No. 2PA17 EIGHTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Guilford County
	)	COA16-424
JUAN ANTONIA MILLER	)	

****

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

****

The Beloved Community Center of Greensboro, by and through undersigned counsel, moves this Court pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure for leave to file a brief in the above-captioned case as *amicus curiae* in support of appellee Juan Antonia Miller.

INTEREST OF *AMICUS CURIAE*

The Beloved Community Center of Greensboro (BCC) is a community-based organization rooted in Dr. Martin Luther King, Jr.'s legacy and is committed to grassroots empowerment, particularly among minorities. The BCC was officially founded in 1981 and has maintained a continued commitment to promoting and fighting for racial, economic, and social justice within Greensboro communities. Some of their current efforts include challenging racial

discrimination at all stages of the criminal justice system and its impact on racial and ethnic minority communities.

REASONS WHY AN *AMICUS CURIAE* BRIEF IS DESIRABLE

As part of our mission, the BCC supports community members and citizens and aids them in voicing their concerns to the Greensboro City Council. One of the BCC's most recent initiatives included speaking out against Greensboro City Council's hesitancy to release police officer body-camera footage and the disparities with which minorities are treated by Greensboro Police Officers. As a part of this initiative, the BCC has accessed an online database of all known traffic stops to have occurred in North Carolina since 1 January 2002. This database is known as "Open Data Policing" and is available at https://opendatapolicing.com/nc/.

Open Data Policing aggregates, visualizes, and publishes public records related to all known traffic stops to have occurred in North Carolina since Jan 01, 2002. Data is available for most North Carolina departments and officers serving populations greater than 10,000.

The questions of law before this Court are closely tied to important and pressing public policy concerns related to the racial disparity in traffic stops and discretionary searches by the Greensboro Police Department. The database currently contains information on 588,513 stops by the GPD. The BCC is positioned to offer unique insight to this Court regarding issues that are implicated in Mr. Miller's appeal.

QUESTION OF LAW TO BE ADDRESSSED

1. Did the Court of Appeals correctly rule that assuming the stop was constitutional, consent, if given, was not freely and voluntarily given?

POSITION OF THE BELOVED COMMUNITY CENTER OF GREENSBORO

The BCC will contend that the Court of Appeals correctly ruled that consent, if given, was not freely and voluntarily given. In support of these arguments, BCC will present data on police practices in Greensboro in support of a policy curtailing discretionary searches conducted during routine traffic stops.

FILING OF *AMICUS CURIAE* BRIEF

The BCC has submitted its proposed brief as amicus curiae contemporaneously with this motion for consideration by the Court should the court grant the motion. *See* N.C. R. APP. P. 28(i).

CONCLUSION

For the reasons stated above, the BCC respectfully requests this Court grant the motion for leave to file an *amicus curiae* brief in support of appellee Juan Antonia Miller.

Respectfully submitted, this the 10th day of November 2017.

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PROPOSED *AMICUS CURIAE* BRIEF OF THE
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PROPOSED *AMICUS CURIAE* BRIEF OF THE
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IN SUPPORT OF THE RESPONDENT

****

I. THE ADVENT OF DATA COLLECTION, PARTICULARLY AS IT RELATES TO POLICE STOP AND SEARCH PRACTICES, HAS REVEALED "ALARMING" RACIAL DISPARITIES AND PROMPTED COURTS TO GRAPPLE WITH THE REALITY OF RACIAL PROFILING.

The Court of Appeals vacated Juan Miller's conviction and ordered a new trial after reviewing body camera footage and concluding that his grant of consent to an officer's request to search—if he gave consent at all—was not voluntary. *State v. Miller*, 795 S.E.2d 374, 379 (N.C. Ct. App. 2016). This Court granted certiorari to consider, among other matters, whether Miller voluntarily consented to a search of his person.

