

Report to the Eastern District Court of Virginia

Introduction to Report:

Using newspaper accounts, court cases, archival collections, and peer-reviewed articles and monographs, this report makes the historical finding that in Richmond, Virginia, racial segregation has been systemically implemented to the detriment of black residents through public policy at the federal, state, and local levels. Byproducts of this are the separation of black and white people into distinct legal castes; unequal treatment under law inflicted upon black people; residential segregation of whites and blacks; endurance of systemic poverty among blacks; and historical animus between black residents and local law enforcement (Richmond Police Department—RPD). This report has been completed at the request of Judge John A. Gibney, Senior United States District Judge presiding over the *United States v. Keith Rodney Moore* case.

Racial Segregation and Public Policy, 1865-Present:

Founded in 1737 by businessman and slave owner William Byrd II, the City of Richmond was a commercial outpost for the Virginia Colony's black slave market. Between the 1660s and 1737, the Virginia Colony, then governed by the House of Burgesses, passed a series of laws defining black people as a slave race—a people who were to have no rights or privileges beyond the whims of their owners. Slavery was a life sentence of forced servitude for black Virginians. The only exception to this rule were free blacks who were privately manumitted by their owners. The Virginia Colony banned slaves from owning personal property, engaging in commerce, and congregating without the supervision of whites. No such laws were inflicted upon white people as a race, poor, rich, or in-between.¹ The American Revolution (1775-1783) compelled the House of Burgesses to make Richmond Virginia's capital in 1781. While the Revolution liberated the North American colonies from British tyranny, the segregation of white and black people into distinct racial castes under law still existed in Richmond, Virginia, and most of the nation.

The New Republic (1783-1820) and Antebellum (1820-1865) years begot the expansion of racial segregation in Richmond. During these periods, racial segregation expanded beyond the legal racialization of peoples into distinct castes (free—white and unfree—black) and breached the realm of residence. As the city's black population (slave and free) grew to almost equal the white population, the Virginia Legislature—formerly House of Burgesses—instituted newer laws by 1806 requiring free blacks to either leave the Commonwealth within 6 months of their manumission, or be subject to rules (mainly white guardianship) where the ultimate punishment was re-enslavement.² By 1859, the

¹ William Waller Hening, ed., *The Statutes at large; Being a Collection of All the Laws of Virginia*, (Richmond, VA, 1810), 1-281; A. Leon Higginbotham, Jr., "Virginia Led the Way in Legal Oppression," *Washington Post*, May 21, 1978,

<https://www.washingtonpost.com/archive/opinions/1978/05/21/virginia-led-the-way-in-legal-oppression/664bcd4f-8aaf-475f-8ea7-eb597aee7ecd/>; and Marie Tyler-McGraw, *At The Falls: Richmond, Virginia, and Its People*, (Chapel Hill: University of North Carolina Press, 1994), 38.

² Midori Takagi, *Rearing Wolves to Our Own Destruction: Slavery in Richmond, Virginia, 1782-1865*, (Charlottesville, VA: University of Virginia Press, 1999), 19-21; Benjamin Campbell, *Richmond's Unhealed History*, (Richmond, VA: Brandywine Publishers, Inc., 2012), 101; Tyler-McGraw, *At The Fall*, 64 and 108; and Gregg D. Kimball, *American City, Southern Place: A Cultural History of Antebellum Richmond*, (Athens, GA: University of Georgia Press, 2000), 129.

Richmond City Council passed its own “Ordinance Concerning Negroes,” barring free and enslaved blacks from consorting with one another without ‘proper’ white supervision.³ These new restrictions even impacted white non-slave owners. They were sometimes brought up on insurrection charges for consorting with slaves without the permission of their master, and for dealing with free blacks outside the purview of their legal white guardians.⁴ Culture was downstream of law. Working-and-middle-class whites residentially segregated themselves from blacks by clustering in Union Hill and Fulton Hill in the East End, Oregon Hill in the Near West End, and Navy Hill just north of downtown. These whites used not-so-subtle tactics to keep upwardly mobile free blacks from moving near them, thus blacks congregated in the decrepit northern city limits of Jackson Ward and the backwater Shockoe Creek area of downtown.⁵ By 1865, the legal division of people into racial castes evolved into a newer custom of racial segregation by residence.⁶

Between 1865 and 1930, white Richmond leadership (public and private) worked diligently to maintain residential segregation by race through newer laws that circumvented the legal changes brought about by Congressional Reconstruction (1865-1877). The Confederate defeat on April 9, 1865; Richmond’s subsequent territorial expansion between 1867-1914; and the city not having any laws prohibiting blacks and whites from living near one another generated white desires to maintain existing residential segregated housing patterns through law, and not just custom.⁷ Blacks who tried to relocate beyond their enclaves and oppose segregated mass transit to racially identifiable areas of town between 1865 and 1900 faced resistance from white residents. This white resistance compelled the city council and Virginia Legislature to legally segregate city transportation in 1906 and housing in 1911 and 1929.⁸

Residential and transportation segregation worked in tandem to help maintain the “racial integrity” of Richmond’s black and white areas. When the Virginia Legislature considered forcibly segregating mass transit as early as 1901, the Virginia Passenger and Power Company (VPPC)—Richmond’s streetcar provider since 1888—resisted, arguing that such laws would require the purchase of newer streetcars and laying of newer rail lines that served both races on separate sides of town. But that was the point. The Virginia Legislature’s insistence on segregating transit services was a response to pressure from aspiring New South race-baiting white politicians, such as Richmond’s John E. Epps, who entered electoral politics on the promise to help make Richmond a fully segregated city. VPPC segregated its services in 1904, and the state required it of all urban areas two years later. Segregated transit helped solidify segregated housing, as white streetcars served the

³ Tyler-McGraw, *At The Falls*, 131.

⁴ Takagi, *Rearing Wolves to Our Own Destruction*, 67.

⁵ Tyler-McGraw, *At The Falls*, 114-5.

⁶ Takagi, *Rearing Wolves to Our Own Destruction*, 38-9 and 96.

⁷ Campbell, *Richmond’s Unhealed History*, 142 and 167; and Christopher Silver, *Twentieth-Century Richmond: Planning, Politics, and Race*, (Knoxville, TN: University of Tennessee Press, 1984), 28.

⁸ Marvin Chiles, “Down Where the South Begins: Black Richmond Activism before the Modern Civil Rights Movement, 1899-1930,” *Journal of African American History*, Vol. 105, No.1, (Winter 2020): 66-82; T. B. Benson, “Segregation Ordinances,” *Virginia Law Register*, New Series, Vol. 1, No. 5 (September 1915): 330-56; “Municipal Segregation Ordinances,” *Virginia Law Review*, Vol. 3, No. 4 (January 1916): 304-9; and Benjamin Campbell, *Richmond’s Unhealed History*, 143.

burgeoning white suburban frontier in the West End and Northside, while black streetcars served black neighborhoods around the downtown area.⁹

Legal activism made Richmond's residential segregation code legally untenable. Black Richmond attorney Joseph Roland Pollard, white attorney Alfred E. Cohen, along with funding from *Richmond Planet* Editor John Mitchell, Jr.,¹⁰ and the National Association for the Advancement of Colored People in New York fueled two separate legal attacks against Richmond's segregated housing ordinance—*Hopkins v. Richmond* (1915) and *Deans v. Richmond* (1929). The latter resulted in local and federal court victories that ended Richmond's segregated housing ordinance after city officials insisted on keeping it after losing in the circuit courts in winter 1929.¹¹ This decision, along with cases throughout the nation—*Buchanan v. Warley* (1917), *Harmon v. Tyler* (1927), *Hurd v. Dodge* (1948), and *Shelley v. Kraemer* (1948)—combined to make residential segregation (via private restrictive covenants or government legislation) a violation of the Fourteenth Amendment, which protects individuals' rights to use their property (through use and sale) as they see fit. This did not, however, end racially segregated housing in Richmond or anywhere else for that matter.¹²

Richmond's real estate community (realtors and mortgage lenders) along with policymakers colluded to maintain racially segregated housing between the Great Depression (1929-1938) and post-World War II era (1945-1970). They did this by enacting what scholar Christopher Silver later detailed as the "Greater Richmond" form of city planning. Relying on the public-private partnership of industry and city government, the plan involved local white elites controlling Richmond real estate through creating and buttressing racially identifiable, class-defined enclaves throughout the city using federal public housing funds for the black poor and private enterprise for middle- and upper-class black housing.¹³ The intended result was to remove blacks in aggregate from the central city to make room for industry and upper-class white residency, as annexations between 1914-1942 shifted black neighborhoods, once located along Richmond's periphery, to the city's core.

This began in 1933, when the Richmond Chamber of Commerce, with support from the Richmond Real Estate Exchange, secured federal funds to begin building segregated public housing for blacks outside of the city's core.¹⁴ This, along with the subsequent creation of a local housing authority in 1939, led to the construction of the all-black Gilpin Court in 1941, Hillside Court in 1952, Whitcomb and Fairfield Courts in 1958, and Mosby Court in 1962.¹⁵ Adjacent to these developments were slumlords (representing the private

⁹ August Meier and Elliott Rudwick, "Negro Boycotts of Segregated Streetcars in Virginia, 1904-1907," *Virginia Magazine of History and Biography*, Vol. 81, No. 4 (Oct., 1973), 479-487; Blair L.M. Kelley, *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson*, (Chapel Hill: University of North Carolina Press, 2010), 117-64;

¹⁰ The *Richmond Planet* was a black owned newspaper.

¹¹ Chiles, "Down Where the South Begins," 73-5; *Hopkins v. City of Richmond* 86 S. E. (1915) 139; and *City of Richmond v. Deans*, 37 F.2d 712 (4th Cir. 1930).

¹² *Buchanan v. Warley*, 245 US 60 38 S. Ct. 16 L. Ed (1917) 70-82; *Harmon v. Tyler*, 273 US 668, 47 S. Ct. 471, 71 L. Ed (1927), 831; "Unconstitutionality of Segregation Ordinances," *Yale Law Journal*, Vol. 27, No. 3. (January 1918): 393-7; *Hurd v. Dodge*, 334 U.S. 24, 68 S. Ct. 847; 92 L. Ed. 2d 1187, (1948); and Joe T. Darden, "Black Residential Segregation Since the 1948 *Shelley v. Kraemer* Decision," *Journal of Black Studies*, Vol. 25, No. 6, (July 1995): 680-91.

¹³ Silver, *Twentieth-Century Richmond*, 57-156.

¹⁴ Silver, *Twentieth-Century Richmond*, 131-41.

¹⁵ Silver, *Twentieth-Century Richmond*, 149-54.

sector) who helped pack poor blacks who did not qualify for public housing into specific areas in the East End, Northside, and Southside. These areas remained majority black and poor until the gentrification movement in the 2010s.

Working and middle-class blacks were not spared from the Greater Richmond plan. In fact, the plan evolved because of them.

By 1945, white city leaders (private and public) subscribed to famed urban planner Harland Bartholomew's 1946 "Master Plan," which instructed city leaders across the nation to preserve the centrality of their inner cities through zoning policies.¹⁶ A part of this "zoning" was designating where socially-mobile blacks could live. Aiding this was the creation of the Home Owners' Loan Corporation by the President Franklin D. Roosevelt administration in 1933. They classified urban neighborhoods across the country from best (A) to worst (D). Under this system, lending institutions could refuse mortgage loans to D areas. "Richmond's [D] areas were exclusively black; none housed whites." Furthermore, "neighborhoods were grade D simply because they were black," said Christopher Silver.¹⁷ This policy was furthered by Title I and II of the Federal Housing Act of 1934, which blocked federal mortgage insurance for homes located in 'slum' regions. These 1930's housing policies incentivized local real estate barons to refuse black Richmonders mortgages and dissuade whites from living in neighborhoods near blacks, even as the city continued expanding through annexation in the 1940s.¹⁸ In the 1950s, city leaders expanded their Greater Richmond plans further with the Main-to-the-James Development Strategy. Using federal highway funds issued through the President Dwight D. Eisenhower administration, later renewed through the President John F. Kennedy administration, city leaders cleared "slum" neighborhoods—in Richmond, code for black—through eminent domain for newer interstates, expressways, and highways to the expanding, ultra-white and affluent suburbs in Chesterfield and Henrico Counties.¹⁹ This plan dislocated homeownership blacks from Idlewood and Carver in the Near West End and Fulton Hill in the East End.²⁰

Helping to effectuate this plan was the local real estate community, who racially steered upwardly mobile blacks to the Northside and Southside, and then white Richmonders to the Chesterfield and Henrico suburbs. Long deemed by scholars as "blockbusting," white realtors convinced many middle-class white Northsiders to relocate to the crabgrass frontier. To speed up the process, they worked with black realtors to gin up interest in black home ownership in the Northside between the 1940s and 1970s. Some

¹⁶ Silver, *Twentieth-Century Richmond*, 160-4.

¹⁷ Silver, *Twentieth-Century Richmond*, 143.

¹⁸ Campbell, *Richmond's Unhealed History*, 143-44; Silver, *Twentieth-Century Richmond*, 28; Tyler-McGraw, *At The Falls*, 113

¹⁹ Ed Grimsley, "Downtown Virginia," 23-9, *The Commonwealth Magazine, The Magazine of Virginia*, Virginia Chamber of Commerce, Vol. XXXIV, No.5, May, 1967, James C. Wheat Papers, Virginia Museum of History and Culture, Richmond, Virginia; Richmond District," *The Virginia Road Builder*, April 26, 1965; Robert L. Horn, Executive Director to the Richmond Regional Planning Commission to the Richmond City Council, June 1, 1965, Folder 11, Mss1 W5603 b FA2, James C. Wheat Papers. and "Continuous Transportation Planning process Richmond Regional Area," Mss1 W5603b FA2, Series 1 Expressways (1 of 2), James C. Wheat Papers.

²⁰ Silver, *Twentieth-Century Richmond*, 213-30 and 317; "Idlewood Ave. Residents Urged To Pack City Hall" and "Marsh Leads Drive To Save Homes," *Richmond Afro-American*, November 19, 1966, 1, 2, and 18; "Marsh Questions \$\$ Angle," *Richmond Afro-American*, November 26, 1-2; "Idlewood Express Route is Again Criticized by Marsh," *Richmond Times-Dispatch*, November 28, 1966, 1-2; and "Mundle's Popularity Continues to Drop," *Richmond Afro-American*, December 31, 1966, 1-2.

examples involved white realtors allegedly paying black couples, or sometimes just two young well-kempt black people (male and female), to walk around in white neighborhoods to scare whites into moving. Another tactic was strategically placing ads for homes they wanted to sell to whites in white newspapers, and placing ads they wanted to sell to blacks in black newspapers. Black realtors were privy to this activity. In many cases, they helped white realtors for a slight fee. This practice was so rampant that black realtor Milton Randolph claimed in 1968 that it was undeniable that, “The Establishment [white Richmond leaders] has created controlled areas into which the Negroes are allowed to move.”²¹

Racial segregation came to define the entire Richmond region by the late 1970s. Richmond’s white political leadership wanted to maintain their white majority in lieu of suburban flight between the 1950s and early 1970s. Thus, the city council annexed 23 square miles, with around 45,000 white residents, from Chesterfield County on January 1, 1970. This annexation resulted from nearly two decades of failed merger attempts by Richmond to combine with Chesterfield and Henrico. In December 1970, Judge Robert Merhige enjoined the three localities into a lawsuit facing Richmond’s (*Bradley v. Richmond*, 1970) refusal to integrate its public schools. Judge Merhige later ordered the three localities to form one unitary or combine public school district in 1971. Richmond white leaders desired this outcome because the courts could do for them what they could not do for themselves: merge with their ultra-white suburban neighbors through a taxpayer-funded government service. However, the Fourth Circuit Court of Appeals overturned the decision in June 1972 based on the famous Dillon Rule. Under this precedent established by John F. Dillon of Iowa in 1868, and adopted in Virginia as early as 1896, the Dillon Rule contends that local governments have only as much power as their state grants them, as they are subsidiaries of their state legislatures. Under this logic, neither Richmond nor the federal courts could force Richmond’s suburban neighbors into interjurisdictional cooperation with Richmond; that power rested with the state. The subsequent U.S. Supreme Court’s 4-4 tie, with Justice Lewis F. Powell abstaining, temporarily ended white Richmond leaders’ hopes of a majority white and suburban metropolitan Richmond. Cementing this was the Virginia Legislature’s perpetual moratorium on annexations, which is still in effect today. By the late 1970s, the Richmond areas was solidly segregated by residence.²² With the Chesterfield and Henrico suburbs being protected from future mergers and annexations, real estate values rose, and Richmond’s white real estate community helped white families relocate. Residentially, Richmond’s inner city was identifiably black, working to middle class, while the suburban counties were identifiably white and middle to working class.

A combination of federal law and local activism helped curb systemic residential segregation between the 1960s and 1980s. Congress passed the Fair Housing Act of 1968 (FHA), Home Mortgage Disclosure Act of 1975 (HMDA), and Community Reinvestment

²¹ Dr. James A. Sartain meeting with Milton Randolph, undated, Mss1S4772a, James A. Sartain Papers, Virginia Museum of History and Culture, Richmond, Virginia; and “Scare Tactics Cited In Area House Sales,” *Richmond News Leader*, November 23, 1968, 9.

²² Progress Report on Planning the Consolidation of the Richmond, Chesterfield, and Henrico School Divisions, April 7, 1972, Consolidation, 1961- 1972; “Reversal of the Richmond Busing Decision,” Education Summary, June 23, 1972, 1-3, Busing 1970-1972; *Bradley v. Richmond* School Board, 834-75; CEPS Newsletter, January 1972, Box 2; “Reversal of the Richmond Busing Decision,” Education Summary, June 23, 1972, Box 1, M283, Virginia Alden Crockford Papers, Virginia Commonwealth University, Richmond, Virginia.

