

SOCIAL JUSTICE SOCIETY (SJS), PETITIONER, VS. DANGEROUS DRUGS BOARD AND PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA), RESPONDENTS.

G.R. No. 157870. November 03, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

In these kindred petitions, the constitutionality of Section 36 of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, insofar as it requires mandatory drug testing of candidates for public office, students of secondary and tertiary schools, officers and employees of public and private offices, and persons charged before the prosecutor's office with certain offenses, among other personalities, is put in issue.

As far as pertinent, the challenged section reads as follows:

SEC. 36. Authorized Drug Testing.—Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of the test results. x x x The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of drug used and the confirmatory test which will confirm a positive screening test. x x x The following shall be subjected to undergo drug testing:

x x x x

(c) Students of secondary and tertiary schools.—Students of secondary and tertiary schools shall, pursuant to the related rules and regulations as contained in the school's student handbook and with notice to the parents, undergo a random drug testing x x x;

(d) Officers and employees of public and private offices.—Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, x x x for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

x x x x

(f) All persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall undergo a mandatory drug test;

(g) All candidates for public office whether appointed or elected both in the national or local government shall undergo a mandatory drug test.

In addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act.

G.R. No. 161658 (Aquilino Q. Pimentel, Jr. v. Commission on Elections)

On December 23, 2003, the Commission on Elections (COMELEC) issued Resolution No. 6486, prescribing the rules and regulations on the mandatory drug testing of candidates for public office in connection with the May 10, 2004 synchronized national and local elections. The pertinent portions of the said resolution read as follows:

WHEREAS, Section 36 (g) of Republic Act No. 9165 provides:

SEC. 36. Authorized Drug Testing.—x x x

x x x x

(g) All candidates for public office x x x both in the national or local government shall undergo a mandatory drug test.

WHEREAS, Section 1, Article XI of the 1987 Constitution provides that public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency;

WHEREAS, by requiring candidates to undergo mandatory drug test, the public will know the quality of candidates they are electing and they will be assured that only those who can serve with utmost responsibility, integrity, loyalty, and efficiency would be elected x x x.

NOW THEREFORE, The [COMELEC], pursuant to the authority vested in it under the Constitution, Batas Pambansa Blg. 881 (Omnibus Election Code), [RA] 9165 and other election laws, RESOLVED to promulgate, as it hereby promulgates, the following rules and regulations on the conduct of mandatory drug testing to candidates for public office[:]

SECTION 1. Coverage.—All candidates for public office, both national and local, in the May 10, 2004 Synchronized National and Local Elections shall undergo mandatory drug test in government forensic laboratories or any drug testing laboratories monitored and accredited by the Department of Health.

SEC. 3. x x x

On March 25, 2004, in addition to the drug certificates filed with their respective offices, the Comelec Offices and employees concerned shall submit to the Law Department two (2) separate lists of candidates. The first list shall consist of those candidates who complied with the mandatory drug test while the second list shall consist of those candidates who failed to comply x x x.

SEC. 4. Preparation and publication of names of candidates.—Before the start of the campaign period, the [COMELEC] shall prepare two separate lists of candidates. The first list shall consist of those candidates who complied with the mandatory drug test while the second list shall consist of those candidates who failed to comply with said drug test. x x x

SEC. 5. Effect of failure to undergo mandatory drug test and file drug test certificate.—No person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test and filed with the offices enumerated under Section 2 hereof the drug test certificate herein required. (Emphasis supplied.)

Petitioner Aquilino Q. Pimentel, Jr., a senator of the Republic and a candidate for re-election in the May 10, 2004 elections,[1] filed a Petition for Certiorari and Prohibition under Rule 65. In it, he seeks (1) to nullify Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 dated December 23, 2003 for being unconstitutional in that they impose a qualification for candidates for senators in addition to those already provided for in the 1987 Constitution; and (2) to enjoin the COMELEC from implementing Resolution No. 6486.

