

RE: H.B. 5429 AN ACT CONCERNING PEDESTRIAN SAFETY, VISION ZERO COUNCIL, SPEED LIMITS IN MUNICIPALITIES, FINES AND CHARGES FOR CERTAIN VIOLATIONS, THE GREENWAYS COMMEMORATIVE ACCOUNT AND MAINTENANCE WORK ZONE AND SCHOOL ZONE SAFETY ENFORCEMENT.

Dear Chair Lemar, Vice Chair Cassano, Vice Chair Simms, Ranking Member Carney, Ranking Member Summers, and Members of the Transportation Committee,

Thank you for the opportunity to share our thoughts about HB 5429. This is an important bill that we hope will be signed into law this session. We endorse the measure and write briefly to explain why. In particular, we, Tracey Meares, Walton Hale Hamilton Professor of Law, Tom Tyler, Macklin Fleming Professor of Law and Professor of Psychology, and James Forman, Jr., J. Skelly Wright Professor of Law, write in support of the automated enforcement program proposed by HB 5429. Professors Meares and Forman are residents of New Haven; Professor Tyler is a resident of Branford.

Today, traffic stops are a significant source of police-civilian interactions.¹ Approximately twelve percent of drivers are stopped each year by the police.²

These stops occur in the context of a highly discretionary traffic enforcement regime. Police have substantial leeway to determine who to stop, and for which infractions, because the number of traffic violations is beyond the capacity of the resources currently dedicated to enforcing traffic laws.

This discretion leads to the unequal enforcement of traffic laws against Black and Hispanic motorists relative to their white peers.³ More than twenty-five percent of racial minorities are stopped each year by the police, over twice the rate for all motorists.⁴ After the initial stop, police are more likely to escalate a traffic stop to a search when the motorist is Black or Hispanic than if they are white.⁵ One study of Los Angeles police noted that they “were more likely to stop [B]lack motorists than non-Hispanic whites and, having stopped them, were more likely to make [B]lacks get out of their car, more likely to frisk [B]lacks, more likely to search their cars, and more likely to arrest them.”⁶ Other studies have found, similarly, that Black motorists are more likely to be searched during stops “even though those Black drivers are less likely to possess contraband.”⁷

Inequitable enforcement rooted in discretion leads to tragic consequences that upend and destroy lives unjustly. “Traffic enforcement has historically served and still functions as a gateway for funneling civilians, and especially Black and Latinx motorists, into the criminal justice system.”⁸ Escalation at traffic stops also causes fatalities. A 2015 estimate found that eleven percent of fatal shootings by police occurred during traffic stops, and a disproportionate share of those fatalities were Black.⁹

Beyond the direct consequences of police stops, they can damage the civic fabric of our communities. Perceptions of discrimination in discretionary stops can “erode individual liberty, undermine democratic equality, and divide local communities by income, race, and ethnicity.”¹⁰ If a community perceives an enforcement regime as illegitimate, that undermines voluntary compliance with a policy or law,¹¹ thus thwarting the very objectives that the regime attempts to

achieve. In contrast, enforcement that is respected as fair and unbiased promotes compliance, as well as cooperation when enforcement does occur.¹²

This enforcement regime occurs in the context of a transportation system that disproportionately injures and kills Black and Latinx individuals. “[D]rivers are significantly less likely to stop for African-American and Hispanic adult pedestrians solely because of the pedestrians’ race.”¹³ “African-Americans, Native Americans, and Hispanic Americans, who live in low-income communities at higher rates than White Americans, are at least twice as likely to be killed while walking.”¹⁴

A well-designed automated enforcement regime—such as the one proposed in HB 5429—can reduce these ills, improving compliance with traffic laws and limiting police discretion in a way that improves the lives of members of Black and Latinx communities. Automating speeding enforcement, which HB 5429 proposes to do in a pilot program targeted at schools and work zones, can significantly reduce police encounters.¹⁵ It can also make crossing the street safer for people who primarily navigate our communities on foot.

Indeed, automated enforcement programs often enjoy robust support from these communities—a reflection of their effectiveness in reducing policing disparities and protecting community members from traffic violence. In New York, for instance, which implemented an automated enforcement program similar to that proposed in HB 5429, public polling found that “Black, Hispanic, and lower-income New Yorkers are far more likely than other groups to support the introduction of more speed enforcement cameras.”¹⁶

We emphasize that the automated enforcement program must be designed with equity in mind to achieve these laudable goals. HB 5429 includes a number of well-designed provisions to reduce the impact of traffic enforcement on the lives of Black and Latinx drivers. For instance, the provision imposing a fine for speeding designates a fine of \$75 for the first violation and \$90 for the second violation.¹⁷ This is a substantially lower penalty than the consequences of a stop by a police officer, which may result in fines of several hundred dollars in addition to points on a driver’s license.

Program design and management are also critical to ensure that we do not replace one inequitable system with another. An automated enforcement program’s success in reducing racial disparities in traffic enforcement is contingent on the equitable placement of speed cameras. Installing cameras only in those neighborhoods with disproportionate numbers of minority residents would be deeply counterproductive to its goals. And speed cameras are not the solution for every troublesome intersection; street design and infrastructure changes are alternative means that may be more appropriate in certain locations.