Act of 1977 (CRA).²³ Combined, these laws prohibited the use of race to determine the financing, insuring, renting, purchase and sale of any dwelling by both private and public agencies (via FHA); outlawed racial zoning (otherwise known as redlining) by requiring federally-insured mortgage lenders—those covered under Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation—to keep and make public record of every mortgage they approved (via HMDA); and required banking regulators to encourage real estate communities to invest mortgage and business loans in moderate and low-income urban areas (via CRA). Atop this triangle was the Federal Reserve System which provided the necessary forms for record, and should it be necessary, levied fines to ensure compliance.²⁴ Most importantly, any mortgage lender found in violation of the FHA, HMDA, and CRA were subject to fines, having their charters revoked, and being blocked from mergers with other compliant financial institutions.²⁵

Between 1978 and 1981, a grassroots organization named the Richmond Urban Institute (RUI) petitioned Congress to block the merger of Norfolk-based Virginia National Bank and First and Merchants Bank from Richmond, claiming that they flagrantly violated the FHA, HMDA, and CRA. Richmond's Federal Reserve Board heard RUI's evidence that showed that while Richmond was "about evenly divided between white and black," more than-80% of mortgage activity was in the majority white Far and Near West End and surrounding Chesterfield and Henrico suburbs. Nearly 3/4^{ths} of Richmonders (all black) lived in areas with no mortgage activity at all. Majority black areas in the East End, Southside, and Northside had virtually no mortgage activity at all. Representatives from Richmond's Board of Realtors claimed that lenders merely met the market demands of the white middle and upper classes.²⁶ Yet the evidence was clear that,

²³ Nicholas Dragen Bloom, *Suburban Alchemy: 1960s New Towns and The Transformation of the American Dream*, (Columbus, OH: Ohio State University Press, 2001); Anny Forsyth, *Reforming Suburbia: The Planned Communities of Irvine, Columbia and the Woodlands*, (Berkley, CA: University of California Press, 2005); Ocean Howell, "The Merchant Crusaders: Eichler Homes and Fair Housing," *Pacific Historical Review*, Vol.85, No.3, (August 2016): 379-407; and "Proxmire Bill Would Require Lenders To Open Their Books on Mortgages: And Reveal Where Loans Are Made," *Washington Post*, April 26, 1975, E14.

²⁴ Proposed Neighborhood Assistance Act of 1979, Summary, Neighborhood Assistance Act, Box 26, M258, Richmond Urban Institute Papers; "Fed Issues Lender 'Redlining' Rules," *Washington Post*, June 2, 1976, E2; and Patricia A. McCoy, "The Home Mortgage Disclosure Act: A Synopsis and Recent Legislative History," *Journal of Real Estate Research*, Vol. 29, No. 4 (2007), 381-98.

²⁵ "To Stop Redlining," *New York Times*, June 14, 1976, 30; "Some Banks Accused of Ignoring U.S. Law on Mortgage Disclosure," *New York Times*, October 9, 1976, 22; "Mortgage Lenders Apply to Avoid Revealing Information on Redlining," *New York Times*, September 27, 1976, 19; "Urban Parley Acts To Halt Redlining and Blockbusting," *New York Times*, April 21, 1975, 23; "Redlining' by Lenders Is Called Cause of Old Communities' Decay," *New York Times*, May 26, 1975, 20; "Some Banks Accused of Ignoring U.S. Law on Mortgage Disclosure," *New York Times*, October 9, 1976, 22; "Washington & Business: Redlining Fight," *New York Times*, October 21, 1976, 67; "Mixed Results Seen for Loan Disclosures," *Washington Post*, March 5, 1977; and 'Redlining'--Byrne vs. Banks: 'Redlining,' *New York Times*, January 28, 1978, NJ1; Rebecca F. Guy, Louis G. Pol and Randy E. Ryker, "Discrimination in Mortgage Lending: The Home Mortgage Disclosure Act," *Population Research and Policy Review* Vol. 1, No. 3, (October 1982): 283-96; "Redlining Data Is Criticized," *Atlanta Constitution*, June 18, 1976, 13D; and "S&Ls Change Lending Pattern Mortgage Lenders Putting More Cash in Once 'Redlined' Area of D.C.," *Washington Post*, October 3, 1976, 1.

²⁶ Missioner's Report, August 24, 1981, Co-Missioner, Benjamin Campbell Reports, 1980-1982, Box 3, M258, Richmond Urban Institute Papers; Racial Steering by Real Estate Sales Agents in Metropolitan Richmond, Virginia, A Research Project Conducted by HOME of Richmond, Virginia, March 1980,

as RUI's comprehensive study found: "metropolitan Richmond contains two separate, distinct, and unequal sales housing markets—one for whites and another for blacks."²⁷ RUI's weaponization of federal law effectively ended racial steering by Richmond's real estate community by the mid-1980s.²⁸

Still, the vestiges of Richmond's history with racial segregation remains etched into the city's landscape and culture. While upwardly-mobile blacks can and have taken advantage of federal law and grassroots activism to live wherever their money can afford them, the majority of working-class and underclass blacks remain in racially homogenous enclaves in Richmond. A major reason is the skills mismatch which separates them from the growing biotech, medical, administrative, education, and managerial labor force that now dominates Richmond's middle class in ways that industrial manufacturing did decades ago. This skills mismatch is a product of segregated housing in the past. While the black middle class fled the city, beginning in the 1980s, working-and-underclass blacks remained trapped in Richmond's underperforming school district.²⁹ Furthermore,

Housing Opportunities Made Equal, 1979-1980, Box 20, M258, Richmond Urban Institute Papers; Benjamin Campbell Testimony Before Representatives of the Federal Reserve Board, December 5, 1981, Federal Reserve Board, Housing Issue, 1981-1982, Box 12, M258, Richmond Urban Institute Papers.

²⁷ Racial Steering by Real Estate Sales Agents in Metropolitan Richmond, Virginia, A Research project Conducted by HOME of Richmond, Virginia, March 1980, Housing Opportunities Made Equal, 1979-1980, Box 20, M258, Richmond Urban Institute Papers; Home's Marketing Program To Let Consumers Choose, December 1979, Housing Opportunities Made Equal, 1979-1980, Box 20, M258, Richmond Urban Institute Papers; Racial Steering by Real Estate Sales Agents in Metropolitan Richmond, Virginia, A Research project Conducted by HOME of Richmond, Virginia, March 1980, Housing Opportunities Made Equal, 1979-1980, Box 20, M258, Richmond Urban Institute Papers; Investment Patterns in Richmond, 1979, Published May 9, 1981, Home Mortgage Patterns in Richmond, 1979, Box 19, M258, Richmond Urban Institute Papers; Community Reinvestment Agreement, October 1, 1983, Community Reinvestment Act, Box 19, M258, Richmond Urban Institute Papers; "Lenders Discover Advantages and New Market with Community Reinvestment Act," *Journal of Housing*, March 1980; "Community Groups and CRA: Case Studies of Action Strategies," *Neighborhood Revitalization Project*, Vol. 1, No.1, July 1980, Community Reinvestment Act, Box 19, M258, Richmond Urban Institute Papers; and Community Reinvestment Act Statement of Community Services: Central Fidelity Bank, August 1, 1985, Community Reinvestment Act, Box 19, M258, Richmond Urban Institute Papers.

²⁸ "Average Income Necessary to Purchase an Average House in Richmond," undated chart made by RUI, Federal Reserve Board, Housing Issue, 1981-1982, Box 12, M258, Richmond Urban Institute Papers; Community Reinvestment Agreement, October 1, 1983, Community Reinvestment Act, Box 19, M258, Richmond Urban Institute Papers; Community Reinvestment Act Statement of Community Services: Central Fidelity Bank, August 1, 1985, Community Reinvestment Act, Box 19, M258, Richmond Urban Institute Papers.

²⁹ Julian Maxwell Hayter, "City Profile of Richmond, Virginia," *Thriving Cities*, University of Virginia Institute for Advanced Studies in Culture, 2015, <https://static1.squarespace.com/static/5a0f45fad74cff16c9f6e45e/t/5b4fab87f950b72639899c00/1531947915667/City-Profile-Richmond.pdf>; "Richmond, Virginia, Social Enterprise Feasibility Enterprise Analysis: Reducing Poverty and Building Community Wealth Through Social Enterprise," Final Report Submitted to the City of Richmond, June 2016, https://www.rva.gov/sites/default/files/2019-10/SocialEnterprise_6-16.pdf; John V. Moeser, Nina Mauney, Evelyn Jeong, and Emily Routman, "Unpacking the Census: 2017 Updates--Master Copy," Poverty in Metropolitan Richmond, Bonner Center for Civic Engagement, 2019, <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1038&context=poverty>; Marvin T. Chiles, "Tough on Conduct: Punitive Leadership in Urban Public Schools, A Case Study of Angry Principal Dr. Roy A. West, 1986-1991," *Spectrum: A Journal on Black Men*, Fall 2020, Vol.8, No.1, 55-85; Genevieve Siegel-Hawley, Kendra Taylor, Kimberly Bridges, Erica Frankenberg, Andrene Castro, Shenita Williams & Sarah Haden, "School Segregation by Boundary Line in Virginia: Scope, Significance and State Policy Solutions," Center for Education and Civil Rights, November 2020, 7-10,

as Richmond continues to grow more multicultural and economically prosperous in the 21st century, racially segregated housing and its corollary effects remains an issue.

Issues with Black Residents and Richmond Police, 1865-Present:

The Richmond Police Department (RPD) developed throughout the centuries to surveil and incarcerate black residents at the behest of white residents. Richmond police were not born in opposition to its black residents, rather the burdens of history pitted the two against one another.³⁰

“Profoundly,” said RPD historian Louis Cei in 1975, nothing “influenced the [Richmond Police] force’s attitude and development” more than “the presence of the Negro.”³¹ That was not always so, as policing in Richmond began in the 1730s with Virginia’s Colonial governors forcing white property holders to serve as night watch against Indian raiders and poor white thieves. In 1782, after the American Revolution, Richmond received both official city governance and a paid police force manned by white war veterans. The increased black (slave and free) population in Richmond compelled white residents to anoint RPD as the enforcement arm of white supremacy. After the failed Gabriel’s Rebellion in 1800 and Nat Turner Rebellion in 1831, the Richmond city council, with help from the Virginia militia, expanded RPD from a skeleton night force to a tax-funded department who patrolled 24 hours a day.³² Between 1800 and 1865, white residents only supported RPD funding and salary increases during panics over runaway slaves and black rebellions. Thus, blacks were the most harassed and arrested people by RPD between 1782 and 1865, most of which happened in black communities.³³ This time period is important because while RPD was not born as a racist institution per se, circumstances shaped them into an anti-black body with a strong anti-black identity. RPD officers were compelled to enforce a dual legal code, one for whites and another for blacks. Furthermore, the days of slavery revealed a crucial fact about RPD. That was, as Cei once claimed: “No matter how important crime control appeared, the true mission of the force revolved around suppressing the city’s Negro population.”³⁴

The end of slavery only worsened the relationship between black Richmonders and RPD. With Confederate General Robert E. Lee’s surrender in April 1865, white Richmonders (mainly the local white media) compelled RPD to control the new bumper crop of freed people through the passage and enforcement of vagrancy laws.³⁵ This, along

https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1013&context=edlp_pubs; and “Va. Education Disparities - Report: Virginia's High-Poverty Schools Don't Have Same Opportunities For Students,” *Richmond Times-Dispatch*, October 31, 2017 2B.

³⁰ This report was done without primary source material from the Richmond Police Department. I have tried to secure information from them in the past, as recent as 2018, however I was told that they do not have archival material or collections that are available for research purposes.

³¹ Louis Bernard Cei, “Law Enforcement in Richmond: A History of Police-Community Relations,” 1737-1974, (PhD diss., Florida State University, 1975), 7.

³² Tyler-McGraw, *At The Falls*, 64 and 80.

³³ Tyler-McGraw, *At The Falls*, 131.

³⁴ Cei, “Law Enforcement in Richmond,” 2-43. Quote on p.43.

³⁵ *Richmond City Hustings Court Minute Book* 27, 127, (*Library of Virginia*, Richmond Virginia); Testimony of Albert Brooks, Alexander Davis, Stephen Jones, Wellington Booker, William Ferguson, and Bernard H. Roberts, Statements Relating to Abuses of Freedmen in Richmond,” Records of the Assistant Commissioner for the State of Virginia Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1869, M1048, roll 59, (*Library of Virginia*); and Testimony of Robert W. Johnson, Richard Cooper, and

with later laws stripping blacks of their Fifteenth Amendment voting rights for felony and petty larceny convictions, resulted in blacks being disproportionately arrested, publicly whipped (ended in 1881), and killed by RPD between 1865 and 1900. RPD was even accused of voter suppression, as they reportedly assaulted black men who wanted to vote in contested city elections in the 1890s.³⁶ Progressive Era (1890-1929) reforms on police malfeasance, as well as civilian crimes of drug distribution, alcohol consumption, and prostitution only strengthened RPD's Negrophobia, as black neighborhoods were primary targets for RPD enforcement. In fact, when RPD increased their focus on white crime, the white Richmond public openly called to defund them as retaliation.³⁷

White desires for RPD to focus primarily on black people is best seen in the controversy over hiring a black police officer. In 1936, a cadre of respected black Richmond ministers called for then Mayor J. Fulmer Bright to hire black officers and assign them to black neighborhoods to ease animosity between RPD and black Richmonders.³⁸ "As long as I am Mayor of Richmond," Bright told the local media in response to the request, "there will be no Negroes on the police force."³⁹ He reasoned that whites would not support the hiring of black police because it was antithetical to everything they believed about policing in Richmond. To them, whites committed crimes, but blacks were criminals. This was the baseline understanding behind the popular support RPD received in the mid-20th century.

The post-World War II era bred more resentment between blacks and RPD. While this era saw the hiring of the city's first black policemen in 1946, RPD remained at odds with black residents, particularly in their enforcement of segregation law in opposition to protests (sit-ins) commonly attributed to the Modern Civil Rights Movement (1954-1968).⁴⁰

Madison Carter, Statements Relating to Abuses of Freedmen in Richmond, Records of the Assistant Commissioner for the State of Virginia Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1869, M1048, roll 59, (*Library of Virginia*).

³⁶ "Jackson Ward Wholesale Robbery-Republicans Counted Out, Contest to Be Made," *Richmond Planet*, June 6, 1896, 1; "The Jackson Ward Robbery," *Richmond Planet*, May 26, 1900, 1; "The Election Today, Chairman Ellyson Says The Usual Democratic Victory," *Richmond Dispatch*, May 24, 1900, 1; "Jackson Ward Cases to be Reviewed," *Richmond Planet*, June 2, 1900, 1; "The Question of Jurisdiction," *Richmond Planet*, June 9, 1900, 1; "Judge Witt Takes His Time," *Richmond Planet*, June 16, 1900, 1; "To The Supreme Court, Mr. Royall Will Apply," *Richmond Planet*, June 26, 1900, 1; and "The Jackson Ward Cases," *Richmond Planet*, June 30, 1900, 1.

³⁷ Cei, "Law Enforcement in Richmond," 64-93, 138-248.

³⁸ "Richmond Crime Parley," *Richmond Times-Dispatch*, September 29, 1936, 4; and "City Pastors Seek Negro Policemen," *Richmond Times-Dispatch*, October 13, 1936, 1.

³⁹ Quote in "Bright Firm in Opposing Negro Police," *Richmond Times-Dispatch*, October 15, 1936, 1; and "Richmond's Most Obstinate Man," *Richmond Magazine*, August 5, 2016, <https://richmondmagazine.com/news/richmond-history/richmonds-most-obstinate-man/>.

⁴⁰ Marvin T. Chiles, "A Period of Misunderstanding: Reforming Jim Crow in Richmond, Virginia, 1930-1954," *Virginia Historical Society: Virginia Magazine of History and Biography*, Vol. 129, No.3, (Fall 2021): 244-78; "Plan Appeal on Jim Crow Fines," *Richmond Afro-American*, March 6, 1943, 3; "Supreme Court to Review Va. Bus Segregation Case," *Richmond Afro-American*, January 26, 1946, 1, 21; "Trailways Bus Company Denied Right to Seat Passengers in Violation of Law," *Richmond Afro-American*, January, 25, 1947, 1, 4; "Who Is Now Defying The Law," *Richmond Times-Dispatch*, February 24, 1960, 14; "Store Is Picketed; Negroes Ask Boycott," *Richmond Times-Dispatch*, February 25, 1960, 1 and 3; "Negroes to Spread Boycott," *Richmond Times-Dispatch*, February 25, 1 and 4; "Anti-Trespass Laws Signed to Meet Sit-Down Protests," *Richmond Times-Dispatch*, February 26, 1960, 1; "Whites, Negroes Confer on Protests," *Richmond Times-Dispatch*, February 27, 1960, 2; "Judge Says 'This Is No Race Issue,' *Richmond Afro-American*, March 12, 1960, 1; "Va. U. Students to Appeal Fines," *Richmond Afro-American*, March 12, 1960,

Black Richmonders became more assertive in their demands for equal treatment from RPD in the 1960s, given the national criminal justice reforms created by U.S. Supreme Court decisions. *Gideon v. Wainwright* (1963) required states to provide the accused with legal counsel while being indicted.⁴¹ The following year, *Escobedo v. Illinois* (1964) ensured that police suspects had the right to legal counsel during interrogations.⁴² *Miranda v. Arizona* (1966) completed this trinity, as law enforcement were to remind suspects of their Fifth Amendment rights to recuse themselves from self-incrimination.⁴³

With police tactics now under a national microscope, black Richmonders, undoubtedly inspired by the above and the on-going civil rights movement, led a call for a Police Review Board in summer 1966. As shaped by the Richmond NAACP, Urban League, Gilpin Court Civic Association, Creighton Court Civic Group, and others, the Police Review Board would have been a 9-member body (4 police officers chosen by the police chief and 5 citizens appointed by the city council) who would field, archive, and investigate complaints of police brutality. After that, they would recommend resolutions with the complainant or punishment for the accused officer. This was not an extraneous request, as police review boards had been in place in cities such as Minneapolis, Minnesota; Philadelphia, Pennsylvania; and New York City since the late 1950s, making it, at the time, a policy of common sense reform designed to instill and solidify public trust in police.

