

STRIP SEARCHES STRIP GOOD SCHOOLS OF THEIR TITLES

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INTRODUCTION

A school can come in any shape, color, and size. A school can boast high test scores, low attrition rates, or a tradition of academic excellence. A school can be in a city, a suburb, or inside the walls of somebody's home. But all schools have one thing in common: they strive to be considered a "good school." A school can only achieve this status if it succeeds in educating its students. Although there a wide variety of methods and means to educating students, a school must create a safe environment in which learning can thrive above all else.

Schools acknowledge the need for safety on campus. They install metal detectors, perform drug tests, hire security, and some conduct strip searches. Although these can be effective ways to detect and deter unsafe conduct, one has to question whether they successfully further the goal of creating a safe environment on campus. This is especially questionable when school administrators walk the line of what is a reasonable means to protect the school environment when conducting strip searches on students. Strip searches are humiliating and invade a student's privacy. If the means of controlling student conduct is so intrusive and humiliating as to violate students' sense of security, how safe can students feel?

Strip searches are counterproductive to creating a safe environment conducive to learning. The interest of controlling a school's drug problem or enforcing school rules does not outweigh the excessive violation of a student's right to privacy. Additionally,

strip searches violate a student's right to education by creating an environment of fear instead of one that encourages learning. Moreover, a school that performs strip searches on students cannot possibly create a safe learning environment, and therefore cannot be considered a good school.

DISCUSSION

Savana Redding

On October 8, 2003, at Safford Middle School ["SMS"] in Safford, Arizona, a student gave a small, white pill, later identified as prescription Ibuprofen, to the Assistant Principal.¹ The student told the Assistant Principal that another student, Marissa, gave the pill to him, and that a group of students planned to take more of the pills at lunch.² After searching Marissa, the Assistant Principal found more pills in her pockets.³ According to Marissa, another student named Savana Redding gave her the pills along with a school planner that contained school-banned items including knives, a lighter, and a cigarette.⁴

School officials called Savana, a thirteen-year-old eighth grade student, to the office.⁵ Savana saw her planner in the office, admitting that it belonged to her and that she lent it to Marissa, but denied ownership of the pills and the items inside.⁶ After receiving Savana's consent, the Assistant Principal searched her belongings, but found nothing.⁷ He then sent her to the nurse's office where his assistant and the school nurse,

¹ Redding v. Safford United Sch. Dist., 531 F.3d 1071, 1076 (9th Cir. 2008).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 1074.

⁶ *Id.* at 1075.

⁷ *Id.*

without Savana's consent, performed a strip search on her.⁸ They made her remove each layer of clothes one at a time, until she sat in her bra and underwear.⁹ Then, they asked her to pull her bra and underwear to the side and shake them, leaving her breast and crotch area exposed.¹⁰ Ultimately, the administrators did not find any prescription pills on Savana.¹¹

Savana claimed she was on the verge of tears during the entire strip search.¹² She was "embarrassed and scared, but felt [she] would be in more trouble if [she] did not do what they asked."¹³ She described it as the "most humiliating experience" of her life and that she felt "violated by the strip search."¹⁴ SMS saw the strip search as a school safety precaution.¹⁵ It claimed that one and a half months prior to the search, administrators worried about possible alcohol use at a school dance.¹⁶ There was also a tip from a student that some others were bringing drugs and weapons to school.¹⁷ Neither of these incidents involved Savana specifically.¹⁸ In fact, Savana did not have a previous history of discipline before October 8.¹⁹ The only possible nexus between Savana and the claimed drug problem at the school was that the same student who brought the pills to the Assistant Principal accused Savana's parents of providing alcohol to students before a school dance.²⁰ However, no one could prove this accusation.²¹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Redding, 531 F.3d at 1075.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 1077.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1075.

²⁰ *Id.* at 1077.

²¹ *Id.*

April Redding, Savana's mother, brought suit in the District Court of Arizona.²² After the court granted SMS's Motion for Summary Judgment, the Ninth Circuit Court of Appeals reversed the lower court's decision, finding that the strip search was improper and violated Savana's Fourth Amendment Rights.²³ Now, the Supreme Court faces the task of determining whether this strip search was unreasonable by applying previous rulings on school searches.²⁴

A strip search like the one conducted on Savana must be found unreasonable in all situations in the school context. If the Supreme Court finds that the strip search was reasonable, it will be affording the school too much discretion and power to enforce school rules at any cost to the student. If we allow schools to keep pushing the envelope on what they can reasonably do to ensure school safety, eventually there will be no boundaries on what and why schools may search individuals. Furthermore, strip searches like Savana's are so violating and humiliating as to destroy the student's sense of privacy. Although schools should be allowed to search a student's belongings when there are reasonable grounds, strip searches cross the line of what is an appropriate means to ensure school safety. SMS's intentions of keeping the school safe and drug-free are virtuous, but in the process they destroyed the very thing they were trying to ensure: a safe environment that is conducive to learning. Savana's statements of how she felt after the search exemplified how a harsh investigative measure can destroy a student's sense of security, privacy, and faith in their administrators. The fear of a similar search will ultimately contaminate the entire student body by creating a general feeling of non-safety

²² *Id.*

²³ *Id.* at 1089.

