110 S.Ct. 2481
Supreme Court of the United States

MICHIGAN DEPARTMENT OF STATE POLICE, et al., Petitioners
v.
Rick SITZ, et al.

No. 88–1897.
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Argued Feb. 27, 1990.
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Decided June 14, 1990.

Synopsis
Motorists brought action to challenge constitutionality of highway sobriety checkpoint program. The Circuit Court, Wayne County, Michigan, Michael L. Stacey, J., invalidated program and appeal was taken. The Court of Appeals of Michigan, 170 Mich.App. 433, 429 N.W.2d 180, Lambros, J., affirmed. Certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that: (1) Fourth Amendment "seizure" occurs when vehicle is stopped at checkpoint, and (2) checkpoint program did not violate Fourth Amendment.

Reversed and remanded.

***444 **2482** *Syllabus*[*]

Petitioners, the Michigan State Police Department and its Director, established a highway sobriety checkpoint program with guidelines governing checkpoint operations, site selection, and publicity. During the only operation to date, 126 vehicles passed through the checkpoint, the average delay per vehicle was 25 seconds, and two drivers were arrested for driving under the influence of alcohol. The day before that operation, respondents, licensed Michigan drivers, filed suit in a county court seeking declaratory and injunctive relief from potential subjection to the checkpoints. After a trial, at which the court heard extensive testimony concerning, among other things, the "effectiveness" of such programs, the court applied the balancing test of *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357, and ruled that the State's program violated the Fourth Amendment. The State Court of Appeals affirmed, agreeing with the lower court's findings that the State has a "grave and legitimate" interest in curbing drunken driving; that sobriety checkpoint programs are generally ineffective and, therefore, do not significantly further that interest; and that, while the checkpoints' objective intrusion on individual liberties is slight, their "subjective intrusion" is substantial.

Held: Petitioners' highway sobriety checkpoint program is consistent with the Fourth Amendment. Pp. 2484–2488.

(a) *United States v. Martinez–Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116—which utilized a balancing test in upholding checkpoints for detecting illegal aliens—and *Brown v. Texas*, *supra*, are the relevant authorities to be used in evaluating the constitutionality of the State's program. *Treasury Employees v. Von Raab*, 489 U.S. 656, 109 S.Ct. 1384, 103 L.Ed.2d 685, was not ****2483** designed to repudiate this Court's prior cases dealing with police stops of motorists on public highways and, thus, does not forbid the use of a balancing test here. Pp. 2484–2485.

(b) A Fourth Amendment "seizure" occurs when a vehicle is stopped at a checkpoint. See *Martinez–Fuerte*, *supra*, at 556, 96 S.Ct. at 3082. Thus, the question here is whether such seizures are "reasonable." P. 2485.

(c) There is no dispute about the magnitude of, and the States' interest in eradicating, the drunken driving problem. The courts below accurately gauged the "objective" intrusion, measured by the seizure's duration and the investigation's intensity, as minimal. However, they ***445** misread this Court's cases concerning the degree of "subjective intrusion" and the potential for generating fear and surprise. The "fear and surprise" to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a checkpoint but, rather, the fear and surprise engendered in law-abiding motorists by the nature of the particular stop, such as one made by a roving patrol operating on a seldom-traveled road. Here, checkpoints are selected pursuant to guidelines, and uniformed officers stop every vehicle. The resulting intrusion is constitutionally

indistinguishable from the stops upheld in *Martinez–Fuerte.* Pp. 2485–2487.

(d) The Court of Appeals also erred in finding that the program failed the "effectiveness" part of the *Brown* test. This balancing factor—which *Brown* actually describes as "the degree to which the seizure advances the public interest"—was not meant to transfer from politically accountable officials to the courts the choice as to which among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger. Moreover, the court mistakenly relied on *Martinez–Fuerte, supra,* and *Delaware v. Prouse,* 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660, to provide a basis for its "effectiveness" review. Unlike *Delaware v. Prouse,* this case involves neither random stops nor a complete absence of empirical data indicating that the stops would be an effective means of promoting roadway safety. And there is no justification for a different conclusion here than in *Martinez–Fuerte,* where the ratio of illegal aliens detected to vehicles stopped was approximately 0.5 percent, as compared with the approximately 1.6 percent detection ratio in the one checkpoint conducted by Michigan and with the 1 percent ratio demonstrated by other States' experience. Pp. 2487–2488.

170 Mich.App. 433, 429 N.W.2d 180 (1988), reversed and remanded.

REHNQUIST, C.J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., filed an opinion concurring in the judgment, *post,* p. 2488. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post,* p. 2488. STEVENS, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined as to Parts I and II, *post,* p. 2490.

