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*Special Needs and Special Deference:  
Suspicionless Civil Searches in the Modern Regulatory State*

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Abstract by Raymond R. Janairo

Under the special needs principle, when a special need beyond the normal need of law enforcement exists, courts must determine Fourth Amendment reasonableness by balancing the competing governmental interest and the private interests at stake. This principle allows agencies to conduct suspicionless civil searches of commercial areas, personal homes and persons themselves. The Supreme Court has upheld such suspicionless civil searches (in the form of drug testing) on railroad employees, customs officials, and precollegiate student athletes. The Supreme Court, however, has struck down such drug testing involving candidates for public office. Critics of these suspicionless civil searches argue that these actions amount to unreasonable searches in violation of the Fourth Amendment. Moreover, many have proposed amendments to the principle, especially the implementation of an individual suspicion requirement.

The author of this article asserts that these proposals fall short because the history of the United States has recognized “the modern regulatory state’s commonplace need to conduct suspicionless searches.” After discussing the support for this assertion and the history behind special needs, the author then presents a theory that the Supreme Court is applying a “flexible deferential standard” in order to bring predictability to special needs jurisprudence. The Court derives this flexible deference from its experiences in administrative law and applies varying levels of deference based on the “degree of correlation between the government’s asserted special need and the predefined regulatory objective at issue.” After analogizing and distinguishing such practice to courts’ use of *Chevron* deference, the author questions how tenable the practice is given the legislature’s and the executive’s ability to manipulate regulatory objectives. The author finally concludes that, although it may bring predictability to special need cases, courts should limit their use of the correlation approach and not take the place of other factors court use to protect against government overreaching.