

## Supreme Court Review

Van R. Lawrence

Over the past year, issues of compelling importance to public administrators have figured prominently in the docket of the United States Supreme Court.

This section of *Policy Perspectives* reviews Supreme Court cases that addressed such issues as the president's immunity to a civil lawsuit during his time in office, cooperative federalism, the line item veto, and the validity of drug testing absent a compelling state interest.

Few recent United States Supreme Court cases have captured the attention of the public like *Clinton v. Jones*. Although the case was described by the media as a sexual harassment case, the real issue in this dispute was presidential immunity.

The question raised in this case was whether President Clinton could claim executive privilege or immunity to shield him from responding to a private civil suit while he held the office of President of the United States. Although the Supreme Court held that the plaintiff in the case could proceed against the president during his

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term of office, the entire lawsuit was ultimately dismissed by the trial court.

In 1994, Paula Jones filed a complaint against William Jefferson Clinton and Danny Ferguson in the United States District Court for the Eastern District of Arkansas.<sup>1</sup> The complaint alleged that in 1991 Clinton, then governor of Arkansas, and Ferguson, an Arkansas state trooper, lured Jones into a hotel room where she was sexually harassed and assaulted by Clinton.<sup>2</sup> Her complaint also alleged that Clinton defamed her by denying her allegations, branding her, in effect, a liar. Jones' complaint further alleged civil rights violations and tort claims of defamation and intentional infliction of emotional distress;<sup>3</sup> claims that were based on the plaintiff's version of the case,<sup>4</sup> although by the time the case was scheduled for trial many of these claims had been dropped by the plaintiff or dismissed by the trial court.

Clinton, who had been elected president after the case was brought, filed a motion to dismiss Jones' complaint without prejudice based on grounds of presidential immunity. The United States District Court for the Eastern District of Arkansas denied the president's motion to dismiss the case and held that the case could go forward after the president left office.<sup>5</sup> President Clinton then filed a motion asking that the judge's order be stayed pending appeal, a motion which was granted.<sup>6</sup>

Jones appealed the District Court's decision to defer the suit to

the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit reversed the District Court's decision to stay the proceedings.<sup>7</sup> President Clinton appealed and the Supreme Court granted certiorari.

The Court heard arguments on *Clinton v. Jones* on January 13, 1997.<sup>8</sup> Arguing on behalf of President Clinton was his personal attorney, Robert S. Bennett, and Acting Solicitor General, Walter Dellinger. The argument opened with Bennett proposing that President Clinton should not be required to divert his attention from his executive duties without a "compelling necessity" that would warrant such a diversion.<sup>9</sup> This led to questions by Justices O'Connor and Scalia regarding whether the president was seeking a strict rule applicable to all cases or a balancing test to be used in this case based on "compelling necessity."<sup>10</sup> Justice Scalia rejected any adoption of a case-by-case balancing test to determine whether the president could be forced to answer a private civil suit while in office.<sup>11</sup>

At the argument, Justice Scalia scoffed at Bennett's suggestion that responding to private suits against the president could become a major hindrance to the president's ability to perform his duties. As Scalia observed, we've all seen pictures of presidents riding horses and playing golf.<sup>12</sup>

Justice Stevens delivered the opinion of the Court and held that: (1) the Constitution does not afford the president temporary immunity, in all but the most exceptional circumstances, from civil damages litigation

arising out of events that occurred before he took office; (2) the doctrine of separation of powers does not require federal courts to stay all private actions against a president until he leaves office; and (3) the District Court erred in deferring trial until after the president left office.<sup>13</sup>

The Court did not address two important constitutional issues since they were not included in the questions presented by the certiorari petition: (1) whether a claim comparable to the petitioner's assertion of immunity might succeed in a state tribunal, and (2) whether a court may compel the President's attendance at any specific time or place.<sup>14</sup>

The rejection of President Clinton's request for temporary immunity from suit was based on the Court's assertion that presidents are granted immunity to shield them from damages based on their actions executed in a presidential, not personal, capacity. The Court based this assertion on its prior holding in *Nixon v. Fitzgerald*<sup>15</sup> where the Court did not support any immunity, qualified or otherwise, for acts performed outside of official capacities. The Court further elaborated on this idea by pointing to the fact that immunity, when granted, is conferred through the nature of the duty performed, not through the status of the actor who performed the duty.<sup>16</sup> In this case, President Clinton was being sued for actions outside the *Nixon v. Fitzgerald* designation of "official" duties. Thus, Clinton was simply relying on his status as president to avoid a timely response to private civil allega-

tions, an argument that was not strong enough to pass the Court's constitutional muster.<sup>17</sup> Thus, the Court recognized that Paula Jones' right to access to the courts was more compelling than Clinton's claim to qualified immunity from suit.