Opinion

***447** Chief Justice REHNQUIST delivered the opinion of the Court.

This case poses the question whether a State's use of highway sobriety checkpoints violates the Fourth and Fourteenth Amendments to the United States Constitution. We hold that it does not and therefore reverse the contrary holding of the Court of Appeals of Michigan.

Petitioners, the Michigan Department of State Police and its director, established a sobriety checkpoint pilot program in early ****2484** 1986. The director appointed a Sobriety Checkpoint Advisory Committee comprising representatives of the State Police force, local police forces, state prosecutors, and the University of Michigan Transportation Research Institute. Pursuant to its charge, the advisory committee created guidelines setting forth procedures governing checkpoint operations, site selection, and publicity.

Under the guidelines, checkpoints would be set up at selected sites along state roads. All vehicles passing through a checkpoint would be stopped and their drivers briefly examined for signs of intoxication. In cases where a checkpoint officer detected signs of intoxication, the motorist would be directed to a location out of the traffic flow where an officer would check the motorist's driver's license and car registration and, if warranted, conduct further sobriety tests. Should the field tests and the officer's observations suggest that the driver was intoxicated, an arrest would be made. All other drivers would be permitted to resume their journey immediately.

***448** The first—and to date the only—sobriety checkpoint operated under the program was conducted in Saginaw County with the assistance of the Saginaw County Sheriff's Department. During the 75–minute duration of the checkpoint's operation, 126 vehicles passed through the checkpoint. The average delay for each vehicle was approximately 25 seconds. Two drivers were detained for field sobriety testing, and one of the two was arrested for driving under the influence of alcohol. A third driver who drove through without stopping was pulled over by an officer in an observation vehicle and arrested for driving under the influence.

On the day before the operation of the Saginaw County checkpoint, respondents filed a complaint in the Circuit Court of Wayne County seeking declaratory and injunctive relief from potential subjection to the checkpoints. Each of the respondents "is a licensed driver in the State of Michigan ... who regularly travels throughout the State in his automobile." See Complaint, App. 3a–4a. During pretrial proceedings, petitioners agreed to delay further implementation of the checkpoint program pending the outcome of this litigation.

After the trial, at which the court heard extensive testimony concerning, *inter alia*, the "effectiveness" of highway sobriety checkpoint programs, the court ruled that the Michigan program violated the Fourth Amendment and Art. 1, § 11, of the Michigan Constitution. App. to Pet. for Cert. 132a. On appeal, the Michigan Court of Appeals affirmed the holding that the program violated the Fourth Amendment and, for that reason, did not consider whether the program violated the Michigan Constitution. 170 Mich.App. 433, 445, 429 N.W.2d 180, 185 (1988). After the Michigan Supreme Court denied petitioners' application for leave to appeal, we granted certiorari. 493 U.S. 806, 110 S.Ct. 46, 107 L.Ed.2d 15 (1989).

To decide this case the trial court performed a balancing test derived from our opinion in *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). As described by the Court of Appeals, the test involved ***449** "balancing the state's interest in preventing accidents caused by drunk drivers, the effectiveness of sobriety checkpoints in achieving that goal, and the level of intrusion on an individual's privacy caused by the checkpoints." 170 Mich.App., at 439, 429 N.W.2d, at 182 (citing *Brown*, *supra*, 443 U.S., at 50–51, 99 S.Ct., at 2640). The Court of Appeals agreed that "the *Brown* three-prong balancing test was the correct test to be used to determine the constitutionality of the sobriety checkpoint plan." 170 Mich.App., at 439, 429 N.W.2d, at 182.

As characterized by the Court of Appeals, the trial court's findings with respect to the balancing factors were that the State has "a grave and legitimate" interest in curbing drunken driving; that sobriety checkpoint programs are generally "ineffective" and, ****2485** therefore, do not significantly further that interest; and that the checkpoints' "subjective intrusion" on individual liberties is substantial. *Id.*, at 439, 440, 429 N.W.2d, at 183, 184. According to the court, the record disclosed no basis for disturbing the trial court's findings, which were made

within the context of an analytical framework prescribed by this Court for determining the constitutionality of seizures less intrusive than traditional arrests. *Id.,* at 445, 429 N.W.2d, at 185.

In this Court respondents seek to defend the judgment in their favor by insisting that the balancing test derived from *Brown v. Texas, supra,* was not the proper method of analysis. Respondents maintain that the analysis must proceed from a basis of probable cause or reasonable suspicion, and rely for support on language from our decision last Term in *Treasury Employees v. Von Raab,* 489 U.S. 656, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989). We said in *Von Raab:*

> "[W]here a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant ***450** or some level of individualized suspicion in the particular context." *Id.,* at 665–666, 109 S.Ct., at 1390–1391.

