115 S.Ct. 2386
Supreme Court of the United States

VERNONIA SCHOOL DISTRICT 47J, Petitioner,
v.
Wayne ACTON, et ux., etc.

No. 94–590.
|
Argued March 28, 1995.
|
Decided June 26, 1995.

Synopsis
Student and his parents brought action against school district, challenging random urinalysis requirement for participation in interscholastic athletics. The United States District Court for the District of Oregon, Malcolm F. Marsh, J., upheld policy, 796 F.Supp. 1354, and student appealed. The Court of Appeals, Fernandez, J., 23 F.3d 1514,reversed and remanded, and certiorari review was sought. The Supreme Court, Justice Scalia, held that public school district's student athlete drug policy did not violate student's federal or state constitutional right to be free from unreasonable searches.

Vacated and remanded.

Justice Ginsburg, concurred and filed opinion.

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

****2387** *Syllabus*[*]

***646** Motivated by the discovery that athletes were leaders in the student drug culture and concern that drug use increases the risk of sports-related injury, petitioner school district (District) adopted the Student Athlete Drug Policy (Policy), which authorizes random urinalysis drug testing of students who participate in its athletics programs. Respondent Acton was denied participation in his school's football program when he and his parents (also respondents) refused to consent to the testing. They then filed this suit, seeking declaratory and injunctive relief on the grounds that the Policy violated the Fourth and Fourteenth Amendments and the Oregon Constitution. The District Court denied the claims, but the Court of Appeals reversed, holding that the Policy violated both the Federal and State Constitutions.

Held: The Policy is constitutional under the Fourth and Fourteenth Amendments. Pp. 2390–2397.

(a) State-compelled collection and testing of urine constitutes a "search" under the Fourth Amendment. *Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602, 617, 109 S.Ct. 1402, 1413, 103 L.Ed.2d 639. Where there was no clear practice, either approving or disapproving the type of search at issue, at the time the constitutional provision was enacted, the "reasonableness" of a search is judged by balancing the intrusion on the individual's Fourth Amendment interests against the promotion of legitimate governmental interests. Pp. 2390–2391.

(b) The first factor to be considered in determining reasonableness is the nature of the privacy interest on which the search intrudes. Here, the subjects of the Policy are children who have been committed to the temporary custody of the State as schoolmaster; in that capacity, the State may exercise a degree of supervision and control greater than it could exercise over free adults. The requirements that public school children submit to physical examinations and be vaccinated indicate that they have a lesser privacy ****2388** expectation with regard to medical examinations and procedures than the general population. Student athletes have even less of a legitimate privacy expectation, for an element of communal undress is inherent in athletic participation, and athletes are ***647** subject to preseason physical exams and rules regulating their conduct. Pp. 2391–2393.

(c) The privacy interests compromised by the process of obtaining urine samples under the Policy are negligible, since the conditions of collection are nearly identical to those typically encountered in public restrooms. In addition, the tests look only for standard drugs, not medical conditions, and the results are released to a limited group. Pp. 2393–2394.

(d) The nature and immediacy of the governmental concern at issue, and the efficacy of this means for meeting it, also favor a finding of reasonableness. The importance of deterring drug use by all this Nation's schoolchildren cannot be doubted. Moreover, the Policy is directed more narrowly to drug use by athletes, where the risk of physical harm to the user and other players is high. The District Court's conclusion that the District's concerns were immediate is not clearly erroneous, and it is self-evident that a drug problem largely caused by athletes, and of particular danger to athletes, is effectively

