct., at 1387–1388, and that the employees in question would have “access to vast sources of valuable contraband,” *id.*, at 669, 109 S.Ct., at 1392–1393. Furthermore, Customs officers “ha[d] been the targets of bribery by drug smugglers on numerous occasions,” and several had succumbed to the temptation. *Ibid.*

Respondents overlook a telling difference between *Von Raab* and Georgia’s candidate drug-testing program. In *Von Raab* it was “not feasible to subject employees [required to carry firearms or concerned with interdiction of controlled substances] and their work product to the kind of day-to-day scrutiny that is the norm in more traditional office environments.” *Id.*, at 674, 109 S.Ct., at 1395. Candidates for public office, in contrast, are subject to relentless scrutiny—by their peers, the public, and the press. Their day-to-day conduct attracts attention notably beyond the norm in ordinary work environments.

What is left, after close review of Georgia’s scheme, is the image the State seeks to project. By requiring candidates for public office to submit to drug testing, Georgia displays its commitment to the struggle against drug abuse. The suspicionless tests, according to respondents, signify that candidates, if

4. In *Treasury Employees v. Von Raab*, 489 U.S. 656, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989), the applicant for promotion or transfer could not know precisely when action would be taken on

the application. In contrast, the potential candidate knows from the start the timing of all relevant events.

elected, will be fit to serve their constituents free from the influence of illegal drugs. But Georgia asserts no evidence of a drug problem among the State's elected officials, those officials typically do not perform high-risk, ¹³²³safety-sensitive tasks, and the required certification immediately aids no interdiction effort. The need revealed, in short, is symbolic, not "special," as that term draws meaning from our case law.

In *Von Raab*, the Customs Service had defended its officer drug-testing program in part as a way to demonstrate the agency's commitment to enforcement of the law. See Brief for United States in *Treasury Employees v. Von Raab*, O.T.1988, No. 86-1879, pp. 35-36. The *Von Raab* Court, however, did not rely on that justification. Indeed, if a need of the "set a good example" genre were sufficient to overwhelm a Fourth Amendment objection, then the care this Court took to explain why the needs in *Skinner*, *Von Raab*, and *Vernonia* ranked as "special" wasted many words in entirely unnecessary, perhaps even misleading, elaborations.

In a pathmarking dissenting opinion, Justice Brandeis recognized the importance of teaching by example: "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." *Olmstead v. United States*, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928). Justice Brandeis explained in *Olmstead* why the Government set a bad example when it introduced in a criminal proceeding evidence obtained through an unlawful Government wiretap:

"[I]t is . . . immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Id.*, at 479, 48 S.Ct., at 572-573.

However well meant, the candidate drug test Georgia has devised diminishes personal privacy for a symbol's sake. The Fourth

Amendment shields society against that state action.

¹³²³III

We note, finally, matters this opinion does not treat. Georgia's singular drug test for candidates is not part of a medical examination designed to provide certification of a candidate's general health, and we express no opinion on such examinations. Nor do we touch on financial disclosure requirements, which implicate different concerns and procedures. See, e.g., *Barry v. City of New York*, 712 F.2d 1554 (C.A.2 1983) (upholding city's financial disclosure law for elected and appointed officials, candidates for city office, and certain city employees); *Plante v. Gonzalez*, 575 F.2d 1119 (C.A.5 1978) (upholding Florida's financial disclosure requirements for certain public officers, candidates, and employees). And we do not speak to drug testing in the private sector, a domain unguarded by Fourth Amendment constraints. See *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984).

[14, 15] We reiterate, too, that where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as "reasonable"—for example, searches now routine at airports and at entrances to courts and other official buildings. See *Von Raab*, 489 U.S., at 674-676, and n. 3, 109 S.Ct., at 1395-1396, and n. 3. But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search, no matter how conveniently arranged.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Eleventh Circuit is

Reversed.

Chief Justice REHNQUIST, dissenting.

