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Governmental Drug Testing Programs: Legal and Constitutional Developments

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Summary

Constitutional law on the subject of governmentally mandated drug testing is primarily an outgrowth of the Fourth Amendment prohibition on unreasonable searches and seizures. Judicial exceptions to traditional requirements of a warrant and individualized suspicion for "administrative" searches have been extended to random drug testing of public employees and school students where the government is able to demonstrate a "special need" beyond the demands of ordinary law enforcement. In the public employment setting, however, special needs analysis has largely been confined to relatively narrow circumstances directly implicating "compelling" public safety, law enforcement, or national security interests of the government. More generalized governmental concerns for the "integrity" or efficient operation of the public workplace have usually not been deemed sufficient to justify interference with the "reasonable expectation of privacy" of workers or other individuals to be tested. Additionally, warrantless, suspicionless drug testing programs that serve primarily a criminal law enforcement purpose are likely to be unconstitutional.

The constitutional parameters of "special needs" analysis is outlined in a series of Supreme Court rulings. In *Skinner v. Railway Labor Executives Association*, the U.S. Supreme Court upheld post-accident drug and alcohol testing of railway employees after major train accidents or incidents, and it approved the testing of U.S. Customs employees seeking promotion to certain "sensitive" jobs involving firearms use, drug interdiction duties, or access to classified information in *National Treasury Employees Union v. Von Raab*. These decisions established that "compelling" governmental interests in public safety or national security may, in appropriate circumstances, override constitutional objections to testing procedures by employees whose privacy expectations are diminished by the nature of their duties or workplace scrutiny to which they are otherwise subject. In *Veronia School District v. Acton*, the Supreme Court first approved of random drug testing procedures for high school student athletes, a holding that was subsequently extended, in *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, to permit random drug testing of students participating in non-athletic extracurricular activities. However, the Court placed limitations on the "special needs" doctrine when, in *Chandler v. Miller*, it voided a Georgia law requiring drug testing of candidates for state office for lack of a governmental need substantial enough to warrant suspicionless searches. Additionally, the Court generally has struck down drug testing policies that primarily serve criminal law enforcement purposes, such as in *Ferguson v. City of Charleston*.

Contents

Governmental Drug Testing Programs: Legal and Constitutional Developments

Introduction

One outgrowth of the nation's "war on drugs" has been a proliferation of governmental initiatives at the federal, state, and local levels to detect and deter illegal drug use in the workplace, the schools, and by recipients of public benefits. Since the late 1980s, the federal government has conducted "random" drug tests of executive branch employees in "sensitive" job positions and has implemented similar procedures for public and private employees in transportation and other safety or security-related industries. Aiding these efforts are state and local governmental testing programs for police officers, firefighters, prison guards, teachers, and other personnel with public safety responsibilities. Beyond employment, states and localities have required other individuals to submit to drug testing, such as students in public schools.

Constitutional challenges to "suspicionless" or random governmental drug testing most often focus on issues of personal privacy and Fourth Amendment protections against "unreasonable" searches and seizures. Generally speaking, the government is required by the Fourth Amendment to obtain warrants based on probable cause in order to effectuate constitutional searches and seizures. An exception to ordinary warrant requirements has gradually evolved, however, for cases where a "special need" of the government, not related to criminal law enforcement, is found by the courts to outweigh any "diminished expectation" of privacy invaded by a search.

In 1989, the U.S. Supreme Court upheld post-accident drug and alcohol testing of railway employees after major train accidents or incidents, in *Skinner v. Railway Labor Executives Association*,[1] and of U.S. Customs employees seeking promotion to certain "sensitive" jobs involving firearms use, drug interdiction duties, or access to classified information, in *National Treasury Employees Union v. Von Raab*.[2] These rulings make clear that "compelling" governmental interests in public safety or national security may, in appropriate circumstances, override constitutional objections to testing procedures by employees whose privacy expectations are diminished by the nature of their duties or the workplace scrutiny to which they are otherwise subject. In *Veronia School District v. Acton*,[3] the Supreme Court first approved of random drug testing procedures — for high school student athletes rather

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[1] 489 U.S. 602 (1989).

[2] 489 U.S. 656 (1989).

[3] 515 U.S. 646 (1995).

than public employees — after it had earlier left standing lower court decisions allowing for certain suspicionless testing of police officers,[4] transit employees,[5] nuclear power plant employees,[6] Justice Department lawyers who hold top-secret security clearances,[7] and Army civilian drug counselors.[8] *Veronia* was subsequently extended by the Court to permit random drug testing of students participating in non-athletic extracurricular activities.[9] However, the Court distinguished earlier rulings when, in *Chandler v. Miller*,[10] it voided a Georgia law requiring drug testing of candidates for state office because no "special need" substantial enough to warrant suspicionless searches was shown. Additionally, the Court generally has struck down drug testing policies that primarily serve criminal law enforcement purposes, such as in *Ferguson v. City of Charleston*.

There are no federal constitutional limits on the ability of private employers or other non-public entities to conduct drug tests. The Fourth Amendment and other constitutional safeguards apply only to governmental action — federal, state, or local — or private conduct undertaken at the direction of the government. States, via constitutions or statutes, are free to provide individual protections beyond what is allowed pursuant to the Fourth Amendment.

This report examines the current state of constitutional law on the subject of governmentally mandated drug testing in employment and of students in the public schools, which is followed by a brief review of federal drug-free workplace programs presently in effect.

Personal Privacy vs. the Public Interest

The constitutional focus of governmental drug testing litigation, whether in the employment, public education, or other administrative context, has been the Fourth Amendment, which protects the "right of the people" to be free from "unreasonable searches and seizures" by the government. This constitutional stricture applies to all governmental action, federal, state, and local, by its own force or through the Due

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[4] Policemen's Benevolent Assoc. v. Township of Washington, 850 F.2d 133 (1989).

[5] United Transportation Union v. Southeastern Pennsylvania Transportation Authority (SEPTA), 863 F.2d 1110 (3d Cir.), cert. denied, 109 S.Ct. 3209 (1989) (approved random urinalysis testing of around 2,600 transit "operating engineers" in "safety sensitive" positions over a one-year period, and breathalyzer tests for close to 5,400 such workers annually).

[6] Alverado v. Washington Public Power Supply Systems and Bechtel Construction, Inc., 111 Wash.2d 424 (Wash. 1988), cert. denied, 490 U.S. 1004 (1989).