The decision about whether Miller's consent was coerced or voluntary should be made in light of the comprehensive statistics that exist with respect to traffic stops and searches by the Greensboro Police Department during the relevant time period. *See infra* Part I.b. These statistics reveal pronounced racial disparities in stops and searches by police officers in

Greensboro that the city's police chief has called "alarming." *See* Sharon LaFraniere, *Greensboro Puts Focus on Reducing Racial Bias*, N.Y. TIMES, Nov. 11, 2015, at A20.

"[I]nasmuch as no contraband is recovered and no court case results," the large majority of people subjected to the type of practices at issue in this case have no practical means of seeking relief from them; thus, "questionable stops and searches of innocent persons' vehicles are usually not brought to the court's attention." *United States v. Freeman*, 209 F.3d 464, 470 (6th Cir. 2000) (Clay, J., concurring). Instead, use of the exclusionary rule in criminal cases is typically the courts' "sole means of ensuring that police refrain from engaging in the unwarranted harassment . . . of anyone—whether he or she is one of the most affluent or most vulnerable members of our community." *United States v. Foster*, 634 F.3d 243, 249 (4th Cir. 2011).

The "problem of disparate treatment is real" and has been "validated by law enforcement investigations into their own practices." *Illinois v. Wardlow*, 528 U.S. 119, 133 & n.10 (2000) (quotation omitted). The advent of data collection has laid these disparities bare and prompted numerous courts to explicitly recognize that people of color in this country face "the recurring indignity of being racially profiled." *Massachusetts v. Warren*, 58 N.E.3d 333, 342 (Mass. 2016); *see also, e.g.*, *Ligon v. City of New York*, 925 F. Supp. 2d 478, 496 (S.D.N.Y. 2013) (finding black men face routine and pervasive "indignities," including illegal and invasive searches, at the hands of the NYPD); *Floyd v. City of New York*, 283 F.R.D. 153, 159, 167 (S.D.N.Y 2012) (finding "strong evidence" for a Fourth and Fourteenth Amendment subclass in light of "extensively documented racial disparities in the rates of stops"). As one judge observed last year, the absence of a Fourth Amendment remedy for discriminatory treatment has "enable[d] artifice and abuse by law enforcement, with [a] disproportionate effect on racial minorities."

United States v. Magallon-Lopez, 817 F.3d 671, 677 (9th Cir. 2016) (Berzon, J., concurring); *see also Atwater v. City of Lago Vista*, 532 U.S. 318, 372 (2001) (O'Connor, J., dissenting (observing the phenomenon of "racial profiling demonstrates . . . a relatively minor traffic infraction may often serve as an excuse for stopping and harassing an individual").

North Carolina is no exception to this phenomenon, and perhaps no department is more associated with the practice than the Greensboro PD. In the year after Mr. Miller's arrest, *The New York Times* published a feature length investigative story about the department's racially disparate stop and search practices on the front page of its Sunday edition. *See* Sharon LaFraniere & Andrew W. Lehren, *The Disproportionate Risks of Driving While Black*, N.Y. TIMES, Oct. 25, 2015, at A1. Greensboro's police chief called the disparities "alarming" and within days announced a significant policy change, barring officers from making regulatory-based traffic stops, which at the time constituted the majority of stops among black drivers in the city. *See* Sharon LaFraniere, *Greensboro Puts Focus on Reducing Racial Bias*, N.Y. TIMES, Nov. 11, 2015, at A20. As a result, the department's racial stop disparities dropped by more than 10% the following year. *See Greensboro Police Department, Traffic Stops*, OPEN DATA POLICING, https://opendatapolicing.com/nc/agency/105/ (last accessed Nov. 4, 2017) (hereinafter OPEN DATA POLICING (GPD)). But with the glare of the national spotlight gone, the same chief made the decision in January to reverse course and resume the practice. *See* Adrienne Dipiazza, *Greensboro Police Will Resume Stops for Equipment Violations in February*, FOX 8, Jan. 19, 2017, http://bit.ly/2hRQcrQ. This year, the racial disparity in traffic-based searches in the city—79% black and 20% white—is the most pronounced it has been in the fifteen years the department has tracked its data. *See Search Data by Race/Ethnicity*, OPEN DATA POLICING (GPD).

a. THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY MAINTAINS A DATABASE OF MORE THAN 22,000,000 TRAFFIC STOPS AND THEIR ATTENDANT SEARCHES, PROVIDING THIS COURT ACCESS TO ONE OF THE RICHEST SOURCES OF SUCH INFORMATION IN THE COUNTRY.

