

maintain a school parking pass, in direct contravention of Pennsylvania Supreme Court precedent and the privacy protections of the Constitution of the Commonwealth of Pennsylvania. Plaintiffs—two Panther Valley High School students who are currently barred from participation in school activities because of their refusal to consent to this unconstitutional invasion of privacy, and their parents—are entitled to an injunction against the District’s continued enforcement of its unconstitutional drug testing policy.

VENUE

2. Venue is proper in this Court pursuant to Pa. R. Civ. P. 2103(b).

PARTIES

3. Jeremy Thomas is 18 years old and is a twelfth grade honors student at Panther Valley High School in the Panther Valley School District. He lives with his parents, Morgan and Donna Thomas, in Summit Hill, Pennsylvania. Jeremy is the brother of Plaintiff M.T. Jeremy is active in his church, is an Eagle Scout candidate, is a member of the Junior Reserve Officer Training Corps (JROTC), and is considering a career in military service. In his final semester of high school, Jeremy would like to play on his school’s golf team, work on the yearbook staff, join the Recycling Club, and go to the Prom. But Jeremy was forced off of the golf team in September of 2010 and was told that he is ineligible to participate in his other activities. To do these activities, Jeremy would have to agree to Panther Valley’s drug testing policy, permitting the school to demand that he produce a urine sample for drug screening at any time throughout the school year.

4. M.T., Jeremy’s sister, is 16 years old and is in ninth grade at Panther Valley High School. She lives with her parents, Donna and Morgan Thomas, in Summit Hill, Pennsylvania. M.T. plays the clarinet and is also active with the JROTC. M.T. would like to join her school’s

basketball team, but to do so she would have to agree to Panther Valley's drug testing policy, permitting the school to demand that she produce a urine sample for drug screening at any time throughout the school year.

5. Defendant Panther Valley School District ("Panther Valley" or "the District") is, and at all times relevant was, a political subdivision of the Commonwealth of Pennsylvania, located in Carbon County. Its business office is located at 1 Panther Way, Lansford, Pennsylvania.

FACTS

The Policy

6. On August 26, 2010, after Panther Valley School District activities and classes had already begun for the 2010–2011 school year, the Panther Valley Board of Directors adopted a policy entitled "227.1. DRUG/ALCOHOL TESTING" ("Policy 227.1" or "the Policy"). A copy of the Policy is attached as Exhibit P-1 to this complaint.

7. The Policy provides for three kinds of drug and alcohol screening: "Random Mandatory Testing," "Voluntary Testing," and "Reasonable Suspicion Testing." This complaint concerns only the "Random Mandatory Testing" provisions and related procedures.

8. The "Random Mandatory Testing" provisions of the Policy apply to all Panther Valley students in sixth through twelfth grades participating in extracurricular or cocurricular activities, participating in athletics, or wishing to obtain a school parking pass. "Extracurricular activities" are defined in the Policy as "activities that include Board-sponsored activities that are not offered for academic credit toward graduation."

9. The Policy requires the District Superintendent or a designee to prepare a list of "extracurricular activities" and report this information to the Board of Directors. On August 30,

2010, Panther Valley Superintendent Rosemary Poremba sent a letter to all parents and guardians listing the activities that would be subject to the Policy. This list included Yearbook, Drama, Recycling Club, National Honor Society, Art Club, and Prom, as well as athletics and numerous other nonathletic activities. A copy of this letter is attached as Exhibit P-2 to this complaint.

10. To enjoy any of the privileges listed in the Policy, students and their parents must sign and submit a form entitled “Consent to Random Mandatory Testing of Urine Samples and Authorization for Release of Information.” The District’s August 30, 2010 letter required students (or their guardians) to return a consent form within two days in order to participate in any of the listed activities during the school year. A copy of this form is attached as Exhibit P-3 to this complaint.

11. This consent form authorizes the District to collect urine samples from the student throughout the school year and interscholastic season, and, when “necessary,” authorizes the District Superintendent or a designee to release the results of drug testing to the school principal, Athletic Director, head coaches and activities advisors, and members of the District’s Student Assistance Program.

12. A student called for testing must also declare all medications taken in the past thirty days.

13. The Policy is “violated” when a urine sample tests positive for drugs or alcohol, or when a student refuses to provide a urine sample or is unable to provide a urine sample within two and one-half hours in the testing area. Violations of the Policy result in referrals to the District’s Student Assistance Program, suspensions from all covered activities and privileges, searches of the student’s property, and continued drug screening.

14. Under the Policy, a student in the testing pool who withdraws from drug testing becomes ineligible for any of the relevant activities and privileges for one year.

Plaintiffs Have Suffered and Will Continue to Suffer Irreparable Harm Because of Policy 227.1

15. As students at Panther Valley High School, Plaintiffs Jeremy Thomas and M.T. are both subject to the random mandatory drug testing provisions of the Policy, which place conditions on their participation in school athletics, ability to obtain a parking pass, and participation in extracurricular activities.

16. Plaintiff Jeremy Thomas has suffered direct harm as a result of the Policy. For refusing to consent to random testing under the Policy, Jeremy was removed from the Panther Valley High School boys' golf team, missed the remainder of the fall season, and is ineligible for any spring golf activities. He is not eligible to participate in the Recycling Club or his yearbook staff, and has already missed meetings and activities for those groups. He is also ineligible to attend the Prom. School officials even told Jeremy that, because of his drug testing status, he was ineligible to attend a school charity dance in December, even though the dance was never listed as an activity pursuant to the Policy. The District's enforcement of the Policy violates Jeremy's constitutional right to privacy by attaching these serious consequences to his choice not to allow his school to test his urine pursuant to a baseless, constitutionally deficient drug policy.

