Florida’s Suspicionless Drug Testing of Welfare Applicants

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I. INTRODUCTION

The State of Florida has passed legislation requiring welfare applicants to undergo drug testing in order to receive cash benefits. Florida is the first state since Michigan to enact such a law. This controversial law is being vehemently challenged by many groups and organizations around the country and by the welfare recipients themselves. The American Civil Liberties Union (ACLU) filed suit on September 6, 2011 in federal court in Orlando on behalf of Luis Lebron, a temporary cash benefit applicant.

This note will focus on how this Florida legislation can withstand a Fourth Amendment constitutional challenge. First, the background section will dissect the current Florida legislation and the state of welfare in Florida including statistics of the recipients and the effects of drugs on children, families, and employment. Next, the legislation’s biggest hurdle, the Fourth Amendment, will be explained and examined including an in depth look at the evolution of the special needs doctrine and how it has been applied in the suspicionless drug testing setting. This evolution of the suspicionless drug testing law will be demonstrated through cases from the Supreme Court of the United States and various lower courts across the United States. Furthermore, part IV examines why the Michigan legislation was ruled unconstitutional, focusing on the decision in Marchwinski v. Howard (Marchwinski I), continuing with a detailed application of the special needs doctrine to the current Florida legislation. Finally, this note concludes that Florida’s legisla-
tion falls within the special needs exception of the Fourth Amendment and therefore, the legislation is constitutional.

II. BACKGROUND

A. Florida’s Legislation

Florida’s legislation on the drug screening of welfare recipients went into effect on July 1, 2011. Under this act, every applicant for Temporary Assistance for Needy Families (TANF) seeking cash assistance under the Temporary Cash Assistance (TCA) program will be required to undergo testing for illegal drugs. Drug testing will not be required when applying for food assistance and Medicaid programs. The applicant will be responsible for the initial cost of the drug test, but if passed, the cost will be returned to them in their first assistance check. The cost of a drug test is estimated to be between ten and thirty-six dollars, depending on the facility; a list of all of the approved facilities is on the Florida Department of Children and Families (DCF) website or can be provided to applicants in person. To the contrary, if the applicant fails the drug test, he or she will bear the cost of the test without a refund. Further, the applicant will not be able to reapply for TANF for a period of one year from the date the applicant tested positive or three years if this is his or her second failed attempt. The applicant may also reapply six months after the successful completion of a drug rehabilitation program. The rehabilitation option is only available to the applicant one time.

6. FLA. LEGIS., FINAL BILL ANALYSIS, 2011 REG. SESS., SUMMARY ANALYSIS at 1, CS for HB 353 [hereinafter SUMMARY ANALYSIS, CS for HB 353].
11. FLA. STAT. § 414.0652(1)(b), (2)(a), (h).
12. Id.
13. Id. § 414.0652(2)(j).
14. Id.
If an applicant fails the drug test and is a parent, there are two options to ensure that the dependent child still receives benefits. First, DCF may assign a “protective payee” who will receive the cash benefits on behalf of the child. Alternatively, the second option is that the parent may designate an immediate family member, which is undefined by the act, to receive the benefits on behalf of the child. Both the protective payee and the immediate relative will have to undergo and pass a drug screen.

When a TANF applicant tests positive for an illegal substance, the DCF must provide the applicant with information regarding drug addiction, abuse, and treatment programs in the area, although neither DCF nor the State will be responsible for providing or paying any part of a rehabilitation program. At the time of the application, DCF must provide the applicant with a summary of the legislation, the procedures adopted by it, and all potential outcomes. After being told of the drug screening policy, the applicant can choose not to continue with the application at that time and return at a later date. Additionally, DCF is required to have the applicant sign a form indicating that he or she has received notice of the drug screening policy and, at that point, the applicant can voluntarily disclose the use of any legally obtained prescriptions or over-the-counter medications that may have an effect on the outcome of the test. If the applicant does not feel comfortable disclosing prescription medication information at the time of application, the applicant can have a medical review officer privately review any prescriptions, over-the-counter medicines, or recent medical procedures that would cause the applicant to fail the drug test. The medical review officer will just provide the applicant’s caseworker with the negative result and no further personal medical information. This drug screening policy will apply to everyone receiving cash benefits who is included in the family except children under the age of eighteen.

15. Id. § 414.0652(3).
16. FLA. STAT. § 414.0652(3)(b).
17. Id. § 414.0652(3)(c).
18. See id.
19. See id. § 414.0652(2)(i).
20. See id. § 414.0652(2)(a).
22. Id. § 414.0652 (2)(d)-(e).
23. See Drug Testing Policy, supra note 7.
24. Id.
25. FLA. STAT. § 414.0652(2)(a).
B. Welfare in Florida

The welfare reform legislation of 1996 created the Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA). This act created the TANF program, replacing the previous welfare platform of Aid to Families with Dependent Children. PWRORA terminated any federal entitlement to government welfare assistance and created TANF, granting federal funds to states each year. These federal funds cover expenses incurred by the state from benefits, administrative expenses, and services rendered to needy families. Additionally, the federal government cannot prohibit states from drug testing welfare recipients or taking away benefits because of a positive drug test. Furthermore, TANF became effective in 1997, was reauthorized in 2006, expired again on September 30, 2011, and must be reauthorized by Congress in order to continue distributing benefits.

TANF is not a governmental hand-out, but a program designed to help people become independent and self-sufficient. States receive funding for TANF in order to accomplish four main goals. The first goal is “assisting needy families so that children can be cared for in their own homes.” The second purpose is “reducing the dependency of needy parents by promoting job preparation, work, and marriage.” Third is “preventing out-of-wedlock pregnancies,” and fourth is “encouraging the formation and maintenance of two-parent families.”

The only section of TANF that will be affected by the drug screening procedures is the TCA program. The TCA program was set up in order to provide cash to families with dependent children under the age of eighteen. A person applying for TCA under TANF must comply with every require-

28. Id.
29. Id.
31. About TANF, supra note 27.
32. SUMMARY ANALYSIS, CS for HB 353, at 2.
33. See About TANF, supra note 27.
34. Id.
35. Id.
36. Id.
37. Id.
39. Id.
ment before cash assistance will be disbursed.\textsuperscript{40} Cash assistance will only be provided to applicants for a lifetime total of forty-eight months unless the applicant is a child, in which case, there is no time limit.\textsuperscript{41} Unless an exception is met, TCA recipients will be required to participate in work activities or some equivalent.\textsuperscript{42} The exceptions include having a child under the age of three months, being disabled, being deemed not work eligible, or an exemption from the time limit.\textsuperscript{43} The income of the applicant must be less than 185\% of the poverty level, and once an individual is receiving benefits, he or she will receive an earned income deduction in order to incentivize getting and keeping a job.\textsuperscript{44} Additionally, applicants must either be a citizen of the United States or qualify as a non-citizen; no matter which category the applicant is in, he or she must reside in the State of Florida and provide a valid social security number, or at minimum, proof of application for one.\textsuperscript{45}

In the 2010 fiscal year, which was from October 2009 through September 2010, DCF received an average of 39,715 applications for TANF assistance per month.\textsuperscript{46} Of the nearly 40,000 applications received, DCF approved an average of 6828 per month.\textsuperscript{47} The total number of TANF recipients each month in the State of Florida for the fiscal year of 2010 was an average of 107,023 recipients per month.\textsuperscript{48} As of January 1, 2011, DCF reported that roughly 113,346 people were receiving TCA.\textsuperscript{49}

\textsuperscript{40} Id.
\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{44} Temporary Cash Assistance: Eligibility Rules, supra note 38.
\textsuperscript{45} Id.
\textsuperscript{46} Admin. for Children & Families, U.S. Dep't of Health & Human Servs., TANF: Average Number of Applications Received (Fiscal Year 2010), http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/applications/tanf_fy_tappsrec_2010.htm (last updated May 16, 2011).
\textsuperscript{49} Summary Analysis, CS for HB 353, at 2 n.5.
C. Substance Abuse and Welfare Recipients: The Statistics and General Information

The TEDS Report is a publication that is published by the Center for Behavioral Health Statistics and Quality of the Substance Abuse and Mental Health Services Administration (SAMHSA). SAMHSA is a governmental organization “established in 1992 and directed by Congress to target effectively substance abuse and mental health services to the people most in need and to translate research in these areas more effectively and more rapidly into the general health care system.” The “mission [of SAMHSA] is to reduce the impact of substance abuse and mental illness on America’s communities.” One of the main goals of the SAMHSA organization is to “provide[...] the public with the best and most up-to-date information about behavioral health issues and prevention/treatment approaches.” The information compiled by SAMHSA seems to be the most comprehensive, reliable, and up-to-date. A majority of the statistics presented in this section and throughout this note will come from this governmental organization.

In 2008, 7.5% of all people admitted into a substance abuse treatment facility aged eighteen to fifty-four reported that their main source of income was public assistance. The patients receiving public assistance were roughly 6% more likely to abuse heroin and roughly 5% more likely to abuse cocaine. Patients receiving public assistance were also nearly 10% less likely to have completed treatment upon discharge and roughly 8% more likely to drop out of treatment.

SAMHSA also publishes data about substance use and abuse within families who receive government assistance. This publication is called the National Household Survey on Drug Abuse, which is more commonly known as the NHSDA Report. Their research indicated that roughly 14%...
of people between the ages of twelve and sixty-four lived in homes with families assisted by the government. 59 The focus of the report was to determine the percentage of members of families receiving government assistance who used illicit drugs within the past month. 60 Roughly 7.2% of all people aged twelve to sixty-four receiving government assistance reported using illicit drugs in the past month. 61 When the focus is turned to persons in families receiving government assistance, the numbers go up; 9.6% of persons in government assisted families reported using illicit drugs, compared to only 6.8% of persons in families that did not receive assistance. 62 Additionally, the study found drug use among persons in families receiving cash assistance is higher than in families that do not benefit from cash assistance. 63

D. How Parental Substance Abuse Affects Child Welfare

In 2007, DCF issued a training bulletin concerning child welfare and substance abuse. 64 This training bulletin compiled numerous statistical discoveries, which prompted DCF to draft this bulletin for their caseworkers. 65 DCF reports that “[c]hildren of substance-abusing parents are almost three times more likely to be abused and more than four times more likely to be neglected than children of caregivers who are not substance abusers.” 66 Additionally, “[c]hildren’s mental health problems are closely related to parental substance abuse, maltreatment, and other forms of family violence.” 67 Furthermore, nearly two-thirds of violence from a spouse occurs when the perpetrator is inebriated. 68 There is a lasting impact of spousal domestic violence on the children who are watching because they are then “50% more likely to abuse drugs and/or alcohol” after growing up in a home where domestic violence is a regular occurrence. 69

59. Id.
60. Id. “[I]llicit drug[s] [include] marijuana, cocaine, heroin, hallucinogens, and inhalants and non-medical use of prescription-type pain relievers, tranquilizers, stimulants, and sedatives.” Id. at n.2.
61. Substance Use Among Persons in Families Receiving Government Assistance, supra note 57.
62. Id.
63. Id.
65. See id.
66. Id.
67. Id.
68. Id.
DCF gives numerous examples of potential risk of harm to children when their parents or guardians abuse or are dependent on drugs. The parent may leave the child unattended while seeking out drugs or partying, placing the child in possibly unsafe conditions to fend for himself or herself. Even when the parent is home, the parent might neglect the essential dietary, clothing, and sanitary needs of the child because of the parent’s altered state of mind due to drug use. More importantly, such parents who abuse illegal substances are more likely to use funds to buy alcohol or drugs, rather than food and clothing for the child, thus placing the need for the illegal drug over the child’s necessities. Additionally, 75% of welfare professionals have reported that children are much “more likely to enter foster care” when their parents are addicts.

Drug abuse by children is strongly correlated with parental drug abuse. A child who witnesses his or her parents doing drugs is likely to perceive that his or her parents are “permissive about the use of drugs,” and therefore, the child is more likely to use drugs in the future. In fact, children are generally going to take drugs in their future if they witness their parents taking drugs, because studies show that children who use drugs, more often than not, have parents who use drugs.

DCF gives a long list of ways for a case manager, while on an in-home examination, to determine if the parents are abusing drugs. This list includes numerous and obvious factors such as finding drug paraphernalia or a parent admitting to substance abuse, however, “[a]lcohol and drug use often are under-recognized” by caseworkers who interview parents.