RPD leadership, the majority white city council, and the City Attorney's Office "unequivocally opposed" the board, citing that it would lower officer morale. Many black activists felt, however, that the board was rejected because it promised the "underprivileged" with oversight powers to correct the historic injustice inflicted upon them by RPD.⁴⁴ To be clear: RPD opposed this proposal in light of black leadership asking for better policing. "Negroes [in Richmond] want more police protection, not more police brutality," said John M. Brooks of the Richmond NAACP after RPD and elected officials in City Hall denied the proposal. RPD leadership reasoned that their opposition to the review board was grounded in empirical data, as between 1960 and 1966, they logged just 121 complaints after 322,000 arrests, with most of the complaints being from whites. Black leaders felt that this statistic reflected black fear of retaliation for reporting police brutality, as the local NAACP and other organizations fielded the complaints that would have become a part of the public record with the Police Review Board.⁴⁵

RPD's refusal to support citizen oversight strengthened its anti-black identity, creating a divide that not even black political leadership could avoid between the 1970s and 1990s. In lieu of the failed Police Review Board movement of 1966, the mostly white city council militarized RPD—with the purchase of anti-riot weapons and training—in anticipation that the riots that engulfed other majority-black cities would touch down in

19; "Students Fined \$20 Each," *Richmond Afro-American*, March 19, 1960, 1 and 16; "Sit-In Case Conviction Is Upheld," *Richmond Times-Dispatch*, April 25, 1961, 1 and 3; and "34 Students in Sit-Ins Plan Appeal," *Richmond Times-Dispatch*, April 26, 1961, 8.

⁴¹ *Gideon v. Wainwright*, 372 US 335 (1963).

⁴² *Escobedo v. Illinois*, 378 US 478 (1964).

⁴³ *Miranda v. Arizona*, 384 US 436 (1966).

⁴⁴ Quotes "Police Group Opposes Review Unit," *Richmond Times-Dispatch*, July 12, 1966, 2; and "City Attorney's Office Calls Police Review Board Illegal," *Richmond Times-Dispatch*, September 21, 1966, 2.

⁴⁵ "Council Kills Police Review Board Bill," *Richmond Times-Dispatch*, September 27, 1966, 1-2; and Cei, "Law Enforcement in Richmond," 37, 55-6, 132.

Richmond.⁴⁶ By the late 1970s and early 1980s, Richmond's political leadership was mostly black, and RPD had more black officers than ever before. Yet, as was said by a black police captain about RPD culture in the late 1980s: "We have a black mayor, a black city manager, a black assistant city manager, and many high ranking black public officials, yet it seems very little has changed."⁴⁷

Between 1977 and 1990, city leadership and business leadership (mostly white) engaged in expansive downtown revitalization plans (Project One and Sixth Street Marketplace) to attract white suburban residents and out-of-town industry to Richmond.⁴⁸ This plan, however, relied heavily on explicit calls from city businessmen for RPD to increase their policing of black neighborhoods.⁴⁹ Delivering on this request were black city managers Emmanuel Deese, and later Robert C. Bobb in the mid-1980s. Richmond's "war on drugs" led to the first ever Narcotics Division created in 1984, the Select Neighborhood Action Patrol Division created in 1986, and the Drugs and Firearms Strike Force created in 1987. These divisions within RPD worked with the Richmond Redevelopment and Housing Authority to enact plans such as Operation Hot Spot, in which dozens of RPD officers exclusively patrolled, as was said in a *Richmond Times-Dispatch* editorial, "high-density, low-income areas—notably housing projects—that have been breeding grounds for crime."⁵⁰ With plans to repopulate the city with monied whites

⁴⁶ The Kiplinger Washington Letter, Circulated Privately to Businessmen, August 4, 1967, Mss1 W5603b FA2, Series 1, Racial Problems (1 of 2), 40, James C. Wheat, Jr., Papers; Council Crime Report, Conducted by Councilman Phil J. Bagley, B.A. Cephas, and Mayor Morrill M. Crowe, January 21, 1968, Mss1 W5603b FA2, Series 1, Racial Problems (1 of 2), 40, James C. Wheat, Jr., Papers; Frank R. Barnett, president of the National Strategy Information Center, Inc., to Mr. J.C. Wheat, Jr., J.C. Wheat and Co., Inc., February 21, 1968, Mss1 W5603b FA2, Series 1, Racial Problems (2 of 2), 41; "The Negro Veteran, Urban Stability and The National Purpose," National Strategy Information Center Third Draft, February 14, 1968, 1, Mss1 W5603b FA2, Series 1, Racial Problems (2 of 2), 41; "Urban Coalition Formed to Meet Crisis in Cities," United States Municipal News, Vol. 34, No.16, August 15, 1967, Mss1 W5603b FA2, Series 1, Racial Problems (2 of 2), 41; Director of Public Safety to City Manager, December 14, 1964, Folder 22, Mss1 W5603 b FA2, James C. Wheat, Jr., Papers; Meeting of School-Community Coordinators, April 16, 1968, Mss1S4772a, James A Sartain Papers; Cei, "Law Enforcement in Richmond," 235-48

⁴⁷ "Subtle Racism is Practiced in Richmond Force, Cop Claims," *Richmond Afro-American*, October 3, 1987.

⁴⁸ Marvin T. Chiles, "Here We Go Again: Race and Redevelopment in Downtown Richmond, 1977-Present" *Journal of Urban History*, <https://journals.sagepub.com/doi/abs/10.1177/0096144221992374>.

⁴⁹ Jackson Ward, Summary Tape File 3G, The Neighborhood Revitalization Division of the Department of Planning and Community Development, City of Richmond Neighborhood Statistics, November 1985, Box 5, M303, Richmond Renaissance Papers; For more on crime and perceptions of crime in Jackson Ward, see Table 1, Reported Offenses: 1976-1980, Second Street Study Area Richmond, Virginia, 1980, Economic and Market Analysis, 1-10; and A Commercial Revitalization Plan for the Second Street Commercial Area, 3-7, 2nd Street Commercial Revitalization, 1981, Box 4, M303, Richmond Renaissance Papers; Economic and Market Analysis: Second Street Commercial Revitalization Study, Richmond, Virginia, by John E. Scott and Associates, January 19, 1981, 2nd Street Commercial Revitalization, 1981, Box 4 and 5, M303, Richmond Renaissance Papers; Clarence L. Townes to Mr. Jeff Nowakowski, November 13, 1984, Media-Negative TV Reporting, 1984, Box 13, M303, Richmond Renaissance Papers; and "Candidates Blame News Media For Downtown's Image Problem," *Richmond Times-Dispatch*, April 5, 1990, 27.

⁵⁰ "Police Forming Narcotics Division," *Richmond Times-Dispatch*, February 18, 1984, B1; "Police Help Bobb Explain Concept of Overstaffing," *Richmond Times-Dispatch*, August 12, 1986; and Quote "SNAP! BAM! BOBB!" *Richmond Times-Dispatch*, August 15, 1986, 10; "Drug Dealer, Beware! City Declares 'War,' Expanding SNAP," *Richmond Afro-American*, December 17, 1988, 1; and "Drug War: Bobb Plans All-Out Fight," *Richmond Afro-American*, April 8, 1989; "Crackdown Promising, Police Say," *Richmond Times-Dispatch*, December 17, 1990, B-1.

in lieu of the suburban sprawl of the post-World War II period, the new police strategy, as dictated by black political leaders, ensured that “it will not take long for the neighborhoods to recognize the increased police presence and the more aggressive enforcement” in the city’s blackest areas.⁵¹ Increased policing of historically black and poor areas was often celebrated and encouraged by the white and black media, as well as by black and white Richmond leadership as a sign of progress. This late 20th century development was tied directly to RPD history of being sic’d on black people, as Richmonders, both new and old, long understood this to be their primary function above all else. This did not change with the appointment of Marty Tapscott to be the first black RPD chief in city history in 1989, or the increased number of black policemen along with him.⁵²

Conclusion

Richmond’s racial history is largely defined by the maintenance of residential segregation and over-policing of black residents at the hands of RPD. This report seeks not to indict every white Richmonder, or RPD officer, as racist or bigoted. Rather, it argues that current issues with residential segregation and RPD-black animus exist within a historical ecosystem shaped by people and interests of a bygone era. Furthermore, to understand and find common ground in the present requires adherence to the knowable past.

⁵¹ “City Manager Advocates SNAP To Reduce Crime in Richmond,” *Richmond Afro-American*, August 16, 1986, 1.

⁵² “Richmond Gets First Black Police Chief,” *Richmond Afro-American*, June 8, 1989, 1; and “More Blacks Needed on Police Force,” *Richmond Afro-American*, March 5, 1988, 1.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 3:21cr42
	)	
KEITH RODNEY MOORE,	)	
Defendant	)	

**SECOND SUPPLEMENT TO MR. MOORE’S
MOTION TO SUPPRESS EVIDENCE AND STATEMENTS**

Keith Moore, through counsel, moved the Court to suppress evidence of a handgun that police found after initiating an unconstitutional traffic stop of Mr. Moore in this case and to suppress statements after interrogating Mr. Moore in violation of his Fifth Amendment right to remain silent. *See* ECF Nos. 17, 28, and 32. After an evidentiary hearing on that motion on July 26, 2021, Mr. Moore supplemented his Fourth and Fifth Amendment challenges with a Fourteenth Amendment challenge because of the Richmond Police Department’s selective enforcement of Virginia’s traffic laws. *See* ECF No. 32.

Statistical, historical, and contemporary evidence demonstrates that if you are driving while black in the city of Richmond—like Mr. Moore, you are far more likely to be pulled over, searched, and arrested. White drivers on the other hand not only are essentially given a pass on traffic stops, but when they get pulled over, they are far more likely than black drivers to receive a summons or citation to come to court. Such discriminatory enforcement of facially neutral laws violates our Constitution’s guarantee of equal protection of the laws regardless of the color of one’s skin and cannot be tolerated. This Court must suppress all evidence stemming from the traffic stop in this case and dismiss the case against Mr. Moore.

I. The Fourteenth Amendment guarantees to all those in the United States the right to equal protection of the laws regardless of the color of their skin.

The Equal Protection Clause of the “Constitution prohibits selective enforcement of the law based on considerations such as race.” *Whren v. United States*, 517 U.S. 806, 813 (1996); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886) (“Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.”); *Marshall v. Columbia Lea Reg’l Hosp.*, 345 F.3d 1157, 1167 (10th Cir. 2003) (“Racially selective law enforcement violates this nation’s constitutional values the most fundamental level; indeed, unequal application of criminal law to white and black persons was one of the central evils addressed by the framers of the Fourteenth Amendment.”).

The “Equal Protection Clause of the Fourteenth Amendment provides citizens a degree of protection independent of the Fourth Amendment protection against unreasonable searches and seizures.” *United States v. Avery*, 137 F.3d 343, 352 (6th Cir. 1997). An equal protection challenge to police action “does not fit neatly into the various stages of Fourth Amendment search and seizure analysis” because “the central intention behind the Equal Protection Clause is the prevention of official conduct discriminating on the basis of race.” *Id.* at 353 (6th Cir. 1997) (“A citizen’s right to equal protection of the laws, however, does not magically materialize when he is approached by the police. Citizens are cloaked at all times with the right to have the laws applied to them in an equal fashion—undeniably, the right not to be exposed to the unfair application of the laws based on their race.”).

To prove that police officers were selectively enforcing¹ a facially neutral law against a particular race, the defendant must show by a preponderance of the evidence that the challenged police action: 1) was motivated by a discriminatory purpose; and 2) had a discriminatory effect on a racial group to which the defendant belongs. *See Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 272–74 (1979); *Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264–66 (1977); *Washington v. Davis*, 426 U.S. 229, 239–42 (1976); *see also Conley v. United States*, 5 F.4th 781, 789-96 (7th Cir. 2021) (observing after thorough analysis that defendant must prove a selective enforcement claim by preponderance of the evidence)².

As to the first prong of the selective enforcement test—discriminatory purpose, a defendant must prove that there was a discriminatory purpose behind the course of action. The defendant need not, however, prove that the “challenged action rested solely on racially discriminatory

¹ It is critical to recognize that Mr. Moore’s claim is one of selective enforcement, not one of selective prosecution. “Selective prosecution occurs when, from among the pool of people referred by police, a prosecutor pursues similar cases differently based on race. Selective enforcement occurs when police investigate people of one race but not similarly-situated people of a different race.” *Conley v. United States*, 5 F.4th 781, 789 (7th Cir. 2021).

² As the *Conley* court noted, the Fourth Circuit has relied on *United States v. Armstrong*, 517 U.S. 456 (1996)—which is a selective prosecution case, to posit that a defendant must “demonstrate ‘clear evidence’ of racially animated selective law enforcement.” *United States v. Mason*, 774 F.3d 824 (7th Cir. 2014) (quoting *United States v. Olvis*, 97 F.3d 739, 743 (4th Cir. 1996) (observing in a selective prosecution case that the Supreme Court required a defendant to “support a selective-prosecution claim with ‘clear evidence,’” quoting *Armstrong*). In *Mason*, the Fourth Circuit evaluated a habeas petition based in part on the defendant alleging that his attorney was ineffective because he failed to raise a racially selective law enforcement argument. 774 F.3d at 826. In rejecting that argument, the *Mason* court simply observed that proving equal protection challenges are difficult and then simply cited—without analyzing—selective prosecution claims without discussing the difference between that type of claim and a selective enforcement claim. *Id.* at 829-30.

As the *Conley* court recognized, prosecutors enjoy “a powerful privilege” and are “covered by a presumption of constitutional behavior.” 5 F.4th at 791. Police officers, on the other hand, “are regularly called before courts to justify their tactics” and thus, selective enforcement claims do not warrant the heightened evidentiary standard applicable to selective prosecution claims. *Id.* *Mason*’s passing reference then to the applicable standard of proof is not a binding holding on this Court. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 n.5 (1992) (“It is of course contrary to all traditions of our jurisprudence to consider the law on this point conclusively resolved by broad language in cases where the issue was not presented or even envisioned.”).

purposes.” *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); *see also Hunter v. Underwood*, 471 U.S. 222, 232 (1985) (stating that “an additional purpose . . . would not render nugatory the purpose to discriminate against all Blacks”); *Feeney*, 442 U.S. at 277 (“Discriminatory intent is simply not amenable to calibration. It either is a factor that has influenced the legislative choice or it is not.”). A showing of discriminatory intent need not be made with direct evidence, but can be shown through circumstantial evidence. *See Avery*, 137 F.3d at 355 (“[o]ften it is difficult to prove directly the invidious use of race,” so “an invidious discriminatory purpose may often be inferred from the totality of the relevant facts” (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976))). In some cases, blunt statistical evidence of a racially disparate impact may be sufficient to prove the discriminatory intent element of an equal protection claim. *See, e.g., Arlington Heights*, 429 U.S. at 266 (“Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face.”); *see also Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 n.20 (1977) (“Statistics showing racial or ethnic imbalance are probative . . . because such imbalance is often a telltale sign of purposeful discrimination.”).

As to the second prong of the selective enforcement test—discriminatory effect, police action has a racially discriminatory effect when members of a protected racial group—here, black citizens in Richmond—receive less favorable treatment than nonmembers. The Supreme Court has long relied on statistical analysis to show a discriminatory effect. *See, e.g., Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886) (finding that a San Francisco ordinance banning the operation of laundries in wooden buildings was discriminatorily applied to Chinese launderers where the city denied the petitions of some two hundred Chinese applicants who applied for exemption from the ordinance, but granted all but one of the eighty petitions of the non-Chinese launderers who

applied); *see also Hunter*, 471 U.S. at 227 (finding that the fact that a section of the Alabama Constitution made disenfranchisement of blacks at least 1.7 times more likely than disenfranchisement of whites was “indisputable evidence that the state law had a discriminatory effect on blacks as compared to similarly situated whites”). In selective enforcement claims, statistical evidence of racial disparity can be sufficient³ to show a discriminatory effect. *See, e.g., Floyd v. City of New York*, 959 F. Supp. 2d 540, 661 (S.D.N.Y. 2013) (finding that evidence showed that the New York Police Department stopped more black and Hispanic residents, were more likely to stop blacks and Hispanics than whites within defined geographical areas, were more likely to use force against blacks and Hispanics than whites, and stopped blacks and Hispanics with less justification than whites).

³ In an unpublished, per curiam opinion that is not binding on this Court, the Fourth Circuit reviewed a Fourth Amendment challenge to a traffic stop. *See United States v. Suarez*, 321 F. App’x 302 (4th Cir. Jan. 30, 2009). The defendants argued that the traffic stop was pretextual and therefore violated the Fourth Amendment. *Id.* at 304. In dicta, the *Suarez* court observed that “[a]llegations of racially motivated law enforcement implicate the Equal Protection Clause rather than the Fourth Amendment.” *Id.* at 305. And again, like the *Mason* court, the *Suarez* court simply observed that proving equal protection challenges are difficult and then cited—without analyzing—*Armstrong* (a selective prosecution case) for the proposition that a “defendant must show that the law enforcement practice was not enforced against ‘similarly situated individuals of a different race.’” 321 F. App’x at 305 (internal quotation marks omitted). Again, *Suarez*’s passing reference then to the applicable standard of proof is not a binding holding on this Court. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 n.5 (1992) (“It is of course contrary to all traditions of our jurisprudence to consider the law on this point conclusively resolved by broad language in cases where the issue was not presented or even envisioned.”).

