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Chandler v. Miller: The Supreme Court Closed the Door on the Factual Instances That Warrant Suspicionless Searches

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Chandler v. Miller: The Supreme Court Closed the Door on the Factual Instances That Warrant Suspicionless Searches

Chandler v. Miller[1] involved the constitutionality of a Georgia statute that required candidates for designated state offices to pass a drug test prior to qualifying for nomination or election.[2]

I. FACTUAL BACKGROUND

In 1990 the Georgia General Assembly enacted a law requiring candidates for designated state offices to certify that they had tested negative for illegal drugs thirty days prior to qualifying for nomination or election.[3] To ensure the testing scheme's professional validity, the statute required the procedure to comport with the Mandatory Guidelines for Federal Workplace Drug Testing Programs.[4] Candidates who sought qualification for nomination or election to a designated state office were informed that the procedure could be conducted at any state-approved medical testing laboratory or in the privacy of the candidate's personal physician's office.[5] Once a sample was obtained, it was sent to an approved laboratory to determine whether any of the specified illegal drugs were present. A certificate reporting the results of the test was then sent to the candidate. The certificate did not include a detailed analysis of the candidate's sample but merely provided that a drug screen had been performed and that the results were negative.

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1. 117 S. Ct. 1295 (1997).
2. *Id.* at 1298. *See* O.C.G.A. § 21-2-140 (1993).
3. 117 S. Ct. at 1299. The statute listed as "illegal drugs": marijuana, cocaine, opiates, amphetamines, and phencyclidines. The designated state offices were: the Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, Justices of the Georgia Supreme Court, Judges of the Georgia Court of Appeals, judges of the superior courts, district attorneys, members of the General Assembly, and members of the Public Service Commission. *See id.*
4. Respondents' Brief at 1, Chandler (No. 96-126).
5. 117 S. Ct. at 1299.

In May 1994 petitioners Chandler, Harris, and Walker, Libertarian Party nominees, filed this action seeking declaratory and injunctive relief in the United States District Court for the Northern District of Georgia. Petitioners filed suit against Governor Zell Miller and two other state officials involved in administering the statute.[6] The district court, relying on the important nature of the offices sought coupled with the relative unintrusiveness of the testing procedure, denied petitioners' motion for preliminary injunctive relief.[7] In January 1995 the district court entered judgment for respondents.[8]

On appeal a divided Eleventh Circuit panel affirmed the decision.[9] The court concluded that the state's important interest in maintaining the integrity of its high public offices outweighed the individual privacy expectations intruded upon by the mandatory drug testing requirement.[10] Consequently, the court held the statute, as applied in this instance, to be consistent with the requirements of the Fourth and Fourteenth Amendments.[11]

The Supreme Court granted certiorari and reversed.[12] The Court concluded that Georgia's drug testing scheme for candidates seeking to qualify for nomination or election did not fall within the narrow scope of constitutionally permissible suspicionless searches.[13]

II. LEGAL BACKGROUND

It is undisputed that government-ordered collection and testing of bodily fluids constitutes a search governed by the strictures of the Fourth Amendment.[14] The Fourth Amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause . . . ."[15] Traditionally, the Supreme Court has deemed

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6. *Id.* The Libertarian Party nominated Walker L. Chandler for the office of Lieutenant Governor, Sharon T. Harris for the office of Commissioner of Agriculture, and James D. Walker for the office of member of the General Assembly. *See id.*

7. *Id.* Petitioners then submitted to the requirements of O.C.G.A. § 21-2-140 and appeared on the ballot. After the election, petitioners moved for final judgment on stipulated facts. *See id.*

8. *Id.*

9. Chandler v. Miller, 73 F.3d 1543, 1544 (11th Cir. 1996).

10. *Id.* at 1547.

11. *Id.* (citing U.S. CONST. amend. IV and XIV).

12. 117 S. Ct. at 1298.

13. *Id.*

14. Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602, 616-18 (1989).

