

Senate Committee on Judiciary and Ballot Measure 110  
Implementation

Testimony in support of SB 1510

February 3, 2022

Chair Prozanski, Vice-Chair Thatcher, and Senators  
Dembrow, Gelsner Blouin, Heard, Linthicum, and Manning

Our names are Mariotta Gary-Smith and Dr. Angela Addae  
and we are the Chair and Vice-Chair of the Oregon  
Commission on Black Affairs, respectively. Today, we write  
jointly and on behalf of the Oregon Commission on Black  
Affairs in support of SB 1510.

1. The Commission on Black Affairs works toward economic, social, political, and legal equity for Black Oregonians. We do this through advocacy, public policy research, leadership development, and partnerships.
2. In our statutory role of bringing equity focus and community voice into Oregon policy making, the OCBA strongly supports SB 1510.

The Oregon Commission on Black Affairs supports SB 1510. Focusing on the provision requiring that individuals be informed of their right to consent, it does not impact all that can be done with a warrant, it does not impact all that can be done with probable cause, and it does not impact all that can or even should be done with reasonable suspicion. It also does not limit officers in their continuing ability to conduct pat down searches to ensure officer safety. It simply returns the consent doctrine to the premise that should be fundamental to

**Oregon Commission on  
Black Affairs**

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our understanding of fairness: a person has the right to give up rights, but that right only has meaning if the person giving it up knows that it exists.

To quote a prescient comment from Justice Thurgood Marshall in dissent of one of the Supreme Court's early consent doctrine cases, *Schneckloth v Bustamante*, "the capacity to choose necessarily depends upon knowledge that there is a choice to be made."

For those who have expressed concern that the change would result in the suppression of criminal evidence because peace officers will not comply with the law, I'd like to suggest two responses.

First, this would systematize a practice that has, on an ad hoc basis, helped to defend against motions to suppress. Many courts, including the 9<sup>th</sup> circuit in *US v. Cormier*, in 2000, and a litany of Oregon courts using the totality of circumstances test, have held that whether an officer informed a person of their right to refuse consent could serve as evidence regarding whether consent was voluntary. So this rule can, in fact, bolster the admissibility of evidence because with it, one of the factors to assess voluntariness is met as a matter of course.

Second, this is a public safety measure. Informing people about their rights is a public service, and to have police officers provide this information can really transform the dynamics of police/public interactions, along the same veins of community policing and other efforts to restore faith in our system.

We are considering the history, past and present, with policing and communities of color, particularly Black communities. The ability of people to make an informed decision when they have a full understanding of their rights is necessary to be able to ground relationships for better engagement between communities of color and police officers.

It is important to consider how situations can escalate, and a part of de-escalation is making sure people understand what the law says they can and cannot do; what they may engage in and to what they do not have to consent. This knowledge and communication are building




blocks for law enforcement to advance how they engage and protect Black and brown communities.

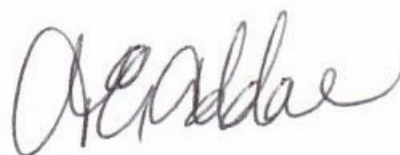
Looking beyond the proactive moves of the city of Portland, this approach has appeared elsewhere in reaction to expensive investigations, accusations, and litigation, including the California Highway Patrol in response to a major lawsuit, and the city of Durham, NC in response to a human relations commission revealing massive racial disparities in policing, and in select searches of people's homes in Washington state. Consider also the city of Fayetteville, NC, in a move that was subsequently hailed by a White House task force on policing in 2015.

We commend the Oregon legislature for considering the proactive approach, rather than waiting for the lawsuit, or letting cases by criminal defendants shape the rights that will affect so many members of the public, and we believe that dissent from a generation ago, from Justice Thurgood Marshall, can serve as the lighthouse to allow for a better and brighter path forward. For these reasons, the Oregon Commission on Black Affairs urges the committee to support SB 1510.

Sincerely,



Mariotta Gary-Smith  
Chair of the Oregon  
Commission on Black Affairs



Dr. Angela Addae, Esq.  
Vice-Chair of the Oregon  
Commission on Black Affairs