The second part of the *Clinton v. Jones* holding focused on separation of powers issues. President Clinton asserted that the doctrine of separation of powers required federal courts to defer private civil actions against a sitting president until the conclusion of the term of office. Bennet argued that forcing the president to respond to private civil claims allowed the courts to set the president's agenda and decide presidential priorities.<sup>18</sup>

The Court strongly rejected this argument. The Court pointed out that the doctrine of separation of powers has internal checks and balances to guard against the encroachment of one branch on the powers of another.<sup>19</sup> The Court saw its function as simply responding to Paula Jones' request that the Court exercise its jurisdiction and allow her access to court and to the defendant so her case could be decided.<sup>20</sup> The Court did not see its actions as an executive function, but as an inherently judicial function conferred on the courts by the Constitution.<sup>21</sup>

The Court also reminded the executive branch that the Court may and has severely burdened the executive branch by reviewing the constitutional legality of the president's official conduct.<sup>22</sup> The Court reminded President Clinton that the Court

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emphatically restricted President Harry S. Truman when he attempted to exercise power outside his legislatively and constitutionally granted authority by ordering a government seizure of United States steel mills during the Korean War.<sup>23</sup> Given the Court's strong assertion that it has the power to review the legality of the president's official conduct, it followed that the Court certainly had the power to review the president's unofficial conduct.

The Court also rejected the argument that the Jones case and other litigation that might arise from it could effectively consume the presidency and burden the president's performance of his duties.<sup>24</sup> This position was based on the minimal evidence of past presidents being burdened in such a manner.

The final part of the *Clinton v. Jones* holding addressed the discretion exercised by the District Court in granting President Clinton a postponement of the case. The Supreme Court affirmed the District Court's right to stay its proceedings as part of its power to control the judicial business of its docket, but upheld the Eighth Circuit's decision to reverse the District Court's ruling that put off the starting date of the trial until after the president left office.<sup>25</sup>

The Court found it entirely appropriate for the District Court to consider the burden the case placed on the presidency. The Court, however, ruled that the District Court erred in this case because it did not adequately consider Paula Jones' interest in bringing the

case to trial.<sup>26</sup> The Court noted that President Clinton did not provide the District Court with a legal record sufficient to determine whether delay of the trial was warranted.<sup>27</sup>

Perhaps the most revealing aspect of the Court's holding is the minimal weight afforded political arguments warning against the possible use of the private civil suit as a political tool against the president. The Court, with the exception of Justice Breyer, seemed unconcerned by the possibility of such political tactics. Justice Breyer warned that the Court may have understated the dangers of allowing such a suit to proceed when he wrote:

"Nonetheless, predicting the future is difficult, and I am skeptical. Should the majority's optimism turn out to be misplaced, then, in my view, courts will have to develop administrative rules applicable to such cases (including postponement rules of the sort at issue in this case) in order to implement the basic constitutional directive."<sup>28</sup>

Less than a year after the Court's decision, the issues argued by Bennett and Dellinger came to fruition. During the discovery phase of the *Jones v. Clinton* civil suit, allegations arose that the president may have obstructed justice by encouraging a former White House intern to lie during a deposition associated with the Jones civil suit; these allegations were precisely the kind of activity the Court deemed so unlikely as to not warrant serious consideration in this case.<sup>29</sup> Additionally, President Clinton was consumed with

defending himself against accusations that arose during the discovery phase of the Jones civil suit.

As a result of the Supreme Court's decision, a trial date for Paula Jones' case in District Court in Arkansas was set for May 27, 1998. In a customary pre-trial maneuver, President Clinton's lawyer filed a motion for summary judgment (a request that the case be found meritless and be dismissed before trial). In a stunning turn of events, Judge Susan Weber Wright of the District Court in Arkansas, the judge who had originally held that the trial could be delayed until President Clinton left office, dismissed Paula Jones' lawsuit against the president on April 1, 1998.