15. U.S. CONST. amend. IV.

a warrantless search reasonable only when accompanied by some degree of individualized suspicion.[16] However, the Court has recently recognized certain situations when a search was considered reasonable in the absence of any level of individualized suspicion.[17]

In *New Jersey v. T.L.O.*,[18] the Court defined the limited circumstances to which this exception applies: "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."[19] In these limited circumstances, the Court used a two-tiered analysis to determine the reasonableness of the search. At the first tier, the Court focused upon whether or not a "special need" existed. Once a "special need" was established, the Court attempted at the second tier to balance the government's interests against the individual's privacy expectations to determine whether it was practical to require a warrant or some level of individualized suspicion in the particular context.[20]

The "special needs" balancing test was first applied in the context of a mandatory drug testing scheme in *Skinner v. Railway Labor Executives Ass'n*.[21] In *Skinner* the Court upheld Federal Railroad Administration ("FRA") regulations that required mandatory drug testing of employees who were involved in certain train accidents or had violated certain safety rules.[22] The regulations were enacted in response to evidence of drug abuse by railway employees and the obvious safety hazards posed by this abuse.[23]

The Court found that the government's interest in testing without a showing of individualized suspicion in this context was indeed compelling and sufficient to constitute a "special need."[24] Railroad employees subject to the testing regulations were responsible for duties "fraught with such risks of injury to others that even a momentary lapse of attention [could] have disastrous consequences."[25] Because these employees could cause significant human loss before any signs of impairment became apparent to others, the requirement of individual-

16. 489 U.S. at 624.
17. *Id.*
18. 469 U.S. 325 (1985).
19. *Id.* at 351.
20. *Skinner*, 489 U.S. at 619.
21. 489 U.S. 602 (1989).
22. *Id.* at 606, 613.
23. *Id.* at 608.
24. *Id.* at 628.
25. *Id.*

ized suspicion would frustrate the purpose for which the governmental scheme was enacted.[26]

The Court's analysis then shifted to the individual privacy expectations intruded upon by the testing scheme. While the Court noted that government-ordered collection of blood and urine samples necessarily infringed upon the privacy expectations of the employee, the Court concluded that these expectations were diminished by the employees' participation in an industry that was highly regulated to ensure safety.[27] Therefore, the Court held that the testing procedures contemplated by the regulations posed a justifiable threat to the expectations of privacy of the covered employees.[28] Having recognized the existence of a "special need," the Court held that the government's compelling interests served by the FRA's regulations outweighed the individual privacy concerns of the railroad employees.[29]

In *National Treasury Employees Union v. Von Raab*,[30] decided the same day as *Skinner*, the Supreme Court had another opportunity to apply its newly forged "special needs" balancing test. In *Von Raab* the Court sustained a United States Customs Service program that conditioned promotions or transfers to certain positions upon the successful completion of a drug test.[31] The positions covered by the testing scheme were those that: (1) directly involved drug interdiction, (2) required the incumbent to carry a firearm, and (3) required the incumbent to handle classified materials.[32]

To determine whether a "special need" existed, the Court looked again to the nature of the government's interest. The Court concluded that the government had a compelling interest in ensuring that those directly involved in drug interdiction were physically fit and had unimpeachable judgment and integrity.[33] Additionally, the public interest demanded that those employees in a position to use deadly force should not suffer from the impaired perception and judgment that stems from illegal drug use.[34] The Court reasoned that because "it [was] not feasible to subject [these] employees and their work product to [that] kind of day-to-day scrutiny," the requirement of individualized suspicion would severely

26. *Id.*
27. *Id.* at 627.
28. *Id.* at 628.
29. *Id.* at 633.
30. 489 U.S. 656 (1989).
31. *Id.* at 679.
32. *Id.* at 660-61.
33. *Id.* at 670.
34. *Id.* at 671.

frustrate the purpose for which the program was enacted.[35] Therefore, a "special need" existed, and the balancing test was appropriate.

The Court then turned to the privacy expectations of the individual employees. While courts have noted that "[t]here are few activities in our society more personal or private than the passing of urine," certain areas of public employment demand a diminished expectation of personal privacy.[36] Although this type of intrusion may be considered unreasonable in other contexts, the "'operational realities of the workplace'" rendered this type of work-related intrusion entirely reasonable.[37] Because the government's compelling interests outweighed the privacy expectations of the employees, the Court held the government's testing program to be reasonable under the Fourth Amendment.[38]

The Court most recently applied the "special needs" balancing test in the context of a mandatory drug testing scheme in *Vernonia School District 47J v. Acton*.[39] In *Vernonia* the Court upheld a random drug testing program for high school athletes.[40] The program was sparked by a marked increase in drug use among the children in the district schools.[41]

