

The U.S. Supreme Court in *Safford Unified School District No. 1 v. Redding* (2009) held that partially strip-searching an eighth grader was unreasonable, but granted individual school officials qualified immunity from civil liability for the illegal search.

CASE



Was the Strip Search Reasonable?

Safford Unified School Dist. No. 1 v. Redding
557 U.S. 364 (2009)

HISTORY

Savana Redding, an eighth grader at Safford Middle School, was strip-searched by school officials on the basis of a tip by another student that Redding might have ibuprofen on her person in violation of school policy. April Redding, Savana's mother, later sued the school district and the assistant principal, an administrative assistant, and the school nurse responsible for the search in the District Court for the District of Arizona. She alleged her Fourth Amendment right to be free of unreasonable search and seizure was violated. The district court granted the defendants' motion for summary judgment and dismissed the case. On the initial appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed. However, on rehearing before the entire court, the court of appeals held that Savana Redding's Fourth Amendment right to be free of unreasonable search and seizure was violated. The U.S. Supreme Court affirmed, but also held that the law regarding strip searches of students was not clearly established, and therefore the officials were entitled to qualified immunity.

—Souter, J., joined by Roberts, C.J., and Scalia, Kennedy, Breyer and Alito, J.J.

FACTS

The events immediately prior to the search in question began in 13-year-old Savana Redding's math class at Safford Middle School one October day in 2003. The assistant principal of the school, Kerry Wilson, came into the room and asked Savana to go to his office. There, he showed her a day planner, unzipped and open flat on his desk, in which there were several knives, lighters, a permanent marker, and a cigarette. Wilson asked Savana whether the planner was hers; she said it was, but that a few days before she had lent it to her friend, Marissa Glines. Savana stated that none of the items in the planner belonged to her.

Wilson then showed Savana four white prescription-strength ibuprofen 400-mg pills, and one over-the-counter blue naproxen 200-mg pill, all used for

pain and inflammation but banned under school rules without advance permission. He asked Savana if she knew anything about the pills. Savana answered that she did not. Wilson then told Savana that he had received a report that she was giving these pills to fellow students; Savana denied it and agreed to let Wilson search her belongings. Helen Romero, an administrative assistant, came into the office, and together with Wilson they searched Savana's backpack, finding nothing.

At that point, Wilson instructed Romero to take Savana to the school nurse's office to search her clothes for pills. Romero and the nurse, Peggy Schwallier, asked Savana to remove her jacket, socks, and shoes, leaving her in stretch pants and a T-shirt (both without pockets), which she was then asked to remove. Finally, Savana was told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

The school's policies strictly prohibit the nonmedical use, possession, or sale of any drug on school grounds, including "any prescription or over-the-counter drug, except those for which permission to use in school has been granted pursuant to Board policy." A week before Savana was searched, another student, Jordan Romero (no relation of the school's administrative assistant), told the principal and Assistant Principal Wilson that "certain students were bringing drugs and weapons on campus," and that he had been sick after taking some pills that "he got from a classmate." On the morning of October 8, the same boy handed Wilson a white pill that he said Marissa Glines had given him. He told Wilson that students were planning to take the pills at lunch.

Wilson learned from Peggy Schwallier, the school nurse, that the pill was ibuprofen 400 mg, available only by prescription. Wilson then called Marissa out of class. Outside the classroom, Marissa's teacher handed Wilson the day planner, found within Marissa's reach, containing various contraband items. Wilson escorted Marissa back to his office.

In the presence of Helen Romero, Wilson requested Marissa to turn out her pockets and open her wallet.

Marissa produced a blue pill, several white ones, and a razor blade. Wilson asked where the blue pill came from, and Marissa answered, "I guess it slipped in when she gave me the IBU 400s." When Wilson asked whom she meant, Marissa replied, "Savana Redding." Wilson then enquired about the day planner and its contents; Marissa denied knowing anything about them. Wilson did not ask Marissa any follow-up questions to determine whether there was any likelihood that Savana presently had pills, neither asking when Marissa received the pills from Savana nor where Savana might be hiding them.

