FOURTH AND FOURTEENTH AMENDMENTS—SEARCH AND SEIZURE—STATE LAW REQUIRING THAT CANDIDATES FOR PUBLIC OFFICE PASS A DRUG TEST VIOLATES THE FOURTH AND FOURTEENTH AMENDMENT—*Chandler v. Miller*, 65 U.S.L.W. 4243 (U.S. Apr. 15, 1997).

The United States Supreme Court recently held that a state law requiring candidates for public office to pass a drug test violates the Fourth and Fourteenth Amendments. *Chandler v. Miller*, 65 U.S.L.W. 4243 (U.S. Apr. 15, 1997). In so holding, the Court used the established drug-testing framework under Fourth Amendment jurisprudence to find that a position of public office does not meet the special needs exception justifying a constitutionally permissible suspicionless search. *Id.* at 4244. With this decision, the Court departed from the previous broad interpretation given to the Fourth Amendment with regard to drug-testing and strengthened the Court's precedent that requires a special need for the government to effectuate a search within the meaning of the Fourth Amendment.

Three candidates for state office challenged the constitutionality of a Georgia statute that requires all candidates for public office to provide a certification that they have tested negative for illegal drugs via a urinalysis drug test within one month prior to qualifying for nomination or election. *Id.* at 4245. The petitioners were Libertarian Party nominees for Lieutenant Governor, Commissioner of Agriculture, and a General Assembly member. *Id.* The statute lists as prohibited drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidines. *Id.* at 4244 (citing Ga. Code Ann. § 21-2-140(a)(3) (1993)). Pursuant to the statute, a candidate may have the test administered by a state-approved laboratory or by the candidate's personal physician. *Id.* The test results are sent to an approved laboratory that determines whether any of the specified illegal drugs are present, and the laboratory then prepares a certificate reporting the test results to the candidate. *Id.* (citing Ga Code Ann. § 21-2-140(c) (1993)). If the candidate tests positive, he may withdraw his nomination for candidacy and the results will not be divulged to law enforcement officials. *Id.* at 4245 (citing *Chandler v. Miller*, 73 F.3d 1543, 1547 (1996)).

The petitioners alleged, *inter alia*, that the drug tests required by the Georgia statute violated their rights under the Fourth and Fourteenth Amendments of the United States Constitution. *Id.* at 4245. Petitioners sought declaratory and injunctive relief enjoining enforcement of the statute. *Id.* Stressing the significance of state offices sought and the "relative unintrusiveness" of the testing procedure, the district court denied the petitioners' motion for a preliminary injunction, reasoning that it was unlikely that petitioners would prevail on the merits of their claim. *Id.*

In a divided decision, the United States Court of Appeals for the Eleventh Circuit affirmed the decision of the trial court. *Id.* (citing *Chandler*, 73 F.3d at 1551). While it recognized that the drug tests required by the statute rank as "searches" within the context of the Fourth Amendment, the court of appeals reasoned that Georgia's statute served "special needs" other than the ordinary needs of law enforcement. *Id.* (citing *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602 (1989); *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989)). The court of appeals thus engaged in a balancing test by weighing the individual's privacy expectations against the government's interests in determining whether it was impractical to require either a warrant or some level of individualized suspicion before implementing a drug test. *Id.* (citing *Chandler*, 73 F.3d at 1545). In examining the interests involved, the court identified several particular governmental interests that warrant mandatory drug testing for potential state elected officials. *Id.* Initially, the court observed, the citizens of Georgia place trust in their elected officials to protect their liberty, safety, and economic well-being. *Id.* (citing *Chandler*, 73 F.3d at 1546). As a result, the court stated, those individuals entrusted in public office "must be persons appreciative of the perils of drug use." *Id.* (quoting *Chandler*, 73 F.3d at 1546). Additionally, the court noted that "[t]he nature of public office in itself demands the highest levels of honesty, clear-sightedness, and clear-thinking." *Id.* (quoting *Chandler*, 73 F.3d at 1546). Furthermore, the court perceived the offices that petitioners sought as those that are "particularly susceptible to the 'risks of bribery and blackmail against which the Government is entitled to guard.'" *Id.* (quoting *Chandler*, 73 F.3d at 1546 (quoting *Von Raab*, 489 U.S. at 674)).