Respondents argue that there must be a showing of some special governmental need "beyond the normal need" for criminal law enforcement before a balancing analysis is appropriate, and that petitioners have demonstrated no such special need.

But it is perfectly plain from a reading of *Von Raab,* which cited and discussed with approval our earlier decision in *United States v. Martinez–Fuerte,* 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976), that it was in no way designed to repudiate our prior cases dealing with police stops of motorists on public highways. *Martinez–Fuerte, supra,* which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown v. Texas, supra,* are the relevant authorities here.

Petitioners concede, correctly in our view, that a Fourth Amendment "seizure" occurs when a vehicle is stopped at a checkpoint. Tr. of Oral Arg. 11; see *Martinez–Fuerte, supra,* at 556, 96 S.Ct., at 3082 ("It is agreed that checkpoint stops are 'seizures' within the meaning of the Fourth Amendment"); *Brower v. County of Inyo,* 489 U.S. 593, 597, 109 S.Ct. 1378, 1381, 103 L.Ed.2d 628 (1989) (Fourth Amendment seizure occurs "when there is a governmental termination of freedom of movement *through means intentionally applied* " (emphasis in original)). The question thus becomes whether such seizures are "reasonable" under the Fourth Amendment.

It is important to recognize what our inquiry is *not* about. No allegations are before us of unreasonable treatment of any person after an actual detention at a particular checkpoint. See *Martinez–Fuerte,* 428 U.S., at 559, 96 S.Ct., at 3083 ("[C]laim that a particular exercise of discretion in locating or operating a checkpoint is unreasonable is subject to post-stop judicial review"). As pursued in the lower courts, the instant action challenges only the use of sobriety checkpoints generally. We address only the initial stop of each motorist passing through a checkpoint and the associated preliminary questioning and observation ***451** by checkpoint officers. Detention of particular motorists for more extensive field sobriety testing may require satisfaction of an individualized suspicion standard. *Id.,* at 567, 96 S.Ct., at 3087.

No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion. The anecdotal is confirmed by the statistical. "Drunk drivers cause an annual death toll of ****2486** over 25,000* and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage." 4 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 10.8(d), p. 71 (2d ed. 1987). For decades, this Court has "repeatedly lamented the tragedy." *South Dakota v. Neville,* 459 U.S. 553, 558, 103 S.Ct. 916, 920, 74 L.Ed.2d 748 (1983); see *Breithaupt v. Abram,* 352 U.S. 432, 439, 77 S.Ct. 408, 412, 1 L.Ed.2d 448 (1957) ("The increasing slaughter on our highways ... now reaches the astounding figures only heard of on the battlefield").

Conversely, the weight bearing on the other scale—the measure of the intrusion on motorists stopped briefly at sobriety checkpoints—is slight. We reached a similar conclusion as to the intrusion on motorists subjected to a brief stop at a highway checkpoint for detecting illegal aliens. See *Martinez–Fuerte, supra,* at 558, 96 S.Ct., at 3083. We see virtually no difference between the levels of intrusion on law-abiding motorists ***452** from the brief stops necessary to the effectuation of these two types of checkpoints, which to the average motorist would seem identical save for the nature of the questions the checkpoint officers might ask. The trial court and the Court of Appeals, thus, accurately gauged the "objective" intrusion, measured by the duration of the seizure and the intensity of the investigation, as minimal. See 170 Mich.App., at 444, 429 N.W.2d, at 184.

With respect to what it perceived to be the "subjective" intrusion on motorists, however, the Court of Appeals found such intrusion substantial. See, *supra,* at 2485. The court first affirmed the trial court's finding that the

guidelines governing checkpoint operation minimize the discretion of the officers on the scene. But the court also agreed with the trial court's conclusion that the checkpoints have the potential to generate fear and surprise in motorists. This was so because the record failed to demonstrate that approaching motorists would be aware of their option to make U-turns or turnoffs to avoid the checkpoints. On that basis, the court deemed the subjective intrusion from the checkpoints unreasonable. *Id.*, at 443–444, 429 N.W.2d, at 184–185.

