



### **Testimony in Opposition to LD 1815:**

**“An Act to Require a Blood Test for Drugs for Drivers Involved in a Motor Vehicle Accident That Results in Serious Bodily Injury or Death”**

Senator Beebe-Center, Representative Hasenfus, and the distinguished members of the Committee on Criminal Justice and Public Safety, my name is Harris Van Pate, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify in opposition to LD 1815, “An Act to Require a Blood Test for Drugs for Drivers Involved in a Motor Vehicle Accident That Results in Serious Bodily Injury or Death.”

While this bill aims to improve road safety by identifying drivers who may be under the influence of drugs following serious accidents, it does so by encroaching on the fundamental protections afforded by the Fourth Amendment to the United States Constitution. The Fourth Amendment guards against unreasonable searches and seizures and generally requires a warrant issued by a neutral magistrate before law enforcement may intrude upon an individual’s bodily autonomy.

### **A full explanation of the bill’s unconstitutionality**

In the 2013 Supreme Court case *Missouri v. McNeely*, the court ruled that warrantless blood tests must be reasonably limited, and never on a per se, non-case-by-case basis. Furthermore, in the 2016 case *Birchfield v. North Dakota*, the court confirmed 7-1 that “Because the impact of breath tests on privacy is slight, and the need for BAC testing is great, we conclude that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. Blood tests are a different matter.”

Most striking is the 2019 case *Mitchell v. Wisconsin*, where a four-justice plurality found that exigent circumstances must apply if police intend to pursue a blood test when other less invasive tests are available. In a one-person concurrence, Justice Thomas stated that a per se blood test rule is acceptable, but only if probable cause of drug use exists at the time of the search. The Supreme Court has repeatedly ruled probable cause applies to the search itself, cause, not the retroactive application of the search’s findings in a court of law. Thus, this bill’s attempt at a cop out of constitutional search requirements through a retroactive “the results don’t apply” policy would certainly fail constitutional muster.

Lastly, the three liberal justices who dissented in *Mitchell* held that even in the case of exigent circumstances, a warrant should always be needed for a blood test. Lastly, Justice Gorsuch would’ve dismissed the case due to his interpretation of the



circumstances where a blood test warrant isn't required as being incredibly narrow. Thus, in a 2019 case, eight of the court's nine justices held that blanket blood tests were wholly unconstitutional, and the sole justice who disagreed would only allow them when probable cause of intoxication existed at the time of the search. Thus, we can extrapolate that every justice on the court at that point would likely consider the bill before you as establishing an unconstitutional search procedure.

LD 1815 proposes mandatory blood testing for drivers involved in accidents where there is probable cause to believe serious bodily injury or death has occurred. This effectively compels individuals to undergo a highly invasive procedure—piercing the skin and extracting blood—without a warrant or consent, under the threat of license suspension and potential evidentiary consequences. Probable cause of injury is not probable cause of drug use, nor probable cause of a crime.

The Supreme Court has previously distinguished between breath and blood tests, emphasizing that blood draws are more invasive and thus subject to greater constitutional scrutiny. The Court has made it clear that blood tests generally require a warrant unless exigent circumstances apply—circumstances which are not guaranteed in every traffic accident, even tragic ones involving injury or death. Natural dissipation of THC or other substances from the bloodstream does not, on its own, constitute an exigent circumstance.

Furthermore, due to the fat solubility of drugs like THC, they last longer in the body than alcohol does.<sup>1 2</sup> Thus, the immediacy component of a blood search is actually less than in a potential case of non-alcoholic DUI, further weakening the argument that law enforcement does not have the time to obtain a warrant. Lastly, the fact that urine tests can detect THC for days after usage further proves that less invasive tests are available, and that a warrant is a fully accessible option for law enforcement.<sup>3</sup>

It's also worth noting that the sponsor of this bill sponsored similar legislation in the 129th Maine Legislature – LD 264, signed into law by Gov. Janet Mills on June 3, 2019 as P.L. 2019, Chapter 189. Maine Policy Institute testified against that bill for the same reasons as noted above, indicating a high likelihood that the bill as proposed would not pass constitutional muster. Just seven months later, Maine's high court struck down P.L. 2019, Chapter 189 as unconstitutional.<sup>4</sup>

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<https://onlineacademiccommunity.uvic.ca/carbc/2018/05/23/the-safety-benefits-of-thc-blood-testing-a-research-summary/>

<sup>2</sup> <https://www.verywellhealth.com/how-long-does-alcohol-stay-in-urine-8737723>

<sup>3</sup> <https://www.medicalnewstoday.com/articles/324315>

<sup>4</sup> <https://www.themainewire.com/2020/01/maines-high-court-strikes-down-warrantless-blood-tests/>



## **Conclusion**

LD 1815 creates a framework where refusal to submit to a blood draw leads to automatic license suspension and potential trial implications. This coercive structure undermines the constitutional right to refuse a warrantless search. It may also have unintended legal consequences, inviting litigation and burdening law enforcement and the judicial system with constitutional validity and civil liability questions.

Rather than creating a one-size-fits-all mandate, blood testing for substances should be conducted pursuant to a warrant issued on a case-by-case basis, where a judge has independently determined that probable cause exists. This approach maintains public safety without sacrificing Maine citizens' due process and constitutional rights.

Maine Policy strongly urges this Committee to reject LD 1815 and instead support policy solutions that uphold the rule of law and constitutional safeguards while addressing impaired driving through means that preserve judicial oversight and individual liberty. Thank you for your time and consideration.