Written by **Joe Wolverton, II, J.D.** on July 11, 2018

School's 2013 Strip-search of Sixth-graders Finally Ruled Unconstitutional

When it appeared that $50 was missing during a school field trip for Lanier Middle School in Texas back in 2013, the middle school resource officer (essentially a police officer assigned to a school) told the assistant principal that "girls like to hide things in their bras and panties." With that, the assistant principal, Verlinda Higgins, sent the 22 girls in the Lanier Middle School choir to the school nurse to be strip-searched.

Once all 22 girls in the choir class were taken to the female school nurse, she strip-searched them, taking them one at a time into a bathroom, where she "check[ed] around the waistband of [their] panties," loosened their bras, and checked "under their shirts." The girls "were made to lift their shirts so they were exposed from the shoulder to the waist." Not a single phone call to parents was made, no parent was notified — despite the fact that the girls asked that their parents be notified — and not a penny was found.

Surely such an intrusive search of girls in the sixth grade violated not only their dignity, but their rights, as well.

The parents of some of the girls filed a federal lawsuit against the school district for the "brazenly improper" strip search. A federal district court judge dismissed the complaint, insisting that the girls had failed to establish a constitutional violation of any rights.

Days ago, the United States Fifth Circuit Court of Appeals reversed the lower court judge's ruling, declaring:

> Here, the alleged facts, taken together and assumed to be true, permit the reasonable inference — i.e., the claim has facial plausibility — that the risk of public officials' conducting unconstitutional searches was or should have been a "highly predictable consequence" of the school district's decision to provide its staff no training regarding the Constitution's constraints on searches.

Read closely: The Circuit Court doesn't focus on the fact that there was a strip search of nearly two dozen 11- and 12-year-old girls by a school nurse — under orders from an assistant principal following a bizarre theory from a school cop — but the judge's decision rested on the fact that the school personnel weren't adequately trained to treat the girls so despicably and lewdly.

Tim Cushing of the blog Tech Dirt reminded his readers of the indecency of the incident, pointing to the pointlessness of the act in light of the purported purpose: "No one was looking for weapons or even illegal drugs. It was cash — something easy to lose. That $50 has gone missing does not necessarily mean it was stolen. That it may have been stolen does not necessarily mean the female class members would have stashed it in their undergarments."

Readers, please remember those simple facts of this appalling case: Twenty-two girls, no older than 12

years old, were subjected to searches of their underwear by school officials who claimed such violations were necessary to find FIFTY DOLLARS!

One is reminded of the quote included by Jacques Barzun in the frontispiece of his book *Teacher in America*: "dulce est desipere in loco … parentis." Which, translated, means "It's sometimes pleasant to fool around … when taking the place of a parent."

In most states, school officials vis-à-vis the students are legally considered *in loco parentis*, that is to say, "acting in the place (on behalf of) parents." Put very simply, the Supreme Court has held that *in loco parentis* gives authority to K-12 school administrators and teachers to treat students in any way necessary to achieve a school's interests and educational pursuits.

How were the school's educational — or any other — interests advanced by forcing girls to submit to searches inside their underwear by a school nurse ostensibly looking for some missing money?

The Fifth Circuit Court conveniently side-steps the immodesty and impropriety of the school's strip search of the girls and chooses rather to remind the Lanier Middle School administrators (and all others throughout the country, given the deference afforded federal court decisions) of when they are free to force children into such demoralizing situations:

> To search a student's person, school officials must generally have reasonable suspicion that the search will reveal evidence of a violation of school rules or the law.… Reasonable suspicion has two dimensions. One is the "knowledge component," which measures the strength of the evidence indicating illicit activity.… The second dimension, often called the "nexus" component, measures the strength of the evidence indicating "that the specific 'things' to be searched for and seized are located on the property [or, in this context, the person] to which entry is sought." Together, these elements mean that searching a student's person requires "a moderate chance of finding evidence of wrongdoing" on the person of that specific student.

The last two words of that selection should be enough to cast a constitutional doubt on the act of the school district. The search was of the 22 girls in the choir, not just a "specific student" — a search which has a better than not chance of uncovering "wrongdoing."

Ultimately, the Fifth Circuit came down on the side of the students, holding: "Applied here, this clearly established law means that Higgins violated the constitutional rights of the twenty-two girls unless Higgins reasonably suspected that the missing $50 cash (1) would be found on that particular girl's person and either (2) would be found specifically in that girl's underwear or (3) would pose a dangerous threat to students. For what are perhaps obvious reasons, the parties do not dispute that the alleged search failed all three conditions. It was clearly unconstitutional."

It is to protect people from deprivations of this sort that our Founding Fathers included the Fourth Amendment in the Constitution within a year of its ratification by the states.

The language of the Fourth Amendment is taken in large measure from a similar provision in the Virginia Declaration of Rights, written by George Mason.

In 1776, Mason, the principal author of the Virginia Declaration of Rights, upheld the right to be free from such searches, writing that "general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence [sic] is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted."

We, as a people, cannot remain free without virtue and there is no virtue in the forcing of 22 girls to have their underwear searched by a school nurse, especially when there was not even a scintilla of reasonable suspicion of wrongdoing by the girls treated so indecently, each of whom was denied the chance to contact her parents.