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Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls 122 S. Ct. 2559 (2002)

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BOARD OF EDUCATION OF
INDEPENDENT SCHOOL DISTRICT
NO. 92 OF POTTAWATOMIE COUNTY
V. EARLS
122 S. CT. 2559 (2002)

INTRODUCTION

In 1995, the United States Supreme Court decided *Vernonia School District v. Acton*.¹ The Court concluded that the school district's student athlete drug policy, which randomly tested students who participated in athletics, did not violate the Fourth or Fourteenth Amendments of the United States Constitution because the school's drug testing regime was reasonably tailored to promote the school district's interest in preventing drug use among students.² Based on such facts as the sharp increase in drug use in the 1980s,³ the prominence of athletes among students who use drugs,⁴ and the effect of drugs on coordination and performance,⁵ the Court determined that the government interests in the health and safety of public school students outweighed any privacy interests student

1. 515 U.S. 646 (1995).

2. *See id.* at 662, 664-65 (holding the Vernonia, Oregon, school district's drug policy reasonable based on students' decreased expectation of privacy in the school setting, the limited intrusion of the search and the severity of the need met by the search, such as the significant risks related to drug use, and not in violation of the Fourth Amendment); U.S. CONST. amends. IV, XIV.

3. *See Vernonia*, 515 U.S. at 648-49 (citing evidence that during the second half of the 1980s, students indicated an attraction to the drug culture, and teachers and administrators noticed more disciplinary problems).

4. *See id.* at 649 (noting the District Court's finding that student athletes were the leaders of the drug culture at the school); *see also Acton v. Vernonia Sch. Dist.*, 796 F. Supp. 1354, 1357 (D. Or. 1992) (describing actions of student athletes concerning drugs and alcohol and discussing the school administrations' conclusion that student athletes were leaders in the drug culture at the school).

5. *See id.* (indicating that expert testimony during trial noted that drug use affects motivation, memory, performance and coordination, causing concern among school officials because of the increased risk of sports-related injuries that could result).

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athletes asserted.⁶ The Court used a three-part test to balance the interests of the government against the interests of the individual students. First, the Court considered the nature of the privacy interest intruded upon.⁷ Second, it examined the character of the intrusion.⁸ Third, the Court considered the governmental concern and the means used to address the concern.⁹

During the 2001-2002 term, the Court examined the constitutionality of another school district's attempts to pursue random drug testing of public school students in *Board of Education v. Earls*.¹⁰ In this case, the drug testing was imposed not only on athletes, but on all students who wished to engage in any school-sanctioned extracurricular activities, although in practice drug testing was generally imposed only on students who engaged in competitive extracurricular activities.¹¹ The majority opinion for a divided Court found in favor of the school district, reflecting the Court's continuing interest in promoting a disciplined, safe and healthy school environment, even if student privacy may be compromised to some extent.¹²

I. FACTS

In 1998, the Pottawatomie County (Oklahoma) School District created the Student Activities Drug Testing Policy ("Policy"), requiring middle and high school students wishing to engage in any extracurricular activity to consent to a urinalysis drug test.¹³ Two students challenged the Policy on constitutional grounds. Lindsay

6. See *id.* at 664-65. The Court also focused on the fact that only a few select administrators, including the superintendent, principal and athletic directors, had access to test results and that the records were only kept up to one year. *Id.* at 651.

7. See *id.* at 655 (stating that students' privacy interests must be considered in the context of the school's custodial and tutelary role).

8. See *id.* at 658 (noting that the determination of whether or not an individual's privacy interests are infringed through the method of collecting the sample for the drug test "depends upon the manner in which production of the urine sample is monitored").

9. See *id.* at 660 (explaining that the government interest must be important enough to justify the search at issue).

10. 122 S. Ct. 2559 (2002).

11. See *id.* at 2562-63 (including extracurricular activities such as cheerleading, athletics and band). The Policy was generally only applied to competitive activities that were sanctioned by the Oklahoma Secondary Schools Activities Association. *Id.*

12. Cf. Neal H. Hutchens, *Suspicionless Drug Testing: The Tuition for Attending Public School?*, 53 ALA. L. REV. 1265, 1287 (noting the recent expansion in school districts' drug testing programs to deter student drug abuse).

13. See *Earls*, 122 S. Ct. at 2563 (noting that urinalysis only tested for the presence of illegal drugs, including marijuana and cocaine, but not legitimate prescription medications).