[7] Bell v. Thornburgh, 878 F.2d 484 (D.C. Cir. 1989), cert. denied 493 U.S. 1056 (1990).

[8] National Federation of Federal Employees v. Cheney, 884 F.2d 603 (D.C. Cir. 1989), cert. denied, 496 U.S. 936 (1990).

[9] Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822 (2002).

[10] 520 U.S. 305 (1997).

Process Clause of the Fourteenth Amendment.[11] Thus, while private actors are not directly affected, the actions of government as an employer are subject to Fourth Amendment scrutiny.[12] Governmental conduct will generally be found to constitute a "search" for Fourth Amendment purposes where it infringes "an expectation of privacy that society is prepared to consider reasonable...."[13] If a search or seizure has occurred, the court must then determine whether the government's action was reasonable under the circumstances.

What a court determines to be "reasonable" depends on the nature of the search and its underlying governmental purpose. Probable cause supported by a warrant is the usual constitutional prerequisite for a criminal search.[14] Even in circumstances where warrantless searches are permitted, they ordinarily "must be based on 'probable cause' to believe that a violation of the law has occurred."[15] Nevertheless, the Supreme Court has determined that neither a warrant nor probable cause is invariably required, and has, under certain circumstances, approved of or let stand "suspicionless" searches, such as sobriety checkpoints,[16] border searches,[17] and metal detector screening.[18]

The Fourth Amendment protects against both civil and criminal investigatory processes, though the need for protection against government intrusion decreases if the investigation is entirely unrelated to criminal law enforcement.[19] In such circumstances, a rule less restrictive on the government, based on "reasonable suspicion" of a civil or regulatory law violation, has become the constitutional norm. However, an exception from even this less demanding standard has been recognized for administrative searches by the government to enforce compliance with a regulatory scheme by persons engaged in a "highly regulated industry" on the theory that the very existence of the regulatory program diminishes reasonable expectations

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[11] Mapp v. Ohio, 367 U.S. 643, 655 (1961).

[12] O'Connor v. Ortega, 480 U.S. 709, 715 (1987).

[13] United States v. Jacobsen, 466 U.S. 109, 113 (1984).

[14] Camara v. Municipal Court, 387 U.S. 523, 528-29 (1967) ("one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant.").

[15] New Jersey v. T.L.O., 469 U.S. 325, 340 (1985).

[16] Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990).

[17] United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (upholding suspicionless searches that occur at fixed checkpoints near the border).

[18] See, e.g., United States v. Vigil, 989 F.2d 337, 339 (9th Cir. 1993).

[19] South Dakota v. Opperman, 428 U.S. 364, n.5 (1976) ("The probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine, administrative caretaking functions [such as inventory searches], particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations."); Wyman v. James, 400 U.S. 309, 322-325 (1971) (Visits by government officials to the homes of welfare recipients for the purpose of evaluating their eligibility for benefits do not abridge the Fourth Amendment.).

of privacy of those involved in the industry.[20] In such situations, a Fourth Amendment standard based on a balancing test has been crafted by the Court. This "special needs" approach appears to confer optimal power on the government to search where "compelling" reason exists and correspondingly less protection to the individual's "diminished expectation of privacy."

Even prior to *Skinner* and *Von Raab* there was virtual unanimity among the federal courts that governmental drug testing constituted a search that could constitutionally be justified on reasonable suspicion grounds.[21] There is less consensus, however, as to the constitutional propriety of mandatory testing in other circumstances and, particularly, where random testing is imposed as a deterrent to illegal drug use by public employees or for some other governmental objective unrelated to criminal law enforcement. Although not random testing cases, the special needs analysis of *Skinner* and *Von Raab* was subsequently applied by the lower federal courts to justify suspicionless, random testing, provided that the requisite nexus between an employee's duties and public safety or other compelling governmental need was demonstrated.

Workplace Drug Testing and the U.S. Supreme Court

As noted, the U.S. Supreme Court has ruled on Fourth Amendment issues raised by workplace drug testing procedures on several occasions. *Skinner v. Railway Labor Executives Association*[22] upheld post-accident drug and alcohol testing of railway employees involved in major train accidents and incidents, while a program of one-time testing of U.S. Customs employees who apply for promotion to "sensitive jobs" involving carriage of firearms and drug interdiction duties was approved in *National Treasury Employees Union v. Von Raab*.[23] Although *random* testing was not involved, these decisions together establish that "compelling" governmental interests in public safety or national security may, in appropriate circumstances, override the constitutional objections of employees who have a "diminished expectation of privacy" due to the nature of duties they perform or

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[20] Donovan v. Dewey, 452 U.S. 594, 600 (1981).

[21] "Reasonable suspicion is a lesser standard than probable cause. There is a reasonable suspicion when there is some articulable basis for suspecting that the employee is using illegal drugs. Put another way, there is reasonable suspicion when there is some quantum of individualized suspicion as opposed to an inarticulate hunch. Reasonable suspicion may be based on statements made by other employees and tips from informants. Even probable cause can be based on informants' tips when the totality of the circumstances indicates a fair probability of accuracy." Smith v. White, 666 F. Supp. 1085, 1089-90 (E.D.Tenn. 1987) (internal citations omitted).

[22] 489 U.S. 602 (1989).

[23] 489 U.S. 656 (1989).

workplace scrutiny to which they are otherwise subjected. *Chandler v. Miller*,[24] on the other hand, voided a Georgia law requiring drug testing of candidates for state office because no "special need" substantial enough to warrant suspicionless searches was shown. Random testing procedures applied to student athletes and participants in extracurricular public school activities have also been approved by the Court. Each of these cases is discussed in-depth below.