As the Second Circuit observed in *Pyke v. Cuomo*, 258 F.3d 107, 108-09 (2d Cir. 2001), “[a] plaintiff alleging an equal protection claim under a theory of discriminatory application of the law, or under a theory of discriminatory motivation underlying a facially neutral policy or statute, generally need not plead or show the disparate treatment of other similarly situated individuals.” It is in the special case of selective prosecution rather than selective enforcement, where the “exercise of one of the core powers of the Executive Branch of the Federal Government, the power to prosecute” is at issue, *Armstrong*, 517 U.S. at 457, that a challenger must point to a similarly situated individual who could have been prosecuted but was not. “[T]hat is because courts grant special deference to the executive branch in the performance of the ‘core’ executive function of deciding whether to prosecute.” *Pyke*, 258 F.3d at 109. With a claim that a facially neutral law or policy has been applied in a discriminatory manner, there is no justification for requiring proof of a specific similarly situated individual who was not stopped for a traffic offense. *Id.* at 110 (“a plaintiff who . . . alleges that a facially neutral law or policy has been applied in an intentionally discriminatory race-based manner . . . is not obligated to show a better treated, similarly situated group of individuals of a different race in order to establish a claim of denial of equal protection”).

Once the challenger shows that discriminatory purpose was a “motivating factor,” the burden shifts to the law’s defender to show that “the same decision would have resulted even had the impermissible purpose not been considered.” *Arlington Heights*, 429 U.S. at 270 n.21; *see also Hunter*, 471 U.S. at 228 (1985). “If the [government] comes forward with no such proof or if the trier of fact is unpersuaded that race did not contribute to the outcome of the decision, the equal protection claim is established.” *Floyd*, 959 F. Supp. 2d at 572 (internal quotation marks omitted).

II. The data on the Richmond Police Department’s traffic stops paints a bleak picture: black drivers are far more likely to be stopped, searched, and arrested than white drivers no matter where they are driving in Richmond.

In this case, the evidence is stark. If you are a black driver in Richmond, you are far more likely to be stopped, searched, and arrested than if you are a white driver. The Richmond Police Department has divided its patrol functions into four distinct police precincts. *See* Def. Ex. X (1-4). According to the police department itself, the department “decentralized all of its patrol functions and instituted a Neighborhood Precinct Plan” in 1977. *See* City of Richmond, *History of the Richmond Police Department: 1900-1999*, <https://www.rva.gov/police/departments-history> (last visited Mar. 8, 2022). Three of those precincts correspond to the nearly entirely black neighborhoods in Richmond. *Compare* Def. Ex. X (1-4) *with* Def. Ex. R (1-2). The third precinct—the west end of Richmond—is the only precinct made up of primarily white neighborhoods. *Id.*

The ratio of traffic stops that the Richmond Police Department conducts of black drivers to white drivers is appalling. Black people make up just less than half of the population of Richmond. *See* 7/26/21 Tr. at 169-70 (reporting that black population of Richmond as of 2019 was about 47-48% of the city’s entire population). White people also make up less than half of the population of Richmond. *Id.* (reporting that white population of Richmond as of 2019 was

about 42-46% of the city's entire population). Yet, seventy-six percent of the Richmond Police Department's traffic stops are of black persons. *See* Def. Ex. Y-1. White people make up only fifteen percent of the Richmond Police Department's traffic stops. *Id.* The Richmond Police Department has not reported the race of another eight percent of people stopped, *id.*, in violation of the Virginia Community Policing Act, *see* Va. Code § 52-30.2. At least in this case, none of the officers on the Fourth Precinct Focus Mission Team complied formally with the Virginia Community Policing Act. *See* 7/26/21 Tr. at 118-19. Yet, because Officer Mills kept at least some of the required data in his body camera video titles, *see id.* at 66-68, we know that every individual that the Fourth Precinct Focus Mission Team stopped the night of Mr. Moore's arrest was black, *see* Def. Exs. J, K, L, N, O, P, Q, U-3, U-4, V-3, W; Gov't Ex. 4. We also know that the Fourth Precinct Focus Mission Team searched every car that they stopped that night. *Id.*

Eli Coston, an expert statistician who teaches at Virginia Commonwealth University and has studied the discriminatory effect of the Richmond Police Department's traffic enforcement over time, has found this data to represent a statistically significant effect on black drivers. *See* Ex. A 3/8/22. In comparison with white drivers, black drivers in the city of Richmond were 5.15 times more likely to be stopped by the Richmond Police Department. *Id.* at 5. In comparison with white drivers, black drivers in the city of Richmond were 12.67 times more likely to be arrested as a result of the stop. *Id.* at 6. In comparison with white drivers, black drivers were more likely to be searched during the stop. *Id.* at 7. In comparison with white drivers, black drivers were far more likely to have their cars searched during the stop. *Id.* White drivers were also far more likely to receive a summons or citation than black drivers. *Id.* Black drivers were also far more likely to be arrested than white drivers when the basis for the stop was an equipment violation. *Id.* at 8.

These findings are particularly important when we consider that black drivers do not commit traffic offenses more often than white drivers. *See* Ex. A 3/8/22 at 1-2; *see* Ex. B 3/8/22 at 2-3. Yet, in Richmond, local police officers are stopping black drivers for alleged traffic offenses at a rate that is five times higher than they are stopping white drivers. This evidence—this stark evidence of discriminatory effect—paints a powerful picture of racial discrimination in traffic enforcement in Richmond. *See, e.g., United States v. Ironworkers Local 86*, 443 F.2d 544, 551 (9th Cir. 1977) (“Since the passage of the Civil Rights Act of 1964, the courts have frequently relied upon statistical evidence to prove a violation. . . . In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination by the employer or union involved.” (internal citations omitted); *see also Int’l Bhd. of Teamsters*, 431 U.S. at 339 n.20 (“absent explanation, it is ordinarily to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired. Evidence of longlasting and gross disparity between the composition of a work force and that of the general population thus may be significant . . .”).

The racially discriminatory impact of the Richmond Police Department’s selective enforcement of the traffic laws is even more blunt when we consider the location of the traffic stops. Setting aside for the time being that the lines of the police precincts in Richmond line up perfectly with the lines of racial segregation in the city, if police officers were not selectively enforcing the laws based on race, we could perhaps expect to see more white people than black people stopped for traffic and equipment offenses in the white part of town—the third precinct. That is not at all, however, what the data shows. Rather, the data reveals that even in the third police precinct, the Richmond Police Department stops far more black people than white people.

See Ex. A 3/8/2022 at 9-11. We also see a significant number of black drivers that are stopped in or near the third precinct are stopped near the boundaries of the third precinct. *Id.* at 9, Fig. 2. Such a pattern is indicative of the Richmond Police Department effectively patrolling the boundaries of the white neighborhoods in the third precinct.

Lastly, the mission of the Fourth Precinct Focus Mission Team is not traffic enforcement. Rather, it is to get guns and drugs off the street. See 7/26/21 Tr. at 23-24. The Fourth Precinct Focus Mission Team simply uses minor traffic infractions to pull black people over to search for evidence of more serious criminal activity. *Id.* at 24. That evidence is consistent with the overall picture of what the Community Policing Act data shows: if you are driving while black in the city of Richmond, you should expect to have less than equal protection of the laws because of the color of your skin. The evidence demonstrates that the Fourth Precinct Focus Mission Team's racial profiling was actively having a discriminatory effect on black drivers in Richmond. See, e.g., *Maryland State Conference of NAACP Branches v. Maryland State Police*, 454 F. Supp. 2d 339, 349 (D. Md. 2006) ("if the stop was 'not really' for speeding, then the basis for it is unclear. And, this unclear basis for the stop exists against a backdrop of powerful circumstantial evidence of racial profiling in the form of statistics compiled by the Maryland State Police—and the senior officer corps' conclusions based upon those statistics, i.e., that 'a remarkable deviation' in regard to the percentage of African-Americans stopped and searched existed in the JFK Barrack area—which shows, at least, discriminatory effect from the practices afoot in the JFK Barrack patrol area").

In evaluating discriminatory intent, the Court must take account of the totality of the circumstances. Here, the totality of the circumstances shows that the Fourth Precinct Focus Mission Team pulls black people over for minor traffic violations, surrounds the driver's car with

four police officers, and blatantly searches the entire interior of the car before letting anyone of color not suspected of more serious crimes go. As Judge Hamilton observed in his dissent regarding similar tactics in Milwaukee: “Imagine that the police tried these tactics in Milwaukee’s affluent east side. Citizens would be up in arms, and rightly so. No police officer could expect to keep his job if he treated a car standing in front of a store as worthy of such an intrusive *Terry* stop.” *United States v. Johnson*, 874 F.3d 571, 581 (7th Cir. 2017). The stark numbers and heavy-handed policing tactics of minority neighborhoods in Richmond—a city that feels it needs to devote three of its four police precincts to policing the sections of town made up almost entirely of black citizens—warrant an inference of discriminatory intent. *See, e.g., United States v. Thorpe*, 471 F.3d 652, 661 (6th Cir. 2006) (recognizing that, if severe enough, statistical evidence of discriminatory effect can raise an inference of discriminatory intent).

Mr. Moore, and other black citizens in Richmond, are entitled to and deserve equal protection of the laws. Because the Richmond Police Department, and the Fourth Precinct Focus Mission Team in particular, has ignored this protection, the Court must suppress the evidence seized and dismiss the indictment in this case.

III. Circumstantial and historical evidence indicate that the Richmond Police Department has a long history of discriminatorily enforcing traffic laws against black people in Richmond.

In addition to the severe statistical evidence of the discriminatory effect that the Richmond Police Department’s selective enforcement of traffic laws has had on black drivers in Richmond, circumstantial evidence indicates a long history of the Richmond Police Department selectively enforcing traffic and criminal laws against black citizens. The history of the Richmond Police Department is inseparably entangled with racial discrimination. In 1861 when Virginia seceded from the United States, Richmond Police Department officers wore confederate badges and were

considered part of the confederate militia. See City of Richmond, *History of the Richmond Police Department: 1807-1899*, <https://www.rva.gov/police/departments-history> (last visited Mar. 8, 2022). After the civil war ended and the federal government had established martial law in Richmond, the Richmond Police Department was abolished. *Id.* It was only when Virginia rejoined the United States in 1870 that Richmond was allowed to reestablish a police department. *Id.*

At the turn of the twentieth century, Richmond used a variety of tactics to racially segregate the city. In 1911, the “city of Richmond, using its charter powers, adopted the first ordinance dividing the city into separate blocks for white and ‘colored’.” See Ex. C 3/8/22 at 4. When explicit racialized zoning was outlawed in 1917, “racial zoning gave way to the broader notion of a race-based comprehensive planning process and racially informed zoning districts.” *Id.* The city then used Virginia’s law against interracial marriage as a basis to continue prohibiting black citizens from living in white neighborhoods. See Ex. D 3/8/22 at 2. When restrictive covenants based on race were banned in 1948, Richmond relied on redlining—or the process by which banks drew red lines around predominantly black neighborhoods to prevent financial investment in those areas—to continue racial residential segregation. *Id.* at 2-4.

By the 1970s, whites in Richmond had resorted to leaving the city in droves for the surrounding counties. *Id.* at 4. The city of Richmond responded in 1970 by annexing a large portion of Chesterfield County—to increase its white population. See Roberto Roldan, *Richmond’s Controversial Chesterfield County Annexation, 50 Years Later*, VPM (May 20, 2020), <https://vpm.org/news/articles/13596/richmonds-controversial-chesterfield-annexation-50-years-later> (“This particular case though is interesting because of how the white leaders decided to suppress the black vote. What the Richmond oligarchy decided to do was to simply reduce the

black population. And the way to do that was to annex thousands, tens of thousands of white people from the adjoining County, Chesterfield County.”). It was against this backdrop that the Richmond Police Department decentralized its patrol functions and instituted a “Neighborhood Precinct Plan” in 1977. See City of Richmond, *History of the Richmond Police Department: 1900-1999*, <https://www.rva.gov/police/departments-history> (last visited Mar. 8, 2022). That the third police precinct aligns exactly with the boundaries of the white section of Richmond is not a coincidence.

For at least twenty years, data has shown that Richmond Police Officers stop far more black drivers than white drivers for traffic offenses. See Ex. E 3/8/22 at 2. In 2000, a study of all traffic stops in Richmond during a six-week period showed that sixty-four percent of the drivers stopped were black, while thirty-two percent of the drivers were white. *Id.* Comparable data of the counties surrounding Richmond—Henrico and Chesterfield—much more closely aligned the ratio of the race of drivers stopped with the racial make-up of those counties. *Id.* In 2017 and 2018, Richmond Police Officers were 30.7% more likely to pull over a black driver than a white driver. See Ex. F 3/8/22 at 11. The 2017 and 2018 data reflected racial discrimination in not only traffic stops, but also the Richmond Police Department’s use of force, pedestrian contacts, reports of “suspicious activities,” curfew violations, and truancy violations. See Ex. F 3/8/22.

Mr. Moore has shown at least a prima facie case that the Richmond Police Department selectively enforces traffic laws against black drivers in Richmond. He anticipates presenting additional evidence of discriminatory intent at the evidentiary hearing this Court intends to schedule at the conclusion of this supplemental briefing.

CONCLUSION

As explained above and in ECF Nos. 17, 28, and 32, the Court must suppress evidence of a handgun that police found after initiating an unconstitutional traffic stop of Mr. Moore and dismiss this case.

Respectfully submitted,
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Traffic Stops by the Richmond Police Department: July 1, 2020 – December 6, 2020

Dr. Eli Coston

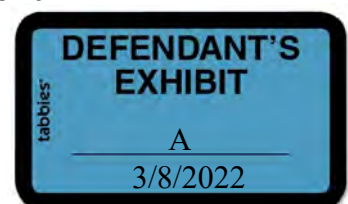
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Introduction

Racial bias and racial disparities in the criminal legal system exist at many levels, from sentencing of criminal defendants (Levinson, Bennett, and Hioki, 2017; Rachlinski, Johnson, Wistrich, and Guthrie, 2008), jury decision-making (Sweeny and Haney, 1992), prosecutorial discretion (Smith and Levinson, 2011), to policing (Baumgartner, Christiani, Roach, and Shoub, 2017; Dunn, 2009; Glaser, 2015; Kahn and Martin, 2016). In all of these areas, we find that racial bias plays a role in the decision-making process, resulting in Black people and other racial and ethnic minorities often facing harsher scrutiny or punishment than their White peers. Though each step of the system is an important contributor to the overall disparities that exist within the criminal legal system, many interactions with the criminal legal system begin with routine traffic stops. However, it is not speeding, lack of use of a seatbelt, or another violation that typically results in greater interaction with the criminal legal system, but the fact that officers use these stops to look for evidence of other crime (Baumgartner, Christiani, Roach, and Shoub, 2017; Carroll and Gonzalez, 2014; Makofske, 2020; Richmond Transparency and Accountability Project, 2019). Concern with racial disparities occurring in traffic stops dates back to the war on drugs, in which specific characteristics, including race were used to develop profiles of drug couriers on our nation's highways (Harris, 1999). During the 1990's, stops of Black drivers were so ubiquitous that the term "Driving While Black" or "Driving While Brown" was coined to describe the phenomena (Harris, 1999). Though profiling specifically based on race is not legal, that does not mean that all profiling involving race has been eliminated, nor does it mean that profiling based solely on race does not occur (Fredrickson and Siljander, 2002). In fact, the enduring presence of racial disparities in traffic stops has led many states or jurisdictions, including Virginia, to track demographic data regarding individuals stopped, as well as the outcome of stops and other actions (such as searches) that took place during the stop (Baumgartner, Christiani, Roach, and Shoub, 2017).

Traffic Stops

The first issue to consider in examining racial disparities in police stops is whether Black drivers commit traffic infractions more often than White drivers, as this would make them more likely to be pulled over. However, there is very limited data that would suggest that Black drivers commit more traffic infractions than White drivers (Harris, 1999; Lundman and Kowalski, 2009; Norton, Fung, and Stayton, 2021). Self-report studies of speeding from New York collected over several years, consistently show that Black drivers report speeding less often than White drivers (Norton, Fung, and Stayton, 2021); although there is no reason to expect that drivers in Richmond would differ, the New York study is one of the only ones that speaks to this issue. Lange, Blackman, and Johnson (2001) in their study of speeding on the New Jersey Turnpike suggested that Black drivers were more likely to engage in excessive speeding (more than 15 MPH over the speed limit), however, Lundman and Kowalski's (2009) work showed that both age and gender account for much of that effect. Moreover, excessive speeding was evident in a relatively small



proportion of cases, which would not account for the larger disparities witnessed in traffic stops along the New Jersey Turnpike (Lundman and Kowalski, 2009). Pierson et al. (2020) have suggested that it is not differences in driving behavior, but driver race that is the primary predictor in traffic stops. Pierson's team analyzed the impact of darkness hours on rates of traffic stops, comparing stops during the daytime and the evening. Their analysis demonstrated that racial differences in rates of stops diminished under the "veil of darkness" (Pierson et al, 2020). These studies show minimal evidence of differences in driving behavior between Black and White drivers, but do suggest that racial bias plays a role in stops.