As for the individual's privacy interest, the court of appeals determined that the drug test as administered was non-intrusive because: 1) the test could be conducted at a candidate's own physician's office; 2) the test itself only revealed information regarding the use of particular drugs and did not reveal any unnecessary information about the general health of the candidate; and 3) the candidate could control the release of the test results. *Id.* (citing *Chandler*, 73 F.3d at 1547). Thus, because the public interest outweighed the intrusion to the candidate's privacy, the court held that the statute was not violative of the Fourth and Fourteenth Amendments. *Id.* (citing *Chandler*, 73 F.3d at 1547).

The United States Supreme Court granted *certiorari* to determine whether Georgia's mandatory drug test constituted an unreasonable search in violation of the Fourth and Fourteenth Amendments. *Id.* at 4244. In an eight to one decision, the Court reversed the court of appeals' decision, holding that Georgia's requirement that candidates for state office pass a drug test violated both the Fourth and Fourteenth Amendments. *Id.* at 4248. The Court reasoned that testing a candidate for public office for drugs did not meet the "special need" exception for a suspicionless search. *Id.* at 4244, 4247.

Writing for the majority, Justice Ginsburg first stated that Georgia's drug-

testing requirement, which is mandated by law and enforced by state officials, clearly effects a search implicating the Fourth and Fourteenth Amendments. *Id.* at 4245. Generally, the Court explained, the prohibition on unreasonable searches and seizures bars the state from undertaking a search or seizure absent individualized suspicion. *Id.* at 4244. The Court noted, however, that there are limited circumstances when searches conducted without grounds of particular suspicion have been upheld. *Id.* (citing *Von Raab*, 489 U.S. at 656). Relying on precedent, Justice Ginsburg reaffirmed that a search without individualized suspicion can be conducted on "special needs, beyond the scope of law enforcement." *Id.* 4245-46 (citing *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989)). When such "special needs" are alleged, the Court elaborated, courts must engage in a context-specific inquiry, balancing the competing private and public interests. *Id.* at 4246. The Court identified that in limited circumstances, when an individual's privacy interests are minimal, and where an important state interest would be jeopardardized by the necessity of individualized suspicion, a search may be reasonable without such suspicion. *Id.* (citing *Skinner*, 489 U.S. at 624). Because Georgia's statute was not based on individualized suspicion, the Court announced, a balancing test needed to be undertaken. *Id.*

Turning to established precedent, the Court distinguished its drug-testing jurisprudence upholding the administration of suspicionless drug tests from the statute at issue. *Id.* Justice Ginsburg noted that, in *Skinner*, the Federal Railroad Administration had adopted a regulation implementing a drug-testing program in reaction to apparent drug and alcohol abuse by some railroad employees, while it did not require individualized suspicion. *Id.* (citing *Skinner*, 489 U.S. at 607-12). The Court further explained that, in *Skinner*, the public had a genuine safety interest that was addressed by the regulation because the drug tests were meant to deter illegal drug use by employees who were in a position to "cause great human loss before any signs of impairment become noticeable to supervisors." *Id.* (quoting *Skinner*, 489 U.S. at 628). Furthermore, the Court announced, the nature of the railroad industry diminished an employee's expectation of privacy because the industry is regulated pervasively to ensure safety. *Id.* (citing *Skinner*, 489 U.S. at 627). Requiring individualized suspicion for railroad employees, the Court hypothesized, would be ineffective as a deterrent and counter-productive because: 1) an employee could avoid detection by simply abstaining from drug use at the prescribed test time; 2) employees could not predict when events that would provoke testing, such as an accident or safety violation, would occur; and 3) requiring a drug test in the aftermath of an accident could seriously impede the efforts to discern the cause of the accident. *Id.* (citing *Skinner*, 489 U.S. at 628, 631).

Continuing to survey precedent, Justice Ginsburg next considered *Treasury Employees v. Von Raab*, where the Court upheld the administration of drug tests to certain customs officials. *Id.* (citing *Von Raab*, 489 U.S. 656, 659

(1989)). Justice Ginsburg explained that in *Von Raab* drug tests were only required for those officials who were promoted or transferred to positions that either directly involved drug interdiction or that required an employee to carry a firearm. *Id.* (citing *Von Raab*, 489 U.S. at 660-61, 667-77). The majority stated that because of the exposure to large amounts of illegal narcotics and the safety concerns for those carrying firearms, the *Von Raab* Court held that the government had a compelling governmental interest to ensure that individuals placed in these positions would not include drug users. *Id.* (citing *Von Raab*, 489 U.S. at 670-71). Furthermore, Justice Ginsburg reasoned, suspicionless drug-testing was warranted because these officials are not subjected to the day-to-day scrutiny that is traditional in other office environments. *Id.* (citing *Von Raab*, 489 U.S. at 674).