70. Id. at 2.
71. Id.
72. Id.
73. Id.
75. Id.
76. Id.
77. Id.
78. Child Welfare & Substance Abuse: Known Factors That Increase Risk, supra note 64, at 3.
79. Id.
E. Substance Abuse and the Workplace

Anyone who is attempting to get a new job in the private sector should prepare to take a drug test. A study performed by the Society for Human Resource Management (SHRM) concluded that roughly 83.5% of employers administer drug tests as part of their pre-employment procedure and about 73.3% of employers will drug test employees upon reasonable suspicion after they have been hired. These employers drug test their applicants and employees because it is estimated that there is roughly eighty-one billion dollars in lost productivity among American businesses each year because of drug and alcohol abuse. Drug abuse by employees can result in "[r]isk, safety, and liability issues; [l]oss of production; [h]igher absenteeism . . . consistent tardiness; . . . [i]ncreased incidences of theft [and] embezzlement; . . . [h]igher employee turnover; [and] [e]mployee behavior issues that affect a company’s morale, culture, and image." The SHRM reports that employer drug testing is working in the United States. According to the annual Drug Testing Index, positive drug test results fell from 13.6% in 1988 to roughly 3.8% in 2006. Drug testing by employers appears to be a successful tactic in reducing employee drug use and increasing company efficiency and will likely be a continued tactic among American businesses.

F. Recipients’ Diminished Level of Privacy and Lack of Entitlement

Prior to being faced with the instant issue of suspicionless drug testing, the Supreme Court of the United States faced a similar issue in Wyman v. James. Specifically, the issue in Wyman was whether a welfare caseworker has the right to enter the home of a recipient and whether the refusal of admission is sufficient grounds to terminate benefits. The holding, which was that welfare recipients have a reduced expectation of privacy, is essential to the instant issue.

81. Id.
83. See Gurchiek, supra note 80.
84. Id.
85. See id.
86. 400 U.S. 309, 310 (1971).
87. Id. at 310.
88. See id. at 317–18.
In *Wyman*, the Supreme Court analyzed the issue of whether a welfare recipient can refuse a home visit by a caseworker and still retain his or her benefits.\(^89\) The plaintiff, Mrs. James, denied her caseworker access to her home even though the caseworker told her that she was required by law to let her in and that if she did not let her in, her benefits would be terminated.\(^90\) About a week after denying the caseworker entry into her home, Mrs. James received a letter stating that her benefits were going to be discontinued and was granted a hearing before a review officer.\(^91\) The review officer stated that the termination was proper and Mrs. James would no longer be receiving benefits unless she opened her home to the caseworker.\(^92\) Mrs. James then brought a civil rights suit on behalf of herself and everyone else in her situation.\(^93\)

The Court did not consider the home intrusion a violation of the Fourth Amendment rights of Mrs. James.\(^94\) It was noted that a visitation to the home is neither compelled nor forced and denying the caseworker access does not result in a criminal act.\(^95\) This instance was not considered a search because it did not reach the threshold of a search; if the caseworker is denied access, she does not enter and therefore, does not conduct a search.\(^96\) Additionally, even if the caseworker was to enter the home, the visit is not unreasonable and still does not fall within the Fourth Amendment, as the Fourth Amendment only protects against unreasonable searches.\(^97\) The Court stated many reasons why the home visit is not unreasonable.\(^98\) The most noteworthy reasons being: first, there is a large public interest in protecting the children of these families;\(^99\) second, the agency, by using state and federal tax funds, is satisfying a public trust, and the “agency has appropriate and paramount interest[s] and concern[s] in seeing” that the funds go to the intended party for the intended use;\(^100\) third, the public is providing this funding in a purely charitable nature and has the right to know how its funds are put to work;\(^101\) fourth, the goals of the program are to help the recipient’s family become

\(^{89}\) *Id.* at 310.

\(^{90}\) *Id.* at 313–14.

\(^{91}\) *Wyman*, 400 U.S. at 314.

\(^{92}\) *Id.*

\(^{93}\) *Id.*

\(^{94}\) *Id.* at 318.

\(^{95}\) *Id.* at 317.

\(^{96}\) *Wyman*, 400 U.S. at 317–18.

\(^{97}\) *Id.* at 318.

\(^{98}\) See *id.* at 318–24.

\(^{99}\) *Id.* at 318.

\(^{100}\) *Id.* at 318–19.

\(^{101}\) *Wyman*, 400 U.S. at 319.
self-sufficient, to make sure the family has what it needs to live, and to make sure that the recipient is not merely exploiting a child for personal gain;\textsuperscript{102} fifth, there is only a minimum burden upon the recipient because the recipient is notified of the visit well in advance;\textsuperscript{103} and sixth, there are no criminal consequences involved in any part of the initial visit.\textsuperscript{104} Furthermore, the Court said that Mrs. James seemed to want the government agency to provide her family with "the necessities for life . . . upon her own informational terms, to utilize the Fourth Amendment as a wedge for imposing those terms, and to avoid questions of any kind."\textsuperscript{105}

Although the Court did not consider this a search under the Fourth Amendment, it is still an important case when analyzing the instant issue. The Court ultimately determined the required visit to be constitutional because "there is no search involved in this case [and] even if there were a search, it would not be unreasonable; and that even if this were an unreasonable search, a welfare recipient waives her right to object by accepting benefits."\textsuperscript{106}

Additionally, as vital to the analysis of suspicionless drug testing of welfare recipients, the language of 42 U.S.C. § 601 provides for "block grants to states for [TANF]."\textsuperscript{107} 42 U.S.C. § 601(b) states: "[t]his part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part."\textsuperscript{108} This section removed the previous entitlement to government assistance funds and sets out further requirements and limitations of the funds throughout various sections of the statute.\textsuperscript{109}

### III. THE FOURTH AMENDMENT

#### A. In General

The Fourth Amendment guarantees the people of the United States that they will be free from unreasonable searches and seizures conducted by government officials.\textsuperscript{110} This "Amendment guarantees the privacy, dignity, and

\textsuperscript{102} Id.
\textsuperscript{103} Id. at 320–21.
\textsuperscript{104} Id. at 323.
\textsuperscript{105} Id. at 321–22.
\textsuperscript{106} Wyman, 400 U.S. at 338 (Marshall, J., dissenting).
\textsuperscript{108} Id. § 601(b).
\textsuperscript{109} Id. § 601.
\textsuperscript{110} U.S. Const. amend. IV.

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
security of persons against certain arbitrary and invasive acts by officers of the Government or those acting at their direction."\textsuperscript{111} "[T]he Fourth Amendment cannot be translated into a general constitutional right to privacy," and only covers certain intrusions by the Government.\textsuperscript{112} A search, under this Amendment, is defined as a government invasion of a person's privacy, and the specific invasion must be no greater than necessary under the circumstances of the case.\textsuperscript{113} The Fourth Amendment only bars those searches that are considered unreasonable.\textsuperscript{114} Reasonableness is determined by viewing the entirety of "the circumstances surrounding the search or seizure"\textsuperscript{115} and "a careful balancing of governmental and private interests."\textsuperscript{116}

In general, searches conducted without a warrant by government officials require an "unquestionable[ ] showing [of] probable cause"\textsuperscript{117} because the Constitution requires "that [a] deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police."\textsuperscript{118}

Justice Harlan, concurring in \textit{Katz v. United States},\textsuperscript{119} laid out a two-part test that emerged from the compilation of prior case law to determine if a person has a legitimate right to privacy in a given instance.\textsuperscript{120} First, in order to have such a right, a person must "exhibit[] an actual (subjective) expectation of privacy, and second, that [person's] expectation [must] be one that society is prepared to recognize as reasonable."\textsuperscript{121} Justice Harlan stated as an example, that a person's home is a place where privacy is to be expected, but on the contrary, a conversation with someone in public cannot be protected from being heard by others and thus, there would be an unreasonable expectation of privacy in that instance.\textsuperscript{122}

\textit{Id.} upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

\textit{Id.}


\textsuperscript{117} \textit{Katz}, 389 U.S. at 357.

\textsuperscript{118} \textit{Id.} (quoting Wong Sun v. United States, 371 U.S. 471, 481–82 (1963)).


\textsuperscript{120} \textit{Id.} at 361 (Harlan, J., concurring).

\textsuperscript{121} \textit{Id.} (internal quotation marks omitted).

\textsuperscript{122} \textit{Id.}
The Fourth Amendment applies to state and local governments through the Due Process Clause of the Fourteenth Amendment. Additionally, the Fourth Amendment's "prohibition against 'unreasonable searches and seizures' must be interpreted 'in light of contemporary norms and conditions.'" Justice Black, in *Katz*, noted that the Fourth Amendment was originally enacted in order to prevent government officials from breaking into, ransacking, or seizing a person's personal effects without a warrant. The Supreme Court of the United States has often stated that because the Fourth Amendment "must be interpreted 'in light of contemporary norms,'" the "Bill of Rights' safeguards should be given a liberal construction." As a result of changing times and technology, the courts are faced with new types of searches and seizures and must adapt accordingly.

B. The Special Needs Doctrine

The special needs exception was first articulated by Justice Blackmun in his concurring opinion in *New Jersey v. T.L.O.* Justice Blackmun stated that this exception is only applicable to "exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." In such instances, governmental and privacy interests are balanced to see if requiring the official to have probable cause or a warrant is unreasonable. When a search or seizure by the government is found to be within the realm of the special needs doctrine, there is no need to show probable cause, reasonable suspicion, or to obtain a warrant. In fact, "the Fourth Amendment imposes no irreducible requirement of [individualized] suspicion." Special needs cases involve:

128. See id. at 357–58.
130. Id.
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1) an exercise of governmental authority distinct from that of mere law enforcement—such as the authority as employer, the in loco parentis authority of school officials, or the post-incarceration authority of probation officers; 2) lack of individualized suspicion of wrongdoing, and concomitant lack of individualized stigma based on such suspicion; and 3) an interest in preventing future harm, generally involving the health or safety of the person being searched or of other persons [affected] by that person’s conduct, rather than [an interest in] deterrence or [in] punishment for past wrongdoing.134

The Supreme Court of the United States has used the special needs exception four times to rule suspicionless drug testing constitutional135 and once to rule it unconstitutional.136

This section will discuss the evolution of the special needs doctrine in Supreme Court suspicionless drug testing cases. Additionally, this section will delve into the expanding application of the special needs doctrine by various lower courts across the country.

1. The Supreme Court of the United States Cases

a. The Beginning: Skinner v. Railway Labor Executives Ass’n

Skinner v. Railway Labor Executives Ass’n137 is a case where the Supreme Court of the United States granted certiorari to decide the issue of whether the Federal Railroad Administration (FRA) could drug test certain employees without any sort of suspicion after an accident.138 The FRA was attempting to drug and alcohol test their employees pursuant to the Federal Railroad Safety Act of 1970, which gives the FRA permission to “‘prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety.’”139 The Court held that the Fourth Amendment did apply to the drug and alcohol testing that the FRA wanted to implement, but that the testing was reasonable under the Fourth Amendment even though it

138. Id. at 606.
139. Id. (quoting 45 U.S.C. § 431(a) (1970)).
did not require a warrant, probable cause, or any suspicion of use.\textsuperscript{140} The Court did not need further evidence of a drug epidemic at this particular railway station; thus, a finding of drug use by railroad employees nationwide was enough to subject their employees to suspicionless testing.\textsuperscript{141}

To validate the drug testing of the railroad employees, the \textit{Skinner} Court used the special needs doctrine.\textsuperscript{142} When a court is faced with a special need, it “balance[s] the governmental and privacy interests to assess the practicality of the warrant and probable-cause requirements in the particular context.”\textsuperscript{143} Here, the Court determined that the Government had an interest in ensuring the safety of the passengers, the railway employees, and surrounding property because many of the railway employees that would be drug tested had safety sensitive tasks.\textsuperscript{144} The FRA proved to the Court that it would be counterproductive to require a warrant or probable cause when performing the drug tests.\textsuperscript{145} The burden of obtaining a warrant on such occasions would frustrate the purpose because alcohol and other drugs exit the system at a constant rate and when a test is triggered, the FRA needs immediate results.\textsuperscript{146} Additionally, the Court stated that requiring the FRA to get a warrant for each drug test is unreasonable because the FRA employees are not familiar with the law surrounding warrants, and would therefore be unfamiliar with the requisite procedures involved in obtaining a warrant.\textsuperscript{147}

In its analysis, the Court in \textit{Skinner} first determined whether the drug tests themselves amount to a search and seizure under the Fourth Amendment.\textsuperscript{148} The Court stated that the Fourth Amendment is always relevant at many different stages and levels when the Government is trying to get physical evidence from a person.\textsuperscript{149} The Fourth Amendment will apply from the initial detention required to obtain the sample.\textsuperscript{150} It will be particularly relevant where the detention itself interferes with the free movement of the person, if the actual method of obtaining the evidence is intrusive, or if taking the evidence “infringes [on] an expectation of privacy that society is prepared to recognize as reasonable.”\textsuperscript{151} The Court found that the railroad em-
ployees would only have to give urine samples and that urine testing did not involve any surgical intrusion like blood testing.152