Pimentel invokes as legal basis for his petition Sec. 3, Article VI of the Constitution, which states:

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

According to Pimentel, the Constitution only prescribes a maximum of five (5) qualifications for one to be a candidate for, elected to, and be a member of the Senate. He says that both the Congress and COMELEC, by requiring, via RA 9165 and Resolution No. 6486, a senatorial aspirant, among other candidates, to undergo a mandatory drug test, create an additional qualification that all candidates for senator must first be certified as drug free. He adds that there is no provision in the Constitution authorizing the Congress or COMELEC to expand the qualification requirements of candidates for senator.

G.R. No. 157870 (Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency)

In its Petition for Prohibition under Rule 65, petitioner Social Justice Society (SJS), a registered political party, seeks to prohibit the Dangerous Drugs Board (DDB) and the Philippine Drug Enforcement Agency (PDEA) from enforcing paragraphs (c), (d), (f), and (g) of Sec. 36 of RA 9165 on the ground that they are constitutionally infirm. For one, the provisions constitute undue delegation of legislative power when they give unbridled discretion to schools and employers to determine the manner of drug testing. For another, the provisions trench in the equal protection clause inasmuch as they can be used to harass a student or an employee deemed undesirable. And for a third, a person's constitutional right against unreasonable searches is also breached by said provisions.

G.R. No. 158633 (Atty. Manuel J. Laserna, Jr. v. Dangerous Drugs Board and Philippine Drug Enforcement Agency)

Petitioner Atty. Manuel J. Laserna, Jr., as citizen and taxpayer, also seeks in his Petition for Certiorari and Prohibition under Rule 65 that Sec. 36(c), (d), (f), and (g) of RA 9165 be struck down as unconstitutional for infringing on the constitutional right to privacy, the right against unreasonable search and seizure, and the right against self-incrimination, and for being contrary to the due process and equal protection guarantees.

The Issue on Locus Standi

First off, we shall address the justiciability of the cases at bench and the matter of the standing of petitioners SJS and Laserna to sue. As respondents DDB and PDEA assert, SJS and Laserna failed to allege any incident amounting to a violation of the constitutional rights mentioned in their separate petitions.[2]

It is basic that the power of judicial review can only be exercised in connection with a bona fide controversy which involves the statute sought to be reviewed.[3] But even with the presence of an actual case or controversy, the Court may refuse to exercise judicial review unless the constitutional question is brought before it by a party having the requisite standing to challenge it.[4] To have standing, one must establish that he or she has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.[5]

The rule on standing, however, is a matter of procedure; hence, it can be relaxed for non-traditional plaintiffs, like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of transcendental importance, of overarching significance to society, or of paramount public interest.[6] There is no doubt that Pimentel, as senator of the Philippines and candidate for the May 10, 2004 elections, possesses the requisite standing since he has substantial interests in the subject matter of the petition, among other preliminary considerations. Regarding SJS and Laserna, this Court is wont to relax the rule on locus standi owing primarily to the transcendental importance and the paramount public interest involved in the enforcement of Sec. 36 of RA

9165.

The Consolidated Issues

The principal issues before us are as follows:

(1) Do Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 impose an additional qualification for candidates for senator? Corollarily, can Congress enact a law prescribing qualifications for candidates for senator in addition to those laid down by the Constitution? and

(2) Are paragraphs (c), (d), (f), and (g) of Sec. 36, RA 9165 unconstitutional? Specifically, do these paragraphs violate the right to privacy, the right against unreasonable searches and seizure, and the equal protection clause? Or do they constitute undue delegation of legislative power?

