

SAFFORD UNIFIED SCHOOL DISTRICT #1 v. REDDING
129 S. Ct. 2633 (2009)

JUDGES: SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, BREYER, and ALITO, JJ., joined, and in which STEVENS and GINSBURG, JJ., joined as to Parts I-III. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, J., joined. GINSBURG, J., filed an opinion concurring in part and dissenting in part. THOMAS, J., filed an opinion concurring in the judgment in part and dissenting in part.

OPINION

JUSTICE SOUTER delivered the opinion of the Court.

The issue here is whether a 13-year-old student's Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over-the-counter drugs to school. Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, we hold that the search did violate the Constitution, but because there is reason to question the clarity with which the right was established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.

I

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.

Savana's mother filed suit against Safford Unified School District # 1, Wilson, Romero, and Schwallier for conducting a strip search in violation of Savana's Fourth Amendment rights. The

individuals (hereinafter petitioners) moved for summary judgment, raising a defense of qualified immunity. The District Court for the District of Arizona granted the motion on the ground that there was no Fourth Amendment violation, and a panel of the Ninth Circuit affirmed.

A closely divided Circuit sitting en banc, however, reversed. The Ninth Circuit held that the strip search was unjustified under the Fourth Amendment test for searches of children by school officials set out in *New Jersey v. T. L. O.*, 469 U.S. 325 (1985). The Circuit then applied the test for qualified immunity, and found that Savana's right was clearly established at the time of the search. The upshot was reversal of summary judgment as to Wilson, while affirming the judgments in favor of Schwallier, the school nurse, and Romero, the administrative assistant, since they had not acted as independent decisionmakers.

II

In *T. L. O.*, we held that for searches by school officials "a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause." We have thus applied a standard of reasonable suspicion to determine the legality of a school administrator's search of a student, and have held that a school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

A number of our cases on probable cause have an implicit bearing on the reliable knowledge element of reasonable suspicion. Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a "fair probability" or a "substantial chance" of discovering evidence of criminal activity. The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing.

III

A

In this case, the school's policies strictly prohibit the nonmedical use, possession, or sale of any drug on school grounds, including "[a]ny prescription or over-the-counter drug, except those for which permission to use in school has been granted." 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 followup 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. 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. 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.

B

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 way to speak of it. 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 intrusiveness of the exposure. The common reaction of these adolescents 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 degrading.

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 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 students were receiving great numbers of pills.

Nor could Wilson have suspected that Savana was hiding common painkillers in her underwear. Petitioners suggest that "students . . . hid[e] contraband in or under their clothing," and cite a 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.

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.

IV

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." Outrageous conduct obviously will be unconstitutional. But even as to action less than an outrage, "officials can still be on notice that their conduct violates established law . . . in novel factual circumstances."

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 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. A number of judges have read *T. L. O.* as the en banc minority of the Ninth Circuit did here. The Sixth Circuit upheld a strip search of a high school student for a drug, without any suspicion that drugs were hidden next to her body. *Williams v. Ellington*, 936 F.2d 881 (6th Cir. 1991). See also *Thomas v. Roberts*, 323 F.3d 950 (11th Cir. 2003) (granting qualified immunity to a teacher and police officer who conducted a group strip search of a fifth grade class looking for \$ 26).

We think these differences of opinion from our own are substantial enough to require immunity for the school officials in this case. We would not suggest that entitlement to qualified immunity is the guaranteed product of disuniform views of the law in the other federal, or state, courts, and the fact that a single judge, or even a group of judges, disagrees about the contours of a right does not automatically render the law unclear if we have been clear. That said, however, the cases viewing school strip searches differently from the way we see them are numerous enough, with well-reasoned majority and dissenting opinions, to counsel doubt that we were sufficiently clear in the prior statement of law. We conclude qualified immunity is warranted.

V

The strip search of Savana Redding was 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 the question of the liability of Safford Unified School District # 1 under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978), a claim the Ninth Circuit did not address. 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.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, concurring in part and dissenting in part.

In *New Jersey v. T. L. O.*, the Court established a two-step inquiry for determining the reasonableness of a school official's decision to search a student. Nothing the Court decides today alters this basic framework. It simply 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 "[i]t 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 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 Parts I-III of the Court's opinion, I disagree with its decision to extend qualified immunity to the school official who authorized this unconstitutional search.

The Court reaches a contrary conclusion about qualified immunity based on the fact that various Courts of Appeals have adopted seemingly divergent views about *T. L. O.*'s application to strip searches. But the clarity of a well-established right should not depend on whether jurists have misread our precedents. In this case, we chart no new constitutional path. We merely decide whether the decision to strip search Savana Redding was prohibited under *T. L. O.* Our conclusion leaves the boundaries of the law undisturbed. The Court of Appeals properly rejected the qualified immunity defense, and I would affirm that court's judgment in its entirety.