In determining whether the government's interest was sufficient to constitute a "special need," the Court sought guidance from its previous holdings in this area.[42] The Court concluded that the deterrence of drug use by our nation's school children was at least as compelling as the nation's war on drugs, or the deterrence of drug use by those engaged in the railroad industry.[43] The Court next focused its analysis on the privacy expectations intruded upon by the testing program, concluding that school children, who have been committed temporarily to the custody of the State, have minimal expectations of privacy.[44] The Court noted that because public school children were consistently required to submit to various physical examinations, the privacy interests compromised by this testing procedure were negligible.[45] Having recognized the existence of a "special need," the Court held that the drug testing scheme, when weighed against the school children's

35. *Id.* at 674.
36. National Treasury Employees Union v. Von Raab, 816 F.2d 170, 175 (5th Cir. 1987).
37. *Von Raab*, 489 U.S. at 671 (quoting O'Connor v. Ortega, 480 U.S. 709, 717 (1987)).
38. *Id.* at 677.
39. 515 U.S. 646 (1995).
40. *Id.* at 664-65.
41. *Id.* at 648-50.
42. *Id.* at 653-54.
43. *Id.* at 661.
44. *Id.* at 656-57.
45. *Id.*

minimal privacy expectations, was reasonable within the meaning of the Fourth Amendment.[46]

While the Supreme Court's "special needs" balancing test has become the yardstick by which reasonableness is measured in the context of suspicionless searches, it has not been universally accepted by the Justices of the Supreme Court. In a strongly worded dissent, Justice Marshall criticized the majority in *Skinner* for allowing the recognition of a "special need" to displace the constitutional prescriptions of the Fourth Amendment.[47] Marshall noted that while the majority purports to limit its holding to the testing of employees with "safety sensitive" jobs, "the damage done to the Fourth Amendment is not so easily cabined. The majority's acceptance of dragnet blood and urine testing ensures that the first, and worst, casualty of the war on drugs will be the precious liberties of our citizens."[48] In *Von Raab* Justice Scalia criticized the majority's application of the "special needs" balancing test as an "immolation of privacy and human dignity in symbolic opposition to drug use."[49]

As predicted by Justice Marshall, the damage occasioned upon the Fourth Amendment by the "special needs" analysis has not been sufficiently cabined. In fact, the factual instances that give rise to a "special need" have continued to expand. Prior to the Court decision in *Chandler*, the Supreme Court had never invalidated a mandatory drug testing scheme under the "special needs" analysis.

III. COURT'S RATIONALE

In assessing the validity of Georgia's drug testing scheme, the Court first sought to determine whether the "special needs" balancing test was appropriate in this context.[50] Referring to the test articulated in *T.L.O.*, the Court reiterated the notion that before the Court could substitute its balancing for that of the Framers, a "special need" must exist beyond the needs of law enforcement that renders the requirement of individualized suspicion impracticable.[51] The Court then attempted to determine whether Georgia's proffered interests in performing a suspicionless search constituted a "special need."[52]

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46. *Id.* at 664-65.
47. *Skinner*, 489 U.S. at 635-36 (Marshall, J., dissenting).
48. *Id.* at 636.
49. *Von Raab*, 489 U.S. at 681 (Scalia, J., dissenting).
50. *Chandler*, 117 S. Ct. at 1297.
51. *Id.* at 1303.
52. *Id.*

Respondents rested their justification of a "special need" primarily upon the fundamental incompatibility of holding state office and the use of illegal drugs.[53] Georgia maintained that its interest in preventing its public offices from being occupied by illegal drug users was indeed "compelling" and sufficient to constitute a "special need."[54] Respondents attempted to liken their scheme to the one upheld in *Von Raab*.[55] Georgia asserted that state officials, like customs officials, were often the targets of bribery and other acts of impropriety.[56] The Court, however, came to quite a different conclusion.

