VERNONA SCHOOL DISTRICT 47J v. ACTON *(1995)*

When James Acton was in seventh grade, he wanted to play football. On his first day at practice, he was asked to take home a permission slip for his parents to sign. The permission slip said that the Vernonia School District planned to test every student athlete for drugs at the beginning of the season, and it planned to conduct random drug tests on student athletes throughout the athletic season.

James Acton and his parents disagreed with the drug-testing policy, and they challenged it in the federal district court. The federal court ruled in favor of the school district, arguing that the student athlete's right to privacy gave way to government interests in this case. The Actons appealed to the Ninth Circuit Court of Appeals, which, on a 30- vote, reversed the lower court decision in favor of the Actons. The Vernonia School District then appealed to the U. S. Supreme Court.

Majority Opinion (Justice Antonin Scalia)

The Student Athlete Drug Policy adopted by School District 47J in the town of Vernonia, Ore., authorizes random urinalysis drug testing of students who participate in the district's school athletics programs. . . . The school board approved the [drug testing policy] to prevent student athletes from using drugs, [and] to protect their health and safety. . . .

As the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a government search is "reasonableness." . . . [T]he reasonableness standard is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. . . .

A search unsupported by probable cause can be constitutional, we have said, "when special needs . . . make the warrant and probable cause impracticable." We have found special needs to exist in the public school context . . . [because of] "the substantial need of teachers and administrators for freedom to maintain order in the school." *New Jersey v. T.L.O.* (1985).

. . . [W]e have acknowledged that for many purposes "school authorities act *in loco parentis*." . . . Thus, while children assuredly do not "shed their constitutional rights . . . at the schoolhouse gate," the nature of those rights is what is appropriate for children in school. . . . Legitimate privacy expectations are even less with regard to student athletes. 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. . . .

Deterring drug use by our nation's school children is important. . . . [S]chool years are when the physical, psychological, and addictive effects of drugs are most severe. . . . [T]he effects of a drug-infested school are not just visited upon the users, but upon the entire student body and faculty, and the educational process is disrupted. . . .

It seems to us self-evident that a drug problem largely fueled by the "role model" effect of athletes' drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs.

Editorial
USA Today
June 28, 1995

The Supreme Court upheld the Vernonia, Oregon schools' requirement that all athletes be subject to random drug testing — not, mind you, for alcohol, the drug of choice among America's teens, and not for steroids, a particular attraction for teen jocks, but for far less prevalent marijuana, heroin, and cocaine.

The Vernonia school system had overreacted to community concern over what was described as a surge in disciplinary problems, accompanied by reports of illegal drug use by some students. But instead of focusing on the problem students, everybody was targeted.

Of the 500 students tested in four and a half years, a mere twelve tested positive, not many for a district claiming huge problems. . . .

Widespread random testing is not only of questionable value, it is offensive to American principles of personal liberty.

In 1989, Supreme Court Justice Antonin Scalia, writing in dissent to a court opinion, described a challenged drug testing program for certain U. S. Customs employees as "a kind of immolation (sacrificial killing) of privacy and human dignity in symbolic opposition to drug use."

He might better have used that language to describe the Vernonia program. Instead, writing for the Court majority, he brushed aside the Court's assertion in 1969 that youngsters do not "shed their constitutional rights . . . at the schoolhouse gate" and rejected concerns about the rights of students, athletes, and "role models."