Next, the Court made mention of privacy issues that could be infringed upon; for example, the tester learning private medical facts about the person, as is the case in blood testing.153 The Supreme Court ultimately decided that urinalysis “intrudes upon expectations of privacy that society has long recognized as reasonable” and the testing must be considered a search under the Fourth Amendment.154 The FRA made it clear to the Court that privacy is not an issue because they would not be using the urinalysis results to assist in any prosecution or discover any medical conditions; but only to ensure that the employees are not intoxicated on the job or after an accident occurs.155 Additionally, the urine sample was not required to be collected under the direct supervision of a monitor, even though the integrity of the sample could be compromised, and “the sample [was] collected in a medical environment,” not by an employee of the railroad company.156

The Court reiterated its previous stance on the Fourth Amendment that a “showing of individualized suspicion is not a constitutional floor, below which a search must be presumed unreasonable.”157 Limited instances arise during a search where the privacy interests that are infringed upon are minimal, and an important governmental interest is furthered by that minimal privacy infringement.158 The Court found the suspicionless testing of the railroad employees to fall within this category because urinalysis is unobtrusive and there is a compelling governmental interest in keeping the railroad employees drug free because of the safety sensitive jobs that they hold.159

The Court concluded “the compelling Government interests served by the FRA's regulations would be significantly hindered if railroads were required to point to specific facts giving rise to a reasonable suspicion of impairment before testing a given employee.”160 The Court ended its opinion with a final, powerful statement:

The possession of unlawful drugs is a criminal offense that the Government may punish, but it is a separate and far more dangerous wrong to perform certain sensitive tasks while under the influ-

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152.  *Skinner*, 489 U.S. at 617.
153.  *Id.*
154.  *Id.*
155.  *Id.* at 620–21.
156.  *Id.* at 626–27.
158.  *Id.*
159.  *Id.* at 626–28.
160.  *Id.* at 633.
ence of those substances. . . . The Government may take all necessary and reasonable regulatory steps to prevent or deter that hazardous conduct, and since the gravamen of the evil is performing certain functions while concealing the substance in the body, it may be necessary, as in the case before us, to examine the body or its fluids to accomplish the regulatory purpose. 161

b. The Skinner Companion: National Treasury Employees Union v. Von Raab

The Supreme Court of the United States granted certiorari in National Treasury Employees Union v. Von Raab162 to determine whether the United States Customs Service can require urine testing from employees seeking to transfer or get promoted without violating the Fourth Amendment.163 The Customs Service is “responsible for processing persons, carriers, cargo, and mail into the United States, collecting revenue from imports, and enforcing customs and related laws.”164 Additionally, the Customs Service has the responsibility of seizing contraband, including illegal drugs that people attempt to smuggle into the United States.165 Many of the agents employed by the Customs Service use firearms while on duty because they come in contact with many dangerous criminals in charge of major drug operations who may use violence or threats against the agent.166 In 1985, the Commissioner of Customs implemented a drug-screening program after extensive research led them to the conclusion that “drug screening through urinalysis is technologically reliable, valid and accurate.”167 The Commissioner of Customs validated his drug-screening program by reasoning that he does not believe illegal drug use to be a major problem amongst Customs agents but that “unfortunately no segment of society is immune from the threat of illegal drug use.”168 The Commissioner made drug testing a requirement for placement within jobs that meet any of three criteria: first, any job directly related to drug enforcement; second, any position which requires the employee to carry a firearm; and third, if the employee handles any classified materials.169 After it is determined that the employee falls within one or more of these cate-

161. Id.
163. Id. at 659.
164. Id.
165. Id. at 659–60.
166. Id. at 660.
167. Von Raab, 489 U.S. at 660.
168. Id.
169. Id. at 660–61.
categories, he or she is contacted by an independent drug testing facility to coordinate a time and place for the screening. The employee has the option of either producing the sample behind a partition or in a stall. The main request of the testing facility is that the person being screened remove all of his or her personal belongings and any additional clothing that is not necessary; for example, a jacket.

The laboratory in Von Raab tested only for standard illegal drugs, not for additional medical conditions or prescription medications. This laboratory has two levels of tests, and if the specimen fails the first test, it must be confirmed by the second test. The result of a screen that is confirmed positive for illegal drugs is sent to a medical review officer at the Customs Service, who is a licensed physician. The employees who test positive must have a valid explanation for their tests coming up positive or they can be dismissed from their position. The Customs Service ensures that any positive results will not be turned over to any other agency for criminal proceedings without the express written consent of the employee.

It is noteworthy that Von Raab was decided on the same day as Skinner; thus, the Court relied on the finding in Skinner that a governmental requirement of urinalysis drug testing is a search under the Fourth Amendment and therefore, the Customs Service’s testing must meet the necessary level of reasonableness required by the Fourth Amendment. The Court identified the government’s purpose, which was to prevent and deter drug use among employees with sensitive employment positions, as a substantial governmental interest. It stated that the substantial governmental interest presented an instance where the special needs doctrine might obviate the need for a warrant or probable cause. Additionally, the Court noted that a warrant will only provide the employee with little or no additional protection of his or her privacy because a warrant will merely tell the employee that a neutral magistrate has authorized a narrow intrusion of privacy. The drug screening policy in Von Raab is already narrowly and specifically defined, and all em-

170. Id. at 661.
171. Id.
172. Von Raab, 489 U.S. at 661.
173. Id. at 662.
174. Id.
175. See id.
176. Id. at 663.
177. Von Raab, 489 U.S. at 663.
179. Von Raab, 489 U.S. at 666.
180. See id.
181. Id. at 667.
employees are put on adequate notice of the testing.\textsuperscript{182} The Court reasoned that the “Service does not make a discretionary determination to search based on a judgment that certain conditions are present, there are simply ‘no special facts for a neutral magistrate to evaluate.’”\textsuperscript{183} Additionally, cases that require a warrant also require probable cause, and probable cause is prominently related to criminal investigations.\textsuperscript{184}

The Court ultimately found that the government’s need to conduct suspicionless drug tests of its employees outweighs the privacy interests of those employees.\textsuperscript{185} In the holding, it reasoned that “[t]he Customs Service is our Nation’s first line of defense against one of the greatest problems affecting the health and welfare of our population.”\textsuperscript{186} The great problem that the Court spoke of is, of course, the smuggling of illegal drugs into the United States.\textsuperscript{187} Additionally, the Customs employees who are directly involved in the handling of illegal drugs or the carrying of firearms, have “a diminished expectation of privacy in respect to the intrusions occasioned by a urine test.”\textsuperscript{188}

The Court focused on two of the petitioner’s contentions.\textsuperscript{189} First, the petitioner argued that the drug-testing program is unjustified because there is no belief by the Customs Service that it will actually find any employees using illegal drugs.\textsuperscript{190} Second, the petitioner argued that the method employed by the Customs Service is not sufficiently productive to justify its Fourth Amendment infringement because employees who are on illegal drugs can avoid the detection of those drugs by temporarily abstaining or by tampering with their sample.\textsuperscript{191}

In addressing the first, it is undisputed that drug abuse is one of the worst problems facing society and that no office is immune from potential illegal drug use.\textsuperscript{192} Given this reasoning and the government’s compelling interest, the urinalysis requirement for a few narrowly defined jobs cannot be looked at as unreasonable.\textsuperscript{193} The mere possibility that a Custom’s employee

\begin{thebibliography}{9}
\bibitem{182} Id.
\bibitem{183} Id. (quoting South Dakota v. Opperman, 428 U.S. 364, 383 (1976) (Powell, J., concurring)).
\bibitem{184} Von Raab, 489 U.S. at 667.
\bibitem{185} Id. at 668.
\bibitem{186} Id.
\bibitem{187} Id.
\bibitem{188} Id. at 672.
\bibitem{189} Von Raab, 489 U.S at 673.
\bibitem{190} Id.
\bibitem{191} Id.
\bibitem{192} Id. at 674.
\bibitem{193} Id.
\end{thebibliography}
uses drugs and thus becomes more susceptible to taking bribes to let drugs illegally enter the country safely or steals seized drugs is reason enough to allow the government to drug screen certain employees.\textsuperscript{194} The fact that all but a few of the tested employees will test negative does not obviate the need of the drug testing program or the government’s compelling interest.\textsuperscript{195}

With regard to the petitioner’s second argument, the Court stated that addicts may not even be able to abstain from the use of illegal drugs for even a short period of time.\textsuperscript{196} The court of appeals found that illegal drugs can stay in the blood system for widely varying amounts of time, depending on the person.\textsuperscript{197} Therefore, the Court rejected the petitioner’s argument because "no employee reasonably can expect to deceive the test by the simple expedient of abstaining after the test date is assigned."\textsuperscript{198} Additionally, it is not likely that the employee will be able to tamper with the sample, due to the facility’s safeguards.\textsuperscript{199}

The Court concluded that despite both of the petitioner’s arguments, "the program bears a close and substantial relation to the Service’s goal of deterring drug users from seeking promotion to sensitive positions."\textsuperscript{200} Further, it found that employees seeking promotions that are covered by the drug testing policy had to go through background investigations, medical exams, and other possible intrusive requirements before being hired, all of which can be expected to lower their privacy expectations when dealing with urinalysis.\textsuperscript{201} Ultimately, the Court’s final holding was that even though urinalysis is considered a search under the Fourth Amendment, the drug policy employed by Customs was reasonable because the government’s compelling interest in preventing the promotion of drug users to sensitive positions outweighed the privacy interests of those employees.\textsuperscript{202}

\textbf{c. Vernonia School District 47J v. Acton ex rel. Acton}

The Vernonia School District adopted a student athlete drug policy that allows random drug testing of all student athletes in the school district.\textsuperscript{203} A

\begin{itemize}
\item \textsuperscript{194} Von Raab, 489 U.S. at 674.
\item \textsuperscript{195} Id.
\item \textsuperscript{196} Id. at 676.
\item \textsuperscript{197} Id.
\item \textsuperscript{198} Id.
\item \textsuperscript{199} Von Raab, 489 U.S. at 676.
\item \textsuperscript{200} Id.
\item \textsuperscript{201} Id. at 677.
\item \textsuperscript{202} Id. at 679; U.S. CONST. amend. IV.
\item \textsuperscript{203} Vernonia Sch. Dist. 47J v. Acton ex rel. Acton, 515 U.S. 646, 648 (1995).
\end{itemize}
student and his parents unsuccessfully challenged this policy.\textsuperscript{204} The Vernonia School District decided to implement its drug policy because students began to speak out about their drug use and bragged about the school's inability to address it.\textsuperscript{205} In the Vernonia School District, the student athletes were some of the heaviest users of drugs in the school.\textsuperscript{206} This finding sounded alarms for the Vernonia School District because the use of drugs is related to an increase in sports injuries.\textsuperscript{207} This relation was supported by expert testimony at trial, which demonstrated that there are "deleterious effects of drugs on motivation, memory, judgment, reaction, coordination, and performance."\textsuperscript{208} The Vernonia School District even implemented classes and speakers designed to deter students from using illicit drugs, but nothing worked.\textsuperscript{209}

The drug testing policy implemented by the Vernonia School District applied to all students wishing to participate in sports programs through the school.\textsuperscript{210} The testing was done without suspicion at the beginning of the season, and additionally, there was a random drawing of ten percent of the athletes on each team, each week, to be tested.\textsuperscript{211} The student was required to reveal all prescription drugs before the test and then enter an empty locker room with a monitor of the same sex and provide a sample for testing.\textsuperscript{212} The monitor would stand about twelve to fifteen feet away from the student providing the sample and watch to make sure there was no tampering and listen for normal urination sounds.\textsuperscript{213} The female students were in a closed stall and could not be seen by the monitor.\textsuperscript{214} In order to ensure the privacy of the student being tested, the laboratory did not know the identity of the student and "[o]nly the superintendent, principals, vice-principals, and athletic directors" received the results, which were kept for no more than a year.\textsuperscript{215} If the student tested positive, a second test was immediately given, and if the second test was negative, there was no further action; however, if the second test was positive, the student and his or her parents were notified immediate-

\textsuperscript{204} Id. at 651, 666.
\textsuperscript{205} See id. at 648.
\textsuperscript{206} Id. at 649.
\textsuperscript{207} Id.
\textsuperscript{208} Acton, 515 U.S. at 649.
\textsuperscript{209} Id.
\textsuperscript{210} Id. at 650.
\textsuperscript{211} Id.
\textsuperscript{212} Id.
\textsuperscript{213} Acton, 515 U.S. at 650.
\textsuperscript{214} Id.
\textsuperscript{215} Id. at 651.
The student and his or her parents then had two options: first, the student could participate in a six week program which involved being drug tested every week; or second, the student could choose suspension for the remainder of the season and the following season.