In *Skinner*, a panel of the Ninth Circuit had voided on Fourth Amendment grounds Federal Railroad Administration (FRA) regulations requiring breath, blood, and urine tests of railroad workers who are involved in train accidents.[25] The Supreme Court ruled that the entire testing regulation, even portions applicable to certain employee rule infractions that were merely permissive rather than mandatory upon the railroads, carried sufficient government "encouragement, endorsement, and participation ... to implicate the Fourth Amendment."[26] On the merits, the majority held that because "the collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable," FRA testing for drugs and alcohol was a "search" that had to satisfy constitutional standards of reasonableness.[27] The "special needs" of railroad safety, however, made traditional Fourth Amendment requirements of a warrant and probable cause "impracticable" in this context.[28] Nor was "individualized suspicion" deemed by the majority to be a "constitutional floor" where the intrusion on privacy interests are "minimal" and an "important governmental interest" is at stake.[29] According to the Court, covered rail employees had "expectations of privacy" as to their own physical condition that were "diminished by reasons of their participation in an industry that is regulated pervasively to ensure safety...."[30] In these circumstances, the majority held, it was "reasonable" to conduct the tests, even in the absence of a warrant or reasonable suspicion that any employee may be impaired.[31]

The Court also rejected another line of attack against the challenged tests which proceeds from the generally accepted scientific and judicial view that standard test protocols are capable indicators only of prior drug use but are not a measure of current job impairment or drug influence. Because of this fact, a number of lower federal courts had voided certain drug tests for not being reasonably related to legitimate governmental interests in assuring employee fitness or competence.[32] In

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[24] 520 U.S.305 (1997).

[25] *Skinner*, 489 U.S. at 606.

[26] *Id.* at 615-16.

[27] *Id.* at 617.

[28] *Id.* at 631.

[29] *Id.* at 624.

[30] *Id.* at 627.

[31] *Id.* at 633.

[32] E.g., Jones v. McKenzie, 833 F.2d 335, 340 (D.C.Cir. 1987); Ry. Labor Executive Ass'n v. Burnley, 839 F.2d 1507 (9th Cir. 1988); Harmon v. Meese, 690 F. Supp. 65 (D.D.C. (continued...)

Skinner, however, the majority found the information provided by the tests to be a valid investigative tool which "may allow the FRA to reach an informed judgment as to how a particular accident occurred."[33] In addition, the government "may take all necessary and reasonable regulatory steps to prevent and deter" forbidden drug use by the covered employees.[34]

In the *Von Raab* case, handed down on the same day as *Skinner*, the Supreme Court upheld drug testing of U.S. Customs Service personnel who sought transfer to certain "sensitive" positions, namely those involving drug interdiction, carrying firearms, or access to classified information, without a requirement of reasonable individualized suspicion. The testing procedure was administered once the employee sought transfer to the sensitive position upon five days notice by the Customs Service. Thus, the drug test in *Von Raab* was conditioned on the employee's own action in seeking a transfer and no adverse consequence flowed from a later withdrawn transfer application.[35] According to the Court:

> the Government's compelling interests in preventing the promotion of drug users to positions where they might endanger the integrity of our Nation's borders or the life of the citizenry outweigh the privacy interests of those who seek promotions to those positions, who enjoy a diminished expectation of privacy by virtue of the special physical and ethical demands of those positions.[36]

Neither the absence of "any perceived drug problem among Customs employees," nor the possibility that "drug users can avoid detection with ease by temporary abstinence," would defeat the program because "the possible harm against which the Government seeks to guard is substantial [and] the need to prevent its occurrence furnishes an ample justification for reasonable searches calculated to advance the Government's goal."[37]

The Court's rulings in *Skinner* and *Von Raab* established several constitutional standards potentially relevant to the random testing issue. First, reasonable suspicion was not a constitutional threshold for all governmental drug testing and, therefore, may not preclude carefully crafted random testing in the public sector. Equally important, the balancing test in those cases, based on the "special needs" of the government for assuring transportation safety and the integrity of the federal drug interdiction effort, may as readily be transposed to other regulatory environments where public employees — or, perhaps, applicants for other governmental benefits — may enjoy a "diminished expectation of privacy." Third, as noted above, the Court rejected earlier decisions that had faulted drug testing methodologies due to their inability to detect *present* drug impairment as opposed to simple *past* drug use.

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[32] (...continued)
1988).

[33] *Skinner*, 489 U.S. at 632.

[34] *Id.* at 632-33.

[35] *Id.* at 630-33.

[36] *Von Raab*, 489 U.S. at 679.

[37] *Id.* at 673-75.

Beyond *detection*, it appears the government may have a legitimate interest in *deterring* employee drug use and that drug test evidence may be relevant to "compelling" governmental concerns.

Conversely, the Court, in *Chandler v. Miller*,[38] disapproved a 1990 Georgia statute requiring candidates for Governor, Lieutenant Governor, Attorney General, the state judiciary and legislature, and certain other elective offices, to file a certification that they have tested negatively for illegal drug use. The majority opinion noted several factors distinguishing the Georgia law from drug testing requirements upheld in earlier cases. First, there was no "fear or suspicion" of generalized illicit drug usage by state elected officials in the law's background that might pose a "concrete danger demanding departure from the Fourth Amendment's main rule."[39] The Court noted that while not an invariable constitutional prerequisite, evidence of historical drug abuse by the group targeted for testing might "shore up an assertion of special need for a suspicionless general search program."[40] Secondly, the law did not serve as a "credible means" to detect or deter drug abuse by public officials. Since the timing of the test was largely controlled by the candidate rather than the state, legal compliance could be achieved by mere temporary abstinence.[41] A final "telling difference" between the Georgia case and earlier rulings stemmed from the "relentless scrutiny" to which candidates for public office are subjected, as compared to persons working in less exposed work environments. Any drug abuse by public officials is far more likely to be detected in the ordinary course of events, making suspicionless testing less necessary than in the case of safety-sensitive positions beyond the public view.[42]

Employee Drug Testing After *Skinner* and *Von Raab*

Federal courts in the wake of *Skinner* and *Von Raab* have generally approved random or other periodic testing of public employees, or workers in heavily regulated industries, provided that the specific jobs covered are directly related to "compelling" public safety, national security, or drug interdiction functions of the government, and testing is undertaken pursuant to a plan that avoids arbitrary application.[43] A generalized desire for workplace "integrity," absent a heightened governmental interest, has usually been found insufficient to warrant random or other routine testing of governmental employees in the absence of individualized suspicion.

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[38] Chandler v. Miller, 520 U.S. 305 (1997).

[39] *Id.* at 318-19.

[40] *Id.* at 319.

[41] *Id.* at 39-20.

[42] *Id.* at 321.

[43] Ford v. Dowd, 931 F.2d 1286 (8th Cir. 1991) (invalidating drug testing of individual police officer in absence of specific plan, whether applied randomly or routinely, and in absence of reasonable suspicion of drug use); Jackson v. Gates, 975 F.2d 648 (9th Cir. 1992) (invalidating drug testing of individual police officer in absence of random testing scheme and in absence or articulable basis for suspecting drug use).

