Drug Testing for TANF Recipients

Sen. David Vitter has recently introduced The Drug Free Families Act of 2011 (S. 83). This legislation would require all new applicants for TANF benefits, and all individuals currently receiving these benefits, to submit to drug testing. This proposed policy is a misguided and punitive waste of resources, and would place unnecessary financial burdens on taxpayers and state and federal budgets in order to enact an ineffective policy.

If passed, the U.S. Supreme Court will likely find S. 83 unconstitutional. The Supreme Court has held that a drug test constitutes a search within the meaning of the 4th Amendment and therefore must be based upon individualized suspicion of wrongdoing in order to pass constitutional muster. The Court has carved out a narrow exception to this requirement and held that where there are “substantial” and “important” government needs, individualized suspicion might not be necessary. Universal testing of TANF applicants would clearly not qualify under this exception because the Court has stated that a purely hypothetical possibility of drug use is insufficient to override an individual’s expectation of privacy and permit a test. There is no documented problem of substance abuse among welfare recipients or applicants, who use drugs at the same rate as the larger population. Approving S. 83 could result in expensive litigation.

The Sixth Circuit has already found universal drug testing of welfare applicants unconstitutional. A law nearly identical to S. 83 was struck down in Michigan in 2003 when the Sixth Circuit upheld a 2000 decision by U.S. District Court Judge Victoria Roberts. The Court’s finding states that mandatory suspicionless urine testing of applicants for public assistance violates the 4th Amendment’s protection from unreasonable search and seizure, and proves unnecessary given the existence of more effective and less invasive means of detecting drug abuse. In addition to covering Michigan, this ruling also applies to Kentucky, Ohio, and Tennessee.

If enacted, the proposal could potentially deprive these four states of all federal funding for unemployment. S. 83 requires that states drug test applicants for TANF benefits, but the Sixth Circuit ruling would prevent Kentucky, Michigan, Ohio, and Tennessee from complying with the new federal mandate, which could result in a conflict between federal and state law that could lead to the loss of federal TANF funding for those four states.

S. 83 is a fiscally irresponsible waste of resources. Simple drug-testing is an expensive and ineffective method of identifying people with substance abuse problems. Drug tests identify drug usage, not substance-abuse problems, and most positive tests identify casual marijuana users, rather than individuals struggling with addiction. Other less expensive and reliable means of screening for substance abuse problems are available. These methods include in-person interviews and questionnaires, among other tactics, and do not damage the mutual trust relationship between social worker and client like a drug test would.

The cost per “find” from drug testing could be anywhere from $500 to thousands of dollars. The average cost of a drug test is $42, not including the cost of administrative functions and conducting an additional test to guard against false positives, which are common. Claims that testing will save money are built upon the assumption that the tests will return a high number of positive results. However, this is not the case. Welfare recipients use drugs at the same rate as the general population (past month use around 8 percent), which means that an overwhelming majority of testing kits return negative results. Drug testing is clearly not an efficient way of identifying individuals with substance abuse problems. Mandatory drug testing for welfare benefits in three Michigan offices resulted in only 21 people out of 258 tested with a positive result for illicit substances. Of those 21, all but three tested positive for marijuana alone.
There are proven, more effective alternatives to universal drug testing. A 2002 survey revealed that more than half the States use a “screen-and-refer” method to detect and deal with drug abuse among benefit recipients. Paper-and-pencil questionnaires, designed to identify problem users and refer them to treatment, are used, such as the Substance Abuse Subtle Screen Inventory (SASSI). These tests have high accuracy rates (between 89-97 percent), are able to distinguish between drug use and drug abuse, are able to also detect alcohol abuse, and are far less costly than urinalysis testing. While these screen-and-refer methods can be improved, they are far more effective than urinalysis in identifying those with substance abuse problems when individualized suspicion has not yet materialized.

Sanctions on TANF recipients will fall heavily on children. The majority (roughly 75 percent) of TANF beneficiaries are children from impoverished families. Removing or restricting assistance due to the behavior of a parent punishes the child for circumstances beyond his or her control. Even if only the adult portion of benefits is eliminated, children still suffer because TANF assistance is so low to begin with. This proposal would also exacerbate existing stigma associated with receiving TANF or other public benefits, and could potentially deter struggling individuals from applying for aid.

Drug testing fails to spot those with true substance abuse problems. Urinalysis drug testing detects metabolites from drugs in an individual’s urine. The metabolites of marijuana can remain in the body for weeks after use, unlike metabolites for cocaine or heroin, which are flushed out after 72 hours. Therefore, casual marijuana users are more likely to be identified and penalized than users of harder drugs. Furthermore, because drug tests only identify a specific substance in an individual’s system, they have no ability to distinguish between those who abuse drugs and those who only engage in sporadic use. While drug abuse may hinder work performance and provide a barrier to employment, there is no evidence that drug use alone has this result.

Drug testing also fails to identify other serious problems like alcohol abuse and mental health disorders. A study of a similar drug testing program by researchers from the University of Michigan found that the majority of those who tested positive were casual users with no classifiable underlying addiction, and the program ignored serious issues like mental health problems.