Pimentel Petition

(Constitutionality of Sec. 36[g] of RA 9165 and COMELEC Resolution No. 6486)

In essence, Pimentel claims that Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 illegally impose an additional qualification on candidates for senator. He points out that, subject to the provisions on nuisance candidates, a candidate for senator needs only to meet the qualifications laid down in Sec. 3, Art. VI of the Constitution, to wit: (1) citizenship, (2) voter registration, (3) literacy, (4) age, and (5) residency. Beyond these stated qualification requirements, candidates for senator need not possess any other qualification to run for senator and be voted upon and elected as member of the Senate. The Congress cannot validly amend or otherwise modify these qualification standards, as it cannot disregard, evade, or weaken the force of a constitutional mandate,[7] or alter or enlarge the Constitution.

Pimentel's contention is well-taken. Accordingly, Sec. 36(g) of RA 9165 should be, as it is hereby declared as, unconstitutional. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution.[8] In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.[9]

Congress' inherent legislative powers, broad as they may be, are subject to certain limitations. As early as 1927, in *Government v. Springer*, the Court has defined, in the abstract, the limits on legislative power in the following wise:

Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments x x x are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are necessarily implied from the given powers. The Constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.[10]

Thus, legislative power remains limited in the sense that it is subject to substantive and constitutional limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation.[11] The substantive constitutional limitations are chiefly found in the Bill of Rights[12] and other provisions, such as Sec. 3, Art. VI of the Constitution prescribing the qualifications of candidates for senators.

In the same vein, the COMELEC cannot, in the guise of enforcing and administering election laws or

promulgating rules and regulations to implement Sec. 36(g), validly impose qualifications on candidates for senator in addition to what the Constitution prescribes. If Congress cannot require a candidate for senator to meet such additional qualification, the COMELEC, to be sure, is also without such power. The right of a citizen in the democratic process of election should not be defeated by unwarranted impositions of requirement not otherwise specified in the Constitution.[13]

Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition sine qua non to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that "[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test." Viewed, therefore, in its proper context, Sec. 36(g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. Whether or not the drug-free bar set up under the challenged provision is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non-compliance with the drug-testing requirement.

It may of course be argued, in defense of the validity of Sec. 36(g) of RA 9165, that the provision does not expressly state that non-compliance with the drug test imposition is a disqualifying factor or would work to nullify a certificate of candidacy. This argument may be accorded plausibility if the drug test requirement is optional. But the particular section of the law, without exception, made drug-testing on those covered mandatory, necessarily suggesting that the obstinate ones shall have to suffer the adverse consequences for not adhering to the statutory command. And since the provision deals with candidates for public office, it stands to reason that the adverse consequence adverted to can only refer to and revolve around the election and the assumption of public office of the candidates. Any other construal would reduce the mandatory nature of Sec. 36(g) of RA 9165 into a pure jargon without meaning and effect whatsoever.

While it is anti-climactic to state it at this juncture, COMELEC Resolution No. 6486 is no longer enforceable, for by its terms, it was intended to cover only the May 10, 2004 synchronized elections and the candidates running in that electoral event. Nonetheless, to obviate repetition, the Court deems it appropriate to review and rule, as it hereby rules, on its validity as an implementing issuance.

It ought to be made abundantly clear, however, that the unconstitutionality of Sec. 36(g) of RA 9165 is rooted on its having infringed the constitutional provision defining the qualification or eligibility requirements for one aspiring to run for and serve as senator.

SJS Petition

(Constitutionality of Sec. 36[c], [d], [f], and [g] of RA 9165)

The drug test prescribed under Sec. 36(c), (d), and (f) of RA 9165 for secondary and tertiary level students and public and private employees, while mandatory, is a random and suspicionless arrangement. The objective is to stamp out illegal drug and safeguard in the process "the well being of [the] citizenry, particularly the youth, from the harmful effects of dangerous drugs." This statutory purpose, per the policy-declaration portion of the law, can be achieved via the pursuit by the state of "an intensive and unrelenting campaign against the trafficking and use of dangerous drugs x x x through an integrated system of planning, implementation and enforcement of anti-drug abuse policies, programs and projects." [14] The primary legislative intent is not criminal prosecution, as those found positive for illegal drug use as a result of this random testing are not necessarily treated as criminals. They

may even be exempt from criminal liability should the illegal drug user consent to undergo rehabilitation. Secs. 54 and 55 of RA 9165 are clear on this point:

Sec. 54. Voluntary Submission of a Drug Dependent to Confinement, Treatment and Rehabilitation.—A drug dependent or any person who violates Section 15 of this Act may, by himself/herself or through his/her parent, [close relatives] x x x apply to the Board x x x for treatment and rehabilitation of the drug dependency. Upon such application, the Board shall bring forth the matter to the Court which shall order that the applicant be examined for drug dependency. If the examination x x x results in the certification that the applicant is a drug dependent, he/she shall be ordered by the Court to undergo treatment and rehabilitation in a Center designated by the Board x x x.

x x x x

Sec. 55. Exemption from the Criminal Liability Under the Voluntary Submission Program.—A drug dependent under the voluntary submission program, who is finally discharged from confinement, shall be exempt from the criminal liability under Section 15 of this Act subject to the following conditions:

x x x x

School children, the US Supreme Court noted, are most vulnerable to the physical, psychological, and addictive effects of drugs. Maturing nervous systems of the young are more critically impaired by intoxicants and are more inclined to drug dependency. Their recovery is also at a depressingly low rate.[15]

The right to privacy has been accorded recognition in this jurisdiction as a facet of the right protected by the guarantee against unreasonable search and seizure[16] under Sec. 2, Art. III[17] of the Constitution. But while the right to privacy has long come into its own, this case appears to be the first time that the validity of a state-decreed search or intrusion through the medium of mandatory random drug testing among students and employees is, in this jurisdiction, made the focal point. Thus, the issue tendered in these proceedings is veritably one of first impression.

US jurisprudence is, however, a rich source of persuasive jurisprudence. With respect to random drug testing among school children, we turn to the teachings of *Vernonia School District 47J v. Acton* (Vernonia) and *Board of Education of Independent School District No. 92 of Pottawatomie County, et al. v. Earls, et al.* (Board of Education),[18] both fairly pertinent US Supreme Court-decided cases involving the constitutionality of governmental search.

In *Vernonia*, school administrators in Vernonia, Oregon wanted to address the drug menace in their respective institutions following the discovery of frequent drug use by school athletes. After consultation with the parents, they required random urinalysis drug testing for the school's athletes. James Acton, a high school student, was denied participation in the football program after he refused to undertake the urinalysis drug testing. Acton forthwith sued, claiming that the school's drug testing policy violated, inter alia, the Fourth Amendment[19] of the US Constitution.

The US Supreme Court, in fashioning a solution to the issues raised in *Vernonia*, considered the following: (1) schools stand in loco parentis over their students; (2) school children, while not shedding their constitutional rights at the school gate, have less privacy rights; (3) athletes have less privacy rights than non-athletes since the former observe communal undress before and after sports events; (4) by joining the sports activity, the athletes voluntarily subjected themselves to a higher degree of school supervision and regulation; (5) requiring urine samples does not invade a student's privacy since a student need not undress for this kind of drug testing; and (6) there is need for the drug testing because of the dangerous effects of illegal drugs on the young. The US Supreme Court held that the policy constituted reasonable search under the Fourth[20] and 14th Amendments and declared

the random drug-testing policy constitutional.

In *Board of Education*, the Board of Education of a school in Tecumseh, Oklahoma required a drug test for high school students desiring to join extra-curricular activities. Lindsay Earls, a member of the show choir, marching band, and academic team declined to undergo a drug test and averred that the drug-testing policy made to apply to non-athletes violated the Fourth and 14th Amendments. As Earls argued, unlike athletes who routinely undergo physical examinations and undress before their peers in locker rooms, non-athletes are entitled to more privacy.