The Court in *Vernonia School District 47J v. Acton ex rel. Acton* made it clear from the beginning of its analysis that a state-compelled urinalysis is a search that must conform to the Fourth Amendment or one of its exceptions. The Court stated that reasonableness is "the ultimate measure of the constitutionality of a governmental search." In order to determine whether the search in *Acton* was reasonable, the Court balanced the intrusion on the Fourth Amendment rights of the student against the search's promotion of a legitimate government interest. The Court pointed out that there were no criminal issues, and when law enforcement officers do a search pursuant to discovering evidence of a crime, reasonableness requires a warrant, and a warrant is obtained by a showing of probable cause. The Court further stated that a warrant is not required in all searches done by the government and that in such cases where no warrant is required, there is also no requirement of probable cause. A search that is done without a warrant and without probable cause can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."

"The first factor [that must] be considered [in a Fourth Amendment search case] is the nature of the privacy interest upon which the search . . . at issue intrudes." The Fourth Amendment only protects legitimate privacy interests, not just subjective ones. Additionally, "the legitimacy of certain privacy expectations vis-à-vis the State may depend upon the individual's legal relationship with the State."

The *Acton* Court began its examination of this factor by pointing out that the people subject to the drug policy were children, and thus while in school, they were temporarily under the custody...

216. *Id.*
217. *Id.*
219. *Id.* at 652.
220. *Id.*
221. *Id.* at 652–53.
222. *Id.* at 653 (citing Skinner v. Ry. Labor Execs. Ass’n, 489 U.S. 602, 619 (1989)).
223. *Acton*, 515 U.S. at 653.
224. *Id.* (quoting Griffin v. Wisconsin, 483 U.S. 868, 873 (1987)).
225. *Id.* at 654.
226. *Id.*
227. *Id.*
of the State and more specifically, the schoolmaster.\(^{228}\) The students did not lose all constitutional rights at the door of their school, however, and for many purposes, the school acted in loco parentis, which allows the school to do what is reasonable in instructing the students to act and behave civilly.\(^{229}\) The determination of reasonableness cannot ignore "the schools' custodial and tutelary responsibility for children."\(^{230}\) The Court reasoned that students are already subjected to "a lesser expectation of privacy than members of the [general population]" because attending school requires numerous vaccinations and exams that ensure the safety of other children.\(^{231}\) Furthermore, student athletes choose to try out for and join a team, and by doing so, "they voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally."\(^{232}\) The student athletes must obtain: additional physicals, which include urinalysis; "they must [have] adequate insurance coverage;" they must "maintain a minimum grade point average;" and finally, they must adhere to any other dress, practice, and conduct rules set by the athletic director.\(^{233}\) The Court compared students who participate in sports to adults who work in a heavily regulated industry, finding that both "have reason to expect intrusions upon normal rights and privileges, including privacy."\(^{234}\)

The Acton Court then examined the character of the intrusion.\(^{235}\) The Court reiterated what the Skinner Court previously stated: "that the degree of intrusion depends upon the manner in which production of the urine sample is monitored."\(^{236}\) In Acton, the Court determined that there were negligible privacy interests that were compromised by the way the urine sample was collected.\(^{237}\) An additional privacy issue that the Court raised when determining the character of the intrusion was the additional private medical information that could be discovered about the student through urinalysis.\(^{238}\) The school board in Acton only looked for illegal drugs and not medical conditions such as pregnancy, epilepsy, or diabetes.\(^{239}\) Additionally, the tests did
not vary depending on the student, and the school board could only test for the standard illicit drugs.240 Finally, the test results were only to be released to a very limited number of school officials who needed to know the results, and it was made clear that the results were not to be used in any criminal investigation.241 The Court did not find the release of prescriptions that were being taken to be "a significant invasion of privacy" because the results could be given to the testing center and not released to anyone who personally knew the student.242

The final factor examined by the Acton Court was "the nature and immediacy of the governmental concern at issue . . . and the efficacy of [the] means for meeting it."243 The Courts in Skinner and Von Raab both held that the government interests were compelling, and the district and court of appeals in Acton both took that to mean that the governmental interest must be compelling.244 The Court in Acton pointed out that the lower courts were mistaken to think that a compelling governmental interest was a fixed floor, and that a case would be disposed of unless the government could prove it had a compelling interest.245 The Court stated that there must be "an interest that appears important enough to justify the particular search at hand, in light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy."246 The Court reasoned that the Vernonia School District had a very important and perhaps compelling interest in keeping their schoolchildren off of drugs.247 Additionally, the Court called to attention that when students use drugs, the effect is felt across the entire school, from the other students to the faculty members.248 Finally, the Court reasoned that this drug screening was narrowly directed to athletes, where "immediate physical harm to the . . . user" himself or to the opposing team's players was very high.249 The Court additionally mentioned the role model effect that the athletes had on the other students, and how this important is-

240. Id.
241. See id. (citing Acton ex rel. Acton v. Vernonia Sch. Dist. 47J, 796 F. Supp 1354, 1364 (D. Or. 1992)).
243. Acton, 515 U.S. at 660.
244. Id. at 660–61 (citing Acton, 796 F. Supp at 1363).
245. See id. at 661.
246. Id. (emphasis omitted).
247. See id. at 660–61.
248. Acton, 515 U.S. at 662.
249. Id.
sue was addressed by the athletes being drug tested so they were not able to use illicit drugs.\footnote{Id. at 663.}

The Court stated in Acton that it has "repeatedly refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment."\footnote{Id. (citing Skinner v. Ry. Labor Execs. Ass'n, 489 U.S. 602, 629 n.9 (1989)).} The petitioner in Acton argued that the better alternative was suspicionless testing.\footnote{Id.} The Court quickly rejected this alternative for numerous reasons.\footnote{Acton, 515 U.S. at 663.} First, the proposal for suspicionless testing has the attached risk that teachers and coaches will be able to arbitrarily impose drug testing on students who are "troublesome but not drug-likely."\footnote{Id.} This risk, as the Court pointed out, could open the school to numerous lawsuits that would be very costly to defend, and further, expensive procedures would need to be put in place before accusatory drug screening could be imposed on a student.\footnote{Id. at 663–64.} Additionally, the Court stated that the already busy school teachers would need to add a new responsibility to their already demanding job: spotting drug users.\footnote{Id. at 664.} Teachers, in general, are not prepared to take on this additional task because "a drug impaired individual 'will seldom display any outward signs detectable by [a] lay person or, in many cases, even [a] physician.'"\footnote{Id. (quoting Skinner v. Ry. Labor Execs. Ass'n, 489 U.S. 602, 628 (1989)).}

The Court in Acton took into account all of the necessary factors and concluded that the drug testing policy imposed by the Vernonia School District was reasonable and constitutional.\footnote{Acton, 515 U.S. at 664–65.} The Court did point out that there will always need to be a full analysis of the above factors in every suspicionless drug testing case and that future cases will not automatically pass constitutional muster.\footnote{Id. at 665.} The Court concluded by reiterating that when the government is acting as someone else, such as an employer or a guardian, as in Acton, "the relevant question is whether the search is one that a reasonable guardian [or employer] might undertake."\footnote{Id.}
d. Chandler v. Miller

In Chandler v. Miller, Georgia enacted a law requiring political candidates for designated state office positions to pass a drug test. This law did not require an individualized suspicion of the candidates. Georgia was the first and only state to enact such a law, and the Supreme Court of the United States ultimately held the law to be unconstitutional.

The Georgia regulation required political candidates to submit to a drug test thirty days prior to their qualification as a candidate. This test was to be done at an approved facility and only tested for five standard illicit drugs. The United States Court of Appeals for the Eleventh Circuit held that this was a constitutional drug testing procedure. That court found that there was a special need in performing this type of drug testing, bringing this search into the realm of the special needs doctrine. The Eleventh Circuit then proceeded to balance the individual potential candidate’s privacy expectations against the governmental interest to see if the need for individualized suspicion would be impractical in this context. The court found there was no record of any kind of drug abuse by any elected officials in Georgia and no reason to believe any users or addicts would be uncovered by the testing. The court still found the testing was reasonable because the citizens of Georgia place a lot of trust in their elected officials, and those officials are in charge of many important things such as economics, safety, and law enforcement. Additionally, the court stated that high-ranking government officials can be very susceptible to bribes and blackmail, and an illegal drug habit would make an official even more susceptible.

262. Id. at 308.
263. See id.
264. Id. at 309.
265. Id.
266. Chandler, 520 U.S. at 309 (explaining that the standard illicit drugs tested for are marijuana, cocaine, opiates, amphetamines, and phencyclidines).
267. Id.
268. Id. at 311.
269. Id.
270. See id.
271. Chandler, 520 U.S. at 311.
272. Id.
273. Id. at 311–12.
Upon review, the Supreme Court of the United States first noted that this is a case that falls within the Fourth Amendment analysis because urinalysis has previously been held to be a search under the Fourth Amendment.\textsuperscript{274} Then, it proceeded to discuss the reasonableness of the search.\textsuperscript{275} For a search to be considered reasonable under the Fourth Amendment, an individualized suspicion is usually required unless there is a special need for the search and it is outside of the normal need for law enforcement involvement.\textsuperscript{276} The Court then re-examined the balancing of the private and governmental interests.\textsuperscript{277} Ultimately, the Court decided that although the government does have a substantial or important interest, there is no "concrete danger demanding departure from the Fourth Amendment's main rule," the threats and dangers were only hypothetical.\textsuperscript{278} The Court did point out that a demonstrated problem is not necessary in all cases, but that the proof of a problem could help to clarify and validate specific hazards.\textsuperscript{279}

An additional focus of the Court was that the legislation does not credibly deter illegal drug use.\textsuperscript{280} Under the Georgia law, the potential candidate has ample notice that he would need to submit a clean drug test result within thirty days of being approved to run for office.\textsuperscript{281} There was no secret as to the date of the test.\textsuperscript{282} The Court stated that as long as a candidate is not prohibitively addicted to illegal drugs, he or she will be able to abstain long enough to pass a scheduled drug test, and those who are not able to abstain are very unlikely to become a candidate.\textsuperscript{283} The Court reasoned that, unlike in \textit{Von Raab} where it was not feasible to subject the agents to standard office scrutiny, public officials are constantly scrutinized by the public, media, and other government officials.\textsuperscript{284}

The Court ultimately conceded that this testing procedure was relatively noninvasive, and therefore it was not an excessive intrusion on the candidates, and that the government had a significant and important governmental interest.\textsuperscript{285} Despite this concession, the Court still held that because public

\textsuperscript{274}. \textit{Id.} at 313; U.S. \textit{Const.} amend. IV.
\textsuperscript{275}. \textit{Chandler}, 520 U.S. at 313.
\textsuperscript{276}. \textit{See id.} at 313; U.S. \textit{Const.} amend. IV.
\textsuperscript{277}. \textit{See Chandler}, 520 U.S. at 314, 318.
\textsuperscript{278}. \textit{Id.} at 318–19.
\textsuperscript{279}. \textit{See id.} at 319.
\textsuperscript{280}. \textit{Id.}
\textsuperscript{281}. \textit{Id.} at 309.
\textsuperscript{283}. \textit{Id.} at 320.
\textsuperscript{284}. \textit{Id.} at 321 (citing Nat'l Treasury Emps. Union v. \textit{Von Raab}, 489 U.S. 656, 674 (1989)).
\textsuperscript{285}. \textit{Id.} at 318.
safety is not genuinely in jeopardy, this kind of suspicionless search will be barred by the Fourth Amendment even if the search is done in the most convenient way possible.\textsuperscript{286} The Court stated that this drug testing was merely a symbol and not a special need.\textsuperscript{287}

\begin{enumerate}
\item[i. \textit{The Chandler} Dissent]

Chief Justice Rehnquist wrote a very compelling dissent and stated that he would rule the Georgia regulation constitutional.\textsuperscript{288} Chief Justice Rehnquist began by declaring that Georgia should not be faulted, and it should not be held against Georgia that it is the only state to enact a law like the one at issue because it takes one state to step up in order to bring about change or a new, nationwide enactment of similar legislations.\textsuperscript{289}

Chief Justice Rehnquist stated that there are very few people, if any, that would be able to honestly say that illegal drug use is not a major issue that the United States is facing, and a person would have to be very bold to state that illegal drug use could not extend to candidates for public office.\textsuperscript{290} Chief Justice Rehnquist noted that the record did not show any illegal drug use problems among candidates or high-ranking officials, but that the State of Georgia should not have to wait until illegal drug use among candidates becomes a problem to actually attack it.\textsuperscript{291} If the State was to wait until there was an issue, it could mean that a drug addict was running for a high-ranking official position or that one actually was elected to a position.\textsuperscript{292} Such a scenario could have devastating effects on the integrity of the electoral procedures or on the office itself. Chief Justice Rehnquist cited to the majority in \textit{Von Raab} to demonstrate that the Supreme Court of the United States had already held a drug testing procedure to be constitutional without the need for a perceived drug problem.\textsuperscript{293}

