The First Amendment and Public Schools

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The First Amendment and the Classroom: Overview

- Review controlling U.S. Supreme Court precedent governing speech in public schools (*Tinker* to *Morse*).
- Discuss how cases have been interpreted by the lower courts and issues that commonly arise.
- Questions?

Student Speech in Public Schools

- A public school is a unique environment:
  - A setting where attendance is compelled and behavior may be significantly restricted by government actors (in some ways like a prison) .
  - Also a place where an important goal is the exchange of ideas; preparing people for democracy; and the teaching of constitutional values (resembles a public forum).
- Legal balancing act: If courts uphold controversial student speech, they risk becoming "Super School Boards." But if courts defer, unreasonable rules can squelch free exchange of ideas; autonomy.

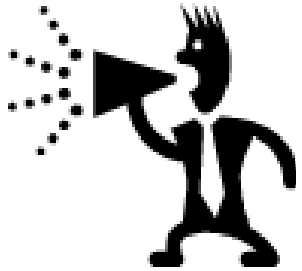
Tinker v. Des Moines School District

- Tinkers wear armband to protest war; is suspended. Argue that suspension violates 1A.
- Court: Neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."
- Students were engaged in "pure speech."
- In *Tinker*, school authorities could not "forecast substantial disruption" and no "disturbances or disorders on school premises" had occurred.

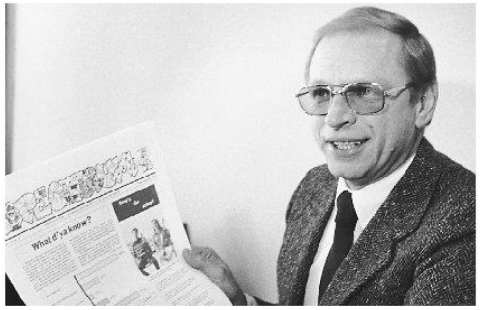
Tinker v. Des Moines School Dist.

- HELD: School violates 1A by prohibiting message, "at least without **evidence that it is necessary to avoid material or substantial interference with schoolwork or discipline**" or impinges on the rights of other students.
- Also, discipline was "content based:" administrators had allowed other types of symbols to be displayed by students (even Nazi symbols like Iron Cross) so obviously were disfavoring protests of war.
- School cannot ban speech based to avoid the unpleasantness of unpopular opinions ("Make America Great;" "I'm with Her").
- But what of symbols of hate? Limits on *Tinker*?

Retreat from *Tinker*: Naughty Speech



- *Bethel School District No. 403 v. Fraser* (1986): School could suspend high school student who gave a student government campaign speech during school assembly that contained sexual puns and allusions ("I know a man who is firm—he's firm in his pants, etc.")
- Determination of what speech in schools is appropriate is for school officials.
- *Tinker* distinguished: that was political speech, not "vulgar, lewd, or offensive" speech. Schools may teach what is socially appropriate behavior.



Retreat from *Tinker*: Pedagogical Interests

- *Hazelwood School Dist. v. Kuhlmeir* (1988): Principal deletes newspaper articles about teen pregnancy; divorce.
- If *Tinker* applies, no forecast disruption; also looks like censorship of content based on dislike of ideas.
- HELD: *Tinker* does not apply.
- *Hazlewood* test used in place of the *Tinker* test:
  - Educators can control the style and content of student speech in "**school-sponsored expressive activities**" if actions are "reasonably related to legitimate pedagogical concerns." (Newspaper part of Journalism II class).
- Test is extremely deferential: is decision "unreasonable?"

Retreat from *Tinker*: Drug Speech

- *Morse v. Frederick* (2007): speech not in school (on street); message ambiguous, but not lewd. Student suspended for banner.

Morse v. Frederick (2007)

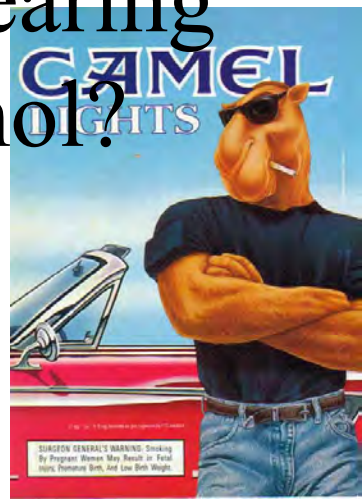
- *Tinker* is still good law, but . . .
- Broad definition of school speech (here, during school hours; across the street from school; band & cheerleaders performed; visible to students).
- Deference to school officials in interpreting content of speech: reasonable to interpret "Bong Hits 4 Jesus" as promoting illegal drug use, despite student's contention that it was nonsense intended to get on TV.

Morse v. Frederick

- Court holds that school officials can sanction student speech at school events because:
  - School has an important interest in deterring drug use by students.
  - The school environment's "special characteristics" allows schools to restrict student expression that promotes drug use.
- *Tinker* thus effectively now has a "drug speech" exception. Apparently, even a viewpoint-based ban on drug speech OK.

Questions after *Morse:*

- What if Frederick instead unfurled a banner that said "Legalize Marijuana Now?"
  - Justices Alito & Kennedy say school could not punish. Clever inciters may not be punished?
- Could students be disciplined for wearing a T-shirt displaying a bottle of alcohol? Displaying a cigarette logo?



Questions after *Morse:*

- What 1A rights now extend into the schoolhouse? Should S. Ct. Overrule *Tinker*? J. Thomas:
  - "*Tinker* effected a sea change in students' speech rights" and should be rejected. *Tinker* also conflicts with the freedom to discipline students that schools have historically enjoyed.
- When does *Tinker* apply? First grader who bring in birthday treats with a message that violates policy?
- Can School discipline speech outside of school? Social media posts?

- Student is suspended for wearing a Marilyn Manson T-shirt. Shirt depicted a three-faced Jesus, accompanied by the words “See No Truth. Hear No Truth. Speak No Truth.” On the back of the shirt, the word “BELIEVE” was spelled out in capital letters, with the letters “LIE” highlighted.
- *Boroff v. Van Wert City Bd. of Educ.*, 220 F.3d 465 (6th Cir. 2000) (School wins because artist’s songs promoted drugs, suicide, and murder)(2-1 decision).

MANSON SHIRT ATTACKING THE LORD JESUS CHRIST

- Student is suspended by principal for wearing a shirt to school that says: **"INTOLERANT: JESUS SAID . . . 'I am the way, the truth, and the life.' Homosexuality is a sin, Islam is a lie, abortion is murder. Some issues are just black and white"?**
- *Nixon v. Northern Local School Dist.,* 383 F.Supp.2d 965 (S.D.Ohio 2005)(School loses under *Tinker* because it could not prove shirt was disruptive).

- School bans: clothing and accessories that display "racial or ethnic slurs/symbols." May students be disciplined for wearing the Confederate flag on shirts/belt buckles where evidence of racial violence, threats, and tensions?
- YES. School policy upheld where school offered evidence that it could reasonably forecast disruptions to learning environment. *Defoe ex rel. Defoe v. Spiva,* 625 F.3d 324 (6th Cir. 2010). No need for disruption to have actually occurred (student argued flag did not cause fights).
- But cannot ban Jeff Foxworthy T-shirt "You might be a red-neck . . ." under otherwise valid racial harassment policy *Sypniewski v. Warren Hills Bd. of Educ.* (3d Cir.2002).
- Can schools monitor speech outside school?

Student Social Media and the 1A?

- Schools are beginning to monitor social media for wide variety of speech (hiring outside companies). https://www.pbs.org/newshour/show/schools-watching-students-social-media-raising-questions-free-speech
  - Identify: bullying; threats; illegal activity.
  - But "what if someone posts something that is offensive language, racist, sexist?"
  - Principal in stirt: "Absolutely" because "against campus culture."
- 1A limits on such discipline of students for speech?

Lewd speech off of school grounds?

- Student creates a lewd parody of the principal on MySpace using a photo copied from school website? Other students access website. Can student be disciplined?
  - NO. *Layshock v. Hermitage School District,* (3d Cir. 2011). Speech is protected.
  - Irrelevant that the school district considered the speech lewd and offensive because it occurred outside of school; *Fraser* cannot be used to punish.
- Accord: *J.S. ex rel. Snyder v. Blue Mountain School Dist.*, 650 F.3d 915 (3d. Cir. 2011).
- But what if off campus speech criticizes school practices? Or makes threats? Or both?

Bell v. Itawamba Co. School Bd. (2015)

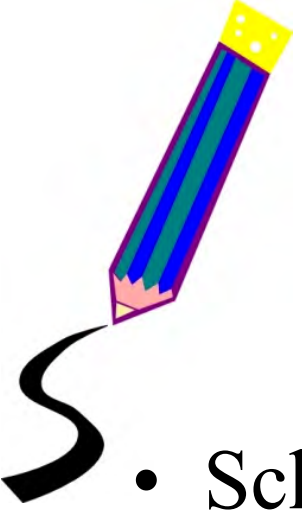
- Taylor Bell's a.k.a., T-Bizzle's Rap:
- Criticized coaches for harassing female students but also included threats of violence in rap style (*e.g.*, "Run up on T–Bizzle / I'm going to hit you with my Rueger"; "betta watch your back.")
- Close case—judges conflicted.

Bell v. Itawamba Co. School Bd.

- HELD: Bell could be disciplined for posting song. 799 F.3d 379 (5th Cir. 2015)(7 to 4).
- Majority: *Tinker* rule applies to speech off campus. TB intended speech to reach school community. Court, gives deference to school authorities; held that school might have forecast substantial disruption or material interference with school activities."
- Song "threatened, harassed, and intimidated" two named coaches. School was "measured" in response (temporary suspension; alternative program).
- If can't reach speech, sexual harassment and cyberbullying will be allowed via Internet.

Bell v. Itawamba Co. School Bd.

- Dissent: *Tinker* rule should not be applied to **off campus** speech (Court never has; relied on "special characteristics" of school environment).
- Rap song was speech of public concern at core of 1A (B was trying to call attention to teacher misconduct).
- Majority will limit future public criticism of teachers by those most likely to know: students.
- Even if *Tinker* applies, majority too deferential (evidence suggests profanity was problem). No evidence of disruption and deference inappropriate outside of school.
- SCOTUS denied cert. despite many briefs urging reversal (Killer Mike; Big Boi).



Line lower courts seem to be drawing (SCOTUS silent)

- Schools can discipline for speech off school grounds if it is threatening, harassing, or intimidating toward students or teachers.
  - Rationale: Reasonable that such speech would disrupt the learning environment.
- Schools usually cannot discipline for speech that is merely lewd or critical of school.
  - Punishing intolerant speech not laced with threats; pictures of school lunch would be problematic.

A word about teacher speech in public schools

- Generally, Court has applied a balancing test: school wins if it can show that its needs outweigh the needs of the employee. *Pickering v. Board of Education* (1968).
- Speech is unprotected by 1A if it is on the job and part of employee's duties. *Garcetti v. Ceballos* (2006).
- Courts have upheld discipline for teaching material Board did not approve of (Romeo & Juliet film; *Siddhartha*); or displaying in classroom large banners emphasizing God (could violate establishment clause). See *Evans-Marshall v. Tipp-City Board of Education*, 624 F.3d 332 (6th Cir. 2010); *Johnson v. Poway Unified School Dist.,* 658 F.3d 954 (9th Cir. 2011).

The 4th Amendment and Schools

MIKE DEWINE
OHIO ATTORNEY GENERAL

Key SCOTUS precedent

New Jersey v. T.L.O., 469 U.S. 325 (1985)

- Students *do* have 4th Amendment rights
- Those rights are reduced, and school officials *do not* need to obtain a warrant
- Court adopted a reduced standard because "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures"

T.L.O.'s 4th Amendment Test

1. Whether the search was justified at its inception

2. Whether the search as actually conducted was reasonably related in scope to the circumstances which justified it in the first place

What is reasonable?

Under Step 1:

- A search will be justified at its inception when "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school"

What is reasonable?

Under Step 2:

- A search will be reasonable as actually conducted when it is “reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction”

SCOTUS's Application of *T.L.O.*

***Veronia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995); *Bd. Of Educ. v. Earls*, 536 U.S. 822 (2002) (drug testing cases)**

Decisions focused on three questions*:*

(1) Privacy interest, (2) nature of the intrusion, and (3) governmental interest

Court was reluctant to second-guess the schools' asserted interests

Recent developments

Safford Unified Sch. Dist. #1 v. Redding,
537 U.S. 364 (2009)

Strip-search violated the 4th Amendment

- Unreasonable as actually conducted
- Student's heightened privacy interest required more specific suspicion to justify the search

Ohio-specific decision

State v. Polk, 150 Ohio St. 3d 29 (2017)

- Decision effectively tracked *T.L.O.* two-step analysis
  - Evaluated the government's interest and the school's search policy (reasonable at its inception)
  - Weighed the student's privacy interest and the intrusiveness of the search (reasonable as it actually occurred)

Lessons from the case law

- Courts are likely to be reluctant to second guess teachers and administrators when it comes to school safety and discipline (*Polk*; drug search cases)
- The greater a privacy interest, however, the more specific the suspicion for a search will likely be found to be unreasonable *as conducted* (*Redding*)

Emerging 4th Amendment Issues

Cellphones

- *Riley v. California*, 134 S. Ct. 2473 (2014)
  - Recognized heightened privacy interest in a cellphone
- **School Resource Officer involvement**
  - Likely to depend on why a SRO was involved
  - *But see Ohio v. Clark*, 135 S. Ct. (2015) (teachers are not law enforcement for 6th amend. purposes)

SRO involvement

People v. Dillworth, 661 N.E.2d 310 (Ill. 1996)

Three types of possible SRO involvement

1. those where school officials initiate a search or where police involvement is minimal,
2. those involving school police or liaison officers acting on their own authority, and
3. **those where outside police officers initiate a search.**

Further reading:

Developments in the Law: Policing Students

128 Harv. L. Rev. 1747 (2015)

T.L.O. and Cell Phones: Student Privacy and Smart Devices After Riley v. California,

101 Iowa L. Rev. 343 (2015)

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N.J. v. T. L. O.

Supreme Court of the United States

March 28, 1984, Argued ; January 15, 1985, Decided

No. 83-712

Reporter
469 U.S. 325 *; 105 S. Ct. 733 **; 83 L. Ed. 2d 720 ***; 1985 U.S. LEXIS 41 ****; 53 U.S.L.W. 4083

NEW JERSEY v. T. L. O.

Subsequent History: [**1]** Reargued October 2, 1984.

Prior History: CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

Disposition: *94 N. J. 331, 463 A. 2d 934*, reversed.

Core Terms

searches, purse, teachers, probable cause, cigarettes, smoking, probable-cause, school official, schools, balancing test, intrusion, marihuana, privacy, school authorities, circumstances, discipline, school administrator, exclusionary rule, infraction, applies, cases, authorities, violating, courts, papers, expectation of privacy, search conducted, requires, joined, Municipal

Case Summary

Procedural Posture
Petitioner State of New Jersey appealed the judgment from the Supreme Court of New Jersey that reversed the lower court's judgment and suppressed evidence found during a search by school officials in an action where respondent student alleged that the school officials violated respondent's rights under the *U.S. Const. amend IV*.

Overview
The student's purse was searched after she was suspected of having cigarettes. The principal discovered that the student had the cigarettes in her possession, and discovered evidence of marijuana and a list of alleged users from the school. The State of New Jersey brought delinquency charges against the student. The student alleged that the search of her purse violated her *Fourth Amendment* rights. The Court held that the search did not violate the *Fourth Amendment*. The Court held that a search by a school official was permissible in its scope when the measures adopted were reasonably related to the objectives of the search and were not intrusive in light of the age and the sex of the student. Therefore, the Court reversed the judgment of the state supreme court and held that the evidence of marijuana was admissible.

Outcome
The Court reversed the state supreme court's holding against the State of Jersey in which the evidence of drug dealing was suppressed and the Court held that the search, which resulted in the discovery of the evidence of marihuana dealing by the student, was reasonable.

Syllabus

A teacher at a New Jersey high school, upon discovering respondent, then a 14-year-old freshman, and her companion smoking cigarettes in a school lavatory in violation of a school rule, took them to the Principal's office, where they met with the Assistant Vice Principal. When respondent, in response to the Assistant Vice Principal's questioning, denied that she had been smoking and claimed that she did not smoke at all, the Assistant Vice Principal demanded to see her purse. Upon opening the purse, he found a pack of cigarettes and also noticed a package of cigarette rolling

papers that are commonly associated with the use of marihuana. He then proceeded to search the purse thoroughly and found some marihuana, a pipe, plastic bags, a fairly substantial amount of money, an index card containing a list of students who owed respondent money, and two letters that implicated her in marihuana dealing. Thereafter, the State brought delinquency charges against respondent in the Juvenile Court, which, after denying respondent's motion to suppress **[****2]** the evidence found in her purse, held that the *Fourth Amendment* applied to searches by school officials but that the search in question was a reasonable one, and adjudged respondent to be a delinquent. The Appellate Division of the New Jersey Superior Court affirmed the trial court's finding that there had been no *Fourth Amendment* violation but vacated the adjudication of delinquency and remanded on other grounds. The New Jersey Supreme Court reversed and ordered the suppression of the evidence found in respondent's purse, holding that the search of the purse was unreasonable.

Held:

1. The *Fourth Amendment's* prohibition on unreasonable searches and seizures applies to searches conducted by public school officials and is not limited to searches carried out by law enforcement officers. Nor are school officials exempt from the Amendment's dictates by virtue of the special nature of their authority over schoolchildren. In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents of students, and they cannot claim the parents' immunity from **[****3]** the *Fourth Amendment's* strictures. Pp. 333-337.

2. Schoolchildren have legitimate expectations of privacy. They may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items by bringing them onto school grounds. But striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and **[****4]** whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction. Pp. 337-343.

3. Under the above standard, the search in this case was not unreasonable for *Fourth Amendment* purposes. First, the initial search for cigarettes was reasonable. The report to the Assistant Vice Principal that respondent had been smoking warranted a reasonable suspicion that she had cigarettes in her purse, and thus the search was justified despite the fact that the cigarettes, if found, would constitute "mere evidence" of a violation of the no-smoking rule. Second, the discovery of the rolling papers then gave rise to a reasonable **[****5]** suspicion that respondent was carrying marihuana as well as cigarettes in her purse, and this suspicion justified the further exploration that turned up more evidence of drug-related activities. Pp. 343-347.

Counsel: Allan J. Nodes, Deputy Attorney General of New Jersey, reargued the cause for petitioner. With him on the brief on reargument were Irwin J. Kimmelman, Attorney General, and Victoria Curtis Bramson, Linda L. Yoder, and Gilbert G. Miller, Deputy Attorneys General. With him on the briefs on the original argument were Mr. Kimmelman and Ms. Bramson.

Lois De Julio reargued the cause for respondent. With her on the briefs were Joseph H. Rodriguez and Andrew

Dillmann. *

[**6]**

Judges: WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and POWELL, REHNQUIST, and O'CONNOR, JJ., joined, and in Part II of which BRENNAN, MARSHALL, and STEVENS, JJ., joined. POWELL, J., filed a concurring opinion, in which O'CONNOR, J., joined, post, p. 348. BLACKMUN, J., filed an opinion concurring in the judgment, post, p. 351. BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL, J., joined, post, p. 353. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL, J., joined, and in Part I of which BRENNAN, J., joined, post, p. 370.

Opinion by: WHITE

Opinion

[*327] [*725] [**735]** JUSTICE WHITE delivered the opinion of the Court.

[1A] [2A]We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in **[***726]** violation of the *Fourth Amendment* by public school authorities. Our consideration of the proper application of the *Fourth Amendment* to the public schools, however, has led us to conclude that the search that gave rise to **[*328]** the case now before us did not violate the *Fourth Amendment*. Accordingly, we here address only the questions **[****7]** of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N. J., discovered two girls smoking in a lavatory. One of the two girls was the respondent T. L. O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T. L. O.'s companion admitted that she had violated the rule. T. L. O., however, denied that she had been smoking **[**736]** in the lavatory and claimed that she did not smoke at all.

Mr. Choplick asked T. L. O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T. L. O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession **[****8]** of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T. L. O. money, and two letters that implicated T. L. O. in marihuana dealing.

Mr. Choplick notified T. L. O.'s mother and the police, and turned the evidence of drug dealing over to the polise. At **[*329]** the request of the police, T. L. O.'s mother took her daughter to police headquarters, where T. L. O. confessed that she had been selling marihuana at the high school. On the basis of the confession and the evidence seized by Mr. Choplick, the State brought delinquency charges against T. L. O. in the Juvenile and

* Briefs of amici curiae urging reversal were filed for the United States by Solicitor General Lee, Deputy Solicitor General Frey, and Kathryn A. Oberly; for the National Association of Secondary School Principals et al. by Ivan B. Gluckman; for the National School Boards Association by Gwendolyn H. Gregory, August W. Steinhilber, and Thomas A. Shannon; for the Washington Legal Foundation by Daniel J. Popeo and Paul D. Kamenar; and for the New Jersey School Boards Association by Paula A. Mullaly and Thomas F. Scully.

Briefs of amici curiae urging affirmance were filed for the American Civil Liberties Union et al. by Mary L. Heen, Burt Neuborne, E. Richard Larson, Barry S. Goodman, and Charles S. Sims; and for the Legal Aid Society of the City of New York et al. by Janet Fink and Henry Weintraub.

Julia Penny Clark and Robert Chanin filed a brief for the National Education Association as amicus curiae.

Domestic Relations Court of Middlesex County. [1] Contending that Mr. Choplick's search of her purse violated the *Fourth Amendment*, T. L. O. moved to suppress the evidence found in her purse as well as her confession, which, she **[****9]** argued, was tainted by the allegedly unlawful search. The Juvenile Court denied the motion to suppress. State ex rel. T. L. O., 178 N. J. Super. 329, **[***727]** 428 A. 2d 1327 (1980). Although the court concluded that the *Fourth Amendment* did apply to searches carried out by school officials, it held that

"a school official may properly conduct a search of a student's person if the official has a reasonable suspicion that a crime has been or is in the process of being committed, *or* reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies." Id., at 341, 428 A. 2d, at 1333 (emphasis in original).

[**10]** Applying this standard, the court concluded that the search conducted by Mr. Choplick was a reasonable one. The initial decision to open the purse was justified by Mr. Choplick's well-founded suspicion that T. L. O. had violated the rule forbidding smoking in the lavatory. Once the purse **[*330]** was open, evidence of marihuana violations was in plain view, and Mr. Choplick was entitled to conduct a thorough search to determine the nature and extent of T. L. O.'s drug-related activities. Id., at 343, 428 A. 2d, at 1334. Having denied the motion to suppress, the court on March 23, 1981, found T. L. O. to be a delinquent and on January 8, 1982, sentenced her to a year's probation.

On appeal from the final judgment of the Juvenile Court, a divided Appellate Division affirmed the trial court's finding that there had been no *Fourth Amendment* violation, but vacated the adjudication of delinquency and remanded for a determination whether T. L. O. had knowingly and voluntarily waived her *Fifth Amendment* rights before confessing. State ex rel. T. L. O., 185 N. J. Super. 279, 448 A. 2d 493 (1982). T. L. O. appealed the **[****11]** *Fourth Amendment* ruling, and the Supreme Court of New Jersey reversed the judgment of the Appellate Division and ordered the suppression of the evidence found in T. L. O.'s purse. State ex **[**737]** rel. T. L. O., 94 N. J. 331, 463 A. 2d 934 (1983).

The New Jersey Supreme Court agreed with the lower courts that the *Fourth Amendment* applies to searches conducted by school officials. The court also rejected the State of New Jersey's argument that the exclusionary rule should not be employed to prevent the use in juvenile proceedings of evidence unlawfully seized by school officials. Declining to consider whether applying the rule to the fruits of searches by school officials would have any deterrent value, the court held simply that the precedents of this Court establish that "if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." Id., at 341, 463 A. 2d, at 939 (footnote omitted).

With respect to the question of the legality of the search before it, the court agreed with the Juvenile Court that a warrantless search by a school official does not violate the *Fourth* **[****12]** *Amendment* so long as the official "has reasonable grounds to believe that a student possesses evidence of illegal **[*331]** activity or activity that would interfere with school discipline and order." Id., at 346, 463 A. 2d, at 941-942. However, the court, with two justices dissenting, sharply disagreed with the Juvenile Court's conclusion that the search of the purse was reasonable. According to the majority, the contents of T. L. O.'s purse had no bearing on the accusation against T. L. O., for possession **[***728]** of cigarettes (as opposed to smoking them in the lavatory) did not violate school rules, and a mere desire for evidence that would impeach T. L. O.'s claim that she did not smoke cigarettes could not justify the search. Moreover, even if a reasonable suspicion that T. L. O. had cigarettes in her purse would justify a search, Mr. Choplick had no such suspicion, as no one had furnished him with any specific information that there were cigarettes in the purse. Finally, leaving aside the question whether Mr. Choplick was justified in opening the purse, the court held that the evidence of drug use that he saw inside did not justify the **[****13]** extensive "rummaging"

[1] T. L. O. also received a 3-day suspension from school for smoking cigarettes in a nonsmoking area and a 7-day suspension for possession of marihuana. On T. L. O.'s motion, the Superior Court of New Jersey, Chancery Division, set aside the 7-day suspension on the ground that it was based on evidence seized in violation of the ***Fourth Amendment***. *(T. L. O.)* v. *Piscataway Bd. of Ed.*, No. C.2865-79 (Super. Ct. N. J., Ch. Div., Mar. 31, 1980). The Board of Education apparently did not appeal the decision of the Chancery Division.

through T. L. O.'s papers and effects that followed. *Id., at 347, 463 A. 2d, at 942-943*.

We granted the State of New Jersey's petition for certiorari. *464 U.S. 991 (1983)*. Although the State had argued in the Supreme Court of New Jersey that the search of T. L. O.'s purse did not violate the *Fourth Amendment*, the petition for certiorari raised only the question whether the exclusionary rule should operate to bar consideration in juvenile delinquency proceedings of evidence unlawfully seized by a school official without the involvement of law enforcement officers. When this case was first argued last Term, the State conceded for the purpose of argument that the standard devised by the New Jersey Supreme Court for determining the legality of school searches was appropriate and that the court had correctly applied that standard; the State contended only that the remedial purposes of the exclusionary rule were not well served by applying it to searches conducted by public authorities not primarily engaged in law enforcement.

[*332] Although we originally granted certiorari to decide the issue of the appropriate **[****14]** remedy in juvenile court proceedings for unlawful school searches, our doubts regarding the wisdom of deciding that question in isolation from the broader question of what limits, if any, the *Fourth Amendment* places on the activities of school authorities prompted us to order reargument on that question. [2] **[****15]** **[***729]** Having heard argument **[**738]** on **[*333]** the legality of the search of T. L. O.'s purse, we are satisfied that the search did not violate the *Fourth Amendment*. [3]

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[2] State and federal courts considering these questions have struggled to accommodate the interests protected by the ***Fourth Amendment*** and the interest of the States in providing a safe environment conducive to education in the public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of cases courts have held that school officials conducting in-school searches of students are private parties acting *in loco parentis* and are therefore not subject to the constraints of the ***Fourth Amendment***. See, *e. g., D. R. C.* v. *State, 646 P. 2d 252 (Alaska App. 1982)*; *In re G., 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970)*; *In re Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969)*; *R. C. M.* v. *State, 660 S. W. 2d 552 (Tex. App. 1983)*; *Mercer v. State, 450 S. W. 2d 715 (Tex. Civ. App. 1970)*. At least one court has held, on the other hand, that the ***Fourth Amendment*** applies in full to in-school searches by school officials and that a search conducted without probable cause is unreasonable, see *State v. Mora, 307 So. 2d 317* (La.), vacated, ***423 U.S. 809 (1975)***, on remand, *330 So. 2d 900 (La. 1976)*; others have held or suggested that the probable-cause standard is applicable at least where the police are involved in a search, see *M.* v. *Board of Ed. Ball-Chatham Community Unit School Dist. No. 5, 429 F.Supp. 288, 292 (SD Ill. 1977)*; *Picha v. Wielgos, 410 F.Supp. 1214, 1219-1221 (ND Ill. 1976)*; *State v. Young, 234 Ga. 488, 498, 216 S. E. 2d 586, 594 (1975)*; or where the search is highly intrusive, see *M. M.* v. *Anker, 607 F.2d 588, 589 (CA2 1979)*.

The majority of courts that have addressed the issue of the ***Fourth Amendment*** in the schools have, like the Supreme Court of New Jersey in this case, reached a middle position: the ***Fourth Amendment*** applies to searches conducted by school authorities, but the special needs of the school environment require assessment of the legality of such searches against a standard less exacting than that of probable cause. These courts have, by and large, upheld warrantless searches by school authorities provided that they are supported by a reasonable suspicion that the search will uncover evidence of an infraction of school disciplinary rules or a violation of the law. See, *e. g., Tarter* v. *Raybuck*, No. 83-3174 (CA6, Aug. 31, 1984); *Bilbrey v. Brown, 738 F.2d 1462 (CA9 1984)*; *Horton v. Goose Creek Independent School Dist., 690 F.2d 470 (CA5 1982)*; *Bellnier v. Lund, 438 F.Supp. 47 (NDNY 1977)*; *M.* v. *Board of Ed. Ball-Chatham Community Unit School Dist. No. 5, supra;* *In re W., 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973)*; *State v. Baccino, 282 A. 2d 869 (Del. Super. 1971)*; *State v. D. T. W., 425 So. 2d 1383 (Fla. App. 1983)*; *State v. Young, supra;* *In re J. A., 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980)*; *People v. Ward, 62 Mich. App. 46, 233 N. W. 2d 180 (1975)*; *Doe v. State, 88 N. M. 347, 540 P. 2d 827 (App. 1975)*; *People v. D., 34 N. Y. 2d 483, 315 N. E. 2d 466 (1974)*; *State v. McKinnon, 88 Wash. 2d 75, 558 P. 2d 781 (1977)*; *In re L. L., 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979)*.

Although few have considered the matter, courts have also split over whether the exclusionary rule is an appropriate remedy for ***Fourth Amendment*** violations committed by school authorities. The Georgia courts have held that although the ***Fourth Amendment*** applies to the schools, the exclusionary rule does not. See, *e. g.*, *State v. Young, supra;* *State v. Lamb, 137 Ga. App. 437, 224 S. E. 2d 51 (1976)*. Other jurisdictions have applied the rule to exclude the fruits of unlawful school searches from criminal trials and delinquency proceedings. See *State v. Mora, supra;* *People v. D., supra.*

[3] In holding that the search of T. L. O.'s purse did not violate the ***Fourth Amendment***, we do not implicitly determine that the exclusionary rule applies to the fruits of unlawful searches conducted by school authorities. The question whether evidence should be excluded from a criminal proceeding involves two discrete inquiries: whether the evidence was seized in violation of the ***Fourth Amendment***, and whether the exclusionary rule is the appropriate remedy for the violation. Neither question is logically antecedent to the other, for a negative answer to either question is sufficient to dispose of the case. Thus, our determination that the search at issue in this case did not violate the ***Fourth Amendment*** implies no particular resolution of the question of the applicability of the

II

[3]In determining whether the search at issue in this case violated the *Fourth Amendment*, we are faced initially with the question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.

[*334] It **[****16]** is now beyond dispute that "the Federal Constitution, by virtue of the *Fourteenth Amendment*, prohibits unreasonable searches and seizures by state officers." *Elkins v. United States, 364 U.S. 206, 213 (1960)*; accord, *Mapp v. Ohio, 367 U.S. 643 (1961)*; *Wolf v. Colorado, 338 U.S. 25 (1949)*. Equally indisputable is the proposition that the *Fourteenth Amendment* protects the rights of students against encroachment by public school officials:

"The *Fourteenth Amendment*, as now applied to the States, protects the citizen against the State itself and all of its creatures -- Boards of Education not excepted. These have, of course, important, **[**739]** delicate, and highly discretionary functions, but none that they may not perform **[***730]** within the limits of the *Bill of Rights*. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *West Virginia State Bd. of Ed.* v. *Barnette, 319 U.S. 624, 637 (1943)*. **[****17]**

These two propositions -- that the *Fourth Amendment* applies to the States through the *Fourteenth Amendment*, and that the actions of public school officials are subject to the limits placed on state action by the *Fourteenth Amendment* -- might appear sufficient to answer the suggestion that the *Fourth Amendment* does not proscribe unreasonable searches by school officials. On reargument, however, the State of New Jersey has argued that the history of the *Fourth Amendment* indicates that the Amendment was intended to regulate only searches and seizures carried out by law enforcement officers; accordingly, although public school officials are concededly state agents for purposes of the *Fourteenth Amendment*, the *Fourth Amendment* creates no rights enforceable against them. [4]

[**18]** **[*335]** It may well be true that the evil toward which the *Fourth Amendment* was primarily directed was the resurrection of the pre-Revolutionary practice of using general warrants or "writs of assistance" to authorize searches for contraband by officers of the Crown. See *United States v. Chadwick, 433 U.S. 1, 7-8 (1977)*; *Boyd v. United States, 116 U.S. 616, 624-629 (1886)*. But this Court has never limited the Amendment's prohibition on unreasonable searches and seizures to operations conducted by the police. Rather, the Court has long spoken of the *Fourth Amendment's* strictures as restraints imposed upon "governmental action" -- that is, "upon the activities of sovereign authority." *Burdeau v. McDowell, 256 U.S. 465, 475 (1921)*. Accordingly, we have held the *Fourth Amendment* applicable to the activities of civil as well as criminal authorities: building inspectors, see *Camara v. Municipal Court, 387 U.S. 523, 528 (1967)*, Occupational Safety and Health Act inspectors, see *Marshall v. Barlow's, Inc., 436 U.S. 307, 312-313 (1978)*, and even firemen entering privately **[****19]** owned premises to battle a fire, see *Michigan v. Tyler, 436 U.S. 499, 506 (1978)*, are all subject to the restraints imposed by the *Fourth Amendment*. As we observed in *Camara v. Municipal Court, supra*, "[the] basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *387 U.S., at 528*. Because the individual's interest in privacy and personal security "suffers whether the government's motivation is to investigate violations of **[***731]** criminal laws or breaches of other statutory or regulatory standards," *Marshall v. Barlow's, Inc., supra, at 312-313*, it would be "anomalous to say that the individual and his private property are fully protected by the *Fourth Amendment* only when the individual is suspected of criminal behavior." *Camara* v. *Municipal Court, supra*, at 530.

[*336] Notwithstanding the general applicability of the

exclusionary rule.

[4] Cf. *Ingraham v. Wright, 430 U.S. 651 (1977)* (holding that the ***Eighth Amendment's*** prohibition of cruel and unusual punishment applies only to punishments imposed after criminal convictions and hence does not apply to the punishment of schoolchildren by public school officials).

Fourth Amendment to the activities of civil authorities, a few courts have concluded that school officials are **[****20]** exempt from the dictates of the *Fourth* ***[**740]*** *Amendment* by virtue of the special nature of their authority over schoolchildren. See, *e. g.*, *R. C. M.* v. *State, 660 S. W. 2d 552 (Tex. App. 1983)*. Teachers and school administrators, it is said, act *in loco parentis* in their dealings with students: their authority is that of the parent, not the State, and is therefore not subject to the limits of the *Fourth Amendment*. *Ibid*.

[4]Such reasoning is in tension with contemporary reality and the teachings of this Court. We have held school officials subject to the commands of the *First Amendment*, see *Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)*, and the *Due Process Clause of the Fourteenth Amendment*, see *Goss v. Lopez, 419 U.S. 565 (1975)*. If school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students. More generally, the Court has recognized that "the concept **[****21]** of parental delegation" as a source of school authority is not entirely "consonant with compulsory education laws." *Ingraham v. Wright, 430 U.S. 651, 662 (1977)*. Today's public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies. See, *e. g.*, the opinion in *State ex rel. T. L. O., 94 N. J., at 343, 463 A. 2d, at 934, 940*, describing the New Jersey statutes regulating school disciplinary policies and establishing the authority of school officials over their students. In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they **[*337]** cannot claim the parents' immunity from the strictures of the *Fourth Amendment*.