The US Supreme Court, citing *Vernonia*, upheld the constitutionality of drug testing even among non-athletes on the basis of the school's custodial responsibility and authority. In so ruling, said court made no distinction between a non-athlete and an athlete. It ratiocinated that schools and teachers act in place of the parents with a similar interest and duty of safeguarding the health of the students. And in holding that the school could implement its random drug-testing policy, the Court hinted that such a test was a kind of search in which even a reasonable parent might need to engage.

In sum, what can reasonably be deduced from the above two cases and applied to this jurisdiction are: (1) schools and their administrators stand in loco parentis with respect to their students; (2) minor students have contextually fewer rights than an adult, and are subject to the custody and supervision of their parents, guardians, and schools; (3) schools, acting in loco parentis, have a duty to safeguard the health and well-being of their students and may adopt such measures as may reasonably be necessary to discharge such duty; and (4) schools have the right to impose conditions on applicants for admission that are fair, just, and non-discriminatory.

Guided by *Vernonia* and *Board of Education*, the Court is of the view and so holds that the provisions of RA 9165 requiring mandatory, random, and suspicionless drug testing of students are constitutional. Indeed, it is within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. To be sure, the right to enroll is not absolute; it is subject to fair, reasonable, and equitable requirements.

The Court can take judicial notice of the proliferation of prohibited drugs in the country that threatens the well-being of the people,[21] particularly the youth and school children who usually end up as victims. Accordingly, and until a more effective method is conceptualized and put in motion, a random drug testing of students in secondary and tertiary schools is not only acceptable but may even be necessary if the safety and interest of the student population, doubtless a legitimate concern of the government, are to be promoted and protected. To borrow from *Vernonia*, "[d]eterring drug use by our Nation's schoolchildren is as important as enhancing efficient enforcement of the Nation's laws against the importation of drugs"; the necessity for the State to act is magnified by the fact that the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty.[22] Needless to stress, the random testing scheme provided under the law argues against the idea that the testing aims to incriminate unsuspecting individual students.

Just as in the case of secondary and tertiary level students, the mandatory but random drug test prescribed by Sec. 36 of RA 9165 for officers and employees of public and private offices is justifiable, albeit not exactly for the same reason. The Court notes in this regard that petitioner SJS, other than saying that "subjecting almost everybody to drug testing, without probable cause, is unreasonable, an unwarranted intrusion of the individual right to privacy,"[23] has failed to show how the mandatory, random, and suspicionless drug testing under Sec. 36(c) and (d) of RA 9165 violates the right to privacy and constitutes unlawful and/or unconsented search under Art. III, Secs. 1 and 2 of the Constitution.[24] Petitioner Laserna's lament is just as simplistic, sweeping, and gratuitous and does not merit serious consideration. Consider what he wrote without elaboration:

The US Supreme Court and US Circuit Courts of Appeals have made various rulings on the constitutionality of

mandatory drug tests in the school and the workplaces. The US courts have been consistent in their rulings that the mandatory drug tests violate a citizen's constitutional right to privacy and right against unreasonable search and seizure. They are quoted extensively hereinbelow.[25]

The essence of privacy is the right to be left alone.[26] In context, the right to privacy means the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities.[27] And while there has been general agreement as to the basic function of the guarantee against unwarranted search, "translation of the abstract prohibition against 'unreasonable searches and seizures' into workable broad guidelines for the decision of particular cases is a difficult task," to borrow from *C. Camara v. Municipal Court*. [28] Authorities are agreed though that the right to privacy yields to certain paramount rights of the public and defers to the state's exercise of police power.[29]

As the warrantless clause of Sec. 2, Art III of the Constitution is couched and as has been held, "reasonableness" is the touchstone of the validity of a government search or intrusion.[30] And whether a search at issue hews to the reasonableness standard is judged by the balancing of the government-mandated intrusion on the individual's privacy interest against the promotion of some compelling state interest.[31] In the criminal context, reasonableness requires showing of probable cause to be personally determined by a judge. Given that the drug-testing policy for employees—and students for that matter—under RA 9165 is in the nature of administrative search needing what was referred to in *Vernonia* as "swift and informal disciplinary procedures," the probable-cause standard is not required or even practicable. Be that as it may, the review should focus on the reasonableness of the challenged administrative search in question.

