

August 14, 2020

The Honorable Nancy Vaughn, Mayor
Members of the Greensboro City Council
City of Greensboro
P.O. Box 3136
Greensboro, NC 27402-3136

Dear Honorable Mayor Vaughn and members of Greensboro City Council,

I am writing you on behalf of several attorneys in Greensboro who have collectively represented thousands of clients who have been subjected to searches by law enforcement. We are thankful to all of you for considering a written consent policy, as we believe it will be good both for citizens and our police. We are familiar with some of the hesitations from council members and we would like to address a few of those concerns as well.

Written consent policies are good for citizens. If a search is based on probable cause, then consent is not required in the first place. The only people we are addressing with this policy, are people who have not given police any reason to think they are doing anything wrong. In a free society, these are people who should be able to go about their lives and not be detained for a lengthy and often dehumanizing roadside process. Many of these people have no idea that they are allowed to say “no.” It should be our goal to encourage citizens to exercise their right, if they wish, and what better way to establish trust in the community with law enforcement than to have police officers teaching these basic rights to citizens?

Written consent policies are good for law enforcement. If a search is unlawful, the evidence that is obtained may not be used in court. One type of unlawful search is when a defendant argues that they never actually gave consent, or they were coerced to do so. We spend countless hours and resources filing motions over this issue and litigating it in court. Some of these hearings would never happen if there is a document showing that someone freely and voluntarily gave consent to search.

Written consent policies do not “slow down” law enforcement. If there is no probable cause, it is actually the law enforcement officer that is extending the stop by asking for consent to search a vehicle. To the extent that going over a one-page form slows anything down, it is much quicker to go over someone’s rights than to spend hours of judicial resources litigating whether consent was actually given freely and voluntarily.

Written consent policies do not endanger law enforcement. The idea that police will be endangered if they have to go over a form is flatly untrue. Before police ever even get to written consent form, they can order people out of a vehicle, detain them, and even frisk them for weapons if they have a reason to believe they are armed and dangerous. The idea that holding a form will leave officers defenseless ignores the fact that officers write citations to people every single day.

Written consent policies will make it easier to identify any officers that falsely manufacture probable cause. There is a criticism that more people refusing to consent will lead to more probable cause searches. This is true, in part, because many officers that have probable cause still ask for

consent. As it stands now, many cases where an officer might have manufactured probable cause just don't get litigated because someone consented anyway, and the issue becomes moot. If an officer tries to search and doesn't have probable cause, that issue will get addressed in court much more easily.

Written consent policies won't fix systemic racism, but it will help. Greensboro has an undeniable racial disparity among who gets stopped by police and an even greater disparity among who gets searched. In 2019 alone, according to the Greensboro Police Department's own data as reported to the North Carolina Department of Justice, Black people were almost twice as likely to be stopped by police than white people and five times more likely to be searched. This is due, in part, to bias that affects discretionary decisions such as what communities we choose to police, who to pull over, and who to search. These commonly used strategies aren't even particularly effective, considering that most data shows that drug use rates are roughly similar across racial lines despite an overwhelmingly disproportionate number of Black people who get charged with possession crimes.

We urge the honorable members of this Council to consider adopting this modest policy proposal. This policy would require officers to verbally inform citizens of their right to refuse a consent search and their right to withdraw consent at any time. Officers would then provide a form, available in various languages, for citizens to sign indicating that they understand these rights and are choosing to waive them. We have provided sample language for such a form for you to use after the electronic signature section of this letter.

Thank you all again for considering this issue. Please feel free to contact me if you have any questions or would like me to follow up on any of the information in this letter.

Sincerely,

A. Brennan Aberle

This letter is joined by the following attorneys who practice in Greensboro:

Andrew Clifford	Aaron Wellman	Whitten Stone
Preston Edwards	Johnna Herron	Rami Madan
Erin Adler	Lauren Gebhard	Alex Snow
James Doermann	Rodrigo Pocasangre	Gabriel Kussin
Julie Wall	Morgan Bennett	Amy Williams
Wayne Baucino	Peter Zellmer	Ed Galloway
Katie Sanders	Ben Klein	Christon Halkiotis

Sharon E Dunmore

Abigail Seymour

Tomakio Gause

Phillip Carey

Spencer Holland

Graham Holt

Jason Keith

Francis Kevin Gorham

Adam Soltys

Bob Stitcher

Anika Bailey

Rodrick Rouse

Daniel Harris

Patrick Apple

Steve Schlosser

Molly Hilburn-Holte

ShaKeta Berrie

Elliot Clark-Farnell

Joseph Floyd

Richard Wells

Roger Rizo

Greensboro Police Department

100 E. Police Plaza
Greensboro, NC 27402

Consent to Search Form

I, _____ have been informed of my right to refuse to consent to this search. I also understand that I have the right to limit or restrict the areas to be searched. Additionally, I understand that I may withdraw consent at any time.

Check only one box

Refused to consent.

I freely and voluntarily give consent to search the following:

(initial for each category that you are granting consent)

My Person _____

My Vehicle _____

Electronic Device _____

Other _____ Describe Property: _____

Name

Date/Time

Signature

Date of Birth

DEPARTMENTAL DATA