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Earls, a member of the school marching band, choir, National Honor Society and Academic Team, and Daniel James, who wished to be on the Academic Team, filed a claim under 42 U.S.C. § 1983,¹⁴ arguing that the Policy was unconstitutional on its face as it applied to them.¹⁵ They argued that the school district failed to refer to a special need for testing students who participate in extracurricular activities and that the Policy did not address a proven drug problem at the school.¹⁶

The United States District Court for the Western District of Oklahoma upheld the Policy as constitutional based on the existence of a special need, indicated by accounts of drug abuse since 1970.¹⁷ The Tenth Circuit Court of Appeals reversed the district court's decision, holding that the Policy was unconstitutional because there was no evidence that an identifiable drug problem existed among the students, or that the drug testing policy would target those students with drug problems.¹⁸ The school board appealed, and the United States Supreme Court granted certiorari.¹⁹

II. HOLDING

The U.S. Supreme Court reversed the decision of the Tenth Circuit Court of Appeals and reaffirmed the decision of the district court, finding the Policy constitutional.²⁰ Applying *Vernonia's* three-part test, the Court held that the Policy compromised only a limited privacy interest,²¹ the intrusion imposed by the policy was "negligible"²² and

14. See 42 U.S.C. § 1983 (2000) (providing a private civil cause of action to individuals whose constitutional and/or federal rights are infringed by an individual acting under the color of state law).

15. See *Earls*, 122 S. Ct. at 2563.

16. See *id.* (arguing that the Policy failed to solve a problem or benefit the school or its students and, therefore, there was no special need for testing students in order to permit them to participate in extracurricular activities).

17. See *Earls v. Bd. of Educ.*, 115 F. Supp. 2d 1281, 1287 (W.D. Okla. 2000) (noting that although the drug problem beginning in 1970 was "not major," there existed legitimate concern). It is also important to note that the district court ruled that Daniel James, who was receiving failing grades, was ineligible to participate in extracurricular activities, and therefore did not have standing to bring suit. However, the district court determined that Lindsey Earls had standing because her grades met the school's threshold for eligibility. *Id.* at 1282 n.1.

18. See *Earls v. Bd. of Educ.*, 242 F.3d 1264, 1278 (10th Cir. 2001).

19. *Earls v. Bd. of Educ.*, 242 F.3d 1264, 1278 (10th Cir. 2001), *cert. granted*, 534 U.S. 1015 (2001).

20. See *Earls*, 122 S. Ct. at 2569.

21. See *id.* at 2565 (focusing on the state's interests in maintaining order and discipline).

22. See *id.* at 2566 (noting the privacy protections the Policy afforded students, including allowing male students to produce their urinalysis sample inside a closed stall).

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that the Policy was reasonable in pursuit of students' safety and health, a legitimate government interest.²³

III. ANALYSIS

Fourth Amendment protections against unreasonable search and seizure apply to urinalysis testing.²⁴ Therefore, under the Fourth Amendment, such testing must be reasonable to be held constitutional.²⁵ The reasonableness of a search, though, depends on the context of the search, as a warrant based on probable cause may not always be required for reasonableness to exist.²⁶ This is the case for special needs searches, where the search goes "beyond the need for normal law enforcement,"²⁷ because the government has a sufficiently compelling interest in discovering "latent or hidden conditions."²⁸ Therefore, the usual warrant and probable cause requirements are unnecessary for the search to be valid.²⁹ Such special needs searches are most apparent in public schools, as probable cause is not necessarily required for drug testing students, because a reasonableness inquiry cannot ignore the school's "custodial and tutelary responsibility for children" and that requirement may impinge on the authority of school officials to take quick action to maintain order.³⁰ Additionally, the reasonableness of a search is not always dependent on the existence of individualized suspicion, such as in the case of drug testing.³¹ The Court followed the balancing test it applied in *Vernonia*, and weighed the intrusion of the drug testing Policy imposed on students against the government

23. See *id.* at 2569 (determining that testing students who participate in extracurricular activities is a reasonable method to detect and prevent drug use).

24. See *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 652 (1995) (finding that collecting and testing urine samples constitutes a search and, therefore, protections afforded under the Fourth Amendment apply).

25. See *id.*

26. See *id.* at 653 (stating that "a warrant is not required to establish the reasonableness of *all* government searches."). A warrantless search can be considered constitutional when "special needs" exist that make compliance with the constitutional requirements for obtaining a warrant impracticable. *Id.*

27. *Id.*

28. *Id.*

29. See *id.*

30. See *id.* (noting that a warrant requirement "would unduly interfere with the maintenance of the swift and informal disciplinary procedures [that are] needed.").