The Court stated that noticeably lacking from respondents' scheme was any "concrete danger" demanding a departure from the requirement of individualized suspicion.[57] The Court then looked to the record to see if the hazards described by respondents were supported by any factual evidence. While a demonstrated problem of drug abuse was not a prerequisite to the validity of a testing program, it "would shore up an assertion of [a] special need for a suspicionless general search program."[58] Because Georgia's testing program was not enacted in response to any demonstrated problem of drug abuse, the Court concluded that it did not constitute a "special need" as contemplated by *Vernonia* or *Skinner*.[59]

The Court then focused its analysis on the nature of the "special need" created by the testing scheme in *Von Raab*.[60] The Court noted that while the testing program of *Von Raab* was not predicated upon a demonstrated problem of drug abuse, a "special need" existed in part because of the public safety issues involved.[61] Additionally, because Customs officials were not subject to daily scrutiny, the requirement of individualized suspicion would not function in this environment.[62] The Court concluded that candidates, on the other hand, were subject to "relentless scrutiny—by their peers, the public, and the press."[63] Because of this scrutiny, the Court determined that a departure from the requirement of individualized suspicion would be inappropriate.[64]

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53. *Id.*
54. *Id.*
55. *Id.* at 1304.
56. *Id.*
57. *Id.* at 1303.
58. *Id.*
59. *Id.*
60. *Id.* at 1304.
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.* at 1305.

Ultimately, the Court held that because Georgia's testing scheme did not implicate notions of public safety and was not predicated upon a demonstrated problem of drug abuse, a "special need" did not exist.[65] Because respondents' scheme was not necessitated by a "special need," the balancing test was inapplicable to this case.[66]

Chief Justice Rehnquist, the lone dissenter, condemned the selective application of the Court's precedent in this area. The Chief Justice stated that a "special need" existed when there was a compelling governmental purpose other than law enforcement.[67] He likened respondents scheme to the one upheld in *Von Raab*.[68] In *Von Raab* the Court would have upheld the suspicionless searches of employees who were not directly involved with public safety but instead handled classified materials. The Court "readily agree[d] that the Government has a compelling interest in protecting truly sensitive information from those who, 'under compulsion of circumstances or for other reasons, . . . might compromise [such] information.'"[69] The Chief Justice argued that this compelling interest created a "special need" that should properly invoke the balancing test.[70] Justice Rehnquist asserted that when Georgia's testing program was viewed through "the correct lens of our precedents in this area, the Georgia urinalysis test [was] a 'reasonable' search; it is only by distorting these precedents that the Court [was] able to reach the result [that] it [did]."[71]

IV. IMPLICATIONS

The decision in *Chandler v. Miller* represents a marked shift in the Court's philosophy with respect to its decisions regarding suspicionless searches. The holding in *Chandler* was a clear departure from an increasing trend in support of the government's authority to conduct suspicionless searches. In *Chandler* the Court once again breathed life into the Fourth Amendment, taking a small step toward reading the probable cause requirement back into the Constitution.

Chandler marks the first time in the Court's history that a mandatory drug testing scheme has been ruled unconstitutional. In the wake of *Skinner*, *Von Raab*, and *Vernonia*, many scholars feared that the "special needs" exception would be extended beyond the narrow circumstances

65. *Id.*
66. *Id.*
67. *Id.* at 1306 (Rehnquist, C. J., dissenting).
68. *Id.*
69. *Id.* at 1307 (brackets in original).
70. *Id.*
71. *Id.*

justifying them and in a sense leaving the door to blanket suspicionless searches wide open.[72] However, the Supreme Court in *Chandler* put these fears to rest as it began to close the door on the factual instances that would warrant a suspicionless search. Addressing the concerns expressed by Justice Scalia's dissent in *Von Raab*, the decision in *Chandler* distinguished between the acceptable suspicionless searches involving public safety and factually supported instances of drug abuse from the unacceptable blanket suspicionless searches used to drive home the message that illegal drug use will simply not be tolerated.

Perhaps the holding in *Chandler* will doom future deployments of the government's "Draconian weapon—the compulsory collection and chemical testing of . . . blood and urine"[73] on large groups of white-collar employees in an attempt to revitalize this nation's war on drugs.

JUSTIN SCOTT

72. *Fourth Amendment—Mandatory Drug Testing—Eleventh Circuit Upholds Suspicionless Drug Testing for Political Candidates*, Chandler v. Miller, 73 F.3d 1543 (11th Cir. 1996), 110 HARV L. REV. 547, 547 (1996).

73. *Skinner*, 109 S. Ct. at 1423.