



## TO SEARCH OR NOT TO SEARCH – THAT IS THE QUESTION!

ERICA GRAHAM  
DEPUTY GENERAL COUNSEL  
HOUSTON INDEPENDENT SCHOOL DISTRICT

1

## THE FOURTH AMENDMENT

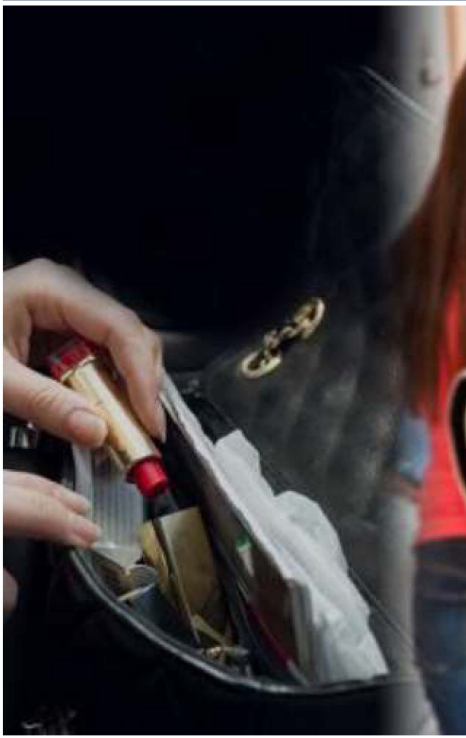


The 4th Amendment to the U.S. Constitution protects the right of all people “to be secure in their persons, house, papers and effects against **unreasonable** searches and seizures by the government.

The **reasonableness** of a search is determined on a case-by-case basis by balancing the need to search against the invasion it entails.

In the school context, this means balancing the student's legitimate expectations of privacy against the need of the school to perform the search to maintain order and discipline.

2



## *NEW JERSEY V. T.L.O.*

469 U.S. 325, 105 S. CT. 733 (1985)

- A teacher observed two HS students smoking cigarettes in a school restroom. In the principal's office, T.L.O.'s friend confessed, but T.L.O. denied smoking. Based on the teacher's observation and the friend's confession, the AP searched T.L.O.'s purse.
- The AP discovered a pack of cigarettes and rolling papers. Upon further search of the purse, the AP discovered marijuana, a pipe, and a list of student names who owed her money.

3

## TWO-PRONG TEST FOR REASONABLENESS

### 1<sup>st</sup> Prong

#### **Was the search justified at its inception?**

(i.e. were there reasonable grounds for suspecting that a law or a school rule was violated?)

### 2<sup>nd</sup> Prong

#### **Was the scope of the search reasonably related to the initial justification and not overly intrusive?**

(i.e. you did not have kids empty pockets when looking for a laptop.)

4



## APPLYING THE TWO-PRONG TEST: *NEW JERSEY V. T.L.O.*

### 1. Was the search justified at its inception?

- T.L.O. and her companion was observed smoking by a teacher.
- There were grounds to suspect that the search would uncover violations of the school's no-smoking rules.
- Friend confessed to smoking and implicated T.L.O. in the incident.

### 2. Was the scope of the search reasonably related to the initial justification and not overly intrusive?

- AP indicated he discovered rolling papers in the purse which gave rise in his mind to reasonable suspicion that T.L.O. was carrying MJ in her purse as well. This justified the further exploration of T.L.O.'s purse.
- After finding MJ and a pipe, the Court concluded it was reasonable to extend the scope of the search to the zippered compartments of the purse where the list of students who owed money was discovered.

5

## *NEW JERSEY V. T.L.O.* 469 U.S. 325, 105 S. CT. 733 (1985)

The requirement of reasonable suspicion is not a requirement of absolute certainty.

Sufficient probability, not certainty, is the touchstone of reasonableness.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: To Search or Not to Search, that is the question! Student and Personnel Issues: Fourth Amendment Update

Also available as part of the eCourse

[2024 School Law eConference](#)

First appeared as part of the conference materials for the 39<sup>th</sup> Annual School Law Conference session

"To Search or Not to Search, that is the question! Student and Personnel Issues: Fourth Amendment Update"