The persistent and highly racialized character of traffic stops and searches in the City of Greensboro came to the *Times*' attention by way of a dataset maintained by the North Carolina State Bureau of Investigation since 2000, the contents of which are public record and readily available online. *See generally*, *North Carolina Traffic Stop Statistics*, N.C. DEP'T OF PUB. SAFETY, http://trafficstops.ncsbi.gov/Default.aspx; *North Carolina*, OPEN DATA POLICING, https://opendatapolicing.com/nc/ (publishing database contents unavailable via NCDPS website). This dataset includes detailed information on more than 22,000,000 traffic stops that have occurred in the state since North Carolina law enforcement officers began reporting their data in 2000. *See* N.C.G.S. § 114-10.01 (1999) (currently codified at N.C.G.S. § 143B-903). It is one of the largest datasets in the country of its kind and is presently the subject of significant academic research. *See, e.g.*, FRANK R. BAUMGARTNER, ET AL., SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE (2018) (forthcoming), http://www.unc.edu/~fbaum/books/SuspectCitizens/index.html (hereinafter SUSPECT CITIZENS).

Although many states now require the collection of such information, North Carolina was the first to do so. As of November 2017, the database contains records on 588,513 traffic stops conducted by the Greensboro Police Department. Under the law, "[l]aw enforcement officers employed by police departments in municipalities with a population of 10,000 or more persons" are required to report all traffic stops that are not a product of roadblocks or vehicle checkpoints. N.C.G.S. § 143B-903. Information collected includes the race, age, and gender of drivers and passengers who are stopped; the reason and general location of the stop; and information relating

to searches, citations, arrests, uses of force, and contraband seizures that might occur in the course of the stop. *Id.*

In the aggregate, this information provides important context to the facts of this case, and given that it is collected by state employees pursuant to state law, it is precisely the sort of data of which this Court may properly take judicial notice. *See, e.g.*, *Fortner v. Hornbuckle*, No. COA17-44, 2017 N.C. App. LEXIS 721, at *7 (Ct. App. Sep. 5, 2017) (stating court may take judicial notice of any fact "that is . . . 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'" (quoting N.C.G.S. § 8C-1, Rule 201(b) (2015)); *United States v. White*, 620 F.3d 401, 416 (4th Cir. 2010) (stating courts may take notice of a "dataset [that] is simply a compilation of information available in the public record." (discussing Rule 201(b)) (citing *Hall v. Virginia*, 385 F.3d 421, 423 n.3 (4th Cir. 2004))).

b. FIFTEEN YEARS OF DATA FROM GREENSBORO PD SHOW SIGNIFICANT AND ENTRENCHED RACIAL DISPARITIES WITH RESPECT TO PURPORTEDLY CONSENSUAL SEARCHES OF BLACK MEN IN THE COURSE OF ROUTINE TRAFFIC STOPS—THE SCENARIO AT ISSUE IN THIS CASE.