### ***Printz v. United States: The Evolution of Cooperative Federalism***

*Clinton v. Jones* is not the only recent case to be mischaracterized by the press. The media has inaccurately described *Printz v. United States* as a Second Amendment gun control case when in fact the case is a Tenth Amendment federalism case.

Jay Printz, Sheriff and Coroner of Ravalli County, Montana, sought to enjoin enforcement of certain provisions of the Brady Handgun Violence Prevention Act which imposed requirements on chief law enforcement officers ("CLEOs").<sup>30</sup> The United States District Court for the District of Montana held that the requirement in the law mandating background checks was unconstitutional.<sup>31</sup> A separate action to declare other portions

of the Brady act unconstitutional was brought by Arizona Sheriff Richard Mack in the United States District Court for the District of Arizona.<sup>32</sup> Sheriff Mack's action was successful and the Brady act's background search requirement was declared unconstitutional by the District Court. After appeals, the cases were combined and reversed by the Court of Appeals for the Ninth Circuit and the Supreme Court granted certiorari.<sup>33</sup>

Justice Scalia delivered the opinion of the court and held: (1) the mandate to conduct background checks on prospective handgun purchasers imposed an unconstitutional obligation on state officers to execute federal laws; (2) sheriffs were not in a position to challenge the act's requirements that CLEOs destroy the statements of applicants for handguns and give would-be purchasers written statements of reasons for determining their ineligibility to receive handguns; and (3) no plaintiffs before the Court had standing to challenge provisions requiring firearms dealers to forward CLEOs notice of the contents of statements by applicants for handguns and to wait five business days before consummating the sale.<sup>34</sup>

The *Printz* opinion began by striking down the Brady act's interim provision commanding CLEOs to conduct background checks.<sup>35</sup> Justice Scalia commenced his analysis by emphasizing that the Tenth Amendment, while implicated, was not the foundation of his opinion. Scalia asserted that no constitutional text addresses the question of whether Congress may compel state officers to execute

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federal laws; accordingly, the answer must be found in an analysis of the history and understanding of the structure of the Constitution and the Court's precedents.<sup>36</sup>

In this case, the United States relied on portions of *The Federalist* to argue that the Framers intended the federal government to impose federal responsibilities on state executives. But Justice Scalia countered by saying that the earliest Congressional enactments do not seem to contain evidence of any implicit assumption that the federal government could command a state's executive powers in the absence of constitutional authorization.<sup>37</sup>

Justice Scalia concluded that the government had overlooked the foundation of federalism implied in *The Federalist*, noting that *The Federalist* does not contemplate a situation where a state executive performs federal duties without giving consent.<sup>38</sup> In Scalia's view, the government falsely assumed state consent here<sup>39</sup> and concluded the first part of his holding by emphasizing that United States history does not display any tradition of commanding state executives to carry out federal mandates.<sup>40</sup>

The next section of the holding addressed the issue of dual sovereignty described in *Gregory v. Ashcroft*<sup>41</sup> where the Court held that the Federal government may not determine age criteria for state public servants. The premise for dual sovereignty is that states give up some of their powers to the federal govern-

ment but retain a residual sovereignty that is implicit in the Tenth Amendment.<sup>42</sup> The majority of the Court thus asserted that the Framers intended an arrangement where the federal and state governments would exercise concurrent authority and power.<sup>43</sup>

The majority of the Court was also unimpressed by the government's assertion that the Brady act was permissible as "necessary and proper" to the exercise of Commerce Clause power given to Congress in Article I of the Constitution. The majority of the Court argued that the Brady law does not meet the "proper" part of "necessary and proper" because the law violates principles of state sovereignty.