III

To hold that the *Fourth Amendment* applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the *Fourth Amendment* is always that searches **[****22]** and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires "balancing the need to search against the invasion which the search entails." *Camara* v. *Municipal Court, supra*, at 536-537. On one side of the **[***732]** balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. *Terry v. Ohio, 392 U.S. 1, 24-25 (1967)*. We have also recognized that searches of closed items of personal luggage are intrusions on protected privacy interests, for "the *Fourth Amendment* provides protection to the owner of every container that conceals its contents from plain view." *United States v. Ross, 456 U.S. 798, 822-823 (1982)*. A search of a child's person or of a closed purse or other bag carried on her person, [5] no less **[*338]** than a **[**741]** similar search **[****23]** carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

[**24]** Of course, the *Fourth Amendment* does not protect subjective expectations of privacy that are unreasonable or otherwise "illegitimate." See, *e. g.*, *Hudson v. Palmer, 468 U.S. 517 (1984)*; *Rawlings v. Kentucky, 448 U.S. 98 (1980)*. To receive the protection of the *Fourth Amendment*, an expectation of privacy must be one that society is "prepared to recognize as legitimate." *Hudson v. Palmer, supra, at 526*. The State

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[5] We do not address the question, not presented by this case, whether a schoolchild has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies. Nor do we express any opinion on the standards (if any) governing searches of such areas by school officials or by other public authorities acting at the request of school officials. Compare *Zamora v. Pomeroy, 639 F.2d 662, 670 (CA10 1981)* ("Inasmuch as the school had assumed joint control of the locker it cannot be successfully maintained that the school did not have a right to inspect it"), and *People v. Overton, 24 N. Y. 2d 522, 249 N. E. 2d 366 (1969)* (school administrators have power to consent to search of a student's locker), with *State v. Engerud, 94 N. J. 331, 348, 463 A. 2d 934, 943 (1983)* ("We are satisfied that in the context of this case the student had an expectation of privacy in the contents of his locker. . . . For the four years of high school, the school locker is a home away from home. In it the student stores the kind of personal 'effects' protected by the ***Fourth Amendment***").

of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property "unnecessarily" carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment; and (2) the minimal interest of the child in bringing any items of personal property into the school. Both premises are severely flawed.

Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in **[****25]** the schools may claim no legitimate expectations of privacy. We have recently recognized that the need to maintain order in a prison is such that prisoners retain no legitimate expectations of privacy in their cells, but it goes almost without saying that "[the] prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction **[***733]** and incarceration." *Ingraham v. Wright, supra, at 669*. We are not **[*339]** yet ready to hold that the schools and the prisons need be equated for purposes of the *Fourth Amendment*.

Nor does the State's suggestion that children have no legitimate need to bring personal property into the schools seem well anchored in reality. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular **[****26]** or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.

Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. See generally 1 NIE, U.S. Dept. of Health, Education and Welfare, Violent Schools -- Safe Schools: The Safe School Study Report to the Congress (1978). Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. "Events calling for discipline are frequent occurrences and **[**742]** **[****27]** sometimes require immediate, effective action." *Goss v. Lopez, 419 U.S., at 580*. Accordingly, we have recognized **[*340]** that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship. See *id., at 582-583*; *Ingraham v. Wright, 430 U.S., at 680-682*.

[5]How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. Just as we have in other cases dispensed **[****28]** with the warrant requirement when "the burden of obtaining a warrant is likely to **[***734]** frustrate the governmental purpose behind the search," *Camara v. Municipal Court, 387 U.S., at 532-533*, we hold today that school officials need not obtain a warrant before searching a student who is under their authority.

[6]The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search -- even one that may permissibly be carried out without a warrant -- must be based upon "probable cause" to believe that a

violation of the law has occurred. See, *e. g.*, *Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973)*; *Sibron v. New York, 392 U.S. 40, 62-66 (1968)*. However, "probable cause" is not an irreducible requirement of a valid search. The fundamental command of the *Fourth Amendment* is that searches and seizures be reasonable, and although "both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a search, . . . in certain limited circumstances neither is required." *Almeida-Sanchez v. United States, supra, at 277* **[****29]** (POWELL, **[*341]** J., concurring). Thus, we have in a number of cases recognized the legality of searches and seizures based on suspicions that, although "reasonable," do not rise to the level of probable cause. See, *e. g.*, *Terry v. Ohio, 392 U.S. 1 (1968)*; *United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975)*; *Delaware v. Prouse, 440 U.S. 648, 654-655 (1979)*; *United States v. Martinez-Fuerte, 428 U.S. 543 (1976)*; cf. *Camara* v. *Municipal Court, supra,* at 534-539. Where a careful balancing of governmental and private interests suggests that the public interest is best served by a *Fourth Amendment* standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard.

[1B][7]We join the majority of courts that have examined this issue [6] **[****31]** in concluding that the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that **[****30]** the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether **[**743]** the . . . action was justified at its inception," *Terry v. Ohio, 392 U.S., at 20*; second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place," *ibid*. Under ordinary circumstances, a search of a student by a teacher or **[***735]** other school official [7] will be **[*342]** "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. [8] **[****32]** Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. [9]

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[6] See cases cited in n. 2, *supra*.

[7] We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question. Cf. *Picha v. Wielgos, 410 F.Supp. 1214, 1219-1221 (ND Ill. 1976)* (holding probable-cause standard applicable to searches involving the police).

[8] We do not decide whether individualized suspicion is an essential element of the reasonableness standard we adopt for searches by school authorities. In other contexts, however, we have held that although "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure[,] . . . the ***Fourth Amendment*** imposes no irreducible requirement of such suspicion." *United States v. Martinez-Fuerte, 428 U.S. 543, 560-561 (1976)*. See also *Camara v. Municipal Court, 387 U.S. 523 (1967)*. Exceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal and where "other safeguards" are available "to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field.'" *Delaware v. Prouse, 440 U.S. 648, 654-655 (1979)* (citation omitted). Because the search of T. L. O.'s purse was based upon an individualized suspicion that she had violated school rules, see *infra*, at 343-347, we need not consider the circumstances that might justify school authorities in conducting searches unsupported by individualized suspicion.

[9] Our reference to the nature of the infraction is not intended as an endorsement of JUSTICE STEVENS' suggestion that some rules regarding student conduct are by nature too "trivial" to justify a search based upon reasonable suspicion. See *post*, at 377-382. We are unwilling to adopt a standard under which the legality of a search is dependent upon a judge's evaluation of the relative importance of various school rules. The maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes, but also that students conform themselves to the standards of conduct prescribed by school authorities. We have "repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 507 (1969)*. The promulgation of a rule forbidding specified conduct presumably reflects a judgment on the part of school

[**33]** This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools **[*343]** nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more **[***736]** than is necessary to achieve the legitimate end of preserving order in the schools.

IV

[2B] [8A]There remains the question of the legality of the search in this case. We **[**744]** recognize that the "reasonable grounds" standard applied by the New Jersey Supreme Court in its consideration of this question is not substantially different from the standard that we have adopted today. Nonetheless, we believe that the New Jersey court's application of that standard to strike down the search of T. L. O.'s purse reflects a somewhat crabbed notion of reasonableness. Our review of the facts **[****34]** surrounding the search leads us to conclude that the search was in no sense unreasonable for *Fourth Amendment* purposes. [10]

[8B]

The incident that gave rise to this case actually involved two separate searches, with the first -- the search for cigarettes -- providing the suspicion that gave rise to the second -- the **[*344]** search for marihuana. Although it is the fruits of the second search that are at issue here, the validity of the search for marihuana must depend on the reasonableness of the initial search for cigarettes, as there would have been no reason to suspect that T. L. O. possessed marihuana had the first search not taken place. Accordingly, it is to the search for cigarettes that we first turn our attention.

The New Jersey Supreme Court pointed to two grounds for its holding that the search **[****35]** for cigarettes was unreasonable. First, the court observed that possession of cigarettes was not in itself illegal or a violation of school rules. Because the contents of T. L. O.'s purse would therefore have "no direct bearing on the infraction" of which she was accused (smoking in a lavatory where smoking was prohibited), there was no reason to search her purse. [11] Second, even assuming that a search of T. L. O.'s purse might under some circumstances be reasonable in light of the accusation made against T. L. O., the New Jersey court concluded that Mr. Choplick in this particular case had no reasonable grounds to suspect that T. L. O. had cigarettes in her purse. At best, according **[*345]** to the court, Mr. Choplick **[***737]** had "a good hunch." *94 N. J., at 347, 463 A. 2d, at 942*.

[**36]** Both these conclusions are implausible. T. L. O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all. Surely it cannot be said that under these circumstances, T. L. O.'s possession of cigarettes would be irrelevant to the charges against her or to her response to those charges. T. L. O.'s possession of cigarettes, once it was discovered, would both corroborate the report that she had been smoking and undermine the credibility of her

officials that such conduct is destructive of school order or of a proper educational environment. Absent any suggestion that the rule violates some substantive constitutional guarantee, the courts should, as a general matter, defer to that judgment and refrain from attempting to distinguish between rules that are important to the preservation of order in the schools and rules that are not.

[10] Of course, New Jersey may insist on a more demanding standard under its own Constitution or statutes. In that case, its courts would not purport to be applying the ***Fourth Amendment*** when they invalidate a search.

[11] JUSTICE STEVENS interprets these statements as a holding that enforcement of the school's smoking regulations was not sufficiently related to the goal of maintaining discipline or order in the school to justify a search under the standard adopted by the New Jersey court. See *post*, at 382-384. We do not agree that this is an accurate characterization of the New Jersey Supreme Court's opinion. The New Jersey court did not hold that the school's smoking rules were unrelated to the goal of maintaining discipline or order, nor did it suggest that a search that would produce evidence bearing directly on an accusation that a student had violated the smoking rules would be impermissible under the court's reasonable-suspicion standard; rather, the court concluded that any evidence a search of T. L. O.'s purse was likely to produce would not have a sufficiently direct bearing on the infraction to justify a search -- a conclusion with which we cannot agree for the reasons set forth *infra*, at 345. JUSTICE STEVENS' suggestion that the New Jersey Supreme Court's decision rested on the perceived triviality of the smoking infraction appears to be a reflection of his own views rather than those of the New Jersey court.

defense to the charge of smoking. To be sure, the discovery of the cigarettes would not prove that T. L. O. had been smoking in the lavatory; nor would it, strictly speaking, necessarily be inconsistent with her claim that she did not smoke at all. But it is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, but only have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable **[**745]** or less probable than it would be without the evidence." *Fed. Rule Evid. 401*. The relevance of T. L. O.'s possession of cigarettes to the question **[****37]** whether she had been smoking and to the credibility of her denial that she smoked supplied the necessary "nexus" between the item searched for and the infraction under investigation. See *Warden v. Hayden, 387 U.S. 294, 306-307 (1967)*. Thus, if Mr. Choplick in fact had a reasonable suspicion that T. L. O. had cigarettes in her purse, the search was justified despite the fact that the cigarettes, if found, would constitute "mere evidence" of a violation. *Ibid*.

Of course, the New Jersey Supreme Court also held that Mr. Choplick had no reasonable suspicion that the purse would contain cigarettes. This conclusion is puzzling. A teacher had reported that T. L. O. was smoking in the lavatory. Certainly this report gave Mr. Choplick reason to suspect that T. L. O. was carrying cigarettes with her; and **[*346]** if she did have cigarettes, her purse was the obvious place in which to find them. Mr. Choplick's suspicion that there were cigarettes in the purse was not an "inchoate and unparticularized suspicion or 'hunch,'" *Terry v. Ohio, 392 U.S., at 27*; rather, it was the sort of "common-sense [conclusion] about human behavior" upon **[****38]** which "practical people" -- including government officials -- are entitled to rely. *United States v. Cortez, 449 U.S. 411, 418 (1981)*. Of course, even if the teacher's report were true, T. L. O. *might* not have had a pack of cigarettes with her; she might have borrowed a cigarette from someone else or have been sharing a cigarette with another student. But the requirement of reasonable suspicion is not a requirement of absolute certainty: "sufficient probability, not certainty, is the touchstone of reasonableness under the *Fourth Amendment*. . . ." *Hill v. California, 401 U.S. 797, 804 (1971)*. Because the hypothesis that T. L. O. was carrying cigarettes in her purse was not itself not unreasonable, it is irrelevant that other hypotheses were also consistent with the teacher's accusation. Accordingly, it cannot be said that Mr. Choplick acted **[***738]** unreasonably when he examined T. L. O.'s purse to see if it contained cigarettes. [12]

[**39]**

[*347] [2C]Our conclusion that Mr. Choplick's decision to open T. L. O.'s purse was reasonable brings us to the question of the further search for marihuana once the pack of cigarettes was located. The suspicion upon which the search for marihuana was founded was provided when Mr. Choplick observed a package of rolling papers in the purse as he removed the pack of cigarettes. Although T. L. O. does not dispute the reasonableness of Mr. Choplick's belief that the rolling papers indicated the presence of marihuana, she does contend that the scope of the search Mr. Choplick conducted exceeded permissible bounds when he seized and read certain letters that implicated T. L. O. in drug dealing. This argument, too, is unpersuasive. The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T. L. O. was carrying **[**746]** marihuana as well as cigarettes in her purse. This suspicion justified further exploration of T. L. O.'s purse, which turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type commonly used to store marihuana, a small quantity of marihuana, and a fairly substantial amount of money. Under these circumstances, **[****40]** it was not unreasonable to extend the search to a separate zippered compartment of the purse; and when a search of that compartment revealed an index card containing a list of

[12] T. L. O. contends that even if it was reasonable for Mr. Choplick to open her purse to look for cigarettes, it was not reasonable for him to reach in and take the cigarettes out of her purse once he found them. Had he not removed the cigarettes from the purse, she asserts, he would not have observed the rolling papers that suggested the presence of marihuana, and the search for marihuana could not have taken place. T. L. O.'s argument is based on the fact that the cigarettes were not "contraband," as no school rule forbade her to have them. Thus, according to T. L. O., the cigarettes were not subject to seizure or confiscation by school authorities, and Mr. Choplick was not entitled to take them out of T. L. O.'s purse regardless of whether he was entitled to peer into the purse to see if they were there. Such hairsplitting argumentation has no place in an inquiry addressed to the issue of reasonableness. If Mr. Choplick could permissibly search T. L. O.'s purse for cigarettes, it hardly seems reasonable to suggest that his natural reaction to finding them -- picking them up -- could be a constitutional violation. We find that neither in opening the purse nor in reaching into it to remove the cigarettes did Mr. Choplick violate the ***Fourth Amendment***.

"people who owe me money" as well as two letters, the inference that T. L. O. was involved in marihuana trafficking was substantial enough to justify Mr. Choplick in examining the letters to determine whether they contained any further evidence. In short, we cannot conclude that the search for marihuana was unreasonable in any respect.

Because the search resulting in the discovery of the evidence of marihuana dealing by T. L. O. was reasonable, the New Jersey Supreme Court's decision to exclude that evidence **[*348]** from T. L. O.'s juvenile delinquency proceedings on *Fourth Amendment* grounds was erroneous. Accordingly, the judgment of the Supreme Court of New Jersey is

Reversed.

Concur by: POWELL; BLACKMUN; BRENNAN (In Part); STEVENS (In Part)

Concur

[*739]** JUSTICE POWELL, with whom JUSTICE O'CONNOR joins, concurring.

I agree with the Court's decision, and generally with its opinion. I would place greater emphasis, however, on the special characteristics of elementary and secondary schools that make it unnecessary **[****41]** to afford students the same constitutional protections granted adults and juveniles in a nonschool setting.

In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally. They spend the school hours in close association with each other, both in the classroom and during recreation periods. The students in a particular class often know each other and their teachers quite well. Of necessity, teachers have a degree of familiarity with, and authority over, their students that is unparalleled except perhaps in the relationship between parent and child. It is simply unrealistic to think that students have the same subjective expectation of privacy as the population generally. But for purposes of deciding this case, I can assume that children in school -- no less than adults -- have privacy interests that society is prepared to recognize as legitimate.

However one may characterize their privacy expectations, students properly are afforded some constitutional protections. In an often quoted statement, the Court said that students do not "shed their constitutional rights . . . at the schoolhouse gate." *Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969)*. **[****42]** The Court also has "emphasized the need for affirming the comprehensive authority of the states and of school officials . . . **[*349]** to prescribe and control conduct in the schools." *Id., at 507*. See also *Epperson v. Arkansas, 393 U.S. 97, 104 (1968)*. The Court has balanced the interests of the student against the school officials' need to maintain discipline by recognizing qualitative differences between the constitutional remedies to which students and adults are entitled.

In *Goss v. Lopez, 419 U.S. 565 (1975)*, the Court recognized a constitutional right to due process, and yet was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was notice and a hearing described as "rudimentary"; it amounted to no more than "the disciplinarian . . . informally [discussing] the alleged misconduct with the student minutes after it has occurred." *Id., at 581-582*. In *Ingraham v. Wright, 430 U.S. 651 (1977)*, we declined to extend the *Eighth Amendment* to prohibit the use of corporal punishment of schoolchildren **[****43]** as authorized by **[**747]** Florida law. We emphasized in that opinion that familiar constraints in the school, and also in the community, provide substantial protection against the violation of constitutional rights by school authorities. "[At] the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends and is rarely apart from teachers **[***740]** and other pupils who may witness and protest any instances of mistreatment." *Id., at 670*. The *Ingraham* Court further pointed out that the "openness of the public school and its supervision by the community afford significant safeguards" against the violation of constitutional rights. *Ibid*.

The special relationship between teacher and student also distinguishes the setting within which schoolchildren operate. Law enforcement officers function as adversaries of criminal suspects. These officers have the responsibility to investigate criminal

activity, to locate and arrest those who violate our laws, and to facilitate the charging and bringing of such persons to trial. Rarely does this type of adversarial **[*350]** **[****44]** relationship exist between school authorities and pupils. [1] Instead, there is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is one of personal responsibility for the student's welfare as well as for his education.

The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school **[****45]** has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules applies with the same force and effect in the schoolhouse as it does in the enforcement of criminal laws. [2]

In sum, although I join the Court's opinion and its holding, [3] my emphasis is somewhat different.

[**46]** **[*351]** JUSTICE BLACKMUN, concurring in the judgment.

I join the judgment of the Court and agree with much that is said in its opinion. I write separately, however, because I believe the Court omits a crucial step in its analysis of whether a school search must be based upon probable cause. The Court correctly states that we have recognized limited exceptions to the probable-cause requirement "[where] a careful balancing of governmental **[***741]** and private interests suggests that the public interest is best served" by a lesser standard. *Ante*, at 341. I believe that we have used such a balancing test, rather than strictly applying the *Fourth Amendment's* Warrant and Probable-Cause Clause, only when we were confronted with "a special law enforcement need for greater flexibility." *Florida v. Royer, 460 U.S. 491, 514* ***[**748]*** *(1983)* (BLACKMUN, J., dissenting). I pointed out in *United States v. Place, 462 U.S. 696 (1983)*:

"While the *Fourth Amendment* speaks in terms of freedom from unreasonable [searches], the Amendment does not leave the reasonableness of most [searches] to the judgment of courts or government officers; the **[****47]** Framers of the Amendment balanced the interests involved and decided that a [search] is reasonable only if supported by a judicial warrant based on probable cause. See *Texas v. Brown, 460 U.S. 730, 744-745 (1983)* (POWELL, J., concurring); *United States v. Rabinowitz, 339 U.S. 56, 70 (1950)* (Frankfurter, J., dissenting)." *Id., at 722* (opinion concurring in judgment).

See also *Dunaway v. New York, 442 U.S. 200, 213-214 (1979)*; *United States v. United States District Court, 407 U.S. 297, 315-316 (1972)*. Only in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable, is a court entitled to substitute its balancing of interests for that of the Framers.

[*352] Thus, for example, in determining that police can conduct a limited "stop and frisk" upon less than probable cause, this Court relied upon the fact that "as a practical matter" the stop and frisk could not be subjected to a warrant and probable-cause requirement, because a law enforcement officer must be able to take immediate **[****48]** steps to assure himself that the person he has stopped to question is not armed with a

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[1] Unlike police officers, school authorities have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws. Of course, as illustrated by this case, school authorities have a layman's familiarity with the types of crimes that occur frequently in our schools: the distribution and use of drugs, theft, and even violence against teachers as well as fellow students.

[2] As noted above, decisions of this Court have never held to the contrary. The law recognizes a host of distinctions between the rights and duties of children and those of adults. See *Goss v. Lopez, 419 U.S. 565, 591 (1975)* (POWELL, J., dissenting.)

[3] The Court's holding is that "when there are reasonable grounds for suspecting that [a] search will turn up evidence that the student has violated or is violating either the law or the rules of the school," a search of the student's person or belongings is justified. *Ante*, at 342. This is in accord with the Court's summary of the views of a majority of the state and federal courts that have addressed this issue. See *ante*, at 332-333, n. 2.

weapon that could be used against him. *Terry v. Ohio, 392 U.S. 1, 20-21, 23-24 (1968)*. Similarly, this Court's holding that a roving Border Patrol may stop a car and briefly question its occupants upon less than probable cause was based in part upon "the absence of practical alternatives for policing the border." *United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975)*. See also *Michigan v. Long, 463 U.S. 1032, 1049, n. 14 (1983)*; *United States v. Martinez-Fuerte, 428 U.S. 543, 557 (1976)*; *Camara v. Municipal Court, 387 U.S. 523, 537 (1967)*.

The Court's implication that the balancing test is the rule rather than the exception is troubling for me because it is unnecessary in this case. The elementary and secondary school setting presents a special need for flexibility justifying a departure from the balance struck by the Framers. As JUSTICE POWELL notes, "[without] first establishing discipline and maintaining order, **[***742]** teachers cannot begin to educate their students." **[****49]** *Ante*, at 350. Maintaining order in the classroom can be a difficult task. A single teacher often must watch over a large number of students, and, as any parent knows, children at certain ages are inclined to test the outer boundaries of acceptable conduct and to imitate the misbehavior of a peer if that misbehavior is not dealt with quickly. Every adult remembers from his own schooldays the havoc a water pistol or peashooter can wreak until it is taken away. Thus, the Court has recognized that "[events] calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Goss v. Lopez, 419 U.S. 565, 580 (1975)*. Indeed, because drug use and possession of weapons have become increasingly common **[*353]** among young people, an immediate response frequently is required not just to maintain an environment conducive to learning, but to protect the very safety of students and school personnel.

Such immediate action obviously would not be possible if a teacher were required to secure a warrant before searching a student. Nor would it be possible if a **[**749]** teacher could not conduct a necessary search until the teacher **[****50]** thought there was probable cause for the search. A teacher has neither the training nor the day-to-day experience in the complexities of probable cause that a law enforcement officer possesses, and is ill-equipped to make a quick judgment about the existence of probable cause. The time required for a teacher to ask the questions or make the observations that are necessary to turn reasonable grounds into probable cause is time during which the teacher, and other students, are diverted from the essential task of education. A teacher's focus is, and should be, on teaching and helping students, rather than on developing evidence against a particular troublemaker.

Education "is perhaps the most important function" of government, *Brown v. Board of Education, 347 U.S. 483, 493 (1954)*, and government has a heightened obligation to safeguard students whom it compels to attend school. The special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable-cause requirement, and in applying a standard determined **[****51]** by balancing the relevant interests. I agree with the standard the Court has announced, and with its application of the standard to the facts of this case. I therefore concur in its judgment.

Dissent by: BRENNAN (In Part); STEVENS (In Part)

Dissent

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, concurring in part and dissenting in part.

I fully agree with Part II of the Court's opinion. Teachers, like all other government officials, must conform their **[*354]** conduct to the *Fourth Amendment's* protections of personal privacy and personal security. As JUSTICE STEVENS points out, *post*, at 373-374, 385-386, this principle is of particular importance when applied to schoolteachers, for children learn as much by example as by exposition. It would be incongruous and futile to charge teachers with the task of embuing **[***743]** their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections. See *Board of Education v. Pico, 457 U.S. 853, 864-865 (1982)* (plurality opinion); *West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637 (1943)*. **[****52]**

I do not, however, otherwise join the Court's opinion. Today's decision sanctions school officials to conduct full-scale searches on a "reasonableness" standard whose only definite content is that it is *not* the same test as the "probable cause" standard found in the text of the *Fourth Amendment*. In adopting this unclear, unprecedented, and unnecessary departure from generally applicable *Fourth Amendment* standards, the Court carves out a broad exception to standards that this Court has developed over years of considering *Fourth Amendment* problems. Its decision is supported neither by precedent nor even by a fair application of the "balancing test" it proclaims in this very opinion.

I

Three basic principles underly this Court's *Fourth Amendment* jurisprudence. First, warrantless searches are *per se* unreasonable, subject only to a few specifically delineated and well-recognized exceptions. See, *e. g.*, *Katz v. United States, 389 U.S. 347, 357 (1967)*; accord, *Welsh v. Wisconsin, 466 U.S. 740, 748-749 (1984)*; *United States v. Place, 462 U.S. 696, 701 (1983)*; *Steagald v. United States, 451 U.S. 204, 211-212 (1981)*; **[****53]** *Mincey v. Arizona, 437 U.S. 385 (1978)*; *Terry v. Ohio, 392 U.S. 1, 20 (1968)*; *Johnson v. United States, 333 U.S. 10, 13-14 (1948)*. Second, full-scale **[**750]** searches -- whether conducted in accordance with the warrant **[*355]** requirement or pursuant to one of its exceptions -- are "reasonable" in *Fourth Amendment* terms only on a showing of probable cause to believe that a crime has been committed and that evidence of the crime will be found in the place to be searched. *Beck v. Ohio, 379 U.S. 89, 91 (1964)*; *Wong Sun v. United States, 371 U.S. 471, 479 (1963)*; *Brinegar v. United States, 338 U.S. 160, 175-176 (1949)*. Third, categories of intrusions that are substantially less intrusive than full-scale searches or seizures may be justifiable in accordance with a balancing test even absent a warrant or probable cause, provided that the balancing test used gives sufficient weight to the privacy interests that will be infringed. *Dunaway v. New York, 442 U.S. 200, 210 (1979)*; *Terry v. Ohio, supra.* **[****54]**

Assistant Vice Principal Choplick's thorough excavation of T. L. O.'s purse was undoubtedly a serious intrusion on her privacy. Unlike the searches in *Terry v. Ohio, supra*, or *Adams v. Williams, 407 U.S. 143 (1972)*, the search at issue here encompassed a detailed and minute examination of respondent's pocketbook, in which the contents of private papers and **[***744]** letters were thoroughly scrutinized. [1] Wisely, neither petitioner nor the Court today attempts to justify the search of T. L. O.'s pocketbook as a minimally intrusive search in the *Terry* line. To be faithful to the Court's settled doctrine, the inquiry therefore must focus on the warrant and probable-cause requirements.

[**55]** A

I agree that schoolteachers or principals, when not acting as agents of law enforcement authorities, generally may conduct a search of their students' belongings without first **[*356]** obtaining a warrant. To agree with the Court on this point is to say that school searches may justifiably be held to that extent to constitute an exception to the *Fourth Amendment's* warrant requirement. Such an exception, however, is not to be justified, as the Court apparently holds, by assessing net social value through application of an unguided "balancing test" in which "the individual's legitimate expectations of privacy and personal security" are weighed against "the government's need for effective methods to deal with breaches of public order." *Ante*, at 337. The Warrant Clause is something more than an exhortation to this Court to maximize social welfare as *we* see fit. It requires that the authorities must obtain a warrant before conducting a full-scale search. The undifferentiated governmental interest in law enforcement is insufficient to justify an exception to the warrant requirement. Rather, some *special* governmental interest beyond the need merely to apprehend lawbreakers **[****56]** is necessary to justify a categorical exception to the warrant requirement. For the most part, special governmental needs sufficient to override the warrant requirement flow from "exigency" -- that is, from the press of time that makes obtaining a warrant either impossible or hopelessly infeasible. See *United States v. Place, supra, at 701-702*; *Mincey v. Arizona, supra, at 393-394*; *Johnson v. United States, supra, at 15*. Only after finding an extraordinary governmental interest of this kind do we -- or ought we -

[1] A purse typically contains items of highly personal nature. Especially for shy or sensitive adolescents, it could prove extremely embarrassing for a teacher or principal to rummage through its contents, which could include notes from friends, fragments of love poems, caricatures of school authorities, and items of personal hygiene.

- engage in a balancing test to determine if a warrant should nonetheless be required. [2]

[**57]** **[*357]** **[**751]** To require a showing of some extraordinary governmental interest before dispensing with the warrant requirement is not to undervalue society's need to apprehend violators of the criminal law. To be sure, forcing law enforcement personnel to obtain a warrant before engaging in a search will predictably deter the police from conducting some searches that they would otherwise **[***745]** like to conduct. But this is not an unintended *result* of the *Fourth Amendment's* protection of privacy; rather, it is the very *purpose* for which the Amendment was thought necessary. Only where the governmental interests at stake exceed those implicated in any ordinary law enforcement context -- that is, only where there is some extraordinary governmental interest involved -- is it legitimate to engage in a balancing test to determine whether a warrant is indeed necessary.

In this case, such extraordinary governmental interests do exist and are sufficient to justify an exception to the warrant requirement. Students are necessarily confined for most of the schoolday in close proximity to each other and to the school staff. I agree with the Court that we can take judicial **[****58]** notice of the serious problems of drugs and violence that plague our schools. As JUSTICE BLACKMUN notes, teachers must not merely "maintain an environment conducive to learning" among children who "are inclined to test the outer boundaries of acceptable conduct," but must also "protect the very safety of students and school personnel." *Ante*, at 352-353. A teacher or principal could neither carry out essential teaching functions nor adequately protect students' safety if required to wait for a warrant before conducting a necessary search.

B

I emphatically disagree with the Court's decision to cast aside the constitutional probable-cause standard when assessing the constitutional validity of a schoolhouse search. The Court's decision jettisons the probable-cause standard -- the only standard that finds support in the text of the *Fourth* ***[*358]*** *Amendment* -- on the basis of its Rohrschach-like "balancing test." Use of such a "balancing test" to determine the standard for evaluating the validity of a full-scale search represents a sizable innovation in *Fourth Amendment* analysis. This innovation finds support neither in precedent nor policy and portends a dangerous weakening of **[****59]** the purpose of the *Fourth Amendment* to protect the privacy and security of our citizens. Moreover, even if this Court's historic understanding of the *Fourth Amendment* were mistaken and a balancing test of some kind were appropriate, any such test that gave adequate weight to the privacy and security interests protected by the *Fourth Amendment* would not reach the preordained result the Court's conclusory analysis reaches today. Therefore, because I believe that the balancing test used by the Court today is flawed both in its inception and in its execution, I respectfully dissent.

1

An unbroken line of cases in this Court have held that probable cause is a prerequisite for a full-scale search. In *Carroll v. United States, 267 U.S. 132, 149 (1925)*, the Court held that "[on] reason and authority the true rule is that if the search and seizure . . . are made upon probable cause . . . the search and seizure are valid." Under our past decisions probable cause -- which exists where "the facts and circumstances within [the officials'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable **[****60]** caution in the **[***746]** belief" that a criminal offense had occurred and the evidence would be found in the **[**752]** suspected place, *id., at 162* -- is the constitutional minimum for justifying a full-scale search, regardless of whether it is conducted pursuant to a warrant or, as in *Carroll*, within one of the exceptions to the warrant requirement. *Henry v. United States, 361 U.S. 98, 104 (1959)* (*Carroll* "merely relaxed the requirements for a warrant on grounds of practicality," but "did not dispense **[*359]** with the need for probable cause"); accord, *Chambers v. Maroney, 399 U.S. 42, 51 (1970)* ("In enforcing the *Fourth Amendment's* prohibition

[2] Administrative search cases involving inspection schemes have recognized that "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection. . . ." *United States v. Biswell, 406 U.S. 311, 316 (1972)*; accord, *Donovan v. Dewey, 452 U.S. 594, 603 (1981)*. Cf. *Marshall v. Barlow's, Inc., 436 U.S. 307 (1978)* (holding that a warrant is nonetheless necessary in some administrative search contexts).

against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution"). [3]

[**61]** Our holdings that probable cause is a prerequisite to a full-scale search are based on the relationship between the two Clauses of the *Fourth Amendment*. The first Clause ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . .") states the purpose of the Amendment and its coverage. The second Clause (". . . and no Warrants shall issue but upon probable cause . . .") gives content to the word "unreasonable" in the first Clause. "For all but . . . narrowly defined intrusions, the requisite 'balancing' has been performed in centuries of precedent and is embodied in the principle that seizures are 'reasonable' only if supported by probable cause." *Dunaway v. New York, 442 U.S., at 214*.

I therefore fully agree with the Court that "the underlying command of the *Fourth Amendment* is always that searches and seizures be reasonable." *Ante*, at 337. But this "underlying command" is not directly interpreted in each category of cases by some amorphous "balancing test." Rather, the provisions of the Warrant Clause -- a warrant and probable cause -- provide the yardstick **[****62]** against which official searches **[*360]** and seizures are to be measured. The *Fourth Amendment* neither requires nor authorizes the conceptual free-for-all that ensues when an unguided balancing test is used to assess specific categories of searches. If the search in question is more than a minimally intrusive *Terry* stop, the constitutional probable-cause standard determines its validity.

To be sure, the Court recognizes that probable cause "ordinarily" is required to justify a full-scale search and that the existence of probable cause "bears on" the validity of the search. *Ante*, at 340-341. Yet the Court fails to cite any case in which a full-scale intrusion upon privacy interests has **[***747]** been justified on less than probable cause. The line of cases begun by *Terry v. Ohio, 392 U.S. 1 (1968)*, provides no support, for they applied a balancing test only in the context of minimally intrusive searches that served crucial law enforcement interests. The search in *Terry* itself, for instance, was a "limited search of the outer clothing." *Id., at 30*. The type of border stop at issue in *United States v. Brignoni-Ponce, 422 U.S. 873, 880 (1975)*, **[****63]** usually "[consumed] no more than a minute"; the Court explicitly noted that "any further detention . . . must be based on consent or probable cause." *Id., at 882*. See also *United States v. Hensley, ante, at 224* (momentary stop); *United States v. Place, 462 U.S., at 706-707* (brief detention of luggage for **[**753]** canine "sniff"); *Pennsylvania v. Mimms, 434 U.S. 106 (1977)* *(per curiam)* (brief frisk after stop for traffic violation); *United States v. Martinez-Fuerte, 428 U.S. 543, 560 (1976)* (characterizing intrusion as "minimal"); *Adams v. Williams, 407 U.S. 143 (1972)* (stop and frisk). In short, all of these cases involved "'seizures' so substantially less intrusive than arrests that the general rule requiring probable cause to make *Fourth Amendment* 'seizures' reasonable could be replaced by a balancing test." *Dunaway, supra, at 210*.

Nor do the "administrative search" cases provide any comfort for the Court. In *Camara v. Municipal Court, 387 U.S. 523 (1967)*, the Court held that the probable-cause standard governed **[****64]** even administrative searches. Although **[*361]** the *Camara* Court recognized that probable-cause standards themselves may have to be somewhat modified to take into account the special nature of administrative searches, the Court did so only after noting that "because [housing code] inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy." *Id., at 537*. Subsequent administrative search cases have similarly recognized that such searches intrude upon areas whose owners harbor a significantly decreased expectation of privacy, see, *e. g.*, *Donovan v. Dewey, 452 U.S. 594, 598-599 (1981)*, thus circumscribing the injury to *Fourth Amendment* interests caused by the search.

[3] In fact, despite the somewhat diminished expectation of privacy that this Court has recognized in the automobile context, see *South Dakota v. Opperman, 428 U.S. 364, 367-368 (1976)*, we have required probable cause even to justify a warrantless automobile search, see *United States v. Ortiz, 422 U.S. 891, 896 (1975)* ("A search, even of an automobile, is a substantial invasion of privacy. To protect that privacy from official arbitrariness, the Court always has regarded probable cause as the minimum requirement for a lawful search") (footnote omitted); *Chambers v. Maroney, 399 U.S., at 51*.