Since the Greensboro PD began collecting and reporting its data in 2002, black drivers have made up the majority of persons stopped by its officers, despite whites being the predominant racial group in the city. *See* OPEN DATA POLICING (GPD). This year, blacks have accounted for 57% of persons pulled over in traffic stops and 79% of those searched in the course of those stops. *Id.* This pattern of black drivers being searched at a significantly higher rate than white drivers has persisted for the entire fifteen year period that GPD has reported its data. *Id.* This is not because searches of black motorists are more productive. During this same time, the department discovered contraband on whites and blacks at exactly the same rate (31%). *Id.*

In the twelve years leading up to Mr. Miller's traffic stop and what the State contends was a consensual search, Greensboro officers reported conducting consent-based searches on approximately one in eighteen black men they stopped, compared to one in forty white men. *See North Carolina Traffic Stop Statistics*, N.C. DEP'T OF PUB. SAFETY, http://trafficstops.ncsbi.gov/Default.aspx (last accessed Nov. 5, 2017); Frank R. Baumgartner, Derek Epp, and Kelsey Shoub, *ANALYSIS OF BLACK-WHITE DIFFERENCES IN TRAFFIC STOPS AND SEARCHES IN GREENSBORO, NC, 2002-2013*, UNC DEP'T OF POLITICAL SCIENCE, at 15 (2015), https://www.unc.edu/~fbaum/TrafficStops/Reports2014/GreensboroReport_23Mar2015.pdf. Overall, officers were over 100% more likely to search pursuant to a purported grant of consent when the driver was black than white. *Id.* at 8. Similarly, among the hundreds of thousands of traffic stops made for a speed limit violation, as was the case here, Greensboro officers were 116% more likely to search the driver when they were black than white. *See* OPEN DATA POLICING (GPD).

c. IT IS APPROPRIATE FOR THIS COURT TO TAKE JUDICIAL NOTICE OF GREENSBORO'S SEARCH DATA WHEN EVALUATING THE CONSTITUTIONALITY OF MR. MILLER'S PURPORTED GRANT OF CONSENT.

"Fourth Amendment searches do not occur in a vacuum; rather, context must inform the judicial inquiry." *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 385 (2009) (Thomas, J., dissenting) (citing *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)). Courts are expected to consider the broader context in which a stop occurs, because to do otherwise would "make adjudication ill-informed." *United States v. Bumpers*, 705 F.3d 168, 173 (4th Cir. 2013). Here, the fact that Greensboro police officers search black drivers at a significantly higher rate than white drivers in the course of routine traffic stops—despite an identical contraband seizure rate—means the department has searched many thousands more innocent black drivers than white drivers over the last decade. *See* OPEN DATA POLICING (GPD). Police practices that

disproportionately burden one race—particularly in the face of statistics demonstrating the "violations [being pursued are] committed proportionately by all races"—are constitutionally problematic. *United States v. Olvis*, 97 F.3d 739, 745 (4th Cir. 1996). Because Greensboro PD's own statistics suggest consent searches put precisely such a burden on black drivers, the State's claim that the search in this case was consensual deserves particular scrutiny.

Indeed, courts have a unique "responsibility to guard against police conduct which is overbearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires." *Terry v. Ohio*, 392 U.S. 1, 15 (1968). Unwarranted police interference with the lives of innocent people is one of the principal issues with which the Fourth Amendment is concerned. *See Dunaway v. New York*, 442 U.S. 200, 214 (1979) (identifying one of the "purposes of the Fourth Amendment" as safeguarding "innocent persons [against] harassment" (quotation omitted)). It is thus appropriate for this Court to account for the considerable statistical evidence that consent searches are, as a matter of practice in Greensboro, administered in a racially disparate manner, uniquely affecting many thousands of innocent black citizens, who regularly endure the "degrading" experience of being treated as drug suspects because of a minor traffic infraction. *See Utah v. Strieff*, 136 S. C.t 2056, 2069 (2016) (Sotomayor, J., dissenting).