It is also important to consider whether there are differences in the likelihood to be pulled over. Langan (2001) used nationally representative data to examine this question, finding that even though there are proportionally fewer Black drivers than White drivers (that is to say, Black people are less likely to have a driver's license than White people). Black drivers are still stopped more often than White drivers. Additionally, in examining people who were pulled over more than once in the prior year, Black drivers were much more likely to have been pulled over multiple times. The Langan (2001) study is especially important because it utilizes nationally representative data including those who were pulled over, as well as those who were not pulled over, in order to assess differences between racial groups. Most data collected is only once a stop has occurred, telling us less about the entire population of drivers than they type of nationally representative data that Langan utilized.

Reason for Stops

The reason for a stop is another important factor in understanding the complexities behind racial profiling, particularly as it relates to the issue of pretextual stops. (England and Calnon, 2004; Johnson, 2010; Makofske, 2020). Traffic stops can be made for a number of reasons, most often for traffic violations (which can vary greatly in severity). But equipment violations are also violations of the traffic code that can result in a stop. Pretextual stops are those that are not specifically out of regard to concern for public safety, such as having a side marker out on one's vehicle. Pretextual stops have greater latitude in the amount of discretion an officer can use in whether to conduct the stop itself; for example, it would be more difficult for an officer to ignore someone driving dangerously than someone with a minor equipment violation. Likewise, there is a substantial amount of discretion in how they utilize any stop as a means of investigating other potential crime. Though pretextual stops are legal, there is concern among criminologists and legal scholars as to how much they may contribute to racial bias in traffic stops. (England and Calnon, 2004; Johnson, 2010; Makofske, 2020). In one specific example, Makofske (2020) found especially high rates of arrest for "failure to signal" in Louisville, KY, even when failure to signal was the sole reason for the stop. Likewise, Higgins, Vito, and Walsh (2008) discovered an abnormally high number of stops in Louisville for equipment violations, as compared to other jurisdictions, which they suggest were pretextual stops. Thus, equipment violations, particularly as they relate to pretextual stops, may be an important factor in understanding racial disparities in traffic stops.

Searches Conducted During Stops

Once a stop has occurred, it is important to examine whether there are differences in what occurs during the stop itself, based upon the race of the driver. One of the most examined aspects in this regard is searches conducted during the stop. Perhaps the most comprehensive study regarding

searches conducted during traffic stops is Baumgartner, Christiani, Roach, and Shoub's (2017) analysis of 132 jurisdictions' data on traffic stops across multiple years of data, resulting in analysis of over 50 million traffic stops from across the U.S. They found that in most jurisdictions, searches of Black drivers were more common than searches of White drivers. On average, Black drivers were 2.5 times more likely to be searched. Due to the differing nature of data collection across jurisdictions, this figure combines both searches of persons and searches of vehicles (Baumgartner, Christiani, Roach, and Shoub, 2017). However, similar findings regarding Black drivers being searched more frequently than White drivers have been found across multiple smaller studies (Carroll and Gonzalez, 2014; Engel and Calnon, 2004; Ridgeway, 2009).

Outcome of Stops

Ultimately, the outcome of the stop is one of the most important aspects of a traffic stop, as this also determines whether or not there will be continued contact with the criminal legal system as a result of the encounter. Those who are arrested may experience serious impacts to their livelihood due to pretrial detention (Harvey, 2019). Even those who eventually cannot pay the fee for a citation may face serious disruptions to their lives due to later incarceration (Harvey, 2019). When examining national data, Black drivers are more likely to be arrested as the result of a traffic stop than White drivers (Engel and Calnon, 2004). Black drivers nationally are also more likely to be ticketed than White drivers (Engel and Calnon, 2004). Analyses of particular locations, such as Cleveland, OH, Cincinnati, OH, Houston, TX, or New Jersey, reveals similar patterns of higher ticketing and/or arrests of Black drivers (Dunn, 2009; Harris, 1999; Ridgeway, 2009; Roh, and Robinson, 2009). Similarly, in 2019, the Richmond Transparency and Accountability Project released a report analyzing data from the Richmond Police department regarding traffic arrests, showing that in Richmond, Black drivers were more likely to be arrested than White drivers.

Data

The data analyzed was provided by the Richmond Police Department and contains data collected in accordance with Virginia's *Community Policing Act*, which was specifically established to prohibit and monitor "biased-based profiling" in policing in Virginia. "Biased-based profiling" refers to policing that relies solely on a characteristic such as race or gender in making decisions about policing, such as the decision to stop an individual. The data contains all traffic stops conducted from July 1, 2020 through December 6, 2020 by the Richmond Police Department (RPD).

Sample

During the time period analyzed, 2,582 stops occurred. As subsequent analyses required location data, only stops with valid location data were included in the final analysis. 82 of the 2,582 stops (3.18%) included locations outside of RPD's jurisdiction. These had no impact on the overall results, thus, these were omitted from final analyses. Additionally, for chi-square (χ^2) analyses involving race, the small number of stops involving Asian, American Indian, or drivers of

“Unknown” races led to those categories being excluded from analyses leading to a final analytic sample of 2279 for most analyses¹.

Description of Key Variables

Location: Location in the original data was noted as an address, intersection, or block number. The location information was processed by Geocodio to generate latitude and longitude coordinates for each stop. Geocodio also provides accuracy analysis based on the location provided. For all locations with less than a .6 accuracy score, locations were checked and corrected by an intern with the public defender’s office. I verified a random selection of these to ensure accuracy in corrected latitude and longitude, and found no discrepancies in the corrections. Only 11 items retained in the final analysis had location scores of less than .6, representing less than 1% of the data. Again, inclusion of these data did not impact the overall analysis.

Race of Driver: Race of driver is a categorical variable with Black (76%), White (15%), Asian (1%), American Indian (<1%), or “Unknown” (8%) as possible response options.

Reason for Stop: The reason for stop is a categorical variable indicating why the initial stop occurred. Most commonly stops were for traffic violations (69%) or equipment violations (36%), though other reasons for stops were noted (5%).

Action Taken as Result of Stop: This variable is a categorical variable representing the most serious action taken as the result of a stop. Resultant outcomes (from most to least serious) include arrest (7%), citation or summons issued (24%), or a warning issued (69%).

Search of Persons: This is a binary variable (yes or no) indicating whether any person was searched as a result of the stop. Searches occurred in 10% of cases.

Search of the Vehicle: This is a binary variable (yes or no) indicating whether the vehicle was searched as a result of the stop. Searches occurred in 14% of cases.

Arrest of Person Other than Driver: This is a binary variable (yes or no) indicating whether an individual other than the driver was arrested as a result of the stop. Arrest of a person other than the driver occurred in 3% of cases.

Analysis

The analyses examine whether there are statistically significant differences in the nature of traffic stops conducted by the Richmond Police Department according to race of the driver of a vehicle. Although regression has been used to examine similar data, those techniques were not appropriate due the distribution of the data in this instance. Specifically, the data contained high levels of multicollinearity (indicating interrelationships among the independent variables), which make the chi-square analysis more appropriate. Thus, a series of chi square (χ^2) tests were utilized to examine the relationship between the race of the driver and several characteristics of

¹ See “Analysis” section for more detail on chi-square test and decisions regarding inclusion/exclusion of data.

the traffic stops. The χ^2 test has several assumptions, such as independence of observations, having mutually exclusive categories for analysis, and perhaps most important to this analysis, a minimum of 5 expected observations in each cell for 80% of the cells is required (McHugh, 2013). Though all other assumptions were met, the minimum expected cell count was violated for variables related to race of the driver, requiring changes to the analytic strategy. Specifically, this led to traffic stops involving Asian, American Indian, and drivers of “Unknown” races being dropped from final χ^2 tests². Dropping these cases did not result in changes to overall significance or changes to the overall pattern of findings for each individual analysis. Additionally, in the analysis of equipment violations and race of the driver, one cell (rather than several) presented a small number of cases, in order to correct for this, a variation of the chi-square test, the Fisher’s exact test was used. In order to assess the strength of the association, Cramer’s V was computed for significant χ^2 tests with more than four cells (Healey, 2014; McHugh, 2013), while Kendall’s Tau was computed for significant χ^2 tests with only four cells (Cliff and Charlin, 1991; Daniels, 1978). Analysis of individual cells contribution to the χ^2 statistic was also performed for all significant findings (Sharpe, 2015). Stata/SE 16.1 was used for these analyses. In examining the results of the chi-square analyses, the χ^2 test indicates that there is a significant relationship between the variables if the associated p-value is less than .05, while the Cramer’s V or Kendall’s Tau indicates how strong that association is (with larger numbers in terms of absolute value indicating a stronger association).

ArcGIS Pro was used to examine the data in relation to spatial relationships among stops. Specifically, the location data was used to visualize the location of stops across Richmond and to determine the precinct in which individual stops occurred based on geo-location data. Additionally, heat maps were generated to identify the locations in which stops occur more frequently on the basis of clustering of the data (Scott and Janikas, 2010). Maps of the police precincts are provided as an overlay to the map of stops, as well as the most recent (2015-2019) racial demographic data from the American Community Survey.

Findings

Summary data can be found in Table 1. The majority of stops in Richmond during the time period under investigation were of Black drivers (77%). In comparison to White drivers, Black drivers were 5.13 times more likely to be stopped. The majority of stops involved traffic

² For example, in examining the outcome of stops (arrest, citation/summons, or warning) by race of the driver (American Indian, Asian, Black, White, and “Unknown”) each outcome by race category produces a cell to be used in the analysis for a total of 15 cells. The counts for many of these cells was less than five; only 2 Asian drivers were arrested and none of the cells (arrest, summons/citation, or warning) contained 5 cases for Native American drivers. While a chi-square statistic can be computed with low cell counts, it can lead to inaccurate p-values (measures of statistical significance); likewise, use of data with low cell counts could lead to inaccurate estimation of the strength of an association. To ensure that the p-values were accurate and that strength of association was appropriately assessed, only Black and White drivers were included in the final analyses presented in this report. To ensure this did not impact the overall findings, chi-square tests were also run including all racial groups for each test presented and the significance did not change for any of the analyses; thus the findings are robust with regard to inclusion or omission of the additional racial groups.

violations (69%), with equipment violations also comprising a large portion of stops conducted (36%). Additionally, most stops resulted in a warning being issued (69%). However, in the 7% of cases in which arrest of the driver occurred, Black drivers were 12.67 times more likely than White drivers to be arrested as the result of a stop. During most stops, additional actions were not taken, such as searches of persons, searches of the vehicle, or arrest of individuals other than the driver; these occurred only in a minority of cases.

Table 1. Summary Data

Variable	Frequency	Percent
Race of Driver		
American Indian	2	0.08
Asian	19	0.76
Black	1925	77
White	354	14.16
Unknown	200	8
Outcome of Stop		
Arrest	179	7.17
Citation/Summons	560	22.44
Warning	1756	70.38
Reason Stopped		
Traffic Violation	1426	58.48
Equipment Violation	910	36.4
Other	128	0.05
Search of Person		
Yes	266	10.65
No	2232	89.35
Search of Vehicle		
Yes	367	14.68
No	2133	85.32
Arrest of Person Other than Driver		
Yes	86	3.82
No	2165	96.18

The primary analysis was to conduct a chi-square test of independence on the traffic stop data regarding the race of the driver and primary result of the stop (arrest, summons/citation, or warning). Based on the Chi-square test, there are significant differences in the result of a stop based on driver race (χ^2 (2, N=2276) = 33.19, $p < .01$) the results of this analyses are presented in Table 2. Cramer's V = .12, indicating that there is a weak to moderate, but substantive effect of race of driver on the result of a stop. In examining individual cells, Black drivers faced the most severe outcome, arrest, more often than expected by chance; while White drivers

experienced arrest less often than expected by chance. This pattern was reversed for summons/citations; with White drivers receiving summons more often than expected by chance and Black drivers less often than expected by chance. The overall contribution to the analysis of receiving a warning based upon race was minimal.

Table 2. Chi-Square Tests of Association on Race of Driver and Result of Traffic Stop

Race of Driver	Outcome of Stop			Total
	Arrest	Summons/Citation	Warning	
Black	152 {7.91}	390 {20.29}	1380 {71.80}	1922 {100}
White	12 {3.39}	117 {33.05}	225 {63.56}	354 {100}
Total	164 {7.21}	507 {22.28}	1605 {70.52}	
Chi-square (2, N=2276) = 33.19, p < .01				
Cramer's V = .12				

Note: Counts are provided with row percentages in {}

Additional chi-square tests of independence on the traffic stop data regarding the race of the driver and other actions taken during the stop were conducted; specifically, whether a person was searched during the stop, whether the vehicle was searched during the stop, or whether a person other than the driver was arrested as the result of a stop. Based on these Chi-square tests, there are significant differences in searches conducted during a stop based on driver race, but not in arrests of additional persons. The results of each of these analyses are presented individually.

In regard to a person being searched during the stop, the results were statistically significant ($\chi^2(1, N=2277) = 6.25, p = .01$). The results of this analyses are presented in Table 3. Kendall's Tau was used to measure strength of association, with $\tau = -0.05$, indicating that there is a weak effect of race of driver on searches of persons performed during a stop. In examining individual cells, Black drivers were searched more often than expected by chance; while White drivers were searched less often than expected by chance.

In regard to the vehicle being searched during the stop, the results were statistically significant ($\chi^2(1, N=2279) = 20.73, p < .01$) the results of this analyses are also presented in Table 3. Kendall's Tau was used to measure strength of association, with $\tau = -0.10$, indicating that there is a weak effect of race of driver on searches of the vehicle performed during a stop. In examining individual cells, the vehicles of Black drivers were searched more often than expected by chance; while the vehicles of White drivers were searched less often than expected by chance.

The results of the analysis regarding the arrest of additional persons based on the race of the driver were not significant ($\chi^2 = 0.17, p = .68$).

Table 3. Chi-Square Tests of Association on Race of Driver and Searches of Vehicles and Persons

	Search of Person			Search of Vehicle		
Race of Driver	Yes	No	Total	Yes	No	Total
Black	223	1701	1924	317	1608	1925
	{11.59}	{88.41}	{100}	{16.47}	{83.53}	{100}
White	25	328	353	25	329	354
	{7.08}	{92.92}	{100}	{7.06}	{92.94}	{100}
Total	248	2029		342	1937	
	{10.89}	{89.11}		{15.01}	{84.99}	
	Chi-square (1, N=2277) = 6.25, p = .01			Chi-square (1, N=2279) = 20.74, p < .01		
	Kendall's Tau = -0.05			Kendall's Tau = -0.10		

Note: Counts are provided with row percentages in {}

Additional analyses were conducted to determine whether the reason for the stop (equipment violation or traffic violation) had an impact on the outcome of the stop. The results of the analysis regarding differences in outcomes for stops involving traffic violations based on the race of the driver was significant ($\chi^2(2, N=1323) = 14.07, p < .01$). Cramer's V was used to measure strength of association, with $V = .10$, indicating that there is a weak effect of race of driver on the outcome of stops for traffic violations. In examining individual cells, White drivers were given a summons or citation more often than expected by chance; while Black drivers received a summons or citation less often than expected by chance. In regard to differences in outcomes for stops involving equipment violations based on the race of the driver, the test was statistically significant ($\chi^2(2, N=848) = 7.24, p = .02$). Cramer's V was used to measure strength of association, with $V = 0.09$, indicating that there is a weak effect of race of driver on the outcome of a stop for equipment violations. Similar to traffic stops, White drivers were given a summons or citation more often than expected by chance; while Black drivers received a summons or citation less often than expected by chance. However, Black drivers were more likely than chance to be arrested as the result of a stop for an equipment violation. The results of these analyses can be found in Table 4.

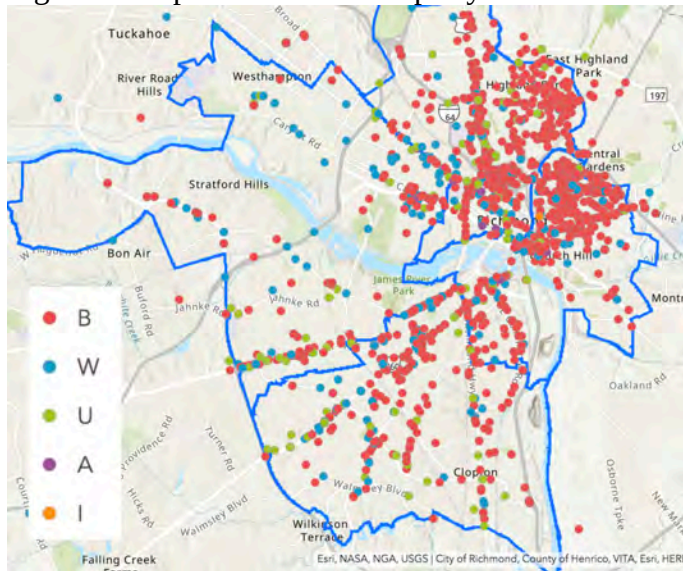
Table 4. Chi-Square Tests of Association on Race of Driver and Result of Traffic Stop for Traffic Violations and Equipment Violations

Race of Driver	Outcome of Stop (Traffic Violations)				Outcome of Stop (Equipment Violations)			
	Arrest	Summons/Citation	Warning	Total	Arrest	Summons/Citation	Warning	Total
Black	62 {5.75}	318 {29.50}	698 {64.75}	1078 {100}	56 {7.47}	62 {8.27}	632 {84.27}	750 {100}
White	9 {3.67}	102 {41.63}	134 {54.69}	245 {100}	2 {2.04}	14 {14.29}	82 {83.67}	98 {100}
Total	71 {5.37}	420 {31.75}	832 {62.89}		58 {6.84}	76 {8.96}	714 {84.20}	
Chi-square (2, N=1323) = 14.07, p < .01				Chi-square (2, N=848) = 7.24, p = .02				
Cramer's V = .10				Cramer's V = .09				

Note: Counts are provided with row percentages in {}

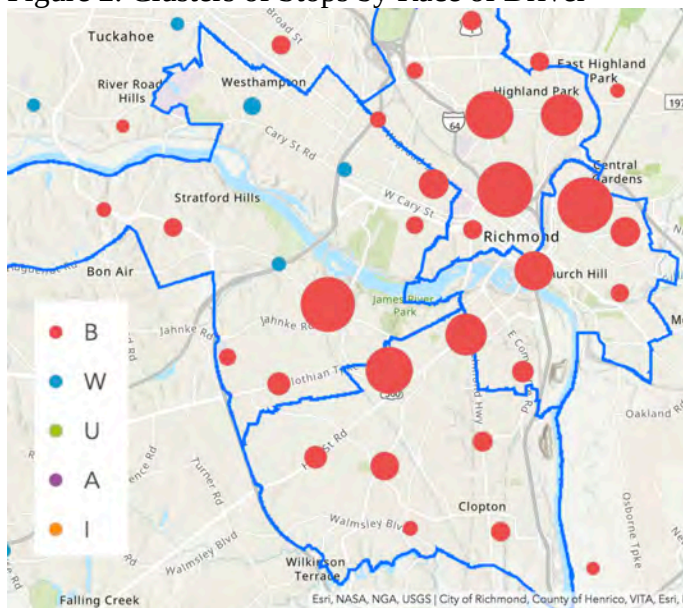
In regard to the spatial analysis, the map of the individual stops that occurred during the time period under investigation by the Richmond police department is presented in Figure 1, with each dot indicating an individual stop.