Most courts have resisted suspicionless testing procedures as applied to administrative or office personnel who do not pose a threat to public safety or national security. Among programs that have been voided for "overbreadth" are a plan by the Justice Department to test all criminal prosecutors and employees with access to grand jury proceedings;[44] post-accident testing of Office of Personnel Management employees who drive motor vehicles;[45] U.S. Coast Guard drug testing regulations requiring random screening of all private employees aboard commercial vessels;[46] and post-accident testing of any teacher, aide, or clerical workers injured on the job.[47]

What emerges is a pattern of case-by-case judicial decisionmaking as to the "reasonableness" of testing in the circumstances presented. Consequently, broad-based testing programs that fail to account for distinctions among employees in terms of the public safety or national security sensitivity of their duties are less likely to pass constitutional scrutiny.

National Security

Courts have upheld random testing programs that were designed to protect sensitive information. In the Justice Department case, *Harmon v. Thornburgh*,[48] the U.S. Court of Appeals for the District of Columbia ruled that protection of sensitive information — one of the governmental interests cited in *Von Raab* — justified the Department's need to test employees with top secret clearances, but not all federal employees involved in grand jury proceedings. The court elaborated:

> Whatever "truly sensitive" information includes, we agree that it encompasses top secret national security information....We do not believe, however, that the government's interest in preserving all its secrets can justify the testing of all federal prosecutors or of all employees with access to grand jury proceedings. We recognize that every employee within the three categories will have access to information which he is duty-bound not to divulge. But whatever the precise contours of "truly sensitive" information intended by the *Von Raab* Court, we believe that the term cannot include *all* information which is confidential or closed to public view. A very wide range of government employees — including

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[44] Harmon v. Thornburgh, 878 F.2d 484 (D.C. Cir. 1989).

[45] Connelly v. Newman, 753 F. Supp. 293, 297 (N.D. Cal. 1990) (absence of "sufficient threat to public safety" undermined governmental interest in testing OPM drivers).

[46] Transp. Inst. v. U.S. Coast Guard, 727 F.Supp. 648, 657 (D.D.C.1990) (striking down "broadly drawn" federal requirement that all private workers on private commercial ships be randomly tested because the "immediacy or gravity of the potential safety threat [not] sufficient" to justify the policy.).

[47] United Teachers of New Orleans v. Orleans Parish Sch. Bd., 142 F.3d 853 (5th Cir. 1998) (striking down policy that required testing without "any suggestion that a triggering injury was caused by any misstep of the employee to be tested."). But see, Knox County Educ. Ass'n v. Knox County Bd. of Educ., 158 F.3d 361 (6th Cir. 1999) (upholding suspicionless testing of public school teachers upon appointment or transfer).

[48] Harmon v. Thornburgh, 878 F.2d 484 (D.C. Cir. 1989).

> clerks, typists, or messengers — will potentially have access to information of this sort.[49]

The U.S. Court of Appeals for the D.C. Circuit also upheld a random drug testing policy for certain White House employees.[50] In a unanimous decision, the appellate panel found that the employees' rights to be free from random drug testing was outweighed not only by the government's need to protect the President, but also by the government's need to assure the public that it is protecting the President. "The public interest the government is seeking to protect is undoubtedly of the utmost importance. Few events debilitate the nation more than the assassination of the President."[51] The court noted the link between the risk posed by a drug-using OEOB permanent passholder and the potential harm to the President or the Vice President was "direct" and "immediate."[52] It likened the situation to that of an employee with access to top-secret information, where "a single incident could be disastrous." To highlight this direct connection, the opinion observes:

> It is possible that a drug-using OEOB passholder could be blackmailed into using his access to the building to assist in an attack on the President. Given the importance of protecting the President's safety, this is all that is required to make this particular search reasonable. It therefore does not violate the Fourth Amendment.[53]

Public Safety

The government's "compelling" interest in public safety may also justify suspicionless random testing in certain circumstances. For example, after *Von Raab*, the Customs Service drug testing program was expanded from frontline drug interdiction personnel to cover random testing of employees in traditional office environments who had access to databases targeting contraband shipments and inspections. In *National Treasury Employees Union v. U.S. Customs Service*,[54] the D.C. Circuit noted that, because of its link to drug smuggling, the government had an "obvious and compelling" interest in preserving the confidentiality of this database that outweighed the privacy expectations of employees, particularly in light

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[49] *Id.* at 491-92 (emphasis original). See also, 919 F.2d 170 (D.C.Cir. 1990).

[50] 110 F.3d 801 (D.C. Cir. 1997).

[51] *Id.* at 803-04.

[52] *Id.* at 806.

[53] *Id.*

[54] 27 F.3d 623 (D.C. Cir. 1994); See also, Nat'l Treasury Employees Union v. Hallet, 756 F. Supp. 947 (E.D.N.Y. 1991) (upholding testing of applicants for Customs Service positions requiring top secret, secret, and confidential security clearances; Nat'l Treasury Employees Union v. Hallet, 776 F. Supp. 680 (E.D.N.Y. 1991) upholding random testing of customs employees directly involved in law enforcement; those with access to or who handle illegal drugs, including chemists and student trainees under their supervision; customs workers who operate forklifts or motor vehicles; and those who carry firearms).

of the intense background checks they underwent prior to employment.[55] Similarly, random testing has been permitted of workers in the transportation,[56] hospital,[57] nuclear power and civilian chemical weapons industries,[58] and of all federal correctional officers of the Bureau of Prisons[59] due to the gravity of risk to be averted by the governmental program.

However, several lower courts have invalidated certain drug testing programs because they "cast too wide a net" in defining categories of persons who must be subjected to random testing procedures. *National Federation of Federal Employees (NFFE) v. Cheney*[60] considered a program that tested civilian employees in the Department of the Army.[61] The random testing of 2,800 civilian employees who flew and serviced Army aircraft and 3,700 civilian law enforcement personnel at Army facilities was upheld, as well as testing of "direct service" employees, mainly drug counselors, in the Army's alcohol and drug abuse prevention program. But, the court rejected a program of random testing for those employees that "work in a more traditional office environment" simply because they were in the "chain of custody" of urine samples.[62]

In *American Federation of Federal Employees v. Sullivan*,[63] the court had to determine whether it was constitutional to randomly drug test motor vehicle operators who did not carry passengers. As dictated by *Skinner* and *Von Raab*, the court balanced the government's interest in conducting the tests against the individual's privacy expectations. The court observed:

> The government's interest here is the safety risk that an impaired government driver might pose to other drivers on the road. While not insubstantial, this is obviously no different than the interest the public and the government have in

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[55] *Nat'l Treasury Employees Union v. U.S. Customs Serv.*, 27 F.3d at 629-30.