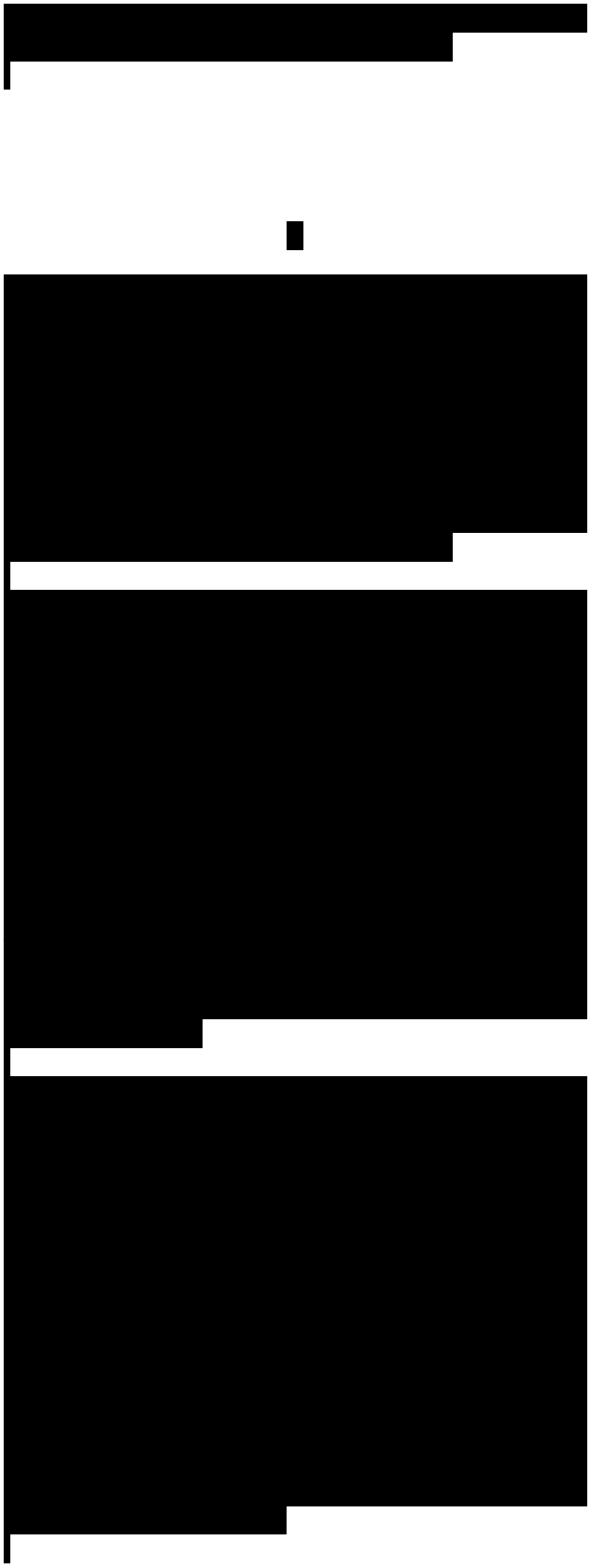
addressed by ensuring that athletes do not use drugs. The Fourth Amendment does not require that the "least intrusive" search be conducted, so respondents' argument that the drug testing could be based on suspicion of drug use, if true, would not be fatal; and that alternative entails its own substantial difficulties. Pp. 2394–2396.

23 F.3d 1514 (CA9 1994), vacated and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and KENNEDY, THOMAS, GINSBURG, and BREYER, JJ., joined. GINSBURG, J., filed a concurring opinion, *post*, p. 2397. O'CONNOR, J., filed a dissenting opinion, in which STEVENS and SOUTER, JJ., joined, *post*, p. 2397.

Opinion

Justice SCALIA delivered the opinion of the Court.



C

In the fall of 1991, respondent James Acton, then a seventh grader, signed up to play football at one of the District's grade schools. He was denied participation, however, because he and his parents refused to sign the testing consent forms. The Actons filed suit, seeking declaratory and injunctive relief from enforcement of the Policy on the grounds that it violated the Fourth and Fourteenth Amendments to the United States Constitution and ***652** Article I, § 9, of the Oregon Constitution. After a bench trial, the District Court entered an order denying the claims on the merits and dismissing the action. 796 F.Supp., at 1355. The United States Court of Appeals for the Ninth Circuit reversed, holding that the Policy violated both the Fourth and Fourteenth Amendments and Article I, § 9, of the Oregon Constitution. 23 F.3d 1514 (1994). We granted certiorari. 513 U.S. 1013, 115 S.Ct. 571, 130 L.Ed.2d 488 (1994).

