



## Testimony for the House Judiciary Committee

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### HB 1529 Drunk and Drugged Driving - Testing – Warrants

#### UNFAVORABLE

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The ACLU of Maryland urges an unfavorable report on HB 1529, which would allow for Marylanders to be compelled to take an alcohol, drug, or CDS test if there is a valid warrant.

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.<sup>1</sup> 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.”<sup>2</sup> However, the Court has explicitly held that exigency depends on the totality of the circumstances.<sup>3</sup> In *McNeely*, the Court held that there is no “per se exigency” that justifies an exception to the 4th Amendment’s warrantless search requirement.<sup>4</sup> As such, warrantless nonconsensual blood tests in all drunk-driving cases are unconstitutional.<sup>5</sup>

Under state law, Marylanders may not be required to take a drug or alcohol test unless there has been a car accident in which someone dies or suffers life-threatening injuries.<sup>6</sup> In 2016, the U.S. Supreme Court 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.<sup>7</sup>

Although the Court’s decision allowed for blood tests pursuant to a warrant, it is nonetheless bad policy to further sanction such tests under state law. Alcohol and drug-related public safety concerns are best addressed in the

<sup>1</sup> *Missouri v. McNeely*, 569 U.S. 141, 166, 133 S.Ct. 1552, 1569-70 (2013).

<sup>2</sup> *Kentucky v. King*, 563 U.S. 452, 460 (2011).

<sup>3</sup> *McNeely*, 133 S. Ct. at 1556.

<sup>4</sup> *Id.* at 1562-63.

<sup>5</sup> *Id.* at 1556.

<sup>6</sup> Md. Code Ann., Transportation, § 16-205.1.

<sup>7</sup> *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016).



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healthcare context, through substance use disorder treatment and education about the dangers of driving under the influence. We respectfully urge the committee to explore these avenues, instead of granting greater authority to law enforcement to engage in intrusive practices against Marylanders.

For these reasons, we urge an unfavorable report for HB 1529.