Considerations of the deepest significance for the freedom of our citizens counsel strict adherence to the principle that no search may be conducted where the official is not in possession of probable cause -- that is, where the official does not know of "facts and circumstances [that] warrant a prudent man in believing that the offense has been committed." *Henry v. United States, 361 U.S., at 102*; **[****65]** see also *id., at 100-101* (discussing history of probable-cause standard). The *Fourth Amendment* was designed not merely to protect against official intrusions whose social utility was less as measured by some "balancing **[***748]** test" than its intrusion on individual privacy; it was designed in addition to grant the individual a zone of privacy whose protections could be breached only where the "reasonable" requirements of the probable-cause standard were met. Moved by whatever momentary evil has aroused their fears, officials -- perhaps even supported by a majority of citizens -- may be tempted to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil. [4] But the *Fourth Amendment* **[*362]** rests on the principle that a true balance between the individual and society depends on the recognition of "the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States, 277 U.S. 438, 478 (1928)* (Brandeis, J., dissenting). That right protects the privacy and security of the individual unless the authorities can cross a specific threshold of **[****66]** need, designated by the term "probable cause." I cannot agree with the Court's assertions today that a "balancing test" can replace the constitutional threshold with one that is more convenient for those enforcing the laws but less protective of the citizens' liberty; the *Fourth Amendment's* protections should not be defaced by "a balancing process that overwhelms the individual's protection against unwarranted official intrusion by a governmental interest said to justify the search and seizure." **[**754]** *United States v. Martinez-Fuerte, supra, at 570* (BRENNAN, J., dissenting).

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[4] As Justice Stewart said in *Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971)*: "In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or 'extravagant' to some. But the values were those of the authors of our fundamental constitutional concepts."

I thus do not accept the majority's **[****67]** premise that "[to] hold that the *Fourth Amendment* applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches." *Ante,* at 337. For me, the finding that the *Fourth Amendment* applies, coupled with the observation that what is at issue is a full-scale search, is the end of the inquiry. But even if I believed that a "balancing test" appropriately replaces the judgment of the Framers of the Fourth *Amendment, I* would nonetheless object to the cursory and shortsighted "test" that the Court employs to justify its predictable weakening of *Fourth Amendment* protections. In particular, the test employed by the Court vastly overstates the social costs that a probable-cause standard entails and, though it plausibly articulates the serious privacy interests at stake, inexplicably fails to accord them adequate weight in striking the balance.

[*363] The Court begins to articulate its "balancing test" by observing that "the government's need for effective methods to deal with breaches of public order" is to be weighed on one side of the balance. *Ibid*. Of course, this is not correct. It is not the government's need for **[****68]** effective enforcement methods that should weigh in the balance, for ordinary *Fourth Amendment* standards -- including probable cause -- may well permit methods for maintaining the **[***749]** public order that are perfectly effective. If that were the case, the governmental interest in having effective standards would carry no weight at all as a justification for *departing* from the probable-cause standard. Rather, it is the costs of applying probable cause as opposed to applying some lesser standard that should be weighed on the government's side. [5]

[**69]** In order to tote up the costs of applying the probable-cause standard, it is thus necessary first to take

[5] I speak of the "government's side" only because it is the terminology used by the Court. In my view, this terminology itself is seriously misleading. The government is charged with protecting the privacy and security of the citizen, just as it is charged with apprehending those who violate the criminal law. Consequently, the government has *no* legitimate interest in conducting a search that unduly intrudes on the privacy and security of the citizen. The balance is not between the rights of the government and the rights of the citizen, but between opposing conceptions of the constitutionally legitimate means of carrying out the government's varied responsibilities.

into account the nature and content of that standard, and the likelihood that it would hamper achievement of the goal -- vital not just to "teachers and administrators," see *ante*, at 339 -- of maintaining an effective educational setting in the public schools. The seminal statement concerning the nature of the probable-cause standard is found in *Carroll v. United States, 267 U.S. 132 (1925)*. *Carroll* held that law enforcement authorities have probable cause to search where "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to **[*364]** warrant a man of reasonable caution in the belief" that a criminal offense had occurred. *Id., at 162*. In *Brinegar v. United States, 338 U.S. 160 (1949)*, the Court amplified this requirement, holding that probable cause depends upon "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id., at 175*. **[****70]**

Two Terms ago, in *Illinois v. Gates, 462 U.S. 213 (1983)*, this Court expounded at some length its view of the probable-cause standard. Among the adjectives used to describe the standard were "practical," "fluid," "flexible," "easily applied," and "nontechnical." See *id., at 232, 236, 239*. The probable-cause standard was to be seen as a "common-sense" test whose application depended **[**755]** on an evaluation of the "totality of the circumstances." *Id., at 238*.

Ignoring what *Gates* took such great pains to emphasize, the Court today holds that a new "reasonableness" standard is appropriate because it "will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense." *Ante*, at 343. I had never thought that our pre-*Gates* understanding of probable cause defied either reason or common sense. But after *Gates*, I would have thought that there could be no doubt that this "nontechnical," **[***750]** "practical," and "easily applied" concept was eminently serviceable **[****71]** in a context like a school, where teachers require the flexibility to respond quickly and decisively to emergencies.

A consideration of the likely operation of the probable-cause standard reinforces this conclusion. Discussing the issue of school searches, Professor LaFave has noted that the cases that have reached the appellate courts "strongly suggest that in most instances the evidence of wrongdoing prompting teachers or principals to conduct searches is sufficiently detailed and specific to meet the traditional probable cause test." 3 W. LaFave, Search and Seizure § 10.11, **[*365]** pp. 459-460 (1978). [6] The problems that have caused this Court difficulty in interpreting the probable-cause standard have largely involved informants, see, *e. g.*, *Illinois v. Gates, supra; Spinelli v. United States, 393 U.S. 410 (1969)*; *Aguilar v. Texas, 378 U.S. 108 (1964)*; *Draper v. United States, 358 U.S. 307 (1959)*. However, three factors make it likely that problems involving informants will not make it difficult for teachers and school administrators to make probable-cause decisions. This Court's decision in *Gates* **[****72]** applying a "totality of the circumstances" test to determine whether an informant's tip can constitute probable cause renders the test easy for teachers to apply. The fact that students and teachers interact daily in the school building makes it more likely that teachers will get to know students who supply information; the problem of informants who remain anonymous even to the teachers -- and who are therefore unavailable for verification or further questioning -- is unlikely to arise. Finally, teachers can observe the behavior of students under suspicion to corroborate any doubtful tips they do receive.

As compared with the relative ease with which teachers can apply the probable-cause standard, the amorphous "reasonableness under all the circumstances" standard freshly coined by the Court today will likely spawn increased litigation **[****73]** and greater uncertainty among teachers and administrators. Of course, as this Court should know, an essential purpose of developing and articulating legal norms is to enable individuals to conform their conduct to those norms. A school system conscientiously attempting to obey the *Fourth Amendment's* dictates under a probable-cause standard could, for example, consult decisions and other legal materials and prepare a booklet expounding the rough outlines of the concept. Such a booklet could be distributed to **[*366]** teachers to provide them with guidance as to when a search may be lawfully conducted. I cannot but believe that the same school

[6] It should be noted that Professor LaFave reached this conclusion in 1978, *before* this Court's decision in *Gates* made clear the "flexibility" of the probable-cause concept.

system faced with interpreting what is permitted under the Court's new "reasonableness" standard would be hopelessly adrift as to when a search may be permissible. The sad result of this uncertainty may well be that some teachers will be reluctant to conduct searches that are fully permissible and even necessary under the constitutional probable-cause standard, while others may **[**756]** intrude arbitrarily **[***751]** and unjustifiably on the privacy of students. [7]

[**74]** One further point should be taken into account when considering the desirability of replacing the constitutional probable-cause standard. The question facing the Court is not whether the probable-cause standard should be replaced by a test of "reasonableness under all the circumstances." Rather, it is whether traditional *Fourth Amendment* standards should recede before the Court's new standard. Thus, although the Court today paints with a broad brush and holds its undefined "reasonableness" standard applicable to *all* school searches, I would approach the question with considerably more reserve. I would not think it necessary to develop a single standard to govern all school searches, any more **[*367]** than traditional *Fourth Amendment* law applies even the probable-cause standard to *all* searches and seizures. For instance, just as police officers may conduct a brief stop and frisk on something less than probable cause, so too should teachers be permitted the same flexibility. A teacher or administrator who had reasonable suspicion that a student was carrying a gun would no doubt have authority under ordinary *Fourth Amendment* doctrine to conduct a limited search of the **[****75]** student to determine whether the threat was genuine. The "costs" of applying the traditional probable-cause standard must therefore be discounted by the fact that, where additional flexibility is necessary and where the intrusion is minor, traditional *Fourth Amendment* jurisprudence itself displaces probable cause when it determines the validity of a search.

A legitimate balancing test whose function was something more substantial than reaching a predetermined conclusion acceptable to this Court's impressions of what authority teachers need would therefore reach rather a different result than that reached by the Court today. On one side of the balance would be the costs of applying traditional *Fourth Amendment* standards -- the "practical" and "flexible" probable-cause standard where a full-scale intrusion is sought, a lesser standard in situations where the intrusion is much less severe and the need for greater authority compelling. Whatever costs were toted up on this side would have to be discounted by the costs of applying an unprecedented and ill-defined "reasonableness under all the circumstances" test that will leave teachers and administrators uncertain as to their authority **[****76]** and will encourage excessive fact-based litigation.

[*752]** On the other side of the balance would be the serious privacy interests of the student, interests that the Court admirably articulates in its opinion, *ante*, at 337-339, but which the Court's new ambiguous standard places in serious jeopardy. I have no doubt that a fair assessment of the two **[*368]** sides of the balance would necessarily reach the same conclusion that, as I have argued above, the *Fourth Amendment's* language compels -- that school searches like that conducted in this case are valid only if supported by probable cause.

II

Applying the constitutional probable-cause standard to the facts of this case, I would find that Mr. Choplick's search violated **[**757]** T. L. O.'s *Fourth Amendment* rights. After escorting T. L. O. into his private office, Mr. Choplick demanded to see her purse. He then opened the purse to find evidence of whether she had been smoking in the bathroom. When he opened the purse, he discovered the pack of cigarettes. At this point, his search for evidence of the smoking violation was complete.

[7] A comparison of the language of the standard ("reasonableness under all the circumstances") with the traditional language of probable cause ("facts sufficient to warrant a person of reasonable caution in believing that a crime had been committed and the evidence would be found in the designated place") suggests that the Court's new standard may turn out to be probable cause under a new guise. If so, the additional uncertainty caused by this Court's innovation is surely unjustifiable; it would be naive to expect that the addition of this extra dose of uncertainty would do anything other than "burden the efforts of school authorities to maintain order in their schools," *ante*, at 342. If, on the other hand, the new standard permits searches of students in instances when probable cause is absent -- instances, according to this Court's consistent formulations, when a person of reasonable caution would not think it likely that a violation existed or that evidence of that violation would be found -- the new standard is genuinely objectionable and impossible to square with the premise that our citizens have the right to be free from arbitrary intrusions on their privacy.

Mr. Choplick then noticed, below the cigarettes, a pack of cigarette rolling papers. **[****77]** Believing that such papers were "associated," see *ante*, at 328, with the use of marihuana, he proceeded to conduct a detailed examination of the contents of her purse, in which he found some marihuana, a pipe, some money, an index card, and some private letters indicating that T. L. O. had sold marihuana to other students. The State sought to introduce this latter material in evidence at a criminal proceeding, and the issue before the Court is whether it should have been suppressed.

On my view of the case, we need not decide whether the initial search conducted by Mr. Choplick -- the search for evidence of the smoking violation that was completed when Mr. Choplick found the pack of cigarettes -- was valid. For Mr. Choplick at that point did not have probable cause to continue to rummage through T. L. O.'s purse. Mr. Choplick's suspicion of marihuana possession at this time was based *solely* on the presence of the package of cigarette papers. The mere presence without more of such a staple item of commerce is insufficient to warrant a person of reasonable caution in inferring both that T. L. O. had violated the law **[*369]** by possessing marihuana and that evidence of that **[****78]** violation would be found in her purse. Just as a police officer could not obtain a warrant to search a home based solely on his claim that he had seen a package of cigarette papers in that home, Mr. Choplick was not entitled to search possibly the most private possessions of T. L. O. based on the mere presence of a package of cigarette papers. Therefore, the fruits of this illegal search must be excluded and the judgment of the New Jersey Supreme Court affirmed.

III

In the past several Terms, this Court has produced a succession of *Fourth Amendment* opinions in which "balancing tests" have been applied to resolve various questions concerning the proper scope of official searches. The Court has begun to apply a "balancing test" to determine whether a particular category of searches intrudes upon expectations **[***753]** of privacy that merit *Fourth Amendment* protection. See *Hudson v. Palmer, 468 U.S. 517, 527 (1984)* ("Determining whether an expectation of privacy is 'legitimate' or 'reasonable' necessarily entails a balancing of interests"). It applies a "balancing test" to determine whether a warrant is necessary to conduct a search. See *ante*, at 340; **[****79]** *United States v. Martinez-Fuerte, 428 U.S., at 564-566*. In today's opinion, it employs a "balancing test" to determine what standard should govern the constitutionality of a given category of searches. See *ante*, at 340-341. Should a search turn out to be unreasonable after application of all of these "balancing tests," the Court then applies an additional "balancing test" to decide whether the evidence resulting from the search must be excluded. See *United States v. Leon, 468 U.S. 897 (1984)*.

All of these "balancing tests" amount to brief nods by the Court in the direction of a neutral utilitarian calculus while the Court in fact engages in an unanalyzed exercise of judicial will. Perhaps this doctrinally destructive nihilism is merely **[*370]** a convenient umbrella under which a majority that cannot agree on a genuine rationale can conceal its differences. Compare *ante*, p. 327 (WHITE, J., delivering the opinion of the Court), with *ante*, p. 348 (POWELL, J., joined by O'CONNOR, J., concurring), and *ante*, p. 351 (BLACKMUN, J., concurring in judgment). And it may be that the real force underlying today's decision **[****80]** is the belief that the Court purports to reject -- the **[**758]** belief that the unique role served by the schools justifies an exception to the *Fourth Amendment* on their behalf. If so, the methodology of today's decision may turn out to have as little influence in future cases as will its result, and the Court's departure from traditional *Fourth Amendment* doctrine will be confined to the schools.

On my view, the presence of the word "unreasonable" in the text of the *Fourth Amendment* does not grant a shifting majority of this Court the authority to answer *all Fourth Amendment* questions by consulting its momentary vision of the social good. Full-scale searches unaccompanied by probable cause violate the *Fourth Amendment*. I do not pretend that our traditional *Fourth Amendment* doctrine automatically answers all of the difficult legal questions that occasionally arise. I do contend, however, that this Court has an obligation to provide some coherent framework to resolve such questions on the basis of more than a conclusory recitation of the results of a "balancing test." The *Fourth Amendment* itself supplies that framework and, because the Court today fails to heed its message, **[****81]** I must respectfully dissent.

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, and with whom JUSTICE BRENNAN joins as to Part I, concurring in part and dissenting in part.

Assistant Vice Principal Choplick searched T. L. O.'s purse for evidence that she was smoking in the girls' restroom. Because T. L. O.'s suspected misconduct was not illegal and did not pose a serious threat to school discipline, the New Jersey Supreme Court held that Choplick's **[***754]** search **[*371]** of her purse was an unreasonable invasion of her privacy and that the evidence which he seized could not be used against her in criminal proceedings. The New Jersey court's holding was a careful response to the case it was required to decide.

The State of New Jersey sought review in this Court, first arguing that the exclusionary rule is wholly inapplicable to searches conducted by school officials, and then contending that the *Fourth Amendment* itself provides no protection at all to the student's privacy. The Court has accepted neither of these frontal assaults on the *Fourth Amendment*. It has, however, seized upon this "no smoking" case to announce "the proper standard" that should govern searches by school **[****82]** officials who are confronted with disciplinary problems far more severe than smoking in the restroom. Although I join Part II of the Court's opinion, I continue to believe that the Court has unnecessarily and inappropriately reached out to decide a constitutional question. See *468 U.S. 1214 (1984)* (STEVENS, J., dissenting from reargument order). More importantly, I fear that the concerns that motivated the Court's activism have produced a holding that will permit school administrators to search students suspected of violating only the most trivial school regulations and guidelines for behavior.

I

The question the Court decides today -- whether Mr. Choplick's search of T. L. O.'s purse violated the *Fourth Amendment* -- was not raised by the State's petition for writ of certiorari. That petition only raised one question: "Whether the *Fourth Amendment's* exclusionary rule applies to searches made by public school officials and teachers in school." [1] The State quite properly declined to submit the former question because "[it] did not wish to present what might appear to be solely a factual dispute to this Court." [2] **[*372]** Since this Court has twice had the threshold **[****83]** question argued, I believe that it should expressly consider the merits of the New **[**759]** Jersey Supreme Court's ruling that the exclusionary rule applies.

The New Jersey Supreme Court's holding on this question is plainly correct. As the state court noted, this case does not involve the use of evidence in a school disciplinary proceeding; the juvenile proceedings brought against T. L. O. involved a charge that would have been a criminal offense if committed by an adult. [3] Accordingly, the exclusionary rule issue decided by that court and later presented to this Court concerned only the use in a criminal proceeding of evidence obtained in a search conducted by a public school administrator.

[**84]** Having confined the issue to the law enforcement context, the New Jersey court then reasoned that this Court's cases have made it quite clear that the exclusionary rule is equally applicable "whether the public official who illegally obtained the **[***755]** evidence was a municipal inspector, *See* v. *Seattle 387 U.S. 541* [1967]; *Camara* [v. *Municipal Court,*] *387 U.S. 523* [1967]; a firefighter, *Michigan v. Tyler, 436 U.S. 499, 506* [1978]; or a school administrator or law enforcement official." [4] It correctly concluded "that if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." [5]

When a defendant in a criminal proceeding alleges that she was the victim of an illegal search by a school administrator, the application of the exclusionary rule is a simple corollary of the principle that "all evidence obtained by **[****85]** searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." *Mapp v. Ohio, 367 U.S. 643, 655 (1961)*. The practical basis for this principle is,

[1] Pet. for Cert. i.

[2] Supplemental Brief for Petitioner 6.

[3] *State ex rel. T. L. O., 94 N. J. 331, 337*, nn. 1 and 2, 342, n. 5, *463 A. 2d 934, 937*, nn. 1 and 2, 939, n. 5 (1983).

[4] *Id., at 341, 463 A. 2d, at 939*.

[5] *Id., at 341-342, 463 A. 2d, at 939*.

in part, its deterrent effect, see *id., at 656*, and as a general **[*373]** matter it is tolerably clear to me, as it has been to the Court, that the existence of an exclusionary remedy does deter the authorities from violating the *Fourth Amendment* by sharply reducing their incentive to do so. [6] In the case of evidence obtained in school searches, the "overall educative effect" [7] of the exclusionary rule adds important symbolic force to this utilitarian judgment.

[**86]** Justice Brandeis was both a great student and a great teacher. It was he who wrote:

"Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States, 277 U.S. 438, 485 (1928)* (dissenting opinion).

Those of us who revere the flag and the ideals for which it stands believe in the power of symbols. We cannot ignore that rules of law also have a symbolic power that may vastly exceed their utility.

Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry. [8] If the Nation's students **[**760]** can be convicted through the use of **[***756]** arbitrary methods destructive of personal liberty, they cannot help but feel that they have **[*374]** been dealt with unfairly. [9] **[****88]** The application of the exclusionary rule in criminal proceedings arising from illegal school searches makes an important statement to young people that "our society **[****87]** attaches serious consequences to a violation of constitutional rights," [10] and that this is a principle of "liberty and justice for all." [11]

Thus, the simple and correct answer to the question presented by the State's petition for certiorari would have required affirmance of a state court's judgment suppressing evidence. That result would have been dramatically out of character for a Court that not only grants prosecutors relief from suppression orders with distressing regularity, [12] **[****90]** but **[*375]** also is prone to rely on grounds not advanced by the parties in

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[6] See, *e. g.*, *Stone v. Powell, 428 U.S. 465, 492 (1976)*; *United States v. Janis, 428 U.S. 433, 453 (1976)*; *United States v. Calandra, 414 U.S. 338, 347-348 (1974)*; *Alderman v. United States, 394 U.S. 165, 174-175 (1969)*.

[7] *Stone v. Powell, 428 U.S., at 493*.

[8] See *Board of Education v. Pico, 457 U.S. 853, 864-865 (1982)* (BRENNAN, J., joined by MARSHALL and STEVENS, JJ.); *id., at 876, 880* (BLACKMUN, J., concurring in part and concurring in judgment); *Plyler v. Doe, 457 U.S. 202, 221 (1982)*; *Ambach v. Norwick, 441 U.S. 68, 76 (1979)*; *Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 507, 511-513 (1969)*; *Brown v. Board of Education, 347 U.S. 483, 493 (1954)*; *West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637 (1943)*.

[9] Cf. *In re Gault, 387 U.S. 1, 26-27 (1967)*. JUSTICE BRENNAN has written of an analogous case:

"We do not know what class petitioner was attending when the police and dogs burst in, but the lesson the school authorities taught her that day will undoubtedly make a greater impression than the one her teacher had hoped to convey. I would grant certiorari to teach petitioner another lesson: that the ***Fourth Amendment*** protects '[the] right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures'. . . . Schools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms." ***Doe v. Renfrow, 451 U.S. 1022, 1027-1028 (1981)*** (dissenting from denial of certiorari).

[10] *Stone v. Powell, 428 U.S., at 492*.

[11] *36 U. S. C. § 172* (pledge of allegiance to the flag).

[12] A brief review of the ***Fourth Amendment*** cases involving criminal prosecutions since the October Term, 1982, supports the proposition. Compare *Florida* v. *Rodriguez, ante*, p. 1 *(per curiam)*; *United States v. Leon, 468 U.S. 897 (1984)*; *Massachusetts v. Sheppard, 468 U.S. 981 (1984)*; *Segura v. United States, 468 U.S. 796 (1984)*; *United States v. Karo, 468 U.S. 705 (1984)*; *Oliver v. United States, 466 U.S. 170 (1984)*; *United States v. Jacobsen, 466 U.S. 109 (1984)*; *Massachusetts v. Upton, 466 U.S. 727 (1984)* *(per curiam)*; *Florida v. Meyers, 466 U.S. 380 (1984)* *(per curiam)*; *Michigan v. Long, 463 U.S. 1032 (1983)*; *Illinois v. Andreas, 463 U.S. 765 (1983)*; *Illinois v. Lafayette, 462 U.S. 640 (1983)*; *United States v. Villamonte-Marquez, 462 U.S. 579 (1983)*; *Illinois v. Gates, 462 U.S. 213 (1983)*; *Texas v. Brown, 460 U.S. 730 (1983)*; *United States v. Knotts, 460 U.S. 276 (1983)*; *Illinois v. Batchelder, 463 U.S. 1112 (1983)* *(per curiam)*; *Cardwell v. Taylor, 461 U.S. 571 (1983)* *(per curiam)*, with *Thompson* v. *Louisiana, ante*, p. 17 *(per curiam)*; *Welsh v. Wisconsin, 466 U.S. 740 (1984)*; *Michigan v. Clifford, 464 U.S. 287 (1984)*; *United States v. Place, 462 U.S. 696 (1983)*; *Florida v. Royer, 460 U.S. 491 (1983)*.

order to protect evidence from exclusion. [13] **[**761]** In characteristic disregard of the **[***757]** doctrine of judicial restraint, the Court avoided that result in this case by ordering reargument and directing the parties to address a constitutional question that the parties, with good reason, had not asked the Court to decide. Because judicial activism undermines the Court's power to perform its central mission in a legitimate way, I dissented from the reargument order. See *468 U.S. 1214 (1984)*. I have not modified the views expressed **[****89]** in that dissent, but since the majority has brought the question before us, I shall explain why I believe the Court has misapplied the standard of reasonableness embodied in the *Fourth Amendment*.

II

The search of a young woman's purse by a school administrator is a serious invasion of her legitimate expectations of privacy. A purse "is a common repository for one's personal effects and therefore is inevitably associated with the expectation of privacy." *Arkansas v. Sanders, 442 U.S. 753, 762 (1979)*. Although such expectations must sometimes yield to the legitimate requirements of government, in assessing the constitutionality of a warrantless search, our decision must be guided by the language of the *Fourth Amendment*: "The right of the people to be secure in their persons, houses, **[*376]** papers and effects, against *unreasonable* searches and seizures, shall not be violated. . . ." In order to evaluate **[****91]** the reasonableness of such searches, "it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.'" *Terry v. Ohio, 392 U.S. 1, 20-21 (1968)* (quoting *Camara v. Municipal Court, 387 U.S. 523, 528, 534-537*, (1967)).

[13] *E. g. United States v. Karo, 468 U.S., at 719-721*; see also *Segura v. United States, 468 U.S., at 805-813* (opinion of BURGER, C. J., joined by O'CONNOR, J.); cf. *Illinois v. Gates, 459 U.S. 1028 (1982)* (STEVENS, J., dissenting from reargument order, joined by BRENNAN and MARSHALL, JJ.)

[14]

The "limited search for weapons" in *Terry* was justified by the "immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." *392 U.S., at 23, 25*. **[****92]** When viewed from the institutional perspective, "the substantial need of teachers and administrators for freedom to maintain order in the schools," *ante*, at 341 (majority opinion), is no less acute. Violent, unlawful, or seriously disruptive conduct is fundamentally inconsistent with the principal function of teaching institutions which is to educate young people and prepare them for citizenship. [15] When such conduct occurs **[***758]** amidst a sizable group of impressionable young people, it creates an explosive atmosphere that requires a prompt and effective response.

[**93]** Thus, warrantless searches of students by school administrators are reasonable when undertaken for those purposes. **[*377]** But the majority's statement of the standard for evaluating the reasonableness of such searches is not suitably adapted to that end. The majority holds that "a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds **[**762]** for suspecting that the search will turn up evidence *that the student has violated or is violating* either the law or *the rules of the school." Ante*, at 341-342. This standard will permit teachers and school administrators to search students when they suspect that the search will reveal evidence of even the most trivial school regulation or precatory guideline for student behavior. The Court's standard for deciding whether a search is justified "at its inception" treats all violations of the rules of the school as though they were fungible. For the Court, a search

[14] See also *United States v. Brigoni-Ponce, 422 U.S. 873, 881-882 (1975)*; *United States v. Martinez-Fuerte, 428 U.S. 543, 567 (1976)*.

[15] Cf. *ante*, at 353 (BLACKMUN, J., concurring in judgment) ("The special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable-cause requirement"); *ante*, at 350 (POWELL, J., concurring, joined by O'CONNOR, J.) ("Without first establishing discipline and maintaining order, teachers cannot begin to educate their students").

for curlers and sunglasses in order to enforce the school dress code [16] is apparently just as important as a search for evidence of heroin addiction or violent gang activity.

[**94]** The majority, however, does not contend that school administrators have a compelling need to search students in **[*378]** order to achieve optimum enforcement of minor school regulations. [17] **[****95]** To the contrary, when minor violations are involved, there is every indication that the informal school disciplinary process, with only minimum requirements of due process, [18] can function effectively without the power to search for enough evidence to prove a criminal case. In arguing that teachers and school administrators need the power to search students based on a lessened standard, the United States as *amicus curiae* relies heavily on empirical evidence of a contemporary crisis of violence and unlawful behavior that is seriously undermining the process of education in American **[***759]** schools. [19] A standard better attuned to this concern would permit teachers and school administrators to search a student when they have reason to believe that the search will uncover *evidence that the student is violating the law or engaging in conduct that is seriously disruptive of school order, or the educational process.*

This standard is properly directed at "[the] sole justification for the [warrantless] search." [20] In addition, a standard **[*379]** that varies the extent of the permissible **[**763]** intrusion with the gravity of the suspected offense is also more consistent with common-law experience and this Court's precedent. Criminal law has traditionally recognized a distinction **[****96]** between essentially regulatory offenses and serious violations of the peace, and graduated the response of the criminal justice system depending on the character of the violation. [21] **[****97]** The application of a

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[16] Parent-Student Handbook of Piscataway [N. J.] H. S. (1979), Record Doc. S-1, p. 7. A brief survey of school rule books reveals that, under the majority's approach, teachers and school administrators may also search students to enforce school rules regulating:

(i) secret societies;

(ii) students driving to school;

(iii) parking and use of parking lots during school hours;

(iv) smoking on campus;

(v) the direction of traffic in the hallways;

(vi) student presence in the hallways during class hours without a pass;

(vii) profanity;

(viii) school attendance of interscholastic athletes on the day of a game, meet or match;

(ix) cafeteria use and cleanup;

(x) eating lunch off-campus; and

(xi) unauthorized absence.

See *id., at 7-18*; Student Handbook of South Windsor [Conn.] H. S. (1984); Fairfax County [Va.] Public Schools, Student Responsibilities and Rights (1980); Student Handbook of Chantilly [Va.] H. S. (1984).

[17] Cf. *Camara v. Municipal Court, 387 U.S. 523, 535-536 (1967)* ("There is unanimous agreement among those most familiar with this field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures. . . . [If] the probable cause standard . . . is adopted, . . . the reasonable goals of code enforcement will be dealt a crushing blow").

[18] See *Goss v. Lopez, 419 U.S. 565, 583-584 (1975)*.

[19] "The sad truth is that many classrooms across the country are not temples of learning teaching the lessons of good will, civility, and wisdom that are central to the fabric of American life. To the contrary, many schools are in such a state of disorder that not only is the educational atmosphere polluted, but the very safety of students and teachers is imperiled." Brief for United States as *Amicus Curiae* 23.

See also Brief for National Education Association as *Amicus Curiae* 21 ("If a suspected violation of a rule threatens to disrupt the school or threatens to harm students, school officials should be free to search for evidence of it").

[20] *Terry v. Ohio, 392 U.S. 1, 29 (1968)*; *United States v. Brignoni-Ponce, 422 U.S., at 881-882*.

[21] Throughout the criminal law this dichotomy has been expressed by classifying crimes as misdemeanors or felonies, *malum prohibitum* or *malum in se*, crimes that do not involve moral turpitude or those that do, and major or petty offenses. See generally W. LaFave, Handbook on Criminal Law § 6 (1972).

Some codes of student behavior also provide a system of graduated response by distinguishing between violent, unlawful, or seriously disruptive conduct, and conduct that will only warrant serious sanctions when the student engages in repetitive offenses. See, *e. g.*, Parent-Student Handbook of Piscataway [N. J.] H. S. (1979), Record Doc. S-1, pp. 15-16; Student Handbook of South Windsor [Conn.] H. S. para. E (1984); Rules of the Board of Education of the District

similar distinction in evaluating the reasonableness of warrantless searches and seizures "is not a novel idea." *Welsh v. Wisconsin, 466 U.S. 740, 750 (1984)*. [22]

In *Welsh*, police officers arrived at the scene of a traffic accident and obtained information indicating that the driver of the automobile involved was guilty of a first offense of **[*380]** driving while intoxicated -- a civil violation with a maximum fine of $ 200. The driver had left the scene of the accident, and the officers followed the suspect to his home where they arrested him without **[****98]** a warrant. Absent exigent circumstances, **[***760]** the warrantless invasion of the home was a clear violation of *Payton v. New York, 445 U.S. 573 (1980)*. In holding that the warrantless arrest for the "noncriminal, traffic offense" in *Welsh* was unconstitutional, the Court noted that "application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed." *466 U.S., at 753*.

The logic of distinguishing between minor and serious offenses in evaluating the reasonableness of school searches is almost too clear for argument. In order to justify the serious intrusion on the persons and privacy of young people that New Jersey asks this Court to approve, the State must identify "some real immediate and serious consequences." *McDonald v. United States, 335 U.S. 451, 460 (1948)* (Jackson, J., concurring, joined by Frankfurter, J.). [23] While school **[**764]** administrators have entirely legitimate reasons for adopting school regulations and guidelines for student behavior, the authorization of **[****99]** searches to enforce them "displays a shocking lack of all sense of proportion." *Id., 459*. [24]

[**100]** **[*381]** The majority offers weak deference to these principles of balance and decency by announcing that school searches will only be reasonable in scope "when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student *and the nature of the infraction." Ante*, at 342 (emphasis added). The majority offers no explanation why a two-part standard is necessary to evaluate the reasonableness of the ordinary school search. Significantly, in the balance of its opinion the Court pretermits any discussion of the nature of T. L. O.'s infraction of the "no smoking" rule.

The "rider" to the Court's standard for evaluating the reasonableness **[***761]** of the initial intrusion apparently is the Court's perception that its standard is overly generous and does not, by itself, achieve a fair balance between the administrator's right to search and the student's reasonable expectations of privacy. The

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of Columbia, Ch. IV, §§ 431.1-.10 (1982). Indeed, at Piscataway High School a violation of smoking regulations that is "[a] student's first offense will result in assignment of up to three (3) days of after school classes concerning hazards of smoking." Record Doc. S-1, *supra, at 15*.

[22] In *Goss v. Lopez, 419 U.S., at 582-583* (emphasis added), the Court noted that similar considerations require some variance in the requirements of due process in the school disciplinary context:

"[As] a general rule notice and hearing should precede removal of the student from school. We agree . . . , however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. *Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school*. In such cases the necessary notice and rudimentary hearing should follow as soon as practicable. . . ."

[23] In *McDonald* police officers made a warrantless search of the office of an illegal "numbers" operation. Justice Jackson rejected the view that the search could be supported by exigent circumstances:

"Even if one were to conclude that urgent circumstances might justify a forced entry without a warrant, no such emergency was present in this case. . . . *Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat upon the gravity of the offense thought to be in progress* as well as the hazards of the method of attempting to reach it. . . . [The defendant's] criminal operation, while a shabby swindle that the police are quite right in suppressing, was not one which endangered life or limb or the peace and good order of the community. . . ." *335 U.S., at 459-460*.

[24] While a policeman who sees a person smoking in an elevator in violation of a city ordinance may conduct a full-blown search for evidence of the smoking violation in the unlikely event of a custodial arrest, *United States v. Robinson, 414 U.S. 218, 236 (1973)*; *Gustafson v. Florida, 414 U.S. 260, 265-266 (1973)*, it is more doubtful whether a search of this kind would be reasonable if the officer only planned to issue a citation to the offender and depart, see *Robinson, 414 U.S., at 236, n. 6*. In any case, the majority offers no rationale supporting its conclusion that a student detained by school officials for questioning, on reasonable suspicion that she has violated a school rule, is entitled to no more protection under the ***Fourth Amendment*** than a criminal suspect under custodial arrest.

Court's standard for evaluating the "scope" of reasonable school searches is obviously designed to prohibit physically intrusive searches of students by persons of the opposite sex for relatively minor offenses. **[****101]** The Court's effort to establish a standard that is, at once, clear enough to allow searches to be upheld in nearly every case, and flexible enough to prohibit obviously unreasonable intrusions of young adults' privacy only creates uncertainty in the extent of its resolve to prohibit the latter. Moreover, the majority's application of its standard in this case -- to permit a male administrator to rummage through the purse of a female high school student in order to obtain evidence that she was smoking **[*382]** in a bathroom -- raises grave doubts in my mind whether its effort will be effective. [25] Unlike the Court, I believe the nature of the suspected infraction is a matter of first importance in deciding whether *any* invasion of privacy is permissible.

[**102]** III

The Court embraces the standard applied by the New Jersey Supreme Court as equivalent to its own, and then deprecates the state court's application of the standard **[**765]** as reflecting "a somewhat crabbed notion of reasonableness." *Ante*, at 343. There is no mystery, however, in the state court's finding that the search in this case was unconstitutional; the decision below was not based on a manipulation of reasonable suspicion, but on the trivial character of the activity that promoted the official search. The New Jersey Supreme Court wrote:

"We are satisfied that when a school official has reasonable grounds to believe that a student possesses evidence of *illegal activity or activity that would interfere with school discipline and order*, the school official has the right to conduct a reasonable search for such evidence.

"In determining whether the school official has reasonable grounds, courts should consider 'the child's age, history, and school record, *the prevalence and seriousness of the problem in the school to which the search was* **[*383]** *directed*, the exigency to make the search without delay, and the probative value and reliability of the information **[****103]** used as a justification for the search.'" [26]

The emphasized language in the state court's opinion focuses on the **[***762]** character of the rule infraction that is to be the object of the search.

In the view of the state court, there is a quite obvious and material difference between a search for evidence relating to violent or disruptive activity, and a search for evidence of a smoking rule violation. This distinction does not imply that a no-smoking rule is a matter of minor importance. Rather, like a rule that prohibits a student from being tardy, its occasional violation in a context that poses no threat of disrupting school order and discipline offers no reason to believe that an immediate search is necessary to avoid unlawful conduct, violence, or a serious impairment of the educational process.

