



May 1, 2014

Chief Jason Hoaby  
Perham Police Department  
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VIA FACSIMILE, E-MAIL AND U.S. MAIL

Dear Chief Hoaby,

AMERICAN CIVIL  
LIBERTIES UNION OF  
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The ACLU-MN was concerned to learn that the Perham Police Department plans to administer warrantless, suspicionless breathalyzer tests to students attending the Perham High School Prom. Enclosed is a letter that was sent to the Perham School District setting forth the law governing searches by school officials and explaining that the school's breathalyzer plan likely violates both the U.S. and Minnesota Constitutions.

As you are no doubt aware, standards governing searches of students by school officials are less rigorous than standards governing searches by law enforcement officers. Breathalyzer tests constitute a search under the Fourth Amendment. See *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 616-617, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989). As the U.S. Supreme Court made clear last year in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), "[t]he natural metabolization of alcohol in the bloodstream [does not] present[] a per se exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." *McNeely*, 133 S. Ct. at 1556. Absent voluntary consent, exigent circumstances or a warrant, police may not require breathalyzer tests in this context. See e.g. *Spencer v. City of Bay City*, 292 F. Supp. 2d 932, 946 (E.D. Mich. 2003) (holding breathalyzer tests to be a search subject to the warrants clause of the Fourth Amendment).

We respectfully urge you to revisit the decision to participate in the likely unconstitutional practice of conducting warrantless, suspicionless breathalyzer searches of Perham High School Prom attendees.

Sincerely,

A handwritten signature in black ink that reads "Charles Samuelson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Charles Samuelson  
Executive Director



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