Justice Ginsburg concluded the review of precedent with the most recent drug-testing case of *Vernonia School District v. Acton*, which also upheld the use of suspicionless drug tests. *Id.* (citing *Vernonia*, 115 S. Ct. 2386 (1995)). In *Vernonia*, the Court explained, drug-testing high school students involved in interscholastic athletic competitions was reasonable because local governments are responsible as guardians and tutors for children entrusted to their care. *Id.* (citing *Vernonia*, 115 S. Ct. at 2391). Additionally, Justice Ginsburg recounted, students in the school environment enjoy a lesser expectation of privacy than the public generally. *Id.* (citing *Vernonia*, 115 S. Ct. at 2392-93). Lastly, Justice Ginsburg elaborated, the Court in *Vernonia* emphasized the significance of deterring drug use among school children and the risk that such use may pose not only to the athlete who uses the drugs but to those who are with him on the playing field. *Id.* (citing *Vernonia*, 115 S. Ct. at 2395-96).

Having considered the relevant precedent, the majority began its analysis to determine whether the drug test at issue was reasonable within the meaning of the Fourth Amendment. *Id.* at 4247. Initially, the Court rejected the respondents' claim that Georgia's sovereign power, derived from the Tenth Amendment, was implicated. *Id.* Relying on *Gregory v. Ashcroft*, which upheld Missouri's mandatory retirement age for state judges, the respondents suggested, as deciphered by Justice Ginsburg, that extraordinary deference should be given to the States to set conditions of candidacy for public office pursuant to the Tenth Amendment. *Id.* (citing *Gregory*, 501 U.S. 452 (1991)). *Id.* The majority quickly disposed of this contention, stating that the Court was not aware of any "precedent suggesting that a State's power to establish qualifications for state offices . . . diminishes the constraints on state action imposed by the Fourteenth Amendment." *Id.*

Relying on the principles set forth in the Court's drug-testing precedent, the majority first noted that the testing method prescribed by the Georgia statute was relatively noninvasive because the candidate could provide a urine specimen in his private physician's office and the candidate had control over the dissemination of the results. *Id.* Thus, the Court stated, if a special need had

been shown, an excessive intrusion would not exist. *Id.* Therefore, the majority concluded, the dispositive question was whether a special need warranted the certification requirement. *Id.* The Court elucidated that a special need for drug testing must be substantial enough to outweigh the individual's privacy interest and "sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion." *Id.*

The majority found insufficient respondents' proffered justifications for their certification requirement, namely that the unlawful use of drugs is incompatible with holding state office, draws into question a candidate's judgment and integrity, jeopardizes the execution of public office, including anti-drug law enforcement, and undermines public confidence in elected officials. *Id.* The Court proffered several reasons why Georgia's drug-testing program was insufficient as a special need; thus, the program was unable to overcome the Fourth Amendment's fundamental rule that individualized suspicion is necessary to effectuate a search. *Id.* Notably lacking from respondents' contention, the Court reasoned, was any indication that the use of drugs by candidates for public office posed a concrete danger. *Id.* There is no evidence, the Court reasoned, that the potential hazards suggested by respondents were real and not simply hypothetical. *Id.* The Court explained that a demonstrated problem with drug use may not fully validate such a statute but would provide tangible evidence of a special need based on specific dangers posed by such use. *Id.* As a result, the Court found that, two previous justifications for upholding suspicionless searches were not present: employees engaged in safety-sensitive tasks existing in *Skinner* and the immediate crisis of rising drug use by students at issue in *Vernonia*. *Id.*

Next, the Court noted that, as compared to the testing procedures at issue in *Skinner*, *Von Raab*, and *Vernonia*, Georgia's testing procedure was not well designed to specifically identify candidates who violate anti-drug laws. *Id.* Nor, the Court continued, was the implementation of the drug test an effective deterrent because the test date could be chosen by the candidate any time up to one month before qualifying for a place on the ballot; this provides the candidate with ample time to abstain from illegal drug use before providing a urine sample. *Id.* Moreover, the Court continued, respondents provided no evidence why traditional law enforcement efforts would be insufficient to apprehend such addicted persons should they enter into the limelight of public office. *Id.*