The first factor to consider in the matter of reasonableness is the nature of the privacy interest upon which the drug testing, which effects a search within the meaning of Sec. 2, Art. III of the Constitution, intrudes. In this case, the office or workplace serves as the backdrop for the analysis of the privacy expectation of the employees and the reasonableness of drug testing requirement. The employees' privacy interest in an office is to a large extent circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace. Their privacy expectation in a regulated office environment is, in fine, reduced; and a degree of impingement upon such privacy has been upheld.

Just as defining as the first factor is the character of the intrusion authorized by the challenged law. Reduced to a question form, is the scope of the search or intrusion clearly set forth, or, as formulated in *Ople v. Torres*, is the enabling law authorizing a search "narrowly drawn" or "narrowly focused"?[32]

The poser should be answered in the affirmative. For one, Sec. 36 of RA 9165 and its implementing rules and regulations (IRR), as couched, contain provisions specifically directed towards preventing a situation that would unduly embarrass the employees or place them under a humiliating experience. While every officer and employee in a private establishment is under the law deemed forewarned that he or she may be a possible subject of a drug test, nobody is really singled out in advance for drug testing. The goal is to discourage drug use by not telling in advance anyone when and who is to be tested. And as may be observed, Sec. 36(d) of RA 9165 itself prescribes what, in *Ople*, is a narrowing ingredient by providing that the employees concerned shall be subjected to "random drug test as contained in the company's work rules and regulations x x x for purposes of reducing the risk in the work place."

For another, the random drug testing shall be undertaken under conditions calculated to protect as much as possible the employee's privacy and dignity. As to the mechanics of the test, the law specifies that the procedure shall employ two testing methods, i.e., the screening test and the confirmatory test, doubtless to ensure as much as possible the trustworthiness of the results. But the more important consideration lies in the fact that the test shall

be conducted by trained professionals in access-controlled laboratories monitored by the Department of Health (DOH) to safeguard against results tampering and to ensure an accurate chain of custody.[33] In addition, the IRR issued by the DOH provides that access to the drug results shall be on the "need to know" basis;[34] that the "drug test result and the records shall be [kept] confidential subject to the usual accepted practices to protect the confidentiality of the test results." [35] Notably, RA 9165 does not oblige the employer concerned to report to the prosecuting agencies any information or evidence relating to the violation of the Comprehensive Dangerous Drugs Act received as a result of the operation of the drug testing. All told, therefore, the intrusion into the employees' privacy, under RA 9165, is accompanied by proper safeguards, particularly against embarrassing leakages of test results, and is relatively minimal.

To reiterate, RA 9165 was enacted as a measure to stamp out illegal drug in the country and thus protect the well-being of the citizens, especially the youth, from the deleterious effects of dangerous drugs. The law intends to achieve this through the medium, among others, of promoting and resolutely pursuing a national drug abuse policy in the workplace via a mandatory random drug test.[36] To the Court, the need for drug testing to at least minimize illegal drug use is substantial enough to override the individual's privacy interest under the premises. The Court can consider that the illegal drug menace cuts across gender, age group, and social- economic lines. And it may not be amiss to state that the sale, manufacture, or trafficking of illegal drugs, with their ready market, would be an investor's dream were it not for the illegal and immoral components of any of such activities. The drug problem has hardly abated since the martial law public execution of a notorious drug trafficker. The state can no longer assume a laid back stance with respect to this modern-day scourge. Drug enforcement agencies perceive a mandatory random drug test to be an effective way of preventing and deterring drug use among employees in private offices, the threat of detection by random testing being higher than other modes. The Court holds that the chosen method is a reasonable and enough means to lick the problem.

