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Testimony for the Senate Judicial Proceedings Committee
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SB 1150 - Vehicle Laws - Accidents Resulting in Death - Mandatory Drug and Alcohol Testing (Danshaun's Law)

OPPOSE

The American Civil Liberties Union of Maryland (ACLU) opposes SB 1150, which would unconstitutionally require a driver to submit to a blood test if they are involved in a motor vehicle accident that involves death of *any* person. To be clear, this is a nonconsensual, warrantless mandatory blood test without any reasonable suspicion of criminal behavior, no less probable cause, as required by constitutional law.

It is indisputable that a test of a person's blood, breath, or urine is a search under the Fourth Amendment, only justified by a warrant or subject to an exception to the warrant requirement.[1] One such exception to the warrant requirement may arise "when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment."[2] However, the Court has explicitly held that exigency depends on the totality of the circumstances.[3] In *McNeely*, the Court held that there is no "per se exigency" that justifies an exception to the 4th Amendment's warrantless search requirement.[4] As such, warrantless nonconsensual blood tests in all drunk-driving cases are unconstitutional.[5] More importantly, SB 1150 has nothing to do with drunk-driving at all. It simply mandates nonconsensual blood tests for any driver involved in an accident involving death or substantial injury. This does not even attempt to comport with constitutional requirements.

These Fourth Amendment principles were affirmed in an even more recent U.S. Supreme Court decision. Justice Samuel Alito, writing for the Court in *Birchfield v. North Dakota*, held that the Fourth Amendment forbids the police from conducting warrantless blood tests.[6] In *Birchfield*, Justice Alito stated, "[s]earch warrants protect privacy in two main ways. First, they ensure that a search is not carried out unless a neutral magistrate makes an independent determination that there is probable cause to believe that evidence will be found….Second, if the magistrate finds probable cause, the warrant limits the intrusion on privacy by specifying the scope of the search—that is, the area that can be searched and the items that can be sought."[7]

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[1] *Missouri v. McNeely*, 569 U.S. 141, 166, 133 S.Ct. 1552, 1569-70 (2013).
[2] *Kentucky v. King*, 563 U.S. 452, 460 (2011).
[3] *McNeely*, 133 S. Ct. at 1556.
[4] *Id.* at 1562-63.
[5] *Id.* at 1556.
[6] *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016).
[7] *Id*. at 2181.

While a state may "choos[e] to protect privacy beyond the level that the Fourth Amendment requires,"[8] this bill does just the opposite: there is no requirement that law enforcement find reasonable grounds of any wrongdoing, no less taking drugs and alcohol while driving, in order to mandatorily draw blood from a nonconsenting individual. This severely rolls back every constitutional protection against nonconsensual, warrantless blood tests.

SB 1150 does not even attempt to capture a new scenario that creates an exception to the warrant requirement. It, in fact, removes any circumstances under which a nonconsensual blood test would be remotely constitutional.

For these reasons, we strongly urge an unfavorable report for SB 1150.

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[8] *Virginia v. Moore,* 553 U.S. 164, 171, 128 S.Ct. 1598 (2008).