In *Maryland State Conference of NAACP Branches v. Maryland State Police*, the Federal District Court of Maryland found that "statistics compiled by the Maryland State Police . . . [that showed] 'a remarkable deviation' in regard to the percentage of African-Americans stopped and searched" amounted to "powerful circumstantial evidence of racial profiling." 454 F. Supp. 2d 339, 349 (D. Md. 2006). That court had before it a small fraction of the data that is now publicly available in North Carolina. The data out of Greensboro is comprehensive in nature,

representing not a sample of consent search activity in the course of traffic stops but *all* such searches except those officers might unlawfully fail to report.[1] *See Chavez v. Ill. State Police*, 251 F.3d 612, 642 (7th Cir. 2001) (describing "the type of information that would be useful" to show a pattern of discriminatory enforcement practices as precisely what is now available to North Carolina courts: "a comprehensive record of all motorists stopped; . . . [a] database that tracks every stop, the race of the parties involved, and whether a search took place").

It is well-established that courts may consider such traffic stop data when evaluating the propriety of police practices. *Polk v. Holmes*, No. 3:16CV00017, 2016 U.S. Dist. LEXIS 152914, at *9 (W.D. Va. Nov. 3, 2016). This includes taking disparate, department-wide enforcement patterns into account when evaluating the propriety of individual searches. *E.g.*, *United States v. Freeman*, 209 F.3d 464, 467 (6th Cir. 2000) (Clay, J., concurring) (concurring with reversal of district court's denial of motion to suppress, citing "troubling pattern . . . [by] drug interdiction squad of stopping 'target' vehicles on questionable probable cause grounds . . . in order to search for contraband"); *Chavez*, 251 F.3d at 641–43 (considering, but ultimately rejecting, statewide traffic enforcement statistics because they were an unrepresentative sample, in discriminatory enforcement claim against individual unit within state police force); *Maryland NAACP*, 454 F.

[1] Notably, the traffic stop and search pursuant to which Mr. Miller was arrested were not reported by Officer Harris or any other officer on the scene, in violation of N.C.G.S. § 143B-903. Moreover, if one cross-references publicly available AOC and ACIS records relating to Officer Harris' current cases arising out of traffic stops against the DPS traffic stop database, it would appear Officer Harris often does not comply with the data reporting law. *Compare Statewide Officer Court Appearance Query*, THE NORTH CAROLINA COURT SYSTEM, http://www1.aoc.state.nc.us/www/calendars/OfficerQuery.html (last accessed Nov. 5, 2017), *and* Offender Search, AUTOMATED CRIMINAL INFRACTIONS SYSTEM [ACIS], *with* North Carolina: Find a Traffic Stop, OPEN DATA POLICING, https://opendatapolicing.com/nc/search/ (enter agency name, violator demographics, and search). Greensboro PD, by contrast, generally has a strong record of data reporting compliance. Curiously, the only time in fifteen years that it failed to meet its reporting obligations was March 2014, the month Mr. Miller was arrested. To this date, the March 2014 dataset remains absent from DPS' website. *See North Carolina Traffic Stop Statistics*, N.C. DEP'T OF PUB. SAFETY, http://trafficstops.ncsbi.gov/Default.aspx.

Supp. 2d at 349 (finding that officer's "unclear" justification for traffic stop, when set "against a backdrop of powerful . . . statistics," provided basis for Fourth Amendment violation).

II. THE COURT OF APPEALS PROPERLY HELD MILLER'S ACTIONS WERE INSUFFICIENT TO GRANT CONSENT TO SEARCH; DISTURBING THAT JUDGMENT WOULD LIKELY EXACERBATE THE CONSIDERABLE PROBLEMS ASSOCIATED WITH CONSENT SEARCHES.