II

The Fourth Amendment to the United States Constitution provides that the Federal Government shall not violate "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures ...." We have held that the Fourteenth Amendment extends this constitutional guarantee to searches and seizures by state officers, *Elkins v. United*

States, 364 U.S. 206, 213, 80 S.Ct. 1437, 1441–1442, 4 L.Ed.2d 1669 (1960), including public school officials, *New Jersey v. T.L.O.*, 469 U.S. 325, 336–337, 105 S.Ct. 733, 740, 83 L.Ed.2d 720 (1985). In *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 617, 109 S.Ct. 1402, 1413, 103 L.Ed.2d 639 (1989), we held that state-compelled collection and testing of urine, such as that required by the Policy, constitutes a "search" subject to the demands of the Fourth Amendment. See also *Treasury Employees v. Von Raab*, 489 U.S. 656, 665, 109 S.Ct. 1384, 1390, 103 L.Ed.2d 685 (1989).

As the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a governmental search is "reasonableness." At least in a case such as this, where there was no clear practice, either approving or disapproving the type of search at issue, at the time the constitutional provision was enacted,[1] whether a particular search meets the reasonableness standard " 'is judged by balancing ***653** its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.' " *Skinner*, *supra*, at 619, 109 S.Ct., at 1414 (quoting *Delaware v. Prouse*, 440 U.S. 648, 654, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660 (1979)). Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, this Court has said that reasonableness generally requires the obtaining of a judicial warrant, *Skinner*, *supra*, at 619, 109 S.Ct., at 1414. Warrants cannot be issued, of course, without the showing of probable cause required by the Warrant Clause. But a warrant is not required to establish the ****2391** reasonableness of *all* government searches; and when a warrant is not required (and the Warrant Clause therefore not applicable), probable cause is not invariably required either. A search unsupported by probable cause can be constitutional, we have said, "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, 3168, 97 L.Ed.2d 709 (1987) (internal quotation marks omitted).

We have found such "special needs" to exist in the public school context. There, the warrant requirement "would unduly interfere with the maintenance of the swift and informal disciplinary procedures [that are] needed," and "strict adherence to the requirement that searches be based upon probable cause" would undercut "the substantial need of teachers and administrators for freedom to maintain order in the schools." *T.L.O.*, 469 U.S., at 340, 341, 105 S.Ct., at 742. The school search we approved in *T.L.O.*, while not based on probable cause, *was* based on individualized *suspicion* of wrongdoing. As we explicitly acknowledged, however, " 'the Fourth Amendment imposes no irreducible requirement of such suspicion,' " *id.*, at 342, n. 8, 105 S.Ct., at 743, n. 8 (quoting *United States v. Martinez–Fuerte*, 428 U.S. 543, 560–561, 96 S.Ct. 3074, 3084, 49 L.Ed.2d 1116 (1976)). We have upheld suspicionless searches and seizures to conduct drug testing of railroad personnel involved in train accidents, see *Skinner*, *supra;* to conduct random drug testing of federal customs officers who carry arms or are involved in drug interdiction, ***654** see *Von Raab*, *supra;* and to maintain automobile checkpoints looking for illegal immigrants and contraband, *Martinez–Fuerte*, *supra*, and drunk drivers, *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990).

