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February 1, 2023

Submitted Electronically

Chair William C. Smith, Jr.
Vice Chair Jeffery Waldstreicher
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re Senate Bill 51 – Criminal Procedure – Reasonable and Probable Cause – Cannabis – **Favorable**

Chairperson Smith and Vice Chair Waldstreicher:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF)¹, we support Senate Bill 51, which prohibits the odor of cannabis from being the sole evidence for reasonable suspicion or probable cause relating to possession of contraband or other criminal activity. LDF supports SB 51 because the odor of cannabis, possession or suspected possession of cannabis, or presence of money in proximity to cannabis should not serve as a basis for a person or their vehicle to be stopped or searched. In November of 2022, Maryland voters ratified an amendment to the Maryland Constitution to allow the possession and use of cannabis for individuals 21 years of age and older, beginning July 1, 2023, subject to regulation by the Maryland General Assembly. In 2021 the Maryland General assembly passed legislation that sets the contours of legalization, permitting possession of up to 1.5 ounces without penalty. With the implementation of cannabis legalization, police stops and searches based on odor alone should be prohibited. Black Marylanders are disproportionately criminalized for cannabis offenses. The use of cannabis odor as a basis for stops or searches is ineffective, as there is no clear distinction between the odor of cannabis possessed in a lawful amount up to 1.5 ounces or the odor of cannabis that is an amount

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF's work to address police violence and misconduct dates back to its inception. *See, Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949; the men were brutally beaten by sheriff's deputies in an attempt to force confessions). Today, LDF's Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to transform public safety systems, advance police accountability, and prevent and remedy the impact of racial bias in public safety.

that exceeds the lawful threshold. Finally, other states have prohibited the use of odor-based stops and searches, providing precedent for Maryland to build upon.

I. Black Marylanders have been disproportionately criminalized for cannabis offenses.

While Black people use cannabis at the same rate,² or less³ than white people, Black Marylanders are criminalized more often for cannabis offenses. A 2018 report comparing cannabis possession arrests for Black and white people found that Black Marylanders were arrested 2.14 times more than white Marylanders.⁴ From 2018-2019, Black Baltimoreans made up 96% of all cannabis possession charges filed even though Black people only represent 60% of the city's population.⁵ SB 51 would help make the promise of cannabis legalization in Maryland real for Black people who are more likely to be criminalized, by removing odor as the sole basis for a stop.

II. The use of odor-based searches is ineffective where possession of certain amounts of cannabis is lawful.

Recent legislation and the November 2022 ballot initiative in Maryland rendered cannabis possession and use of up to 1.5 ounces lawful. Thus, odor is an unreliable basis for stops and searches because odor does not differentiate between lawful and unlawful amounts of cannabis. Furthermore, cannabis odor, alone, is not a reliable indicator of the presence of any cannabis. Indeed, in 2020 in *Lewis v. State*,⁶ the Maryland Court of Appeals ruled that the odor of cannabis alone does not provide probable cause for a warrantless search of a person because an officer cannot determine the quantity of cannabis in a person's possession and therefore does not have probable cause to make an arrest or search a person. SB 51 is necessary to clarify that the odor of cannabis alone does not provide a reasonable suspicion for a stop.⁷ Because certain amounts of cannabis are lawful in Maryland, the mere odor of cannabis alone cannot be a sufficient basis for any law enforcement activity.

² Ezekiel Edwards, Will Bunting, and Lynda Garcia, *The War on Marijuana in Black and White*, American Civil Liberties Union, 21 (June 2013), <https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white>.

³ A 2018 national survey found the lifetime prevalence of cannabis use was lower for Black (45.3%) than White (53.6%) adults 18 years or older. See Silvia S. Martin, Luis E. Segura, Natalie S. Levy, et al., *Racial and Ethnic Differences in Cannabis Use Following Legalization in US States with Medical Cannabis Laws*, *Jama Network Open*, Introduction (Sept. 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8477268/>.

⁴ Ezekiel Edwards, Emily Greytak, Brooke Madubonwu, et al., *A Tale of two Countries: Racially targeted arrest sin the era of Marijuana Reform*, American Civil Liberties Union, Table 7, "Black and White Marijuana Possession Arrest Rates and Disparities by State" 32 (2018), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

⁵ Neydin Milián, *Time to Put An End to the Racist War on Marijuana*, American Civil Liberties Union Maryland, (Dec. 22, 2022) <https://www.aclu-md.org/en/news/time-put-end-racist-war-marijuana>.

⁶ *Lewis v. State*, 233 A.3d 86, 91 (Md. 2020).

⁷ See, *In re D.D.*, 277 A.3d 949, 954-55 (Md. 2022). This 2022 decision found that odor of cannabis on a person does provide reasonable suspicion for an investigatory stop.

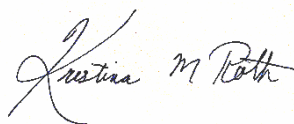
III. Other states have already prohibited the odor of cannabis as a basis for stops and searches.

Maryland should follow in the footsteps of other states that recognize odor-based stops and searches can perpetuate racial discrimination and are ineffective. In 2020, even before the commonwealth of Virginia legalized cannabis, Governor Northam signed a bill into law to prohibit law enforcement from conducting a “stop, search, or seizure of a person, place or thing solely on the basis of the odor of cannabis.”⁸ And as a part of New York’s legalization of cannabis, the state’s 2021 law includes a provision prohibiting law enforcement from using the odor of cannabis to search a vehicle.⁹

Cannabis legalization in Maryland will take effect July 1, 2023. To ensure that the intent of cannabis legalization is achieved, the legislature must also pass SB 51 to prohibit the use of cannabis odor serve as the sole basis for law enforcement stops or searches.

Thank you for considering our testimony. If you have any questions, please do not hesitate to contact us via email at kroth@naacpldf.org.

Sincerely yours,



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⁸ S. 5029, 161st Leg., 1st Spec. Sess. (Va. 2020).

⁹ *What you need to know about marijuana legalization in New York*, Legal Aid Society, last updates December 17, 2022, <https://legalaidnyc.org/get-help/wrongful-convictions-clemency-sealing/what-you-need-to-know-about-marijuana-legalization-in-new-york/>.