[56] United Food & Commercial Workers Int'l Union, Local 558 v. Foster Poultry Farms, 74 F.3d 169 (9th Cir. 1995) (truck drivers); Bluestein v. Skinner, 908 F.2d 451 (9th Cir. 1990) (airline workers); Ry. Labor Executive Ass'n v. Skinner, 934 F.2d 1096 (9th Cir. 1991) (certain railroad employees); Int'l Bhd. of Teamsters v. Dept. of Transp., 932 F.2d 1292 (9th Cir. 1991) (commercial vehicle operators). But see, Rutherford v. City of Albequerque, 77 F.3d 1258 (10th Cir. 1996) (holding the dismissal of city dump truck driver upon return from medical leave based on positive result of unannounced drug test violates the Fourth Amendment).

[57] Kemp v. Claiborne County Hosp., 763 F.Supp. 1362 (S.D.Miss. 1991) (scrub technician in surgery was in safety sensitive position that justified drug testing).

[58] Thomson v. Marsh, 884 F.2d 113 (4th Cir. 1989) (civilian chemical weapons employees).

[59] Am. Fed'n of Gov't Employees v. Roberts, 9 F.3d 1464 (9th Cir. 1993) (upholding random and reasonable suspicion drug testing of all federal correctional officers by the Bureau of Prisons).

[60] 884 F.2d 603 (D.C.Cir. 1989).

[61] *Id.* at 615.

[62] *Id.* at 614-15.

[63] 787 F. Supp. 255 (D.D.C. 1992).

> keeping potentially impaired driver off the road. If there is a sufficient "special governmental need" to permit warrantless searches..., then the federal government could proceed to test any and all drivers on the road.[64]

Because the federal agency employees did not carry passengers and did not have access to classified information, the court found that neither the passenger safety rationale nor national security concerns were applicable. For these reasons, the court held that it would be unconstitutional to subject these motor vehicle operators to random drug tests.[65]

State or local mandatory testing programs for police or correctional personnel, firefighters, and other "public safety" personnel have usually met with at least qualified judicial approval. In *Guiney v. Roach*,[66] the First Circuit upheld random testing of Boston police officers who were involved in drug interdiction or who carried firearms, but remanded the case for further consideration regarding random testing of other officers. Similarly, the Sixth Circuit has upheld mandatory testing of firefighters and police officers, concluding that there is no requirement of individualized suspicion when testing employees whose duties are "fraught with ... risks of injury to others...."[67]

The Seventh Circuit in *Taylor v. O'Grady*[68] held that the Cook County Department of Corrections could constitutionally require employees who "(1) [] had regular access to inmate population, (2) [] reasonable opportunity to smuggle drugs into the inmate population, [or] (3) [] access to firearms" to submit to annual drug testing without advanced warning as to the specific timing of the testing. The program was unconstitutional as applied to other personnel "[s]ince those officers with only administrative or clerical duties or otherwise lacking contact with the jail population do not threaten claimed dangers if impaired while on duty, and since the record does not show they are able to smuggle drugs to the prisoners, the Department gains nothing by testing them."[69] Random or other periodic testing of police and other public safety officers also has been approved by many state courts to confront the issue.

The Fifth Circuit's decision, *Aubrey v. School Board of Lafayette Parish*,[70] emphasizes the need to not only avoid overly broad testing coverage, but also to

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[64] *Id.* at 257.

[65] *Id.* See also, Nat'l Treasury Employees Union v. Watkins, 722 F.Supp 766 (D.D.C. 1989) (enjoining the Department of Energy (DOE) from random testing of certain DOE employees in "sensitive positions," including motor vehicle operators and computer specialists involved in security operations, because the court found none of the extraordinary public safety, drug interdiction, and security interests highlighted by *Skinner* and *Von Raab*).

[66] 873 F.2d 1557 (lst Cir. 1989).

[67] Penny v. Kennedy, 915 F.2d 1065, 1067 (6th Cir. 1990).

[68] 888 F.2d 1189 (7th Cir. 1989).

[69] *Id.* at 1197.

[70] 92 F.3d 316 (1996).

include certain procedural safeguards in implementing such a policy in accordance with the Fourth Amendment. The question before the court was whether an elementary school custodian was a "safety-sensitive" position that could be randomly tested for illegal drug usage. The district court had approved the testing, arguing the custodian was in a safety-sensitive position because he "handles poisonous solvents and lawn mowers, things that could be dangerous to small children if not handled in a safety-conscious manner."[71] In reversing, the appellate court noted that intrusions on personal privacy that may be unreasonable in some contexts "may be rendered entirely reasonable by the operational realities of the workplace."[72] Valid and compelling public interests must be weighed against the interference with individual liberty. This meant that mandatory testing had to be limited to sensitive positions and hedged with procedural safeguards, such as giving notice to individuals that they may be randomly tested. In this case, however:

> [n]o evidence was presented to show which positions are considered safety sensitive and which are not, or whether the policy at the elementary school would differ from that at a high school. Nor was any evidence presented to show whether employees in safety-sensitive positions had notice that they would be subject to random drug testing, or what kind of notice they received, or even if [the custodian] had received notice.[73]

Preemployment Drug Testing

Based on the rationale that applicants for employment do not have the same expectations of privacy as current employees, the courts have often permitted preemployment testing as a condition of public employment. The *Von Raab* case itself presented preemployment issues in that the testing there was required as part of the application process for drug enforcement duty. Federal appellate decisions since have generally approved preemployment and probationary testing rules for public employees or workers in federally regulated industries, especially for safety-sensitive positions.[74]

However, lower courts often have rejected more broadly-based applicant screening programs. For example, a federal district court in *Georgia Association of*

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[71] *Id.* at 318.

[72] *Id.*

[73] *Id.* at 319.