31. See *Earls*, 122 S. Ct. at 2564-65 (noting that individualized suspicion for an invasion of an individual's privacy may not be necessary when the government interest is "sufficiently compelling" to make a requirement of individualized suspicion impracticable).

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interests in the students' health and safety.³²

A. A Student Possesses Limited Privacy Rights in the Public School Setting

The Court determined in *Earls* that a "student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety."³³ The students' argument was based on the difference between athletic and non-athletic extracurricular activities, claiming a stronger privacy interest for the latter.³⁴ The Court did not agree with this distinction, instead identifying the school's custodial relationship with its students as the controlling factor.³⁵ The custodial relationship limits student privacy in the school environment, and students are often subject to greater controls on their activities.³⁶ In fact, the Court determined that student participants in competitive extracurricular activities are subject to similar privacy limitations as athletes.³⁷

B. The Personal Intrusion on Students is "Negligible"

The drug testing policy adopted by the Pottawatomie County School District requires a faculty member to serve as a monitor, and wait outside a closed restroom for the student to produce a urine sample.³⁸ The monitor pours the urine sample into two bottles that are then sealed and put into a mailing envelope.³⁹ This process affords the student more privacy than students were provided in *Vernonia*, allowing the male students here to urinate in a closed restroom.⁴⁰ The Policy also protects students by requiring that the

32. *See id.* at 2565.

33. *Id.*

34. *See id.* (arguing that since non-athletic extracurricular activities do not include a component of annual physicals and communal undress, there exists a higher expectation of privacy outside of the athletic sphere).

35. *See id.* (stating that in *Vernonia*, it was irrelevant that the Vernonia School District's drug testing only applied to athletes because the decision depended primarily on the school's custodial responsibility for the students); *see also* *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 652-53 (1995).

36. *See id.* (noting that students are subject to routine examinations and vaccinations).

37. *See id.* at 2566 (noting that some non-athletic extracurricular activities required travel and communal undress, as well as specific rules to participate, that did not apply to the entire student body).

38. *See id.* (commenting that the faculty monitor "must listen for the normal sounds of urination in order to guard against tampered specimens and to insure an accurate chain of custody.").

39. *See id.* (noting that the student's consent form is also enclosed with the urine samples).

40. *See id.* (commenting that "[g]iven that we considered the method of collection in *Vernonia* a 'negligible' intrusion, the method here is even less

test results be kept confidential, separate from other school files such as academic records. Faculty and staff are only notified of the results on a “need to know”⁴¹ basis. The respondents referred to examples of carelessness in actually keeping the drug test records confidential, but the Court determined this did not have any bearing on the question of whether the search was impermissibly intrusive.⁴²

Additionally, even if the first drug test result is positive, the only consequence is that the school meets with the student’s parent(s).⁴³ The student is allowed to continue participation in extracurricular activities if he or she provides proof of drug counseling within five days and is willing to take another drug test in two weeks after the original positive drug test result.⁴⁴ If the student’s drug test is again positive, a fourteen-day suspension from extracurricular activities is imposed and the student is required to undergo substance abuse counseling.⁴⁵ Suspension for the remainder of the school year is only imposed should a student fail a drug test for a third time.⁴⁶

C. The Drug Testing Policy is a Reasonable Method to Promote the Government’s Valid Interests in the Health and Safety of Students.

As in *Vernonia*, the Pottawatomie County School District’s interest in preventing drug abuse, especially among students, is important.⁴⁷ The faculty at schools in the Pottawatomie County School District testified to evidence of drug use.⁴⁸ Police officers and drug dogs located drugs near the school parking lot and in a student’s car.⁴⁹ The Court did not question the district court’s finding that

problematic.”).

41. *See id.* (describing a situation where a teacher might need to know what medications a student is taking during an off-campus excursion).

42. *See id.* (relating a single incident where the choir teacher left a student’s prescription drug list easily accessible to other students).

43. *See id.* at 2566-67 (focusing on the fact that drug test results are not provided to any law enforcement body).

44. *See id.* at 2567.

45. *See id.* (including monthly drug testing).

46. *See id.* (noting that a student who fails a drug test for the third time is suspended for the longer of either the remainder of the school year or eighty-eight days).