JUSTICE GINSBURG, concurring in part and dissenting in part.

I agree with the Court that Assistant Principal Wilson's subjection of 13-year-old Savana Redding to a humiliating stripdown search violated the Fourth Amendment. But I also agree with Justice Stevens that *New Jersey v. T. L. O.* "clearly established" the law governing this case.

Fellow student Marissa Glines, caught with pills in her pocket, accused Redding of supplying them. As the Court observes, no followup questions were asked. Wilson did not test Glines's accusation for veracity by asking Glines when did Redding give her the pills, where, for what purpose. Any reasonable search for the pills would have ended when inspection of Redding's backpack and jacket pockets yielded nothing. Wilson had no cause to suspect, based on prior experience at the school or clues in this case, that Redding had hidden pills in her underwear or body. To make matters worse, Wilson did not release Redding after the search. Instead, he made her sit on a chair outside his office for over two hours. At no point did he attempt to call her parent. Abuse of authority of that order should not be shielded by official immunity.

In contrast to *T. L. O.*, the search of Redding involved her body and rested on the bare accusation of another student whose reliability the Assistant Principal had no reason to trust. The Court's opinion in *T. L. O.* plainly stated the controlling Fourth Amendment law: A search ordered by a school official, even if "justified at its inception," crosses the constitutional boundary if it becomes "excessively intrusive in light of the age and sex of the student and the nature of the infraction."

Here, "the nature of the [supposed] infraction," the slim basis for suspecting Savana Redding, and her "age and sex" establish beyond doubt that Assistant Principal Wilson's order cannot be reconciled with *T. L. O.* Wilson's treatment of Redding was abusive and it was not reasonable for him to believe that the law permitted it. I join Justice Stevens in dissenting from the Court's acceptance of Wilson's qualified immunity plea.

JUSTICE THOMAS, concurring in the judgment in part and dissenting in part.

I agree with the Court that the judgment against the school officials with respect to qualified immunity should be reversed. Unlike the majority, however, I would hold that the search of Savana Redding did not violate the Fourth Amendment. The majority imposes a vague and

amorphous standard on school administrators. It also grants judges sweeping authority to second-guess the measures that these officials take to maintain discipline in their schools and ensure the health and safety of the students in their charge. This deep intrusion into the administration of public schools exemplifies why the Court should return to the common-law doctrine of *in loco parentis* under which "the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order." *Morse v. Frederick*, 551 U.S. 393, 414 (2007) (THOMAS, J., concurring). But even under the prevailing Fourth Amendment test established by *New Jersey v. T. L. O.*, all petitioners are entitled to judgment as a matter of law in their favor.

I

"Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." Thus, although public school students retain Fourth Amendment rights under this Court's precedent, those rights "are different . . . than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." For nearly 25 years this Court has understood that "[m]aintaining 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, "[e]vents 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 . . . enforc[e] rules against conduct that would be perfectly permissible if undertaken by an adult." Seeking to reconcile the Fourth Amendment with this unique public school setting, the Court in *T. L. O.* held that a school search is "reasonable" if it is "'justified at its inception'" and "'reasonably related in scope to the circumstances which justified the interference in the first place.'" The search under review easily meets this standard.

A "search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." As the majority rightly concedes, this search was justified at its inception.

Furthermore, in evaluating whether there is a reasonable "particularized and objective" basis for conducting a search based on suspected wrongdoing, government officials must consider the "totality of the circumstances." School officials have a specialized understanding of the school environment which enables them to "'formulat[e] 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 [this] 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. 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 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 after Romero "bec[a]me 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."

School officials justifiably took quick action in light of the lunchtime deadline. The assistant principal took the pill to the school nurse who identified it as prescription-strength 400-mg Ibuprofen. A subsequent search of Glines and her belongings produced a razor blade, a Naproxen 200-mg pill, and several Ibuprofen 400-mg pills. When asked, Glines claimed that she had received the pills from Redding. A search of Redding's planner, which Glines had borrowed, then uncovered "several knives, several lighters, a cigarette, and a permanent marker." Thus, as the majority acknowledges, the totality of circumstances justified a search of Redding for pills.

The remaining question is whether the search was reasonable in scope. Under *T. L. O.*, "a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." Because the school officials searched in a location where the pills could have been hidden, the search was reasonable in scope under *T. L. O.*

The majority finds that "societal expectations of personal privacy support . . . treat[ing]" this search, which it labels a "strip search," as "categorically distinct, requiring distinct elements of justification for going beyond a search of clothing and belongings." Thus, in the majority's view, although school officials had reasonable suspicion to believe that Redding had the pills on her person, they needed some greater level of particularized suspicion to conduct this "strip search." There is no support for this contortion of the Fourth Amendment.