A correct understanding **[****104]** of the New Jersey court's standard explains why that court concluded in T. L. O.'s case that "the assistant principal did not have reasonable grounds to believe that the student was concealing in her purse evidence of criminal activity or evidence of activity that *would seriously interfere with school discipline or order*." [27] The importance of the nature of the rule infraction to the New Jersey Supreme Court's holding is evident from its brief explanation of the principal basis for its decision:

"A student has an expectation of privacy in the contents of her purse. Mere possession of cigarettes did not violate school rule or policy, since the school allowed smoking in designated areas. The contents of the handbag had no direct bearing on the infraction.

"The assistant principal's desire, legal in itself, to gather evidence to impeach the student's credibility at a

[25] One thing is clear under any standard -- the shocking strip searches that are described in some cases have no place in the schoolhouse. See *Doe v. Renfrow, 631 F.2d 91, 92-93 (CA7 1980)* ("It does not require a constitutional scholar to conclude that a nude search of a 13-year-old child is an invasion of constitutional rights of some magnitude"), cert. denied, ***451 U.S. 1022 (1981)***; *Bellnier v. Lund, 438 F.Supp. 47 (NDNY 1977)*; *People v. D., 34 N. Y. 2d 483, 315 N. E. 2d 466 (1974)*; *M. J.* v. *State, 399 So. 2d 996 (Fla. App. 1981)*. To the extent that deeply intrusive searches are ever reasonable outside the custodial context, it surely must only be to prevent imminent, and serious harm.

[26] *94 N. J., at 346, 463 A. 2d, at 941-942* (quoting *State v. McKinnon, 88 Wash. 2d 75, 81, 558 P. 2d 781, 784 (1977))* (emphasis added).

[27] *94 N. J., at 347, 463 A. 2d, at 942* (emphasis added).

[*384] hearing on the disciplinary infraction does not validate the search." [28]

[766]** Like the New Jersey Supreme Court, I would view this case differently if the Assistant Vice Principal had reason to believe T. L. O.'s purse contained evidence of criminal activity, or of an activity that would seriously **[****105]** disrupt school discipline. There was, however, absolutely no basis for any such assumption -- not even a "hunch."

In this case, Mr. Choplick overreacted to what appeared to be nothing more than a minor infraction -- a rule prohibiting smoking in **[****106]** the bathroom of the freshmen's and sophomores' building. [29] It is, of course, true that he actually found evidence of serious wrongdoing by T. L. O., but no one claims that the prior search may be justified by his unexpected discovery. As far as the smoking infraction is concerned, the search for cigarettes merely tended to corroborate a teacher's eyewitness account of T. L. O.'s violation of a **[***763]** minor regulation designed to channel student smoking behavior into designated locations. Because this conduct was neither unlawful nor significantly disruptive of school order or the educational process, the invasion of privacy associated with the forcible opening of T. L. O.'s purse was entirely unjustified at its inception.

A review of the sampling of school search cases relied on by the Court demonstrates how different this case is from those **[*385]** in which there was indeed **[****107]** a valid justification for intruding on a student's privacy. In most of them the student was suspected of a criminal violation; [30] **[****108]** in the remainder either violence or substantial disruption of school order or the integrity of the academic process was at stake. [31] Few involved matters as trivial as the no-smoking rule violated by T. L. O. [32] The rule the Court adopts today is so open-ended that it may make the *Fourth Amendment* virtually meaningless in the school context. Although I agree that school administrators must have broad latitude to maintain order and discipline in our classrooms, that authority is not unlimited.

IV

The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to **[*386]** policemen and prison guards. The values they learn there, they take with them in life. One of our most cherished **[****109]** ideals is the one contained in the *Fourth Amendment*: that the government may not **[**767]** intrude on the personal privacy of its citizens without a warrant or compelling circumstance. The Court's decision today is a curious

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[28] *Ibid.* The court added:

"Moreover, there were not reasonable grounds to believe that the purse contained cigarettes, if they were the object of the search. No one had furnished information to that effect to the school official. He had, at best, a good hunch. No doubt good hunches would unearth much more evidence of crime on the persons of students and citizens as a whole. But more is required to sustain a search." *Id., at 347, 463 A. 2d, at 942-943*.

It is this portion of the New Jersey Supreme Court's reasoning -- a portion that was not necessary to its holding -- to which this Court makes its principal response. See *ante*, at 345-346.

[29] See Parent-Student Handbook of Piscataway [N. J.] H. S. 15, 18 (1979), Record Doc. S-1. See also Tr. of Mar. 31, 1980, Hearing 13-14.

[30] See, *e. g.*, *Tarter v. Raybuck, 742 F.2d 977 (CA6 1984)* (search for marihuana); *M.* v. *Board of Education Ball-Chatham Community Unit School Dist. No. 5, 429 F.Supp. 288 (SD Ill. 1977)* (drugs and large amount of money); *D. R. C.* v. *State, 646 P. 2d 252 (Alaska App. 1982)* (stolen money); *In re W., 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973)* (marihuana); *In re G., 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970)* (amphetamine pills); *In re Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969)* (methedrine pills); *State v. Baccino, 282 A. 2d 869 (Del. Super. 1971)* (drugs); *State v. D. T. W., 425 So. 2d 1383 (Fla. App. 1983)* (drugs); *In re J. A., 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980)* (marihuana); *People v. Ward, 62 Mich. App. 46, 233 N. W. 2d 180 (1975)* (drug pills); *Mercer v. State, 450 S. W. 2d 715 (Tex. Civ. App. 1970)* (marihuana); *State v. McKinnon, 88 Wash. 2d 75, 558 P. 2d 781 (1977)* ("speed").

[31] See, *e. g.*, *In re L. L., 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979)* (search for knife or razor blade); *R. C. M.* v. *State, 660 S. W. 2d 552 (Tex. App. 1983)* (student with bloodshot eyes wandering halls in violation of school rule requiring students to remain in examination room or at home during midterm examinations).

[32] See, *e. g.*, *State v. Young, 234 Ga. 488, 216 S. E. 2d 586* (three students searched when they made furtive gestures and displayed obvious consciousness of guilt), cert. denied, ***423 U.S. 1039 (1975)***; *Doe v. State, 88 N. M. 347, 540 P. 2d 827 (1975)* (student searched for pipe when a teacher saw him using it to violate smoking regulations).

moral for the Nation's youth. Although the search of T. L. O.'s purse does not trouble today's majority, I submit that we are not dealing with "matters relatively trivial to the welfare of the Nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution." *West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943)*.

I respectfully dissent.

References

68 Am Jur 2d, Searches and Seizures 13.5

8 Federal Procedure, L Ed, Criminal Procedure 22:155

12 Federal Procedure, L Ed, Evidence 33:386

7 Federal Procedural Forms, L Ed, Criminal Procedure 20:611 et seq.

[**110]** 22 Am Jur Pl & Pr Forms (Rev), Searches and Seizures, Forms 71 et seq.

5 Am Jur Trials 331, Excluding Illegally Obtained Evidence

USCS, *Constitution, Fourth Amendment*

US L Ed Digest, Search and Seizure 3, 5, 6, 7, 8

L Ed Index to Annos, Schools; Search and Seizure

ALR Quick Index, Schools; Search and Seizure

Federal Quick Index, Schools and School Districts; Search and Seizure

Annotation References:

Lawfulness of warrantless search of purse or wallet of person arrested or suspected of crime. *29 ALR4th 771*.

Admissibility ,in criminal case, of evidence obtained by search conducted by school official or teacher. *49 ALR3d 978*.

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People v. Dilworth

Supreme Court of Illinois

January 18, 1996, FILED

Docket No. 78274

Reporter
169 Ill. 2d 195 *; 661 N.E.2d 310 **; 1996 Ill. LEXIS 4 ***; 214 Ill. Dec. 456 ****

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. KENNETH DILWORTH, Appellee.

Prior History: Appeal from the Appellate Court for the Third District; heard in that court on appeal from the Circuit Court of Will County, the Hon. William Penn, Judge, presiding.

Disposition: [*1]** Appellate court judgment reversed; circuit court judgment affirmed.

Core Terms

police officer, flashlight, school official, teachers, searches, reasonable suspicion, probable cause, liaison, drugs, criminal activity, decisions, alternative school, school police, investigate, arrest, seized, reasonable suspicion standard, assigned, fourth amendment, expectation of privacy, purposes, liaison officer, school district, circumstances, staff, rights, fourth amendment standards, special relationship, primary duty, schoolchildren

Case Summary

Procedural Posture
Defendant was convicted of unlawful possession of a controlled substance with intent to deliver while on school property. At trial, defendant filed a motion to suppress evidence, which the trial court denied. The Appellate Court for the Third District (Illinois) reversed the trial court, granted the motion to suppress, and reversed defendant's conviction. The State appealed.

Overview
Defendant was a student at an alternative school. A member of the staff was a liaison police officer who worked full time at the school to prevent criminal activity and enforce school rules. A teacher requested that the officer search a student. The officer didn't find anything on the student or in his locker, but the student and defendant laughed at the officer as if they were hiding something from him. The officer saw a flashlight in the defendant's hand. Reasoning that a flashlight was an unusual item to have in school and based upon a hunch that the flashlight contained narcotics, the officer seized the flashlight and found cocaine hidden under batteries. On appeal, the court determined that the trial court's ruling was not manifestly erroneous. School officials do not need a warrant before searching students, but the Fourth and Fourteenth Amendments required that the school official have reasonable suspicion. The court determined, based upon the totality of the circumstances, that the officer had reasonable suspicion. The court also found that the search was reasonable because it was justified at its inception and the scope of the search was limited to the flashlight.

Outcome
The judgment of the appellate court was reversed and the judgment of the trial court was affirmed.

Counsel: Roland Burris and James Ryan, Attorneys General, of Springfield, and James W. Glasgow, State's Attorney, of Joliet (Norbert J. Goetten, John X. Breslin and Lawrence M. Kaschak, of the Office of the State's Attorneys Appellate Prosecutor, of Ottawa, of counsel), for the People.

Robert Agostinelli, Deputy Defender, and Peter A. Carusona, Assistant Defender, of the Office of the State

Appellate Defender, of Ottawa, for appellee.

Judges: CHIEF JUSTICE BILANDIC delivered the opinion of the court: JUSTICE NICKELS, dissenting: JUSTICES HARRISON and McMORROW join in this dissent.

Opinion by: BILANDIC

Opinion

[*197] [312] [****458]** CHIEF JUSTICE BILANDIC delivered the opinion of the court:

Following a bench trial in the circuit court of Will County, defendant, Kenneth Dilworth, was convicted of unlawful possession of a controlled substance (cocaine) with intent to deliver while on school property (Ill. Rev. Stat. 1991, ch. 56 1/2, par. 1407(b)(2)). The circuit court had earlier denied defendant's motion to suppress evidence. The appellate court reversed defendant's conviction, finding that his motion to suppress evidence should have been granted. (*267 Ill. App. 3d 155, 640 N.E.2d 1009, 203 Ill. Dec. 859*.) We allowed the State's petition for leave to appeal (145 Ill. 2d R. 315) and now reverse the appellate court.

FACTS

Defendant was a 15-year-old student at the Joliet Township High Schools Alternate School. The Alternate **[***2]** School is unlike a regular public school in that only students with behavioral disorders attend it. A little more than 100 students attended the school at the relevant times.

[313] [****459]** According to the Alternate School handbook, which was admitted into evidence, the goal of the school's program is to create an environment that will allow students to modify their behavior in a positive direction. Students who improve their behavior are allowed to return to regular school. The school staff was listed as consisting of 11 teachers, four para-professionals, one social worker, one psychologist, one counselor, and, significantly, one liaison officer.

The liaison officer was Detective Francis Ruettiger. Ruettiger was a police officer employed by the Joliet police department and was assigned full-time to the Alternate School as a member of its staff. His primary purpose at the school was to prevent criminal activity. If he discovered criminal activity, he had the authority to arrest the offender and transport the offender to the **[*198]** police station. Ruettiger also handled some disciplinary problems. Like the teachers, Ruettiger was authorized to give a detention, but not a suspension. Only the school principal **[***3]** and the director could suspend a student.

On November 18, 1992, two teachers asked Ruettiger to search a student, Deshawn Weeks, for possession of drugs. The teachers informed Ruettiger that they had overheard Weeks telling other students that he had sold some drugs and would bring more drugs with him to school the following day. The next day, Ruettiger searched Weeks' person in his office and found nothing. He then escorted Weeks back to his locker.

Defendant and Weeks met at their neighboring lockers. According to Ruettiger, the two adolescents began talking and giggling "like they put one over on [him]." Ruettiger further testified that they turned toward him and they were "looking, laughing at [him] like [he] was played for a fool." Ruettiger noticed a flashlight in defendant's hand and immediately thought that it might contain drugs. He grabbed the flashlight from defendant, unscrewed the top, and observed a bag containing a white chunky substance underneath the flashlight batteries. The substance later tested positive for the presence of cocaine. Defendant ran from the scene, but was captured by Ruettiger and transported to the police station. While there, defendant gave **[***4]** a statement admitting that he intended to sell the cocaine because he was tired of being poor.

Ruettiger explained that he had two reasons for seizing and searching the flashlight. He was suspicious that the flashlight contained drugs. Secondly, Ruettiger believed it was a violation of school rules to possess a flashlight on school grounds because a flashlight is a "blunt instrument." The school's disciplinary guidelines, of which every student must be informed when they enroll, prohibited the possession of "any object that can **[*199]** be construed to be a weapon." Ruettiger had never seen a student with a flashlight at the school before. He admitted, however, that students were never specifically informed that flashlights were prohibited. Also, he did not consider a flashlight to be "contraband *per se*."

Ruettiger further related that he had daily contact with each student at the Alternate School. Although he did not talk with each student individually every day, he did go into each classroom. Prior to arresting defendant, Ruettiger saw defendant during school several times a day and had always gotten along with him pretty well. On one occasion, two weeks before the arrest, a teacher **[***5]** had suspected defendant of selling drugs in class and asked Ruettiger to search him. Ruettiger did so and found nothing. At that time, defendant told Ruettiger that he did not have any drugs, but named another student who did. A search of the other student revealed marijuana and resulted in the student's arrest.

Defendant's teacher, Danica Grabavoy, testified that sometime soon after defendant was enrolled in the Alternate School, she reviewed the entire school handbook with him and his guardian. Among other things, the handbook explains the school's policies and disciplinary guidelines. On a page entitled "Alternate School Search Procedures," the handbook states:

> **"To protect the security, safety, and rights of other students and the staff at the Alternate School, we will search students.** This search may include the student's person, his/her belongings, and school locker. Search procedures may result **[**314]** **[****460]** from suspicions generated from direct observation or from information received from a third party.
>
> Search is done to protect the safety of students. However, if in the process any illegal items or controlled substances are found in a search, these items and the student will **[***6]** be turned over to the police." (Emphasis in original.)

Prior to trial, defendant moved to suppress the evidence **[*200]** found in his flashlight. He argued that Ruettiger's seizure and search of the flashlight violated the *fourth* and *fourteenth amendments to the United States Constitution*. The circuit court conducted a hearing in which it denied the motion. The court found that Ruettiger was acting as an agent for the staff of the Alternate School when he seized and searched the flashlight. Noting that the school staff must deal with difficult students, the court held that the proper fourth amendment standard to apply in this case was the reasonable suspicion standard for searches of students by school officials *(* New Jersey v. T.L.O. (1985), 469 U.S. 325, 83 L. Ed. 2d 720, 105 S. Ct. 733), rather than the general standard of probable cause. Alternatively, the court found that even if Ruettiger was acting as a police officer, he had "reasonable cause" to believe that the flashlight contained contraband.

Defendant was tried as an adult in a stipulated bench trial. The circuit court found defendant guilty and sentenced him as an adult to the minimum four-year term of imprisonment.

As **[***7]** previously noted, the appellate court reversed defendant's conviction outright based on its holding that his motion to suppress evidence should have been granted. The appellate court agreed with the lower court that the reasonable suspicion standard applied; however, it found that Ruettiger did not have reasonable suspicion to seize and search the flashlight. In the appellate court's opinion, Ruettiger had only a mere "hunch" that the flashlight contained drugs.

ANALYSIS

The State contends that the circuit court properly denied defendant's motion to suppress evidence for two reasons: (1) Ruettiger properly seized the flashlight as contraband because defendant's possession of the flashlight violated the school's disciplinary guidelines; **[*201]** and (2) Ruettiger had reasonable suspicion, as well as probable cause if required, to seize and search the flashlight. Defendant responds that Ruettiger's seizure and search of his flashlight contravened the *fourth* and *fourteenth amendments to the United States Constitution*.

Generally, a circuit court's ruling on a motion to suppress evidence is subject to reversal only if manifestly erroneous. *(* People v. James (1994), 163 Ill. 2d 302, 310, 206 ***[***8]*** Ill. Dec. 190, 645 N.E.2d 195.) Here, however, neither the facts nor the credibility of witnesses is questioned. We therefore find it proper to conduct *de novo* review in this cause. See James, 163 Ill. 2d at 310, quoting People v. Foskey (1990), 136 Ill. 2d 66, 76, 143 Ill. Dec. 257, 554 N.E.2d 192.

The *fourth amendment to the United States Constitution* provides that the Federal government shall not violate "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures ***." (U.S. Const., amend. IV.)

The fundamental purpose of this amendment is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. *(Camara v. Municipal Court (1967), 387 U.S. 523, 528, 18 L. Ed. 2d 930, 935, 87 S. Ct. 1727, 1730*.) The due process clause of the fourteenth amendment (*U.S. Const., amend. XIV*) extended this constitutional guarantee to searches and seizures conducted by State officials. *Elkins v. United States (1960), 364 U.S. 206, 213, 4 L. Ed. 2d 1669, 1675, 80 S. Ct. 1437, 1442*.

In *New Jersey v. T.L.O. (1985), 469 U.S. 325, 83 L. Ed. 2d 720, 105 S. Ct. 733*, the **[***9]** United States Supreme Court addressed the constitutionality of searches of students by teachers and school officials. In *T.L.O.*, a teacher discovered T.L.O., a 14-year-old high school student, smoking cigarettes in a lavatory in violation of **[*202]** a school rule. The **[**315] [****461]** teacher took T.L.O. to the principal's office, where she was questioned by an assistant vice principal. T.L.O. denied that she had been smoking and claimed that she did not smoke at all. The school official demanded to see her purse, opened it, and found a pack of cigarettes. As the school official reached into the purse for the cigarettes, he noticed a package of cigarette rolling papers. In his experience, the possession of rolling papers by high school students was closely associated with the use of marijuana. A further, thorough search of the purse revealed a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of one-dollar bills, a list of names of students who apparently owed T.L.O. money, and two letters implicating T.L.O. in marijuana dealing. The school official turned this evidence over to the police after notifying T.L.O.'s mother. T.L.O.'s mother accompanied T.L.O. to police **[***10]** headquarters, where T.L.O. confessed to selling marijuana at the high school. The State subsequently brought delinquency charges against her in juvenile court. T.L.O. sought to suppress the evidence of marijuana dealing, claiming the search was unconstitutional.

The Court initially determined that the *fourth amendment to the United States Constitution* applies to searches of students conducted by public school officials. *(T.L.O., 469 U.S. at 333-36, 83 L. Ed. 2d at 729-31, 105 S. Ct. at 738-40*.) In doing so, the Court rejected the argument that public school officials are exempt from the dictates of the fourth amendment because they act *in loco parentis* in their dealings with students. *In loco parentis*, which literally means "in the place of a parent" (Black's Law Dictionary 403 (5th ed. 1983)), is a common law doctrine that means a parent "'may … delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent **[*203]** committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.'" *(Vernonia* **[***11]** *School District 47J v. Acton* (1995), 515 U.S. __, __, *132 L. Ed. 2d 564, 575, 115 S. Ct. 2386, 2391*, quoting W. Blackstone, Commentaries on the Laws of England 441 (1769).) The Court found such a view of things to be "not entirely 'consonant with compulsory education laws'" and to be inconsistent with its earlier decisions treating school officials as State actors for purposes of the due process and free speech clauses. *(T.L.O., 469 U.S. at 336, 83 L. Ed. 2d at 731, 105 S. Ct. at 740*, quoting *Ingraham v. Wright (1977), 430 U.S. 651, 662, 51 L. Ed. 2d 711, 724, 97 S. Ct. 1401, 1407*.) Nonetheless, the Court emphasized that the State has a substantial interest in maintaining a proper educational environment for the schoolchildren entrusted to its custody and tutelage. "Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." *T.L.O., 469 U.S. at 339, 83 L. Ed. 2d at 733, 105 S. Ct. at 741*.

The Court explicitly recognized **[***12]** that, under the fourth and fourteenth amendments, schoolchildren have legitimate expectations of privacy in possessions brought with them to school. "In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds." *T.L.O., 469 U.S. at 339, 83 L. Ed. 2d at 733, 105 S. Ct. at 741*.

In balancing the competing interests of a school's need to maintain a proper educational environment and **[*204]** the schoolchild's legitimate expectations of privacy, the Court held that teachers and school officials do not need a warrant before searching a student and

need not adhere to the requirement that searches be based on probable cause. "Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." (T.L.O., 469 U.S. at 341, 83 L. Ed. 2d at 734, 105 S. Ct. at 742.) The Court set forth a twofold inquiry for determining the reasonableness of any search. First, the action must be "'justified at its inception'"; second, the search as actually **[***13]** conducted must be "'reasonably related in scope to the circumstances **[**316]** **[****462]** which justified the interference in the first place.'" T.L.O., 469 U.S. at 341, 83 L. Ed. 2d at 734, 105 S. Ct. at 743, quoting Terry v. Ohio (1968), 392 U.S. 1, 20, 20 L. Ed. 2d 889, 905, 88 S. Ct. 1868, 1879.

Applying the test to the facts, the Court found that the school official's search of T.L.O.'s purse for cigarettes was reasonable, given the teacher's report that T.L.O. had been smoking in the lavatory in violation of school rules and that T.L.O. denied doing so. The Court characterized the school official's suspicion that T.L.O. had cigarettes in her purse as "the sort of 'common-sense conclusion about human behavior' upon which 'practical people'-including government officials-are entitled to rely," rather than "an 'inchoate and unparticularized suspicion or "hunch."'" (T.L.O., 469 U.S. at 346, 83 L. Ed. 2d at 737, 105 S. Ct. at 745, quoting United States v. Cortez (1981), 449 U.S. 411, 418, 66 L. Ed. 2d 621, 629, 101 S. Ct. 690, 695, and Terry, 392 U.S. at 27, 20 L. Ed. 2d at 909, 88 S. Ct. at 1883.) The Court proceeded to find the further search for marijuana reasonable as well, given **[***14]** the school official's observation of rolling papers. Consequently the Court concluded that the evidence of marijuana dealing should have been admitted in T.L.O.'s juvenile delinquency proceedings.

[*205] II

The State first argues that Ruettiger properly seized defendant's flashlight based solely on the Alternate School's disciplinary guidelines, which prohibited the possession of "any object that can be construed to be a weapon." The State maintains that the flashlight can be construed to be a weapon considering its blunt nature. Therefore, the State asserts, the flashlight was contraband *per se* in the context of this Alternate School and was properly seized and searched as such. (Illinois v. Andreas (1983), 463 U.S. 765, 77 L. Ed. 2d 1003, 103 S. Ct. 3319.) Although the circuit court made no ruling on this argument, a reviewing court may affirm the circuit court's decision based on any grounds in the record. People v. Thomas (1995), 164 Ill. 2d 410, 419, 207 Ill. Dec. 490, 647 N.E.2d 983.

Counsel for the State conceded at oral argument that, under the above logic, school officials could automatically seize and search any flashlight carried onto school grounds. Moreover, counsel **[***15]** admitted that, under his interpretation of the school's rule, any other blunt object, such as a book, could also be construed to be a weapon subject to automatic search and seizure. These are precisely the types of arbitrary invasions by government officials that the fourth amendment safeguards against. The State cannot compel attendance at public schools and then subject students to unreasonable searches of the legitimate, noncontraband items that they carry onto school grounds. (T.L.O., 469 U.S. 325, 83 L. Ed. 2d 720, 105 S. Ct. 733.) Accordingly, we reject the State's initial argument.

III

The State next contends that, under the totality of the circumstances, Ruettiger had reasonable suspicion, as well as probable cause if required, to seize and search the flashlight. Defendant responds that Ruettiger had neither; rather, he seized and searched the flashlight on **[*206]** a mere hunch in violation of defendant's constitutional rights.

Before addressing these contentions, we must determine whether the proper fourth amendment standard to apply in this case is the less stringent reasonable suspicion standard for searches of students by school officials (T.L.O., 469 U.S. 325, 83 L. ***[***16]*** Ed. 2d 720, 105 S. Ct. 733) or the general standard of probable cause. Defendant insists that because Ruettiger was a police officer, he was required to have probable cause to seize and search the flashlight.

The Court in *T.L.O.* stated that the standard of reasonableness applies to a search of a student "by a teacher or other school official." (T.L.O., 469 U.S. at 341, 83 L. Ed. 2d at 734-35, 105 S. Ct. at 743.) In so ruling, however, the Court noted:

> "We here consider only searches carried out by school authorities acting alone and on their own

> authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in **[**317]** **[****463]** conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question." *T.L.O., 469 U.S. at 341 n.7, 83 L. Ed. 2d at 735 n.7, 105 S. Ct. at 743 n.7*.

Decisions filed after *T.L.O.* that involve police officers in school settings can generally be grouped into three categories: (1) those where school officials initiate a search or where police involvement is minimal, (2) those involving school police or liaison officers acting on their own **[***17]** authority, and (3) those where outside police officers initiate a search. Where school officials initiate the search or police involvement is minimal, most courts have held that the reasonable suspicion test obtains. (See, *e.g.*, *Cason v. Cook (8th Cir. 1987), 810 F.2d 188* (applying reasonable suspicion where a school official acted in conjunction with a liaison officer); *Martens v. District No. 220, Board of Education (N.D. Ill. 1985), 620 F. Supp. 29* **[*207]** (applying reasonable suspicion where an officer's role in the search of a student was limited); *Coronado v. State (Tex. Crim. App. 1992), 835 S.W.2d 636* (applying reasonable suspicion where a school official, along with a sheriff's officer assigned to the school, conducted various searches of a student); *In re Alexander B. (1990), 220 Cal. App. 3d 1572, 270 Cal.Rptr. 342* (applying reasonable suspicion where a school official initiated an investigation and requested police assistance); see generally Annot., *31 A.L.R.5th 229, 330, 376 (1995)* (discussing several pre-T.L.O. and post-T.L.O. cases).) The same is true in cases involving school police or liaison officers acting on their own authority. (See *In re S.F. (1992), **[***18]** 414 Pa. Super. 529, 531, 607 A.2d 793, 794* (applying reasonable suspicion to a search by a "plainclothes police officer for the School District of Philadelphia"); *Wilcher v. State (Tex. Ct. App. 1994), 876 S.W.2d 466, 467* (applying reasonable suspicion where the searcher was "a police officer for the Houston Independent School District"). But see *A.J.M. v. State (Fla. App. 1993), 617 So. 2d 1137* (holding that a school resource officer employed by a sheriff's office must have probable cause to search).) However, where outside police officers initiate a search, or where school officials act at the behest of law enforcement agencies, the probable cause standard has been applied. See, *e.g.*, *F.P. v. State (Fla. App. 1988), 528 So. 2d 1253* (applying probable cause where an outside police officer investigating an auto theft initiated the search of a student at school).

In the present case, the record shows that Detective Ruettiger was a liaison police officer on staff at the Alternate School, which is a high school for students with behavioral disorders. He worked there full-time, handling both criminal activity and disciplinary problems. Two teachers initially asked Ruettiger **[***19]** to search a student other than defendant for drugs. Once that **[*208]** search proved fruitless, he escorted the student back to his locker. The student met defendant at their neighboring lockers. In Ruettiger's presence, the two adolescents began talking and giggling as if they had fooled Ruettiger. Ruettiger noticed a flashlight in defendant's hand and immediately thought that it might contain drugs. He then seized and searched the flashlight, finding cocaine. Given this scenario, this case is best characterized as involving a liaison police officer conducting a search on his own initiative and authority, in furtherance of the school's attempt to maintain a proper educational environment. We hold that the reasonable suspicion standard applies under these facts.

This holding is consistent with this court's precedent. In *In re Boykin (1968), 39 Ill. 2d 617, 237 N.E.2d 460*, decided before *T.L.O.*, this court applied a reasonableness standard to a search of a student at school. There, an assistant principal summoned two police officers to a Chicago high school. He informed the officers that he had received anonymous information that one of the students had a gun. The student was removed **[***20]** from his classroom and escorted to the hall, where the officers were waiting. After the student denied that he had a gun, one of the officers held the student's arms while the other officer removed a gun from his pants pocket. The *Boykin* court simply held that the search was reasonable under the circumstances and therefore rejected the student's claims that the search violated his rights under the *fourth* and *fourteenth amendments to the United States Constitution* and under **[**318]** **[****464]** section 6 of article II of the Illinois Constitution of 1870.

Our holding in this case also comports with *Vernonia School District 47J v. Acton (1995), 515 U.S. , 132 L. Ed. 2d 564, 115 S. Ct. 2386* (upholding the

constitutionality of drug tests for student athletes in public high schools). There, the United States Supreme Court **[*209]** utilized a three-prong test for determining whether special needs beyond normal law enforcement require a departure from the usual fourth amendment standard of probable cause and a warrant. The competing interests of the individual and the State were balanced by an examination of the following: (1) the nature of the privacy interest upon which the search intrudes, (2) the **[***21]** character of the search, and (3) the nature and immediacy of the governmental concern at issue, and the efficacy of the means for meeting it.

An analysis of each of these three factors supports our holding that reasonable suspicion, not probable cause, is the proper fourth amendment standard to be applied in this case. As to the first factor, the nature of the privacy interest upon which the search intrudes, it must be remembered that we are dealing with schoolchildren here. In this respect, the *Vernonia* majority stated:

> "Fourth Amendment rights *** are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children. For their own good and that of their classmates, public school children are routinely required [to do a variety of things]. *** 'Students within the school environment have a lesser expectation of privacy than members of the population generally.' *T.L.O., 469 U.S. at 348* (Powell, J., concurring)." *Vernonia*, 515 U.S. at __, 132 L. Ed. 2d at 576-77, 115 S. Ct. at 2392.

The second factor is the character of the search. The intrusion complained of in this **[***22]** case is the seizure and search of defendant's flashlight by a school liaison officer. Of utmost significance, the liaison officer had an *individualized* suspicion that defendant's flashlight contained drugs. He confirmed his suspicion by searching only that flashlight. Thus, we find this search as conducted to be minimally intrusive.

The final factor-the nature and immediacy of the governmental concern at issue, and the efficacy of the **[*210]** means for meeting it-also weighs in favor of the reasonable suspicion standard here. There is no doubt that the State has a compelling interest in providing a proper educational environment for students, which includes maintaining its schools free from the ravages of drugs. (See *Vernonia*, 515 U.S. at __, 132 L. Ed. 2d at 579-80, 115 S. Ct. at 2395; see generally *T.L.O., 469 U.S. 325, 83 L. Ed. 2d 720, 105 S. Ct. 733*.) As to the efficacy of the means for meeting this interest, it is relevant that the search at issue took place at an alternate school for students with behavioral disorders. In order to maintain a proper educational environment at this particular school, school officials found it necessary to have a full-time police liaison **[***23]** as a member of its staff. The liaison officer assisted teachers and school officials with the difficult job of preserving order in this school. See *Vernonia*, 515 U.S. at __, 132 L. Ed. 2d at 581, 115 S. Ct. at 2396 (noting that school teachers are ill-prepared to spot and bring to account drug abuse).

In sum, our consideration of the three *Vernonia* factors supports our application of the reasonable suspicion standard in the case at bar. The same concerns discussed above prompted the Supreme Court in *T.L.O.* and *Vernonia* to depart from the probable cause standard where schoolchildren were involved.

IV

The dissent does not agree that reasonable suspicion is the proper fourth amendment standard to be applied in this case. In reaching this conclusion, the dissent (1) wrongly claims that the Supreme Court in *T.L.O.* and *Vernonia* applied a reasonableness standard to the searches before them because of a "special relationship between student and teacher"; (2) improperly creates a distinction between liaison police officers permanently assigned to schools and "school police"; and (3) misconstrues Ruettiger's testimony that his primary purpose **[*211]** at the school **[***24]** was to prevent criminal activity. The **[**319]** **[****465]** dissent's analysis loses sight of the forest for the trees.

The main reason the Supreme Court majorities in *T.L.O.* and *Vernonia* lowered the fourth amendment standard applicable to searches of students at school was *to protect and maintain a proper educational environment for all students*, not because of any real or imagined "special relationship" between students and teachers. Professor LaFave discussed this subject at length in his treatise. He first commended the *T.L.O.* Court's unequivocal rejection of the use of the *in loco parentis* doctrine as a basis for its holding. (4 W. LaFave, Search & Seizure § 10.11(a), at 802-06 (3d ed. 1996) (hereinafter LaFave).)

> "'One of the things that makes *in loco parentis* such an erroneous phrase in this context is precisely the absence of a genuinely parental protective concern for the student who is threatened with the school's power. It is presumably a characteristic of the use of parental force against a child that the force is tempered by understanding and love based on a close, intimate, and permanent child-parent relationship. What so many of the courts persist in talking **[***25]** about as a parental relationship between school and student is really a law enforcement relationship in which the general student society is protected from the harms of antisocial conduct.'" (LaFave § 10.11(a), at 806, quoting W. Buss, *The Fourth Amendment and Searches of Students in Public Schools,* 59 Iowa L. Rev. 739, 768 (1974).)

Professor LaFave elaborated on what he considered to be a more proper theory behind school search cases:

> "It would appear that a strong case can be made that school searches, as a class, are directed to a rather special public concern-the maintenance of a proper educational environment-which is deserving of a high level of protection. This concern has, if anything, heightened in recent years. 'The problem of drug abuse among students has reached serious proportions and is increasingly recognized as a major national problem.' The point is not simply that **[*212]** there are many drug offenses occurring, for certainly an increase in crime is alone no basis for abandoning the usual Fourth Amendment safeguards. Rather, it is the educational setting which is important. As one court has noted:
>
> > The school authorities have an obligation to maintain discipline **[***26]** over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, *** have a right to expect certain safeguards.
> >
> > It is in the high school years particularly that parents are justifiably concerned that their children not become accustomed to antisocial behavior, such as the use of illegal drugs. The susceptibility to suggestion of students of high school age increases the danger. Thus, it is the affirmative obligation of the school authorities to investigate any charge that a student is using or possessing narcotics and to take appropriate steps, if the charge is substantiated.
>
> In short, a high school 'is a special kind of place in which serious and dangerous wrongdoing is intolerable.' The state, having compelled students to attend school and thus 'associate with the criminal few-or perhaps merely the immature and unwise few-closely and daily,' thereby 'owes those students a safe and secure environment.'" (LaFave § 10.11(b), at 809-10.)

We agree with Professor **[***27]** LaFave's observations.

Furthermore, as earlier noted, the *Vernonia* majority specifically found that students within the school environment have a lesser expectation of privacy than members of the population generally. We are convinced that, in this case, when the students' lessened expectations of privacy are balanced against the Alternate School's compelling interest in maintaining a proper educational environment for all its students, a departure **[*213]** from the usual probable cause standard is not only warranted, but required. Therefore, we reiterate that the Supreme Court's decisions in **[**320]** **[****466]** *T.L.O.* and *Vernonia* support our application of the reasonable suspicion standard in this case.

The dissent also attempts to create a distinction between "school police" and liaison police officers permanently assigned to a school. The dissent apparently believes that "school police" can search with reasonable suspicion because they are "employed by and [are] ultimately responsible to the school district." The dissent then asserts that, in contrast, liaison police officers permanently assigned to a school must have probable cause to search because they are "employed by and ultimately responsible **[***28]** to local law enforcement authorities." We cannot agree that this distinction exists, or that it would be controlling even if it were to exist. We cite *In re S.F. (1992), 414 Pa. Super. 529, 607 A.2d 793*, and *Wilcher v. State (Tex. Ct. App. 1994), 876 S.W.2d 466*, as examples where courts have applied the reasonable suspicion standard to

searches of students at school by school police or liaison officers acting on their own authority. In *In re S.F.*, the Supreme Court of Pennsylvania applied the reasonable suspicion standard to a search of a student at school by a police officer. *(In re S.F., 414 Pa. Super. at 531, 607 A.2d at 794*.) The officer's status in *S.F.* was undoubtedly quite similar to Ruettiger's status here. The *S.F.* opinion specifically notes that the officer there had worked as a plainclothes police officer for the school district of Philadelphia for four years and that he personally had "made 15 to 20 narcotics arrests during that time." *(In re S.F., 414 Pa. Super. at 531, 607 A.2d at 794*.) In *Wilcher*, the Texas appellate court applied the reasonable suspicion standard to a search of a student at school by a "police officer for the Houston **[***29]** Independent School District." **[*214]** *(Wilcher, 876 S.W.2d at 467*.) Although the officer there did not effect the arrest of the student herself, there is nothing in the opinion suggesting that she lacked the authority to do so. (See *Wilcher, 876 S.W.2d 466*.) We also fail to see how such a distinction would be material under the dissent's analysis. The "special relationship" the dissent apparently finds controlling of this issue does not exist between students and "school police" to any greater degree than it does between students and liaison police officers.