Additionally, Chief Justice Rehnquist found that the majority in \textit{Chandler} applied the special needs doctrine differently than they had in \textit{Von Raab} and \textit{Skinner}.\textsuperscript{294} He stated that the majority incorrectly relied on the notion

\begin{itemize}
\item \textsuperscript{286} \textit{Id.} at 323.
\item \textsuperscript{287} \textit{Chandler}, 520 U.S. at 322.
\item \textsuperscript{288} \textit{Id.} at 328 (Rehnquist, C.J., dissenting).
\item \textsuperscript{289} \textit{See id.} at 323–24.
\item \textsuperscript{290} \textit{Id.} at 324.
\item \textsuperscript{291} \textit{Id.}
\item \textsuperscript{292} \textit{Chandler}, 520 U.S. at 324.
\item \textsuperscript{293} \textit{See id.} (citing Nat’l Treasury Emps. Union v. \textit{Von Raab}, 489 U.S. 656, 673–74 (1989)).
\item \textsuperscript{294} \textit{Id.} at 325 (citing \textit{Von Raab}, 489 U.S. at 669; \textit{Skinner} v. \textit{Ry. Labor Execs. Ass’n}, 489 U.S. 602, 620 (1989)).
\end{itemize}
that a candidate is already subject to high levels of scrutiny by the public thereby allowing the public to easily spot his or her drug use.\(^{295}\) Chief Justice Rehnquist pointed out the strangeness of such a holding\(^{296}\) by comparing the candidates to the workers in *Skinner* and the Customs officials in *Von Raab* and stating that it could be easily said that those two groups are under the same sort of scrutiny from their employees and supervisors who work very closely with them on a daily basis.\(^{297}\) Specifically, he stated:

> [T]he clear teaching of those cases is that the government is not required to settle for that sort of a vague and uncanalized scrutiny; if in fact preventing persons who use illegal drugs from concealing that fact from the public is a legitimate government interest, these cases indicate that the government may require a drug test.\(^{298}\)

Additionally, the privacy interest that is infringed upon by a urinalysis of this kind is negligible just as in the previous cases before this Court.\(^{299}\)

Chief Justice Rehnquist concluded his dissent by stating that the Court had previously held that preventing drug use by Customs employees—even off duty—was compelling because they are susceptible to bribery and blackmail.\(^{300}\) The risks for bribery and blackmail are just as high among high-ranking government officials, especially officials who engage in the use of illegal drugs.\(^{301}\) Specifically, “when measured through the correct lens of our precedents in this area, the Georgia urinalysis test is a ‘reasonable’ search; it is only by distorting these precedents that the Court is able to reach the result it does.”\(^{302}\)

e. Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls

In *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*,\(^{303}\) the Board of Education of Pottawatomie County in Oklahoma implemented a drug-testing requirement for students who

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295. Id.
296. Id. at 326.
298. Id.
299. Id.
300. Id.
301. See id.
wished to participate in extracurricular activities.\textsuperscript{304} There were three parts that all students wishing to participate had to consent to: first, a drug test before signing up for an activity; second, “random drug testing while participating;” and third, a drug test anytime there was reasonable suspicion of drug use.\textsuperscript{305} All tests would only screen for illegal drugs and not for prescription medication or medical conditions of any kind.\textsuperscript{306}

The Supreme Court of the United States’ Fourth Amendment analysis began with the reasonableness of the governmental search and determined that the search was not related to criminal proceedings, and thus, probable cause was not required.\textsuperscript{307} The respondents’ argument relied on the fact that there was no individualized suspicion required in the testing of the students.\textsuperscript{308} The Court answered by stating that the Supreme Court had long held that “the Fourth Amendment imposes no irreducible requirement of [individualized] suspicion.”\textsuperscript{309} Therefore, when there is a “‘special need[] beyond the . . . need for law enforcement,’” and probable cause is impracticable, a suspicionless search could be legal if safety is an issue.\textsuperscript{310}

The Court quickly dismissed the privacy issue because a public school is considered a unique and special setting.\textsuperscript{311} The Court reasoned that, “[a] student’s privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety. Schoolchildren are routinely required to submit to physical examinations and vaccinations against disease.”\textsuperscript{312} Additionally, the Court stated that public school students are subject to fewer privacy rights than people outside of the school in order to maintain order within the school.\textsuperscript{313} Finally, the Court stated that extracurricular activities are regulated beyond that of normal school regulations, and thus, students who participate have a lesser expectation of privacy.\textsuperscript{314}

The Court then examined the character of the intrusion.\textsuperscript{315} Urinalysis is a testing procedure that is usually covered by the Fourth Amendment, but the

\begin{thebibliography}{99}
\bibitem{304} Id. at 825.
\bibitem{305} Id. at 826.
\bibitem{306} Id.
\bibitem{307} Id. at 828–29.
\bibitem{308} Earls, 536 U.S. at 829.
\bibitem{309} Id. at 829 (alteration in original) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 561 (1976)).
\bibitem{310} Id. (quoting Griffin v. Wisconsin, 483 U.S. 868, 873 (1987)).
\bibitem{311} See id. at 830–31.
\bibitem{312} Id. (citing Vernonia Sch. Dist. 47J v. Acton ex rel. Acton, 515 U.S. 646, 657 (1995)).
\bibitem{313} Earls, 536 U.S. at 831.
\bibitem{314} Id. at 832 (citing Acton, 515 U.S. 646, 657 (1995)).
\bibitem{315} Id.
\end{thebibliography}
level of the intrusion depends upon the manner in which the urine sample is collected. Here, a faculty member waited outside of a closed bathroom stall in order to "'listen for the normal sounds of urination'" and to make sure that the student was not tampering with the sample. The Court considered this method to be a clearly negligible intrusion. Additionally, the school kept all of the results private and separate from all other records the school had on the child. Only faculty members who needed to know the results were given the results. The Court ultimately concluded that the intrusion was minimal because of the nature of the sample collection and because the results were used very limitedly.

Finally, the Court looked to the nature and immediacy of the school’s concerns and the effectiveness of the drug policy in meeting those concerns. The evidence before the Court suggested that drug use among children had gotten worse since the Court previously faced this issue seven years prior to this decision. The Court, relying on precedent, concluded that although a demonstrated problem of drug abuse is not required in all cases, the fact that the school board proved the existence of even some drug use in the school was enough to "'shore up an assertion of special need for a suspicionless general search program.'" Additionally, in this context, individualized suspicion is unnecessary for preventing, deterring, and detecting drug use by students. Teachers are already faced with the difficult task of keeping order and disciplining the students, and therefore, a test which required individualized suspicion would be unnecessarily burdensome. Additionally, an individualized suspicion-based policy could lead to the targeting of certain students and open the school up to further litigation. The Court concluded that "'it would make little sense to require a school district to wait for a substantial portion of its students to begin using drugs before it was allowed to institute a drug testing program designed to deter drug

316. Id. (citing Acton, 515 U.S. at 658).
318. See Earls, 536 U.S. at 833.
319. Id.
320. Id.
321. Id. at 834.
322. Id.
323. Earls, 536 U.S. at 834.
324. Id. at 835 (quoting Chandler v. Miller, 520 U.S. 305, 319 (1997)).
325. Id. at 837.
326. Id.
327. Id.
use."³²⁸ The Court found the school district's policy to be "a reasonable means of furthering [its] important interest in preventing and deterring drug use among its schoolchildren," and therefore, the suspicionless drug testing, although falling within the Fourth Amendment, was not in violation.³²⁹

2. Trends Among the Lower Courts

Courts around the United States are not shying away from upholding suspicionless drug testing under the special needs doctrine.³³⁰ Since 1989, courts around the country have upheld suspicionless testing of Department of Transportation employees,³³¹ teachers,³³² city employees whose jobs implicate public safety,³³³ and government employees who work with at risk youths.³³⁴

In 1989, just a few months after the Supreme Court of the United States decided Skinner and Von Raab, the United States Court of Appeals for the District of Columbia Circuit upheld suspicionless drug testing for certain employees of the Department of Transportation (DOT).³³⁵ There, the court used the same analysis as in Skinner and Von Raab.³³⁶ The court determined that "[t]here can be little doubt . . . that the testing plan serves needs other than law enforcement, and therefore need not necessarily be supported by any level of particularized suspicion."³³⁷ It was ultimately found by the court that the balance of the DOT employees' privacy interests against the important governmental interest of public safety issues involved with their jobs were identical to those in Skinner and was therefore easy to uphold.³³⁸

Nine years later, in a lengthy Fourth Amendment analysis, the United States Court of Appeals for the Sixth Circuit upheld suspicionless drug test-

³²⁸. Earls, 536 U.S. at 836.
³²⁹. Id. at 838.
³³¹. See Am. Fed'n of Gov't Empls., 885 F.2d at 886, 898.
³³². See Knox Cnty. Educ. Ass'n, 158 F.3d at 363, 384; Crager, 313 F. Supp. 2d at 691, 697.
³³³. See Robinson, 10 P.3d at 470.
³³⁶. Id. at 888.
³³⁷. Id. at 889.
³³⁸. Id. at 889, 898.
ing for school employees applying for positions that are safety sensitive. The school board defined safety sensitive positions as ones "where a single mistake by such employee can create an immediate threat of serious harm to students and fellow employees.” This "include[d] principals, assistant principals, teachers, traveling teachers, teacher aides, substitute teachers, school secretaries, and school bus drivers." The lower court found that because there was a lack of evidence or history of drug abuse among the positions tested and there were not the same disastrous harm implications as in previous cases, the suspicionless policy should not be upheld. Furthermore, the lower court found the urinalysis to be fairly intrusive and “rejected the argument that teachers [have] a diminished expectation of privacy.”

The Sixth Circuit disposed of the lower court’s decision finding in favor of suspicionless testing. The Sixth Circuit stated that little or no evidence of drug abuse was not an issue because a showing of a problem is not necessary. The analysis turned to an examination of the competing privacy interests of the teachers and the government's interest in child safety. The court stated, “[w]e can imagine few governmental interests more important to a community than that of insuring the safety and security of its children while they are entrusted to the care of teachers and administrators.” Additionally, teachers have a direct influence on children and are serving in loco parentis. The court noted that even a momentary lapse in attention or judgment during recess on the playground, or while eating in the cafeteria, or just while the children are engaging in general horseplay can cause serious harm to the children because “children are active, unpredictable, and in [the] need of constant attention and supervision.”

The court distinguished this case from Chandler. It noted that because “teachers are not subject to the same [level of] day-to-day scrutiny as [the] candidates for public office” in Chandler, there is a greater need for

340. Id. at 367.
341. Id.
342. Id. at 370.
343. Id. (internal quotation marks omitted).
345. Id. at 374.
346. See id. at 373–84.
347. Id. at 374–75.
348. Id. at 375.
350. Id. at 374–75.
Moreover, teachers work in a very special environment where they are mostly surrounded by students for roughly six hours a day, and the majority of their daily contact is with students who might not be able to detect drug use or abuse.\footnote{Id. at 375; Chandler v. Miller, 520 U.S. 305, 321 (1997).} If a student does suspect drug use, it is unlikely that he or she would report it because a drug use allegation is very serious and there can be numerous consequences or fear of retaliation.\footnote{Knox Cnty. Educ. Ass’n, 158 F.3d at 375.} Finally, “unlike candidates for public office who may indirectly affect the lives of children as role models and policymakers, teachers directly influence and supervise children daily.”\footnote{Id.}

The court concluded that suspicionless drug testing of teachers is justified because of “the unique role they play in the lives of school children and the in loco parentis obligations imposed upon them.”\footnote{Id. at 379-80.} Additionally, the court pointed out that this urinalysis testing is fairly nonintrusive because there is no random element to this testing.\footnote{Knox Cnty. Educ. Ass’n, 158 F.3d at 379–80.} All the information collected by the test is protected by extensive privacy safeguards, and privacy levels of teachers are significantly diminished because of the high level of regulation of their jobs and the nature of the work itself.\footnote{Robinson v. City of Seattle, 10 P.3d 452, 470 (Wash. Ct. App. 2000).}

Two years later in 2000, a Washington appellate court upheld a Seattle law requiring the drug testing of city employee applicants whose duties can implicate public safety.\footnote{Id. at 703.} There, the court found a compelling governmental interest in the safety of its citizens that outweighed the minimal privacy intrusions of the urinalysis and that the testing was narrowly tailored.\footnote{Crager v. Bd. of Educ. of Knott Cnty., Ky., 313 F. Supp. 2d 690, 691 (E.D. Ky. 2004).}

In 2004, the case of suspicionless drug testing of teachers was addressed by the United States District Court for the Eastern District of Kentucky.\footnote{Id. at 703.} There, the court set aside an injunction to stop the suspicionless testing because it said that the plaintiff would not suffer irreparable injury if he were forced to undergo drug testing.\footnote{Id. at 703.} Specifically, the court held:

The justifications for permitting the suspicionless drug testing of teachers (as discussed in Knox County), the fact that random
tests were upheld in *Earls* and *Vernonia*, the language in *Chandler* and *Skinner*, and the significant drug problem facing Knott County, support the right of the Board to protect its school children and employees through the use of random testing.  