47. *See id.* (stating “ [t]he health and safety risks identified in *Vernonia* apply with equal force to [Pottawatomie’s] children. Indeed, the nationwide drug epidemic makes the war against drugs a pressing concern in every school.”).

48. *See id.* (considering faculty testimony that students talked about drugs openly and that faculty observed students who appeared to be influenced by drugs).

49. *See id.* (noting that the student, whose car was found to contain drugs, was a member of Future Farmers of America, a competitive, non-athletic extracurricular activity).

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“(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,” because there existed some evidence of student drug use.⁵⁰

In response to respondents’ argument that the school district could not justify its drug testing Policy because it lacked a “real and immediate”⁵¹ interest, the Court determined that the validity of a drug testing policy is not dependent on a demonstration of drug use.⁵² Drug testing on a purely preventative basis is acceptable, as there is no requirement to show an identifiable drug use problem before a school drug testing regime is established.⁵³ The Court opined that requiring a school district to demonstrate an identifiable drug problem and showing how drug testing will ameliorate the drug problem is quite burdensome and difficult to administer.⁵⁴

The respondents also argued that safety interests must be at issue for a valid special needs search to be upheld.⁵⁵ They argued that there exist no safety issues that justify testing students engaged in non-athletic extracurricular activities.⁵⁶ The Court found no distinction among non-athletes and athletes when safety is at issue--the government has an interest in the health and safety of all students.⁵⁷

Finally, the Court did not agree with respondents’ contention that the Fourth Amendment requires individualized suspicion, because that would be least intrusive.⁵⁸ The Court refused to require individualized reasonable suspicion for a valid drug testing regime to

50. *Earls v. Bd. of Educ.*, 115 F. Supp. 2d 1281, 1287 (W.D. Okla. 2000).

51. *See Earls*, 122 S. Ct. at 2567.

52. *See id.* at 2568 (remarking that the Court has not previously required the existence of a pervasive drug problem before conducting suspicionless drug testing).

53. *See id.* (noting that the general epidemic of drug abuse and specific evidence of drug use at a particular school is enough to make a drug testing regime valid).

54. *See id.* (stating that “we refuse to fashion what would in effect be a constitutional quantum of drug use necessary to show a ‘drug problem,’” because it would be difficult to determine what level of drug use is required to rationalize a drug testing regime).

55. *See id.*

56. *See id.* (finding that safety issues inherently exist in the attempt to prevent drug abuse among students).

57. *See id.* (articulating that safety factors apply similarly to athletes and non-athletes, as the interest in student health and safety apply to all students).

58. *See id.* (declining “to impose such a requirement on schools attempting to prevent and detect drug use by students” because individualized suspicion may be difficult for teachers, who already have to maintain order and discipline in the school).

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exist.⁵⁹ In fact, the Court argued that a drug testing policy based on individualized suspicion would be more burdensome for school administrators and might be considered unfair towards some students, as searches may focus on particular groups of students by directing the school's attention towards unpopular groups of students.⁶⁰

The Court determined that subjecting students who participate in extracurricular activities to drug testing is a reasonable method to address the government's interests in the health and safety of students.⁶¹ Because deterring drug use is a legitimate governmental goal and the Policy is a reasonable means to achieve that goal, the Court ruled that the Pottawatomie County School District's Policy was valid and not in violation of the Fourth and Fourteenth Amendments.⁶²

IV. CONCURRENCE AND DISSENT

Justice Breyer submitted a concurring opinion. He agreed with the majority decision, but emphasized, among other issues, the seriousness of the drug problem in schools.⁶³ Second, Justice Breyer called attention to the fact that attempts to reduce the supply of illegal drugs have not been successful in reducing teenage drug use.⁶⁴ Third, he emphasized the burden on schools posed by attempting to prevent drug abuse among teenagers as a reason for upholding the drug testing Policy, due to the fact that schools have a wide variety of responsibilities, inside and outside of the classroom.⁶⁵ Justice Breyer also noted that the Policy discouraged drug use by attempting to

59. *See id.*

60. *See id.* at 2568-69 (considering the possibility of lawsuits that would prevent effective enforcement of a drug testing regime). The Court abandons the individualized suspicion standard because it believes that testing students who participate in extracurricular activities for drugs is a permissible method of addressing the School District's "legitimate concerns in preventing, deterring, and detecting drug use." *Id.* at 2569.

61. *See id.* at 2569 (concluding that the Policy addressed the school district's concerns, such as detecting and preventing drug use among its students).