Next, the dissent places undue emphasis on Ruettiger's testimony that his primary purpose at the school was to prevent criminal activity. This statement must be viewed in context. Ruettiger's overall purpose at the Alternate School was to assist other school officials in their attempt to maintain a proper educational environment for the students. As the record here reveals, Ruettiger was listed in the school handbook as a member of the Alternate School staff. He worked at the school full-time, handling both criminal activity and disciplinary problems. The teachers referred such problems to Ruettiger, as is evidenced by the teachers' **[***30]** report to Ruettiger concerning Deshawn Weeks and an earlier report concerning defendant himself. Ruettiger also had daily contact with the students at the Alternate School. Under all these circumstances, Ruettiger is properly considered to be a school official.

Last, the dissent finds it fundamentally unfair to conclude that defendant has diminished privacy rights while a student at a public school, and then to charge and sentence defendant to four years in the penitentiary as an adult with evidence obtained as a result of his diminished privacy rights. Defendant has not argued, and we cannot say, that our General Assembly's decision to punish as adults those young offenders who intend to sell drugs while on school grounds changes the **[*215]** constitutional standard to be applied. If anything, the legislature's stiff penalty for defendant's crime reflects a well-reasoned policy of zero tolerance for drugs in our troubled public schools.

For the reasons stated, we find that reasonable suspicion is the proper fourth amendment standard to be applied in the case *sub judice.*

V

There remains the question of the constitutionality of the search in this case. When evaluating the reasonableness **[***31]** of a search, "each case must stand or fall on its own set of concrete facts." *(People v. Galvin (1989), 127 Ill. 2d 153, 174, 129 Ill. Dec. 72, 535 N.E.2d 837*.) "The requirement of reasonable **[**321]** **[****467]** suspicion is not a requirement of absolute certainty: 'sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment … ." *T.L.O., 469 U.S. at 346, 83 L. Ed. 2d at 737, 105 S. Ct. at 745*, quoting *Hill v. California (1971), 401 U.S. 797, 804, 28 L. Ed. 2d 484, 490, 91 S. Ct. 1106, 1111*.

As earlier noted, the Court in *T.L.O.* set forth a twofold inquiry for determining whether, under all the circumstances, a search of a student is reasonable: the action must be justified at its inception, and the search as actually conducted must be reasonably related in scope to the circumstances which justified the interference in the first place. *(T.L.O., 469 U.S. at 341, 83 L. Ed. 2d at 734, 105 S. Ct. at 743*.) The Court further explained:

> "Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up **[***32]** evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of

the student and the nature of the infraction." *T.L.O., 469 U.S. at 341-42, 83 L. Ed. 2d at 734-35, 105 S. Ct. at 743*.

[*216] For Ruettiger's search of defendant's flashlight to have been justified at its inception, Ruettiger must have had reasonable grounds for suspecting that the flashlight contained drugs in violation of the law and the school rules. Two teachers had informed Ruettiger that they had overheard Deshawn Weeks telling other students that he had sold some drugs and would bring more drugs with him to school the following day. Ruettiger searched Weeks the next day, finding nothing. Ruettiger then walked Weeks back to his locker, where the defendant met with Weeks. The two teenagers began talking and giggling "like they put one over on [Ruettiger]." They turned toward Ruettiger and were "looking, laughing at [Ruettiger] like [he] was played for a fool." Defendant was holding a flashlight **[***33]** in his hand. Ruettiger had never seen a student with a flashlight at the school before, so he considered it a very unusual item for defendant to have. The totality of these circumstances would lead a reasonable person to suspect that defendant was carrying drugs in his flashlight. Indeed, upon seeing the flashlight in defendant's hand, Ruettiger testified that he immediately thought that it might contain drugs. Although an objective standard must be used in determining whether reasonable suspicion was present, the testimony of an officer as to his subjective feelings is one of the factors that may be considered in the totality of the circumstances. *(Galvin, 127 Ill. 2d at 166-68*.) Ruettiger's testimony as to his subjective belief can thus be considered as additional support for our conclusion.

We also find that the search as conducted here was permissible in its scope. Ruettiger had individualized suspicion that defendant's flashlight contained drugs. He seized and searched only that flashlight. This measure was reasonably related to the objectives of the search and was not excessively intrusive.

[*217] For the foregoing reasons, we conclude that Ruettiger's seizure and search of defendant's **[***34]** flashlight was constitutional because it was reasonable under the totality of the circumstances. We therefore reverse the judgment of the appellate court and affirm the judgment of the circuit court.

Appellate court judgment reversed; circuit court judgment affirmed.

Dissent by: NICKELS

Dissent

JUSTICE NICKELS, dissenting:

I respectfully dissent. I cannot agree with the majority that a police officer whose self-stated primary duty is to investigate and prevent criminal activity may search a student on school grounds on a lesser fourth amendment standard than probable cause merely because the police officer is permanently assigned to the school and is listed in the student handbook as a member of the school staff. The majority's departure from a unanimous line of Federal and State decisions places form over substance and opens the door for widespread abuse and erosion of **[**322]** **[****468]** students' fourth amendment rights to be free from unreasonable searches and seizures by law enforcement officers.

The majority reaches its conclusion by: (1) relying on the faulty premise that Ruettiger is a school official for fourth amendment purposes; (2) misreading the line of school search decisions involving **[***35]** police; and (3) relying on conclusions from factually distinguishable United States Supreme Court decisions rather than utilizing the rationale the Court used to reach those conclusions. I address each issue in turn.

I

The majority takes the position that for the purposes of the fourth amendment, Ruettiger is a school official similar to a teacher or principal. However, Ruettiger is a police officer. He is employed by the City of Joliet police **[*218]** department and is assigned to patrol the Alternate School grounds as a police liaison officer. Ruettiger's self-stated primary duty at the school is to investigate and prevent criminal activity. When Ruettiger discovers such activity, he arrests the offender and takes him or her to the police station. Ruettiger is not employed by the Alternate School and is not a teacher or administrator. Ruettiger is also not a member of the Alternate School security staff, which the school employs. Although Ruettiger is listed in the school handbook as a member of the school support staff, and had the authority to give a detention, and handles

"some" disciplinary problems, these additional factors do not detract from the fact that Ruettiger was still a police **[***36]** officer whose primary duty was the same as any police officer assigned to patrol any area: to investigate and prevent criminal activity.

The fact that Ruettiger was a police officer, and acted as one in seizing and searching defendant's flashlight, is clear from the record. After observing and questioning defendant in the hallway, Ruettiger seized and searched defendant's flashlight because he suspected it contained drugs. After finding cocaine, Ruettiger chased and captured defendant, arrested him, placed him in custody, handcuffed him, placed him in the squad car, and took him down to the investigative division of the Joliet police station. There, Ruettiger handcuffed defendant to a wall, read him his *Miranda* rights, and interrogated him. These were the acts of a police officer, not a school official, a point the State has acknowledged in its brief:

> "The search of defendant in the present case is best characterized as one conducted *solely by a member of law enforcement,* since Officer Ruettiger was not directed by any school official to search the defendant. Likewise, *no school officials participated, even to a minor extent, in the search."* (Emphasis added.)

[*37]** **[*219]** See also *In re E.M. (1994), 262 Ill. App. 3d 302, 199 Ill. Dec. 556, 634 N.E.2d 395*, where our appellate court noted that a school principal's interrogation of a student at school was for school disciplinary purposes while a police liaison officer's subsequent interrogation of that student at school regarding the same incident was for law enforcement purposes. *Cf. People v. Bowers (1974), 77 Misc. 2d 697, 356 N.Y.S.2d 432*, where a school security officer, unlike a faculty member, was required to have probable cause rather than reasonable suspicion in searching a student because: (1) the security guard was under the control of the police commissioner and had to abide by the police department's guidelines; and (2) the security guard was placed on school grounds solely for security purposes and served no educational function at the school.

The majority, however, fails to acknowledge this clear point and argues that I place undue emphasis on Ruettiger's testimony that his primary purpose at the school was to investigate and prevent criminal activity. However, I only emphasize so strongly Ruettiger's testimony as to his primary duty at the school because the majority cannot **[***38]** see what is so obvious in this case: Ruettiger's self-stated primary duty at the school, as displayed by his actions in arresting defendant, is that of a police officer, not a school official. See *In re F.P. v. State (Fla. App. 1988), 528 So. 2d 1253, 1254 n.1* (where the school resource officer, an employee of the local sheriff's department assigned to the school, worked *"primarily* in delinquent prevention, education and counseling, but also **[**323]** **[****469]** handled any law enforcement matter[] that [arose]" (emphasis added).

In addition to relying on the fiction that Ruettiger is a school official, the majority argues that support for its decision exists in previous case law, and specifically in two United States Supreme Court decisions, for its holding that Ruettiger was allowed to search defendant **[*220]** based only on reasonable suspicion. However, there is no support for the majority's conclusion in any previous decision.

II

Federal and State Decisions

The majority examines the line of Federal and State decisions involving police searches of students at school and concludes that the reasonable suspicion standard applies to Ruettiger's action here. This conclusion, however, is based on **[***39]** a misreading of two decisions. Every Federal and State decision on this matter has rejected the majority's view.

All Federal and State decisions reviewed indicate that *police officers, including police liaison officers,* are required to have probable cause to search a student if they are significantly involved in the search. This was the law prior to *T.L.O.* (see *Picha v. Wielgos (N.D. Ill. 1976), 410 F. Supp. 1214, 1219* (cited by the United States Supreme Court in *T.L.O.* in declining to address whether the reasonable suspicion standard applies to school searches involving police); *M.J. v. State (Fla. App. 1981), 399 So. 2d 996, 998*; *M. v. Board of Education Ball-Chatham Community Unit School District No. 5 (S.D. Ill. 1977), 429 F. Supp. 288, 292*; *State v. Young (1975), 234 Ga. 488, 499-500, 216 S.E.2d 586, 594)*, and has also been the law after *T.L.O.*

As Professor LaFave has noted:

> "Lower courts have held or suggested that the usual probable cause test obtains if the police are involved in the search in a significant way." (4 W. LaFave, Search & Seizure § 10.11(b) (3d ed. 1996) (hereinafter LaFave).)

(See *A.J.M. v. State (Fla. App. **[***40]** 1993), 617 So. 2d 1137*; *In re Devon T. (1991), 85 Md. App. 674, 701, 584 A.2d 1287, 1300*; *F.P. v. State (Fla. App. 1988), 528 So. 2d 1253*.) This analysis applies to police liaison officers as well. See *Coronado v. State (Tex. Ct. App. 1991), 806 S.W.2d 302*, **[*221]** *rev'd on other grounds* (Tex. Crim. App. 1992), *835 S.W.2d 636*; *Cason v. Cook (8th Cir. 1987), 810 F.2d 188*.

Although several decisions have allowed student searches under the reasonable suspicion standard where police have participated in the search. (See *Martens v. District No. 220, Board of Education (N.D. Ill. 1985), 620 F. Supp. 29*; *Cason v. Cook (8th Cir. 1987), 810 F.2d 188*.) These decisions have stressed that police involvement in the searches was minimal. See also *Coronado v. State (Tex. Ct. App. 1991), 806 S.W.2d 302*, *rev'd on other grounds* (Tex. Crim. App. 1992), *835 S.W.2d 636*; *In re Alexander (1990), 220 Cal. App. 3d 1572, 1577 n.1, 270 Cal. Rptr. 342, 344 n.1* (where courts held that the reasonable suspicion standard applies where school officials request police assistance in searching a student because the police are not the primary actors but are merely assisting school officials).

[*41]** The majority attempts to find support for its holding by stating that the reasonable suspicion standard applies in those cases "involving school police or liaison officers." (Slip op. at 10.) The two decisions on which the majority relics for this assertion, however, *Wilcher v. State (Tex. Ct. App. 1994), 876 S.W.2d 466*, and *In re S.F. (1992), 414 Pa. Super. 529, 607 A.2d 793*, not only fail to address the issue of what fourth amendment standard applies, they do not involve police liaison officers. The two decisions involve "school police," which differ from police liaison officers in several significant respects. First, school police are employed by a school district while police liaison officers are employed by the local police department. Thus, while a school police officer is employed by and is ultimately responsible to the school district, a police liaison officer, such as Ruettiger, is employed by and ultimately responsible to local law enforcement authorities. Obviously, school districts and local law enforcement authorities have different missions. **[*222]** **[**324]** **[****470]** Also, while Ruettiger is assigned to the school, he still operates out of the police station, as was seen in this case. **[***42]** Ruettiger arrested defendant, placed him in his squad car, brought him to the police station, and interrogated him there.

School police also have duties that are significantly more limited than police liaison officers, such as Ruettiger, a point made clear in *Wilcher*. The *Wilcher* court noted that the duties of the school police officer there "entailed quelling disturbances and generally carrying out the various school policies applicable to her job assignment." *(* *Wilcher, 876 S.W.2d at 467*.) In fact, the *Wilcher* court specifically noted that the school police officer there did not arrest the defendant after he emptied his pockets and revealed contraband. Instead, the school police officer called the Houston police department to have a police officer sent to the school to take over the search and investigation. *(Cf.* *In re Frederick B. (1987), 192 Cal. App. 3d 79, 88-89, 237 Cal. Rptr. 338, 344* (noting that school security guards, although peace officers for purposes of carrying out their duties, are of a special category, and are carefully limited in their powers and scope of operation).) In contrast to school police, Ruettiger's primary duty at the school was that **[***43]** of any police officer, to investigate and prevent criminal activity, arresting those he found violating the law. Unlike "school police," Ruettiger's duties were not limited in any manner. Ruettiger not only instigated the seizure and search, he arrested defendant, handcuffed him, took him to the station, read him his *Miranda* rights, and interrogated him.

The distinction between school police and police liaison officers is significant because every case involving police liaison officers has indicated that probable cause is required if the officer acts on his own initiative, as Ruettiger did here. (See *Coronado v. State (Tex. Ct. App. **[*223]** 1991), 806 S.W.2d 302*; *Cason v. Cook (8th Cir. 1987), 810 F.2d 188*.) As the *Coronado* court noted, citing *Cason:*

> "This same standard [reasonableness] applies when school officials conduct the search in question in conjunction with, *but not at the behest of police*

officers who are assigned to the school." (Emphasis added.) *(* Coronado, 806 S.W.2d at 303.)

Surely, if the reasonable suspicion standard is not applicable to a police liaison officer directing a school official to conduct a search, it is not applicable **[***44]** where that same police liaison officer conducts a search on his own initiative, without the involvement of any school official, as was done here.

The majority incorrectly assumes that I approve of the *Wilcher* and *S.F.* decisions that allow "school police" to search students on the basis of reasonable suspicion. I do not necessarily agree with those decisions, but instead analyze them only to (1) note that the issue of what standard to search applied was not raised or addressed in those cases, and (2) distinguish them from cases involving police liaison officers, such as *Coronado* and *Cason*, which require probable cause.

The majority also attempts to find support for its conclusion in *Boykin.* However, *Boykin* provides the majority no support because it does not present the same facts as the instant case. As the majority acknowledges, the principal in *Boykin* wished to search a student and requested assistance from police assigned to the school. This court found the search reasonable. Thus, *Boykin* is similar to cases such as *Coronado,* which conclude that when police merely assist school officials in a search, the standard to search is reasonable suspicion. **[***45]** Those same cases note, however, that if a principal searches a student at the behest of law enforcement officials, probable cause is required. The same would certainly be true if the officer instigated and conducted the search on his own without the involvement of any school official.

[*224] The majority also finds that Ruettiger initiated the search to further the school's attempt to maintain a proper educational environment. However, any police search at a school, or even of a school child outside of school, can be said to have been performed to maintain a proper educational environment. This does not allow a police officer, whose primary duty is to investigate and prevent criminal activity, the right to search a student on mere whim and less than probable cause in direct contravention of a student's constitutional rights.

[325]** **[****471]** In sum, not one case involving a police search of a student at school, including cases involving police liaison officers, supports the majority's conclusion. In fact, every authority available has rejected the majority's view. The majority finds support only by misreading the facts of *Wilcher* and *S.F.*, decisions that involve "school police" rather than police **[***46]** liaison officers. The result is that this court has for the first time in a long line of cases departed from the overwhelming view that police officers, even liaison police officers, are required to have probable cause to search a student on school grounds when instigating and carrying out a search.

III

The majority also attempts to find support for its position in two Supreme Court decisions, *T.L.O.* and *Vernonia.* However, the majority errs in relying simply on the results of those two factually distinguishable decisions rather than on the analysis which led the court to its conclusions. Both *T.L.O.* and *Vernonia* allowed school officials, not police authorities, to search students for noncriminal purposes based on only a reasonable suspicion. The results of *T.L.O.* and *Vernonia* thus do not apply to the instant case because the search here was conducted by a police officer investigating criminal activity for the purpose of facilitating a criminal case against defendant. A thorough examination of the three-part **[*225]** test enunciated by the Supreme Court in *Vernonia* reveals this distinction and the flaws in the majority's cursory analysis.

(i)

The first factor **[***47]** in balancing the competing interests of the individual and the State is the nature of the privacy interest upon which the search intrudes. The majority in the instant case concludes that because defendant was a child in school, he had a lowered expectation of privacy. (Slip op. at 11-12.) This arbitrary and somewhat simplistic holding, however, fails to consider the factor the *Vernonia* Court found most relevant to this issue: defendant's privacy interest in relation to the State's role in conducting the search.

The *T.L.O.* Court did not elaborate on the reasons for its finding that a schoolchild has a diminished expectation of privacy, a point noted by Justice Powell in his concurrence. Justice Powell, however, emphasized that school "teachers have a degree of familiarity with, and authority over, their students that is unparalleled except

perhaps in the relationship between parent and child." *(T.L.O., 469 U.S. at 348, 83 L. Ed. 2d at 739, 105 S. Ct. at 746* (Powell, J., concurring).) Justice Powell continued:

> "The special relationship between teacher and student also distinguishes the setting within which schoolchildren operate. Law enforcement officers function as **[***48]** adversaries of criminal suspects. These officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws, and to facilitate the charging and bringing of such persons to trial. Rarely does this type of adversarial relationship exist between [teachers] and [their] pupils. Instead, there is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is one of personal responsibility for the student's welfare as well as for his education." (*T.L.O., 469 U.S. at 349-50, 83 L. Ed. 2d at 740, 105 S. Ct. at 747* (Powell, J., concurring).)

[*226] Justice Powell's concurrence directly distinguishes the instant case from *T.L.O.* and *Vernonia.* In both *T.L.O.* and *Vernonia,* school officials, sharing a commonality of interests with their students, conducted the searches in question. Here, a police officer, charged with the adversarial responsibility of investigating criminal activity and arresting those who violate the law, conducted the search.

The special relationship between student and teacher noted by Justice Powell was recently stressed by the United States Supreme Court in articulating **[***49]** the reasons why a schoolchild has a diminished expectation of privacy in school with respect to school officials. (See *Vernonia, 515 U.S. , 132 L. Ed. 2d 564, 115 S. Ct. 2386*.) The *Vernonia* Court noted that while expectations of privacy vary according to context, such as whether **[**326]** **[****472]** an individual is in a car, at work, or in his home,

> "the legitimacy of certain privacy expectations vis-a-vis the State may depend upon the individual's legal relationship with the State." *(Vernonia, 515 U.S. at , 132 L. Ed. 2d at 575, 115 S. Ct. at 2391*.)

The Court noted that the most important factor concerning the privacy interest of schoolchildren is the special relationship between the subject of the search, the schoolchildren, and the State in its role in conducting the search, as schoolmaster, guardian and tutor:

> "The most significant element in this case is the [privacy interest of school children]; that the [search] was undertaken in furtherance of the government's responsibilities, under a public school system, as guardian and tutor of children entrusted to its care. Just as when the government conducts a search in its capacity as employer **[***50]** (a warrantless search of an absent employee's desk to obtain an urgently needed file, for example), the relevant **[*227]** question is whether that intrusion upon privacy is one that a reasonable employer might engage in [citation]. *So also when the government acts as guardian and tutor the relevant question is whether the search is one that a reasonable guardian and tutor might undertake."* (Emphasis added.) *Vernonia, 515 U.S. at , 132 L. Ed. 2d at 582, 115 S. Ct. at 2396-97*.

In the instant case, the State did not act as guardian and tutor in conducting the search. Instead, the State acted as adversarial law enforcer. Ruettiger was not assigned to the school to act as guardian and tutor. He was at the school primarily to investigate and prevent criminal activity and arrest those who violate the law. Thus, the special relationship of the kind noted by Justice Powell in *T.L.O.,* and by the majority in *Vernonia,* did not exist between defendant and Ruettiger. Listing Ruettiger as a member of the school staff and allowing him to give a detention does not alter his primary role at the school, which Ruettiger readily admitted was to investigate and prevent criminal activity. **[***51]** To find that Ruettiger acted as guardian and tutor for the purposes of the fourth amendment in his relationship with defendant denies the facts of the case. The relevant question to be asked here, then, is whether the search is one that a reasonable police officer might undertake, one based on probable cause. The answer is no.

Thus, while defendant was at school, his expectation of privacy was diminished in relation to school officials, such as teachers or principals, to whom he was entrusted and who served as guardian and tutor in a nonadversarial role. However, defendant's right to an expectation of privacy was not diminished in relation to the State in its adversarial role as law enforcer. A school child's expectation of privacy vis-a-vis the State as

police officer, even a police liaison officer, is not diminished simply because the child is at school. See *Griffin v. Wisconsin (1987), 483 U.S. 868, 873-76, 97 L. Ed. 2d 709, 717-19, 107 S. Ct. 3164, 3168-70* (where the Court noted that while a probationer has a lesser privacy interest **[*228]** with respect to the State acting as probation officer, the probation officer has in mind the welfare of the probationer and is not a police officer **[***52]** charged with the duty of investigating criminal activity).

The majority finds that I have erred in using the special relationship between student and teacher noted by Justice Powell and emphasized by the court in *Vernonia.* The majority believes that I find that the Supreme Court in *T.L.O.* and *Vernonia* applied a reasonableness standard because of this special relationship. I note, however, that my analysis is not so simplistic. The special relationship between pupil and teacher is relevant to the student's legitimate expectation of privacy, which is but one of three factors the Supreme Court has balanced in lowering the standard to search students. Moreover, while the majority relies on Professor LaFave's citation to W. Buss, who argues against the *in loco parentis* theory (slip op. at 13), Professor LaFave thereafter notes that the Supreme Court in *Vernonia* "used the more straightforward proposition that the Fourth Amendment's ""reasonableness" inquiry cannot disregard the school's custodial and tutelary responsibilities for children.'" LaFave § 10.11(a), at 806, quoting *Vernonia* **[**327]** **[****473]** *School District 47J v. Acton* (1995), 515 U.S. __, __, *132 L. **[***53]** Ed. 2d 564, 576, 115 S. Ct. 2386, 2392*.

The majority also notes Professor LaFave's "more proper" theory of school search decisions. (Slip op. at 13-14.) However, Professor LaFave cautions that the matter is not "free of all doubt" (LaFave § 10.11(b), at 809) and further cautions at the end of this section:

> "Mention must be made of the fact that all of the preceding discussion has been premised on the assumption that the search of the student in question was conducted by school authorities without the inducement or involvement of police." (LaFave § 10.11(b), at 832.)

And, as noted previously, Professor LaFave concludes **[*229]** by noting that the usual probable cause test obtains where police are involved in the search in a significant manner. (LaFave § 10.11(b), at 832.) Ruettiger, a police officer whose self-stated primary duty at the school was that of a police officer, to investigate and prevent criminal activity, was involved in a significant manner in the search here.

It is also important to note that while the majority finds that defendant had a diminished right to privacy in school, defendant was charged and sentenced to four years in the penitentiary as an adult. I **[***54]** find it fundamentally unfair and inconsistent with compulsory school attendance laws to conclude that defendant had diminished privacy rights in relation to a police officer assigned to a school, whose primary duty was to investigate and prevent criminal activity, and then to charge and sentence defendant as an adult with evidence obtained by that officer.

(ii)

The next factor considered in this balance is the character of the intrusion. The majority finds the intrusion minimal because Ruettiger limited his search to defendant's flashlight. However, the majority cannot reconcile this finding with the Supreme Court's holding in *T.L.O.* that a seizure and search of a child's possessions, such as the handbag or purse at issue in *T.L.O.*, or the flashlight involved here, "no less than a similar search carried out on an adult, is undoubtedly a severe violation of *** privacy." *T.L.O., 469 U.S. at 337-38, 83 L. Ed. 2d at 732, 105 S. Ct. at 740-41*.

The majority also cannot reconcile its finding with the readily apparent reason for the search, the investigation of criminal activity. The Supreme Court has noted the importance in fourth amendment analysis of the purpose for a search, **[***55]** whether it was instigated in order to obtain evidence for a criminal prosecution or **[*230]** for some other purpose. In *Vernonia*, for instance, the Court noted that the search was not undertaken for evidentiary purposes for criminal prosecution, and that such searches generally require probable cause. (*Vernonia, 515 U.S. at n.2, 132 L. Ed. 2d at 578 n.2, 115 S. Ct. at 2393 n.2*.) In *Skinner v. Railway Labor Executives' Association (1989), 489 U.S. 602, 103 L. Ed. 2d 639, 109 S. Ct. 1402*, the Court stressed that government-prescribed drug testing of railroad workers was "not to assist in the prosecution of employees, but rather 'to prevent accidents and casualties in railroad

operations.' (*Skinner, 489 U.S. at 620-21* & n.5, *103 L. Ed. 2d at 662* & n.5, *109 S. Ct. at 1415* & n.5, quoting *49 C.F.R. § 219.1(a) (1987)*.) And in *New York v. Burger (1987), 482 U.S. 691, 716 n.27, 96 L. Ed. 2d 601, 623 n.27, 107 S. Ct. 2636, 2651 n.27*, the Court specifically noted that there was no evidence in the record to show that an administrative inspection was a "pretext" for obtaining evidence for a criminal prosecution. The reason for the court's concern is that a government search **[***56]** for evidentiary purposes for a criminal prosecution involves a more substantial invasion of privacy than a search for other purposes. See LaFave § 10.1(b), at 378-79.

It is significant that as a police officer, Ruettiger conducted the seizure and search of defendant's personal noncontraband item, the flashlight, in furtherance of his self-stated primary purpose at the school: "to take care of criminal activity." A search of a student by a school official, however, such as a teacher or principal, is conducted primarily to maintain discipline and decorum in the classroom.

[328] [****474]** Thus, the second factor of the balancing equation, the character of the intrusion complained of, also favors the standard of probable cause. This is a classic fourth amendment search in which a police officer seizes and searches a defendant's noncontraband item in order to facilitate a criminal prosecution.

[*231] (iii)

The final factor in the balance is the nature and immediacy of the governmental concern at issue, and the efficacy of the means used for meeting that concern. I agree with the majority that the State's interest in maintaining schools free from the ravages of drugs is compelling. (See *Vernonia, 515 **[***57]** U.S. at , 132 L. Ed. 2d at 579, 115 S. Ct. at 2394*.) Yet, I do not believe that this interest is sufficiently compelling, even at the Alternate School, in light of student's privacy interest vis-a-vis the State as law enforcer and the severe nature of the intrusion, to justify the lowering of the standard to search for a police officer in school from probable cause to reasonable suspicion. (See *Vernonia, 515 U.S. at , 132 L. Ed. 2d at 579, 115 S. Ct. at 2394*.) I believe this compelling interest has been met by allowing *teachers and school administrators*, who have almost constant contact with and supervision over students, the right to search students based on only reasonable suspicion.

Moreover, in addressing this issue, the *Vernonia* court concluded that accusatory searches by school officials arc more negative than random searches. *(Vernonia, 515 U.S. at , 132 L. Ed. 2d at 581, 115 S. Ct. at 2396*.) The Court noted that in the school setting, random drug testing might be more acceptable to parents than accusatory drug testing because of the stigma attached to being accused, which would "transform[] the process into a badge of shame." **[***58]** *(Vernonia, 515 U.S. at , 132 L. Ed. 2d at 581, 115 S. Ct. at 2396*.) In the present case, the search was accusatory.

The present search was also conducted by a police officer, and not a teacher untrained in the intricacies of fourth amendment jurisprudence and probable cause. *T.L.O.* stated that the lowered level of suspicion was proper for teachers untrained in fourth amendment jurisprudence. (See *T.L.O., 469 U.S. at 343, 83 L. Ed. 2d at 735, 105 S. Ct. at 743*; *cf. Vernonia, 515 U.S. at , 132 **[*232]** L. Ed. 2d at 581, 115 S. Ct. at 2396*.) Police officers such as Ruettiger, however, are trained in fourth amendment jurisprudence. Thus, the lower standard is appropriate for teachers and school administrators, but not for police officers.

The majority tortures this logic by finding that because teachers and school administrators are not trained in the intricacies of the fourth amendment, police officers may patrol school hallways, searching and seizing based only on reasonable suspicion. (Slip op. at 12.) However, the Supreme Court's point is that teachers and school administrators are allowed the lowered standard because they are untrained in fourth amendment **[***59]** jurisprudence. Conversely, since police officers are trained in fourth amendment jurisprudence, they are required to abide by its general requirement of probable cause to search.

(iv)

Upon consideration of these three factors, I find only one, the compelling interest in protecting school children from the influx of drugs into the school that prompted the Supreme Court in *T.L.O.* and in *Vernonia* to lower the fourth amendment standard for school officials to search schoolchildren. This factor, however, is not sufficiently compelling to allow this court to

lower the standard for a police officer to search a student, even a police liaison officer assigned to an alternate school, from probable cause to reasonable suspicion. More significant is the severe intrusion of a schoolchild's expectation of privacy vis-a-vis the State as law enforcer.

My conclusion is supported by the *Vernonia* decision, which found the most important factor in balancing the interests between the individual and the State in a school search to be the relationship between the State as searcher and the subject of the search. The State conducted the seizure and search here as law **[*233]** enforcer and the standard **[***60]** required was probable cause. My conclusion is also consistent with the overwhelming weight of legal authority.

[329]** **[****475]** Probable Cause

I note briefly that Ruettiger did not have probable cause to search defendant's flashlight. Probable cause has been defined as the presence of "'facts and circumstances within the arresting officer's knowledge *** sufficient to warrant a man of reasonable caution in believing that an offense has been committed and that the person arrested has committed the offense.'" *(People v. Creach (1980), 79 Ill. 2d 96, 101, 37 Ill. Dec. 338, 402 N.E.2d 228*, quoting *People v. Robinson (1976), 62 Ill. 2d 273, 276, 342 N.E.2d 356*.) Ruettiger clearly did not have such information when he seized and searched defendant's flashlight.

CONCLUSION

The majority's conclusion has been rejected by every decision addressing this issue. However, henceforth, a police officer assigned to a school whose primary duty at the school is that of a police officer, to investigate and prevent criminal activity, is now not a police officer, but a school official. The result is that local law enforcement agencies now have greater latitude to search students in school, based on the fact **[***61]** that they are children, and then have them charged and sentenced as adults with the evidence obtained. The majority's conclusion is a threat to the rights of all children in school to be free from unreasonable searches and seizures and from overzealous and aggressive police conduct. Children do not learn respect for their basic constitutional rights, or the rights of others, in such a setting. Instead, such a negative environment only fosters cynicism as well as suspicion of, and contempt for, all police activity.

[*234] I cannot join the majority's departure from logic, good sense, and established case law. Accordingly, I dissent.

JUSTICES HARRISON and McMORROW join in this dissent.

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Safford Unified Sch. Dist. #1 v. Redding

Supreme Court of the United States

April 21, 2009, Argued; June 25, 2009, Decided

No. 08-479

Reporter
557 U.S. 364 *; 129 S. Ct. 2633 **; 174 L. Ed. 2d 354 ***; 2009 U.S. LEXIS 4735 ****; 77 U.S.L.W. 4591; 21 Fla. L. Weekly Fed. S 1011

SAFFORD UNIFIED SCHOOL DISTRICT #1, et al., Petitioners v. APRIL REDDING

Prior History: [**1]** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Redding v. Safford Unified Sch. Dist. # 1, 531 F.3d 1071, 2008 U.S. App. LEXIS 14756 (9th Cir. Ariz., 2008)

Disposition: Affirmed in part, reversed in part and remanded.

Core Terms

pills, drugs, school official, prescription drug, searches, strip search, intrusive, prescription, schools, reasonable suspicion, qualified immunity, ibuprofen, underwear, teachers, infraction, suspected, suspicion, circumstances, contraband, backpack, clothing, naproxen, courts, discipline, concealed, internal quotation marks, conducting a search, public school, school rule, planner

Case Summary

Procedural Posture

A student's mother filed suit against petitioners, a school district, a principal, an assistant, and a nurse, alleging that a strip search violated the student's *Fourth Amendment* rights. Claiming qualified immunity, the principal, the assistant, and the nurse moved for summary judgment. The motion was granted. The United States Court of Appeals for the Ninth Circuit reversed the judgment as to the principal. The Supreme Court granted certiorari.

Overview

The school's policies strictly prohibited the nonmedical use, possession, or sale of any drug on school grounds. Another student's statement that forbidden prescription and over-the-counter drugs came from the student was sufficiently plausible to warrant suspicion that the student was involved in pill distribution. This suspicion was enough to justify a search of the student's backpack and outer clothing. The student claimed that extending the search at the principal's behest to the point of making her pull out her underwear was constitutionally unreasonable. The principal knew beforehand that the pills were common pain relievers. What was missing from the suspected facts that pointed to the student was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that the student was carrying pills in her underwear. Thus, the Supreme Court held that the strip search of the student was unreasonable and a violation of the *Fourth Amendment*. Because there was reason to question the clarity with which the right was established, the principal, the assistant, and the nurse were protected from liability through qualified immunity.

Outcome

The judgment was affirmed as to the holding that the strip search of the student was unjustified. The part of the judgment that reversed the grant of summary judgment to the principal was reversed. 6-3 Decision; 2

justices filed opinions concurring in the part of the decision that affirmed the judgment, and dissenting in part; 1 justice filed an opinion concurring in the part of the decision that reversed the judgment, and dissenting in part.

Syllabus

[*364] [*357] [**2635]** After escorting 13-year-old Savana Redding from her middle school classroom to his office, Assistant Principal Wilson showed her a day planner containing knives and other contraband. She admitted owning the planner, but said that she had lent it to her friend Marissa and that the contraband was not hers. He then produced four prescription-strength, and one over-the-counter, pain relief pills, all of which are banned under school rules without advance permission. She denied knowledge of them, but Wilson said that he had a report that she was giving pills to fellow students. She denied it and agreed to let him search her belongings. He and Helen Romero, an administrative assistant, searched Savana's backpack, finding nothing. Wilson then had Romero take Savana to the school nurse's office to search her clothes for pills. After Romero and the nurse, Peggy Schwallier, had Savana remove her outer clothing, they told her to pull her bra out and shake it, and to pull out the elastic on her underpants, **[****4]** thus exposing her breasts and pelvic area to some degree. No pills were found. Savana's mother filed suit against petitioner school district (Safford), Wilson, Romero, and Schwallier, alleging that the strip search violated Savana's *Fourth Amendment* rights. Claiming qualified immunity, the individuals (hereinafter petitioners) moved for summary judgment. The District Court granted the motion, finding that there was no *Fourth Amendment* violation, and the en banc Ninth Circuit reversed. Following the protocol for evaluating qualified immunity claims, see *Saucier v. Katz, 533 U.S. 194, 200, 121 S. Ct. 2151, 150 L. Ed. 2d 272*, the court held that the strip search was unjustified under the *Fourth Amendment* test for searches of children by school officials set out in *New Jersey v. T. L. O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720*. It then applied the test for qualified immunity. Finding that Savana's right was clearly established at the time of the search, it reversed the summary judgment as to Wilson, but affirmed as to Schwallier and Romero because they were not independent decisionmakers.

