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## School Officials in California Should be Cautious of Supreme Court Decision Regarding Strip Search and Administrators' Qualified Immunity

The United States Supreme Court has found that the strip search of a 13-year-old female student by an Arizona school district's assistant principal was not based on "reasonable suspicion," thus violating the Fourth Amendment to the United States Constitution. However, the Court also found that the assistant principal and other school staff were entitled to qualified immunity from personal liability relating to the search. While the Court's interpretation of the Fourth Amendment regarding strip searches will likely make them less common in other jurisdictions, California law already bans strip searches by school officials. Consequently, school officials in California must not engage in strip searches and should not expect qualified immunity if they do.

In Safford Unified School District #1 et al. v. Redding, 557 U.S. \_\_\_\_ (2009), an assistant principal received reports that the female student had distributed pills to students, including prescription strength ibuprofen and an over-the-counter pain reliever. The assistant principal also obtained the student's planner from another student. The planner contained several knives, lighters, a marker, and a cigarette.

The assistant principal confronted the student, who denied providing pills to other students. She admitted that the planner was hers, but claimed that the knives, lighters, marker and cigarette did not belong to her. The assistant principal directed the student to the nursing office for a search of her clothing.

Once in the nursing office, a female nurse and another female staff member directed the student to remove her outer clothing. After the student removed her outer clothing, the nurse and staff member directed the student to pull her bra out and shake it. The nurse and staff member also directed the student to pull out the elastic in her underpants. The student complied, thereby exposing her breasts and pelvic area. The nurse and the staff member did not find any pills.

The student's mother subsequently filed a lawsuit against the school district, the assistant principal, and other school district staff. She alleged that the search violated the student's Fourth Amendment rights.

The Fourth Amendment guarantees the "right of the people to be secure in their persons . . . against unreasonable searches and seizures."

The Fourth Amendment generally requires a law enforcement officer to have probable cause for conducting a search. However, in the school setting, the Supreme Court has determined that officials need not have "probable cause" for conducting a search. Instead, school officials must only have a "reasonable suspicion" or "moderate chance of finding evidence" of wrongdoing. Under this standard, 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."

The Court found that the search of the student's underwear was unreasonable because the assistant principal, "must have been aware of the nature and limited threat of the specific drugs he was searching for, . . . [and] 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." In addition, the Court found that the assistant principal had no real suspicion that the

student was carrying pills in her underwear. As a result, the Court concluded that the search violated the student's Fourth Amendment rights against unreasonable searches.

Unlike California law, Arizona law does not prohibit strip searches. California Education Code section 49050, subdivision (b) states: "No school employee shall conduct a search that involves . . . [r]emoving or arranging any or all of the clothing of a pupil to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the pupil." As a result, the search at issue in this case would have been expressly prohibited in California.

Following the Court's conclusion that the search violated the Fourth Amendment, the Court analyzed whether the administrators involved in the search could be held personally liable. 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."

The Court analyzed several cases involving strip searches in states that do not prohibit them. Some of those cases found the strip searches to be constitutional, while others found the strips searches to be unconstitutional. Based on the cases and their differing outcomes, a majority of the Court's Justices concluded that it was not clearly established that the strip search of the student would violate the Fourth Amendment. As a result, the majority found qualified immunity was warranted and that the administrators were not personally liable. However, given that the California Education Code specifically prohibits strip searches, under similar circumstances, a California school district administrator likely would not be entitled to qualified immunity.

Although the search in this case would be prohibited under California law, this case illustrates the complexity of searches in the school setting. Searches should only occur when the search: (1) is reasonably related to the objectives of the search and (2) is not excessively intrusive in light of the age and sex of the student and the nature of the infraction. If administrators believe that a student is in possession of contraband that could only be discovered by means of a highly intrusive search, we recommend referral of the matter to law enforcement. Although the Court found that the administrators in this case were entitled to qualified immunity, this case suggests that administrators could be held personally liable for unconstitutional strip searches in similar circumstances.

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