Figure 1. Map of Individual Stops by Race of Driver



First, stops were clustered by race to generate an overall picture of the geographic distribution of stops by race of driver, with each cluster representing 5 or more stops in geographic proximity to one another. As the majority of stops by the Richmond police department are of Black drivers, most clusters are also of Black drivers, while White drivers are distributed throughout the city and less likely to show as clusters. This can be seen in Figure 2. Note- this data does include drivers of all races, however, clustering only appears for Black and White drivers due to the small number of stops of other racial groups.

Figure 2. Clusters of Stops by Race of Driver



Next, a heat map was produced for both Black drivers (Figure 3) and White drivers (Figure 4). Heat maps display the density of stops for each group. Based on comparison of these two maps,

there are a greater number of high density locations for stops of Black drivers in comparison to White drivers.

Figure 3. Heat Map of Traffic Stops of Black Drivers

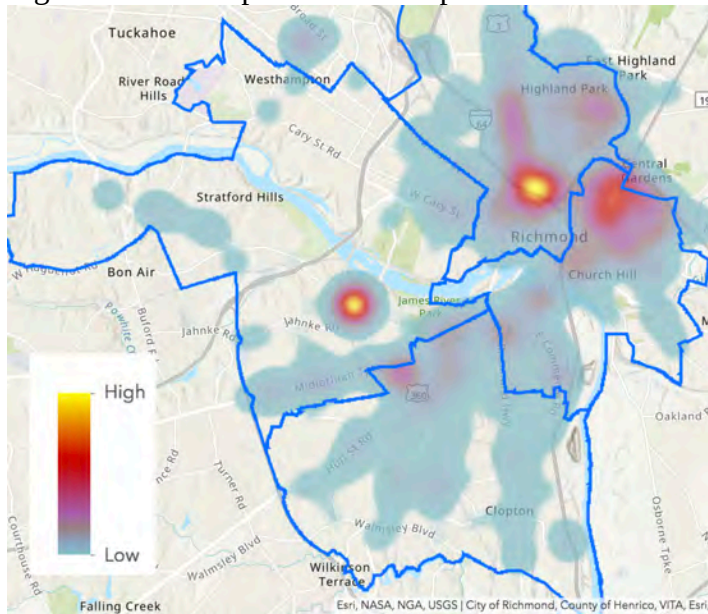
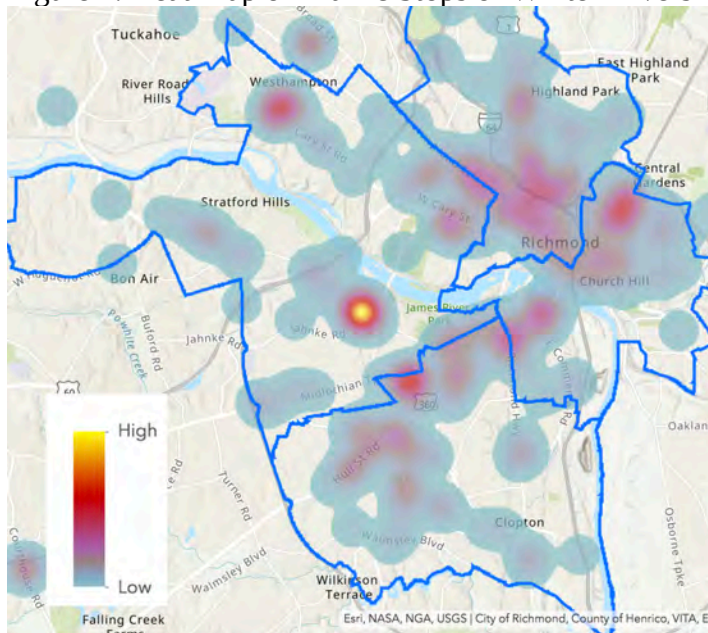


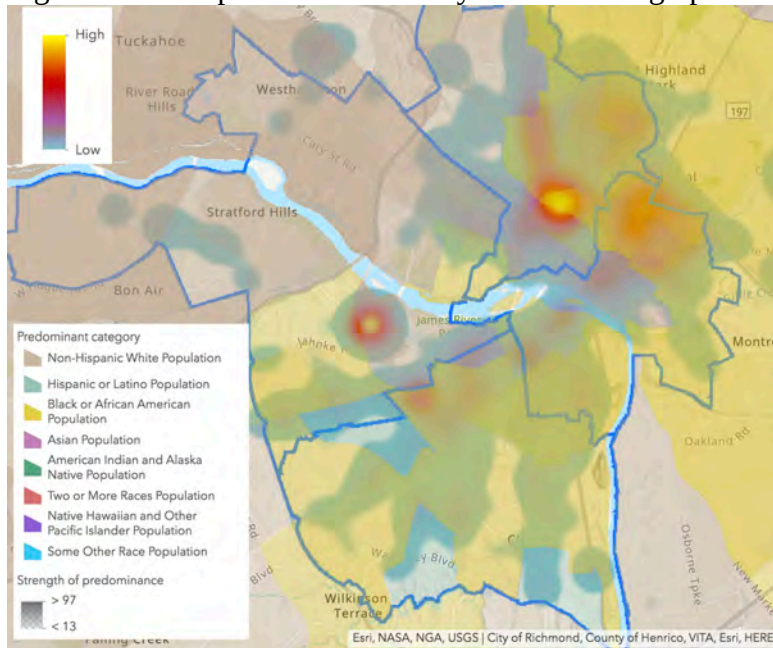
Figure 4. Heat Map of Traffic Stops of White Drivers



Finally, the heat map of stops of Black drivers is presented as an overlay onto the most recent (2015-2019) racial demographics from the American Community Survey, which maps the most prevalent racial demographic living in an area. When examining this map, we see that there are several areas of high density traffic stops of Black drivers in predominantly White areas of Richmond, as well as numerous areas of high density stops of Black Drivers along areas in areas

where racial demographics are in transition, specifically those areas in which predominantly White and predominantly Black neighborhoods border one another.

Figure 5. Overlap of Richmond City Racial Demographics and Traffic Stops of Black Drivers



Conclusion

The statistical significance of these findings across multiple analyses highlights how pervasive the racial disparities in police stops by the Richmond Police Department are. Throughout almost every step of a traffic stop, from the likelihood that a driver is pulled over, to the actions taken during the stop, to the eventual outcome of that stop, Black drivers are at a significant disadvantage compared to White drivers. Though the effect is somewhat weak, this is still an important substantive effect. Race should have no bearing on whether an individual is stopped, whether they are searched, or whether they are arrested during a traffic stop. But in each of these analyses, there is a significant but weak effect. The cumulative impact of these weak effects is that Black drivers face substantially different outcomes as the result of traffic stops as compared to White drivers. This is perhaps most evident when looking at differences in stops for equipment violations for Black and White drivers; while only 2% of White drivers are arrested after being pulled over for an equipment violation, roughly 7.5% of Black drivers are. Given that stops for equipment violations are often considered pretextual stops with greater potential for discretion and bias to impact the incident, these arrests are of particular concern; however, lack of additional data doesn't allow for investigation of these incidents in more detail in this report.

The spatial analyses of the data suggest are also striking. When stops are clustered, it becomes clear that almost all concentrations of stops are of Black drivers. We also see that these clusters are distributed throughout the city, and not contained within predominantly Black neighborhoods. In looking at the clusters of White drivers, the few clusters that exist only occur in neighborhoods that are predominantly White to begin with. This indicates that Black drivers are pulled over in areas where they are both the majority and the minority. The heat map of stops of Black drivers paired with the racial demographic overlay also suggests that enforcement of

traffic stops occurs along lines of gentrification, where predominant racial groups may be in transition and racial boundaries may be especially salient. Along both racial boundaries and in primarily White areas, who does and does not belong may be more noticeable, thus implicating race as a factor in traffic stops specifically in those areas.

While this report cannot say whether a specific traffic stop was the result of racial bias or racial profiling, this report does conclude that race is a significant factor in the decision to stop a driver, whether a person or vehicle is searched, the outcome of a stop, and the location where stops occur.

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A large-scale analysis of racial disparities in police stops across the United States

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We assessed racial disparities in policing in the United States by compiling and analysing a dataset detailing nearly 100 million traffic stops conducted across the country. We found that black drivers were less likely to be stopped after sunset, when a 'veil of darkness' masks one's race, suggesting bias in stop decisions. Furthermore, by examining the rate at which stopped drivers were searched and the likelihood that searches turned up contraband, we found evidence that the bar for searching black and Hispanic drivers was lower than that for searching white drivers. Finally, we found that legalization of recreational marijuana reduced the number of searches of white, black and Hispanic drivers—but the bar for searching black and Hispanic drivers was still lower than that for white drivers post-legalization. Our results indicate that police stops and search decisions suffer from persistent racial bias and point to the value of policy interventions to mitigate these disparities.

More than 20 million Americans are stopped each year for traffic violations, making this one of the most common ways in which the public interacts with the police^{1–4}. Due to the decentralized nature of policing in the United States—and a corresponding lack of comprehensive and standardized data—it is difficult to rigorously assess the manner and extent to which race plays a role in traffic stops⁵. The most widely cited national statistics come from the Police–Public Contact Survey (PPCS)⁶, which is based on a nationally representative sample of approximately 50,000 people who report having been recently stopped by the police. In addition to such survey data, some local and state agencies have released periodic reports on traffic stops in their jurisdictions, and have also made their data available to outside researchers for analysis^{6–20}. While useful, these datasets provide only a partial picture. For example, there is concern that the PPCS, like nearly all surveys, suffers from selection bias and recall errors. Data released directly by police departments are potentially more complete but are available only for select agencies, are typically limited in what is reported and are inconsistent across jurisdictions.

To address these challenges, we compiled and analysed a dataset detailing nearly 100 million traffic stops carried out by 21 state patrol agencies and 35 municipal police departments over almost a decade. This dataset was built through a series of public records requests filed in all 50 states. To facilitate future analysis, we have redistributed these records in a standardized form.

Our statistical analysis of these records proceeds in three steps. First, we assess potential bias in stop decisions by applying the 'veil of darkness' test developed by Grogger and Ridgeway²¹. This test is based on a simple observation: because the sun sets at different times throughout the year, one can examine the racial composition of stopped drivers as a function of sunlight while controlling for time of day. In particular, we use the discontinuity created by the start (and end) of daylight-saving time (DST), comparing the racial distribution of drivers stopped in the evenings immediately before

DST begins, when it is dark, to the distribution after DST begins, when it is light at the same time of day. If black drivers comprise a smaller share of stopped drivers when it is dark and accordingly difficult to determine a driver's race, that suggests black drivers were stopped during daylight hours in part because of their race. In both state patrol and municipal police stops, we find that black drivers comprise a smaller proportion of drivers stopped after sunset, suggestive of discrimination in stop decisions.

Second, we investigate potential bias in the post-stop decision to search drivers for contraband. To do so, we apply the threshold test recently developed by Simoiu et al.⁷ and refined by Pierson et al.²². The threshold test incorporates both the rate at which searches occur, as well as the success rate of those searches, to infer the standard of evidence applied when determining whom to search. This approach builds on traditional outcome analysis^{23,24}, in which a lower search success rate for one group relative to another is seen as evidence of bias against that group, as it suggests that a lower evidentiary bar was applied when making search decisions. Applied to our data, the threshold test indicates that black and Hispanic drivers were searched on the basis of less evidence than white drivers, both on the subset of searches carried out by state patrol agencies and on those carried out by municipal police departments.

Finally, we examine the effects of drug policy on racial disparities in traffic stop outcomes. We specifically compare patterns of policing in Colorado and Washington—two states that legalized recreational marijuana at the end of 2012—to those in 12 states in which recreational marijuana remained illegal. Using a difference-in-differences strategy, we find that legalization reduced both search rates and misdemeanor rates for drug offences for white, black and Hispanic drivers—though a gap in search thresholds persists.

In the process of collecting and analysing millions of traffic stop records across the country, we encountered many logistical and statistical challenges. Based on these experiences, we conclude by offering suggestions to improve data collection, analysis and reporting

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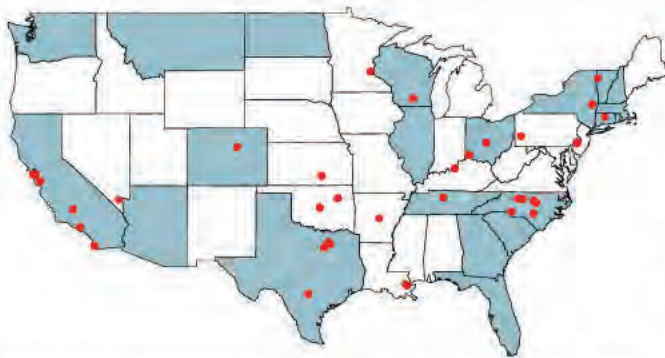


Fig. 1 | Geographic coverage of compiled traffic stop data. We analysed data on approximately 95 million stops from 21 state patrol agencies (blue) and 35 municipal police departments (red) across the country.

by law enforcement agencies. Looking forward, we hope this work provides a road map for measuring racial disparities in policing, and facilitates future empirical research into police practices.

Results

Compiling a national database of traffic stops. To assemble a national dataset of traffic stops, we filed public records requests with all 50 state patrol agencies and over 100 municipal police departments. The municipal police departments include those that serve the largest 100 cities in the nation; to achieve geographic coverage, we also included departments that serve some of the largest cities in each state.

To date, we have collected (and released) data on approximately 221 million stops carried out by 33 state patrol agencies, and 34 million stops carried out by 56 municipal police departments, for a total of 255 million records. In many cases, however, the data we received were insufficient to assess racial disparities (for example, the race of the stopped driver was not regularly recorded, or only a non-representative subset of stops was provided). For consistency in our analysis, we further restrict to stops occurring in 2011–2018, as many jurisdictions did not provide data on earlier stops. Finally, we limit our analysis to drivers classified as white, black or Hispanic, as there were relatively few recorded stops of drivers in other race groups. Our primary dataset thus consists of approximately 95 million stops from 21 state patrol agencies and 35 municipal police departments, as shown in Fig. 1 and described in more detail in Supplementary Table 2.

Because each jurisdiction provided stop data in idiosyncratic formats with varying levels of specificity, we used a variety of automated and manual procedures to create the final dataset. For each recorded stop, we attempted to extract and normalize the date and time of the stop; the county (for state patrol agencies) or police subdivision (for example, beat, precinct or zone, for municipal police departments) in which the stop took place; the race, gender and age of the driver; the stop reason (for example, speeding); whether a search was conducted; the legal justification for the search (for example, ‘probable cause’ or ‘consent’); whether contraband was found during a search; and the stop outcome (for example, a citation or an arrest). As indicated in Supplementary Table 2, the information we received varies markedly across states. We therefore restricted each of our specific analyses to the corresponding subset of jurisdictions for which we have the required fields. Our complete data-cleaning pipeline is extensive and required subjective decisions, which we describe in more detail in Methods. For transparency and reproducibility, we have released the raw data, the standardized data and code to clean and analyse the records at <https://openpolicing.stanford.edu>.

Assessing bias in traffic stop decisions. Relative to their share of the residential population, we found that black drivers were, on average,

stopped more often than white drivers. In particular, among state patrol stops, the annual per-capita stop rate for black drivers was 0.10 compared to 0.07 for white drivers; and among municipal police stops, the annual per-capita stop rate for black drivers was 0.20 compared to 0.14 for white drivers. For Hispanic drivers, however, we found that stop rates were lower than for white drivers: 0.05 for stops conducted by state patrol (compared to 0.07 for white drivers) and 0.09 for those conducted by municipal police departments (compared to 0.14 for white drivers). In all cases, these numbers are the unweighted average annual per-capita stop rates across the states and cities we analysed, and all estimates have corresponding 95% confidence intervals (CIs) with radius <0.001. We note that these results are consistent with self-reported stop rates by white, black and Hispanic drivers who participated in the national PPCS¹.

These numbers are a starting point for understanding racial disparities in traffic stops, but they do not, per se, provide strong evidence of racially disparate treatment. In particular, per-capita stop rates do not account for possible race-specific differences in driving behaviour, including amount of time spent on the road and adherence to traffic laws. For example, if black drivers, hypothetically, spend more time on the road than white drivers, that could explain the higher stop rates we see for the former, even in the absence of discrimination. Moreover, drivers may not live in the jurisdictions where they were stopped, further complicating the interpretation of population benchmarks.