Taking into account the foregoing factors, i.e., the reduced expectation of privacy on the part of the employees, the compelling state concern likely to be met by the search, and the well-defined limits set forth in the law to properly guide authorities in the conduct of the random testing, we hold that the challenged drug test requirement is, under the limited context of the case, reasonable and, ergo, constitutional.

Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service.[37] And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.[38]

Petitioner SJS' next posture that Sec. 36 of RA 9165 is objectionable on the ground of undue delegation of power hardly commends itself for concurrence. Contrary to its position, the provision in question is not so extensively drawn as to give unbridled options to schools and employers to determine the manner of drug testing. Sec. 36 expressly provides how drug testing for students of secondary and tertiary schools and officers/employees of public/private offices should be conducted. It enumerates the persons who shall undergo drug testing. In the case of students, the testing shall be in accordance with the school rules as contained in the student handbook and with notice to parents. On the part of officers/employees, the testing shall take into account the company's work rules. In either case, the random procedure shall be observed, meaning that the persons to be subjected to drug test shall be picked by chance or in an unplanned way. And in all cases, safeguards against misusing and compromising the confidentiality of the test results are established.

Lest it be overlooked, Sec. 94 of RA 9165 charges the DDB to issue, in consultation with the DOH, Department

of the Interior and Local Government, Department of Education, and Department of Labor and Employment, among other agencies, the IRR necessary to enforce the law. In net effect then, the participation of schools and offices in the drug testing scheme shall always be subject to the IRR of RA 9165. It is, therefore, incorrect to say that schools and employers have unchecked discretion to determine how often, under what conditions, and where the drug tests shall be conducted.

The validity of delegating legislative power is now a quiet area in the constitutional landscape.[39] In the face of the increasing complexity of the task of the government and the increasing inability of the legislature to cope directly with the many problems demanding its attention, resort to delegation of power, or entrusting to administrative agencies the power of subordinate legislation, has become imperative, as here.

Laserna Petition (Constitutionality of Sec. 36[c], [d], [f], and [g] of RA 9165)

Unlike the situation covered by Sec. 36(c) and (d) of RA 9165, the Court finds no valid justification for mandatory drug testing for persons accused of crimes. In the case of students, the constitutional viability of the mandatory, random, and suspicionless drug testing for students emanates primarily from the waiver by the students of their right to privacy when they seek entry to the school, and from their voluntarily submitting their persons to the parental authority of school authorities. In the case of private and public employees, the constitutional soundness of the mandatory, random, and suspicionless drug testing proceeds from the reasonableness of the drug test policy and requirement.

We find the situation entirely different in the case of persons charged before the public prosecutor's office with criminal offenses punishable with six (6) years and one (1) day imprisonment. The operative concepts in the mandatory drug testing are "randomness" and "suspicionless." In the case of persons charged with a crime before the prosecutor's office, a mandatory drug testing can never be random or suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy.[40] To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 9165. Drug testing in this case would violate a persons' right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.

WHEREFORE, the Court resolves to GRANT the petition in G.R. No. 161658 and declares Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 as UNCONSTITUTIONAL; and to PARTIALLY GRANT the petition in G.R. Nos. 157870 and 158633 by declaring Sec. 36(c) and (d) of RA 9165 CONSTITUTIONAL, but declaring its Sec. 36(f) UNCONSTITUTIONAL. All concerned agencies are, accordingly, permanently enjoined from implementing Sec. 36(f) and (g) of RA 9165. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[1] Re-elected as senator in the 2004 elections.