Held:

[*358]** 1. The search of Savana's underwear violated the *Fourth Amendment*. Pp. 3-11.

[*365] (a) **[****5]** For school searches, "the public interest is best served by a *Fourth Amendment* standard of reasonableness that stops short of probable cause." *T. L. O., 469 U.S., at 341, 105 S. Ct. 733, 83 L. Ed. 2d 720*. Under the resulting reasonable suspicion standard, a school search "will be permissible . . . when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id., at 342, 105 S. Ct. 733, 83 L. Ed. 2d 720*. The required knowledge component of reasonable suspicion for a school administrator's evidence search is that it raise a moderate chance of finding evidence of wrongdoing. Pp. 3-5.

(b) Wilson had sufficient suspicion to justify searching Savana's backpack and outer clothing. A week earlier, a student, Jordan, had told the principal and Wilson that students were bringing drugs and weapons to school and that he had gotten sick from some pills. On the day of the search, Jordan gave Wilson a pill that he said came from Marissa. Learning that the pill was prescription strength, Wilson called Marissa out of class and was handed **[**2636]** the day planner. Once in his **[****6]** office, Wilson, with Romero present, had Marissa turn out her pockets and open her wallet, producing, *inter alia*, an over-the-counter pill that Marissa claimed was Savana's. She also denied knowing about the day planner's contents. Wilson did not ask her when she received the pills from Savana or where Savana might be hiding them. After a search of Marissa's underwear by Romero and Schwallier revealed no additional pills, Wilson called Savana into his office. He showed her the day planner and confirmed her relationship with Marissa. He knew that the girls had been identified as part of an unusually rowdy group at a school dance, during which alcohol and cigarettes were found in the girls' bathroom. He had other reasons to connect them with this contraband, for Jordan had told the principal that before the dance, he had attended a party at Savana's house where alcohol was served. Thus, Marissa's statement that the pills came from Savana was sufficiently plausible to warrant

suspicion that Savana was involved in pill distribution. A student who is reasonably suspected of giving out contraband pills is reasonably suspected of carrying them on her person and in her backpack. Looking **[****7]** into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing. Pp. 5-8.

(c) Because the suspected facts pointing to Savana did not indicate that the drugs presented a danger to students or were concealed in her underwear, Wilson did not have sufficient suspicion to warrant extending the search to the point of making Savana pull out her underwear. **[*366]** Romero and Schwallier said that they did not see anything when Savana pulled out her underwear, but a strip search and its *Fourth Amendment* consequences are not defined by who was looking and how much was seen. Savana's actions in their presence necessarily exposed her breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct **[***359]** elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings. Savana's subjective expectation of privacy is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness **[****8]** of her expectation is indicated by the common reaction of other young people similarly searched, whose adolescent vulnerability intensifies the exposure's patent intrusiveness. Its indignity does not outlaw the search, but it does implicate the rule that "the search [be] 'reasonably related in scope to the circumstances which justified the interference in the first place.'" *T. L. O., supra, at 341, 105 S. Ct. 733, 83 L. Ed. 2d 720*. Here, the content of the suspicion failed to match the degree of intrusion. Because Wilson knew that the pills were common pain relievers, he must have known of their nature and limited threat and had no reason to suspect that large amounts were being passed around or that individual students had great quantities. Nor could he have suspected that Savana was hiding common painkillers in her underwear. When suspected facts must support the categorically extreme intrusiveness of a search down to an adolescent's body, petitioners' general belief that students hide contraband in their clothing falls short; a reasonable search that extensive calls for suspicion that it will succeed. Nondangerous school contraband does not conjure up the specter of stashes **[****9]** in intimate places, and there is no evidence of such behavior at the school; neither Jordan nor Marissa suggested that **[**2637]** Savana was doing that, and the search of Marissa yielded nothing. Wilson also never determined when Marissa had received the pills from Savana; had it been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person, much less in her underwear. Pp. 8-11.

2. Although the strip search violated Savana's *Fourth Amendment* rights, petitioners Wilson, Romero, and Schwallier are protected from liability by qualified immunity because "clearly established law [did] not show that the search violated the *Fourth Amendment*," *Pearson v. Callahan, 555 U.S. 223, 243-244, 129 S. Ct. 808, 822, 172 L. Ed. 2d 565, 580* The intrusiveness of the strip search here cannot, under *T. L. O.*, be seen as justifiably related to the circumstances, but lower court cases viewing school strip searches differently are numerous enough, with well-reasoned majority and dissenting opinions, **[*367]** to counsel doubt about the clarity with which the right was previously stated. Pp. 11-13.

3. The issue of petitioner Safford's liability under *Monell v. Dep't of Soc. Servs, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611*, **[****10]** should be addressed on remand. P. 13.

531 F.3d 1071, affirmed in part, reversed in part, and remanded.

Counsel: Matthew W. Wright argued the cause for petitioners.

David O'Neil argued the cause for the United States, as amicus curiae, by special leave of court.

Adam B. Wolf argued the cause for respondent.

Judges: Souter, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Kennedy, Breyer, and Alito, JJ., joined, and in which Stevens and Ginsburg, JJ., joined as to Parts I-III. Stevens, J., filed an opinion concurring in part and dissenting in part, in which Ginsburg, J., joined, post, p. ___. Ginsburg, J., filed an opinion concurring in part and dissenting in part, post, p. ___. Thomas, J., filed an opinion concurring in the

judgment in part and dissenting in part, post, p. ___.

Opinion by: SOUTER

Opinion

[*368] [*360]** Justice **Souter** delivered the opinion of the Court.

The issue here is whether a 13-year-old student's *Fourth Amendment* right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over-the-counter drugs to school. Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, we **[****11]** hold that the search did violate the Constitution, but because there is reason to question the clarity with which the right was **[**2638]** established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.

I

The events immediately prior to the search in question began in 13-year-old Savana Redding's math class at Safford Middle School one October day in 2003. The assistant principal of the school, Kerry Wilson, came into the room and asked Savana to go to his office. There, he showed her a day planner, unzipped and open flat on his desk, in which there were several knives, lighters, a permanent marker, and a cigarette. Wilson asked Savana whether the planner was hers; she said it was, but that a few days before she had lent it to her friend, Marissa Glines. Savana stated that none of the items in the planner belonged to her.

Wilson then showed Savana four white prescription-strength ibuprofen 400-mg pills, and one over-the-counter blue naproxen 200-mg pill, all used for pain and inflammation but banned under school rules without advance permission. He asked Savana if she knew anything about the pills. Savana answered that she did not. Wilson **[****12]** then told Savana that he had received a report that she was giving these pills to fellow students; Savana denied it and agreed to let Wilson search her belongings. Helen Romero, an administrative assistant, came into the office, and together with Wilson they searched Savana's backpack, finding nothing.

[*369] At that point, Wilson instructed Romero to take Savana to the school nurse's office to search her clothes for pills. Romero and the nurse, Peggy Schwallier, asked Savana to remove her jacket, socks, and shoes, leaving her in stretch pants and a T-shirt (both without pockets), which she was then asked to remove. Finally, Savana was told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Savana's mother filed suit against Safford Unified School District #1, Wilson, Romero, and Schwallier for conducting a strip search in violation of Savana's *Fourth Amendment* rights. The individuals (hereinafter petitioners) moved for summary judgment, raising a defense of qualified immunity. The District Court for the District of Arizona granted the motion on the ground that **[****13]** there was no *Fourth Amendment* violation, and a panel of the Ninth Circuit affirmed. *504 F.3d 828 (2007)*.

A closely divided Circuit sitting en banc, however, reversed. Following the two-step protocol for evaluating claims of qualified immunity, see *Saucier v. Katz, 533 U.S. 194, 200, 121 S. Ct. 2151, 150 L. Ed. 2d 272 [***361] (2001)*, the Ninth Circuit held that the strip search was unjustified under the *Fourth Amendment* test for searches of children by school officials set out in *New Jersey v. T. L. O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)*. *531 F.3d 1071, 1081-1087 (2008)*. The Circuit then applied the test for qualified immunity, and found that Savana's right was clearly established at the time of the search: "'[t]hese notions of personal privacy are "clearly established" in that they inhere in all of us, particularly middle school teenagers, and are inherent in the privacy component of the *Fourth Amendment's* proscription against unreasonable searches.'" *Id., at 1088-1089* (quoting *Brannum v. Overton Cty. School Bd., 516 F.3d 489, 499 (CA6 2008)*). The upshot was reversal of summary judgment as to Wilson, while affirming the judgments in favor of Schwallier, the school **[****14]** nurse, and Romero, the administrative **[*370]** assistant, since they had not acted as independent decisionmakers. *531 F.3d at 1089*.

[2639]** We granted certiorari, *555 U.S. 1130, 129 S. Ct. 987, 173 L. Ed. 2d 171 (2009)*, and now affirm in part, reverse in part, and remand.

II

[1] The *Fourth Amendment* "right of the people to be secure in their persons . . . against unreasonable searches and seizures" generally requires a law enforcement officer to have probable cause for conducting a search. "Probable cause exists where 'the facts and circumstances within [an officer's] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed," *Brinegar v. United States, 338 U.S. 160, 175-176, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949)* (quoting *Carroll v. United States, 267 U.S. 132, 162, 45 S. Ct. 280, 69 L. Ed. 543 (1925))*, and that evidence bearing on that offense will be found in the place to be searched.

In *T. L. O.*, [2] we recognized that the school setting "requires some modification of the level of suspicion of illicit activity needed to justify a search," *469 U.S., at 340, 105 S. Ct. 733, 83 L. Ed. 2d 720*, **[****15]** and held that for searches by school officials "a careful balancing of governmental and private interests suggests that the public interest is best served by a *Fourth Amendment* standard of reasonableness that stops short of probable cause," *id., at 341, 105 S. Ct. 733, 83 L. Ed. 2d 720*. We have thus applied a standard of reasonable suspicion to determine the legality of a school administrator's search of a student, *id., at 342, 345, 105 S. Ct. 733, 83 L. Ed. 2d 720*, and have held that a school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction," *id., at 342, 105 S. Ct. 733, 83 L. Ed. 2d 720*.

A number of our cases on probable cause have an implicit bearing on the reliable knowledge element of reasonable suspicion, as we have attempted to flesh out the knowledge component **[*371]** by looking to the degree to which known facts imply prohibited conduct, see, *e.g.*, *Adams v. Williams, 407 U.S. 143, 148, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972)*; *id., at 160, n. 9, 92 S. Ct. 1921, 32 L. Ed. 2d 612* (Marshall, J., dissenting), **[****16]** the specificity of the information received, see, *e.g.*, *Spinelli v. United States, 393 U.S. 410, 416-417, **[***362]** 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969)*, and the reliability of its source, see, *e.g.*, *Aguilar v. Texas, 378 U.S. 108, 114, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964)*. At the end of the day, however, we have realized that these factors cannot rigidly control, *Illinois v. Gates, 462 U.S. 213, 230, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)*, and we have come back to saying that [3] the standards are "fluid concepts that take their substantive content from the particular contexts" in which they are being assessed, *Ornelas v. United States, 517 U.S. 690, 696, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996)*.

Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a "fair probability," *Gates, 462 U.S., at 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527*, or a "substantial chance," *id., at 244, n. 13, 103 S. Ct. 2317, 76 L. Ed. 2d 527*, of discovering evidence of criminal activity. The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing. **[****17]**

III

A

In this case, the school's policies strictly prohibit the nonmedical use, possession, **[**2640]** or sale of any drug on school grounds, including "'[a]ny prescription or over-the-counter drug, except those for which permission to use in school has been granted pursuant to Board policy.'" App. to Pet. for Cert. 128a.[1] A week

[1] [4] When the object of a school search is the enforcement of a school rule, a valid search assumes, of course, the rule's legitimacy. But the legitimacy of the rule usually goes without saying as it does here. The Court said plainly in *New Jersey v. T. L. O., 469 U.S. 325, 342, n. 9, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)*, that standards of conduct for schools **[****18]** are for school administrators to determine without second-guessing by courts lacking the experience to appreciate what may be needed. Except in patently arbitrary instances, ***Fourth Amendment*** analysis takes the rule as a given, as it obviously should do in this case. There is no need here either to explain the imperative of keeping drugs out of schools, or to explain the reasons for the school's rule banning all drugs, no matter how benign, without advance permission. Teachers are not pharmacologists trained to identify pills and powders, and an

before Savana was searched, another **[*372]** student, Jordan Romero (no relation of the school's administrative assistant), told the principal and Assistant Principal Wilson that "certain students were bringing drugs and weapons on campus," and that he had been sick after taking some pills that "he got from a classmate." App. 8a. On the morning of October 8, the same boy handed Wilson a white pill that he said Marissa Glines had given him. He told Wilson that students were planning to take the pills at lunch.

Wilson learned from Peggy Schwallier, the school nurse, that the pill was Ibuprofen 400 mg, available only by prescription. Wilson then called Marissa out of class. Outside the classroom, Marissa's teacher handed Wilson the day planner, found within Marissa's reach, containing various contraband items. Wilson escorted Marissa back to his office.

In the presence of Helen Romero, Wilson requested Marissa to turn out her pockets **[****19]** and open her wallet. Marissa produced a blue pill, several white ones, and a razor blade. Wilson asked where the blue pill came from, and Marissa answered, "'I guess it **[***363]** slipped in when *she* gave me the IBU 400s.'" *Id.*, at 13a. When Wilson asked whom she meant, Marissa replied, "'Savana Redding.'" *Ibid.* Wilson then enquired about the day planner and its contents; Marissa denied knowing anything about them. Wilson did not ask Marissa any followup questions to determine whether there was any likelihood that Savana presently had pills: neither asking when Marissa received the pills from Savana nor where Savana might be hiding them.

[*373] Schwallier did not immediately recognize the blue pill, but information provided through a poison control hotline[2] indicated that the pill was a 200-mg dose of an antiinflammatory drug, generically called naproxen, available over the counter. At Wilson's direction, Marissa was then subjected to a search of her bra and underpants by Romero and Schwallier, as Savana was later on. The search revealed no additional pills.

It was at this juncture that Wilson called Savana into his office and showed her the **[**2641]** day planner. Their conversation established that Savana and Marissa were on friendly terms: while she denied knowledge of the contraband, Savana admitted that the day planner was hers and that she had lent it to Marissa. Wilson had other reports of their friendship from staff members, who had identified Savana and Marissa as part of an unusually rowdy group at the school's opening dance in August, during which alcohol and cigarettes were found in the girls' bathroom. Wilson had reason to connect the girls with this contraband, for Wilson knew that Jordan Romero had told the principal that before the dance, he had been at a party at Savana's house where alcohol was served. Marissa's statement that the pills came from Savana was thus sufficiently plausible to warrant suspicion that Savana was involved in pill distribution.

This suspicion of **[****21]** Wilson's was enough to justify a search of Savana's backpack and outer clothing.[3] If a student is **[*374]** reasonably suspected of giving out contraband pills, she is reasonably suspected of carrying them on her person and in the carryall that has become an item of student uniform in most places today. If Wilson's reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth making. And the look into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing.

B

Here it is that the parties part company, with Savana's claim that extending the **[****22]** search at Wilson's

effective drug ban has to be enforceable fast. The plenary ban makes sense, and there is no basis to claim that the search was unreasonable owing to some defect or shortcoming of the rule it was aimed at enforcing.

[2] Poison control centers across the country maintain 24-hour help hotlines to provide "immediate access to poison exposure management **[****20]** instructions and information on potential poisons." American Association of Poison Control Centers, online at http://www.aapcc.org/dnn/About/tabid/74/Default.aspx (all Internet materials as visited June 19, 2009, and available in Clerk of Court's case file).

[3] There is no question here that justification for the school officials' search was required in accordance with the *T. L. O.* standard of reasonable suspicion, for it is common ground that Savana had a reasonable expectation of privacy covering the personal things she chose to carry in her backpack, cf. *469 U.S., at 339, 105 S. Ct. 733, 83 L. Ed. 2d 720*, and that Wilson's decision to look through it was a "search" within the meaning of the ***Fourth Amendment***.

behest to the point of making her pull out her underwear was constitutionally unreasonable. **[***364]** The exact label for this final step in the intrusion is not important, though strip search is a fair way to speak of it. Romero and Schwallier directed Savana to remove her clothes down to her underwear, and then "pull out" her bra and the elastic band on her underpants. *Id.*, at 23a. Although Romero and Schwallier stated that they did not see anything when Savana followed their instructions, App. to Pet. for Cert. 135a, we would not define strip search and its *Fourth Amendment* consequences in a way that would guarantee litigation about who was looking and how much was seen. The very fact of Savana's pulling her underwear away from her body in the presence of the two officials who were able to see her necessarily exposed her breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings.

Savana's subjective expectation **[****23]** of privacy against such a search is inherent in her account of it as embarrassing, **[*375]** frightening, and humiliating. The reasonableness of her expectation (required by the *Fourth Amendment* standard) is indicated by the consistent experiences of other young people similarly searched, whose adolescent vulnerability intensifies the patent intrusiveness of the exposure. See Brief for National Association of Social Workers et al. as *Amici Curiae* 6-14; Hyman & Perone, **[**2642]** The Other Side of School Violence: Educator Policies and Practices that may Contribute to Student Misbehavior, 36 J. School Psychology 7, 13 (1998) (strip search can "result in serious emotional damage"). The common reaction of these adolescents simply registers the obviously different meaning of a search exposing the body from the experience of nakedness or near undress in other school circumstances. Changing for gym is getting ready for play; exposing for a search is responding to an accusation reserved for suspected wrongdoers and fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be, see, *e.g.*, **[****24]** New York City Dept. of Education, Reg. No. A-432, p 2 (2005), online at http://docs.nycenet.edu/docushare/dsweb/Get/Document-21/A-432.pdf ("Under no circumstances shall a strip-search of a student be conducted").

The indignity of the search does not, of course, outlaw it, but it does implicate [5] the rule of reasonableness as stated in *T. L. O.*, that "the search as actually conducted [be] reasonably related in scope to the circumstances which justified the interference in the first place." *469 U.S., at 341, 105 S. Ct. 733, 83 L. Ed. 2d 720* (internal quotation marks omitted). The scope will be permissible, that is, when it is "not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id., at 342, 105 S. Ct. 733, 83 L. Ed. 2d 720*.

Here, the content of the suspicion failed to match the degree of intrusion. Wilson knew beforehand that the pills were prescription-strength ibuprofen and over-the-counter naproxen, common pain relievers **[***365]** equivalent to two Advil, or **[*376]** one Aleve.[4] He must have been aware of the nature and limited threat of the specific drugs he was searching for, and while just about anything can be taken in quantities that will **[****25]** do real harm, Wilson had no reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving great numbers of pills.

Nor could Wilson have suspected that Savana was hiding common painkillers in her underwear. Petitioners suggest, as a truth universally acknowledged, that "students . . . hid[e] contraband in or under their clothing," Reply Brief for Petitioners 8, and cite a smattering of cases of students with contraband in their underwear, *id.*, at 8-9. But when the categorically extreme intrusiveness of a search down to the body of an adolescent requires some justification in suspected facts, general background possibilities fall short; a reasonable search that extensive calls for suspicion that it will pay off. But nondangerous school contraband does not raise the specter of stashes in intimate places, and there is no evidence in the record of any general practice among **[****26]** Safford Middle School

[4] An Advil tablet, caplet, or gel caplet contains 200 mg ibuprofen. See 2007 Physicians' Desk Reference for Nonprescription Drugs, Dietary Supplements, and Herbs 674 (28th ed. 2006). An Aleve caplet contains 200 mg naproxen and 20 mg sodium. See *id.*, at 675.

students of hiding that sort of thing in underwear; neither Jordan nor Marissa suggested to Wilson that Savana was doing that, and the preceding search of Marissa that Wilson ordered yielded nothing. Wilson never even determined when Marissa had received the pills from Savana; if it had been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person, much less in her underwear.

In sum, what was missing from the suspected facts that pointed to Savana was **[**2643]** any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her **[*377]** underwear. We think that the combination of these deficiencies was fatal to finding the search reasonable.

In so holding, we mean to cast no ill reflection on the assistant principal, for the record raises no doubt that his motive throughout was to eliminate drugs from his school and protect students from what Jordan Romero had gone through. Parents are known to overreact to protect their children from danger, and a school official with responsibility for safety may tend to do the same. The **[****27]** difference is that the *Fourth Amendment* places limits on the official, even with the high degree of deference that courts must pay to the educator's professional judgment.

We do mean, though, to make it clear that [6] the *T. L. O.* concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions.

[*366]** IV

[7] A school official searching a student is "entitled to qualified immunity where clearly established law does not show that the search violated the *Fourth Amendment*." *Pearson v. Callahan, 555 U.S. 223, 243-244, 129 S. Ct. 808, 822, 172 L. Ed. 2d 565, 580 (2009)* To be established clearly, however, there is no need that "the very action in question [have] previously been held unlawful." *Wilson v. Layne, 526 U.S. 603, 615, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999)*. The unconstitutionality of outrageous **[****28]** conduct obviously will be unconstitutional, this being the reason, as Judge Posner has said, that "[t]he easiest cases don't even arise." *K. H. v. Morgan, 914 F.2d 846, 851 (CA7 1990)*. But even as to action less than an outrage, "officials can still be on notice that their conduct violates established **[*378]** law . . . in novel factual circumstances." *Hope v. Pelzer, 536 U.S. 730, 741, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002)*.

T. L. O. directed school officials to limit the intrusiveness of a search, "in light of the age and sex of the student and the nature of the infraction," *469 U.S., at 342, 105 S. Ct. 733, 83 L. Ed. 2d 720*, and as we have just said at some length, the intrusiveness of the strip search here cannot be seen as justifiably related to the circumstances. But we realize that the lower courts have reached divergent conclusions regarding how the *T. L. O.* standard applies to such searches.

A number of judges have read *T. L. O.* as the en banc minority of the Ninth Circuit did here. The Sixth Circuit upheld a strip search of a high school student for a drug, without any suspicion that drugs were hidden next to her body. *Williams v. Ellington, 936 F.2d 881, 882-883, 887 (1991)*. **[****29]** And other courts considering qualified immunity for strip searches have read *T. L. O.* as "a series of abstractions, on the one hand, and a declaration of seeming deference to the judgments of school officials, on the other," *Jenkins v. Talladega City Bd. of Ed., 115 F.3d 821, 828 (CA11 1997)* (en banc), which made it impossible "to establish clearly the contours of a *Fourth Amendment* right . . . [in] the wide variety of possible school settings different from those involved in *T. L. O.*" itself, *ibid.* See also *Thomas v. Roberts, 323 F.3d 950 (CA11 2003)* (granting qualified immunity to a teacher and police officer who conducted **[**2644]** a group strip search of a fifth grade class when looking for a missing $26).

We think these differences of opinion from our own are substantial enough to require immunity for the school officials in this case. We would not suggest that entitlement to qualified immunity is the guaranteed product of disuniform views of the law in the other federal, or state, courts, and the fact that a single judge, or even a group of judges, disagrees about the contours of a right does not automatically render the law unclear

if we have been clear. That said, however, the cases **[****30]** viewing school strip searches differently **[*379]** from the way we see them are numerous enough, with well-reasoned majority and dissenting opinions, to counsel doubt that we were sufficiently clear in the prior statement of law. We conclude that qualified immunity is warranted.

V

The strip search of Savana Redding was unreasonable and a violation of the *Fourth Amendment*, but petitioners Wilson, Romero, and Schwallier are nevertheless protected from liability **[***367]** through qualified immunity. Our conclusions here do not resolve, however, the question of the liability of petitioner Safford Unified School District #1 under *Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)*, a claim the Ninth Circuit did not address. The judgment of the Ninth Circuit is therefore affirmed in part and reversed in part, and this case is remanded for consideration of the *Monell* claim.

It is so ordered.

Concur by: Stevens (In Part) Ginsburg (In Part) Thomas (In Part)

Dissent by: Stevens (In Part) Ginsburg (In Part) Thomas (In Part)

Dissent

Justice **Stevens,** with whom Justice **Ginsburg** joins, concurring in part and dissenting in part.

In *New Jersey v. T. L. O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)*, **[****31]** the Court established a two-step inquiry for determining the reasonableness of a school official's decision to search a student. First, the Court explained, the search must be "'justified at its inception'" by the presence of "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *Id., at 342, 105 S. Ct. 733, 83 L. Ed. 2d 720*. Second, the search must be "permissible in its scope," which is achieved "when the measures adopted are reasonably related to the objectives of the search and *not excessively intrusive in light of the age and sex of the student and the nature of the infraction.*" *Ibid.* (emphasis added).

Nothing the Court decides today alters this basic framework. It simply applies *T. L. O.* to declare unconstitutional **[*380]** a strip search of a 13-year-old honors student that was based on a groundless suspicion that she might be hiding medicine in her underwear. This is, in essence, a case in which clearly established law meets clearly outrageous conduct. I have long believed that "'[i]t does not require a constitutional scholar to conclude that a nude search of a 13-year-old **[****32]** child is an invasion of constitutional rights of some magnitude.'" *Id., at 382, n. 25, 105 S. Ct. 733, 83 L. Ed. 2d 720* (Stevens, J., concurring in part and dissenting in part) (quoting *Doe v. Renfrow, 631 F.2d 91, 92-93 (CA7 1980))*. The strip search of Savana Redding in this case was both more intrusive and less justified than the search of the student's purse in *T. L. O.* Therefore, while I join Parts I-III of the Court's opinion, I disagree with its decision to extend qualified immunity to the school official who authorized this unconstitutional search.

The Court reaches a contrary conclusion about qualified immunity based on the fact that various Courts of Appeals have adopted seemingly divergent views about **[**2645]** *T. L. O.*'s application to strip searches. *Ante, at 377-378, 174 L. Ed. 2d, at 366*. But the clarity of a well-established right should not depend on whether jurists have misread our precedents. And while our cases have previously noted the "divergence of views" among courts in deciding whether to extend qualified immunity, *e.g., Pearson v. Callahan, 555 U.S., 223, 245, 129 S. Ct. 808, 822, 172 L. Ed. 2d 565, 580 (2009)* (noting the unsettled constitutionality of the so-called **[****33]** "consent-once-removed" doctrine); *Wilson v. Layne, 526 U.S. 603, 618, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999)* (considering conflicting views on the constitutionality of law enforcement's practice of allowing the **[***368]** media to enter a private home to observe and film attempted arrests), we have relied on that consideration only to spare officials from having "'to predict the *future course* of constitutional law,'" *id., at 617, 119 S. Ct. 1692, 143 L. Ed. 2d 818* (quoting *Procunier v. Navarette, 434 U.S. 555, 562, 98 S. Ct. 855, 55 L. Ed. 2d 24 (1978)*; emphasis added). In this case, by contrast, we chart no new constitutional path.

We merely decide whether the decision to strip search Savana Redding, on these facts, was **[*381]** prohibited under *T. L. O.* Our conclusion leaves the boundaries of the law undisturbed.*

The Court of Appeals properly rejected the school official's qualified immunity defense, and I would affirm that court's judgment in its entirety.

Justice **Ginsburg,** concurring in part and dissenting in part.

I agree with the Court that Assistant Principal Wilson's subjection of 13-year-old Savana Redding to a humiliating stripdown search violated the *Fourth Amendment*. But I also agree with Justice Stevens, *ante, at 379-380, 174 L. Ed. 2d, at 367-368* (opinion concurring in part and dissenting in part), that our opinion in *New Jersey v. T. L. O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)*, "clearly established" the law governing this case.

Fellow student Marissa Glines, caught with pills in her pocket, accused Redding of supplying them. App. 13a. Asked where the blue pill among several white pills in Glines's pocket came from, Glines answered: "I guess it slipped in when *she* gave me the IBU 400s." *Ibid.* Asked next "who is *she*?", Glines responded: "Savana Redding." *Ibid.* As the Court observes, *ante, at 372, 376, 174 L. Ed. 2d, at 362-363, 365*, no followup questions were asked. Wilson did not test Glines's accusation for veracity by asking Glines when did Redding give her the pills, where, for what purpose. **[****35]** Any reasonable search for the pills would have ended when inspection of Redding's backpack and jacket pockets yielded nothing. Wilson had no cause to suspect, based on prior experience at the school or clues in this case, that Redding had hidden pills--containing the equivalent of two Advils or one Aleve--in her underwear or on her body. To make matters worse, Wilson did not release Redding, to return to class or to go home, after the **[*382]** search. Instead, he made her sit on a chair outside his office for over two hours. At no point did he attempt to call her parent. Abuse of authority of that order should not be shielded by official immunity.

In contrast to *T. L. O.*, where a teacher discovered a student smoking in the lavatory, and where the search was confined to the student's purse, the search of Redding involved her body and rested on the bare accusation of another student whose reliability **[**2646]** the Assistant Principal had no reason to trust. The Court's opinion in *T. L. O.* plainly stated the controlling *Fourth Amendment* law: A search ordered by a school official, even if "justified at its inception," crosses the constitutional boundary if it becomes "excessively intrusive in light of the **[****36]** **[***369]** age and sex of the student and the nature of the infraction." *469 U.S., at 342, 105 S. Ct. 733, 83 L. Ed. 2d 720* (internal quotation marks omitted).

Here, "the nature of the [supposed] infraction," the slim basis for suspecting Savana Redding, and her "age and sex," *ibid.*, establish beyond doubt that Assistant Principal Wilson's order cannot be reconciled with this Court's opinion in *T. L. O.* Wilson's treatment of Redding was abusive, and it was not reasonable for him to believe that the law permitted it. I join Justice Stevens in dissenting from the Court's acceptance of Wilson's qualified immunity plea, and would affirm the Court of Appeals' judgment in all respects.

Justice Thomas, concurring in the judgment in part and dissenting in part.

I agree with the Court that the judgment against the school officials with respect to qualified immunity should be reversed. See *ante, at 377-379, 174 L. Ed. 2d, at 366-367*. Unlike the majority, however, I would hold that the search of Savana Redding did not violate the *Fourth Amendment*. The majority imposes a vague and amorphous standard on school administrators. It also grants judges sweeping authority to second-guess the measures that these **[****37]** officials take to maintain discipline in **[*383]** their schools and ensure the health and safety of the students in their charge. This deep intrusion into the administration of public schools exemplifies why the Court should return to the common-law doctrine of *in loco parentis* under which "the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and

* In fact, in *T. L. O.* we cited with approval a Ninth Circuit case, *Bilbrey v. Brown, 738 F.2d 1462 (1984)*, which held that a strip search performed under similar circumstances violated the Constitution. *469 U.S., at 332, n. 2, 105 S. Ct. 733, 83 L. Ed. 2d 720*; *id., at 341, and n. 6, 105 S. Ct. 733, 83 L. Ed. 2d 720* (adopting *Bilbrey*'s reasonable suspicion **[****34]** standard).

teachers to set and enforce rules and to maintain order." *Morse v. Frederick, 551 U.S. 393, 414, 127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007)* (Thomas, J., concurring). But even under the prevailing *Fourth Amendment* test established by *New Jersey v. T. L. O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)*, all petitioners, including the school district, are entitled to judgment as a matter of law in their favor.

I

"Although the underlying command of the *Fourth Amendment* is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." *Id., at 337, 105 S. Ct. 733, 83 L. Ed. 2d 720*. Thus, although public school students retain *Fourth Amendment* rights under this Court's precedent, see *id., at 333-337, 105 S. Ct. 733, 83 L. Ed. 2d 720*, **[****38]** those rights "are different . . . than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children," *Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 656, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995)*; see also *T. L. O., 469 U.S., at 339, 105 S. Ct. 733, 83 L. Ed. 2d 720* (identifying "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds"). For nearly 25 years this Court has understood that "[m]aintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems." *Ibid.* In schools, "[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Goss v. Lopez, 419 U.S. 565, 580, **[***370]** 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975)*; see also *T. L. O., 469 U.S., at 340, 105 S. Ct. 733, 83 L. Ed. 2d 720* (explaining that schools have a "legitimate need **[*384]** to maintain **[**2647]** an environment in which learning can take place").

For this reason, school officials retain broad authority to protect students **[****39]** and preserve "order and a proper educational environment" under the *Fourth Amendment*. *Id., at 339, 105 S. Ct. 733, 83 L. Ed. 2d 720*. This authority requires that school officials be able to engage in the "close supervision of schoolchildren, as well as . . . enforc[e] rules against conduct that would be perfectly permissible if undertaken by an adult." *Ibid.* Seeking to reconcile the *Fourth Amendment* with this unique public school setting, the Court in *T. L. O.* held that a school search is "reasonable" if it is "'justified at its inception'" and "'reasonably related in scope to the circumstances which justified the interference in the first place.'" *Id., at 341-342, 105 S. Ct. 733, 83 L. Ed. 2d 720* (quoting *Terry v. Ohio, 392 U.S. 1, 20, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968))*. The search under review easily meets this standard.

A

A "search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *T. L. O., supra, at 341-342, 105 S. Ct. 733, 83 L. Ed. 2d 720* (footnote omitted). As **[****40]** the majority rightly concedes, this search was justified at its inception because there were reasonable grounds to suspect that Redding possessed medication that violated school rules. See *ante, at 373, 174 L. Ed. 2d, at 363*. A finding of reasonable suspicion "does not deal with hard certainties, but with probabilities." *United States v. Cortez, 449 U.S. 411, 418, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981)*; see also *T. L. O., supra, at 346, 105 S. Ct. 733, 83 L. Ed. 2d 720* ("[T]he requirement of reasonable suspicion is not a requirement of absolute certainty"). To satisfy this standard, more than a mere "hunch" of wrongdoing is required, but "considerably" less suspicion is needed than would be required to "satisf[y] a preponderance of the evidence standard." *United States v. **[*385]** Arvizu, 534 U.S. 266, 274, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002)* (internal quotation marks omitted).

Furthermore, in evaluating whether there is a reasonable "particularized and objective" basis for conducting a search based on suspected wrongdoing, government officials must consider the "totality of the circumstances." *Id., at 273, 122 S. Ct. 744, 151 L. Ed. 2d 740* (internal quotation marks omitted). School officials **[****41]** have a specialized understanding of the school environment, the habits of the students, and the concerns of the community, which enables them to "'formulat[e] certain common-sense conclusions about human behavior.'" *United States v. Sokolow, 490 U.S. 1, 8, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989)* (quoting

Cortez, supra, at 418, 101 S. Ct. 690, 66 L. Ed. 2d 621). And like police officers, school officials are "entitled to make an assessment of the situation in light of [this] specialized training and familiarity with the customs of the [school]." See *Arvizu, supra, at 276, 122 S. Ct. 744, 151 L. Ed. 2d 740*.

Here, petitioners had reasonable grounds to suspect that Redding was **[***371]** in possession of prescription and nonprescription drugs in violation of the school's prohibition of the "non-medical use, possession, or sale of a drug" on school property or at school events. *531 F.3d 1071, 1076 (CA9 2008)* (en banc); see also *id., at 1107* (Hawkins, J., dissenting) (explaining that the school policy defined "drugs" to include "'[a]ny prescription or over-the-counter drug, except those for which permission to use in school has been granted'"). As an initial matter, school officials were aware that **[****42]** a few years earlier, a **[**2648]** student had become "seriously ill" and "spent several days in intensive care" after ingesting prescription medication obtained from a classmate. App. 10a. *Fourth Amendment* searches do not occur in a vacuum; rather, context must inform the judicial inquiry. See *Cortez, supra, at 417-418, 101 S. Ct. 690, 66 L. Ed. 2d 621*. In this instance, the suspicion of drug possession arose at a middle school that had "a history of problems with students using and distributing prohibited and illegal substances on campus." App. 7a, 10a.