As recent as April 6, 2011, the United States District Court for the District of Columbia granted summary judgment for the government in favor of the suspicionless drug testing of government employees that work with at risk youths and economically disadvantaged youths. The court held that the employees had a diminished expectation of privacy because of the realities of the work that they were involved in. Additionally, the testing procedures were identical to the ones previously upheld in *Von Raab*, therefore the court held them to be negligibly intrusive. Ultimately, the court held that the governmental interest outweighed the Fourth Amendment privacy interests of the employees.

These cases only represent a few of the many suspicionless drug-testing cases that have been decided by courts around the country. This sample demonstrates the willingness to apply the special needs doctrine and the consistency in the findings once the test is applied.

3. The Test

A general test for the special needs doctrine has emerged from the five cases that the Supreme Court of the United States has decided on suspicionless drug testing. First, it must be stated that urinalysis is considered a search under the Fourth Amendment because it “intrudes upon expectations of privacy that society has long recognized as reasonable.” Once it is established that the search falls within the Fourth Amendment, the search must

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362. *Id.* at 702.
364. *Id.* at *13.
366. *See* id. at *17.
368. *Skinner*, 489 U.S. at 617.

https://nsuworks.nova.edu/nlr/vol36/iss1/10
then be looked at to see if it is reasonable. Reasonableness of a search "depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." Generally, to be considered reasonable, the search or seizure must be "based on [some] individualized suspicion of wrongdoing" unless the search or seizure can be said to fall within the scope of the special needs doctrine. This special need must be something other than that of crime detection, and obtaining a warrant or gaining probable cause would be impracticable. The privacy intrusion of the drug testing must be examined and then balanced against the recipient's interest in performing the drug testing. The Supreme Court of the United States stated that there must be "an interest that appears important enough to justify the particular search at hand, in light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy." Once it is determined that the governmental interest is very important and outweighs the privacy interests of the individual being tested, the intrusion on the privacy is justified and does not require any form of individualized suspicion.

IV. ANALYSIS

A. Florida vs. Michigan

This section will demonstrate how the Michigan legislation should have passed constitutional muster, but did not, due to a split court. The section begins by showing why the Michigan legislation failed. Next, the Florida legislation will be analyzed by applying the special needs test presenting the constitutionality of the legislation when analyzed correctly.

369. Chandler, 520 U.S. at 313.
371. Acton, 515 U.S. at 653 (emphasis omitted).
373. T.L.O., 469 U.S. at 351 (Blackmun, J., concurring).
375. Acton, 515 U.S. at 661 (alteration in original).
376. Von Raab, 489 U.S. at 668.
1. Why the Michigan Legislation Failed

In 1999, Michigan attempted to enact a suspicionless drug-testing program of welfare recipients, however, the legislation was immediately challenged. The Michigan legislation required that all new applicants be required to submit to a drug test and "[a]dditionally, after six months, twenty percent of [parents]" who are up for redetermination would be randomly selected for testing. If an applicant or recipient tested positive, he or she was required to undergo a substance abuse assessment, and if the assessment determined he or she needed treatment, the applicant would have to comply with a treatment plan. The applicant could still receive funding without going through treatment if he or she had a debilitating illness or injury, had become exempt, or gave credible information about an unplanned event or factor that was the reason why he or she tested positive.

The district court held that the State did not show that public safety would be placed in jeopardy if the recipients and applicants of welfare assistance were not drug tested. The court noted that the goal of Michigan’s government assistance program is to help families become financially self-sufficient, but substance abuse is a persistent problem and is a major barrier to employment and thus, self-sufficiency. This finding was discarded by the district court as not concerning public safety, but was noted as an understandable concern. The State argued that there is strong evidence that shows parents who are substance abusers are more likely to abuse and neglect their children, and the State has a strong interest in protecting the children from abuse or neglect, especially when a main goal of the assistance program is to assist so that children can remain safe in their own homes. The court quickly decided to refute this argument by stating that a drug test is not aimed at actually addressing the issue of child abuse or neglect. The court made a case analogy to Chandler and stated that both applying for welfare and running for state office were voluntary activities, even more so when

379. Id. at 1136.
380. Id.
381. Id. at 1137.
382. Id. at 1140.
384. Id.
385. Id. at 1141.
386. Id.
running for state office, and the *Chandler* Court held the testing in its case was unconstitutional. 387 The ultimate holdings, in both *Chandler* and *Marchwinski I*, were that suspicionless drug testing in those cases was unconstitutional because the State did not show a special need grounded in public safety. 388

The case was appealed to the United States Court of Appeals for the Sixth Circuit, which granted review of the case, ultimately reversing the district court’s decision. 389 The court pointed out that the program eligibility manual for the Michigan assistance program states that having strong family relationships is made harder by substance abuse, and there are more barriers to employment when substance abuse is involved; therefore, the State of Michigan will drug test their recipients. 390 On appeal, the petitioner heavily pushed the argument that Michigan’s interest in preventing child abuse and neglect was enough of a special need to warrant suspicionless drug testing. 391 The court emphasized that “although public safety must be a component of a state’s special need, it need not predominate.” 392 The court found that the district court erred in holding that only a public safety concern is sufficient for a special need. 393 The proper standard, as the court set out, for reviewing this type of case is “whether Michigan has shown a special need, of which public safety is but one consideration.” 394

The Sixth Circuit laid out numerous reasons as to why there was a sufficient special need for Michigan to engage in suspicionless testing. 395 The court was presented with a multitude of studies that supported the notion that the use and abuse of controlled substances negatively impacts the ability of a person to gain and preserve employment and be a responsible and capable parent. 396 Additionally, the studies presented to the court showed that the use of controlled substances was higher among welfare recipients than the general public. 397 Furthermore, substance abuse greatly contributes to child abuse and neglect, and illegal drugs are a significant barrier to financial self-

387. *Id.* at 1143.
390. *Id.*
391. *Id.* at 333.
392. *Id.* at 335.
393. *Id.*
394. *Marchwinski II*, 309 F.3d at 335.
395. *Id.* at 335–36.
396. *Id.* at 335.
397. *Id.* at 335–36.
The court had “no doubt that the safety of the children of families in Michigan’s Family Independence Program is a substantial public safety concern that must be factored into the determination of whether Michigan has shown a special need to this drug testing program.” Finally, the court pointed out the public safety concerns that are inherently attached to illegal drug use and trafficking. The court stated that it is “beyond cavil” that the State has a sufficient special need of ensuring that taxpayers’ money does not go to the promotion of illegal activity, especially when that activity “undermines the objectives of the program . . . [and] directly endangers both the public and the children the program is designed to assist.”

When conducting the standard balancing test involved in any special needs analysis of the plaintiff’s privacy versus the government’s interest, the Sixth Circuit stated that it must evaluate the “asserted privacy interest of the plaintiffs by looking at the character and invasiveness of the privacy intrusion and the nature of the privacy interest.” The court further stated, before conducting the balancing, that “[i]mportant to the determination of the reasonableness of the expectation of privacy is the extent of [the] regulation of the welfare ‘industry,’ the pervasiveness of the testing practice in other areas of life and the voluntary or involuntary nature of the procedure.”

First, the court found that the privacy intrusion is limited because the sample is collected in private without observation, the test is only for illicit drugs and no additional information, only those who need to know the results can obtain them, and the results are not used for any criminal proceedings. Second, when the court examined the nature of the privacy interest, it concluded that the plaintiffs have a clearly “diminished expectation of privacy” because welfare is heavily regulated and recipients are required to “relinquish important and . . . private information” in order to receive benefits, which makes the recipients aware that a condition of receiving benefits comes with a diminished privacy expectation. The court concluded by stating that it does not matter whether it views this drug testing procedure as a requirement to receive benefits or as enforcing the requirement that reci-

398. Id. at 336.
399. Marchwinski II, 309 F.3d at 336.
400. Id.
401. Id.
402. Id. (citing Veronica Sch. Dist. 47J v. Acton ex rel. Acton, 515 U.S. 646, 654 (1995)).
403. Id. at 336 (citing Acton, 515 U.S. at 657; Skinner v. Ry. Labor Execs. Ass’n, 489 U.S. 602, 627 (1989); Wyman v. James, 400 U.S. 309, 325 (1971)).
404. Marchwinski II, 309 F.3d at 336-37.
405. Id. at 337.
patients not use illegal drugs, the State had shown sufficient cause for the testing.\footnote{406}

After being reversed at the appellate level, an en banc review of the case was granted.\footnote{407} The members of the en banc review court were equally divided on the issue and pursuant to a previous Sixth Circuit ruling, the district court judgment was affirmed.\footnote{408} This case was not appealed any further and died due to a split circuit court.\footnote{409} It was a case that would have surely been granted certiorari to be heard by the highest court in Michigan and was well primed to be argued before the Supreme Court of the United States due to its controversial and important nature. The Sixth Circuit decision should have been affirmed for the same reason that the Florida law is constitutional, which will be discussed in length in the next section.

2. Why the Current Florida Legislation Is Constitutional

In order to determine if the current Florida legislation is constitutional, the special needs test will be applied in a five step process. First, it must be determined that the search in question actually falls within the Fourth Amendment's grasp. Second, it will be determined that the search is reasonable. Third, the extent of the invasion on the welfare applicant's privacy will be analyzed. Fourth, the significant or important governmental interest will be analyzed. Finally, the privacy interest and the interest of the government will be balanced to ultimately determine that the search is constitutional.

a. The "Special Needs" Test Applied

i. Does the Search Fall Within the Fourth Amendment?

The first step is the easiest step to analyze in the instant case. The Florida legislation is requiring urine samples when applying for government funds,\footnote{410} and it is well settled case law that urinalysis is considered a search on two levels.\footnote{411} First, the actual taking of the sample of urine, and second, the examination of the urine are both normally protected under the Fourth

\footnote{406} Id. at 338.
\footnote{407} Marchwinski v. Howard (Marchwinski III), 60 F. App’x 601, 601 (6th Cir 2003) (en banc).
\footnote{408} Id.
\footnote{409} See id.
\footnote{410} FLA. STAT. § 414.0652 (2011).
Amendment. Florida will be taking the urine samples from all welfare recipients who wish to receive cash benefits and then will examine the urine for any illicit drugs.

ii. Is the Search Reasonable?

The drug testing of Temporary Cash Assistance recipients is reasonable under the Fourth Amendment’s special needs doctrine. The method used by the government does not need to be the least intrusive in order to be considered reasonable under the Fourth Amendment. Suspicion based testing is the alternative to suspicionless testing and this alternative can have devastating effects. As stated by the court in Vernonia Sch. Dist. 47J v. Acton ex rel. Acton, 515 U.S. 646, 663 (1995) (citing Skinner, 489 U.S. at 629 n.9).

Further, the caseworkers are supposed to further the goals of the TANF program, not play detective during the application process to try to determine if an applicant might be using illegal drugs. The Skinner court duly stated that to a lay person or even a doctor, some drug users are very hard to discover, because often, users will not show any signs of use. Because use is so hard to detect, the caseworkers, who already have limited interactions with the families they are assigned to, will lose focus on the important issues of making sure that the dependent children in the home are well nourished, not abused or neglected, and the home is in livable condition, because they will be concerned with detecting minute signs of drug use by the parent recipients. DCF lists ways that a case manager, while on an in-home visit, can determine the presence of drug use in the home, but they are hardly effective or likely. DCF tells the case managers to look for such signs as drug paraphernalia, the parents admitting to using drugs, or the parent showing physical signs of drug use. These obvious signs are highly unlikely during a

412. Id.
413. FLA. STAT. § 414.0652.
415. See id. at 663–64.
416. About TANF, supra note 27.
418. See Child Welfare & Substance Abuse: Known Factors that Increase Risk, supra note 64, at 3.
419. See id.
420. Id.
scheduled home visit in which the recipient has ample notice and time to hide any signs of drug use in the home. DCF admits that drug use is very often under-recognized by caseworkers who interview the parents. These minimally effective alternatives are not an efficient way of combating the problem of finding drug abuse among people seeking government assistance.

This legislation is very narrowly defined because it only applies to applicants who wish to receive cash assistance. Applicants will be able to receive food stamps, Medicaid, Medicare, disability, and any other government benefit except temporary cash assistance without taking a drug test. This lets the families still have their medical benefits, food, subsidized housing, and any other government assistance they are receiving while the applicant who tested positive is working to get off drugs. Additionally, the applicant's family will still be able to receive cash assistance because the legislation allows an applicant who fails a drug test to assign the benefits to another family member or an approved government agent.

