May 30, 1995

Re: 94-590 - Vernonia School District 47J v. Acton

Dear Nino:

I am in general agreement, but would appreciate your consideration of a few questions/comments.

At p. 13, I would prefer to be more tentative about the prescription drug disclosure requirement. The general objection made here and our rejection of it should not foreclose a more specific challenge. Young women taking birth control pills, for example, might be discomforted by having this information disclosed to coach or other school personnel. Sealing the information so only the testing facility will have it does not seem a large inconvenience.

At p. 16, you make a point that strikes me as "important," even "compelling," i.e., the alternative — individual suspicion — is probably more threatening to students and may give teachers authority (or responsibility) they should not have. But wouldn’t "unruly" be a better description of the endangered student than "obnoxious"? Other substitutes: "inattentive" or, preferred by some parents of such children, "lively."

At p. 17, looking back to section III, you mention, as a facet of the privacy interest at stake, Vernonia’s limitation of the program to students who participate in interscholastic athletics. Perhaps that feature should be included in the paragraph starting "We caution . . . ." After the second sentence, something like this might fit: "Furthermore, the program is confined to students who voluntarily participate in after-school athletics, with consequences only for such participation."

Respectfully,

Justice Scalia