[*386] The school's substance-abuse problems had not abated by the 2003-2004 school year, which is when the challenged search of Redding took place. School officials had found alcohol and cigarettes in the girls' bathroom during the first school dance of the year and noticed that a group of students including Redding and Marissa Glines smelled of alcohol. *Ibid.* Several weeks later, another student, Jordan Romero, reported that Redding had hosted a party before the dance where she served whiskey, vodka, and tequila. *Id.*, at 8a, 11a. Romero had provided this report to school officials as a result of a meeting his mother scheduled with the officials after **[****43]** Romero "bec[a]me violent" and "sick to his stomach" one night and admitted that "he had taken some pills that he had got[ten] from a classmate." *Id.*, at 7a-8a, 10a-11a. At that meeting, Romero admitted that "certain students were bringing drugs and weapons on campus." *Id.*, at 8a, 11a. One week later, Romero handed the assistant principal a white pill that he said he had received from Glines. *Id.*, at 11a. He reported "that a group of students [were] planning on taking the pills at lunch." *Ibid.*

School officials justifiably took quick action in light of the lunchtime deadline. The assistant principal took the pill to the school nurse who identified it as prescription-strength 400-mg ibuprofen. *Id.*, at 12a. A subsequent search of Glines and her belongings produced a razor blade, a naproxen 200-mg pill, and several ibuprofen 400-mg pills. *Id.*, at 13a. When asked, Glines claimed that she had received the pills from Redding. *Ibid.* A search of Redding's planner, which Glines had borrowed, then uncovered "several knives, several lighters, a cigarette, and a permanent marker." *Id.*, at 12a, 14a, 22a. Thus, as the majority acknowledges, *ante, at 373-374, 174 L. Ed. 2d, at 363*, the totality of relevant **[****44]** circumstances justified a search of Redding for pills. [1]

[*387] B

The remaining question is whether the search was reasonable in scope. **[***372]** Under *T. L. O.*, "a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *469 U.S., at 342, 105 S. Ct. 733, 83 L. Ed. 2d 720*. The majority concludes that the school officials' search of Redding's underwear was not "'reasonably related in scope to the circumstances which justified the interference in the first place,'" see *ante, at 374-377, 174 L. Ed. 2d, at 363-365*, notwithstanding the officials' reasonable suspicion that Redding "was **[****45]** involved in pill distribution," *ante, at 373, 174 L. Ed. 2d, at 363*. According to the majority, to be reasonable, this school search required a showing of "danger to the students **[**2649]** from the power of the drugs or their quantity" or a "reason to suppose that [Redding] was carrying pills in her underwear." *Ante, at 376-377, 174 L. Ed. 2d, at 365*. Each of these additional

[1] To be sure, Redding denied knowledge of the pills and the materials in her planner. App. 14a. But her denial alone does not negate the reasonable suspicion held by school officials. See *New Jersey v. T. L. O., 469 U.S. 325, 345, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)* (finding search reasonable even though "T. L. O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all").

requirements is an unjustifiable departure from bedrock *Fourth Amendment* law in the school setting, where this Court has heretofore read the *Fourth Amendment* to grant considerable leeway to school officials. Because the school officials searched in a location where the pills could have been hidden, the search was reasonable in scope under *T. L. O.*

1

The majority finds that "subjective and reasonable societal expectations of personal privacy support . . . treat[ing]" this type of search, which it labels a "strip search," as "categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of **[*388]** outer clothing and belongings." *Ante, at 374, 174 L. Ed. 2d, at 364*. [2] Thus, in the majority's view, although the school officials had reasonable suspicion to believe that Redding **[****46]** had the pills on her person, see *ante, at 373-374, 174 L. Ed. 2d, at 363*, they needed some greater level of particularized suspicion to conduct this "strip search." There is no support for this contortion of the *Fourth Amendment*.

The Court has generally held that the reasonableness of a search's scope depends only on whether it is limited to the area that is capable of concealing the object of the search. See, *e.g.*, *Wyoming v. Houghton, 526 U.S. 295, 307, 119 S. Ct. 1297, 143 L. Ed. 2d 408 (1999)* (Police **[****47]** officers "may inspect passengers' belongings found in the car that are capable of concealing the object of the search"); *Florida v. Jimeno, 500 U.S. 248, 251, 111 S. Ct. 1801, 114 L. Ed. 2d 297 (1991)* ("The scope of a search is generally defined by its expressed object"); *United States v. Johns, 469 U.S. 478, 487, 105 S. Ct. 881, 83 L. Ed. 2d 890 (1985)* (search reasonable because "there is no plausible argument that the object of the search could not have been concealed in the packages"); *United States v. Ross, 456 U.S. 798, 820, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982)* ("A lawful search . . . generally extends **[***373]** to the entire area in which the object of the search may be found"). [3]

In keeping with this longstanding rule, the **[****48]** "nature of the infraction" referenced in *T. L. O.* delineates the proper scope of a search of students in a way that is identical to that permitted **[*389]** for searches outside the school -- *i.e.*, the search must be limited to the areas where the object of that infraction could be concealed. See *Horton v. California, 496 U.S. 128, 141, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990)* ("Police with a warrant for a rifle may search only places where rifles might be" (internal **[**2650]** quotation marks omitted)); *Ross, supra, at 824, 102 S. Ct. 2157, 72 L. Ed. 2d 572* ("[P]robable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase"). A search of a student therefore is permissible in scope under *T. L. O.* so long as it is objectively reasonable to believe that the area searched could conceal the contraband. The dissenting opinion below correctly captured this *Fourth Amendment* standard, noting that "if a student were rumored to have brought a baseball bat on campus in violation of school policy, a search of that student's shirt pocket would be patently unjustified." *531 F.3d at 1104* (opinion of Hawkins, J.).

The analysis of whether the scope of the search here was **[****49]** permissible under that standard is straightforward. Indeed, the majority does not dispute that "general background possibilities" establish that students conceal "contraband in their underwear." *Ante, at 376, 174 L. Ed. 2d, at 365*. It acknowledges that school officials had reasonable suspicion to look in Redding's backpack and outer clothing because if "Wilson's reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth

[2] Like the dissent below, "I would reserve the term 'strip search' for a search that required its subject to fully disrobe in view of officials." *531 F.3d 1071, 1091, n. 1 (CA9 2008)* (opinion of Hawkins, J.). The distinction between a strip search and the search at issue in this case may be slight, but it is a distinction that the law has drawn. See, *e.g.*, *Sandin v. Conner, 515 U.S. 472, 475, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995)* ("The officer subjected Conner to a strip search, complete with an inspection of the rectal area"); *Bell v. Wolfish, 441 U.S. 520, 558, and n. 39, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)* (describing visual inspection of body cavities as "part of a strip search").

[3] The Court has adopted a different standard for searches involving an "intrusio[n] into the human body." *Schmerber v. California, 384 U.S. 757, 770, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)*. The search here does not implicate the Court's cases governing bodily intrusions, however, because it did not involve a "physical intrusion, penetrating beneath the skin," *Skinner v. Railway Labor Executives' Ass'n., 489 U.S. 602, 616, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989)*.

making." *Ante, at 374, 174 L. Ed. 2d, at 363*. The majority nevertheless concludes that proceeding any further with the search was unreasonable. See *ante, at 374-377, 174 L. Ed. 2d, at 363-365*; see also *ante, at 381, 174 L. Ed. 2d, at 368* (Ginsburg, J., concurring in part and dissenting in part) ("Any reasonable search for the pills would have ended when inspection of Redding's backpack and jacket pockets yielded nothing"). But there is no support for this conclusion. The reasonable suspicion that Redding possessed the pills for distribution purposes did not dissipate simply because the search of her backpack turned up nothing. It was eminently reasonable to conclude that **[****50]** the backpack **[*390]** was empty because Redding was secreting the pills in a place she thought no one would look. See *Ross, supra, at 820, 102 S. Ct. 2157, 72 L. Ed. 2d 572* ("Contraband goods rarely are strewn" about in plain view; "by their very nature such goods must be withheld from public view").

Redding would not have been the first person to conceal pills in her undergarments. See Hicks, Man Gets 17-Year Drug Sentence, Times-Tribune (Corbin, Ky.), Oct. 7, 2008, p. 1, 5(Drug courier "told officials she had the [OxyContin] pills concealed in her crotch"); Conley, Whitehaven: Traffic **[***374]** Stop Yields Hydrocodone Pills, Commercial Appeal (Memphis, Tenn.), Aug. 3, 2007, p. B3 ("An additional 40 hydrocodone pills were found in her pants"); Caywood, Police Vehicle Chase Leads to Drug Arrests, (Worcester, Mass.) Telegram & Gazette, June 7, 2008, p. A7 (25-year-old "allegedly had a cigar tube stuffed with pills tucked into the waistband of his pants"); Hubartt, 23-Year-Old Charged With Dealing Ecstasy, The (Fort Wayne, Ind.) Journal Gazette, Aug. 8, 2007, p. 2C ("[W]hile he was being put into a squad car, his pants fell down and a plastic bag containing pink and orange pills fell on the ground"); Sebastian Residents Arrested **[****51]** in Drug Sting, Vero Beach Press Journal, Sept. 16, 2006, p. B2 (Arrestee "told them he had more pills 'down my pants'"). Nor will she be the last after today's decision, which announces the safest place to secrete contraband in school.

2

The majority compounds its error by reading the "nature of the infraction" aspect of the *T. L. O.* test as a license to limit searches based on a judge's assessment of a particular school policy. According to the majority, the scope of the search was impermissible because the school official "must have been aware of the nature and limited threat of the specific drugs he was searching for" and because he "had no **[**2651]** reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving **[*391]** great numbers of pills." *Ante, at 376, 174 L. Ed. 2d, at 365*. Thus, in order to locate a rationale for finding a *Fourth Amendment* violation in this case, the majority retreats from its observation that the school's firm no-drug policy "makes sense, and there is no basis to claim that the search was unreasonable owing to some defect or shortcoming of the rule it was aimed at enforcing." *Ante, at 372, n. 1, 174 L. Ed. 2d, at 362*.

Even **[****52]** accepting the majority's assurances that it is not attacking the rule's reasonableness, it certainly is attacking the rule's importance. This approach directly conflicts with *T. L. O.* in which the Court was "unwilling to adopt a standard under which the legality of a search is dependent upon a judge's evaluation of the relative importance of school rules." *469 U.S., at 342, n. 9, 105 S. Ct. 733, 83 L. Ed. 2d 720*. Indeed, the Court in *T. L. O.* expressly rejected the proposition that the majority seemingly endorses -- that "some rules regarding student conduct are by nature too 'trivial' to justify a search based upon reasonable suspicion." *Ibid.;* see also *id., at 343, n. 9, 105 S. Ct. 733, 83 L. Ed. 2d 720* ("The promulgation of a rule forbidding specified conduct presumably reflects a judgment on the part of school officials that such conduct is destructive of school order or of a proper educational environment. Absent any suggestion that the rule violates some substantive constitutional guarantee, the courts should as a general matter, defer to that judgment").

The majority's decision in this regard also departs from another basic principle of the *Fourth Amendment*: that law enforcement **[****53]** officials can enforce with the same vigor all rules and regulations irrespective of the perceived importance of any of those rules. "In a long line of cases, we have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is **[***375]** constitutionally reasonable." *Virginia v. Moore, 553 U.S. 164, ___, 128 S. Ct. 1598, 170 L. Ed. 2d 559 (2008)*). The *Fourth Amendment* rule for

searches is the same: Police officers are entitled to search regardless of the perceived triviality of the underlying law. **[*392]** As we have explained, requiring police to make "sensitive, case-by-case determinations of government need," *Atwater v. Lago Vista, 532 U.S. 318, 347, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001)*, for a particular prohibition before conducting a search would "place police in an almost impossible spot," *id., at 350, 121 S. Ct. 1536, 149 L. Ed. 2d 549*.

The majority has placed school officials in this "impossible spot" by questioning whether possession of ibuprofen and naproxen causes a severe enough threat to warrant investigation. Had the suspected infraction involved a street drug, **[****54]** the majority implies that it would have approved the scope of the search. See *ante, at 376, 174 L. Ed. 2d, at 365* (relying on the "limited threat of the specific drugs he was searching for"); *ibid.* (relying on the limited "power of the drugs" involved). In effect, then, the majority has replaced a school rule that draws no distinction among drugs with a new one that does. As a result, a full search of a student's person for prohibited drugs will be permitted only if the Court agrees that the drug in question was sufficiently dangerous. Such a test is unworkable and unsound. School officials cannot be expected to halt searches based on the possibility that a court might later find that the particular infraction at issue is not **[**2652]** severe enough to warrant an intrusive investigation. [4]

[*393] A rule promulgated by a school board represents the judgment of school officials that the rule is needed to maintain "school order" and "a proper educational environment." *T. L. O., 469 U.S., at 343, n. 9, 105 S. Ct. 733, 83 L. Ed. 2d 720*. Teachers, administrators, and the local school board are called upon both to "protect the . . . safety of students and school personnel" and "maintain an environment conducive to learning." *Id., at 353, 105 S. Ct. 733, 83 L. Ed. 2d 720* (Blackmun, J., concurring in judgment). They are tasked with "watch[ing] over a large number of students" who "are inclined to test the outer boundaries of acceptable conduct and **[***376]** to imitate the misbehavior of a peer if that misbehavior is not dealt with quickly." *Id., at 352, 105 S. Ct. 733, 83 L. Ed. 2d 720*. In such an environment, something as simple as a "water pistol or peashooter can wreak [havoc] until it is taken away." *Ibid.* The danger posed by unchecked distribution and consumption of prescription pills by students certainly needs no elaboration.

Judges are not qualified to second-guess the best manner for maintaining quiet and order in the school environment. Such institutional **[****57]** judgments, like those concerning the selection of the best methods for "restrain[ing students] from assaulting one another, abusing drugs and alcohol, and committing other crimes," *id., at 342, n. 9, 105 S. Ct. 733, 83 L. Ed. 2d 720*, "involve a host of policy choices that must be made by locally elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country;" *Collins v. Harker Heights, 503 U.S. 115, 129, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992)*; cf. *Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 226, 106 S. Ct. 507, 88 L. Ed. 2d 523 (1985)* (observing that federal courts are not "suited to evaluat[ing] the substance of the multitude of academic decisions" or disciplinary decisions "that are made daily by faculty members of public educational **[*394]** institutions"). It is a mistake for judges to assume the responsibility for deciding which school rules are important enough to allow for invasive searches and which rules are not.

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[4] Justice Ginsburg suggests that requiring Redding to "sit on a chair outside [the assistant principal's] office for over two hours" and failing to call her parents before conducting the search constitutes an "[a]buse of authority" that "should not be shielded by official immunity." See *ante, at 382, 174 L. Ed. 2d, at 368*. But the school was under no constitutional obligation **[****55]** to call Redding's parents before conducting the search: "[R]easonableness under the ***Fourth Amendment*** does not require employing the least intrusive means, because the logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers." *Bd. of Educ. v. Earls, 536 U.S. 822, 837, 122 S. Ct. 2559, 153 L. Ed. 2d 735 (2002)* (internal quotation marks and brackets omitted). For the same reason, the Constitution did not require school officials to ask "followup questions" after they had already developed reasonable suspicion that Redding possessed drugs. See *ante, at 372-376, 174 L. Ed. 2d, at 363, 365* (majority opinion); *ante, at 381, 174 L. Ed. 2d, at 368* (opinion of Ginsburg, J.). In any event, the suggestion that requiring Redding to sit in a chair for two hours amounted to a deprivation of her constitutional rights, or that school officials are required to engage in detailed interrogations before conducting searches for drugs, only reinforces the conclusion that the Judiciary is ill-equipped to second-guess the daily decisions made by public administrators. Cf. *Beard v. Banks, 548 U.S. 521, 536-537, 126 S. Ct. 2572, 165 L. Ed. 2d 697 (2006)* **[****56]** (Thomas, J., concurring in judgment).

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Even if this Court were authorized to second-guess the importance of school rules, the Court's assessment of the importance of this district's policy is flawed. It is a crime to possess or use prescription-strength **[****58]** ibuprofen without a prescription. **[**2653]** See *Ariz. Rev. Stat. Ann. § 13-3406(A)(1)* (West Supp. 2008) ("A person shall not knowingly . . . [p]ossess or use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a prescriber who is licensed pursuant to [state law]"). [5] By prohibiting unauthorized prescription drugs on school grounds -- and conducting a search to ensure students abide by that prohibition -- the school rule here was consistent with a routine provision of the state criminal code. It hardly seems unreasonable for school officials to enforce a rule that, in effect, proscribes conduct that amounts to a crime.

Moreover, school districts have valid reasons for punishing the unauthorized possession of prescription drugs on school **[*395]** property as severely as the possession of street drugs; "[t]eenage abuse of over-the-counter and prescription drugs poses an increasingly **[***377]** alarming national crisis." Get Teens Off Drugs, 72 The Education Digest No. 4, p. 75 (Dec. 2006). As one study noted, "more young people ages 12-17 abuse prescription drugs than any illicit drug except marijuana -- more than cocaine, heroin, and methamphetamine combined." Executive Office of the President, Office of National Drug Control Policy (ONDCP), Prescription for Danger 1 (Jan. 2008) (hereinafter Prescription for Danger). And **[****60]** according to a 2005 survey of teens, "nearly one in five (19 percent or 4.5 million) admit abusing prescription drugs in their lifetime." Columbia University, The National Center on Addiction and Substance Abuse (CASA), "You've Got Drugs!" V: Prescription Drug Pushers on the Internet 2 (July 2008); see also Dept. of Health and Human Services, National Institute on Drug Abuse, High School and Youth Trends 2 (Dec. 2008) ("In 2008, 15.4 percent of 12th-graders reported using a prescription drug nonmedically within the past year").

School administrators can reasonably conclude that this high rate of drug abuse is being fueled, at least in part, by the increasing presence of prescription drugs on school campuses. See, *e.g.*, Gibson, Grand Forks Schools See Rise n Prescription Drug Abuse, Grand Forks Herald, Nov. 16, 2008, pp. A1, A6 (explaining that "prescription drug abuse is growing into a larger problem" as students "'bring them to school and sell them or just give them to their friends'"). In a 2008 survey, "44 percent of teens sa[id] drugs are used, kept or sold on the grounds of their schools." CASA, National Survey of American Attitudes on Substance Abuse XIII: Teens and Parents 19 (Aug. **[****61]** 2008) (hereinafter National Survey). The risks posed by the abuse of these drugs are every bit as serious as the dangers of using a typical street drug.

Teenagers are nevertheless apt to "believe the myth that these drugs provide a medically safe high." ONDCP, Teens **[*396]** and Prescription Drugs: An Analysis of Recent **[**2654]** Trends on the Emerging Drug Threat 3 (Feb. 2007) (hereinafter Teens and Prescription Drugs). But since 1999, there has "been a dramatic increase in the number of poisonings and even deaths associated with the abuse of prescription drugs." Prescription for Danger 4; see also Dept. of Health and Human Services, The NSDUH Report: Trends in Nonmedical Use of Prescription Pain Relievers: 2002 to 2007, p. 1 (Feb. 5, 2009) ("[A]pproximately 324,000 emergency department visits in 2006 involved the nonmedical use of pain relievers"); CASA, Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S., p. 25 (July 2005) ("In 2002, abuse of controlled prescription drugs was implicated in at least 23 percent of drug-related emergency department admissions and 20.4 percent of

[5] Arizona's law is not idiosyncratic; many States have separately criminalized the unauthorized possession of prescription drugs. See, *e.g.*, *Mo. Rev. Stat. § 577.628(1)* (2008 Cum. Supp.) ("No person less than twenty-one years of age shall possess upon the real property comprising a public or private elementary or secondary school or school bus prescription medication without a valid prescription for such medication"); ***Okla. Stat., Tit. 59, § 353.24(2)*** (West 2008 Supp.) ("It shall be unlawful for any person, firm or corporation **[****59]** to . . . [s]ell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except . . . as otherwise provided by the [State] Board of Pharmacy"); *Utah Code Ann. § 58-17b-501(12)* (Lexis 2007) ("'Unlawful conduct' includes:... using a prescription drug . . . for himself that was not lawfully prescribed for him by a practitioner"); see also *Ala. Code § 34-23-7* (2002); Del. Code Ann., Tit. 16, § 4754A(a)(4) (2003); *Fla. Stat. § 499.005(14)* (2007); *N. H. Rev. Stat. Ann. § 318:42(I)* (West Supp. 2008).

all single drug-related emergency department deaths"). At least some of these injuries **[****62]** and deaths are likely due to the fact that "[m]ost controlled prescription drug abusers are poly-substance abusers," *id.*, at 3, a habit that is especially likely to result in deadly drug combinations. Furthermore, even if a child is not immediately harmed by the abuse of prescription drugs, research suggests that prescription drugs have become "gateway drugs to other substances of abuse." *Id.*, at 4; Healy, Skipping the Street, Los Angeles Times, Sept. 15, 2008, p. F1 ("Boomers made marijuana their 'gateway' . . . but a younger generation finds prescription **[***378]** drugs are an easier score"); see also National Survey 17 (noting that teens report "that prescription drugs are easier to buy than beer").

Admittedly, the ibuprofen and naproxen at issue in this case are not the prescription painkillers at the forefront of the prescription-drug-abuse problem. See Prescription for Danger 3 ("Pain relievers like Vicodin and OxyContin are the prescription drugs most commonly abused by teens"). But they are not without their own dangers. As nonsteroidal antiinflammatory drugs (NSAIDs), they pose a risk of death from overdose. The Pill Book 821, 827 (H. Silverman, **[*397]** ed., 13th ed. 2008) (observing that ibuprofen **[****63]** and naproxen are NSAIDs and "[p]eople have died from NSAID overdoses"). Moreover, the side effects caused by the use of NSAIDs can be magnified if they are taken in combination with other drugs. See, *e.g.*, Reactions Weekly, No. 1235 p. 18 (Jan. 17, 2009) ("A 17-year-old girl developed allergic interstitial nephritis and renal failure while receiving escitalopram and ibuprofen"); *id.*, No. 1232 at 26 (Dec. 13, 2008) ("A 16-month-old boy developed iron deficiency anaemia and hypoalbuminaemia during treatment with naproxen"); *id.*, No. 1220 at 15 (Sept. 20, 2008) (18-year-old "was diagnosed with pill-induced oesophageal perforation" after taking ibuprofen "and was admitted to the [intensive care unit]"); *id.*, no. 1170 at 20 (Sept. 22, 2007) ("A 12-year-old boy developed anaphylaxis following ingestion of ibuprofen").

If a student with a previously unknown intolerance to ibuprofen or naproxen were to take either drug and become ill, the public outrage would likely be directed toward the school for failing to take steps to prevent the unmonitored use of the drug. In light of the risks involved, a school's decision to establish and enforce a school prohibition on **[****64]** the possession of any unauthorized drug is thus a reasonable judgment. [6]

[2655]** * * *

In determining whether the search's scope was reasonable under the *Fourth Amendment*, it is therefore irrelevant whether officials suspected Redding of possessing **[*398]** prescription-strength ibuprofen, nonprescription-strength naproxen, or some harder street drug. Safford prohibited its possession on school property. Reasonable suspicion that Redding was in possession of drugs in violation of these policies, therefore, justified a search extending to any area where small pills could **[****65]** be concealed. The search did not violate the *Fourth Amendment*.

II

By declaring the search unreasonable in this case, the majority has "'surrender[ed] control of the American public school system to public school students'" by invalidating school policies that treat all drugs equally and by second-guessing swift disciplinary decisions made by school officials. See *Morse, 551 U.S., at 421, 127 S. Ct. 2618, 168 L. Ed. 2d 290* **[***379]** (Thomas, J., concurring) (quoting *Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 526, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)* (Black, J., dissenting)). The Court's interference in these matters of great concern to teachers, parents, and students illustrates why the most constitutionally sound approach to the question of applying the *Fourth Amendment* in local public schools would in fact be the complete restoration of the common-law doctrine of *in loco parentis*.

"[I]n the early years of public schooling," courts applied the doctrine of *in loco parentis* to transfer to teachers the authority of a parent to "'command obedience, to control

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[6] Schools have a significant interest in protecting all students from prescription drug abuse; young female students are no exception. See Teens and Prescription Drugs 2 ("Prescription drugs are the most commonly abused drug among 12-13-year-olds"). In fact, among 12- to 17-year-olds, females are "more likely than boys to have abused prescription drugs" and have "higher rates of dependence or abuse involving prescription drugs." *Id.*, at 5. Thus, rather than undermining the relevant governmental interest here, Redding's age and sex, if anything, increased the need for a search to prevent the reasonably suspected use of prescription drugs.

stubbornness, to quicken diligence, and to reform bad habits.'" *Morse, supra, at 413-414, 127 S. Ct. 2618, 168 L. Ed. 2d 290* **[****66]** (Thomas, J., concurring) (quoting *State v. Pendergrass, 19 N. C. 365, 365-366 (1837)*). So empowered, schoolteachers and administrators had almost complete discretion to establish and enforce the rules they believed were necessary to maintain control over their classrooms. See 2 J. Kent, Commentaries on American Law * 205 ("So the power allowed by law to the parent over the person of the child may be delegated to a tutor or instructor, the better to accomplish the purpose of education"); 1 W. **[*399]** Blackstone, Commentaries on the Laws of England 441 (1765) ("He may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed"). [7] The perils of judicial policymaking inherent in applying *Fourth Amendment* protections to public schools counsel in favor of a return to the understanding that existed in this Nation's first public schools, which **[**2656]** gave teachers discretion to craft the rules needed to carry out the disciplinary responsibilities delegated **[****67]** to them by parents.

If the common-law view that parents delegate to teachers their authority to discipline and maintain order were to be applied in this case, the search of Redding would stand. There can be no doubt that a parent would have had the authority to conduct the search at issue in this case. Parents have "immunity from the strictures of the *Fourth Amendment*" when it comes to searches of a child or that child's belongings. *T. L. O., 469 U.S., at 337, 105 S. Ct. 733, 83 L. Ed. 2d 720*; see also *id., at 336, 105 S. Ct. 733, 83 L. Ed. 2d 720* (A parent's authority is "not subject to the limits of the *Fourth Amendment*"); *Griffin v. Wisconsin, 483 U.S. 868, 876, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987)* **[****68]** ("[P]arental custodial authority" does not require "judicial approval for [a] search of a minor child's room").

As acknowledged by this Court, this principle is based on the "societal understanding of superior and inferior" with respect to the "parent and child" relationship. *Georgia v. Randolph, 547 U.S. 103, 114, 126 S. Ct. 1515, [***380] 164 L. Ed. 2d 208 (2006)*. In light of this relationship, **[*400]** the Court has indicated that a parent can authorize a third-party search of a child by consenting to such a search, even if the child denies his consent. See *ibid.;* see also 4 W. LaFave, Search and Seizure § 8.3(d), p. 160 (4th ed. 2004) ("[A] father, as the head of the household with the responsibility and the authority for the discipline, training and control of his children, has a superior interest in the family residence to that of his minor son, so that the father's consent to search would be effective notwithstanding the son's contemporaneous on-the-scene objection" (internal quotation marks omitted)). Certainly, a search by the parent himself is no different, regardless of whether or not a child would prefer to be left alone. See *id.*, § 8.4(b), at 202 ("[E]ven [if] a minor child . . . may think **[****69]** of a room as 'his,' the overall dominance will be in his parents" (some internal quotation marks omitted)).

Restoring the common-law doctrine of *in loco parentis* would not, however, leave public schools entirely free to impose any rule they choose. "If parents do not like the rules imposed by those schools, they can seek redress in school boards or legislatures; they can send their children to private schools or home school them; or they can simply move." See *Morse, supra, at 420, 127 S. Ct. 2618, 168 L. Ed. 2d 290* (Thomas, J., concurring). Indeed, parents and local government officials have proved themselves quite capable of challenging overly harsh school rules or the enforcement of sensible rules in insensible ways.

For example, one community questioned a school policy that resulted in "an 11-year-old [being] arrested, handcuffed and taken to jail for bringing a plastic butter knife to school." Downey, Zero Tolerance Doesn't Always Add Up,Atlanta Journal-Constitution, Apr. 6, 2009, p. A11. In another, "[a]t least one school board member was outraged" when 14 elementary-school

[7] The one aspect of school discipline with respect to which the judiciary at times became involved was the "imposition of excessive physical punishment." *Morse, 551 U.S., at 416, 127 S. Ct. 2618, 168 L. Ed. 2d 290* (Thomas, J., concurring). Some early courts found corporal punishment proper "as long as the teacher did not act with legal malice or cause permanent injury"; while other courts intervened only if the punishment was "clearly excessive." *Ibid.* (emphasis deleted; internal quotation marks omitted) (collecting decisions).

students were suspended for "imitating drug activity" after they combined Kool-Aid and sugar in plastic **[****70]** bags. Grant, Pupils Trading Sweet Mix Get Sour **[*401]** Shot of Discipline, Pittsburgh Post-Gazette, May 18, 2006, pp. B1, B2. Individuals within yet another school district protested a "'zero-tolerance' policy toward weapons" that had become "'so rigid that it force[d] schools to expel any student who belongs to a military organization, a drum-and-bugle corps or any other legitimate extracurricular group and is simply transporting what amounts to harmless props.'" Richardson, School Gun Case Sparks Cries **[**2657]** For "Common Sense," Washington Times, Feb. 13-14, 2009, pp. A1, A9. [8]

These local efforts to change controversial school policies through democratic **[***381]** processes have provend successful in many cases. See, *e.g.*, Postal, Schools' Zero Tolerance Could Lose Some Punch, Orlando Sentinel, Apr. 24, 2009, p. B3 ("State lawmakers want schools to dial back strict zero-tolerance policies so students do not end up in juvenile detention for some 'goofy thing'"); Richardson, Tolerance Waning for Zero-tolerance Rules, Washington Times, Apr. 21, 2009, p. A3 ("[A] few states have moved to relax their laws. Utah now allows students to bring asthma inhalers to school without violating the zero-tolerance policy on **[*402]** drugs"); see also Nussbaum, Becoming Fed Up With Zero Tolerance, N.Y. Times, Sept. 3, 2000, section 14, pp. 1, 8 (discussing a report that **[****72]** found that "widespread use of zero-tolerance discipline policies was creating as many problems as it was solving and that there were many cases around the country in which students were harshly disciplined for infractions where there was no harm intended or done").

In the end, the task of implementing and amending public school policies is beyond this Court's function. Parents, teachers, school administrators, local politicians, and state officials are all better suited than judges to determine the appropriate limits on searches conducted by school officials. Preservation of order, discipline, and safety in public schools is simply not the domain of the Constitution. And, common sense is not a judicial monopoly or a constitutional imperative.

III

"[T]he nationwide drug epidemic makes the war against drugs a pressing concern in every school." *Bd. of Educ. v. Earls, 536 U.S. 822, 834, 122 S. Ct. 2559, 153 L. Ed. 2d 735 (2002)*. And yet the Court has limited the authority of school officials to conduct searches for the drugs that the officials believe pose a serious safety risk to their students. By doing so, the majority has confirmed that a return to the doctrine of *in loco parentis* is **[****73]** required to keep the judiciary from essentially seizing control of public schools. Only then will teachers again be able to "'govern the[ir] pupils, quicken the slothful, spur the indolent, restrain the impetuous, and control the stubborn'" by making "'rules, giv[ing] commands, and punish[ing] disobedience'" without interference from judges. *Morse, 551 U.S. at 414, 127 S. Ct. 2618, 168 L. Ed. 2d 290* (Thomas, J., Concurring). By deciding that it is better equipped to decide what behavior should be permitted in schools, the Court has undercut student safety and undermined the authority of school administrators and local officials. Even more troubling, **[*403]** it has done so in a case in which the **[**2658]** underlying response by school administrators was reasonable and justified. I cannot join this regrettable decision. I, therefore, respectfully dissent from the Court's determination that this search violated the *Fourth Amendment*.

References

U.S.C.S., *Constitution, Amendment 4*

Education Law *§§ 9.08*, *12.03*, *12.07* (Matthew Bender)

L Ed Digest, Search and Seizure § 8; States, Territories, and Possessions § 92

[8] See also, *e.g.*, Smydo, Allderdice Parents Decry Suspensions, Pittsburgh Post-Gazette, Apr. 16, 2009, p. B1 (Parents "believe a one-day suspension for a first-time hallway infraction is an overreaction"); O'Brien & Buckham, Girl's Smooch on School Bus Leads to Suspension, Buffalo News, Jan. 6, 2008, p. B1 (Parents of 6-year-old say the "school officials overreacted" when they punished their daughter for "kissing a second-grade boy"); Stewart, Dad Says School Overreacted, Houston Chronicle, Dec. 12, 2007, p. B5 ("The father of a 13-year-old . . . said the school district overstepped its bounds when it suspended **[****71]** his daughter for taking a cell phone photo of another cheerleader getting out of the shower during a sleepover in his home"); Dumenigo & Mueller, "Cops and Robbers" Suspension Criticized at Sayreville School, Star-Ledger (New Jersey), Apr. 6, 2000, p. 15 ("'I think it's ridiculous,' said the mother of one of the [kindergarten] boys. 'They're little boys playing with each other . . . . [W]hen did a finger become a weapon?'").

L Ed Index, Schools and Education

Supreme Court's views as to application or applicability of doctrine of qualified immunity in action **[****74]** under *42 U.S.C.S. § 1983* or in Bivens action, seeking damages for alleged civil rights violations. *116 L. Ed. 2d 965*.

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State v. Polk

Supreme Court of Ohio

March 1, 2017, Submitted; May 11, 2017, Decided

No. 2016-0271

Reporter
150 Ohio St. 3d 29 *; 2017-Ohio-2735 **; 78 N.E.3d 834 ***; 2017 Ohio LEXIS 810 ****; 2017 WL 1951830

THE STATE OF OHIO, APPELLANT, v. POLK, APPELLEE.

Notice: THIS SLIP OPINION IS SUBJECT TO FORMAL REVISION BEFORE IT IS PUBLISHED IN AN ADVANCE SHEET OF THE OHIO OFFICIAL REPORTS.

Prior History: APPEAL from the Court of Appeals for Franklin County, No. 14AP-787, *2016-Ohio-28, 57 N.E.3d 318* **[****1]** .

State v. Polk, 2016-Ohio-28, 2016 Ohio App. LEXIS 23, 57 N.E.3d 318 (Ohio Ct. App., Franklin County, Jan. 7, 2016)

Disposition: Judgment reversed and cause remanded.

Core Terms

bag, unattended, searches, protocol, contents, expectation of privacy, suppress, schools, warrantless search, requires, trial court, intrusion, emptied, privacy interest, school official, public-school, diminished, privacy, papers, bombs, compelling governmental interest, individualized suspicion, court of appeals, initial search, suspecting, abandoned, balancing, cursory, grounds, opened

Case Summary

Overview
HOLDINGS: [1]-Based on the facts of this case, the Supreme Court held that a high school's protocol requiring searches of unattended book bags - to determine ownership and whether the contents are dangerous - furthers the compelling governmental interest in protecting public-school students from physical harm; [2]-The school employees' search of an unattended book bag belonging to appellee was limited to furthering that compelling governmental interest and was reasonable under the *Fourth Amendment*; [3]-Although a cursory review of the bag, which was left on an empty school bus, provided a school official with the name of the bag's owner, it did not enable him to determine that the contents were not dangerous; that determination could not be made - and execution of the school's reasonable protocol for searching unattended book bags could not be completed - until the bag was emptied.

Outcome
Reversed and remanded.

Counsel: Ron O'Brien, Franklin County Prosecuting Attorney, and Seth L. Gilbert, Assistant Prosecuting Attorney, for appellant.

Yeura R. Venters, Franklin County Public Defender, and Timothy E. Pierce and George M. Schumann, Assistant Public Defenders, for appellee.

Michael DeWine, Attorney General, Eric E. Murphy, State Solicitor, Michael J. Hendershot, Chief Deputy Solicitor, Samuel C. Peterson, Deputy Solicitor, and Katherine J. Bockbrader, Assistant Attorney General, urging reversal for amicus curiae Ohio Attorney General Michael DeWine.

Bricker & Eckler, L.L.P., and Jennifer M. Flint, urging reversal for amici curiae Ohio School Boards

Association, **[****2]** Buckeye Association of School Administrators, Ohio Association of School Business Officials, Ohio Association of Secondary School Administrators, Ohio Federation of Teachers, and Ohio Education Association.

Timothy Young, Ohio Public Defender, and Nikki Trautman Baszynski, Assistant Public Defender, urging affirmance for amicus curiae Ohio Public Defender.

Marsha L. Levick, urging affirmance for amici curiae Juvenile Law Center, Center of Juvenile Law and Policy, Center for Wrongful Convictions of Youth, Children's Law Center, Inc., Rutgers School of Law Children's Justice Clinic, Rutgers Criminal and Youth Justice Clinic, Education Law Center-PA, Professor Barry C. Feld, Juvenile Defenders Association of Pennsylvania, Juvenile Justice Initiative, National Center for Youth Law, National Juvenile Justice Network, Northeast Juvenile Defender Center, Roderick and Solange MacArthur Justice Center, and Youth Law Center.

