Ferguson v. City of Charleston, 532 U.S. 67 (2001)

In 1998, the Medical University of South Carolina, the Charleston, South Carolina, police, and several social services organizations developed a policy for identifying and screening women suspected of using cocaine when pregnant. Women who met one or more of nine criteria, including such factors as "No prenatal care" and "Preterm labor of no obvious cause" were tested for cocaine use. Those who tested positive were referred to a substance abuse clinic and arrested if they did not accept that treatment. Crystal Ferguson and nine other women arrested under that policy filed a lawsuit against the City of Charleston claiming that drug tests without a warrant were unconstitutional searches under the Fourth Amendment as incorporated by the due process clause of the Fourteenth Amendment. The local federal district court rejected the lawsuit on the ground that the women had consented to the drug test. The Court of Appeals sustained that decision, but on the ground that "special needs" justified a search without a consent or warrant. Ferguson appealed to the Supreme Court of the United States.

The Supreme Court by a 6–3 vote declared the drug testing program unconstitutional. Justice Stevens's majority opinion asserted that because the primary purpose of the testing program was law enforcement, the special needs exception to the warrant requirement did not justify the search. How did Justice Stevens interpret past precedents on the special needs exception? How did he distinguish Ferguson *from those cases? What is the main difference between the majority opinion and dissent? Why did Justice Scalia think the special needs doctrine not relevant (and satisfied if relevant)? Who had the better of the argument? Suppose Ferguson had consented to the drug test in order to get prenatal care. Would the Court have reached a different conclusion? Should the Court have reached a different conclusion?*

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JUSTICE STEVENS delivered the opinion of the Court.

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Because MUSC is a state hospital, the members of its staff are government actors, subject to the strictures of the Fourth Amendment. Moreover, the urine tests conducted by those staff members were indisputably searches within the meaning of the Fourth Amendment. Neither the District Court nor the Court of Appeals concluded that any of the nine criteria used to identify the women to be searched provided either probable cause to believe that they were using cocaine, or even the basis for a reasonable suspicion of such use. Rather, the District Court and the Court of Appeals viewed the case as one involving MUSC's right to conduct searches without warrants or probable cause. Furthermore, given the posture in which the case comes to us, we must assume for purposes of our decision that the tests were performed without the informed consent of the patients.

Because the hospital seeks to justify its authority to conduct drug tests and to turn the results over to law enforcement agents without the knowledge or consent of the patients, this case differs from the four previous cases in which we have considered whether comparable drug tests "fit within the closely guarded category of constitutionally permissible suspicionless searches." In three of those cases, we sustained drug tests for railway employees involved in train accidents, *Skinner v. Railway Labor Executives' Assn.* (1989), for United States Customs Service employees seeking promotion to certain sensitive positions, *Treasury Employees v. Von Raab* (1989), and for high school students participating in interscholastic sports, *Vernonia School Dist. 47J v. Acton* (1995). . . .

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In each of those cases, we employed a balancing test that weighed the intrusion on the individual's interest in privacy against the "special needs" that supported the program. As an initial matter, we note that the invasion of privacy in this case is far more substantial than in those cases. . . . The reasonable expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent.

The critical difference between [past] drug-testing cases and this one, however, lies in the nature of the "special need" asserted as justification for the warrantless searches. In each of those earlier cases, the "special need" that was advanced as a justification for the absence of a warrant or individualized suspicion was one divorced from the State's general interest in law enforcement. . . . In this case, however, the central and indispensable feature of the policy from its inception was the use of law enforcement to coerce the patients into substance abuse treatment. This fact distinguishes this case from circumstances in which physicians or psychologists, in the course of ordinary medical procedures aimed at helping the patient herself, come across information that under rules of law or ethics is subject to reporting requirements, which no one has challenged here.

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. . . In this case, as Judge Blake put it in her dissent below, "it . . . is clear from the record that an initial and continuing focus of the policy was on the arrest and prosecution of drug-abusing mothers. . . ." Tellingly, the document codifying the policy incorporates the police's operational guidelines. It devotes its attention to the chain of custody, the range of possible criminal charges, and the logistics of police notification and arrests. Nowhere, however, does the document discuss different courses of medical treatment for either mother or infant, aside from treatment for the mother's addiction.

Moreover, throughout the development and application of the policy, the Charleston prosecutors and police were extensively involved in the day-to-day administration of the policy. Police and prosecutors decided who would receive the reports of positive drug screens and what information would be included with those reports. Law enforcement officials also helped determine the procedures to be followed when performing the screens. In the course of the policy's administration, they had access to . . . medical files on the women who tested positive, routinely attended the substance abuse team's meetings, and regularly received copies of team documents discussing the women's progress. Police took pains to coordinate the timing and circumstances of the arrests with MUSC staff. . . .

