

OPINION

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The Trouble with Roadside Saliva Tests:

Proposals damage civil liberties

BY CHLOÉ WHITE

In the wake of marijuana legalization, many states are looking for new ways to keep impaired drivers off the road. Unfortunately, some proposals would lead to problematic and possibly unconstitutional police practices. One such idea is warrantless roadside saliva testing.

During a roadside saliva test, a police officer takes a saliva sample from a driver's mouth and inserts the sample into a machine that at least theoretically can detect whether any amount of certain controlled substances—legal



or illegal—is in the driver's system. Yuck factor aside, there are several problems with this.

First, at best, these tests merely detect the presence of drugs in a person's system. Unlike breathalyzers, they say nothing about actual impairment at the time of testing. As such, the use of saliva tests could result in the detention of someone who has any detectable amount of substance in their body—again, legal or illegal—even though this adds nothing to the determination of whether that person is an impaired driver.

Second, these tests pose serious due process and equal protection concerns.

Roadside stops are considered seizures under the Fourth Amendment, and many factors contribute to whether or not a given sei-

zure is legitimate. Because these warrantless tests will be positive for commonly prescribed medications, such as anti-depressants and pain management medicines, they will undoubtedly result in longer seizures and interrogations of drivers with disabilities who lawfully take the tested-for, doctor-prescribed medicines than those who do not.

This is the essence of disparate and unequal treatment—people with any presence of those particular drugs in their system are always going to be seized for a longer time, no matter their actual impairment. And from a racial justice standpoint, in a country where people of color are disproportionately stopped and searched by police, we can expect that they will also be subjected to this test more frequently than white drivers.

Saliva testing also raises substantial issues regarding personal dignity and privacy. A saliva test on the side of the road is much more invasive of privacy and bodily integrity than a breathalyzer test due to the physical removal of oral fluids and DNA. People's privacy should not be invaded by a warrantless test that has no relation to actual impairment and road safety.

Finally, and perhaps most importantly, according to the National Highway Traffic Safety Administration, it has not yet been clearly established that saliva test devices are even accurate or reliable. States should not be relying on or investing money in technology that has not been absolutely proven to be accurate, especially when they jeopardize some of our most fundamental liberties.

Early indications are that at

least some lawmakers are aware of the problems with roadside saliva testing. Senators in Vermont recently defeated a bill that would have allowed police to conduct these warrantless oral fluids tests. Other states, however, are beginning or are considering pilot programs of these tests on their roads and highways, including California, Michigan, Colorado, Kansas, and Illinois.

Improving road safety is an important goal, but these warrantless tests do nothing to advance that goal while creating multiple civil liberties concerns. Drivers should not have to sacrifice their constitutional and civil rights for a roadside saliva test that is invasive, ineffective, and unreliable. And let's face it, it's also pretty gross.

Chloé White is the policy director of the ACLU of Vermont.

Challenging Trump's Excesses in the Courtroom

Long Live the Litigators

BY MARTHA BURK

Shortly after Donald Trump was awarded the presidency by our perverted and antiquated electoral system, I got desperate calls from some normally non-political family members and friends. They wanted to know what they could do to counter the governing debacle they knew would come. Most asked where they could give money.



I had only one answer: "Give to the litigators."

While think tanks and policy shops are also a much-needed resource in a democracy, groups that directly challenge the government in court can sometimes stop the worst excesses — or at least slow them down until a regime change.

My list was short, but included groups active in areas I thought were most threatened. I recommended the ACLU, Planned Parenthood, the Human Rights Campaign, Earth Justice, the Mexican American Legal Defense Fund (MALDEF), and

the NAACP as some of the most likely to tackle the coming challenges not only to established law, but to common sense and decency.

Like most folks, I like to be right. But this time there was no joy when those challenges arrived like a barrage of incoming missiles from multiple directions.

The Trump administration's move to block funding to global groups that provide any sort of abortion counseling — often including contraception — came only three days after Trump's inauguration.

Dismantling regulations on other fronts was no less drastic.

In his first year alone, Trump overturned 33 environmental regulations ranging from decisions on the Keystone XL and Dakota Access pipelines to migratory bird protections, and 24 more were on the chopping block.

The Muslim travel ban, the ban on transgender individuals serving in the military, and ending DACA were just the most prominent of the dozens of other rollbacks that came almost daily and have never let up.

But I was also right on another front, and on that I can take heart. Litigators quickly stepped up to delay — and maybe eventually end — the abuses.

Human rights and immigration groups jumped in immediately when Trump issued his travel ban, even showing up at airports to aid stranded immigrants. They were successful in stopping the worst excesses and delaying a much watered-down partial ban for several months. Even as the partial ban took effect they pressed on, and if the Supreme Court ultimately overturns it, it will be thanks to them.

Environmental groups have so far stalled Trump's planned pipeline building, and predict their lawsuits will delay it until he is out of office, and possibly forever. Similarly, advocates for gender justice quickly filed suit when Trump announced the transgender ban, and they be-

lieve it will be overturned permanently in the next few months. And DACA defenders including MALDEF, the NAACP, and attorneys general from several states continue to block the Trump administration's attempt to kill the program.

The administration's latest attack on reproductive rights comes in the realm of federal support for family planning services and other preventive health care for low-income, under-insured, and uninsured individuals. New guidelines will support groups that advocate the risky "rhythm method" and the discredited "abstinence only" education over more conventional and effective contraception.

It's widely seen as another backdoor attempt to defund Planned Parenthood, a major provider of sex education and birth control nationwide. So Planned Parenthood and the ACLU have filed suit to stop implementation.

On balance, all of this is heartening progress given the considerable challenges of dealing with an unpredictable and malicious head of state. At least until voters engineer a regime change.

*Martha Burk is the director of the Corporate Accountability Project for the National Council of Women's Organizations (NCWO) and the author of the book *Your Voice, Your Vote*. Distributed by OtherWords.org.*

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