



December 16, 2003

Re: Minor-in-Possession Ruling

Dear City, Village or University Attorney:

We want to draw your attention to a published decision issued by the U.S. District Court for the Eastern District of Michigan on November 18. The decision holds that police officers who require underage pedestrians to submit to Breathalyzer tests violate the Fourth Amendment unless they first obtain search warrants. The district court also struck down a Bay City ordinance that makes it a civil infraction for a minor to refuse to submit to a chemical breath test because the ordinance authorizes warrantless searches. The case is *Spencer v. City of Bay City*, __ F.Supp.2d __, 2003 WL 22801139 (E.D.Mich. 2003), and it may be accessed on the Eastern District of Michigan website by going to:

http://www.mied.uscourts.gov/_opinions/Lawsonpdf/02-10280%20Spencer%20Opinion%20Granting_Denying%20MSJs.pdf.

In *Spencer*, the U.S. District Court specifically held:

The Court finds that the taking of breath samples to test for blood alcohol concentration in the circumstances of this case constitutes a search within the meaning of the Fourth Amendment. There are no special needs that excuse the application of the warrants clause to this practice. The purposed of obtaining the breath samples is primarily to gather evidence of a violation of the City's criminal ordinance. Moreover, exigent circumstances do not automatically exist that justify the failure to obtain a search warrant. To the extent that [the Bay City ordinance] authorizes warrantless searches in all cases, it is unconstitutional.

Spencer, 2003 WL 22801139 * 13.

While the decision focuses on a Bay City ordinance, it has clear implications for cities, townships and universities throughout the state because the Bay City ordinance is identical to state law. *See Spencer*, 2003 WL 22801139 * 1 (“This subsection of the [Bay City] ordinance is patterned after a similarly-worded Michigan statute, *see Mich.Comp.Laws* § 436.1703(5)”). Further, like Bay City, many other municipalities throughout the state have enacted ordinances that track the language of the state law.

We encourage you to inform your police chief about the decision so that, if necessary, your police department will change its policies to conform with the Constitution.

We would appreciate it if you could respond to this letter to let us know whether you plan to inform your police department of the federal decision. Please feel free to call if you would like to discuss this matter further or if you have any questions.

Sincerely,

Michael J. Steinberg, Legal Director
American Civil Liberties Union of Michigan
60 West Hancock St.
Detroit, MI 48201
Direct Dial: (313) 578-6814
msteinberg@aclumich.org

Professor David A. Moran, Cooperating Attorney
American Civil Liberties Union of Michigan
d.moran@wayne.edu