



## Tate & Renner, attorneys at law

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Montgomery County Council  
100 Maryland Avenue, 6th Floor  
Rockville, MD 20850

RE: Support for Freedom to Leave Act, Bill 2-24

Dear Council Members:

This letter is to express my support for the Freedom to Leave Act, Bill 2-24, introduced by At-Large Member Will Jawando. I thank him for his leadership in this issue and I hope each of you will join him in supporting this Bill.

The Freedom to Leave Act continues the effort expressed through last year's Safety and Traffic Equity in Policing (STEP) Act, Bill 12-23. Each is a worthy effort to reduce the racial disparities arising from interactions with our Police Department.

The Freedom to Leave Act serves three important goals:

1. It would remove the most common pretext for police searches – namely, a claim that a search was voluntary when citizens facing armed police officers rarely feel free to refuse;
2. It would refocus police work on serious crimes that are more likely to cause harm to County residents; and,
3. It would enhance the integrity of our law enforcement system by generating data that more closely tracks the racial impact of police interactions.

As to the first goal of reducing racial disparities, I remain impressed by the Racial Equity and Social Justice (RESJ) Impact Statement that Janmarie Peña drafted for Bill 12-23. It lays out the cold facts of the persistent racial disparities experienced by Black and Latinx drivers in our County. See pp. 14-24 at:

[https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2787\\_1\\_24966\\_Bill\\_12-23\\_Publichearing\\_20230425.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2787_1_24966_Bill_12-23_Publichearing_20230425.pdf)

This disparity is sufficient cause for legislative action to promote racial justice in our County. As the Washington Area Bicycle Association (WABA) has stated in its comments, "Safe Street are Equitable Streets." <https://waba.org/blog/2023/04/waba-supports-the-step-act-in-montgomery-county/>

Second, there are more important matters in which law enforcement attention can have a greater and positive impact for our residents. As the Council learned at the December 4, 2023, Public Safety Committee Worksession (at 1:10:18), the odds of our police officers recovering a firearm

during a vehicle search are less than one-half of one percent. These searches are not sufficiently fruitful to justify the harm caused to our minority communities.

May I suggest that the County Police Department begin enforcement of laws against wage theft. As a volunteer in the Bar Association's Pro Bono program, I see too many County residents who complain that employers have failed to pay the wages owed to them. Too many County residents are paid below our County's minimum wage (which itself is still too low to be a livable wage for this County). If wage thefts are detected early, we could avoid prolonged underpayments, such that the one affecting Maryland Corrections Officers who received \$13 million for unpaid wages last year.

<https://www.baltimoresun.com/politics/bs-md-pol-corrections-wage-settlement-20230706-zvuivlduuzdn3j3fnlv5xxagd-q-story.html>

Since 2009, the Maryland Department of Labor has received complaints from 8,290 workers who reported thefts totaling over \$20 million.

<https://www.cbsnews.com/baltimore/news/maryland-wage-theft-millions-dollars-unpaid-overtime-benefits/>

This is a real harm to real people in our County – people who can least afford it. I suggest that even a few prosecutions of employers who steal from their workers would be a far more beneficial deterrent than any search claimed to be consensual arising from a stop for a minor traffic infraction.

Third, our courts have unfortunately permitted the pervasive use of “pretext stops” through which police officers can stop a vehicle for a minor traffic offense when their real purpose is to see if they can find evidence of more serious crimes. See, for example, *Whren v. United States*, 517 U.S. 806, 811-13 (1996) (approving of “police attempts to use valid bases of action against citizens as pretexts for pursuing other investigatory agendas.”).

<https://casetext.com/case/whren-v-us?>

Prof. Paul Butler vividly describes how this decision gives police officers the “super power to racially profile.” *Chokehold [Policing Black Men]* (2017: The New Press, New York), p. 59.

While the courts may look the other way when law enforcement officers use a pretext to justify a stop that would otherwise be unlawful, our County can and should set a higher standard of integrity. A pretext is, after all, a lie about a person's real motive. We should not permit our officers to use any sort of pretext.

For each of these three reasons, I urge each member of this Council to support the Freedom to Leave Act.

Very Truly Yours,



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Attorney at Law