- [2] Rollo (G.R. No. 158633), pp. 184-185.
- [3] Dumlao v. COMELEC, No. L-52245, January 22, 1980, 95 SCRA 392, 401.
- [4] Bernas, *The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 939 (2003).
- [5] Gonzales v. Narvasa, G.R. No. 140835, August 14, 2000, 337 SCRA 733, 740.
- [6] Tatad v. Secretary of the Department of Energy, G.R. Nos. 124360 & 127867, November 5, 1997, 281 SCRA 330, 349; De Guia v. COMELEC, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.
- [7] Palmer v. Board of Education, 276 NY 222 11 NE 2d 887.
- [8] Cruz, *CONSTITUTIONAL LAW* 4 (2000).
- [9] Mutuc v. Commission on Elections, No. L-32717, November 26, 1970, 36 SCRA 228, 234.
- [10] 50 Phil. 259, 309 (1927).
- [11] J. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 604 (1996).
- [12] *Id.*
- [13] See concurring opinion in Go v. Commission on Elections, G.R. No. 147741, May 10, 2001, 357 SCRA 739, 753.
- [14] RA 9165, Sec. 2.
- [15] *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), 661.
- [16] *Ople v. Torres*, G.R. No. 127685, July 23, 1998, 293 SCRA 141, 169; citing *Morfe v. Mutuc*, No. L-20387, January 31, 1968, 22 SCRA 424, 444-445.
- [17] Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized.
- [18] 536 U.S. 822 (2002); cited in 2 Bernas, *CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS* 224-227 (2004).
- [19] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- [20] The Fourth Amendment is almost similar to Sec. 2, Art. III of the Constitution, except that the latter limited the determination of probable cause to a judge after an examination under oath of the complainant and his witnesses. Hence, pronouncements of the US Federal Supreme Court and State Appellate Court may be considered doctrinal in this jurisdiction, unless they are manifestly contrary to our Constitution. See Herrera, *HANDBOOK ON ARREST, SEARCH AND SEIZURE* 8 (2003).
- [21] *Tolentino v. Alconcel*, No. L-63400, March 18, 1983, 121 SCRA 92, 95-96.

[22] Rollo (G.R. No. 158633), p. 204, respondents' Consolidated Memorandum.

[23] Rollo (G.R. No. 157870), p. 10.

[24] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized.

[25] Rollo (G.R. No. 158633), p. 9.

[26] Ople, *supra* note 16, at 153; citing Cooley on Torts, Sec. 135, Vol. 1, 4th ed., [1932].

[27] 62 Am. Jur. 2d, Privacy, Sec. 1.

[28] 387 U.S. 523; cited in 2 Bernas, *supra* note 18, at 232.

[29] 62 Am. Jur. 2d, Privacy, Sec. 17.

[30] *Vernonia & Board of Education*, *supra* notes 15 & 18.

[31] *Skinner v. Railway Labor Executives Assn.*, 489 U.S. 602, 619 (1989); cited in *Vernonia*, *supra*.

[32] *Supra* note 16, at 166 & 169.

[33] Under Sec. 7 [3] of the DOH IRR Governing Licensing and Accreditation of Drug Laboratories, a laboratory is required to use documented chain of custody procedures to maintain control and custody of specimens.

[34] DOH IRR Governing Licensing and Accreditation of Drug Laboratories, Sec. 7 [10.3] provides that the original copy of the test results form shall be given to the client/donor, copy furnished the DOH and the requesting agency.

[35] *Id.*, Sec. 7 [10.4].

[36] Secs. 47 and 48 of RA 9165 charge the Department of Labor and Employment with the duty to develop and promote a national drug prevention program and the necessary guidelines in the work place, which shall include a mandatory drafting and adoption of policies to achieve a drug-free workplace.

[37] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICERS AND EMPLOYEES, Sec. 2.

[38] CONSTITUTION, Art. XI, Sec. 1.

[39] Tatad, *supra* note 6, at 351.

[40] *Leona Pasion Viuda de Garcia v. Locsin*, 65 Phil. 689, 695 (1938); citing Cooley, CONST. LIM. 630 (8th ed.).

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