Schwallier did not immediately recognize the blue pill, but information provided through a poison control hotline indicated that the pill was a 200-mg dose of an anti-inflammatory drug, generically called naproxen, available over the counter. At Wilson's direction, Marissa was then subjected to a search of her bra and underpants by Romero and Schwallier, as Savana was later on. The search revealed no additional pills.

It was at this juncture that Wilson called Savana into his office and showed her the day planner. Their conversation established that Savana and Marissa were on friendly terms: while she denied knowledge of the contraband, Savana admitted that the day planner was hers and that she had lent it to Marissa. Wilson had other reports of their friendship from staff members, who had identified Savana and Marissa as part of an unusually rowdy group at the school's opening dance in August, during which alcohol and cigarettes were found in the girls' bathroom.

OPINION

Wilson had reason to connect the girls with this contraband, for Wilson knew that Jordan Romero had told the principal that before the dance, he had been at a party at Savana's house where alcohol was served. Marissa's statement that the pills came from Savana was thus sufficiently plausible to warrant suspicion that Savana was involved in pill distribution. This suspicion of Wilson's was enough to justify a search of Savana's backpack and outer clothing. If a student is reasonably suspected of giving out contraband pills, she is reasonably suspected of carrying them on her person and in the carryall that has become an item of student uniform in most places today. If Wilson's reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth making. And the look into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing.

Here it is that the parties part company, with Savana's claim that extending the search at Wilson's behest to the point of making her pull out her underwear was constitutionally unreasonable. The exact label for this final step in the intrusion is not important, though strip search is a fair label to speak of it. Romero and Schwallier directed Savana

to remove her clothes down to her underwear, and then "pull out" her bra and the elastic band on her underpants. Although Romero and Schwallier stated that they did not see anything when Savana followed their instructions, we would not define strip search and its Fourth Amendment consequences in a way that would guarantee litigation about who was looking and how much was seen. The very fact of Savana's pulling her underwear away from her body in the presence of the two officials who were able to see her necessarily exposed breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings.

Savana's subjective expectation of privacy against such a search is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness of her expectation (required by the Fourth Amendment standard) is indicated by the consistent experiences of other young people similarly searched, whose adolescent vulnerability intensifies the patent intrusiveness of the exposure. The common reaction of these adolescents simply registers the obviously different meaning of a search exposing the body from the experience of nakedness or near undress in other school circumstances. Changing for gym is getting ready for play; exposing for a search is responding to an accusation reserved for suspected wrongdoers and fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be.

The indignity of the search does not, of course, outlaw it, but it does implicate the rule of reasonableness as stated in *T.L.O.*, that "the search as actually conducted [be] reasonably related in scope to the circumstances which justified the interference in the first place." The scope will be permissible, that is, when it is "not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

Here, the content of the suspicion failed to match the degree of intrusion. Wilson knew beforehand that the pills were prescription-strength ibuprofen and over-the-counter naproxen, common pain relievers equivalent to two Advil, or one Aleve. He must have been aware of the nature and limited threat of the specific drugs he was searching for, and while just about anything can be taken in quantities that will do real harm, Wilson had no reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving great numbers of pills.

Nor could Wilson have suspected that Savana was hiding common painkillers in her underwear. Petitioners suggest, as a truth universally acknowledged, that "students hide contraband in or under their clothing," and cite a

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smattering of cases of students with contraband in their underwear. But when the categorically extreme intrusiveness of a search down to the body of an adolescent requires some justification in suspected facts, general background possibilities fall short; a reasonable search that extensive calls for suspicion that it will pay off. But nondangerous school contraband does not raise the specter of stashes in intimate places, and there is no evidence in the record of any general practice among Safford Middle School students of hiding that sort of thing in underwear; neither Jordan nor Marissa suggested to Wilson that Savana was doing that, and the preceding search of Marissa that Wilson ordered yielded nothing. Wilson never even determined when Marissa had received the pills from Savana; if it had been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person, much less in her underwear.