62. *See id.*

63. *See id.* (Breyer, J., concurring) (framing the drug problem in terms of scope of demand, kind of drugs and consequences not just to the youth population, but to society as a whole).

64. *See id.* (Breyer, J., concurring) (citing statistics indicating that 66% of the federal drug control budget is spent on supply side programs, but that, despite these efforts, teenage drug abuse peaked in 1997 and has been steady ever since).

65. *See id.* at 2570 (Breyer, J., concurring) (finding that schools must not only teach academics, but must also feed students meals and provide services, such as child care, medical and psychological services).

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combat the role peer pressure plays in leading many students to use drugs.⁶⁶

Although Justice Breyer suggested that the urinalysis testing might not be considered such a small imposition on privacy as the majority believed, he pointed to the fact that public meetings were conducted as part of the process of creating the Policy, which enabled the community to play an integral part in its development.⁶⁷ He also gave the Policy credibility due to the fact that it was not mandatory, because students were not required to participate in activities covered by the Policy.⁶⁸ Lastly, he commented that a requirement of individualized suspicion might end up burdening some groups of students more than others, by focusing attention on unpopular groups or causing students whose behavior is considered to be abnormal to be stigmatized in the minds of others.⁶⁹

Justices Stevens, O'Connor and Souter joined a dissenting opinion written by Justice Ginsburg. Although *Vernonia* and *Earls* both concerned public school students who are in the school's custody, the dissent argued that the ill effects of drug use cannot be the sole basis for imposing suspicionless drug testing upon a body of students.⁷⁰ The dissent agreed with the majority that the *Vernonia* test was applicable, but they determined that the balancing conducted under the test fell in the respondents' favor.⁷¹

First, the dissent indicated that athletic and other competitive extracurricular activities are not as similar as the majority suggests.⁷²

66. *See id.* (Breyer, J., concurring) (referring to peer pressure as the single most important factor resulting in students' taking drugs, and suggesting that a student who participates in extracurricular activities now has a convincing reason not to take them).

67. *See id.* at 2571 (Breyer, J., concurring) (observing that the School Board allowed public participation and there was very little objection to the Policy). Justice Breyer states that he believes this type of democratic process is important in close cases such as *Earls* that require the interpretation of constitutional values. *Id.*

68. *See id.* (Breyer, J., concurring) (noting that students who did not want to be subject to the Policy could opt out of participating in extracurricular activities). Justice Breyer noted that while not participating is a serious price to pay, it is not as severe as expulsion from school. *Id.*

69. *See id.* (Breyer, J., concurring).

70. *See id.* at 2572-73 (Ginsburg, J., dissenting) (reasoning that the risks of drug use are present in all school children but *Vernonia* cannot allow drug testing of all school children on that basis).

71. *See id.* at 2574 (Ginsburg, J., dissenting) (stating that a proper balancing of the respective interests as required by *Vernonia* leads to the opposite result).

72. *See id.* (Ginsburg, J., dissenting) (differentiating non-athletic and athletic extracurricular activities to argue that the activities pursued by the respondent contain legitimate privacy expectations; the former do not attract bashful, inhibited students, while the latter attract all students, regardless of shyness or boldness).

Non-athletic extracurricular activities are considered part of the educational mission of the school because they give students the opportunity to develop both socially and personally.⁷³ Regulation of health and safety is a much more important requirement for athletic than for non-athletic extracurricular activities. Thus, the dissent argued that student athletes possess lower legitimate privacy expectations than students who engage in non-athletic extracurricular activities.⁷⁴ Second, the dissent advocated that the character of the intrusion was considered too lightly by the majority opinion, as it did not give sufficient weight to evidence of confidentiality breaches that occurred.⁷⁵ Lastly, the dissent found that the student drug problems described in *Vernonia* were much more immediate and overwhelming than those in *Earls*, giving the government's interest and concern much less force and credibility here.⁷⁶

The dissent ultimately concluded that the Policy's testing of all students who engage in extracurricular activities is too broad, as it does not distinguish between extracurricular activities that may pose health and safety risks and those activities that do not.⁷⁷ Because it does not test a particular portion of the student population shown to be associated with drug use, the Policy does not reach its target group and therefore should be unconstitutional under the Fourth Amendment.⁷⁸ Instead, the dissent asserted that the majority decision reflected the Pottawatomie County School District's symbolic stand against drug use in its schools, regardless of the constitutional costs to

73. See *id.* (Ginsburg, J., dissenting) (noting that students who engage in such activities are given the opportunity to associate with faculty and peers on a more informal basis, promoting self-confidence and providing support).