17. Plaintiff M.T. has suffered direct harm as a result of the Policy. By refusing to consent to random testing under the Policy, M.T. is not eligible to play basketball for Panther Valley High School. She has already missed try-outs and the vast majority of the team's games for the 2010–2011 season. The District's enforcement of the Policy violates M.T.'s

constitutional right to privacy by attaching this serious consequence to her choice not to allow her school to test her urine pursuant to a baseless, constitutionally deficient drug policy.

18. While Jeremy and M.T. would like to participate in after-school clubs and sports with their friends, they will not consent to drug testing because they and their parents believe that Policy 227.1 is an unreasonable invasion of their right to privacy.

The Law

19. In Theodore v. Delaware Valley School District, 575 Pa. 321, 836 A.2d 76 (2003), the Pennsylvania Supreme Court held that the balancing of students' privacy rights under Article I, Section 8 of the Pennsylvania Constitution and school districts' concern for student safety requires that public school drug testing policies must be supported by sufficient evidence of need in order to pass constitutional muster. Under Theodore, any Pennsylvania school enacting a random drug testing policy must "make[] some actual showing of the specific need for the policy and an explanation of its basis for believing that the policy would address that need." Theodore, 575 Pa. at 348, 836 A.2d at 92.

20. Both before and after the passage of Policy 227.1, the school board of Panther Valley was repeatedly made aware of the Theodore holding, both by individual board members and by District parents including Morgan Thomas, the father of Plaintiffs Jeremy and M.T.

21. At no point prior to the passage of Policy 227.1 did Panther Valley analyze drug and alcohol use by sixth through twelfth grade students involved in school activities, or the efficacy of a policy of randomly drug testing active and involved students as a way to address any such drug or alcohol problem. In fact, the school board meetings leading up to the passage of the Policy demonstrate that no analysis was conducted at all; that consideration of drug and alcohol use of any kind in the Panther Valley School District was at best minimal and based on

anecdotal evidence or evidence unrelated to the present student body; and that Panther Valley has structured its drug policy to force as much of the student body as possible into the random drug testing pool without considering why particular groups or activities should be included.

22. Four of the nine Panther Valley School Board members voted against the Policy, with at least two citing concerns about its illegality. On August 26, 2010, in the discussion preceding the passage of Policy 227.1, school board member Irene Genter stated, “we do not have documented data in this policy.” Discussing another school district that had passed a policy based on multiple years of data, she remarked, “I don’t see that in ours... I feel that we are deficient with our written policy.” At the same meeting on August 26, 2010, school board member R. Mickey Angst stated, “I indicated that I was in favor of it [Policy 227.1] too until I read the court [opinion from Theodore].”¹

23. Even were there evidence of drug and alcohol problems among sixth through twelfth graders in the Panther Valley School District, Policy 227.1 is overinclusive and underinclusive because it singles out only students who are involved in school activities and parking privileges without tying that participation to an increased risk of danger from drug or alcohol use, or to a greater likelihood of drug or alcohol use. In fact, extracurricular involvement typically serves as a protective factor, decreasing the likelihood that students will abuse drugs or alcohol.

24. Policy 227.1 also left students who were already participating in activities on August 26, 2010 without prior notice that their continued participation in those activities would be conditioned upon consenting to drug and alcohol screening. As a result, Jeremy Thomas and

¹ The minutes of the August 26, 2010 meeting of the Panther Valley School Board and a transcript of the discussion of the Policy at that meeting are attached to Plaintiffs’ Motion for Preliminary Injunction.

numerous other Panther Valley students began participation in school sports and activities over the summer of 2010 and were presented with Policy 227.1 only after they had invested significant time in these activities.

CLAIMS FOR RELIEF

25. At all times relevant to this action, the Panther Valley School District has attempted to subject Plaintiffs, and its other most active and involved students, to random drug and alcohol testing with no constitutionally permissible basis.

26. The random testing provisions of Panther Valley School District's drug and alcohol testing policy violate Plaintiffs' right to privacy under Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania.

WHEREFORE, Plaintiffs pray that this Honorable Court:

1. Issue an order judging and declaring that Panther Valley School District Policy 227.1 violates Plaintiffs' rights under Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania;

2. Issue preliminary and permanent injunctive relief enjoining and restraining Defendant Panther Valley School District from implementing, maintaining, or enforcing Policy 227.1; and

3. Grant Plaintiffs such other and further relief as may be just and proper.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION

DECHERT LLP

MARY CATHERINE ROPER
Attorney ID No. 71107
M. M. TACK-HOOPER
Attorney ID No. 307828
AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA
P.O. Box 40008
Philadelphia, PA 19106
Tel: (215) 592-1513 x 116
Fax: (215) 592-1343
MRoper@aclupa.org
MTack-Hooper@aclupa.org

WITOLD J. WALCZAK
Attorney ID No. 62976
AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA
313 Atwood Street
Pittsburgh, PA 15213
Tel: (412) 681-7736
VWalczak@aclupa.org

STEPHEN J. McCONNELL
Attorney ID No. 80583
KEVIN M. FLANNERY
Attorney ID No. 62593
MICHAEL J. SALIMBENE
Attorney ID No. 209664
KENNETH J. HOLLOWAY
Attorney ID No. 307693
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Tel: (215) 994-4000
Fax: (215) 655-2682
stephen.mcconnell@dechert.com
kevin.flannery@dechert.com
michael.salimbene@dechert.com
kenneth.holloway@dechert.com

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Attorneys for Plaintiffs