[74] Willner v. Thornburgh, 928 F.2d 1185 (D.C. Cir. 1991) (approving a testing plan for attorneys applying for positions with the Antitrust Division of the Department of Justice); Int'l Bhd. of Teamsters v. Dept. of Transp., 932 F.2d 1292 (9th Cir. 1991) (approving preemployment testing of truck drivers); O'Connor v. Police Comm'r of Boston, 557 N.E.2d 1146 (1990) (approving random drug testing of police cadets during probationary period); McKensie v. Jackson, 547 N.Y.S.2d 120 (App. Div. 1989) (approving random testing of corrections personnel during one-year probationary employment period); Alverado v. Washington State Pub. Power Supply Sys., 759 P.2d 427 (Wash. 1988) (approving preemployment testing of individuals given access to nuclear power plants).

Educators v. Harris[75] enjoined preemployment testing of all applicants for state jobs in the State of Georgia because it defied the special needs approach of *Skinner* and *Von Raab*, stating:

> The court finds it difficult to even begin applying that balancing test, however, because defendants have failed to specifically identify any governmental interest that is sufficiently compelling to justify testing *all* job applicants. Moreover, defendants remain oblivious to *Von Raab's* (and indeed, the fourth amendment's [*sic*]) requirement that it connect its interest in testing to the particular job duties of the applicants it wishes to test. Instead, defendants attempt to justify their comprehensive drug testing program based on a generalized governmental interest in maintaining a drug-free workplace. Defendants' position is untenable because neither *Von Raab* nor its progeny recognize such a generalized interest as sufficiently compelling to outweigh an individual's fourth amendment rights.[76]

Student Drug Testing in the Public Schools

Courts have interpreted the Fourth Amendment as providing more leeway to test students for drugs in the school setting, as compared to testing adults in the public employment context. In *Veronia School District 47J v. Acton*,[77] the High Court first considered the constitutionality of student drug testing in the public schools. At issue there was a school district program for random drug testing of high school student athletes, which had been implemented in response to a perceived increase in student drug activity. All student athletes and their parents had to sign forms consenting to testing, which occurred at the season's beginning and randomly thereafter on a weekly basis for the season's duration. Students who tested positive were given the option of either participating in a drug assistance program or being suspended from athletics for the current and following season.[78]

A 6 to 3 majority of the Court upheld the program against Fourth Amendment challenge. Central to the majority's rationale was the "custodial and tutelary" relationship that is created when children are "committed to the temporary custody of the State as school master," in effect "permitting a degree of supervision and control that could not be exercised over free adults."[79] Students had diminished expectations of privacy by virtue of routinely required medical examinations, a factor compounded in the case of student athletes by insurance requirements, minimum academic standards, and the "communal undress" and general lack of privacy in the sports' locker rooms. Because "school sports are not for the bashful," student athletes were found to have a lower expectation of privacy than other students.[80]

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[75] 749 F. Supp. 1110 (N.D. Ga. 1990).

[76] *Id.* at 1114.

[77] 515 U.S. 646 (1995).

[78] *Id.* at 649-50.

[79] *Id.* at 654-56.

[80] *Id.* at 657.

Balanced against this diminished privacy interest was the nature of the intrusion and importance of the governmental interest at stake. First, the school district had mitigated actual intrusion by implementing urine collection procedures that simulated conditions "nearly identical to those typically encountered in public restrooms," by analyzing the urine sample only for presence of illegal drugs — not for other medical information, such as the prevalence of disease or pregnancy, and by insuring that positive test results were not provided to law enforcement officials.[81]

School officials unquestionably had an interest in deterring student drug use as part of their "special responsibility of care and direction" toward students.[82] That interest was magnified in *Veronia* by judicial findings that, prior to implementation of the program, "a large segment of the student body, particularly those involved in interscholastic athletics, was in a state of rebellion ... fueled by drug and alcohol abuse...."[83] Consequently, the Court approved the school district's drug testing policy reasoning that the Fourth Amendment only requires that government officials adopt reasonable policies, not the least intrusive ones available. The majority in *Veronia*, however, cautioned "against the assumption that suspicionless drug-testing will readily pass muster in other constitutional contexts."[84]

A division of opinion soon emerged among the lower courts as to how broadly *Veronia* could be applied to permit "suspicionless" drug testing that included student groups beyond athletes and in cases where there was no evidence of a systemic drug problem among the student body. For example, the Seventh and Eighth Circuits in nearly identical cases, *Todd v. Rush County Schools*[85] and *Miller v. Wilkes*,[86] respectively upheld random drug testing policies that applied not only to student athletes, but also to students participating in any other extracurricular activity, without an identifiable drug problem among the affected student populations in either case.

Parting company with the *Todd* line of decisions was *Trinadad School District No. 1 v. Lopez*,[87] where the Colorado Supreme Court disapproved of a policy for drug testing all students in extracurricular activities where there was no convincing evidence of higher drug usage rates by students participating in extracurricular activities, or that the reasonable privacy expectations of such students had been so diminished by constraints of the sports culture, or otherwise, as those imposed on student athletes in *Veronia*.

This conflict among the circuits was ultimately settled by the Supreme Court in a 2002 decision, *Board of Education of Independent School District No. 92 of*

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[81] *Id.* at 658.

[82] *Id.* at 662.

[83] *Id.* at 662-63.

[84] *Id.* at 664-65.

[85] 133 F.3d 984 (7th Cir.1998).

[86] 172 F.3d 574 (8th Cir. 1999).

[87] 963 P.2d 1095 (Colo. 1998).

Pottawatomie County v. Earls.[88] In 1998 the Tecumseh Public School District adopted a policy that required "suspicionless drug testing" of students wishing to participate "in any extracurricular activity." Such activities included Future Farmers of America, Future Homemakers of America, academic teams, band, chorus, cheerleading, and athletics. Any student who refused to submit to random testing for illegal drugs was barred from all such activities, but was not otherwise subject to penalty or academic sanction. Lindsay Earls challenged the district's policy "as a condition" to her membership in the high school's show choir, marching band, and academic team, but did not protest the policy as applied to student athletics.