Law Office of Matthew C. Bangerter and Matthew C. Bangerter; and Russell S. Bensing, urging affirmance for amicus curiae Ohio Association of Criminal Defense Lawyers.

Kimberly Payne Jordan, urging affirmance for amicus curiae Justice for Children Project, Moritz College of Law **[****3]** Clinical Programs, Ohio State University.

Judges: KENNEDY, J. O'CONNOR, C.J., and O'DONNELL, FRENCH, O'NEILL, FISCHER, and DEWINE, JJ., concur.

Opinion by: KENNEDY

Opinion

[*836] [*30] KENNEDY, J.**

I. INTRODUCTION

[P1]** In this discretionary appeal, we decide whether the Tenth District Court of Appeals erred in affirming the judgment of the Franklin County Court of Common Pleas granting a defense motion to suppress evidence seized during the warrantless search of an unattended book bag. The search was conducted by a school employee responsible for students' safety and security and the school's principal to determine who owned the bag and to ensure that its contents were not dangerous.

[P2]** Based on the facts of this case, we hold that the school's protocol requiring searches of unattended book bags—to determine ownership and whether the contents are dangerous—furthers the compelling governmental interest in protecting public-school students from physical harm. We further hold that the school employees' search of the unattended book bag belonging to appellee, Whetstone High School student Joshua Polk, was limited to furthering that compelling governmental interest and was reasonable under the *Fourth Amendment to the United States Constitution*. Therefore, we reverse the judgment of the court **[****4]** of appeals and remand the cause to the trial court for further proceedings consistent with this opinion.

II. FACTS AND PROCEDURAL HISTORY

[P3]** Robert Lindsey, who is not a police officer, is employed as a safety and security resource coordinator by the Columbus City School District. His job is to ensure that students are safe, and it requires him to undertake tasks such as running fire drills and carrying out security checks of school buildings, the students, and their lockers. At a hearing on Polk's **[***837]** suppression motion, Lindsey testified that Columbus's Whetstone High School has an unwritten protocol requiring searches of "unattended" book bags to identify their owners and to ensure that their contents are not dangerous. Lindsey testified that the protocol was based on "current events and safety concerns," "what's going on with America," and studies indicating that an "[u]nattended bag * * * is a priority." Lindsey estimated that he searches 15 to 20 bags a day, either because a bag is suspected to contain contraband or because it has been left unattended.

[P4]** Lindsey testified that Whetstone bus drivers perform walk-throughs of the buses after their routes are complete to ensure that no student has remained **[****5]** on the bus. On February 5, 2013, while Lindsey was on duty at Whetstone, a bus driver found a book bag during his walk-through and gave it to Lindsey. Lindsey testified that it was a typical book bag carried by Whetstone students. **[*31]** He opened the bag enough to discern papers, notebooks, a binder, and "stuff like that." One of the papers had Polk's name on

it. Recalling a rumor that Polk was possibly in a gang, Lindsey immediately took the bag to Whetstone's principal, a Mr. Barrett. Together they emptied Polk's bag of its contents—which, Lindsey testified, he would have done regardless of the rumor that Polk may have been in a gang because that was the protocol. Upon emptying the bag, Lindsey and Barrett discovered bullets, which Lindsey had not noticed when he initially opened the bag after receiving it from the bus driver. Barrett then notified a police officer.

[P5]** Lindsey, Barrett, and the police officer determined Polk's location in the school and went to find him. When they found Polk walking in a crowded hallway, they moved him into another hallway away from other students. The police officer then incapacitated Polk by placing him in a hold and instructed Lindsey to search a book **[****6]** bag that Polk was carrying. Lindsey found a handgun in a side compartment of that bag.

[P6]** The state charged Polk with one count of conveyance or possession of a deadly weapon or dangerous ordnance in a school-safety zone. Polk filed a motion to suppress the bullets and the handgun, arguing that the searches of both book bags were unreasonable under the *Fourth Amendment* and that regardless of the legality of the search of the bag that Polk was found carrying, the handgun should be excluded as fruit of the poisonous tree. The state filed a memorandum in opposition.

[P7]** The trial court granted Polk's motion to suppress. The court first determined that Lindsey's initial search of the unattended bag—to identify its owner and to ensure that its contents were not dangerous—was reasonable. The court further determined, however, that the "second and more intrusive search" of the unattended bag, conducted by Lindsey and Principal Barrett, was unreasonable because it was "conducted solely based on the identity and reputation of the owner," which did not constitute reasonable grounds for suspecting a violation of school rules or the law.

[P8]** In a two-to-one decision, the court of appeals affirmed the trial court's judgment, **[****7]** essentially adopting the trial court's reasoning and adding that the trial court had correctly suppressed the handgun as fruit of the poisonous tree. *2016-Ohio-28, 57 N.E.3d 318, ¶ 12-19*. The dissenting judge noted that "when considering the second search, the majority applied the test outlined in [*New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985)]* for the *initial* search[,]" i.e., whether Lindsay '"had "reasonable grounds" for **[***838]** suspecting that the search would turn up evidence that [Polk] had violated or was violating either school rules or the law.'" (Emphasis added.) *2016-Ohio-28, 57 N.E.3d 318, at ¶ 33* (Dorrian, P.J., concurring and dissenting), quoting the trial court's **[*32]** opinion. The dissenting judge went on to conclude that "the [trial] court's question regarding the second search should have been whether the measures adopted [by the school] were reasonably related to the objectives of the initial search (safety and identification) and whether the search was not excessively intrusive." *Id. at ¶ 34*.

[P9]** We accepted the state's discretionary appeal, in which it asserts the following three propositions of law:

> (1) A search is constitutional if it complies with a public school's reasonable search protocol. The subjective motive of the public-school employee performing the search is irrelevant.
>
> (2) The sole purpose **[****8]** of the federal exclusionary rule is to deter police misconduct. As a result, the exclusionary rule does not apply to searches by public-school employees.
>
> (3) Suppression is proper only if the deterrence benefits of suppression outweigh its substantial social costs.

See 145 Ohio St. 3d 1470, 2016-Ohio-3028, 49 N.E.3d 1313. Because we conclude that Whetstone's search protocol is reasonable and that Lindsey and Principal Barrett's search complied with it, it is not necessary to address either the relevance of the subjective motive raised in the state's first proposition of law or the issues raised in the state's second and third propositions of law.

[P10]** The state argues that because a public school is a "special need" setting in which students have a limited expectation of privacy and because public schools have a compelling governmental interest in protecting student safety, the search of the book bag that Polk left on the bus was reasonable because it complied with Whetstone's protocol for searching unattended book bags and because the protocol is reasonable.

[P11]** In response, Polk notes that while a student in a public-school setting has a diminished expectation of privacy in an unattended book bag, that expectation of privacy is not nonexistent. **[****9]** Polk contends that while Lindsey possessed authority to inspect Polk's unattended bag to identify its owner and to determine whether the contents were dangerous, Lindsey's initial search of the bag satisfied these objectives. Therefore, Polk argues, the "second, more-intrusive investigatory search" conducted by Lindsey and Barrett violated the *Fourth Amendment*.

III. ANALYSIS

A. "Special Needs" Searches Not Based on Individualized Suspicion

[P12]** The *Fourth Amendment to the United States Constitution* provides that "[t]he right of the people to be secure in their persons, houses, papers, and **[*33]** effects, against unreasonable searches and seizures, shall not be violated." "To be reasonable under the *Fourth Amendment*, a search ordinarily must be based on individualized suspicion of wrongdoing." *Chandler v. Miller, 520 U.S. 305, 313, 117 S.Ct. 1295, 137 L.Ed.2d 513 (1997)*, citing *Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 652-653, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995)*. "But particularized exceptions to the main rule are sometimes **[***839]** warranted based on 'special needs, beyond the normal need for law enforcement.'" *Id.*, quoting *Skinner v. Ry. Labor Executives' Assn., 489 U.S. 602, 619, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989)*. "When such 'special needs'—concerns other than crime detection—are alleged in justification of a *Fourth Amendment* intrusion, courts must undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties." *Id. at 314*. And "'[i]n limited circumstances, where the privacy interests **[****10]** implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion.'" *Id.*, quoting *Skinner, 489 U.S. at 624*.

B. Permissibility of Warrantless Searches in Special-Needs Settings

[P13]** In *T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720*, the United States Supreme Court first upheld a warrantless search in a special-needs setting. *Ferguson v. Charleston, 532 U.S. 67, 74, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001), fn. 7*. "[U]nder *T.L.O.*, the Supreme Court has moved away from a rule-based search and seizure jurisprudence toward a case-by-case method that will often turn on a careful and meticulous analysis of the facts of the case." *State v. Lindsey, 881 N.W.2d 411, 425 (Iowa 2016)*.

[P14]** In *T.L.O.*, a teacher, upon discovering a student smoking (which was against school rules), took the student to the principal's office. When the student denied that she had been smoking, the principal demanded her purse, opened it, and discovered cigarettes and rolling papers associated with marijuana use. The principal then searched the rest of the student's purse, discovering marijuana, drug paraphernalia, and other incriminating evidence.

[P15]** The state filed delinquency charges against the student, who moved to suppress the evidence found in her purse. **[****11]** The juvenile court denied the motion to suppress, finding that there was reasonable suspicion to search the purse for cigarettes and that once the purse was open, the marijuana could be seized under the plain-view doctrine.

[P16]** The juvenile was adjudicated delinquent. The court of appeals found no violation of the *Fourth Amendment* but vacated the judgment of delinquency on other grounds. The student appealed the *Fourth Amendment* ruling, and the **[*34]** New Jersey Supreme Court held that the search was unreasonable and ordered that the evidence be suppressed.

[P17]** The United States Supreme Court granted the state's petition for certiorari to determine whether the exclusionary rule applied, but that issue became moot when the court determined that the *Fourth Amendment* applied to searches of students conducted by school officials and that the search employed in *T.L.O.* was reasonable. *469 U.S. at 332, 105 S.Ct. 733, 83 L.Ed.2d 720*.

[P18]** Recognizing that "'[t]he basic purpose of [the *Fourth Amendment*] * * * is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials,'" the court in *T.L.O.* held that

"[i]n carrying out searches and other disciplinary functions pursuant to [school disciplinary] policies, school officials act as representatives of the State, not merely as surrogates **[****12]** for the parents, and they cannot claim the parents' immunity from the strictures of the *Fourth Amendment*." *Id. at 335-337*, quoting *Camara v. Mun. Court **[***840]** of San Francisco, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967)*.

[P19]** In determining whether the principal's warrantless search was reasonable under the *Fourth Amendment*, the court stated that "[t]he determination of the standard of reasonableness governing any specific class of searches requires 'balancing the need to search against the invasion which the search entails.'" *Id. at 337*, quoting *Camara, 387 U.S. at 536-537*. Accordingly, the court balanced a student's privacy interest in bringing certain types of property to school (e.g., school supplies, keys, money, and personal-hygiene items as well as highly personal items like photos and diaries) against "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds." *Id. at 339*. The court recognized that

> "[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action." * * * Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.

Id. at 339-340, quoting *Goss v. Lopez, 419 U.S. 565, 580, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975)*, and citing *Goss, 419 at 582-583* and *Ingraham v. Wright, 430 U.S. 651, 680-682, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977)*.

[P20]** The court explained **[****13]** that in striking a balance between students' expectation of privacy and school officials'"need to maintain an environment in which learning can take place[,] [i]t is evident that the school setting requires **[*35]** some easing of restrictions to which searches by public authorities are ordinarily subject"—namely, the requirements of probable cause and a search warrant. *T.L.O., 469 U.S. at 340, 105 S.Ct. 733, 83 L.Ed.2d 720*. The court held that the

> substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the *reasonableness, under all the circumstances*, of the search.

(Emphasis added.) *Id. at 341*.

[P21]** After *T.L.O.*, the court next examined the issue of warrantless searches in the school context in the form of random drug testing of student-athletes and students who participate in extracurricular activities. *See Acton, 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564* (upholding random drug testing of student-athlete); *Bd. of Educ. of Indep. School Dist. No. 92 of Pottawatomie Cty. v. Earls, 536 U.S. 822, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002)* (upholding random drug testing of students who participate in certain extracurricular **[****14]** activities). In both cases, the court applied a balancing test appropriate for special-needs searches that are not based on individualized suspicion. Under this balancing test, the court weighs the importance of the government's interest and the efficacy of the search policy in furthering that interest against the nature of the privacy interest involved and the intrusiveness **[***841]** of the search. *Acton, 515 U.S. at 664-665*; *Earls, 536 U.S. at 830-834*. In both cases, the court upheld the random drug testing of certain students in light of the government's important interest in deterring drug use by schoolchildren and the students' diminished expectations of privacy.

[P22]** Indeed, "while children assuredly do not 'shed their constitutional rights * * * at the schoolhouse gate,' * * * the nature of those rights is what is appropriate for children in school." (First ellipsis sic.) *Acton, 515 U.S. at 655-656*, quoting *Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 506, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969)*. "A student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and *safety*." (Emphasis added.) *Earls, 536 U.S. at 830-831*. And "[s]ecuring order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults." *Id. 536 U.S. at 831*, citing *T.L.O., 469 U.S. at*

350 (Powell, J., concurring).

[*36] C. Whetstone's Search [**15] Protocol**

[P23]** As previously noted, in *T.L.O.*, the Supreme Court held that the legality of the warrantless search of a student depends on the search's "reasonableness, under all the circumstances." 469 U.S. at 341, 105 S.Ct. 733, 83 L.Ed.2d 720. The *T.L.O.* reasonableness standard requires that the court first ask whether the search was "'justified at its inception'"—that is, whether there were "reasonable grounds for suspecting that the search [would] turn up evidence that the student ha[d] violated or [was] violating either the law or the rules of the school." *Id.*, 469 U.S. at 341-342, quoting *Terry*, 392 U.S. at 20, 88 S. Ct. 1868, 20 L.Ed.2d 889.

[P24]** The search in *T.L.O.* was based on individualized suspicion of wrongdoing. *Id.*, 469 U.S. at 344-345. In this case, however, no violation was suspected at the time of Lindsey and Principal Barrett's search of Polk's unattended bag. We are asked to determine the reasonableness of Whetstone's search protocol as applied to this special-needs search. Accordingly, in analyzing Whetstone's search protocol, we find instructive the balancing test established by the Supreme Court in *Acton* and *Earls*, which weighs the importance of the government's interest and the efficacy of the search policy in meeting that interest against the nature of the privacy interest involved and the intrusiveness of the search. **[****16]**

1. Importance of governmental interest and efficacy of searching unattended book bags

[P25]** Schools have an obligation to keep their students safe. *Earls*, 536 U.S. at 830, 122 S. Ct. 2559, 153 L.Ed.2d 735. "Columbine, Virginia Tech University, and now Sandy Hook underscore a fundamental policy change that has taken place in our schools. We now pursue a new fundamental value in our schools: security." Demitchell, *Locked Down & Armed: Security Responses to Violence in Our Schools*, 13 Conn.Pub.Int.L.J. 275, 281 (2014). The United States Department of Homeland Security's "See Something Say Something" website warns that persons should be suspicious of "abandoned" items like luggage. *See* http://www.nationalterroralert.com/suspicious-activity/ (accessed Apr. 17, 2017). Because of "the perceived crisis concerning violence and drug use in the schools, * * * school officials may be remiss if they *do not* find and seize objects which might pose a threat to the well being of other students or school officials." **[***842]** (Emphasis sic.) Ferraraccio, *Metal Detectors in the Public Schools: Fourth Amendment Concerns*, 28 J.L. & Educ. 209, 214 (1999).

[P26]** These warnings are reflective of school shootings and bomb threats and, more generally, terror attacks that have occurred in this country. Lindsey testified that Whetstone's protocol requiring searches of unattended book bags to identify their owners and to ensure that their contents are not dangerous was **[*37]** born of these concerns. **[****17]** Therefore, Whetstone's protocol supports the compelling governmental interest in public-school safety by helping to ensure that the contents of the bags are not dangerous and in turn that Whetstone's students remain safe from physical harm. *See generally* *MacWade v. Kelly*, 460 F.3d 260 (2d Cir.2006) (holding that random warrantless searches of subway riders' closed containers supported deterrence of terrorism and were reasonable under the *Fourth Amendment*). And a complete search of unattended bags is effective in ensuring that they do not contain dangerous contents. See *Earls*, 536 U.S. at 837-838; *Acton*, 515 U.S. at 663-664, 115 S.Ct. 2386, 132 L.Ed.2d 564. Anything less than a complete search may miss dangerous items, as we explain later in this opinion.

2. Students' expectation of privacy in unattended book bags

[P27]** The *Fourth Amendment* protects persons from unreasonable searches only to the extent that they have a reasonable expectation of privacy in the property at issue. *Athens v. Wolf*, 38 Ohio St.2d 237, 240, 313 N.E.2d 405 (1974). "The [Fourth] Amendment does not protect the merely subjective expectation of privacy, but only those 'expectation[s] that society is prepared to recognize as "reasonable."'" *Oliver v. United States*, 466 U.S. 170, 177, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984), quoting *Katz v. United States*, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). A person forfeits his reasonable expectation of privacy in his property when he abandons it. *State v. Gould*, 131 Ohio St. 3d 179, 2012-Ohio-71, 963 N.E.2d 136, ¶ 30. In the context of the *Fourth Amendment*, property is abandoned if there is evidence that ownership of it has been

relinquished. **[****18]** *Id.*

[P28]** Whetstone's search protocol requires school officials to search unattended book bags. The dictionary definition of "unattended" is "not watched with care, attentiveness, or accuracy." *Webster's Third New International Dictionary* 2482 (2002). Property left unattended in a public place is usually considered abandoned for purposes of the *Fourth Amendment*. *See, e.g.*, *United States v. Thomas, 864 F.2d 843, 846-847, 275 U.S. App. D.C. 21 (D.C.Cir.1989)* (defendant had no reasonable expectation of privacy in gym bag he left on floor of public hallway in apartment building).

[P29]** Unlike in *Thomas,* the bag in this case was not left in a public place; it was left on an empty school bus to which the general public had no access. Polk's book bag was not abandoned in the sense that he had relinquished ownership of it. However, leaving a book bag on an empty school bus does diminish the owner's expectation of privacy because school buses transport children to and from school. Children are inquisitive and might be inclined to open an unattended book bag. *See State v. Flynn, 360 N.W.2d 762, 765 (Iowa 1985)* ("the place where seized property is located may be so exposed as to negate any reasonable expectation of privacy"), citing *State v. Kramer, 231 N.W.2d 874, 879 [*38] (Iowa 1975)*; *People v. Shepherd, 23 Cal.App.4th 825, 828-829, 28 Cal.Rptr.2d 458 (1994)* ("an important consideration in evaluating a privacy interest is **[***843]** whether a person has taken normal precautions to **[****19]** maintain his or her privacy").

[P30]** The definition of "unattended" is similar to the definition of "lost," which is defined as "gone out of one's possession or control; mislaid." *Webster's Third New International Dictionary* at 1338. Therefore, we also look to case law addressing lost property to assist our analysis. "Property is lost through inadvertence, not intent." *State v. Ching, 67 Haw. 107, 110, 678 P.2d 1088 (1984)*. Consequently, a person retains a reasonable expectation of privacy in a lost item, "diminished to the extent that the finder may examine the contents of that item as necessary to determine the rightful owner." *State v. Hamilton, 67 P.3d 871, ¶ 26 (Mont.2003)*; *accord Ching at 110*; *State v. Kealey, 80 Wash.App. 162, 173, 907 P.2d 319 (1995)*.

[P31]** One's expectation of privacy in a closed container is further diminished to the extent that there is a need to ensure that its contents are not dangerous to the public. *See Knight v. Commonwealth, 61 Va.App. 297, 306, 734 S.E.2d 716 (2012)*; *accord Ching at 112*. Although the above cases involved property found by law-enforcement officials, the rationale justifying the warrantless investigatory search of a closed container applies to school officials who are responsible for the safety of students.

[P32]** In light of Whetstone's compelling interest in ensuring that unattended book bags do not contain dangerous items and of Polk's greatly diminished expectation of privacy in his unattended **[****20]** bag, we conclude that Whetstone's protocol requiring searches of unattended book bags to identify their owners and to ensure that their contents are not dangerous is reasonable under the *Fourth Amendment*.

3. Intrusiveness of search of Polk's unattended bag

[P33]** It is undisputed that Lindsey conducted a cursory inspection of Polk's unattended book bag that yielded the name of its owner, then shortly thereafter emptied the bag. The trial court found that "it was reasonable for Officer Lindsey to conduct his initial search of the unattended book bag for not only *safety* and *security* purposes, but also to identify the book bag's owner. Having done so, his original purpose for the search was fulfilled." (Emphasis added.) The court then held, however, that Lindsey and Principal Barrett's subsequent emptying of the bag was unreasonable because it was a *new* search motivated solely by the rumor that Polk possibly was a gang member.

[P34]** The court of appeals deferred to the trial court's finding that Lindsey's cursory search of the unattended bag satisfied the purposes of identifying its **[*39]** owner and ensuring that its contents were not dangerous. We conclude, based on this record, that that finding did not warrant the appellate **[****21]** court's deference.

[P35]** Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside, 100 Ohio St. 3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8*.

> "An appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. * * * Accepting these facts as

> true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard."

[*844]** *State v. Codeluppi, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7*, quoting *Burnside at ¶ 8*.

[P36]** The trial court held that Lindsey was justified in searching the unattended bag to identify its owner *and* to ensure that its contents were not dangerous, but it did not explain why merely opening and peering into a book bag full of items would be sufficient to ensure that none of its contents were dangerous. A cursory inspection might easily fail to detect the presence of small but dangerous items. *See Illinois v. Lafayette, 462 U.S. 640, 646, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983)* ("Dangerous instrumentalities—such as razor blades, bombs, or weapons—can be concealed in innocent-looking articles taken from the arrestee's possession"). Eric Harris and Dylan Klebold, the two students responsible for the Columbine High School shootings, fashioned explosive devices out of CO2 cartridges called "cricket **[****22]** bombs." *http://www.cnn.com/SPECIALS/2000/columbine.cd/Pages/BOMBS_TEXT.htm* (accessed Apr. 17, 2017); *see also https://www.youtube.com/watch?v=fYc8ci9z1nY* (accessed Apr. 17, 2017) (showing a cricket-bomb explosion). Cricket bombs are so small that they are likely to evade a cursory search of a book bag, as did the bullets in this case. *See People v. Getman, 188 Misc.2d 809, 817, 729 N.Y.S.2d 858 (2001)* (noting that cricket bombs fit in the pocket of a jacket). Consequently, we conclude that there is not competent, credible evidence to support the trial court's finding that Lindsey's act of opening Polk's unattended bag enough to observe papers, notebooks, and a binder was sufficient to ensure that the bag contained no dangerous items.

[P37]** Moreover, a reasonable delay in completing the execution of a search does not change the fact that a defendant is "no more imposed upon than he could have been at the time" that the reasons justifying the search first arose. *United States v. Edwards, 415 U.S. 800, 805, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974)*. And a warrantless search is not unreasonable merely because officials bring the **[*40]** item to another location before searching it. *United States v. Johns, 469 U.S. 478, 486, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985)*.

[P38]** Lindsey testified that he only peered into Polk's unattended bag when it first came into his possession and that he could see papers, notebooks, and a binder. That cursory review provided him with the name of the bag's owner, but it did not enable him to determine that the **[****23]** contents were not dangerous. That determination could not be made—and execution of Whetstone's reasonable protocol for searching unattended book bags could not be completed—until the bag was emptied.

IV. CONCLUSION

[P39]** Whetstone's protocol requiring searches of unattended book bags furthers the compelling governmental interest in protecting public-school students from physical harm. As executed here, the search of Polk's unattended book bag was limited to fulfilling the purposes of Whetstone's search protocol—to identify the bag's owner and to ensure that its contents were not dangerous. Accordingly, we reverse the judgment of the court of appeals and remand the cause to the trial court for further proceedings consistent with this opinion.

Judgment reversed and cause remanded.

O'CONNOR, C.J., and O'DONNELL, FRENCH, O'NEILL, FISCHER, and DEWINE, JJ., concur.

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Constitutional Law and Public Schools: 14th Amendment

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Fourteenth Amendment of the U.S. Constitution

- Due Process: “No state . . . shall … deprive any person of life, liberty, or property, without due process of law[.]”

- Equal Protection: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

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Due Process

- Procedural Due Process
  - Procedural Due Process generally requires:
    - 1) notice; and
    - 2) an opportunity to be heard before school districts discipline students or terminate a teacher with a property right in her job

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Due Process

- Student discipline
  - Ohio's compulsory attendance laws create a property interest in public education that may not be taken away for misconduct without complying with the Due Process Clause

Due Process

- *Goss v. Lopez*, 419 U.S. 565 (1975)
  - Students facing temporary suspension from a public school have property and liberty interests under the Due Process clause of the 14th Amendment
  - Due Process required that a student (facing suspension of 10 days or less in this case) must be given **oral or written notice** of the charges against him and, if he denies them, an explanation of the evidence authorities have and an **opportunity to present his version**

Due Process

- Generally, notice and a hearing should precede the student's removal from school
    - If prior notice and hearing are not feasible (as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school) the necessary notice and hearing should follow as soon as practicable

Due Process

- A suspension without notice and some form of a hearing violates the Due Process Clause
  - More extensive hearings may be required for expulsions

Due Process

- Ohio's Due Process requirements for suspension and expulsion amended and enacted in light of *Goss v. Lopez*
  - R.C. 3313.66 and R.C. 3313.661
    - Policy Requirement
      - School districts are required to adopt a policy regarding suspension, expulsion, removal, and permanent exclusion that specifies the types of misconduct for which a pupil may be suspended, expelled, or removed

Due Process

- The policy should outline the types of misconduct in a manner that places students on notice of what type of conduct actions will result in disciplinary action

- Schools must post a copy of the policy in a central location in the school and the policy must be made available to pupils upon request

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Due Process

- Suspension – Superintendent or principal may suspend a student for ten or fewer school days (School Board may adopt policy allowing assistant principals and other administrators to suspend a student)
    - A student may not be suspended unless, prior to the suspension, the superintendent or principal:
        - 1) Gives the student written notice of the intention to suspend the student and the reasons why; and

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Due Process

- 2) Provides the student an opportunity to appear at an informal hearing before the principal, assistant principal, superintendent, or superintendent's designee and challenge the reason for the intended suspension or otherwise to explain the student’s actions

Due Process

- Expulsion – Superintendent may expel a student for a period of 80 schools days or less, or the number of school days remaining in the semester/term in which the incident takes place (period may be extended in certain circumstances, including the following school year if there are an insufficient number of days remaining in the school year). Students may be expelled for one year for bringing a firearm to school or extracurricular event

Due Process

- A student may not be expelled unless, prior to the expulsion, the superintendent:
- 1) Gives the student and the student's parent/guardian/custodian written notice of intent to expel the student (Statute provides specific requirements of the notice); and
- 2) Provides the pupil and the pupil's parent, guardian, custodian, or representative an opportunity to appear in person before the superintendent or the superintendent's designee to challenge the reasons for the intended expulsion or otherwise to explain the pupil's actions.

Due Process

- If a student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process taking place either within a classroom or elsewhere on the school premises, the superintendent or a principal or assistant principal may remove a pupil from curricular activities or from the school premises, and a teacher may remove a pupil from curricular activities under the teacher's supervision, without the notice and a hearing. As soon as practicable after making such a removal, the teacher shall submit in writing to the principal the reasons for such removal.

Due Process

- If a pupil is removed, written notice of the hearing and of the reason for the removal shall be given to the student as soon as practicable prior to the hearing, which shall be held within three school days from the time the initial removal is ordered. The individual who ordered, caused, or requested the removal to be made shall be present at the hearing.

Due Process

- If the superintendent or the principal reinstates a pupil in a curricular activity under the teacher's supervision prior to the hearing following a removal under this division, the teacher, upon request, shall be given in writing the reasons for such reinstatement.

- If a student suspended for bringing a firearm or knife to school, the superintendent is required to notify the Registrar of Motor Vehicles and the juvenile judge in the county within two weeks of the discipline. R.C. 3321.13(B)(4).

Due Process

- If a student is suspended or expelled, the superintendent or principal, within one school day after the time of the student's expulsion or suspension, shall notify in writing the parent, guardian, or custodian of the student, and the treasurer of the board of education of the expulsion or suspension.

Due Process

- The notice must include:
  - 1) the reasons for the expulsion or suspension,
  - 2) notice of the right of the pupil or the student's parent, guardian, or custodian to appeal the expulsion or suspension to the board of education or to its designee,
  - 3) notice of the right to be represented in all appeal proceedings,

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Due Process

- 4) notice of the right to be granted a hearing before the board or its designee in order to be heard against the suspension or expulsion,
- 5) notice of the right to request that the hearing be held in executive session,
- 6) notice that the expulsion may be subject to extension if the student is sixteen years of age or older, and
- 7) notice that the superintendent may seek the student's permanent exclusion, if applicable.

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Due Process

- R.C. 3313.66 generally complies with *Goss v. Lopez*
  - However, in *Heyne v. Metropolitan Nashville Pub. Schools*, 655 F.3d 556, 568 (6th Cir.2011), a principal was subject to a Procedural DP claim where it was alleged that he instructed school staff to be more lenient in enforcing the code of conduct against African American students and enhanced the disciplinary proceedings of another student in an alleged effort alter racial inequality in discipline at the school.

Due Process

- Employee Discipline
  - An employee must have either a “liberty interest” or a “property interest” to be entitled to Due Process
  - Liberty interest – If an employee’s “good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.”

Due Process

- Analysis:
  - 1) Did the school make the reasons for the employee's termination public? (i.e., did the school state the reasons for termination to enough people to make it difficult for the employee to obtain another job?) (Note: this issue can be avoided if the school does not publicly state the reasons for an employee's termination).
  - 2) If yes, was there a "name-clearing hearing"?
    - If yes, no DP violation.
    - If no, DP violation.

Due Process

- “When termination of public employment is based on a charge of dishonest or immoral conduct, an employee's liberty interests are at stake-such a charge can “foreclose [the employee's] freedom to take advantage of other employment opportunities”-and due process protections are required.” *Burt v. Bd. of Educ. of City of Grand Rapids*, 35 F.3d 565 (6th Cir.1994) (quoting *Board of Regents v. Roth,* 408 U.S. 564, 573-74 (1972)).

Due Process

- Property interest –
  - As a practical matter, most if not all, Collective Bargaining Agreements provide for internal, pre-termination hearings which provide school district employees with Due Process in the form of notice of the charges against them, an opportunity to respond, and post-termination hearings (e.g., arbitration)

Due Process

- Teachers with a continuing contract have an expectancy of continued employment and therefore a property interest (i.e., they must be afforded Due Process prior to termination)

- It is unlikely that non-tenured teachers have a property interest in their contracts

    - However, R.C. 3319.11 and 3319.111 provide procedures in relation to non-tenured teachers which provide them with some limited rights

Due Process

- Substantive Due Process
  - Substantive due process is not fixed or final, but generally is given to matters relating to marriage, family, procreation, and the right to bodily integrity.
    - A substantive due process violation must be something more than an ordinary tort to be actionable under § 1983

Due Process

- To prevail on a substantive due process claim, plaintiff must generally prove action "shocking to the conscience." *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952).

- In determining whether corporal punishment of students is extreme enough to constitute a substantive due process violation, courts focus on "whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." *Garcia ex rel. Garcia v. Miera*, 817 F.2d 650, 655 (10th Cir.1987), cert. denied, 485 U.S. 959. 108 S. Ct. 1220, 99 L.Ed.2d 421 (1988) (quoting Hall v. Tawney, 621 F.2d 607, 613 (4th Cir.1980).

Due Process

- Where there is no physical injury or danger of injury, the conduct alleged must be excessive and severe to rise to the level of "brutal and inhumane abuse" of power.
  - *Abeyta v. Chama Valley Independent School Dist.*, 77 F.3d 1253 (10th Cir. 1996) – A teacher called a female student a prostitute for a month and a half and allowed other students to tease her about being a prostitute. The court found that the conduct did not rise to the level of a substantive due process violation, even if it caused psychological injury.
  - *Petrone v. Cleveland State Univ.*, 993 F. Supp. 1119, 1126 (N.D. Ohio 1998) – A professor's romantic pursuit of student and one incident of touching student's leg was "not of the outrageous and shocking character that is required for a substantive due process violation."

Due Process

- While schools cannot violate rights secured by the Constitution or laws of the United States, including the Fourteenth Amendment, schools cannot be held liable simply because one of their employees allegedly violated a plaintiff's constitutional rights (i.e., there is no *respondeat superior* liability under § 1983)
    - Supervisory officials are not liable for alleged harassment by their subordinates unless the supervisor encouraged the misconduct or in some other way directly participated in it

Due Process

- In order for a school to be liable for a violation of the Constitution (including a violation of the Fourteenth Amendment), a "plaintiff must prove that the constitutional deprivation occurred as a result of an official custom or policy of the [school]." *Monell v. Department of Social Svcs.* 436 U.S. 658, 690 (1978)

    - A policy is "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers."

Due Process

- A “custom” need not have been officially adopted but is a practice “so permanent and well settled as to constitute a custom or usage with the force of law.”
    - A custom is “a legal institution not memorialized by written law.”

Equal Protection

- The Fourteenth Amendment prevents schools from making distinctions that:
  - (1) burden fundamental rights;
  - (2) target a suspect class; or
  - (3) intentionally treat one individual differently from others similarly situated without rational basis.

Equal Protection

- As mentioned above, a school is only liable for equal protection violations under § 1983, “when execution of [the school’s] policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.” In other words, the constitutional violation must have occurred as a result of an official custom or policy of the school.

    - There also must be an affirmative link between the policy and the particular constitutional violation alleged

Equal Protection

- If a student harasses another student, school districts may be liable under Equal Protection if student can demonstrate unequal treatment based upon protected class (i.e., race, gender, etc.)

- The most common method to establish a violation of the Equal Protection Clause requires proof that the school intentionally discriminated against a student or teacher because of membership in a protected class.

    - School officials must have discriminated against the individual ***because of*** the individual's membership in a particular class, not merely because the individual was treated unfairly

Equal Protection

- Schools must treat similarly situated individuals in a similar manner
    - For example, *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1360 (6th Cir. 1996) – A plaintiff failed to satisfy her burden of proof where she did not produce any evidence of similarly situated Caucasian students who were treated differently than her son.

Equal Protection

- A school district may also be liable under § 1983 for a violation of the Equal Protection Clause if it is deliberately indifferent to harassment against students
    - A constitutional violation based on deliberate indifference occurs when there is:
        - the existence of a clear and persistent pattern of discrimination by school district employees;

Equal Protection

- notice or constructive notice on the part of the school district;
- the school district's tacit approval of the unconstitutional conduct, such that its deliberate indifference can be said to amount to an official policy of inaction; and
- that the school district's custom was the "moving force" or direct causal link in the constitutional deprivation.

Equal Protection

- Deliberate indifference to the discrimination is only demonstrated where the school's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances

Equal Protection

- Generally, schools cannot make “arbitrary” or “unreasonable” decisions with regard to students or employees, and they cannot make decisions that are not rationally related to a legitimate government interest
    - If the distinction in treatment is based upon race or gender, there is heightened scrutiny applied to the decision

Equal Protection

- For example, in *Whitaker By Whitaker v. Kenosha Unified School Dist. No. 1 Bd. of Education* the Seventh Circuit Court of Appeals upheld an injunction requiring a Wisconsin school district to allow a transgender boy to use the boys' restroom.

    - The Equal Protection Clause of the Fourteenth Amendment "is essentially a direction that all persons similarly situated should be treated alike." It therefore, protects against intentional and arbitrary discrimination.

Equal Protection

- The School District argued that since it treats all boys and girls the same, it did not violate the Equal Protection Clause. The court rejected this argument, concluding that the School District treats transgender students like Ash, who fail to conform to the sex-based stereotypes associated with their assigned sex at birth, differently. These students are disciplined under the School District's bathroom policy if they choose to use a bathroom that conforms to their gender identity. This places the burden on the School District to demonstrate that its justification for its bathroom policy is not only genuine, but also "exceedingly persuasive" (a form of heightened scrutiny) This burden was not met by the school district and the Court ruled in favor of Ash.

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