While the ultimate goal of the program may well have been to get the women in question into substance abuse treatment and off of drugs, the immediate objective of the searches was to generate evidence *for law enforcement purposes* in order to reach that goal. The threat of law enforcement may ultimately have been intended as a means to an end, but the direct and primary purpose of MUSC's policy was to ensure the use of those means. In our opinion, this distinction is critical. Because law enforcement involvement always serves some broader social purpose or objective, under respondents' view, virtually any nonconsensual suspicionless search could be immunized under the special needs doctrine by defining the search solely in terms of its ultimate, rather than immediate, purpose. Such an approach is inconsistent with the Fourth Amendment. Given the primary purpose of the Charleston program, which was to use the threat of arrest and prosecution in order to force women into treatment, and given the extensive involvement of law enforcement officials at every stage of the policy, this case simply does not fit within the closely guarded category of "special needs."

According to the dissent, the fact that MUSC performed tests prior to the development of Policy M-7 should immunize any subsequent testing policy despite the presence of a law enforcement purpose and extensive law enforcement involvement. To say that any therapeutic purpose did not disappear is simply to miss the point. What matters is that under the new policy developed by the solicitor's office and MUSC, law enforcement involvement was the means by which that therapeutic purpose was to be met. Policy M-7 was, at its core, predicated on the use of law enforcement. The extensive involvement of law enforcement and the threat of prosecution were, as respondents admitted, essential to the program's success.

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The fact that positive test results were turned over to the police does not merely provide a basis for distinguishing our prior cases applying the "special needs" balancing approach to the determination

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of drug use. It also provides an affirmative reason for enforcing the strictures of the Fourth Amendment. While state hospital employees, like other citizens, may have a duty to provide the police with evidence of criminal conduct that they inadvertently acquire in the course of routine treatment, when they undertake to obtain such evidence from their patients *for the specific purpose of incriminating those patients,* they have a special obligation to make sure that the patients are fully informed about their constitutional rights, as standards of knowing waiver require.

JUSTICE KENNEDY, concurring in the judgment.

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As the majority demonstrates and well explains, there was substantial law enforcement involvement in the policy from its inception. None of our special needs precedents has sanctioned the routine inclusion of law enforcement, both in the design of the policy and in using arrests, either threatened or real, to implement the system designed for the special needs objectives. The special needs cases we have decided do not sustain the active use of law enforcement, including arrest and prosecutions, as an integral part of a program which seeks to achieve legitimate, civil objectives. The traditional warrant and probable-cause requirements are waived in our previous cases on the explicit assumption that the evidence obtained in the search is not intended to be used for law enforcement purposes. Most of those tested for drug use under the policy at issue here were not brought into direct contact with law enforcement. This does not change the fact, however, that, as a systemic matter, law enforcement was a part of the implementation of the search policy in each of its applications. Every individual who tested positive was given a letter explaining the policy not from the hospital but from the solicitor's office. Everyone who tested positive was told a second positive test or failure to undergo substance abuse treatment would result in arrest and prosecution. As the Court holds, the hospital acted, in some respects, as an institutional arm of law enforcement for purposes of the policy. Under these circumstances, while the policy may well have served legitimate needs unrelated to law enforcement, it had as well a penal character with a far greater connection to law enforcement than other searches sustained under our special needs rationale.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE and Justice THOMAS join in part, dissenting.

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. . . What petitioners, the Court, and to a lesser extent the concurrence really object to is not the urine testing, but the hospital's reporting of positive drug-test results to police. But the latter is obviously not a search. At most it may be a "derivative use of the product of a past unlawful search," which, of course, "work[s] no new Fourth Amendment wrong" and "presents a question, not of rights, but of remedies." There is only one act that could conceivably be regarded as a search of petitioners in the present case: the *taking* of the urine sample. I suppose the *testing* of that urine for traces of unlawful drugs could be considered a search of sorts, but the Fourth Amendment protects only against searches of citizens' "persons, houses, papers, and effects"; and it is entirely unrealistic to regard urine as one of the "effects" (*i.e.,* part of the property) of the person who has passed and abandoned it. Some would argue, I suppose, that testing of the urine is prohibited by some generalized privacy right "emanating" from the "penumbras" of the Constitution (a question that is not before us); but it is not even arguable that the testing of urine that has been lawfully obtained is a Fourth Amendment search. . . .