The Court discerned that the respondents relied heavily on *Von Raab* in which the Court upheld a drug-testing program absent any documented drug abuse problems among customs officials. *Id.* Distinguishing *Von Raab*, the Court clarified that its holding in *Von Raab* was limited to the fact-specific context of government employees who not only carried firearms but who were also "routinely exposed to the vast network of organized crime that is inextricably tied to illegal drug use." *Id.* at 4248 (quoting *Treasury Employees v.*

Von Raab, 816 F.3d 170, 173 (5th Cir. 1987), *aff'd in part, vacated in part*, 489 U.S. 656 (1989)). Additionally, the Court furthered distinguished, that the customs officials in *Von Raab* not only had access to large amounts of contraband, but several of the officials had already succumbed to the temptation of bribery by drug smugglers. *Id.*

The Court found that, unlike the drug-testing program at issue in *Von Raab*, Georgia's statute was not enacted to address a problem among state officials; such officials typically do not engage in high-risk, safety-sensitive tasks, and the mandated certification does not aid drug interdiction efforts. *Id.* In short, the Court stated, Georgia's need is symbolic, not "special," as that term has derived meaning for the Court's precedent. Justice Ginsburg stated that, while Georgia's drug-testing scheme may have been well-meant, it diminished personal privacy only for a symbol's sake; mandating drug testing for state employees merely sends a symbolic message condemning drug use. *Id.* Consequently, Justice Ginsburg stated that, when, as here, public safety is not in jeopardy, the Fourth Amendment protects individuals against suspicionless searches. *Id.* Thus, the majority concluded, public office does not come within the ambit of the closely guarded class of permissible suspicionless searches that must be justified by a special need. *Id.*

Dissenting, Chief Justice Rehnquist articulated several justifications to support his conclusion that Georgia's statute should be upheld as constitutional. *Id.* at 4248 (Rehnquist, C.J., dissenting). First, the Chief Justice asserted, the majority briefly noted with implied disapproval that Georgia is the first and only state to condition candidacy for state office on testing negative for a drug test. *Id.* The Chief Justice feared that the novelty of Georgia's law was incorrectly perceived as a weakness by the majority. *Id.* at 4249 (Rehnquist, C.J., dissenting). The Chief Justice noted that mere novelty should not viewed as a vice. *Id.* (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)). In addition, the Chief Justice suggested that the State should not need to wait for a drug addict to run for or actually become a public official before it implements a prophylactic mechanism. *Id.*

The Chief Justice intimated that the majority inaccurately interpreted the Court's drug-testing precedent. *Id.* Under precedent, the dissent illuminated, if there is a proper purpose beyond law enforcement, a "special need" exists, thus warranting a balancing of the proffered governmental interest and the individual's privacy interest. *Id.* According to precedent, the Chief Justice explained, the "special need" exception to suspicionless searches has not required an interest of especially great importance. *Id.* The dissent recounted that, in *Von Raab* and *Skinner*, a "special need" merely described a "basis for a search apart from the regular need of law enforcement" and did not necessitate a significant governmental interest. *Id.* (citing *Von Raab*, 489 U.S. at 669; *Skinner*, 489 U.S. at 620).

The Chief Justice further took issue with the majority's rationale that a

drug test was unnecessary because a candidate voluntarily gives up much of his privacy when running for public office, thus enabling the public to scrutinize his activities, including the detection of any illegal drug use. *Id.* The dissent acknowledged that an individual's expectation of privacy is an important factor in the balancing of interests, but objected to the majority's contention that such public scrutiny would be sufficient to meet the government's interest. *Id.* Applying the majority's reasoning to previous cases, the Chief Justice hypothesized that, if such vague and "uncanalized scrutiny" were sufficient, then the customs officials in *Von Raab* and the railroad employees in *Skinner* also could not be required to take a drug test because they also were subjected to scrutiny by their peers and supervisors. *Id.* Thus, Chief Justice Rehnquist infered from existing precedent that, if preventing illegal drug users from concealing drug use is a legitimate governmental interest, then a "special need" exists, and the state may require a drug test. *Id.*

The dissent then revealed an incongruity in the Court's rationale. *Id.* The majority contended, the Chief Justice explained, that the drug test would be ineffective as a deterrent partly because the testing procedures allowed a candidate to take the test in his own doctor's office. *Id.* According to the majority, the Chief Justice proposed, the statute gave a candidate sufficient notice of when the drug test would be given; therefore, a candidate could abstain from drug use during the necessary period of time. *Id.* The Chief Justice posited that, if the test were random, the Court would hold it unconstitutional because of the degree of intrusiveness. *Id.*