III

The first factor to be considered is the nature of the privacy interest upon which the search here at issue intrudes. The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as "legitimate." *T.L.O.*, 469 U.S., at 338, 105 S.Ct., at 741. What expectations are legitimate varies, of course, with context, *id.*, at 337, 105 S.Ct., at 740, depending, for example, upon whether the individual asserting the privacy interest is at home, at work, in a car, or in a public park. In addition, the legitimacy of certain privacy expectations vis-à-vis the State may depend upon the individual's legal relationship with the State. For example, in *Griffin*, *supra*, we held that, although a "probationer's home, like anyone else's, is protected by the Fourth Amendmen[t]," the supervisory relationship between probationer and State justifies "a degree of impingement upon [a probationer's] privacy that would not be constitutional if applied to the public at large." 483 U.S., at 873, 875, 107 S.Ct., at 3168, 3169. Central, in our view, to the present case 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.

Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians. See 59 Am.Jur.2d, Parent and Child § 10 (1987). When parents place minor children in private schools for their education, the teachers and administrators of those schools stand *in loco parentis* over the children entrusted

to them. In fact, the tutor or schoolmaster ***655** is the very prototype of that status. As Blackstone describes it, a parent "may ... delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed." 1 W. Blackstone, Commentaries on the Laws of England 441 (1769).

In *T.L.O.* we rejected the notion that public schools, like private schools, exercise only parental power over their students, ****2392** which of course is not subject to constitutional constraints. 469 U.S., at 336, 105 S.Ct., at 740. Such a view of things, we said, "is not entirely 'consonant with compulsory education laws,' " *ibid.* (quoting *Ingraham v. Wright*, 430 U.S. 651, 662, 97 S.Ct. 1401, 1407, 51 L.Ed.2d 711 (1977)), and is inconsistent with our prior decisions treating school officials as state actors for purposes of the Due Process and Free Speech Clauses, *T.L.O., supra*, at 336, 105 S.Ct., at 740. But while denying that the State's power over schoolchildren is formally no more than the delegated power of their parents, *T.L.O.* did not deny, but indeed emphasized, that the nature of that power is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults. "[A] proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." 469 U.S., at 339, 105 S.Ct., at 741. While we do not, of course, suggest that public schools as a general matter have such a degree of control over children as to give rise to a constitutional "duty to protect," see *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 200, 109 S.Ct. 998, 1005–1006, 103 L.Ed.2d 249 (1989), we have acknowledged that for many purposes "school authorities ac[t] *in loco parentis*," *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 684, 106 S.Ct. 3159, 3165, 92 L.Ed.2d 549 (1986), with the power and indeed the duty to "inculcate the habits and manners of civility," *id.*, at 681, 106 S.Ct., at 3163 (internal quotation marks omitted). Thus, while children assuredly do not "shed their constitutional ***656** rights ... at the schoolhouse gate," *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 736, 21 L.Ed.2d 731 (1969), the nature of those rights is what is appropriate for children in school. See, *e.g., Goss v. Lopez*, 419 U.S. 565, 581–582, 95 S.Ct. 729, 740, 42 L.Ed.2d 725 (1975) (due process for a student challenging disciplinary suspension requires only that the teacher "informally discuss the alleged misconduct with the student minutes after it has occurred"); *Fraser, supra*, 478 U.S., at 683, 106 S.Ct., at 3164 ("[I]t is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse"); *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 273, 108 S.Ct. 562, 571, 98 L.Ed.2d 592 (1988) (public school authorities may censor school-sponsored publications, so long as the censorship is "reasonably related to legitimate pedagogical concerns"); *Ingraham, supra*, 430 U.S., at 682, 97 S.Ct., at 1418 ("Imposing additional administrative safeguards [upon corporal punishment] ... would ... entail a significant intrusion into an area of primary educational responsibility").