It is rudimentary Fourth Amendment law that a search which has been consented to is not unreasonable. There is no contention in the present case that the urine samples were extracted forcibly. The only conceivable bases for saying that they were obtained without consent are the contentions (1) that the consent was coerced by the patients' need for medical treatment, (2) that the consent was uninformed because the patients were not told that the tests would include testing for drugs, and (3) that the consent was uninformed because the patients were not told that the results of the tests would be provided to the police.

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. . . The Court's analogizing of this case to *Miranda v. Arizona* (1966), and its claim that "standards of knowing waiver" apply are flatly contradicted by our jurisprudence, which shows that using lawfully (but deceivingly) obtained material for purposes other than those represented, and giving that material or information derived from it to the police, is not unconstitutional. . . . Because the defendant had voluntarily provided access to the evidence, there was no reasonable expectation of privacy to invade. Abuse of trust is surely a sneaky and ungentlemanly thing, and perhaps there should be (as there are) laws against such conduct by the government. That, however, is immaterial for Fourth Amendment purposes. . . .

Until today, we have *never* held—or even suggested—that material which a person voluntarily entrusts to someone else cannot be given by that person to the police, and used for whatever evidence it may contain.

There remains to be considered the first possible basis for invalidating this search, which is that the patients were coerced to produce their urine samples by their necessitous circumstances, to wit, their need for medical treatment of their pregnancy. If that was coercion, it was not coercion applied by the government—and if such nongovernmental coercion sufficed, the police would never be permitted to use the ballistic evidence obtained from treatment of a patient with a bullet wound. And the Fourth Amendment would invalidate those many state laws that require physicians to report gunshot wounds, evidence of spousal abuse, evidence of child abuse.

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. . . [T]he District Court's finding of fact [was] that the goal of the testing policy "was not to arrest patients but to facilitate their treatment and protect both the mother and unborn child." This finding is binding upon us unless clearly erroneous. Not only do I find it supportable; I think any other finding would have to be overturned.

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The cocaine tests started in April 1989, *neither at police suggestion nor with police involvement.* Expectant mothers who tested positive were referred by hospital staff for substance-abuse treatment, an obvious health benefit to both mother and child. . . . Thus, in their origin—before the police were in any way involved—the tests had an immediate, not merely an "ultimate," purpose of improving maternal and infant health. Several months after the testing had been initiated, a nurse discovered that local police were arresting pregnant users of cocaine for child abuse, the hospital's general counsel wrote the county solicitor to ask "what, if anything, our Medical Center needs to do to assist you in this matter," the police suggested ways to avoid tainting evidence, and the hospital and police in conjunction used the testing program as a means of securing what the Court calls the "ultimate" health benefit of coercing drug-abusing mothers into drug treatment. Why would there be any reason to believe that, once this policy of using the drug tests for their "ultimate" health benefits had been adopted, use of them for their original, *immediate,* benefits somehow disappeared, and testing somehow became in its entirety nothing more than a "pretext" for obtaining grounds for arrest? . . . .

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In sum, there can be no basis for the Court's purported ability to "distinguis[h] this case from circumstances in which physicians or psychologists, in the course of ordinary medical procedures aimed at helping the patient herself, come across information that . . . is subject to reporting requirements" unless it is this: That the *addition* of a law-enforcement-related purpose *to* a legitimate medical purpose destroys applicability of the "special-needs" doctrine. But that is quite impossible, since the special-needs doctrine was developed, and is ordinarily employed, precisely to enable searches *by law enforcement officials* who, of course, ordinarily have a law enforcement objective. . . .

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[I]t is not the function of this Court—at least not in Fourth Amendment cases—to weigh petitioners' privacy interest against the State's interest in meeting the crisis of "crack babies" that developed in the late 1980's. I cannot refrain from observing, however, that the outcome of a wise weighing of those interests is by no means clear. The initial goal of the doctors and nurses who conducted cocaine testing in this case was to refer pregnant drug addicts to treatment centers, and to prepare for necessary treatment of their possibly affected children. When the doctors and nurses agreed to the program providing test results to the police, they did so because (in addition to the fact that child abuse was required by law to be reported) they wanted to use the sanction of arrest as a strong incentive for

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their addicted patients to undertake drug-addiction treatment. And the police themselves used it for that benign purpose, as is shown by the fact that only 30 of 253 women testing positive for cocaine were ever arrested, and only 2 of those prosecuted. It would not be unreasonable to conclude that today's judgment, authorizing the assessment of damages against the county solicitor and individual doctors and nurses who participated in the program, proves once again that no good deed goes unpunished.

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