thority."[375] Another distinction was that, although there was some evidence of drug use among the district's students, there was no evidence of a significant problem, as there had been in *Vernonia*. Rather, the Court referred to "the nationwide epidemic of drug use," and stated that there is no "threshold level" of drug use that need be present.[376] Because the students subjected to testing in *Earls* had the choice of not participating in extra-curricular activities rather than submitting to drug testing, the case stops short of holding that public school authorities may test all junior and senior high school students for drugs. Thus, although the Court's rationale seems broad enough to permit across-the-board testing,[377] Justice Breyer's concurrence, emphasizing among other points that "the testing program avoids subjecting the entire school to testing,"[378] raises some doubt on this score. The Court also left another basis for limiting the ruling's sweep by asserting that "regulation of extracurricular activities further diminishes the expectation of privacy among schoolchildren."[379]

In two other cases, the Court found that there were no "special needs" justifying random testing. Georgia's requirement that candidates for state office certify that they had passed a drug test, the Court ruled in *Chandler v. Miller*[380] was "symbolic" rather than "special." There was nothing in the record to indicate any actual fear or suspicion of drug use by state officials, the required certification was not well designed to detect illegal drug use, and candidates for state office, unlike the customs officers held subject to drug testing in *Von Raab*, are subject to "relentless" public scrutiny. In the second case, a city-run hospital's program for drug screening of preg-

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[375] 536 U.S. at 831.

[376] 536 U.S. at 836.

[377] Drug testing was said to be a "reasonable" means of protecting the school board's "important interest in preventing and deterring drug use among its students," and the decision in *Vernonia* was said to depend "primarily upon the school's custodial responsibility and authority." 536 U.S. at 838, 831.

[378] Concurring Justice Breyer pointed out that the testing program "preserves an option for a conscientious objector," who can pay a price of nonparticipation that is "serious, but less severe than expulsion." 536 U.S. at 841. Dissenting Justice Ginsburg pointed out that extracurricular activities are "part of the school's educational program" even though they are in a sense "voluntary." "Voluntary participation in athletics has a distinctly different dimension" because it "expose[s] students to physical risks that schools have a duty to mitigate." Id. at 845, 846.

[379] 536 U.S. at 831–32. The best the Court could do to support this statement was to assert that "some of these clubs and activities require occasional off-campus travel and communal undress," to point out that all extracurricular activities "have their own rules and requirements," and to quote from general language in *Vernonia*. Id. Dissenting Justice Ginsburg pointed out that these situations requiring a change of clothes on occasional out-of-town trips are "hardly equivalent to the routine communal undress associated with athletics." Id. at 848.

[380] 520 U.S. 305 (1997).