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Let the Testing Begin

Alexis Reed

On November 7, 2003, in South Carolina, armed policeman swarmed a Stratford Creek high school, bound students with plastic handcuffs, and searched the entire school for evidence of drugs.¹ Students and teachers alike were terrified by the invasion, but the school administrators were not surprised. No drugs were found and school administrators were left with indignant parents who were angered by the violation of their childrens' Fourth Amendment rights.² Some South Carolina schools allow random drug testing, and through that testing, as well as surveillance videos, police and school administrators gain information about student drug usage. Police and school officials could use the information they gather to perform similar drug sweeps in other schools, including elementary schools. When that happens, it is likely that the schools will be faced with more than just angry parents, but also lawsuits.

While police invasions in schools are uncommon now, random drug testing is not. In 1995, the United States Supreme Court ruled that random drug testing of school athletes was constitutional.³ In 2002, the United States Supreme Court decided a case that required all students who participated in competitive extracurricular activities to submit to drug testing.⁴ *Board of Education of Independent School District No. 92*

Pottawatomie County, et al. v. Lindsay Earls allows drug testing of all middle school and high school students as a condition to participating in all extracurricular activities, including sporting events as well as Quiz Bowl, band, and Future Farmers of America.⁵

Students and parents involved in the *Earls* case argued that the random drug testing constituted unreasonable search and seizure since a Fourth Amendment search requires some level of individualized suspicion.⁶ The Supreme Court, over the

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concerns of parents and students, held that the random testing was constitutional and did not violate the unreasonable search and seizure protections of the Fourth Amendment.⁷

The Bush Administration fully supports the school drug testing policies. In fact, President Bush has advanced an election-year proposal that extends the effect of school drug

testing by increasing federal monies spent on school drug testing programs by a tenfold.⁸ While cutting funding from the Environmental Protection Agency, the Centers for Disease Control, and other domestic programs, President Bush proposed providing twenty-three million dollars to the nation's schools for drug testing.⁹

The White House, in advocating for random drug testing in schools, argues that research proves testing acts a deterrent for soldiers, airline pilots, and other professionals.¹⁰ Some schools district representatives also agree that the testing is acting as a deterrent in their systems. School administrators assert that testing provides an added incentive to the "just say no" policies already in effect.¹¹ Some schools have seen a reported ten percent decrease in student drug use and indicate that testing policies offer children another way to resist peer pressure.¹²

However, some states have resisted attempts to institute drug testing programs in their schools. Despite the Supreme Court decisions, those states are not instituting drug testing programs. The American Association of Pediatrics, the National Education Association, the National Association of Social Workers, and the National Council on Drug and Alcohol Dependence are also against random drug testing in our nation's schools.¹³ In rejecting the programs, schools and these associations argue that the best

way to keep students from using drugs is to encourage them to participate in after-school activities.¹⁴ They argue that drug testing creates barriers to those positive activities which creates more harm for the nation's youth.¹⁵

Further opponents to random drug testing wonder about the effect the tests will have on children. They question the propriety of subjecting a student to drug testing when the school does not have any basis to believe the student is using drugs.¹⁶ Some innocent students have indicated that the random testing makes them feel like they are guilty of using drugs when they are not.¹⁷

Furthermore, the American Civil Liberties Union is adamantly opposed to drug testing in schools. The ACLU argues that random drug testing is misplaced in schools, and that it fails to address the society's main problem, alcohol abuse.¹⁸ Graham Boyd, director of the ACLU's Drug Policy Litigation Project, who argued before the Supreme Court Justices in *Earls*, has stated that drug testing in schools presents a slippery slope.¹⁹ Mr. Boyd believes that random drug testing "open[s] the door to the government's inevitable demands for DNA, medical records, financial information, and other personal data."²⁰

Since the Federal Government strongly supports school drug testing but the nation's states argue against the testing programs, it is unclear what is the fate of the nation's children. What is clear is that random drug testing in schools will again become an important national issue, not just for the candidates in the upcoming election, but also for parents and school children across the nation.

1. Stars. Gringo. Armed Police Invade High School, No Drugs Found (11/07/2003) available at <http://portland.indymedia.org/en/2003/11/27561.shtml>

2. Stars, supra note 1

3. *Veronia School District 47J v. Acton*, 515 U.S. 646 (1995).
 4. *Board of Education of Independent School District No. 92 of Pottawatomie County, et al. v. Lindsay Earls*, 536 U.S. 822, (2002).
 5. Justices to Hear Arguments Tomorrow in Landmark ACLU Challenge to Mandatory School Drug Testing, (3/18/2002), available at <http://www.aclu.org/DrugPolicy/DrugPolicy.cfm?ID=10024&c=79>
 6. A Test You Can't Study For - Special Web Feature on Student Drug Testing (10/21/2002) available at <http://www.aclu.org/DrugPolicy/DrugPolicy.cfm?ID=11000&c=79>.
 7. *Earls*, 536 U.S. at 837

8. McLure, Jason. *Guilty Until Proven Innocent: The White House wants to expand random drug testing of schoolchildren*, (2/25/2004), available at <http://msnbc.com/id/4375351>
 9. McLure, supra note 8
 10. McLure, supra note 8
 11. McLure, supra note 8
 12. McLure, supra note 8
 13. Supra note 6
 14. Supra note 6
 15. Supra note 6
 16. McLure, supra note 8
 17. McLure, supra note 8
 18. Supra note 6
 19. Supra note 5
 20. Supra note 5.

BUSH PROPOSES GUEST WORKER PROGRAM

John Anderson

On January 7, 2004, President Bush announced his immigration reform proposal.¹ Recognizing the important role immigrants play in American society and the fear of deportation illegal immigrants live with every day, the Bush Administration proposed a plan that would give temporary legal status to undocumented immigrant workers. The proposal has been praised by business groups and has won some support with immigrant rights groups who say it is a step in the right direction. Others are more hesitant, asserting the program is impractical and does nothing to provide undocumented workers with permanent legal status.

Bush explained that his proposal "will match willing workers with willing employers, without disadvantaging those who have followed the law and waited in line to achieve American citizenship."² The proposal would allow eight million undocumented immigrants to apply for temporary legal status for three years.³ After three years, the foreign workers could renew their legal status at least once. Undocumented immigrants as well as immigrants who have not yet

come to the U.S. could apply for the program.⁴ Participating immigrants would be required to be fully employed throughout their stay. U.S. employers hiring immigrants through the program would have to make a reasonable effort to find a qualified American citizen for the position first. Families of participants in the program would also be granted legal status, on the condition that the participants earned enough money to support their families.⁵

Bush's plan would not offer amnesty for undocumented aliens because after a certain amount of time, participants would not be able to renew their temporary status. The plan would include incentives for the foreign workers to return to their home countries after their legal status has expired. The incentives to return would include credit for the workers in their home countries' retirement system. Additionally, participants would be allowed to legally travel to and from their home countries and the U.S. without having to risk being denied entry.

The U.S. Supreme Court has recognized that the Federal Government has expansive authority