The first part of the Scalia holding was prologue to the most significant and conclusive precedent used in the majority's reasoning, *New York v. United States*,<sup>44</sup> where the Court held that the federal government may not compel states to enact or administer federal regulatory programs.<sup>45</sup> The government (and the justices who dissented from the majority opinion) attempted to argue that the Brady act's background check could be distinguished from *New York v. United States* because of the following:

- (1) the Brady act does not require state officials to make policy;
- (2) requiring state officers to perform discrete ministerial federal tasks does not diminish the official's state or federal accountability;

(3) the Brady act is addressed to individual CLEOs while the provisions struck down in *New York v. United States* were aimed at the state as a total governmental entity.<sup>46</sup>

The majority found none of this compelling and dismissed the argument by asserting that the purpose of the Brady act's background check is to compel state officers to carry out a federal program. The law, therefore, compromises and offends the principles of dual sovereignty.<sup>47</sup>

The second and third part of the majority holding was aimed at procedural matters such as requirements for CLEOs to dispose of all Brady act forms and records<sup>48</sup> and to give prospective purchasers written statements of ineligibility.<sup>49</sup> The provisions were deemed inoperative, not unconstitutional.<sup>50</sup>

### ***Raines v. Byrd*: Congressional Standing — The Line Item Veto Saga Continues**

The latest chapter in the political struggle known as the line item veto was acted out on May 27, 1997, when the Court heard arguments on *Raines v. Byrd*.<sup>51</sup> This case has also been inaccurately described as a decision on the constitutionality of the line item veto when, in fact, the case concerns standing to bring a suit to challenge the president's line item veto.

The suit began with an action filed in the U.S. District Court for the District of Columbia by Senators Robert Byrd, Carl Levin and Daniel Patrick Moynihan, retired Senator

Mark Hatfield, and U.S. Representatives David Skaggs and Henry Waxman. The suit claimed that the Line Item Veto Act violated Article 1 of the Constitution by allowing the president to repeal and cancel provisions of federal law without Congressional input. The District Court declared the Line Item Veto Act unconstitutional and the case was directly appealed to the Supreme Court which held that the congressmen lacked standing to sue. The Court went on to vacate the District Court's judgement and dismissed the complaint.

When the line item veto bill came up for a vote in Congress, the appellees voted against its passage; however, the bill ultimately passed.<sup>52</sup> The president signed the Line Item Veto Act into law on April 4, 1996,<sup>53</sup> and the act became effective on January 1, 1997.<sup>54</sup> The following day, the congressmen filed a complaint in the U.S. District Court for the District of Columbia against the Secretary of the Treasury and the Director of the Office of Management and Budget alleging that the act was unconstitutional.

Chief Justice Rehnquist delivered the opinion of the Court. The Chief Justice began his opinion by explaining the Court's interpretation of the doctrine of standing as applied to federal courts which is based on the "case or controversy" requirements in Article III of the Constitution. According to the Chief Justice, the Court understands this requirement to mean that the parties before the federal courts must have a particular per-

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sonal injury that is concrete and otherwise judicially cognizable<sup>55</sup>; in other words, the Court said that, in order to sue, the legislators must show that they have been harmed. Absent such a showing, plaintiffs do not belong in court because no dispute exists for the courts to decide.

The congressmen argued that they were similarly situated to the plaintiff in a case called *Powell v. McCormick*<sup>56</sup> where the Court held that a congressman had standing to challenge the constitutionality of his exclusion from the House of Representatives. Chief Justice Rehnquist was unimpressed by this argument, emphasizing that the dispute in *Powell*—the denial of a congressional seat—demonstrated a concrete and particular injury, that is, the denial of something to which the congressman believed he was entitled.<sup>57</sup> Chief Justice Rehnquist went on to say that the *Raines* case did not demonstrate how the appellees, as opposed to other members of the House or Senate, were singled out for negative treatment.<sup>58</sup>

The majority of the Court saw *Raines* as a case where damage had assertedly come to the legislative branch of government; thus plaintiffs were claiming a type of institutional injury. However, the Court stressed that the plaintiff's claims were based on an assumed entitlement to political power. The Chief Justice also made it clear that elected officials are not entitled to political power and that a claim based on such an assumed entitlement cannot be con-

verted to a judicially cognizable dispute.<sup>59</sup>

The congressmen, for their part, argued that they were similarly situated to state legislators in a case called *Coleman v. Miller*<sup>60</sup> where the Court held that a state legislator had suffered "institutional injury" and thus had standing to challenge the actions of the state's lieutenant governor who broke a tie vote on a proposed amendment to the Constitution. The rule in *Coleman* was that legislators who have voted to enact or defeat a particular piece of legislation have standing to sue if an action takes places that nullifies their vote.<sup>61</sup>