²⁴ Greg Stohr & Kristin Jensen, *School Strip-Search Draws Questions at Top U.S. Court*, BLOOMBERG.COM, April 21, 2009, http://www.bloomberg.com/apps/news?pid=20601087&sid=akS_.PIwP1oE&refer=home.

from administrators themselves. Thus, SMS's strip search on Savana frustrated its own intentions of creating a safe environment conducive to learning.

Strip Searches Violate a Student's Right to an Education in a Safe Learning Environment

School strip searches infringe a student's right to an education in a safe learning environment by causing individual students to feel violated and without any sense of personal privacy while at school. The right to an education has been recognized both on the international and state level. Article 26 of the Universal Declaration of Human Rights states that "everyone has the right to education."²⁵ It further states that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."²⁶ In the United States, state constitutions set forth the right to an education. For example, the Illinois State Constitution, Article X, Section I, states that "A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities."²⁷ In addition to Article X, Goal 3 of the Illinois Department of Education reads "Every school will offer a safe and healthy learning environment for all students."²⁸ It is clear that there is an established right to an education with a focus on fundamental freedoms and a health safe learning environment.

Schools have acknowledged the need for a safe learning environment, but have attempted to achieve this in the wrong manner: by creating a fearful environment. Many

²⁵ Universal Declaration of Human Rights art. 26, Dec. 14, 1948.

²⁶ *Id.*

²⁷ Ill. Const. art. X, § I.

²⁸

schools demand “stricter discipline” in order to remedy school violence or drug use.²⁹ However, these tactics that encompass “stricter discipline” are actually creating an environment more conducive to violence than learning. A student cannot feel safe in an environment where he may be subject to a search leaving him completely humiliated and violated, as Savana felt. Furthermore, students like Savana feel obligated to consent to strip searches out of fear that they will be in more trouble if they do not comply. This is surely not an environment that makes students feel safe. Therefore, strip searches prevent students from obtaining the education in a safe environment to which they are entitled. Strip searches violate the right to a safe education.

Strip Searches in the School Context Are Never Reasonable Under the Law

Strip searches should never be considered a reasonable way for schools to investigate a student’s illegal or school-prohibited behavior. The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”³⁰ Under the Fourteenth Amendment, state officers, including Boards of Education, must adhere to the limits set forth in the Fourth Amendment.³¹ Specifically in the school context, searches of students only comply with the Fourth Amendment when they are reasonable under the circumstances.³² Courts apply a balancing test to assess reasonableness, weighing the student’s interest in privacy against the school’s interest in preserving a safe learning

²⁹ Irwin A. Hyman & Donna C. Perone, *The Other Side of School Violence: Educator Policies and Practices That May Contribute to Student Misbehavior*, 36 J. SCH. PSYCHOL. 7, 13 (1998).

³⁰ U.S. Const., amend. IV.

³¹ U.S. Const., amend. XIV; *W. Va. Bd. Of Educ. V. Barnette*, 319 U.S. 624, 637 (1943).

³² *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985).

environment.³³ In order to balance the opposing interests, the Supreme Court adopted a two-prong test to determine the constitutionality of a search on a student.³⁴ First, the search must be “justified at its inception.”³⁵ Second, the search must be reasonably related in scope to the circumstances which justified the inference in the first place.³⁶

In the school context, normal searches and seizures of lockers, personal belonging, and even pat downs may potentially pass the tests applied by the Supreme Court for reasonable searches. However, schools should never be allowed to strip search a student because students deserve at least a minimum right to privacy even on campus. A bodily search warrants a higher standard of protection than most searches because of the invasion of the body and the psychological damage it can cause.³⁷ The Supreme Court stated in *New Jersey v. T.L.O.* that “even a limited search of the person is a substantial invasion of privacy.”³⁸

In *Vernonia School District 47J v. Acton*, the Supreme Court held that random drug testing for student athletes and participants in competitive extracurriculars were constitutional because the students had a decreased expectation of privacy by voluntarily participating in the activities.³⁹ In cases such as Savana Redding’s, students should not have a reduced expectation of privacy simply by attending school. It may be reasonable that students have a decreased expectation of privacy to use their locker because the locker is not owned by them. However, students should attend school reasonably believing that their bodies will not be violated and that they still retain a right to privacy.

³³ *Id.* At 340.

³⁴ *T.L.O.*, 469 U.S. at 341.