To that end, we believe that any final bill must require the Secretary of the Office of Policy and Management, in consultation with the Commissioner of Transportation,¹⁸ provide adequate guarantees to ensure that the municipalities place speed enforcement cameras in a manner that does not inequitably burden Black and Latinx communities. We also urge that the bill require regular data-driven assessments of the pilot program to ensure that it does not disproportionately burden persons of color.¹⁹ Without these or similar protections, there is a chance that an automated

enforcement program could widen—rather than narrow—pervasive disparities in traffic enforcement.

A well-designed automated traffic enforcement scheme can yield better outcomes for Black and Latinx communities in Connecticut. We believe that the program proposed in HB 5429 is an improvement relative to the current discretionary regime and respectfully encourage the Transportation Committee to vote the bill out of committee, and for the General Assembly to pass it with the modifications described.

Thank you for your consideration and time. Please feel free to reach out if you would like to discuss further.

James R. Forman, Jr., J. Skelly Wright Professor of Law, New Haven.

Tracey L. Meares, Walton Hale Hamilton Professor of Law, New Haven.

Tom R. Tyler, Macklin Fleming Professor of Law and Professor of Psychology, Branford.

¹ Elizabeth E. Joh, *Discretionless Policing: Technology and the Fourth Amendment*, 95 CALIF. L. REV. 199, 204 (2007) (“Most people rarely find themselves in contact with the police; but if they do, the interaction will most likely take the form of a traffic stop.”).

² CHARLES R. EPP ET AL., *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* 2 (2014).

³ Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 741 (2020) (“Our analysis provides evidence that decisions about whom to stop and, subsequently, whom to search are biased against [B]lack and Hispanic drivers.”).

⁴ EPP ET AL., *supra* note 2, at 2.

⁵ Pierson et al., *supra* note 3, at 740 (“Because [B]lack and Hispanic drivers were more likely to be searched before legalization, the policy change reduced the absolute gap in search rates between race groups; however, the relative gap persisted, with [B]lack and Hispanic drivers still more likely to be searched than white drivers post-legalization.”).

⁶ Barbara Reskin, *The Race Discrimination System*, 38 ANN. REV. SOC. 17, 22 (2012) (noting also that the stops appeared unjustified because, for instance, the proportion of stops that found weapons were lower for Black motorists than non-Hispanic white motorists).

⁷ Marco Conner, *Traffic Justice: Achieving Effective and Equitable Traffic Enforcement in the Age of Vision Zero*, 44 FORDHAM URB. L.J. 969, 982-83 (2017).

⁸ Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. (forthcoming 2021) (manuscript at 5) (on file with authors).

⁹ Wesley Lowery, *A Disproportionate Number of Black Victims in Fatal Traffic Stops*, WASH. POST (Dec. 24, 2015), https://www.washingtonpost.com/national/a-disproportionate-number-of-black-victims-in-fatal-traffic-stops/2015/12/24/c29717e2-a344-11e5-9c4e-be37f66848bb_story.html.

¹⁰ Conner, *supra* note 7, at 986.

¹¹ See Tracey Meares, *The Legitimacy of Police Among Young African-American Men*, 92 MARQ. L. REV. 651, 659 (2009).

¹² See Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUSTICE 283 (2003).

¹³ Conner, *supra* note 7, at 980. See, e.g., Courtney Coughenour et al., *Examining Racial Bias as a Potential Factor in Pedestrian Crashes*, 98 ACCIDENT ANALYSIS & PREVENTION 96, 96-100 (2017), <http://www.sciencedirect.com/science/article/pii/S000145751630361X> [<https://perma.cc/PDX6-9W62>] (examining the potential for racial bias in driver yielding behaviors at midblock crosswalks in low- and high- income neighborhoods located in Las Vegas, Nevada).

¹⁴ Conner, *supra* note 7, at 979; see also ANGIE SCHMITT, *RIGHT OF WAY: RACE, CLASS, AND THE SILENT EPIDEMIC OF PEDESTRIAN DEATHS IN AMERICA* (2020).

¹⁵ SARAH A. SEO, *A PATH TO NON-POLICE ENFORCEMENT OF CIVIL TRAFFIC VIOLATIONS* 5 (2020) (citing a New York State study that found that speeding accounts for 20% of all traffic citations); Elizabeth E. Joh, *Discretionless Policing: Technology and the Fourth Amendment*, 95 CALIF. L. REV. 199, 221 (2007) (“By remotely and automatically enforcing

the laws normally used by police to conduct traffic stops, [automated] systems could eliminate or drastically reduce the number of police-conducted traffic stops.”).

¹⁶ Conner, *supra* note 7, at 999; *see also* Brian Zumhagen, *NYC Voters Overwhelmingly Back Speed Safety Cameras for #EverySchool*, TRANSP. ALTERNATIVES (Feb. 8, 2017), <https://www.transalt.org/news/releases/10089> [<https://perma.cc/52HE-U4XM>] (poll conducted by Penn Schoen Berland in November 2016).

¹⁷ HB 5429 827-833.

¹⁸ HB 5429 delegates authority to these two officials to design the pilot program at lines 787-792.

¹⁹ Blair Woods, *supra* note 8, at 36.