I fear that the novelty of this Georgia law has led the Court to distort Fourth Amendment doctrine in order to strike it down. The Court notes, impliedly turning up its nose, that "Georgia was the first, and appar-

ently remains the only, State to condition candidacy for state office on a drug ¹³²⁴test." *Ante*, at 1299. But if we are to heed the oft-quoted words of Justice Brandeis in his dissent in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S.Ct. 371, 386-387, 76 L.Ed. 747 (1932)—"[i]t is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country"—novelty itself is not a vice. These novel experiments, of course, must comply with the United States Constitution; but their mere novelty should not be a strike against them.

Few would doubt that the use of illegal drugs and abuse of legal drugs is one of the major problems of our society. Cases before this Court involving drug use extend to numerous occupations—railway employees, *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989), Border Patrol officers, *Treasury Employees v. Von Raab*, 489 U.S. 656, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989), high school students, *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995), and machine operators, *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987). It would take a bolder person than I to say that such widespread drug usage could never extend to candidates for public office such as Governor of Georgia. The Court says that "[n]othing in the record hints that the hazards respondents broadly describe are real and not simply hypothetical for Georgia's polity." *Ante*, at 1303. But surely the State need not wait for a drug addict, or one inclined to use drugs illegally, to run for or actually become Governor before it installs a prophylactic mechanism. We held as much in *Von Raab*:

"First, petitioners argue that the program is unjustified because it is not based on a belief that testing will reveal any drug use by covered employees. In pressing this argument, petitioners point out that the Service's testing scheme was not implemented in response to any perceived drug problem among Customs employees....

"Petitioners' first contention evinces an unduly narrow view of the context in which the Service's testing ¹³²⁵program was implemented. Petitioners do not dispute, nor can there be doubt, that drug abuse is one of the most serious problems confronting our society today. There is little reason to believe that American workplaces are immune from this pervasive social problem...." 489 U.S., at 673-674, 109 S.Ct., at 1395.

The test under the Fourth Amendment, as these cases have held, is whether the search required by the Georgia statute is "reasonable." Today's opinion speaks of a "closely guarded" class of permissible suspicionless searches which must be justified by a "special need." But this term, as used in *Skinner* and *Von Raab* and on which the Court now relies, was used in a quite different sense than it is used by the Court today. In *Skinner* and *Von Raab* it was used to describe a basis for a search apart from the regular needs of law enforcement, *Skinner*, *supra*, at 620, 109 S.Ct., at 1414-1415; *Von Raab*, *supra*, at 669, 109 S.Ct., at 1392-1393. The "special needs" inquiry as delineated there has not required especially great "importan[ce]," *ante*, at 1303, unless one considers "the supervision of probationers," or the "operation of a government office," *Skinner*, *supra*, at 620, 109 S.Ct., at 1414-1415, to be especially "important." Under our precedents, if there was a proper governmental purpose other than law enforcement, there was a "special need," and the Fourth Amendment then required the familiar balancing between that interest and the individual's privacy interest.

Under normal Fourth Amendment analysis, the individual's expectation of privacy is an important factor in the equation. But here, the Court perversely relies on the fact that a candidate for office *gives up* so much privacy—"candidates for public office ... are subject to relentless scrutiny—by their peers, the public, and the press," *ante*, at 1304—as a reason for *sustaining* a Fourth Amendment claim. The Court says, in effect, that the kind of drug test for candidates required by the Georgia law is unnecessary, because the scrutiny to which they are al-

ready subjected by reason of their candidacy will enable people to detect any drug use on ³²⁶their part. But this is a strange holding, indeed. One might just as easily say that the railroad employees in *Skinner*, or the Customs officials in *Von Raab*, would be subjected to the same sort of scrutiny from their fellow employees and their supervisors. But the clear teaching of those cases is that the government is not required to settle for that sort of a vague and uncanalized scrutiny; if in fact preventing persons who use illegal drugs from concealing that fact from the public is a legitimate government interest, these cases indicate that the government may require a drug test.