Any decision rendered by this Court that relaxes the contours of consent search law is likely to exacerbate the already considerable problems with the practice that have been well documented in North Carolina and elsewhere. *E.g.*, BAUMGARTNER, ET AL., *SUSPECT CITIZENS*, at 263; Melanie D. Wilson, *An Exclusionary Rule for Police Lies*, 47 AM. CRIM. L. REV. 1, 5–7, 40–41 (2010) (discussing instances where officers "lied about whether they had actually obtained consent to search" and the strong incentives for and weak disincentives against such conduct). There is evidence that abusive and racially discriminatory search practices across the state are not limited to "isolated instances" but are in some cases "the product of institutionalized training procedures." *Strieff*, 136 S. Ct. at 2069 (Sotomayor, J., dissenting). From 2013 to 2014, the City of Durham conducted an investigation into claims that its police officers were stopping and searching cars—and using consent searches, in particular—in a racially discriminatory manner. *See generally* Rich Oppel, Jr., *Wielding Search Data to Challenge and Change Police Policy*, N.Y. TIMES, Nov. 23, 2014, at A1. The city's mayor referred the matter to a 14-member commission, which investigated and ultimately found explicit "racial bias" in the administration of consent searches, leading them to recommend the implementation of a mandatory written consent to search policy. *Id.*; BAUMGARTNER, ET AL., *SUSPECT CITIZENS*, at 262. As a result, "a unified council, mayor, and city manager" ordered the police department to use a form and obtain the searched party's signature for all consent-based searches. BAUMGARTNER, ET AL., *SUSPECT CITIZENS*, at 262.

Durham's experience is evidence that entire police departments can be capable of abusing the laxities of consent search doctrine. In Durham, the problem was two-fold. The department as a whole was administering consent searches, much as in Greensboro, in a racially disparate manner, unsupported by contraband seizure data; and some officers were reporting that individuals had voluntarily consented to searches when they had not. These dynamics likely exist to some degree in all of North Carolina's cities. Given this reality, *amicus* is concerned that a decision construing the video in this case as evidence of voluntary consent will exacerbate existing problems with consent searches and further tilt the scales in an area of the law that is already deferential to law enforcement. *See Thornton v. United States*, 541 U.S. 615, 628 (2004) (Scalia, J., concurring) (stating that Court has "abandoned our constitutional moorings and floated to a place where the law approves of purely exploratory searches of vehicles" (internal quotation omitted)).

a. THE BODY CAMERA FOOTAGE REVIEWED BY THE COURT OF APPEALS DOES NOT DEPICT A CONSENSUAL SEARCH OF MR. MILLER'S PERSON.

At trial, Officer Harris identified the source of his authority to search Miller's pockets as Miller's grant of consent, and that is how the Court of Appeals analyzed the case. The video, however, does not depict Harris asking for Miller's consent either prior to or after searching him, nor does it show Miller commenting at all on whether Harris can search him. It appears the Court of Appeals was willing to assume Harris' request—which is not audible on the video—came during two brief but loud beeps of the radio just prior to the search occurring. Even if it that is true—and it is not at all clear that it is—what *is* clearly depicted provides this Court with more than enough evidence to conclude, as the Court of Appeals did, that Miller's consent, if it was given, was not voluntary.

The Court of Appeals correctly noted that "the footage from the body camera reveals a different version of the interaction" than what Officer Harris testified to at trial, depicting that the officer "had defendant turned around, facing the rear of his vehicle with his arms and legs spread *before he asked for defendant's consent.*" *State v. Miller*, 795 S.E.2d 374, 379 (N.C. Ct. App. 2016). The State argues Miller's posture signaled his consent to the search. *See* State's New Br., at 7. But it could have just as easily signaled Miller's intent to show general compliance with the officer and to stay safe during the encounter. *Cf. Strieff*, 136 S. Ct. at 2070 (Sotomayor, J., dissenting) ("For generations, black and brown parents have given their children 'the talk'—instructing them . . . always keep your hands where they can be seen . . . out of fear of how an officer with a gun will react[.]"). What is unambiguous is that Officer Harris pulls Mr. Miller over for what he describes as a routine traffic infraction and almost immediately orders Miller out of the car and searches his pockets. The manner and speed in which Officer Harris accomplishes this gives it an air of routine and normalcy.