Again, the majority did not agree with the appellees' arguments. Chief Justice Rehnquist noted that the congressmen did not allege facts similar to *Coleman*: the congressmen here did not vote for a specific bill that had sufficient votes to pass but was nonetheless defeated. Instead, the legislators simply cast votes that were given full effect but were ultimately on the losing side of the vote. Chief Justice Rehnquist rejected the idea that such a routine legislative situation was worthy of federal standing.<sup>62</sup>

The majority also stressed the fact that the congressmen claiming institutional damages on behalf of Congress had not been authorized by either body to represent Congress in this action. The Court also noted that both houses of Congress actively opposed the suit. Finally, the majority emphasized that a suit for damages, real or imagined, may still be sought by Congress itself. The Court also did not



bar Congress from repealing the act if it so chose.<sup>63</sup>

***Chandler v. Miller: Symbolic Efforts to Fight the War on Drugs Cannot Burden Privacy***

In 1990, the Georgia legislature passed a bill requiring candidates for some state elected offices to submit to a drug test for marijuana, cocaine, opiates, amphetamines and phencyclidines. A candidate could not qualify for a spot on the state ballot unless a certificate was presented from a state-approved laboratory 30 days before the time for nomination or election. The certificate had to indicate negative test results for the aforementioned types of drugs.

The petitioners, Chandler and three other Libertarian Party candidates, challenged the statute primarily on Fourth Amendment grounds as an unreasonable suspicionless search but also raised First and Fourteenth Amendment concerns. The petitioners filed suit in the District Court about one month before the deadline for submission of the certificates. The petitioners named the governor of Georgia and two state administrative officials as defendants. The District Court denied petitioners' motion for a preliminary injunction and entered a judgment for the defendants.

The Eleventh Circuit Court of Appeals affirmed the District Court decision<sup>64</sup>, agreeing that the tests were searches but reasoning that the statute served "special needs" other than the ordinary needs of law en-

forcement.<sup>65</sup> The Circuit Court also held that the statute, as applied to petitioners, was not inconsistent with the Fourth and Fourteenth Amendments.<sup>66</sup>

In order for a search to be reasonable under the Fourth Amendment, it should be based on individualized suspicion of some wrongdoing.<sup>67</sup> Occasionally, the Court will recognize exceptions to this rule based on "special needs, beyond the normal need for law enforcement"<sup>68</sup> but when recognizing "special needs" courts must examine the context of the case and the competing private and public interests advanced by the parties.<sup>69</sup> Relying on the Court's precedents, Justice Ginsburg, writing for the majority, reversed the District Court's decision upholding the Georgia drug test law.

In other cases where the special needs assertion has been successful, the Supreme Court has found drug tests to be valid when they are designed to be minimally intrusive and to address the need to respond to a compelling state necessity such as public safety.<sup>70</sup> The Court has also found a "special needs" analysis to be valid when the state makes a compelling case to use a drug test to assess the effect of drugs on a particularly vulnerable population such as school children.<sup>71</sup>

Lawyers for the governor of Georgia used a Tenth Amendment argument, claiming that the drug test statute was valid under the sovereignty that was reserved to states under

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the Tenth Amendment to establish qualifications for elected officials.<sup>72</sup> However, the Court rejected this federalism argument by stressing that the Court was aware of no legal precedent that allowed state sovereignty to lessen constraints on state action imposed by the Fourth Amendment.<sup>73</sup>

The Court was disturbed that the state did not attempt to develop any foundation to justify a compelling state interest to impose the drug test on candidates for elected office. No evidence of drug use was shown among Georgia's elected officials and no attempt was made to link state elected officials to any high-risk or safety-sensitive conduct. The state did not even link the drug test to any of its other drug interdiction efforts. Given the lack of a compelling state interest, the Court held that this case was an example of a state government engaging in a scheme to demonstrate a symbolic commitment to the war on drugs by burdening privacy.

Many Supreme Court cases from the past year involved controversies in which significant legal issues—such as the scope of presidential immunity and the state's role in the war on drugs—arose in the context of contemporary challenges in public administration. These court opinions are useful for guiding public administrators' actions and decisions in an increasingly complex world.✦

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## Notes

<sup>1</sup> *Jones v. Clinton*, Civil Action No. LR-C-94-290 (E.D. Ark. May 6, 1994).