The privacy concerns ordinarily implicated by urinalysis drug testing are "negligible," *Vernonia, supra*, at 658, 115 S.Ct., at 2393, when the procedures used in collecting and analyzing the urine samples are set up "to reduce the intrusiveness" of the process, *Skinner, supra*, at 626, 109 S.Ct., at 1418. Under the Georgia law, the candidate may produce the test specimen at his own doctor's office, which must be one of the least intrusive types of urinalysis drug tests conceivable. But although the Court concedes this, it nonetheless manages to count this factor against the State, because with this kind of test the person tested will have advance notice of its being given, and will therefore be able to abstain from drug use during the necessary period of time. But one may be sure that if the test were random—and therefore apt to ensnare more users—the Court would then fault it for its intrusiveness. Cf. *Von Raab*, 489 U.S., at 676, and n. 4, 109 S.Ct., at 1396, and n. 4.

In *Von Raab*, we described as "compelling" the Government interest "in ensuring that many of these covered employees do not use drugs *even off duty*, for such use creates risks of bribery and blackmail against which the Government is entitled to guard." *Id.*, at 674, 109 S.Ct., at 1395 (emphasis added). The risks of bribery and blackmail for high-level officials of state government using illegal drugs would seem to be at least as significant as those for off-duty Customs officials. Even more important, however, is our treatment of the third class of tested employees in *Von Raab*, those who "handle[d] 'classified' ³²⁷

materials." The Court relegates this discussion to a footnote, *ante*, at 1302, n. 3, and all but dismisses it. Although the lack of factual development of the record in *Von Raab* prevented us from determining *who* "handle[d] 'classified' material," we did consider the *weight* of the proffered governmental interest:

"We readily agree that the Government has a compelling interest in protecting truly sensitive information from those who, 'under compulsion of circumstances or for other reasons, . . . might compromise [such] information.' *Department of Navy v. Egan*, 484 U.S. 518, 528, 108 S.Ct. 818, 824, 98 L.Ed.2d 918 (1988). . . . We also agree that employees who seek promotions to positions where they would handle sensitive information can be required to submit to a urine test under the Service's screening program, especially if the positions covered under this category require background investigations, medical examinations, or other intrusions that may be expected to diminish their expectations of privacy in respect of a urinalysis test." 489 U.S., at 677, 109 S.Ct., at 1397.

Although petitioners might raise questions as to some of the other positions covered by the Georgia statute, there is no question that, at least for positions like Governor and Lieutenant Governor, identical concerns are implicated. In short, when measured through the correct lens of our precedents in this area, the Georgia urinalysis test is a "reasonable" search; it is only by distorting these precedents that the Court is able to reach the result it does.

Lest readers expect the holding of this case to be extended to any other case, the Court notes that the drug test here is not a part of a medical examination designed to provide certification of a candidate's general health. *Ante*, at 1305. It is all but inconceivable that a case involving that sort of requirement could be decided differently than the present case; the same sort of urinalysis would be involved. The only possible basis for distinction is to say that the State has ^{328a}far greater interest in the candidate's "general health" than it does with respect to his propensity to use illegal drugs.

But this is the sort of policy judgment that surely must be left to legislatures, rather than being announced from on high by the Federal Judiciary.

Nothing in the Fourth Amendment or in any other part of the Constitution prevents a State from enacting a statute whose principal vice is that it may seem misguided or even

silly to the Members of this Court. I would affirm the judgment of the Court of Appeals.



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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	RE: Latest Copy of Davis/Waxman Steroid Bill -- Close Hold - To: Brian Blake, et al. - From: Neomi Rao	2	05/18/2005	P5;

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Counsel's Office, White House

SERIES:

Rao, Neomi

FOLDER TITLE:

Steroid Use - Proposals

FRC ID:

10169

OA Num.:

6326

NARA Num.:

6127

FOIA ID and Segment:

2014-0126-F

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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Draft	[Draft Legislation with Comments]	8	05/18/2005	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	ONDCP Position on Davis-Waxman Anti-Doping Legislation	5	04/29/2005	P5;

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Handwritten Note	Steroid Use Meeting	1	05/13/2005	P5;

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