The seemingly routine nature of the interaction, however, is no indication of its lawfulness. *Floyd v. City of N.Y.*, 283 F.R.D. 153, 167 (S.D.N.Y. 2012) ("[A]ccording to their own explanations for their actions, NYPD officers conducted at least 170,000 unlawful stops between 2004 and 2009"). Many officers understandably have a tendency to construe ambiguities in a way that works to maximize their authority to proceed with a search or detention. *United States v. Foster*, 634 F.3d 243, 248 (4th Cir. 2011). When such situations come to light, it is incumbent on courts to hold the line. *United States v. Mesa*, 62 F.3d 159, 162 (6th Cir. 1995) ("Since we have extended this authority . . . we have a duty to see that [it] is not abused. . . . [I]f this search can pass muster, then police authorities have license to search almost every vehicle they have reason to stop on the highway, with or without consent of its owner or

occupant."). The Court of Appeals reached the right result in this case, properly recognizing the Fourth Amendment requires that officers not interpret compliant but ambiguous conduct in the course of those stops as voluntary consent to search. The fact that the officer's instincts proved correct in this particular case is immaterial if he lacked the requisite constitutional authority to conduct the search. *Byars v. United States*, 273 U.S. 28, 29 (1927).

If the Court endorses the argument that under these circumstances Miller's failure to "voice[] any objection to the request" to search is the equivalent of his having consented to the request, *see* State's New Br., at 7, it should expect an increase in reports of consent-based searches in coming years. Because of the demographics of who is searched, it should also expect to see racial search disparities grow even more pronounced. If an ambiguous response—or a failure to respond at all—to an officer's request can be deemed by that officer to constitute a "voluntary" grant of permission to search, the Fourth Amendment rights of North Carolina's motorists will be diminished. *But see United States v. Farias*, 43 F. Supp. 2d 1276, 1285 (D. Utah 1999) (holding after review of video of traffic stop in which officer "asked to search, [and driver] gave no response" that it "cannot [be] conclude[d] that any consent given . . . was clear, positive, unequivocal, specific, or freely and intelligently given"). These rights, however, are "too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." *McDonald* v. *United States*, 335 U.S. 451, 455–56 (1948); *Whren v. United States*, 517 U.S. 805, 815 (1996) ("We cannot accept that the search and seizure protections of the Fourth Amendment are so variable . . . and can be made to turn upon such trivialities.").

CONCLUSION

Courts have "given officers an array of instruments [to] probe and examine." *Strieff*, 136 S. Ct. at 2069 (Sotomayor, J., dissenting). Among these is the right to search pursuant to

persons' "voluntary" consent in response to a "legitimate need." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973). But when courts "condone officers' use of these devices without adequate cause," they run the "risk of treating members of our communities as second-class citizens" and sending the message to "everyone, white and black, . . . that your body is subject to invasion while courts excuse the violation of your rights. *Strieff*, 136 S. Ct. at 2070 (Sotomayor, J., dissenting).

For the foregoing reasons, the judgment of the Court of Appeals should be AFFIRMED.

Respectfully submitted, this the 10th day of November 2017.

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CERTIFICATE OF COMPLIANCE WITH N.C. R. APP. P. 28

Undersigned counsel hereby certifies that this brief is in compliance with N.C. R. APP. P. 28(i) and in that it is printed in 12-point Times New Roman font and contains no more than 3,750 words in the body of the amicus brief, footnotes and citations included, as indicated by the word-processing program used to prepare this brief.

This, the 10th day of November, 2017.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original *AMICUS CURIAE* BRIEF OF THE BELOVED COMMUNITY CENTER IN SUPPORT OF THE RESPONDENT has been filed pursuant to N.C. R. APP. P. 26 by electronic means with the Clerk of the North Carolina Supreme Court.

I further certify that a copy of the *AMICUS CURIAE* BRIEF OF BELOVED COMMUNITY CENTER IN SUPPORT OF THE RESPONDENT has been duly served upon the following party by first-class mail, postage prepaid to:

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