By a 5 to 4 vote, the U.S. Supreme Court held that the Tecumseh school district's random drug testing program was a "reasonable means" of preventing and deterring student drug use and did not violate the Fourth Amendment. In its role as "guardian and tutor," the majority reasoned, the state has responsibility for the discipline, health, and safety of students whose privacy interests are correspondingly limited and subject to "greater control than those for adults."[89] Moreover, students who participate in extracurricular activities "have a limited expectation of privacy" as they participate in the activities and clubs on a voluntary basis, subject themselves to other intrusions of privacy, and meet official rules for participation.[90] The fact that student athletes in the *Veronia* case were regularly subjected to physical exams and communal undress was not deemed "essential" to the outcome there. Instead, that decision "depended primarily upon the school's custodial responsibility and authority," which was equally applicable to athletic and nonathletic activities.[91]

The testing procedure itself, involving collection of urine samples, chain of custody, and confidentiality of results, was found to be "minimally intrusive" and "virtually identical" to that approved by the Court in *Veronia*. In particular, the opinion notes test results were kept in separate confidential files only available to school employees with a "need to know," were not disclosed to law enforcement authorities, and carried no disciplinary or academic consequences other than limiting extracurricular participation. "Given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put, we conclude that the invasion of student's privacy is not significant."[92]

The majority concluded that neither "individualized suspicion" nor a "demonstrated problem of drug abuse" were necessary predicates for a student drug testing program, and there is no "threshold level" of drug use that need be satisfied.[93] "Finally, we find that testing students who participate in extracurricular activities is

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[88] 536 U.S. 522 (2002).

[89] *Id.* at 830-31.

[90] *Id.* at 831-32.

[91] *Id.* at 831.

[92] *Id.* at 832-34.

[93] *Id.* at 836-37.

a reasonably effective means of addressing the School District's legitimate concerns in preventing, deterring, and detecting drug use."[94]

Suspicionless Drug Testing in Other Regulatory Contexts

While the focus of judicial scrutiny has largely remained fixed on workplace and public school drug testing, questions have also arisen in regard to testing in other administrative venues. A growing body of case law has developed from the efforts of lower federal and state courts to apply the "special needs" approach to an expanding array of governmental programs and regulatory activities. The Third Circuit, for example, anticipated *Skinner* and *Von Raab* when it upheld mandatory testing of horse racing jockeys, officials, and trainers in *Shoemaker v. Handel*,[95] a decision which has since been extended to other participants in that "heavily regulated" industry.[96]

In another regulatory context, the Illinois Supreme Court in *Fink v. Ryan*[97] upheld that state's "implied consent" statute under the "special needs" exception to the Fourth Amendment and its state constitutional counterpart. The Illinois law authorizes chemical testing for drugs or alcohol of drivers who are arrested and issued a traffic citation for any accident causing serious injury or death. No individualized suspicion was required because the state's special need to suspend and deter chemically impaired drivers went beyond normal law enforcement. Moreover, drivers' expectation of privacy was "diminished" by the highly regulated character of automobile usage upon state highways and because state law imposes a separate duty on drivers in such circumstances to remain at the scene to assist injured parties and law enforcement officials.[98]

On the other hand, the Court has struck down drug testing policies that primarily serve criminal law enforcement purposes. In *Ferguson v. City of Charleston*,[99] the Supreme Court invalidated a drug testing policy of pregnant women, specifically rejecting the state's invocation of the special needs doctrine. In response to the problem of cocaine abuse by expectant mothers and its deleterious impact on fetuses, the City of Charleston joined with a state university hospital to develop a plan to test certain pregnant women for illegal drug abuse. Women who tested positively for drugs during pregnancy were provided substance abuse treatment. If these women

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[94] *Id.* at 837.

[95] Shoemaker v. Handel, 795 F.2d 1136 (3d Cir. 1986).

[96] See, Carelli v. Ginsburg, 956 F.2d 598 (6th Cir. 1992) (testing of licensed thoroughbred horse trainers); Dimeo v. Griffin, 943 F.2d 679 (7th Cir. 1991) (random searches of jockeys and other horse racing participants); Holtus v. Louisiana State Racing Comm'n, 580 So.2d 469 (La. App. 1991) (random testing of licensees of the state racing commission).

[97] 174 Ill.2d 302 (Ill. 1996).

[98] *Id.* at 310-12.

[99] 532 U.S. 67 (2001).

tested positive a second time or missed a treatment session, they were arrested. Women who tested positive after labor were reported to police and arrested immediately.[100] Women arrested under the policy complained that the warrantless and unconsented drug tests were conducted for criminal investigatory purposes and were therefore unconstitutional.[101]

The Court deemed the balancing test of *Von Raab*, *Veronia*, and *Chandler* inappropriate to the case at hand because the "central and indispensable feature of the policy from its inception was the use of law enforcement to coerce patients into substance abuse treatment."[102] A special need may justify suspicionless drug testing under a program devised for a "proper governmental purpose other than law enforcement."[103] But the exception to Fourth Amendment warrant requirements did not apply "given the pervasive involvement of law enforcement with the development and application of the [drug testing] policy."[104]

Federally Mandated Workplace Drug Testing Programs

The Federal Government by statute or executive order has adopted drug-free workplace requirements applicable to federal executive branch agencies, employment in various federally regulated industries, federal contractors and recipients of federal financial assistance. E.O. 12564, issued on September 15, 1986, requires programs to be established by each department or agency within the executive branch to test for illegal drug use by federal employees in sensitive positions and for voluntary employee drug testing.[105] A "sensitive" position is one that an agency head declares "Special Sensitive," "Critical Sensitive," or "Noncritical-Sensitive" pursuant to the Federal Personnel Manual or sensitive under E.O. 10450. It also includes

> an employee who has been ... or may be granted access to classified information, individuals serving under Presidential appointments, law enforcement officers..., and [o]ther positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust or confidence.

In addition, an executive branch employee may be tested based on "reasonable suspicion" of illegal drug use, during an authorized investigation of an accident or unsafe practice, or to follow-up counseling or rehabilitation for illegal drug use through an employee assistance program. Applicants for employment may also be tested.[106] Technical standards to govern specimen collection, scientific analysis,

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[100] *Id.* at 71-72.

[101] *Id.* at 73.

[102] *Id.* at 80.

[103] *Id.* at fn. 17.

[104] *Id.* at 85.

[105] 51 Fed. Reg. 32889 (September 17, 1986).

