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Public Testimony on Bill 2-25 Police - Traffic Stops - Consent Search of Motor Vehicle and Data Collection ("Freedom to Leave Act")

My name is Charlotte Resing and I am the Government Affairs Manager at Center for Policing Equity (CPE), a research and action organization that uses science to identify and reduce the causes of racial disparities in public safety. CPE has worked with law enforcement agencies across the country to analyze police data and recommend changes in police practices that address racial disparities. One area in which we have worked extensively with policy makers, elected officials, and police departments is traffic safety and data collection, specifically, racial disparities in stops and searches.

Montgomery County faces two issues prevalent in jurisdictions across the country: racial disparities in police consent searches and community distrust in law enforcement. The Freedom to Leave Act addresses both issues, and we strongly advise you to support the bill. The Freedom to Leave Act would ban consent searches and improve data collection on traffic stops, which would improve community relations with law enforcement and racial discrepancies in searches.

Robust data collection is vital to help lawmakers, law enforcement, and communities pinpoint the core issues driving inequity and make evidenced-based decisions regarding public safety. Increasing transparency on what law enforcement is doing and who it is impacting can also build relationships and trust between police departments and the communities they serve.

While the Supreme Court has found consent searches as a legal exception to the Fourth Amendment's probable cause requirement because they are "voluntary", research indicates otherwise. When pulled over, most people find it difficult to differentiate between a "request" and a "command." Most people feel compelled to comply, and most do.¹ Some jurisdictions have also found that Black and Latinx drivers are more likely to comply with search requests, likely partially caused by the power imbalance created by disparate use of police force against Black and Latinx people.²

¹ Sommers, R., & Bohns, V. K. (2019). The voluntariness of voluntary consent: Consent searches and the psychology of compliance. *Yale Law Journal*, 128(7), pp. 1962–2024.
yalelawjournal.org/essay/the-voluntariness-of-voluntary-consent; Bandes, S. A. (Updated 2019, January 20). Police accountability and the problem of regulating consent searches. *University of Illinois Law Review*, 2018(5), pp. 1759–1776. ssrn.com/abstract=3275151

² Bandes, 2018. p. 1768; New Jersey Legislature Senate Judiciary Committee. (2006). Report of the New Jersey Senate Judiciary Committee's investigation of racial profiling and the New Jersey State Police. p. 55.
dspace.njstatelib.org/xmlui/handle/10929/25067; Portland Police Bureau Strategic Services Division. (2021). Stops data collection 2020 annual report. p. 19. portlandoregon.gov/police/article/785420

Black and Latinx people are more likely to be asked to consent to searches and are more likely to comply than white people. Research from across the country has shown that police ask Black and Latinx drivers for consent to search disproportionately more than white drivers, in spite of the fact that consent searches of Black and Latinx drivers are less likely to result in the discovery of contraband than those of White drivers.³

Not only do consent searches result in racially disparate impact, they are also an ineffective public safety tool. The vast majority of consent searches fail to produce any contraband.⁴ In Montgomery County, less than 0.5% of consent searches result in recovery of a firearm.⁵ As the Montgomery County Police Department faces staffing shortages, banning consent searches could free up resources to pursue effective public safety strategies that don't drive racially disparate impacts.⁶ This measure is in line with other jurisdictions across the country, including Connecticut, New Jersey, Oregon, Rhode Island, and Minnesota that have banned or significantly restricted consent searches with promising results.⁷ After consent searches were found unconstitutional in Oregon, the Portland Police Department recorded its lowest search rate, while contraband recovery rates increased nearly 20%.⁸

Racial disparities and departmental inefficiencies resulting from consent searches demand the evidence-based change that the Freedom to Leave Act drives forward.

³ Burke, 2016; State v. Carty, 170 N.J. 632 (2002) (“where the individual is at the side of the road and confronted by a uniformed officer . . . it is not a stretch of the imagination to assume that the individual feels compelled to consent.”)

⁴ See Bandes, S. A. (Updated 2019, January 20). Police accountability and the problem of regulating consent searches. University of Illinois Law Review, 2018(5), pp. 1759–1776. ssrn.com/abstract=3275151; Burke, A. S. (2016). Consent searches and Fourth Amendment reasonableness. Florida Law Review, 67(2), p. 511. scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1227&context=flr; Sommers, R., & Bohns, V. K. (2019). The voluntariness of voluntary consent: Consent searches and the psychology of compliance. Yale Law Journal, 128(7), pp. 1962–2024. yalelawjournal.org/essay/the-voluntariness-of-voluntary-consent

⁵ Montgomery County Public Safety Committee.

https://montgomerycountymd.granicus.com/player/clip/17081?view_id=169&redirect=true&h=b6480e21bcef9e4dfe8b4c1b71ec684e

⁶ Pagnucco, Adam. “The Police Staffing Crisis Gets Worse.” Montgomery Perspective, 9 Jan. 2024, montgomeryperspective.com/2023/10/02/the-police-staffing-crisis-gets-worse/.

⁷ An act concerning police accountability, Connecticut Public Act 20-1, HB 6004 (2020); State v. Arreola-Botello, 451 P.3d 939 (Or. 2019); State v. Carty, 170 N.J. 632 (2002); State v. Fort, 660 N.W.2d 415 (Minn. 2003)

⁸ Portland Police Bureau Strategic Services Division. (2021). Stops Data Collection 2020 Annual Report. p. 18-21. portlandoregon.gov/police/article/785420