

DRUG AND ALCOHOL TESTING POLICY VIOLATES FOURTH AMENDMENT RIGHTS, APPEALS COURT RULES

An Oregon city violated the constitutional rights of an applicant for a public library job when it withdrew a job offer because the applicant refused to submit to a mandatory drug and alcohol test, the Court of Appeals for the Ninth Circuit decides. Partially affirming a district court ruling, the Ninth Circuit says Woodburn, Oregon's demand that plaintiff Janet Lanier undergo a drug test before being employed as a part-time library page was an unreasonable search under the Fourth Amendment to the Constitution absent a showing of particularized need. Although Woodburn contended the societal problem of alcohol and drug abuse and the fact that Lanier sometimes would be working with children justified its testing requirement, the court says those arguments do not support a search in this case.

"[T]he city has an obvious interest in protecting children, yet the link that Woodburn identifies between that interest and a position as part-time library page is tenuous at best," Judge Pamela Ann Rymer writes for the court. Unlike a prior appeals court decision that upheld mandatory drug tests for public school faculty and administrators, the court says, "it is evident (at least on this record) that a part-time page, who could be a high school student herself, has no [*in loco parentis*] role in the city of Woodburn." The Ninth Circuit reverses the district court's judgment that Woodburn's drug testing program was facially invalid. Rather, the appeals panel states that such a generally applicable policy is "facially valid unless it can never be applied in a constitutional manner." Woodburn's policy could be upheld as reasonable regarding city employees whose jobs directly affect public safety.

In February 2004, Lanier applied for a position as a library page, whose job primarily is to retrieve items from the library book drop and place them back on the shelves. Pages also may occasionally staff the desk in the library's youth services area, where materials for children and teenagers are located. Woodburn made a conditional offer of employment to Lanier, subject to a background check that included pre-employment drug and alcohol screening. Since 2002, the city has provided that the "candidate of choice" for a municipal job "must successfully pass the drug and alcohol screen as a condition of the job offer." The confirmed presence of any illegal drug or alcohol in a urine sample is cause for disqualifying the applicant, the policy states. Although Lanier wanted the library job, she refused to take the drug and alcohol test. Woodburn rescinded the job offer and Lanier sued in federal district court, alleging violation of her rights under the Fourth Amendment and the Oregon state constitution, both prohibiting unreasonable searches and seizures. The district court for the District of Oregon ruled in Lanier's favor and the city appealed.

The district court erred in declaring the Woodburn drug testing policy constitutionally invalid on its face, the Ninth Circuit states. Citing a federal district decision from Florida, Lanier had argued "there is no set of circumstances under which the city's policy would be constitutional as applied to every applicant for all jobs," the appeals court says. Under the Supreme Court's decision in *U.S. v. Salerno*, 481 U.S. 739 (1987), however, the standard for whether a city policy is facially invalid differs from that stated by Lanier, the Ninth Circuit finds. The *Salerno* test "requires a plaintiff asserting a facial challenge to show that 'no set of circumstances exists under which the [policy] would be valid,'" Judge Rymer writes.

The text of the decision is available at <http://op.bna.com/dlrcases.nsf/r?Open=kmgn-7cur3g>.

(Source: *Lanier v. Woodburn*, 9th Cir., No. 06-35262, March 13, 2008, as reported in BNA, *Daily Labor Report*, No. 53, March 19, 2008, pp. AA1-AA2.)