The Court has generally held that the reasonableness of a search's scope depends only on whether it is limited to the area that is capable of concealing the object of the search. In keeping with this longstanding rule, the "nature of the infraction" referenced in *T. L. O.* delineates the proper scope of a search of students in a way that is identical to that permitted for searches outside the school -- *i.e.*, the search must be limited to the areas where the object of that infraction could be concealed. A search of a student therefore is permissible in scope so long as it is objectively reasonable to believe that the area searched could conceal the contraband.

The analysis of whether the scope of the search here was permissible under that standard is straightforward. Indeed, the majority does not dispute that students conceal "contraband in their underwear." It acknowledges that school officials had reasonable suspicion to look in Redding's backpack and outer clothing because 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." The majority nevertheless concludes that proceeding any further with the search

was unreasonable. But there is no support for this conclusion. The reasonable suspicion that Redding possessed the pills for distribution purposes did not dissipate simply because the search of her backpack turned up nothing. It was eminently reasonable to conclude that the backpack was empty because Redding was secreting the pills in a place she thought no one would look.

Redding would not have been the first person to conceal pills in her undergarments. Nor will she be the last after today's decision, which announces the safest place to secrete contraband in school.

The majority compounds its error by reading the "nature of the infraction" aspect of the *T. L. O.* test as a license to limit searches based on a judge's assessment of a particular school policy. According to the majority, the scope of the search was impermissible because the school official "must have been aware of the nature and limited threat of the specific drugs he was searching for" and because he "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." Thus, in order to locate a rationale for finding a Fourth Amendment violation in this case, the majority retreats from its observation that the school's firm no-drug policy "makes sense."

Even accepting the majority's assurances that it is not attacking the rule's reasonableness, it certainly is attacking the rule's importance. This approach directly conflicts with *T. L. O.* in which the Court was "unwilling to adopt a standard under which the legality of a search is dependent upon a judge's evaluation of the relative importance of school rules." Indeed, the Court in *T. L. O.* expressly rejected the proposition that "some rules regarding student conduct are by nature too 'trivial' to justify a search based upon reasonable suspicion."

The majority's decision in this regard also departs from another basic principle of the Fourth Amendment: that law enforcement officials can enforce with the same vigor all rules and regulations irrespective of the perceived importance of any of those rules.

The majority has placed school officials in this "impossible spot" by questioning whether possession of Ibuprofen and Naproxen causes a severe enough threat to warrant investigation. Had the suspected infraction involved a street drug, the majority implies that it would have approved the scope of the search. In effect, then, the majority has replaced a school rule that draws no distinction among drugs with a new one that does. As a result, a full search of a student's person for prohibited drugs will be permitted only if the Court agrees that the drug in question was sufficiently dangerous. Such a test is unworkable and unsound.

A rule promulgated by a school board represents the judgment of school officials that the rule is needed to maintain "school order" and "a proper educational environment." Teachers, administrators, and the local school board are called upon both to "protect the . . . safety of students and school personnel" and "maintain an environment conducive to learning." They are tasked with "watch[ing] over a large number of students" who "are inclined to test the outer boundaries of acceptable conduct and to imitate the misbehavior of a peer if that misbehavior is not dealt with quickly." In such an environment, something as simple as a "water pistol or peashooter can wreak [havoc] until it is taken away." The danger posed by unchecked distribution and consumption of prescription pills by students certainly needs no elaboration. Judges are not qualified to second-guess the best manner for maintaining quiet and order in the

school environment. " It is a mistake for judges to assume the responsibility for deciding which school rules are important enough to allow for invasive searches and which rules are not.

II

By declaring the search unreasonable in this case, the majority has "surrender[ed] 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 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*.

"[I]n the early years of public schooling," courts applied the doctrine of *in loco parentis* to transfer to teachers the authority of a parent to "command obedience, to control stubbornness, to quicken diligence, and to reform bad habits." So empowered, schoolteachers and administrators had almost complete discretion to establish and enforce the rules they believed were necessary to maintain control over their classrooms. The perils of judicial policymaking inherent in applying Fourth Amendment protections to public schools counsel in favor of a return to the understanding that existed in this Nation's first public schools, which gave teachers discretion to craft the rules needed to carry out the disciplinary responsibilities delegated to them by parents.

If the common-law view that parents delegate to teachers their authority to discipline and maintain order were to be applied in this case, the search of Redding would stand. There can be no doubt that a parent would have had the authority to conduct the search at issue in this case. Parents have "immunity from the strictures of the Fourth Amendment" when it comes to searches of a child or that child's belongings.

In the end, the task of implementing 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.

III

"[T]he 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 the[ir] pupils, quicken the slothful, spur the indolent, restrain the impetuous, and control the stubborn" by making "rules, giv[ing] commands, and punish[ing] 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.