Quantifying potential bias in stop decisions is a statistically challenging problem, in large part because one cannot readily measure the racial distribution of those who actually violated traffic laws because the data contain information only on those stopped for such offences. To mitigate this benchmarking problem, Grogger and Ridgeway²¹ proposed a statistical approach known as the veil-of-darkness test. Their method starts from the idea that officers who engage in racial profiling are less able to identify a driver’s race after dark than during the day. As a result, if officers are discriminating against black drivers—all else being equal—one would expect black drivers to comprise a smaller share of stopped drivers at night, when a veil-of-darkness masks their race. To account for patterns of driving and police deployment that may vary throughout the day, the test leverages the fact that the sun sets at different times during the year. For example, although it is typically dark at 19:00 during the winter months, it is often light at that time during the summer.

To illustrate the intuition behind this method, in Fig. 2 we examine the demographic composition of drivers stopped by the Texas State Patrol at various times of day. Each panel in the plot shows stops occurring in a specific 15-min window (for example, 19:00–19:15), and the horizontal axis indicates minutes since dusk. We restrict to white and black drivers—because the ethnicity of Hispanic drivers is not always apparent, even during daylight hours—and, following Grogger and Ridgeway, we filter out stops that occurred in the ~30-min period between sunset and dusk, when it is neither ‘light’ nor ‘dark’. For each time period, the plot shows a marked drop in the proportion of drivers stopped after dusk who are black, suggestive of discrimination in stop decisions.

In this basic form, darkness—after adjusting for time of day—is a function of the date. As such, to the extent that driver behaviour changes throughout the year, and that these changes are correlated with race, the test can suggest discrimination where there is none. To account for these potential seasonal effects, we applied a more robust variant of the veil-of-darkness test that restricts to two 60-day windows centred on the beginning and end of DST²⁵. On this subset of the data, we fit the following logistic regression model:

$$\Pr(\text{black}|t, g, p, d, s, c) = \text{logit}^{-1}(\alpha_s \times s \times d + \alpha_c \times c \times d + \beta^T \times \text{ns}_6(t) + \gamma[g] + \delta[p]),$$

where $\Pr(\text{black}|t, g, p, d, s, c)$ is the probability that a stopped driver is black at a certain time t , location g and period p (with two periods

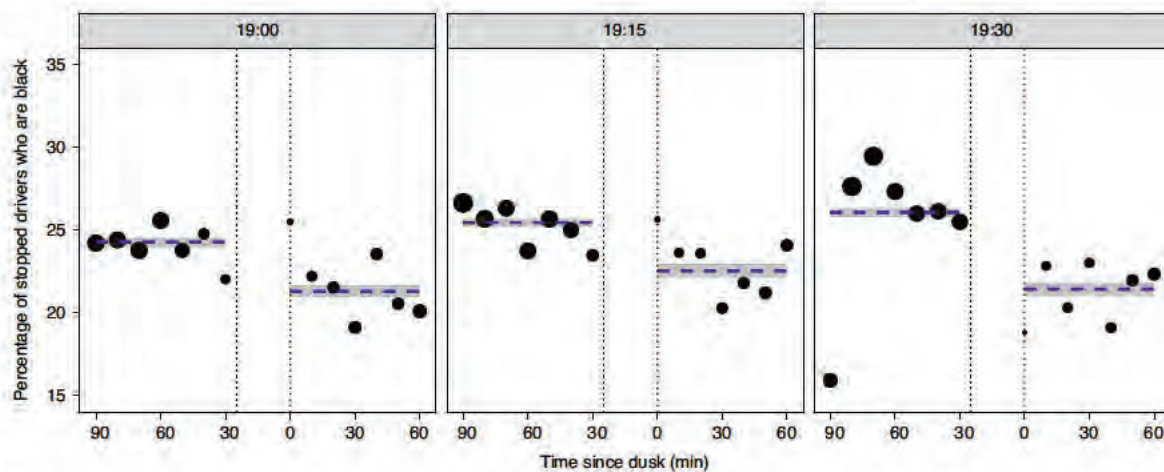


Fig. 2 | An illustration of the veil-of-darkness test for stops occurring in three short time windows in a single state, Texas. For each window (19:00–19:15, 19:15–19:30 and 19:30–19:45), we compute the percentage of stops that involved black drivers for a series of 10-min periods before and after dusk. The figure is based on 112,938 stops of black and white drivers (35,270 during 19:00–19:15, 38,726 during 19:15–19:30 and 38,942 during 19:30–19:45), with points sized according to the total number of stops in each bin. The vertical line at $t=0$ indicates dusk, at which point it is generally considered ‘dark’; we remove stops in the ~ 30 -min period between sunset (indicated by the left-most vertical line in each panel) and dusk, as this period is neither ‘light’ nor ‘dark’. The dashed horizontal lines show the overall proportion of stops involving black drivers before and after dark, with 95% CI. For all three depicted time windows, black drivers comprise a smaller share of stopped drivers after dark, when a veil of darkness masks their race, suggestive of racial profiling.

per year, corresponding to the start and end of DST), with darkness status $d \in \{0, 1\}$ indicating whether a stop occurred after dusk ($d=1$) or before sunset ($d=0$), and with the enforcement agency being either state patrol, $s \in \{0, 1\}$ or city police department, $c \in \{0, 1\}$. In this model, $ns_s(t)$ is a natural spline over time with six degrees of freedom, $\gamma[g]$ is a fixed effect for location g and $\delta[p]$ is a fixed effect for period p . The location $g[i]$ for stop i corresponds to either the county (for state patrol stops) or city (for municipal police department stops), with $\gamma[g[i]]$ the corresponding coefficient. Finally, $p[i]$ captures whether stop i occurred in the spring (within a month of beginning DST) or the fall (within a month of ending DST) of each year, and $\delta[p[i]]$ is the corresponding coefficient for this period. For computational efficiency, we rounded time to the nearest 5-min interval when fitting the model.

The main terms of interest in our model are α_s and α_c , which describe differences in the composition of stopped drivers between daylight and dark, after adjusting for time and location, with $\alpha_s, \alpha_c < 0$ suggesting discrimination against black drivers for state patrols and city departments, respectively. We find $\alpha_s = -0.033$ (95% CI $[-0.039, -0.027]$, $P < 0.001$) and $\alpha_c = -0.039$ (95% CI $[-0.045, -0.033]$, $P < 0.001$), suggesting discrimination among both state patrols and municipal police departments. To gauge the robustness of our results, we fit multiple variations of the veil-of-darkness model described above (for example, using different degrees for the natural spline). In all cases, we found qualitatively similar results that are suggestive of racial bias against black drivers in stop decisions, as described in Methods and Supplementary Table 1.

The veil-of-darkness test is a popular technique for assessing disparate treatment but, like all statistical methods, it comes with caveats. Results could be skewed if race-specific driving behaviour is related more to lighting than time of day, leading the test to suggest discrimination where there is none. Conversely, artificial lighting (for example, from street lamps) can weaken the relationship between sunlight and visibility, and so the method may underestimate the extent to which stops are predicated on perceived race. Finally, if violation type is related to lighting, the test could give an inaccurate measure of discrimination. For example, broken tail lights are more likely to be detected at night and could potentially be more common among black drivers¹⁷, which could in turn mask

discrimination. To address this last limitation, one could exclude stops prompted by such violations but our data, unfortunately, do not consistently indicate stop reasons. Despite these shortcomings, we believe the veil-of-darkness test provides a useful, if imperfect, measure of bias in stop decisions.

Assessing bias in search decisions. After stopping a driver, officers may carry out a search of the driver or vehicle if they suspect more serious criminal activity. We next investigate potential bias in these search decisions. Among stopped drivers, we found that black and Hispanic individuals were, on average, searched more often than white individuals. However, as with differences in stop rates, the disparities we see in search rates are not necessarily the product of discrimination. Black and Hispanic drivers might, hypothetically, carry contraband at higher rates than white drivers, and so elevated search rates may result from routine police work even if no racial bias were present. To measure the role of race in search decisions, we apply two statistical strategies: outcome analysis and threshold analysis. To do so, we limit to the eight state patrol agencies and six municipal police departments for which we have sufficient data on the location of stops, whether a search occurred and whether those searches yielded contraband. We specifically consider state patrol agencies in Connecticut, Illinois, North Carolina, Rhode Island, South Carolina, Texas, Washington and Wisconsin; and municipal police departments in Nashville, TN, New Orleans, LA, Philadelphia, PA, Plano, TX, San Diego, CA and San Francisco, CA. We defer to each department’s characterization of ‘contraband’ when carrying out this analysis.

In the eight state patrol agencies we consider, search rates were 4.3% (95% CI 4.2–4.4%) for black drivers, 4.1% (95% CI 4.0–4.1%) for Hispanic drivers and 1.9% (95% CI 1.9–1.9%) for white drivers. In particular, the gap in search rates between black and white drivers was 2.4% (95% CI 2.3–2.5%, $P < 0.001$) and the gap in search rates between Hispanic and white drivers was 2.2% (95% CI 2.1–2.2%, $P < 0.001$). Similarly, in the six municipal police departments we consider, the search rates were 9.5% (95% CI 9.4–9.6%) for black drivers, 7.2% (95% CI 7.0–7.3%) for Hispanic drivers and 3.9% (95% CI 3.8–3.9%) for white drivers. The gap in municipal search rates between black and white drivers was 5.6% (95% CI

5.5–5.7%, $P < 0.001$) and the gap in search rates between Hispanic and white drivers was 3.3% (95% CI 3.1–3.5%, $P < 0.001$). As above, these numbers are unweighted average search rates across our states and cities, respectively.

In these jurisdictions, stopped black and Hispanic drivers were searched about twice as often as stopped white drivers. To assess whether this gap resulted from biased decision-making, we apply the outcome test, originally proposed by Becker^{23,24}, to circumvent omitted variable bias in traditional tests of discrimination. The outcome test is based not on the search rate but on the ‘hit rate’: the proportion of searches that successfully turn up contraband. Becker argued that even if minority drivers are more likely to carry contraband, in the absence of discrimination, searched minorities should still be found to have contraband at the same rate as searched whites. If searches of minorities are successful less often than searches of whites, it suggests that officers are applying a double standard, searching minorities on the basis of less evidence. Implicit in this test is the assumption that officers exercise discretion in whom to search; therefore, when possible, we exclude non-discretionary searches, such as vehicle impound searches and searches incident to arrest, as those are often required as a matter of procedure, even in the absence of individualized suspicion. We note that outcome tests gauge discrimination only at one specific point in the decision-making process—in this case, the decision to search a driver who has been stopped. In particular, this type of analysis does not capture bias in the stop decision itself.

In Fig. 3 (top row), we plot hit rates by race and location for the states (left) and for the cities (right) for which we have the necessary information. Across jurisdictions, we consistently found that searches of Hispanic drivers were less successful than those of white drivers. However, searches of white and black drivers had more comparable hit rates. The outcome test thus indicates that search decisions may be biased against Hispanic drivers, but the evidence is more ambiguous for black drivers. Aggregating across state patrol stops, contraband was found in 32.0% (95% CI 31.6–32.4%) of searches of white drivers compared to 24.3% (95% CI 23.5–25.2%) of searches of Hispanic drivers and 29.4% (95% CI 28.7–30.0%) of searches of black drivers. In particular, the gap in hit rates between white and Hispanic drivers was 7.6% (95% CI 6.7–8.6%, $P < 0.001$), and the gap in hit rates between white and black drivers was 2.6% (95% CI 1.9–3.4%, $P < 0.001$). Similarly, aggregating across municipal police departments, contraband was found in 18.2% (95% CI 17.8–18.7%) of searches of white drivers compared to 11.0% (95% CI 10.6–11.5%) of searches of Hispanic drivers and 13.9% (95% CI 13.7–14.2%) of searches of black drivers. In this case, the gap in hit rates between white and Hispanic drivers was 7.2% (95% CI 6.6–7.8%, $P < 0.001$) and the gap in hit rates between white and black drivers was 4.3% (95% CI 3.8–4.8%, $P < 0.001$). These numbers all indicate unweighted averages across our cities and states, respectively.

The outcome test is intuitively appealing, but it is an imperfect barometer of bias; in particular, it suffers from the problem of infra-marginality^{8,26,27}. To illustrate this shortcoming, suppose that there are two, easily distinguishable, types of white driver: those who have a 5% chance of carrying contraband and those who have a 75% chance of carrying contraband. Likewise assume that black drivers have either a 5 or 50% chance of carrying contraband. If officers search drivers who are at least 10% likely to be carrying contraband, then searches of white drivers will be successful 75% of the time whereas searches of black drivers will be successful only 50% of the time. Thus, although the search criterion is applied in a race-neutral manner, the hit rate for black drivers is lower than that for white drivers and the outcome test would (incorrectly) conclude that searches are biased against black drivers. The outcome test can similarly fail to detect discrimination when it is present.

Addressing this possibility, Knowles et al.²⁷ suggested an economic model of behaviour—known as the KPT model—in which drivers balance their utility for carrying contraband with the risk of getting caught, while officers balance their utility of finding contraband with the cost of searching. Under equilibrium behaviour in this model, the hit rate of searches is identical to the search threshold and so one can reliably detect discrimination with the standard outcome test. However, Engel and Tillyer²⁸ argue that the KPT model of behaviour requires strong assumptions, including that drivers and officers are rational actors and that every driver has perfect knowledge of the likelihood that he or she will be searched.

To mitigate the limitations of outcome tests (as well as limitations of the KPT model), the threshold test has been proposed as a more robust means for detecting discrimination^{7,22}. This test aims to estimate race-specific probability thresholds above which officers search drivers—for example, the 10% threshold in the hypothetical situation above. Even if two race groups have the same observed hit rate, the threshold test may find that one group is searched on the basis of less evidence, indicative of discrimination. To accomplish this task, the test uses a Bayesian model to simultaneously estimate race-specific search thresholds and risk distributions that are consistent with the observed search and hit rates across all jurisdictions. The threshold test can thus be seen as a hybrid between outcome and benchmark analysis, as detailed in Methods.

As shown in Fig. 3 (bottom row), the threshold test indicates that the bar for searching black and Hispanic drivers is generally lower than that for searching white drivers across the municipal police departments and states we consider. In aggregate across cities, the inferred threshold for white drivers is 10.0% compared to 5.0 and 4.6% for black and Hispanic drivers, respectively. The estimated gaps in search thresholds between white and non-white drivers are large and statistically significant: the 95% credible interval for the Hispanic–white difference is (–6.4, –4.4%) and the corresponding interval for the black–white difference is (–6.1, –4.0%). Similarly across states, the inferred threshold for white drivers is 20.9% compared to 16.0% for black drivers and 13.9% for Hispanic drivers. These differences are again large and statistically significant: the 95% credible interval for the Hispanic–white gap is (–8.4, –5.6%); and the analogous interval for the black–white gap is (–6.5%, –3.1%). As with our outcome results, aggregate thresholds are computed by taking an unweighted average of the city- and state-specific thresholds, respectively.

Compared to by-location hit rates, the threshold test more strongly suggests discrimination against black drivers, particularly for municipal stops. Consistent with past work⁷, this difference appears to be driven by a small but disproportionate number of black drivers who have a high inferred likelihood of carrying contraband. Thus, even though the threshold test finds that the bar for searching black drivers is lower than that for white drivers, these groups have more similar hit rates.

The threshold test provides evidence of racial bias in search decisions. However, as with all tests of discrimination, it is important to acknowledge limits in what one can conclude from such statistical analysis per se. For example, if search policies differ not only across, but also within, the geographic subdivisions we consider, then the threshold test might mistakenly indicate discrimination where there is none. Additionally, if officers disproportionately suspect more serious criminal activity when searching black and Hispanic drivers compared to white drivers (for example, possession of larger quantities of contraband), then lower observed thresholds may stem from non-discriminatory police practices. Finally, we note that thresholds cannot be identified by the observed data alone⁷, and so inferences are dependent on the specific functional form of the underlying Bayesian model, including the prior distributions. (In Methods, however, we show that our main results are robust to relatively large changes to prior distributions).