Reasonableness under the Fourth Amendment usually requires individudalized suspicion unless there is a special need outside of the normal need for law enforcement. It is in the best interest of the applicant for law enforcement or the courts to not get involved in the drug testing proceedings. If DCF was required to obtain a warrant, it would have to go before a judge to explain the facts surrounding the applicant and present evidence that the applicant is using illicit drugs. This procedure goes against the legislation's commitment to privacy, its firm stance on not getting law enforcement involved, and not using the results in any sort of criminal proceeding. Furthermore, probable cause is not required in cases that do not involve criminal proceedings. Therefore, it is not reasonable to require a finding of probable cause in the instant case because no criminal proceedings are involved.

The Chandler Court stated, when talking about the plaintiffs in Von Raab, that it was not feasible for the Customs agents to be subjected to a

421. Id.
424. See id.
425. Id.
430. See id. at 829.
standard level of daily scrutiny like that of an office.\textsuperscript{431} A family who is receiving cash assistance is also not subject to any standard level of daily scrutiny; they are merely visited occasionally by a caseworker and subject to very limited scrutiny.\textsuperscript{432} The Chandler Court found it unreasonable to test potential government candidates because of the high level of scrutiny inherent in the position.\textsuperscript{433} This level of scrutiny is not present in the case of applicants for cash assistance, just as the high level of scrutiny was not present in Von Raab, Skinner, Acton, or Earls.\textsuperscript{434} TCA recipients, unlike the plaintiffs in Chandler, will not be in the public eye and will not be subjected to anything but minimal scrutiny.\textsuperscript{435} This minimal level of scrutiny makes the alternative—suspicion based testing—impracticable because the caseworkers would only detect the most obvious of addicts or users. Furthermore, the individuals that will have a significant amount of interaction with the recipients of the cash assistance are their children, and as the court in Knox County Education Ass’n v. Knox County Board of Education\textsuperscript{436} stated, children are unlikely to be able to tell whether an individual is using illicit drugs and might be scared to say something because of the unwanted consequences.\textsuperscript{437}

Finally, the drug test, just as the home visitation in Wyman, is neither compelled nor forced upon the applicant and the applicant is given ample notice of the requirement to be drug tested prior to choosing whether to proceed with their TCA application.\textsuperscript{438} DCF notifies the applicant of the drug test requirement and then gives them ten days to get the test.\textsuperscript{439} If the applicant chooses not to take the drug test, the benefits will simply not be granted; nothing else happens and the applicant is free to reapply or apply and assign the benefits.\textsuperscript{440} Just as the Court in Wyman held, not complying with the rules of the government assistance program is a reasonable basis for the government to terminate benefits, and an applicant who is using drugs is not

\begin{flushleft}
\textsuperscript{432} See Child Welfare \& Substance Abuse: Known Factors That Increase Risk, supra note 64, at 3.
\textsuperscript{433} Chandler, 520 U.S. at 321.
\textsuperscript{435} See Chandler, 520 U.S. at 321.
\textsuperscript{436} 158 F.3d 361 (6th Cir. 1998).
\textsuperscript{437} Id. at 375.
\textsuperscript{438} See Wyman v. James, 400 U.S. 309, 320–21 (1971).
\textsuperscript{440} See id.
\end{flushleft}
complying with the drug free policy of the government assistance programs and therefore a drug test is a reasonable means of detecting such non-compliance.\textsuperscript{441} The Wyman Court appropriately states that the Fourth Amendment should not be used as a wedge by the applicant to impose his or her own terms of the benefits and avoid any questions of any kind, while the government is willing to provide the applicant the means necessary to obtain life necessities.\textsuperscript{442}

iii. The Extent and Character of the Privacy Intrusion

The intrusion on the privacy of the individuals receiving cash assistance is minimal. The Florida legislation requires that the drug testing be done in accordance with the Drug Free Workplace Act (Act) which provides numerous safeguards for the privacy of the people being tested.\textsuperscript{443} The Act states that "[a] sample shall be collected with due regard to the privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample."\textsuperscript{444} The actual sample and private medication information is taken by a trained professional who will not disclose any of the private information without the patient's written expressed consent.\textsuperscript{445} Most institutions and collection centers do not have anyone in the room when the patient is urinating in the sample cup unless there are extenuating circumstances such as in a jail or drug treatment center.\textsuperscript{446} This sample collection method of unsupervised sample collection in a medical environment by a trained professional was already held by the Court in Skinner to not trigger any privacy issues.\textsuperscript{447} Furthermore, the Court in Vernonia Sch. Dist. v. Acton ex rel. Acton,\textsuperscript{448} stated that a drug testing policy where males stand at a urinal, fully clothed, with a monitor fifteen feet back and where women are in a closed stall with a monitor outside the stall\textsuperscript{449} was a negligible privacy invasion.\textsuperscript{450} The Acton drug testing method with negligible privacy implications\textsuperscript{450} is more intrusive on the privacy of the individuals than the current TANF method, because, unlike the Acton method, there is no one in the sample collection room with

\textsuperscript{441} See Wyman, 400 U.S. at 318–19.
\textsuperscript{442} Id. at 321–22.
\textsuperscript{444} Id. § 112.0455(8)(a) (1989).
\textsuperscript{445} Id. § 112.0455(8)(d), 11(b).
\textsuperscript{449} Id. at 658.
\textsuperscript{450} Id.
the applicant, giving him or her one of the most private collection methods possible.451

The testing information gathered from the drug tests is confidential and will not be shared with anyone except the people who need to know the information, such as the DCF which approves the applications.452 Similar to the drug testing performed in Acton, which looked only for illegal drugs and not medical conditions, and did not vary from person to person,453 the test that TANF applicants will have to take will only test for a set list of drugs, not for any medical conditions, and will not vary from applicant to applicant.454 Additionally, the information that is gathered from the applicant, such as prescription medication that might change the outcome of the test will not be conveyed to the applicant’s caseworker at DCF; a medical review officer will simply tell the caseworker that the applicant either passed or failed the drug test, leaving the private prescription medication usage intact.455 Just as in Acton, no one who personally knows the applicant will be informed of any prescription drug usage or medical condition.456 Furthermore, just as the test results obtained in Von Raab, Acton, and Earls, any of the results obtained by the DCF will not be used in any form of criminal proceedings.457 If a positive test result is attempted to be used against an applicant, the result will be automatically deemed inadmissible as evidence.458

Welfare recipients have a special relationship with the State of Florida when they apply for TANF, which in turn diminishes their expectation of privacy. By applying, an applicant is essentially saying that he or she is unable to financially care for his or her family at the current time and needs the assistance of the government.459 Just as the student athletes in Acton, who “voluntarily subject[ed] themselves to a degree of regulation even higher than that imposed on students generally,”460 welfare applicants voluntarily461

451. See Fla. Stat. § 112.0455(8)(a) (1989); Drug Test, supra note 446.
453. Acton, 515 U.S. at 658.
454. See Drug Testing Policy, supra note 7.
455. See id.
456. See id.; see also Acton, 515 U.S. at 659–60.
459. See Temporary Cash Assistance: Eligibility Rules, supra note 38.
460. Acton, 515 U.S. at 657.
461. The applicants will not lose their food stamps, Medicaid, or subsidized housing benefits, so the risk of becoming homeless and starving is not an issue when the applicant is unable to directly receive cash benefits. See Fla. Dep’t of Children & Families, Temporary Assistance for Needy Families State Plan Renewal, Oct. 1, 2008–Sept. 30, 2011, 17
apply for assistance from the government and have many additional requirements placed on them that are not placed on individuals who do not receive assistance. The Acton Court compared students who participate in sports to adults who work in a heavily regulated industry, and welfare applicants can be added to the comparison because they all "have reason to expect intrusions upon normal rights and privileges, including privacy." Adults in families that receive cash assistance are required to "work or participate in work related activities for a specified number of hours per week depending on the number of work-eligible adults in the family and the age of the children" and supply the DCF with personal information such as their social security number, assets and income, proof of their relationship with the dependent children, and proof of their children’s immunizations and school attendance. This mandatory work participation and required divulgence of personal information is analogous to the additional requirements of a minimum grade point average, specific dress code, required practices, and additional conduct rules required of the student athletes in Acton, which led the Court to state that because of the additional requirements set in place there is a "reason to expect intrusions upon normal rights and privileges, including privacy."

iv. The Governmental Interest and Public Safety Implications

The State of Florida has numerous important and even compelling interests in drug testing welfare applicants, and as stated by case law, these interests do not need to be compelling, just "important enough to justify the particular search." The important interests of the State of Florida can be broken down into five different interests: first, combating the higher use of drugs among people receiving government assistance; second, preserving

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464. Florida TANF Program Assistance Overview, supra note 462.
465. Temporary Cash Assistance: Eligibility Rules, supra note 38.
467. Id. at 661.
468. Substance Use Among Persons in Families Receiving Government Assistance, supra note 57.
the safety of the dependent children in the families; third, removing the barrier to self sufficiency that drugs places on recipients; fourth, helping to assure that the children in these families are not at an increased risk of developing future drug use or addiction; and fifth, the public safety implications of drug use.

The first governmental interest is combating the documented problem of drug use among people receiving governmental assistance. Although proof of a problem is not a necessary factor, such evidence can be used to help in the analysis. As stated by Chief Justice Rehnquist in his compelling dissent of the Chandler decision, very few people would be able to honestly say that illegal drug use is not a major problem in the United States. Statistically, drug use is higher among recipients of government assistance than those not receiving government assistance. By implementing this drug screening program, the government is trying to combat a well documented epidemic of illegal drug use that is even more prevalent among people receiving government assistance. In 2008, 7.5% of all people aged eighteen to fifty-four admitted into a substance abuse treatment facility reported that their main source of income was government assistance. By blindly distributing government funds, the government is simply subsidizing the habits of a group that is statistically more likely to abuse drugs. People receiving government assistance are also more likely to abuse some of the most serious drugs such as heroin and cocaine. Additionally, recipients of government assistance are 10% less likely to successfully complete a drug rehab program than people who are not on government assistance. One way to try to prevent the continued use of illegal drugs by people receiving

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469. See Child Welfare & Substance Abuse: Known Factors That Increase Risk, supra note 64, at 1.
470. See Substance Abuse Treatment Admissions Receiving Public Assistance, supra note 50.
473. Substance Use Among Persons in Families Receiving Government Assistance, supra note 57.
475. Id. at 324 (Rehnquist, C.J., dissenting).
476. Substance Use Among Persons in Families Receiving Government Assistance, supra note 57.
477. Substance Abuse Treatment Admissions Receiving Public Assistance, supra note 50, at 1.
478. Id.
479. Id.
government assistance is to do what Florida is doing, condition the govern-
ment assistance on successfully passing a drug test.480

The Court in Chandler ruled against suspicionless drug testing because it could not discover a concrete danger that required the Court to depart from the standard rule of the Fourth Amendment.481 This is not the case among the recipients of government assistance because, as stated above, there is concrete evidence of a drug problem among the recipients that is statistically higher than that of the general population that does not receive government assistance.482 Those statistics of higher drug use among people receiving government assistance is an example of the proof of a concrete problem that the Chandler Court needed to help clarify and validate specific hazards.483 This is not a problem that is going to solve itself, and as Chief Justice Rehn-
quist stated in his compelling dissent in Chandler, the government should not have to wait to act until the problem is large enough that it has an even greater devastating effect on the country and the people involved.484

The second governmental interest is child safety.485 Every applicant for TANF cash assistance has at least one dependent child under his or her care.486 The Court in Wyman stated:

The focus [of the assistance program] is on the child and, further, it is on the child who is dependent. There is no more worthy ob-
ject of the public’s concern. The dependent child’s needs are pa-
ramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights.487

Additionally, the court in Knox County Education Ass’n stated that there are “few governmental interests more important to a community than that of insuring the safety and security of its children.”488 The Knox County Education Ass’n court deemed drug testing people who apply for teaching positions to be constitutional because teachers have a lot of interaction with

482. Substance Use Among Persons in Families Receiving Government Assistance, supra note 57.
483. Chandler, 520 U.S. at 319.
484. See id. at 324 (Rehnquist, C.J., dissenting).
486. Florida TANF Program Assistance Overview, supra note 462.
the children in their classes and have a major influence on them. Courts continuously compare teachers to parents, holding teachers to a drug-free standard which should also be placed on parents. It would be impractical to implement a nationwide drug testing procedure for all parents, but not impractical to test parents who apply for cash assistance. Families who are receiving government assistance are statistically more likely to have recently used serious drugs than families who are not receiving government assistance. The parents who apply for assistance are asking the government to give them money to help support their children, and the more children a family has, the more money they will receive. The government needs to ensure that the money that is given for each child is actually going to help that child and not used to subsidize a drug habit.