³⁵ *Id.*

³⁶³⁶ *Id.*

³⁷ Deborah Sharp Libby, *Stripped of Dignity*, in *EDUCATING FOR DEMOCRACY* 129, 145 (Robert F. McNergney, Edward R. Ducharme, & Margo K. Ducharme, eds. 1999).

³⁸ *T.L.O.* 469 U.S. at 341.

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Furthermore, a student's expectation of privacy over their bodies should be the highest expectation of privacy that exists. Therefore, under the Supreme Court's test, even if the school has an extremely high interest in preserving a safe learning environment, this should never outweigh a student's expectation of privacy over their bodies.

Additionally, strip searches fail to justify a school's interest in preserving a safe learning environment. First, strip searches are an ineffective means to control school safety. Even in the prison context, strip searches rarely find illegal contraband.⁴⁰ Furthermore, some studies have found that strip searches exacerbate violence and self-harm in women's prisons instead of preventing these occurrences.⁴¹ Women in prisons report feeling helpless during the search, are intensely humiliated, and consider it a violation of their body.⁴² As a result, many women in prisons subjected to strip searches become violent, lashing out against their guards.⁴³

Similar to the prison inmates, Savana Redding reported feeling humiliated, violated, on the verge of tears, and scared that if she did not comply she would be in more trouble.⁴⁴ This certainly cannot contribute to a safe learning environment. In the school context, strip searches have many negative effects including emotional damage, an increase in oppositional behavior, a lost interest in academics, depression, anger, and a need for retaliation.⁴⁵ In one study of students involved in a strip search, the children

⁴⁰ Jude McCulloch & Amanda George, *Naked Power: Strip Searching in Women's Prisons, in Violence and Incarceration* 107, 118 (Paul Scraton & Jude McCulloch, eds. 2008). In a Victorian minimum security prison in 1995, 523 strip searches took place resulting in only three prohibited items- a chewing gum packet, cigarette lighters, some meat and spices.

⁴¹ Anna Bogdanic, *Strip Searching of Female Prisoners in Queensland*, 10, (Oct. 2008) (B.A. thesis, Monash University) <http://www.wipan.info/publications/AnnaBogdanic2.pdf>.

⁴² *Id.* at 10-11. One woman prisoner reported that "[she was] very nearly crying when [she] knew [she] was going to be strip-searched. It made you very angry and very violent too." *Id.* at 11.

⁴³ *Id.* at 11.

⁴⁴ Redding, 531 F.3d at 1075.

⁴⁵ Hyman, *supra* note 37.

developed symptoms of Post Traumatic Stress Disorder.⁴⁶ Conclusively, strip searches do more harm, than they do good. Therefore, no school will be able outweigh a student's expectation of privacy with its own interest in preserving a safe learning environment because strip searches do not serve this interest.

A Good School Provides a Safe Environment for its Students, Without Strip Searching

Even if strip searches did not violate a student's right to education and were reasonable searches under the law, a good school should not perform such invasive procedures. Strip searches result in a culture of unrest and fear in the student body that is not conducive to learning. A good school provides an education to its students in a safe environment. Strip searches are simply counterproductive to establishing a safe environment with effective learning.

Although the Supreme Court has set out its two-prong test balancing the student's expectation of privacy with the school's interest in preserving safety, it is simply too subjective of a test for a school administrator to contemplate every time a dangerous situation arises. In the school's eyes, it will always consider its interest in preserving safety to be of the utmost importance. It is extremely difficult for a school administrator to determine whether the dangerous situation warrants a strip search. For instance, in Savana Redding's case, the school administrator did not truly know the scope of the so-called "drug problem" at SMS, but he probably assumed the worst. This led him to believe that a strip search was the only way to prevent the pills from reaching other students.

⁴⁶ *Id.* at 14.

However, the Assistant Principal never found evidence on Savana's body to make her guilty of bringing the pills to school. Yet, Savana was left with emotional scars for the rest of her life from her humiliation. Furthermore, the rest of the student body will likely mistrust the school administrators, thinking that at any time an anonymous tip can subject them to a strip search. A good school does not have this feeling of unrest and uncertainty of student's privacy. A good school will not allow the administrator to consider a strip search to preserve the safety of the school. Instead, a good school should instruct its administrators to call the police if there is danger to the rest of the school. This will put authority into the hands of professionals who can adequately weigh the severity of the situation. Therefore, even if strip searching did not violate a student's right to a safe school and could be found reasonable under the law, a good school should not allow its administrators to strip search its students if it wants to be considered "good."

CONCLUSION

Schools should never perform strip searches on their students. Strip searches violate the student's right to an education in a safe learning environment. Furthermore, strip searches are unreasonable searches because the student's expectation of privacy over their body should always outweigh an administrator's interest in preserving a safe environment. In fact, strip searches are counterproductive and an ineffective means to creating a safe school environment. Finally, a good school should never allow strip searches because the harm done to the students is far too great. In sum, good schools do not perform strip searches on their students.

