How about drug testing candidates for public office?

CHANDLER v. MILLER
SUPREME COURT OF THE UNITED STATES
520 U.S. 305
April 15, 1997
[8 – 1]

OPINION: Justice GINSBURG/STEVENS/O'CONNOR/SCALIA/KENNEDY/SOUTER/ THOMAS/BREYER…Georgia requires **candidates for designated state offices** to certify that they have taken a drug test and that the test result was negative. 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 programs for student athletes, customs employees, and railway employees…, 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…does not fit within the closely guarded category of constitutionally permissible suspicionless searches.**

…**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. The statute lists as "illegal drugs": marijuana, cocaine, opiates, amphetamines, and phencyclidines. The designated state offices are: "the Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, 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."

Candidate drug tests are to be administered in a manner consistent with the United States Department of Health and Human Services Guidelines or other professionally valid procedures approved by Georgia's Commissioner of Human Resources. A candidate may provide the test specimen at a laboratory approved by the State, or at the office of the candidate's personal physician. Once a urine sample is obtained, an approved laboratory determines whether any of the five specified illegal drugs are present and prepares a certificate reporting the test results to the candidate.

Petitioners…asserted that the [required] drug tests…violated their rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution…[T]he District Court entered final judgment for respondents. A divided Eleventh Circuit panel affirmed. 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."

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." 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." The court further noted that "the nature of high public office in itself demands the highest levels of honesty, clear-sightedness, and clear-thinking." Reciting 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."

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*.' The court also noted the statute's reference to federally approved drug-testing guidelines. 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.** 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." **Concluding that the State's interests outweighed the privacy intrusion caused by the required certification, the court held the statute, as applied to petitioners, not inconsistent with the Fourth and Fourteenth Amendments…**We granted…certiorari and now reverse.

…Because "these intrusions are searches under the Fourth Amendment" we focus on the question: Are the searches **reasonable**?…

Respondents urge that…"special needs" analysis…must be viewed through a different lens because §21-2-140 implicates Georgia's **sovereign power…to establish qualifications for those who seek state office**. Respondents rely on *Gregory v. Ashcroft* (1991), which upheld… Missouri's mandatory retirement age of 70 for state judges…**States enjoy wide latitude to establish conditions of candidacy for state office, but in setting such conditions, they may not disregard basic constitutional protections.** *McDaniel v. Paty* (1978)[1] (invalidating state provision prohibiting members of clergy from serving as delegates to state constitutional convention)…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 measures setting conditions of candidacy for state office. Our guides remain *Skinner*, *Von Raab*, and *Vernonia*.

…Our precedents establish that the proffered special need for drug testing must be…important enough to override the individual's acknowledged privacy interest…Georgia has failed to show…a special need of that kind…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…in response to any fear or suspicion of drug use by state officials…

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 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, safety-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 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*****.** 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:

> "It 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."

[1] Case 1A-R-21 on this website.

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…

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. *Von Raab*. 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…The judgment of the Court of Appeals for the Eleventh Circuit is Reversed.

DISSENT: Chief Justice REHNQUIST…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 apparently remains the only, State to condition candidacy for state office on a drug test." But if we are to heed the oft-quoted words of Justice Brandeis in his dissent in *New State Ice Co. v. Liebmann* (1932) - it 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…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." 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*...

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 - "[c]andidates for public office…are subject to relentless scrutiny-by their peers, the public and the press," 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 already subjected by reason of their candidacy will enable people to detect any drug use on their part. **But this is a strange holding …**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…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…

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…Court of Appeals.