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. For their own good and that of their classmates, public school children are routinely required to submit to various physical examinations, and to be vaccinated against various diseases. According to the American Academy of Pediatrics, most public schools "provide vision and hearing screening and dental and dermatological checks.... Others also mandate scoliosis screening at appropriate grade levels." Committee on School Health, American Academy of Pediatrics, School Health: A Guide for Health Professionals 2 (1987). In the 1991–1992 school year, all 50 States required public school students to be vaccinated against diphtheria, measles, rubella, and polio. U.S. Dept. of Health & Human Services, Public Health Service, Centers for Disease Control, State Immunization Requirements 1991–1992, p. 1. Particularly with regard to medical examinations and procedures,therefore, ***657** "students within the school environment have a lesser expectation of privacy than members of the population generally." *T.L.O., supra*, 469 U.S., at 348, 105 S.Ct., at 746 (Powell, J., concurring).

Legitimate privacy expectations are even less with regard to student athletes. School sports are not for the bashful. They require "suiting up" before each practice or event, and showering and changing afterwards. Public school locker rooms, the usual sites ****2393** 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. As the United States Court of Appeals for the Seventh Circuit has noted, there is "an element of 'communal undress' inherent in athletic participation," *Schaill by Kross v. Tippecanoe County School Corp.*, 864 F.2d 1309, 1318 (1988).

There is an additional respect in which school athletes have a reduced expectation of privacy. By choosing to "go out for the team," they voluntarily subject themselves

to a degree of regulation even higher than that imposed on students generally. In Vernonia's public schools, they must submit to a preseason physical exam (James testified that his included the giving of a urine sample, App. 17), they must acquire adequate insurance coverage or sign an insurance waiver, maintain a minimum grade point average, and comply with any "rules of conduct, dress, training hours and related matters as may be established for each sport by the head coach and athletic director with the principal's approval." Record, Exh. 2, p. 30, ¶ 8. 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. See *Skinner*, 489 U.S., at 627, 109 S.Ct., at 1418–1419; *United States v. Biswell*, 406 U.S. 311, 316, 92 S.Ct. 1593, 1596, 32 L.Ed.2d 87 (1972).

***658** IV

Having considered the scope of the legitimate expectation of privacy at issue here, we turn next to the character of the intrusion that is complained of. We recognized in *Skinner* that collecting the samples for urinalysis intrudes upon "an excretory function traditionally shielded by great privacy." 489 U.S., at 626, 109 S.Ct., at 1418. We noted, however, that the degree of intrusion depends upon the manner in which production of the urine sample is monitored. *Ibid.* Under the District's Policy, male students produce samples at a urinal along a wall. They remain fully clothed and are only observed from behind, if at all. Female students produce samples in an enclosed stall, with a female monitor standing outside listening only for sounds of tampering. These conditions are nearly identical to those typically encountered in public restrooms, which men, women, and especially schoolchildren use daily. Under such conditions, the privacy interests compromised by the process of obtaining the urine sample are in our view negligible.

The other privacy-invasive aspect of urinalysis is, of course, the information it discloses concerning the state of the subject's body, and the materials he has ingested. In this regard it is significant that the tests at issue here look only for drugs, and not for whether the student is, for example, epileptic, pregnant, or diabetic. See *id.*, at 617, 109 S.Ct., at 1413. Moreover, the drugs for which the samples are screened are standard, and do not vary according to the identity of the student. And finally, the results of the tests are disclosed only to a limited class of school personnel who have a need to know; and they are not turned over to law enforcement authorities or used for any internal disciplinary function. 796 F.Supp., at 1364; see also 23 F.3d, at 1521.[2]

****2394 *659** Respondents argue, however, that the District's Policy is in fact more intrusive than this suggests, because it requires the students, if they are to avoid sanctions for a falsely positive test, to identify *in advance* prescription medications they are taking. We agree that this raises some cause for concern. In *Von Raab*, we flagged as one of the salutary features of the Customs Service drug-testing program the fact that employees were not required to disclose medical information unless they tested positive, and, even then, the information was supplied to a licensed physician rather than to the Government employer. See *Von Raab*, 489 U.S., at 672–673, n. 2, 109 S.Ct., at 1394–1395, n. 2. On the other hand, we have never indicated that requiring advance disclosure of medications is *per se* unreasonable. Indeed, in *Skinner* we held that it was not "a significant invasion of privacy." 489 U.S., at 626, n. 7, 109 S.Ct., at 1418, n. 7. It can be argued that, in *Skinner*, the disclosure went only to the medical personnel taking the sample, and the Government personnel analyzing it, see *id.*, at 609, 109 S.Ct., at 1408–1409, but see *id.*, at 610, 109 S.Ct., at 1409 (railroad personnel responsible for forwarding the sample, and presumably accompanying information, to the Government's testing lab); and that disclosure to teachers and coaches—to persons who personally *know* the student—is a greater invasion of privacy. Assuming for the sake of argument ***660** that both those propositions are true, we do not believe they establish a difference that respondents are entitled to rely on here.