When parents are using drugs, the effects are devastating. One of the main goals of the TANF program is to have children be cared for in their own homes, and this goal is not accomplished when parents are using or abusing drugs. Children who live in homes where their parents abuse drugs are “three times more likely to be abused, . . . four times more likely to be neglected,” and more likely to develop mental health problems. A child who is being abused and neglected is not being cared for and should be immediately removed from his or her home, which completely goes against the important goal of the TANF program of having children be cared for in their own homes. To achieve this goal of a child having a safe home to grow up in, it is essential that his or her parents not use or abuse illicit drugs.

The third governmental interest is to help the families receiving governmental assistance become self sufficient, which is hindered by illegal drug use. Parents who come to the DCF and ask for TANF assistance have fallen on hard times and are seeking the assistance of the government with the goal of becoming self sufficient in order to be able to adequately provide for their children. Just as an employer who pays an employee to do a job for him, the government expects something in return for its temporary financial assistance. The government can be said to be acting as an employer, a guardian, or simply a provider for the families in need of cash assistance.

489. Id. at 375.
490. See id.
491. Substance Use Among Persons in Families Receiving Government Assistance, supra note 57.
492. See Temporary Cash Assistance: Eligibility Rules, supra note 38.
493. SUMMARY ANALYSIS, CS for HB 353, at 2.
495. See About TANF, supra note 27.
496. See id.
The Court in *Acton* posed the important question that must always be asked in cases of this nature, which is "whether the search is one that a reasonable guardian, [employer, or provider] . . . might undertake." It is very likely that reasonable guardians or providers would request proof that someone seeking financial help from them is not on drugs to make sure that their money is not going to waste on the purchase of drugs and that the children of the family are not subjected to drug use in their home. It is also reasonable and very common for employers to ask potential employees to submit to a drug test to ensure that they will not be under the influence of illegal drugs while performing the tasks they were hired to perform, which would increase the risk of error and have devastating physical and/or financial impacts on the company and other employees.

There is no longer an entitlement to government assistance, and therefore the government set time limitations and requirements on the part of the recipients. The point of the current TANF funds are to ensure that the applicant’s family can become self sufficient, and a major part of becoming self sufficient and no longer requiring government cash assistance is having and maintaining a job. The likelihood of getting a job decreases tremendously when the applicant uses drugs, even casually, because roughly eighty-four percent of jobs require some form of drug testing. By allowing TANF cash assistance recipients to continue to receive benefits while using illicit drugs, the government is not helping them achieve their ultimate goal of self sufficiency. In Florida, cash assistance is limited to a lifetime total of only forty-eight months, and if a recipient is still not self sufficient after those forty-eight months have expired, the recipient is on his or her own and will no longer receive cash assistance. This will only make the recipient’s situation worse because he or she will still have a drug problem, which will continue to act as a major barrier to employment, but will no longer have cash benefits from the government. A person who is under the influence of drugs while receiving cash benefits will likely not use all of the money for its intended purpose and will no longer have it in the future if it is needed again. Under the new Florida legislation, the local DCF office will assist an applicant who has tested positive to get the help needed by directing him or her to

499. Florida TANF Program Assistance Overview, supra note 462.
500. See id.
502. Temporary Cash Assistance: Eligibility Rules, supra note 38.
the proper facilities, and assisting in assigning the cash benefits to someone who is drug free and capable of utilizing the cash assistance for the dependent children.\textsuperscript{503} Additionally, any applicant who does test positive has free access to the Florida Abuse Hotline, which will help them along the long and difficult path to sobriety.\textsuperscript{504}

The fourth governmental interest is keeping children off drugs.\textsuperscript{505} In \textit{Acton}, the Court determined that keeping children off of drugs was a very important interest.\textsuperscript{506} Children whose parents use drugs are more likely to do drugs themselves.\textsuperscript{507} Parents are the most prominent figure in a young child's life and the parents' actions are often emulated by their children. When parents are viewed by their children using drugs, the children may look at this as a sign that the parents have a permissive attitude about drug use, and therefore, the child is more likely to use drugs.\textsuperscript{508} Children who live in homes where their parents are addicted are statistically the highest risk group to become future addicts.\textsuperscript{509} Nearly two-thirds of spousal violence is a result of substance abuse, and when children witness domestic violence, or are recipients of abuse, they are 50\% more likely to abuse drugs and alcohol in their future.\textsuperscript{510} The connection is clear: When parents abuse drugs their children are much more likely to become addicted to drugs.\textsuperscript{511}

Finally, the fifth interest of the government is public safety implications.\textsuperscript{512} Public safety implications must be present in the analysis, but they do not need to be a dominating factor.\textsuperscript{513} In addition to the safety implications that the children of parents who use drugs face, crime and drug use go

\begin{itemize}
  \item \textsuperscript{503} \textbf{FLA. STAT.} § 414.0652(j)(3)(c) (2011); see \textit{About the Agency}, supra note 51.
  \item \textsuperscript{504} \textit{See} Rodrigez, supra note 439.
  \item \textsuperscript{505} \textit{See} Vernonia Sch. Dist. 47J v. Acton ex rel. Acton, 515 U.S. 646, 661 (1995).
  \item \textsuperscript{506} \textit{Id.}
  \item \textsuperscript{507} \textit{See} Child Welfare and Substance Abuse: \textit{Known Factors That Increase Risk}, supra note 64, at 1.
  \item \textsuperscript{508} \textit{See} id.
  \item \textsuperscript{509} \textit{See} id.
  \item \textsuperscript{510} \textit{Id.}
  \item \textsuperscript{511} \textit{Marchwinski II}, 309 F.3d 330, 336 (6th Cir. 2002), vacated and \textit{reh'g en banc} granted, 319 F.3d 258 (6th Cir. 2003).
  \item \textsuperscript{513} \textit{See} generally Nat'l Treasury Emps. Union v. Von Raab, 489 U.S. 656 (1989) (upholding suspicionless drug testing because of potential bribery and blackmail, not public safety); O'Connor v. Ortega, 480 U.S. 709 (1987) (holding the search of a doctor's office at a state hospital without a warrant as reasonable due to efficiency reasons, not public safety); New Jersey v. T.L.O., 469 U.S. 325 (1985) (upholding a search of a student's purse as reasonable without requiring a public safety implication).
\end{itemize}
hand in hand. Drug users are statistically more likely to commit crimes than people who do not use drugs. Additionally, people who are arrested in connection with a crime are often under the influence of some drug or at least test positive for illicit drugs. The trafficking and distribution of drugs, which is a necessary part of the drug industry, generates serious violence within communities and the United States as a whole. As previously stated, it is much harder for a family to become self sufficient when the parents are using drugs because drugs are a barrier to employment and a very expensive habit that could force the continuance of the family’s reliance on governmental assistance. The public safety implication lies in the time after the family has exhausted their lifetime cash assistance benefits and no longer has money coming in but still has an expensive drug habit. Studies show that many addicts commit crimes in order to purchase drugs when they do not have a source of income or if that income source is not sufficient to fuel their habit. The government, by implementing this drug testing procedure, will assist in helping those who test positive with planning a recovery program and avoiding the potential of the person turning to a life of crime to support a drug habit.

The Skinner Court noted that the mere possession and use of illegal drugs is criminal and can be punished, but the more dangerous effects are the tasks that the user performs while on the drugs. The Court stated that the government is able to take all reasonable and necessary steps to prevent or deter users of illicit drugs from performing those sensitive tasks while under the influence. The problem lies that the drug that inhibits the user is concealed within the body and the Court stated that it may be necessary to examine the excrements in order to uncover the existence of that substance. There are fewer tasks more sensitive than that of safely raising a family, especially when young children are involved and this task should not be performed while under the influence of illicit drugs, especially when the family is unable to survive without government assistance.

514. See Drug Related Crime, supra note 512.
515. Id.
516. Id.
517. Id.
518. See id.
519. See Drug Related Crime, supra note 512.
522. Id.
523. Id.
v. The Balancing of the Interests

The final step of the special needs analysis is the balancing of the privacy interests of those who apply for temporary cash assistance and the important governmental interests present. The Skinner Court concluded that the compelling governmental interest in their case would be hindered if the plaintiffs could only be drug tested if facts were present that gave rise to reasonable suspicion and the same is true with the Florida legislation. The already proven diminished privacy expectations of people receiving government assistance does not outweigh the potential catastrophic implications that drug use and abuse can have on a family, especially the children and the barrier that the drug use places in front of employment.

The Von Raab Court reasoned that the Nation’s first line of defense against drug importation is the Customs employees and the important government interest of those workers performing that job well outweighs the worker’s privacy. The parents in families who receive government assistance are on the front line of getting that family off of government assistance and on to the path of self sufficiency. The important governmental interest in helping families succeed on their own and ensuring a safe environment for the children of that family is severely hindered by the use of drugs. Therefore, this governmental interest far surpasses that of the diminished expectation of privacy that the families have.

The showing of a strong public safety implication and statistical showing of increased drug use by parents receiving government assistance were just the kinds of facts that were missing from the analysis made by the Court in Chandler. This showing of numerous public safety implications and important government interests would have tipped the scales in the other direction in Chandler because this is not a case of drug testing as a symbol; it is a case of a documented special need.

During the balancing step of the analysis, the Supreme Court of the United States in Earls also looked at the nature and immediacy of the regulation. It was concluded that even some drug use was enough to establish an assertion of a special need to implement a suspicionless drug testing pro-

524. Id. at 619.
525. Id. at 633.
529. Id. at 313–14.
gram, where the people being tested, students, already have a diminished expectation of privacy.\textsuperscript{531} This is nearly identical to the problem facing Florida, except for the fact that there is a showing of increased drug use among the group of people being tested, in addition to that group having a diminished expectation of privacy.\textsuperscript{532}

The deterrence and effectiveness factors present in suspicionless drug testing lend their weight to the government’s side in this balancing test.\textsuperscript{533} The Court in \textit{Chandler} wanted a showing of deterrence, which was not present because potential candidates knew that they were going to be tested and could prepare accordingly.\textsuperscript{534} A person does not plan to lose his or her job and be unable to support his or her family, as a potential candidate plans to run for office. Applying for government assistance is something that is the result of unexpected hard times that have fallen on a family, and the parents would have minimal time to get the drugs out of their systems before needing the assistance of the government. There is no secret of the date of the test in \textit{Chandler},\textsuperscript{535} but the date that a family needs to apply for government assistance is not known and cannot be calculated in advance.\textsuperscript{536} This lends to the effectiveness of the Florida legislation. People who are currently receiving cash assistance will be grandfathered in and will not have to submit to a drug test;\textsuperscript{537} but the next time they apply, they will need to be drug free.\textsuperscript{538} Therefore, the legislation may have a major deterrent effect.

The scale clearly tips to the side of the government because the Supreme Court of the United States has continually held suspicionless drug tests to be constitutional where the plaintiffs have diminished levels of privacy and the government has valid important interests in conducting the search.\textsuperscript{539}

**V. CONCLUSION**

The drug testing program implemented by Florida is constitutional. The testing is in response to statistical data that shows that people receiving gov-

\textsuperscript{531} \textit{Id.} at 835 (citing \textit{Chandler}, 520 U.S. at 319).
\textsuperscript{532} \textit{See id.}
\textsuperscript{534} \textit{Chandler v. Miller, 520 U.S. 305, 319–20 (1997).}
\textsuperscript{535} \textit{Id.}
\textsuperscript{536} \textit{See Drug Testing Policy, supra note 7.}
\textsuperscript{537} \textit{Id.}
\textsuperscript{538} \textit{Id.; see also FLA. STAT. § 414.0652(1)–(2) (2011).}
ernment assistance are more likely to use drugs. This program is not a class animus, or an attack on the poor; it is simply the government addressing a known problem and being accountable to the tax payers by not subsidizing the drug habits of people receiving government assistance. This program promotes accountability among the potential applicants by forcing them to pass a drug test and in turn furthering the ultimate goal of self sufficiency.

The special needs doctrine has opened the door for the government to try to alleviate the problem of government assistance funds being used for the purchase of drugs and drug users receiving government funds. This narrowly tailored legislation is satisfied by numerous important and even compelling interests, which all justify the ultimate goal of the government providing assistance to families in order to keep the family safe and help them become self sufficient. In light of all of the factors, the negligible intrusion, the numerous important government interests, and the diminished expectation of privacy of people receiving government assistance, the search performed by the State of Florida is justified under the special needs doctrine of the Fourth Amendment. It must be stated that this analysis does not lend itself to the notion that the special needs doctrine can be easily applied to any form of suspicionless drug testing; an individual analysis of each case must be made in order to uphold the integrity of the Fourth Amendment.