In sum, what was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear. We think that the combination of these deficiencies was fatal to finding the search reasonable.

In so holding, we mean to cast no ill reflection on the assistant principal, for the record raises no doubt that his motive throughout was to eliminate drugs from his school and protect students from what Jordan Romero had gone through. Parents are known to overreact to protect their children from danger, and a school official with responsibility for safety may tend to do the same. The difference is that the Fourth Amendment places limits on the official, even with the high degree of deference that courts must pay to the educator's professional judgment.

We do mean, though, to make it clear that the *T.L.O.* concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions.

A school official searching a student is "entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment." To be established clearly, however, there is no need that "the very action in question [have] previously been held unlawful." *T.L.O.* directed school officials to limit the intrusiveness of a search, "in light of the age and sex of the student and the nature of the infraction," and as we have just said at some length, the intrusiveness of the strip search here cannot be seen as justifiably related to the circumstances. But we realize that the lower courts have reached divergent conclusions regarding how the *T.L.O.* standard applies to such searches. We think these differences of opinion from

our own are substantial enough to require immunity for the school officials in this case.

The strip search of Savana Redding was unreasonable and a violation of the Fourth Amendment, but petitioners Wilson, Romero, and Schwallier are nevertheless protected from liability through qualified immunity. Our conclusions here do not resolve, however, the question of the liability of petitioner Safford Unified School District No. 1. [See Chapter 11 on civil liability of government units.] The judgment of the Ninth Circuit is therefore affirmed in part and reversed in part, and this case is remanded for consideration of the *Monell* claim.

It is so ordered.

CONCURRING AND DISSENTING

Stevens, J., joined by Ginsburg, J.

This case applies *T.L.O.* to declare unconstitutional a strip search of a 13-year-old honors student that was based on a groundless suspicion that she might be hiding medicine in her underwear. This is, in essence, a case in which clearly established law meets clearly outrageous conduct. I have long believed that it does not require a constitutional scholar to conclude that a nude search of a 13-year-old child is an invasion of constitutional rights of some magnitude. The strip search of Savana Redding in this case was both more intrusive and less justified than the search of the student's purse in *T.L.O.*

Therefore, while I join the Court's opinion, [holding that the search was unreasonable], I disagree with its decision to extend qualified immunity to the school official who authorized this unconstitutional search.

DISSENT

Thomas, J.

For nearly 25 years this Court has understood that maintaining order in the classroom has never been easy, but in more recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. In schools, events calling for discipline are frequent occurrences and sometimes require immediate, effective action. For this reason, school officials retain broad authority to protect students and preserve order and a proper educational environment under the Fourth Amendment. This authority requires that school officials be able to engage in the close supervision of schoolchildren, as well as enforce rules against conduct that would be perfectly permissible if undertaken by an adult.

School officials have a specialized understanding of the school environment, the habits of the students, and the concerns of the community, which enables them to formulate certain common-sense conclusions about human behavior. And like police officers, school officials are entitled to make an assessment of the situation in light

of their specialized training and familiarity with the customs of the school.

Here, petitioners had reasonable grounds to suspect that Redding was in possession of prescription and nonprescription drugs in violation of the school's prohibition of the "non-medical use, possession, or sale of a drug" on school property or at school events. School officials were aware that a few years earlier, a student had become seriously ill and spent several days in intensive care after ingesting prescription medication obtained from a classmate. Fourth Amendment searches do not occur in a vacuum; rather, context must inform the judicial inquiry. In this instance, the suspicion of drug possession arose at a middle school that had a history of problems with students using and distributing prohibited and illegal substances on campus.