74. See *id.* at 2573 (Ginsburg, J., dissenting) (explaining that athletic competition exposes students to physical, safety, and health risks that are not present in non-athletic extracurricular activities).

75. See *id.* at 2574-75 (Ginsburg, J., dissenting) (noting the choir teacher's irresponsible behavior, including leaving files unlocked and unsealed, enabling anyone, including fellow students, to see a student's private information).

76. See *id.* at 2575 (Ginsburg, J., dissenting) (contrasting the emergency situation facing the Vernonia School District, involving student disorderly conduct primarily resulting from drug use, with the situation in Pottawatomie County School District, where drug use was not described as a major problem).

77. See *id.* at 2577 (Ginsburg, J., dissenting) (emphasizing that the facts influencing the reasoning in *Vernonia*, specifically the special health risks faced by student athletes and their role in the drug culture, did not mirror the facts of this case).

78. See *id.* (Ginsburg, J., dissenting) (suggesting that the Policy may deter those students most susceptible to drug abuse from participating in extracurricular activities).

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students.⁷⁹

V. IMPLICATIONS

While the Court in *Vernonia* established the framework for determining the constitutionality of a school's suspicionless drug testing regime, the Court in *Earls* made it clear that the government's interest in deterring drug use is compelling, and more often than not outweighs students' privacy interests.⁸⁰ Additionally, the Court emphasized the fact that students who participated in extracurricular activities, and were therefore subject to suspicionless drug testing, did so on a voluntary basis.⁸¹ It is feared that, using this decision as justification, schools will determine more and more school activities to be voluntary, and subject more and more students to suspicionless drug testing.⁸² The school context is important to consider, but it is uncertain what the consequences will be if courts continue to narrow the constitutional protections available to students.⁸³

Although the majority opinion in *Earls* found the Policy to be constitutional based on a reasonableness inquiry, it added that "local school boards must assess the desirability of drug testing school children. In upholding the constitutionality of the Policy, we express no opinion as to its wisdom."⁸⁴ Although the Court did not provide examples of alternative methods to prevent drug abuse among teenagers, opponents of drug testing regimes in schools call for education and preventative measures,⁸⁵ such as parental guidance

79. See *id.* (Ginsburg, J., dissenting) (arguing that the Policy ignored student confidentiality and student rights).

80. See *id.* at 2567 (finding the issue of drug abuse in schools to be a pressing one due to the nationwide war on drugs and evidence suggesting that the problem has gotten worse since *Vernonia*).

81. See *id.* at 2565-66 (explaining that by voluntarily participating in an activity, students subject themselves to additional rules which lead to allowing voluntary intrusions on privacy).

82. See Hutchens, *supra* note 12, at 1285 (asserting that the voluntariness of extracurricular activities is often an important factor in considering the constitutionality of a drug testing program). Many activities, including driving to school, could require drug testing if voluntariness becomes the most significant factor. *Id.*

83. See *id.* at 1286 (pondering the extent to which schools will be allowed to make students "check their constitutional rights at the schoolhouse door."); see also *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

84. *Earls*, 122 S. Ct. at 2569.

85. See Kimberly M. Glassman, *Shedding Their Rights: The Fourth Amendment and Suspicionless Drug Testing of Public School Students Participating in Extracurricular Activities*, 51 CATH. U. L. Rev. 951, 984-85 (2002) (noting that urinalysis is often inaccurate, leading to false indications of drug use).

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and peer discussion groups.⁸⁶ These preventative measures address all teenagers alike, not just a specific group that might be the focus of a school's drug testing policy.⁸⁷

CONCLUSION

The Court used the framework it set out in *Vernonia* to rule in favor of the Pottawatomie County School District, finding its drug testing policy constitutional. However, in *Earls*, the Court expanded the context in which drug testing can pass constitutional muster from drug testing of athletes to testing all students who engage in competitive extracurricular activities. In both cases, the Court's decision in favor of the school district is partially based on the fact that neither drug testing policy released the results to law enforcement and both applied to activities that were entirely voluntary. The Court continues to strongly justify school districts' attempts to deter drug use among its students, giving minimal weight to the constitutional rights of students that are compromised in the process.

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86. *See id.* at 984 (stating that community involvement is an important drug prevention method).

87. *See id.* at 985 (arguing that the solution to drug abuse among teenagers applies to all students, not just an isolated subset).