We believe the Michigan courts misread our cases concerning the degree of "subjective intrusion" and the potential for generating fear and surprise. The "fear and surprise" to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a sobriety checkpoint but, rather, the fear and surprise engendered in law-abiding motorists by the nature of the stop. This was made clear in *Martinez–Fuerte.* Comparing checkpoint stops to roving patrol stops considered in prior cases, we said:

> "[W]e view checkpoint stops in a different light because the subjective intrusion—the generating of concern or even fright on the part of lawful travelers—is appreciably less in the case of a checkpoint stop. In *[United States v.] Ortiz,* [422 U.S. 891, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975),] we noted:
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> ***453** " '[T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he ****2487** can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion. 422 U.S., at 894–895 [95 S.Ct., at 2587–2588].' " *Martinez–Fuerte,* 428 U.S., at 558, 96 S.Ct., at 3083.

See also *id,* at 559, 96 S.Ct., at 3083. Here, checkpoints are selected pursuant to the guidelines, and uniformed police officers stop every approaching vehicle. The intrusion resulting from the brief stop at the sobriety checkpoint is for constitutional purposes indistinguishable from the checkpoint stops we upheld in *Martinez–Fuerte.*

The Court of Appeals went on to consider as part of the balancing analysis the "effectiveness" of the proposed checkpoint program. Based on extensive testimony in the trial record, the court concluded that the checkpoint program failed the "effectiveness" part of the test, and that this failure materially discounted petitioners' strong interest in implementing the program. We think the Court of Appeals was wrong on this point as well.

The actual language from *Brown v. Texas,* upon which the Michigan courts based their evaluation of "effectiveness," describes the balancing factor as "the degree to which the seizure advances the public interest." 443 U.S., at 51, 99 S.Ct., at 2640. This passage from *Brown* was not meant to transfer from politically accountable officials to the courts the decision as to which among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger. Experts in police science might disagree over which of several methods of apprehending drunken drivers is preferrable as an ideal. But for purposes of Fourth Amendment analysis, the choice among such reasonable alternatives ***454** remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers. *Brown* 's rather general reference to "the degree to which the seizure advances the public interest" was derived, as the opinion makes clear, from the line of cases culminating in *Martinez–Fuerte, supra.* Neither *Martinez–Fuerte* nor *Delaware v. Prouse,* 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), however, the two cases cited by the Court of Appeals as providing the basis for its "effectiveness" review, see 170 Mich.App., at 442, 429 N.W.2d, at 183, supports the searching examination of "effectiveness" undertaken by the Michigan court.

In *Delaware v. Prouse, supra,* we disapproved random stops made by Delaware Highway Patrol officers in an effort to apprehend unlicensed drivers and unsafe vehicles. We observed that *no* empirical evidence indicated that such stops would be an effective means of promoting roadway safety and said that "[i]t seems common sense that the percentage of all drivers on the road who are driving without a license is very small and that the number of licensed drivers who will be stopped in order to find one unlicensed operator will be large indeed." *Id.,* 440 U.S., at 659–660, 99 S.Ct., at 1399. We observed that the random stops involved the "kind of standardless and unconstrained discretion [which] is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent." *Id.,* at 661, 99 S.Ct., at 1400. We went on to state that our holding did not "cast doubt on the permissibility of roadside truck weigh-stations and inspection checkpoints, at which some vehicles may be subject to further detention for safety and regulatory inspection than are others." *Id.,* at 663, n. 26, 99 S.Ct., at 1401, n. 26.

Unlike *Prouse,* this case involves neither a complete absence of empirical data nor a challenge to random highway stops. During the operation of the Saginaw

County checkpoint, the detention of the 126 vehicles that entered the checkpoint resulted in the arrest of two drunken drivers. ***455** Stated as a percentage, approximately 1.6 percent of the drivers passing through the checkpoint were arrested for alcohol impairment. In addition, an expert witness testified at the trial ****2488** that experience in other States demonstrated that, on the whole, sobriety checkpoints resulted in drunken driving arrests of around 1 percent of all motorists stopped. 170 Mich.App., at 441, 429 N.W.2d, at 183. By way of comparison, the record from one of the consolidated cases in *Martinez–Fuerte* showed that in the associated checkpoint, illegal aliens were found in only 0.12 percent of the vehicles passing through the checkpoint. See 428 U.S., at 554, 96 S.Ct., at 3081. The ratio of illegal aliens detected to vehicles stopped (considering that on occasion two or more illegal aliens were found in a single vehicle) was approximately 0.5 percent. See *ibid.* We concluded that this "record ... provides a rather complete picture of the effectiveness of the San Clemente checkpoint," *ibid.*, and we sustained its constitutionality. We see no justification for a different conclusion here.

In sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program. We therefore hold that it is consistent with the Fourth Amendment. The judgment of the Michigan Court of Appeals is accordingly reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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