The school's substance-abuse problems had not abated by the 2003-2004 school year, which is when the challenged search of Redding took place. School officials had found alcohol and cigarettes in the girls' bathroom during the first school dance of the year and noticed that a group of students including Redding and Marissa Glines smelled of alcohol. Several weeks later, another student, Jordan Romero, reported that Redding had hosted a party before the dance where she served whiskey, vodka, and tequila. Romero had provided this report to school officials as a result of a meeting his mother scheduled with the officials after Romero became violent and sick to his stomach one night and admitted that "he had taken some pills that he had got[ten] from a classmate." At that meeting, Romero admitted that "certain students were bringing drugs and weapons on campus." One week later, Romero handed the assistant principal a white pill that he said he had received from Glines. He reported "that a group of students [were] planning on taking the pills at lunch."

Moreover, school districts have valid reasons for punishing the unauthorized possession of prescription drugs on school property as severely as the possession of street drugs; teenage abuse of over-the-counter and prescription drugs poses an increasingly alarming national crisis. As one study noted, "more young people ages 12-17 abuse prescription drugs than any illicit drug except marijuana—more than cocaine, heroin, and methamphetamine combined. And according to a 2005 survey of teens, nearly one in five (19 percent or 4.5 million) admit abusing prescription drugs in their lifetime.

By declaring the search unreasonable in this case, the majority has surrendered control of the American public school system to public school students by invalidating school policies that treat all drugs equally and by second-guessing swift disciplinary decisions made by school officials. The Court's interference in these matters of great concern to teachers, parents, and students illustrates why the most constitutionally sound approach to the question of applying the Fourth Amendment in local public schools would in fact be the complete restoration of the common-law doctrine of *in loco parentis*.

This principle is based on the societal understanding of superior and inferior with respect to the parent and child relationship. In light of this relationship, the Court has indicated that a parent can authorize a third-party search of a child by consenting to such a search, even if the child denies his consent. A father, as the head of the household with the responsibility and the authority for the discipline, training and control of his children, has a superior interest in the family residence to that of his minor son, so that the father's consent to search would be effective notwithstanding the son's contemporaneous on-the-scene objection. Certainly, a search by the parent himself is no different, regardless of whether or not a child would prefer to be left alone. Even if a minor child may think of a room as his, the overall dominance will be in his parents.

Restoring the common-law doctrine of *in loco parentis* would not, however, leave public schools entirely free to impose any rule they choose. If parents do not like the rules imposed by those schools, they can seek redress in school boards or legislatures; they can send their children to private schools or home school them; or they can simply move. Indeed, parents and local government officials have proved themselves quite capable of challenging overly harsh school rules or the enforcement of sensible rules in insensible ways.

In the end, the task of implementing and amending public school policies is beyond this Court's function. Parents, teachers, school administrators, local politicians, and state officials are all better suited than judges to determine the appropriate limits on searches conducted by school officials. Preservation of order, discipline, and safety in public schools is simply not the domain of the Constitution. And, common sense is not a judicial monopoly or a constitutional imperative.

The nationwide drug epidemic makes the war against drugs a pressing concern in every school. And yet the Court has limited the authority of school officials to conduct searches for the drugs that the officials believe pose a serious safety risk to their students. By doing so, the majority has confirmed that a return to the doctrine of *in loco parentis* is required to keep the judiciary from essentially seizing control of public schools. Only then will teachers again be able to govern their pupils, quicken the slothful, spur the indolent, restrain the impetuous, and control the stubborn by making rules, giving commands, and punishing disobedience without interference from judges. By deciding that it is better equipped to decide what behavior should be permitted in schools, the Court has undercut student safety and undermined the authority of school administrators and local officials. Even more troubling, it has done so in a case in which the underlying response by school administrators was reasonable and justified. I cannot join this regrettable decision. I, therefore, respectfully dissent from the Court's determination that this search violated the Fourth Amendment.

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