The General Authorization Form that respondents refused to sign, which refusal was the basis for James's exclusion from the sports program, said only (in relevant part): "I ... authorize the Vernonia School District to conduct a test on a urine specimen which I provide to test for drugs and/or alcohol use. I also authorize the release of information concerning the results of such a test to the Vernonia School District and to the parents and/or guardians of the student." App. 10–11. While the practice of the District seems to have been to have a school official take medication information from the student at the time of the test, see *id.*, at 29, 42, that practice is not set forth in, or required by, the Policy, which says simply: "Student athletes who ... are or have been taking prescription medication must provide verification (either by a copy of the prescription or by doctor's authorization) prior to being tested." *Id.*, at 8. It may well be that, if and when James was selected for random testing at a time that he was taking medication, the School District would have permitted him to provide the requested information in a

confidential manner—for example, in a sealed envelope delivered to the testing lab. Nothing in the Policy contradicts that, and when respondents choose, in effect, to challenge the Policy on its face, we will not assume the worst. Accordingly, we reach the same conclusion as in *Skinner:* that the invasion of privacy was not significant.

V

Finally, we turn to consider the nature and immediacy of the governmental concern at issue here, and the efficacy of this means for meeting it. In both *Skinner* and *Von Raab,* we characterized the government interest motivating the search as "compelling." *Skinner, supra,* 489 U.S., at 628, 109 S.Ct., at 1419 (interest in preventing railway accidents); *Von Raab, supra,* 489 U.S., at 670, 109 S.Ct., at 1393 (interest ***661** in insuring fitness of customs officials to interdict drugs and handle firearms). Relying on these cases, the District Court held that because the District's program also called for drug testing in the absence of individualized suspicion, the District "must demonstrate a 'compelling need' for the program." 796 F.Supp., at 1363. The Court of Appeals appears to have agreed with this view. See 23 F.3d, at 1526. It is a mistake, however, to think that the phrase "compelling state interest," in the Fourth Amendment context, describes a fixed, minimum quantum of governmental concern, so that one can dispose of a case by answering in isolation the question: Is there a compelling state interest here? Rather, the phrase describes an interest that appears *important enough* to justify the particular ****2395** search at hand, in light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy. Whether that relatively high degree of government concern is necessary in this case or not, we think it is met.