<sup>2</sup> *Id.*; sexual harassment and assault claims are part of a 42 U.S.C. 1983 claim.

<sup>3</sup> *Id.*; conspiracy claims are part of a 42 U.S.C. 1985 claim.

<sup>4</sup> *Id.*

<sup>5</sup> 869 F.Supp. 690

<sup>6</sup> 879 F.Supp. 86

<sup>7</sup> 72 F.3d 1354

<sup>8</sup> *Clinton v. Jones*, 117 S.Ct. 1636 (1997).

<sup>9</sup> 65 USLW 3497 (1997).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 65 USLW 3498 (1997).

<sup>13</sup> *Id.* at note 6.

<sup>14</sup> *Id.* at 1642-1643.

<sup>15</sup> 457 U.S. 731, 749, 752 (1982).

<sup>16</sup> *Forrester v. White*, 484 U.S. 219, 229 (1987).

<sup>17</sup> *Id.* at note 6, 1643-1645.

<sup>18</sup> *Id.* at note 10.

<sup>19</sup> *Id.* at note 6, 1645-1650; *Buckley v. Valeo*, 424 U.S.1, 22 (1976).

<sup>20</sup> U.S. Const. Art. III.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at note 6, 1645-1650; *United States v. Nixon*, 418 U.S. 683 (1974).

<sup>23</sup> *Id.* at note 6, 1645-1650; *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>24</sup> *Id.* at note 6, 1645-1650 ; 65 USLW 3498 (1997).

<sup>25</sup> *Id.* at note 6, 1650-1651; *Landis v. North American Co.*, 299 U.S. 248, 254 (1936).

<sup>26</sup> *Id.* at note 6, 1645-1650.

- 27 *Id.*
- 28 *Id.* at note 6, 1658.
- 29 *Id.* at note 6, 1651 - 1652.
- 30 18 U.S.C. 922
- 31 854 F.Supp. 1503.
- 32 856 F.Supp. 1372.
- 33 66 F.3d 1025.
- 34 *Printz v. United States*, 117 S.Ct. 2365 (1997).
- 35 18 U.S.C. 922(s)(2).
- 36 *Id.* at note 32, 2369.
- 37 *Id.* at note 32, 2370-2371.
- 38 *Id.* at note 32, 2369-2375.
- 39 *FERC v. Mississippi*, 456 U.S. 742, 796, n.35 (O'Connor, J., concurring in the judgement and dissenting in part).
- 40 *Id.* at note 32, 2372-2375.
- 41 501 U.S. 452, 457 (1991).
- 42 *Lane County v. Oregon*, 1 Wall.71, 76 (1869).
- 43 *Id.* at note 32, 2376-2378.
- 44 *New York v. U.S.*, 505 U.S. 144 (1992).
- 45 *Id.* at 188.
- 46 *Id.* at note 32, 2381-2383.
- 47 *Id.*, 2381-2383.
- 48 18 U.S.C. 922(s)(6)(B)(i).
- 49 18 U.S.C. 922(s)(6)(C).
- 50 *Id.* at note 32, 2383-2384.
- 51 117 S.Ct. 2312.
- 52 142 Cong. Rec. S2995, H2986.
- 53 Pub.L. 104-130, 110 Stat. 1200, codified at 2 U.S.C.A. § 691 et seq. (Supp.1997).
- 54 See Pub.L. 104- 130, § 5.
- 55 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Allen v. Wright*, 468 U.S. 737, 751 (1984).
- 56 395 U.S. 486 (1969).
- 57 *Id.* at note 51, 2318-2319 (1997).
- 58 *Id.*
- 59 *Id.*
- 60 307 U.S. 433 (1933).
- 61 *Id.* at 438.
- 62 *Id.* at note 51, 2319-2321.
- 63 *Id.* at 2321.
- 64 73 F.3d 1534.
- 65 *Id.*
- 66 *Id.*
- 67 *Vernonia School Dist. 47J v. Acton*, 115 S.Ct.2386 , 2391 (1995)
- 68 *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 619 (1989)
- 69 *Treasury Employees v. Von Raab*, 489 U.S.656, 665-666 (1989).
- 70 *Id.* at note 68.
- 71 *Id.* at note 67.
- 72 117 S.Ct. 1295, 1302-1303 (1997).
- 73 *Id.*