Finally, the dissent reasoned that two of the justifications for upholding drug-testing in *Von Raab* were also applicable in the instant case. *Id.* First, the Chief Justice Rehnquist noted, the *Von Raab* Court held that the government had a compelling interest in ensuring that implicated employees do not use drugs off-duty because of the risks of bribery and blackmail. *Id.* (citing *Von Raab*, 489 U.S. at 674). The Chief Justice argued that such risks for elected state officials are at least as significant as those for off-duty customs officials. *Id.* Additionally, the dissent suggested, as with customs officials, state officials who have access to classified materials are subjected to background investigations, medical examinations, and other intrusions that may be expected to diminish their expectations of privacy. *Id.* at 4248-49 (Rehnquist, C.J., dissenting). Chief Justice Rehnquist concluded the dissenting opinion with an assertion that neither the Fourth Amendment nor any other provision of the Constitution prevents a State from passing legislation that may seem "misguided or even silly to the members of [the] Court." *Id.* at 4249 (Rehnquist, C.J., dissenting).

Analysis

Chandler indicates that the present Court will limit the use of the "special needs" exception for suspicionless searches. The Court, in adhering to its context-specific inquiry, determined that the drug test at issue violated petitioner's Fourth and Fourteenth Amendment's rights. *See Chandler v. Miller*, 65 U.S.L.W. at 4244. The Court so held because the State had not shown a "special need" substantial enough to override an individual's privacy interest, thus justifying the suppression of the Fourth Amendment's fundamental requirement of individualized suspicion. More specifically, the Court found that the State's general assertion that a state office is incompatible with the use of drugs was found insufficient to override the individual's privacy interests. *See id.* at 4247. The majority's opinion, although firmly rooted in precedent, has broad implications for Fourth Amendment jurisprudence.

Until *Chandler*, the Court's precedent indicated that the requirement of individualized suspicion could be waived when some legitimate state interests were asserted, such as allegations of public safety risks. The *Chandler* Court, however, stated that mere allegations are insufficient to justify a suspicionless drug test; thus, for example, a safety risk to the public must be substantial and real. The specific setting and context of a Forth Amendment search determines the reasonableness of the search. In *Chandler*, the Court took a significant step in its drug-testing jurisprudence by enunciating that not all circumstances are reasonable and that there are in fact limits to the State's authority to effect a suspicionless search. By specifically limiting the circumstances in which suspicionless drug tests can be administered, the Court recognized the privacy interests of public office candidates and found that such interests were not outweighed by the State's concerns for the identity of its candidates.

Although not intended to be exhaustive, the Court mentioned that "special needs" may, in the following circumstances, be sufficient to transform an unconstitutional suspicionless drug test into a reasonable search. *See id.* First, when the State has evidence to substantiate that present drug problems exists among particular employees, it may have a "special need" in administering a drug test because of the danger of having illegal drug users in a particular job. For example, the State's interest in a drug test for those engaged in safety-sensitive tasks is presumptively reasonable. Furthermore, a "special need" may exist if there is a heightened concern about use of drugs because there is a sufficient nexus between drug abuse and the individual's particular job; for example, job responsibilities are directly involved in drug interdiction.

The Court's rationale for what interests are sufficient to warrant a "special needs" exception to the suspicionless drug test prohibition is valid and comports with traditional Fourth Amendment jurisprudence. Traditionally, suspicionless searches generally have been considered *per se* unreasonable. Without such constraints, the government would be free to arbitrarily test any

employee for drug use simply because such use is illegal. This would be contrary to the privacy principle underlying the Fourth Amendment.

As the dissent argued, the Court opens itself to criticism by suggesting that the non-intrusiveness of the testing procedures weighs against the test's effectiveness as a deterrent. *See id.* at 4249 (Rehnquist, C.J., dissenting). In other words, because the candidates have notice of when the test will occur, they can purposefully avoid any illegal drug use during the prescribed time period. The dissent correctly posited that, if the testing procedure was random, it would be unconstitutional because of the lack of notice and degree of intrusiveness. This, however, is not fatal to the Court's reasoning because the ineffectiveness as a deterrent was not a focal point of the *Chandler* decision. The strength of the majority's argument lies in the fact that no safety risks were at issue, and no evidence of present drug abuse existed among people in the affected public offices. Given the facts of this case, the Court's decision reaches the appropriate resolution.

Kelly M. Brown