That the nature of the concern is important—indeed, perhaps compelling—can hardly be doubted. Deterring drug use by our Nation's schoolchildren is at least as important as enhancing efficient enforcement of the Nation's laws against the importation of drugs, which was the governmental concern in *Von Raab, supra,* 489 U.S., at 668, 109 S.Ct., at 1392, or deterring drug use by engineers and trainmen, which was the governmental concern in *Skinner, supra,* at 628, 109 S.Ct., at 1419. School years are the time when the physical, psychological, and addictive effects of drugs are most severe. "Maturing nervous systems are more critically impaired by intoxicants than mature ones are; childhood losses in learning are lifelong and profound"; "children grow chemically dependent more quickly than adults, and their record of recovery is depressingly poor." Hawley, The Bumpy Road to Drug–Free Schools, 72 Phi Delta Kappan 310, 314 (1990). See also Estroff, Schwartz, & Hoffmann, Adolescent Cocaine Abuse: Addictive Potential, Behavioral and Psychiatric Effects, 28 Clinical Pediatrics 550 ***662** Dec. 1989); Kandel, Davies, Karus, & Yamaguchi, The Consequences in Young Adulthood of Adolescent Drug Involvement, 43 Arch. Gen. Psychiatry 746 (Aug. 1986). And of course the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted. In the present case, moreover, 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. Finally, it must not be lost sight of that this program is directed more narrowly 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. Apart from psychological effects, which include impairment of judgment, slow reaction time, and a lessening of the perception of pain, the particular drugs screened by the District's Policy have been demonstrated to pose substantial physical risks to athletes. Amphetamines produce an "artificially induced heart rate increase, [p]eripheral vasoconstriction, [b]lood pressure increase, and [m]asking of the normal fatigue response," making them a "very dangerous drug when used during exercise of any type." Hawkins, Drugs and Other Ingesta: Effects on Athletic Performance, in H. Appenzeller, Managing Sports and Risk Management Strategies 90, 90–91 (1993). Marijuana causes "[i]rregular blood pressure responses during changes in body position," "[r]eduction in the oxygen-carrying capacity of the blood," and "[i]nhibition of the normal sweating responses resulting in increased body temperature." *Id.,* at 94. Cocaine produces "[v]asoconstriction[,] [e]levated blood pressure," and "[p]ossible coronary artery spasms and myocardial infarction." *Ibid.*

As for the immediacy of the District's concerns: We are not inclined to question—indeed, we could not possibly find clearly erroneous—the District Court's conclusion that "a large segment of the student body, particularly those involved ***663** in interscholastic athletics, was in a state of rebellion," that "[d]isciplinary actions had reached 'epidemic proportions,' " and that "the rebellion was being fueled by alcohol and drug abuse as well as by the student's misperceptions about the drug culture." 796 F.Supp., at 1357. That is an immediate crisis of greater proportions than existed in *Skinner,* where we upheld the Government's drug-testing program based on findings of drug use by railroad employees nationwide, without proof

that a problem existed on the particular railroads whose employees were subject to the test. See *Skinner,* 489 U.S., at 607, 109 S.Ct., at 1407–1408. And of much greater proportions than existed in *Von Raab,* where there was no documented history of drug use by any customs officials. See *Von Raab,* 489 U.S., at 673, 109 S.Ct., at 1395; *id.,* at 683, 109 S.Ct., at 1400 (SCALIA, J., dissenting).

[redacted]

Taking into account all the factors we have considered above—the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met ***665** by the search—we conclude Vernonia's Policy is reasonable and hence constitutional.

We caution against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts. 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.[4] Just as when the government conducts a search in its capacity as employer (a warrantless search of an absent employee's ****2397** desk to obtain an urgently needed file, for example), the relevant question is whether that intrusion upon privacy is one that a reasonable employer might engage in, see *O'Connor v. Ortega,* 480 U.S. 709, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987); so also when the government acts as guardian and tutor the relevant question is whether the search is one that a reasonable guardian and tutor might undertake. Given the findings of need made by the District Court, we conclude that in the present case it is.

[redacted]

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The Ninth Circuit held that Vernonia's Policy not only violated the Fourth Amendment, but also, by reason of that violation, contravened Article I, § 9, of the Oregon Constitution. Our conclusion that the former holding was in error means that the latter holding rested on a flawed premise. We therefore vacate the judgment, and remand the case to the Court of Appeals for further proceedings consistent with this opinion.

It is so ordered.

Footnotes

* 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 Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Not until 1852 did Massachusetts, the pioneer in the "common school" movement, enact a compulsory school-attendance law, and as late as the 1870's only 14 States had such laws. R. Butts, Public Education in the United States From Revolution to Reform 102–103 (1978); 1 Children and Youth in America 467–468 (R. Bremner ed. 1970). The drug problem, and the technology of drug testing, are of course even more recent.