[106] E.O. 12564.

laboratory certification, medical review of positive test results, and access to records are set forth in guidelines issued by the Department of Health and Human Services.[107]

Private employers obtaining federal contracts or grants must also take specified steps to maintain a drug-free workplace. The Drug-Free Workplace Act of 1988[108] covers all entities receiving contract awards of $100,000 or more, all contracts awarded to individuals, and all recipients of federal grants, regardless of grant amount. Specifically, contractors and grantees must certify to the contracting or grantmaking agency that they "will provide a drug-free workplace by publishing a statement prohibiting unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance" in the workplace, "and specifying the actions that will be taken against [offending] employees."[109] The statute also mandates that employees be told about the potential perils of workplace drug abuse and of "available drug counseling, rehabilitation, and employee assistance programs." As a condition of employment, workers are required to report any criminal conviction for drug-related activity in the workplace, and the employer, in turn, must notify the contracting or granting agency and impose appropriate sanctions upon convicted employees. Federal contracts or grants could be terminated or suspended in cases where the employer fails to make a "good faith effort" to maintain a drug-free workplace.[110] The act, however, does not mandate testing employees for illegal drug use.[111]

The Drug-Free Workplace Act of 1998[112] is the small business counterpart to the 1988 Act described above. The 1998 Act establishes financial incentives to encourage development of drug-free workplace programs by small business employers. Under this law, certain eligible businesses may receive financial assistance from the Small Business Administration (SBA) to implement a drug-free workplace program that meets the standards outlined in the act. Such a program may include employee drug testing.[113]

Some statutes and regulations have been enacted that impose drug testing requirements beyond those mandated by the 1988 Drug-Free Workplace Act. For example, the Department of Defense (DOD) implemented special drug testing requirements for certain DOD contractors via the Federal Acquisition Regulations

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[107] For detailed information on the technical standards, see [http://drugfreeworkplace.gov/FedPgms/Pages/Model_Plan.aspx].

[108] 41 U.S.C. §§701, *et seq.*

[109] 41 U.S.C. §§ 701 and 702.

[110] *Id*.

[111] More detailed information on the Drug-free Workplace Act may be found in implementing rules issued at 54 Fed. Reg. 4946 (January 31, 1989), 54 Fed. Reg. 29908 (June 9, 1994), and 69 Fed. Reg. 19644 (April 13, 2004).

[112] 15 U.S.C. § 654.

[113] *Id*.

Supplement.[114] All contracts involving "access to classified information," and any other domestic contract the agency's "contracting officer determines ... necessary for reasons of national security or for the purpose of protecting health or safety" must include a provision obligating the contractor to establish a drug testing program for employees in "sensitive positions" as part of the contractor's duty to maintain a drug-free workplace.[115]

The Civil Space Employee Testing Act of 1991[116] requires the establishment of a program to test for use of alcohol and controlled substances by employees and contractors of the National Aeronautics and Space Administration (NASA) whose duties include "responsibility for safety-sensitive, security, or national security functions." These testing programs must provide for preemployment, reasonable suspicion, random, and post-accident testing, and they also may include periodic recurring testing if warranted. Furthermore, the testing procedures must incorporate the Department of Health and Human Services (DHHS) mandatory testing and record keeping procedures applicable to federal workplace drug testing programs under E.O. 12564.

Mandatory drug and alcohol testing regulations also apply to transportation workers whose jobs have safety and security implications. The Omnibus Transportation Employee Testing Act of 1991[117] requires substance abuse testing, both for alcohol and unlawful drugs, by numerous employers under the jurisdiction of the Department of Transportation (DOT), which include but are not limited to the commercial trucking, railway, aviation, and mass transit industries. Each DOT operating agency maintains its own list of positions considered safety-sensitive. Five types of drug testing are authorized by the act: preemployment, reasonable suspicion, random, post-accident, and periodic recurring. Employees who test positive for drug or alcohol use may be subject to disqualification or dismissal from employment. As part of their substance abuse testing program, employers must also establish drug rehabilitation programs for their employees.[118]

Conclusion

Constitutional law on the subject of governmentally mandated drug testing is primarily an outgrowth of the Fourth Amendment prohibition on unreasonable searches and seizures. Judicial exceptions to traditional requirements of a warrant and individualized suspicion for "administrative" searches have been extended to random drug testing of public employees and school students where the government is able to demonstrate a "special need" beyond the demands of ordinary law enforcement.

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[114] Fed. Acquisition Reg. Supp. § 252.223.

[115] Fed. Acquisition Reg. Supp. §§ 252.223-7004 and 223.570-2.

[116] 42 U.S.C. § 2473c.

[117] P.L. 102-143.

[118] For more information on the DOT drug testing program, see 49 C.F.R. Part 40 and [http://www.dot.gov/ost/dapc/].

In the public employment setting, however, special needs analysis has largely been confined to relatively narrow circumstances directly implicating "compelling" public safety, law enforcement, or national security interests of the government. More generalized governmental concerns for the "integrity" or efficient operation of the public workplace have usually not been deemed sufficient to justify interference with the "reasonable expectation of privacy" of workers or other individuals to be tested. Additionally, warrantless, suspicionless drug testing programs that serve primarily a criminal law enforcement purpose are likely to be unconstitutional.

The constitutional parameters of "special needs" analysis is outlined in a series of Supreme Court rulings. In *Skinner v. Railway Labor Executives Association*, the U.S. Supreme Court upheld post-accident drug and alcohol testing of railway employees after major train accidents or incidents, and it approved the testing of U.S. Customs employees seeking promotion to certain "sensitive" jobs involving firearms use, drug interdiction duties, or access to classified information in *National Treasury Employees Union v. Von Raab*. These decisions established that "compelling" governmental interests in public safety or national security may, in appropriate circumstances, override constitutional objections to testing procedures by employees whose privacy expectations are diminished by the nature of their duties or workplace scrutiny to which they are otherwise subject. In *Veronia School District v. Acton,* the Supreme Court first approved of random drug testing procedures for high school student athletes, a holding that was subsequently extended, in *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, to permit random drug testing of students participating in non-athletic extracurricular activities. However, the Court placed limitations on the "special needs" doctrine when, in *Chandler v. Miller*, it voided a Georgia law requiring drug testing of candidates for state office for lack of a governmental need substantial enough to warrant suspicionless searches. Additionally, the Court generally has struck down drug testing policies that primarily serve criminal law enforcement purposes, such as in *Ferguson v. City of Charleston*.