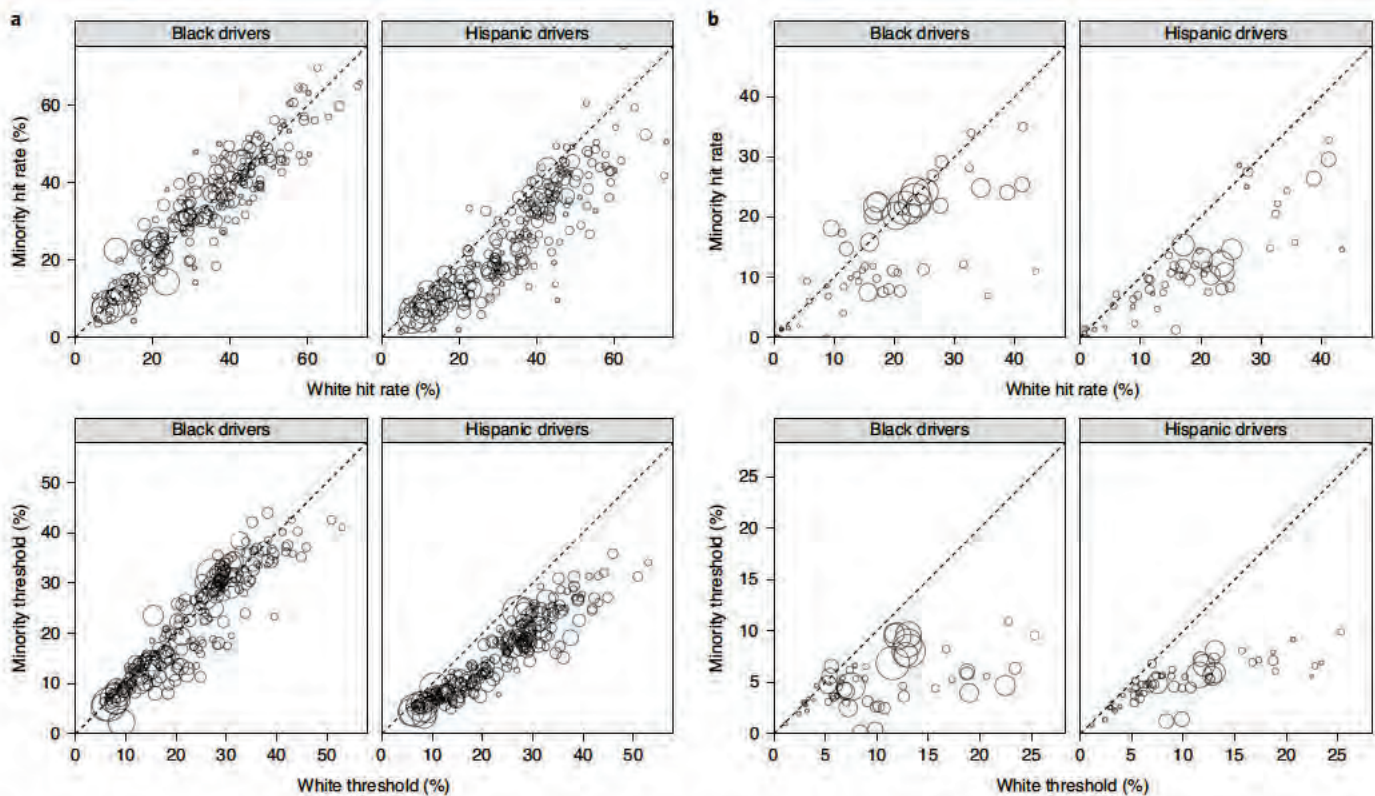


Fig. 3 | Hit rates and inferred search thresholds by race and location. **a**, Data for state patrol are based on 647,251 searches in eight states, with points corresponding to counties. **b**, Data for municipal police are based on 187,145 searches in six cities, with points corresponding to police precincts. Points are sized by number of searches. The top panels indicate search hit rates, and the bottom panels indicate search thresholds. Across locations, the inferred thresholds for searching black and Hispanic drivers are typically lower than those for searching white drivers, suggestive of bias. Despite these lower inferred search thresholds, hit rates for black drivers are comparable to those for white drivers, ostensibly due to the problem of infra-marginality in outcome tests.

The effects of legalization of marijuana on stop outcomes. We conclude our analysis by investigating the effects of legalization of recreational marijuana on racial disparities in stop outcomes. We specifically examine Colorado and Washington, two states in which marijuana was recently legalized and for which we have detailed data before and after legalization. In line with expectations, we find that the proportion of stops that resulted in either a drug-related infraction or misdemeanor fell substantially in both states after marijuana was legalized at the end of 2012 (see Supplementary Fig. 2). Notably, since black drivers were more likely to be charged with such offences previous to legalization, these drivers were also disproportionately impacted by the policy change. This finding is consistent with past work showing that marijuana laws disproportionately affect minorities²⁹.

Because the policy change decriminalized an entire class of behaviour (that is, possession of small amounts of marijuana), it is not surprising that drug offences correspondingly decreased. However, it is less clear, a priori, how the change might have affected officer behaviour more broadly. Investigating this issue, we found that after the legalization of marijuana the number of searches fell substantially in Colorado and Washington (Fig. 4), ostensibly because the policy change removed a common reason for conducting searches.

Because black and Hispanic drivers were more likely to be searched before legalization, the policy change reduced the absolute gap in search rates between race groups; however, the relative gap persisted, with black and Hispanic drivers still more likely to be searched than white drivers post-legalization. We further note that marijuana legalization had secondary impacts for law-abiding drivers, because fewer searches overall also meant fewer searches of

those without contraband. In the year after legalization in Colorado and Washington, about one-third fewer drivers were searched with no contraband found than in the year before legalization.

As further evidence that the observed drop in search rates in Colorado and Washington was due to marijuana legalization, we note that in the 12 states where marijuana was not legalized—and for which we have the necessary data—search rates did not exhibit sharp drops at the end of 2012 (Fig. 5). To add quantitative detail, we computed a difference-in-differences estimate³⁰; our precise model specification and the fitted coefficients are described in Methods. We found that the race-specific coefficients are large and negative for white, black and Hispanic drivers, which again suggests that the observed drop in searches in Colorado and Washington was caused by the legalization of marijuana in those states.

Despite the legalization of marijuana decreasing search rates across race groups, Fig. 4 shows that the relative disparity between whites and minorities remained. We applied the threshold test to assess the extent to which this disparity in search rates may reflect bias. Examining the inferred thresholds (shown in Supplementary Fig. 3), we found that white drivers faced consistently higher search thresholds than minority drivers, both before and after marijuana legalization. The data thus suggest that, although overall search rates dropped in Washington and Colorado, black and Hispanic drivers still faced discrimination in search decisions.

Discussion

Analysing nearly 100 million traffic stops across the country, we have worked to quantify the often complex relationship between race and policing in the United States. Our analysis provides evidence that decisions about whom to stop and, subsequently, whom to search are

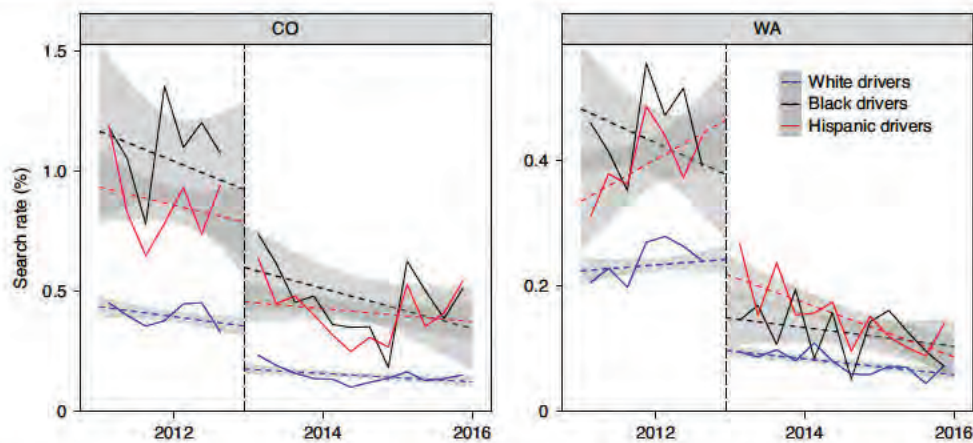


Fig. 4 | Percentage of stops that resulted in a search before and after recreational marijuana was legalized in Colorado and Washington at the end of 2012. After legalization, there was a substantial drop in search rates. The vertical dashed lines indicate the timing of legalization; the other dashed lines show fitted linear trends pre- and post-legalization. The left panel (Colorado) represents 1,674,619 stops and the right panel (Washington) represents 3,985,677 stops. We excluded data for the fourth quarter of 2012, since that period includes stops both before and after legalization. Additionally, in both states, we excluded searches incident to an arrest and other searches that are conducted as a procedural matter, irrespective of any suspicion of drug possession.

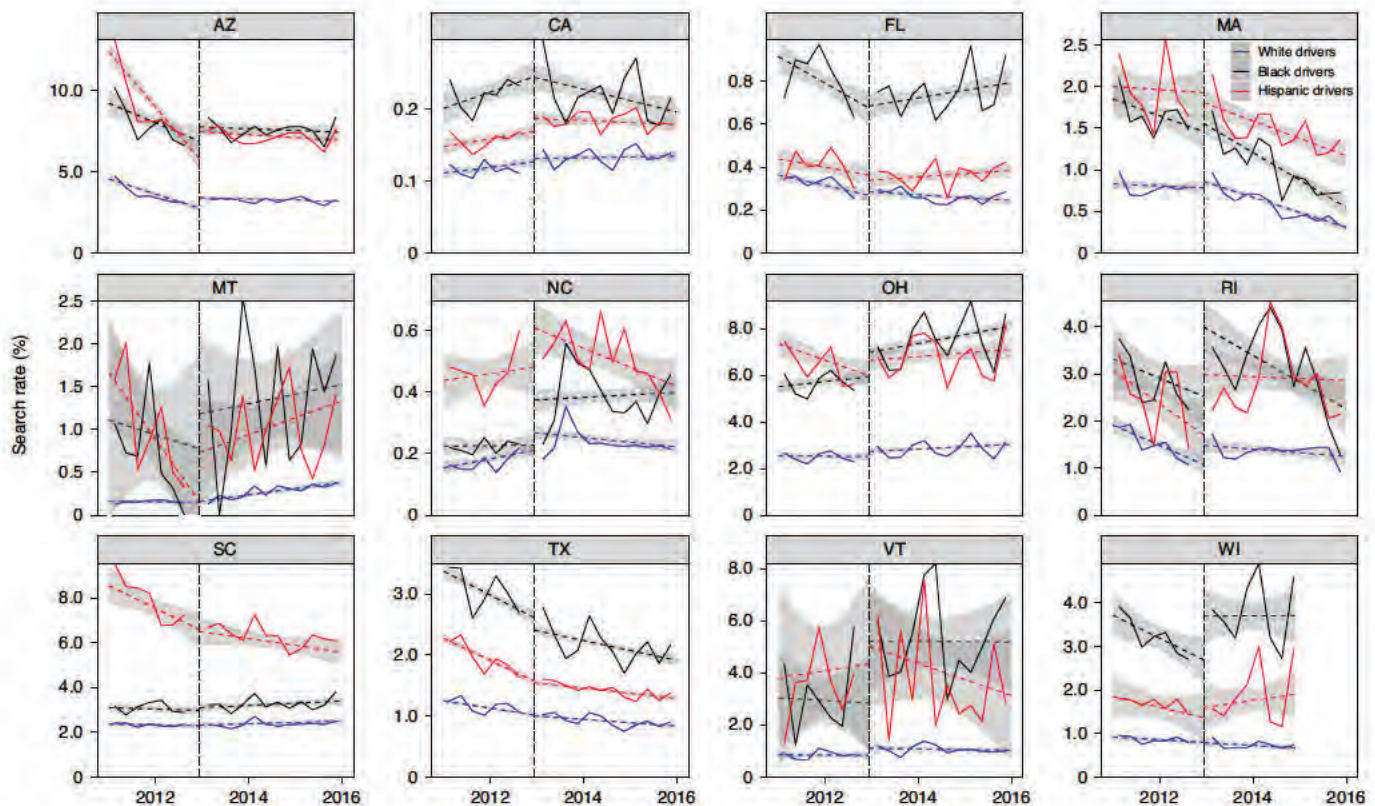


Fig. 5 | Percentage of stops that resulted in a search in 12 states in which recreational marijuana was not legalized. In the 12 states where marijuana was not legalized—and for which we have the necessary data—search rates did not exhibit sharp declines at the end of 2012, which further suggests that marijuana legalization caused the observed drop in search rates in Colorado and Washington. The plots are based on the following number of stops: 2,038,850 in AZ, 19,012,414 in CA, 3,686,757 in FL, 1,773,546 in MA, 547,115 in MT, 3,500,180 in NC, 4,660,935 in OH, 229,691 in RI, 3,909,950 in SC, 20,494,642 in TX, 250,949 in VT and 741,245 in WI. Dashed lines are as in Fig. 4.

biased against black and Hispanic drivers. Our results, however, also point to the power of policy interventions—specifically, legalization of recreational marijuana—to reduce these racial disparities.

These findings lend insight into patterns of policing, but they only partially capture the wider impacts of law enforcement on

communities of colour. If, for example, officers disproportionately patrol black and Hispanic neighbourhoods, the downstream effects can be injurious even if individual stop decisions are not directly affected by the colour of one's skin. Similarly, enforcement of minor traffic violations, like broken tail lights—even if conducted

uniformly and without animus—can place heavy burdens on black and Hispanic drivers without improving public safety¹⁷. We hope the data we have collected and released are useful for measuring, and in turn addressing, these broader effects.

In the course of carrying out this study, we encountered many challenges working with large-scale policing data. We conclude by offering several recommendations for future data collection, release and analysis. As a minimum, we encourage jurisdictions to collect individual-level stop data that include the date and time of the stop; the location of the stop; the race, gender and age of the driver; the stop reason; whether a search was conducted; the search type (for example, ‘probable cause’ or ‘consent’); whether contraband was found during a search; the stop outcome (for example, a citation or an arrest); and the specific violation with which the driver was charged. Most jurisdictions collect only a subset of this information. There are also variables that are currently rarely collected but would be useful for analysis, such as indicia of criminal behaviour, an officer’s rationale for conducting a search and short narratives written by officers describing the incident. New York City’s UF-250 form for pedestrian stops is an example of how such information can be efficiently collected^{31,32}.

Equally important to data collection is ensuring the integrity of the recorded information. We frequently encountered missing values and errors in the data (for example, implausible values for a driver’s age and invalid racial categorizations). Automated procedures can be put in place to help detect and correct such problems. For example, the recorded race of the driver is often based on the officer’s perception rather than a driver’s self-categorization. While there are perhaps sound reasons for this practice, it increases the likelihood of errors. To quantify and correct for this issue, police departments might regularly audit their data, possibly by comparing an officer’s perception of race to a third party’s judgement based on driver’s licence photos for a random sample of stopped drivers.

Despite the existence of public records laws, several jurisdictions failed to respond to our repeated requests for information. We hope that law enforcement agencies consider taking steps to make data more accessible to both external researchers and the public. Connecticut and North Carolina are at the forefront of opening up their data, providing online portals for anyone to download and analyse this information.

We also hope that police departments start to analyse their data regularly and report the results of their findings. Such analyses might include estimates of stop, search and hit rates stratified by race, age, gender and location; distribution of stop reasons by race; and trends over time. More ambitiously, departments could use their data to design statistically informed guidelines that encourage more consistent, efficient and equitable decisions^{31,33–35}. Many of these analyses can be automated and rerun regularly with little marginal effort. In conjunction with releasing the data underlying these analyses, we recommend that the analysis code also be released to ensure reproducibility.

Finally, it bears emphasis that the type of large-scale data analysis we have carried out in this paper is but one of many complementary ways to gauge and rectify bias in police interactions with the public. Just as critical, for example, are conversations with both officers and community members, who can often provide more nuance than is possible with our aggregate statistical approach. Collecting, releasing and analysing police data are important steps for increasing the effectiveness and equity of law enforcement practices, and for improving relations with the public through transparency. Ultimately, though, data collection and analysis are not enough. We must act on the results of such efforts if we are to reduce the persistent, discriminatory impacts of policing on communities of colour.

Methods

Data collection and standardization. Our primary dataset includes 94,778,505 stops from 21 state patrol agencies and 35 municipal police departments.

For more detail on all jurisdictions whose data were used in our analyses, Supplementary Table 2 lists the total number of stops and the range of years in which these stops took place. The table also indicates whether each of several important covariates was available in each jurisdiction: the date and time of the stop; more granular geographic information; the race, age and gender of the stopped driver; and whether a search was conducted and, if so, whether contraband was found. Our data-processing pipeline was extensive. Below we describe some of the key steps in this process, and also note that the complete code required to process the data is available at <https://openpolicing.stanford.edu>.

For each state and city, we requested individual-level records for traffic stops conducted since 2005, under the state’s public records law and filed with the agency responsible for traffic stop data collection. The 33 states and 56 cities that complied provided the data in various formats, including raw text files, Microsoft Excel spreadsheets and Microsoft Access databases. We converted all data we received to a standard comma-separated, text-file format. The states and cities varied widely in terms of the availability of the different data fields, the manner and detail of how the data were recorded and in recording consistency from year to year, even within the same location.

We standardized available fields when possible. Often, locations provided dictionaries to map numeric values to human-interpretable ones. Aggregated data—as provided by Missouri, Nebraska and Virginia, for example—were disaggregated by expanding the number of rows by the reported count. For some locations, we had to manually map the provided location data to a county or district value. For example, in Washington, counties were mapped by first computing the latitude and longitude of the highway post that was recorded for the stop, and then those coordinates were mapped to a county using a shapefile. The raw data we received from the states and cities, the processed data we used in this analysis and the code to clean and analyse the data are all available for public inspection and reuse.

In many cases, more than one row in the raw data appeared to refer to the same stop. For example, in several jurisdictions each row in the raw data referred to one violation, not one stop. We detected and reconciled such duplicates by matching on a location-specific set of columns. For example, in Colorado we counted two rows as duplicates if they had the same officer identification code, officer first and last name, driver first and last name, driver birth date, stop location (precise to the milepost marker) and stop date and time. This type of de-duplication was a common procedure that we applied to many states and cities.

The raw data provided to us by state and municipal police agencies often contained clear errors. We ran numerous automated checks to detect and correct these where possible, although some errors probably remain due to the complex nature of the data. For example, after examining the distribution of recorded values in each jurisdiction, we discovered a spurious density of stops in North Carolina listed as occurring at precisely midnight. As the value ‘00:00’ was probably used to indicate missing information, we treated it as such. In Pittsburgh, PA, recorded values for ‘sex’ and ‘gender’ did not match 73% of the time in the pedestrian stop data, suggesting data corruption. (Note that we did not include pedestrian stop data in our analysis, but we have released those records for other researchers to use.)

In another example, past work revealed that Texas State Patrol officers incorrectly recorded many Hispanic drivers as white, an error the agency subsequently corrected³⁶. To investigate and adjust for this issue, we imputed Hispanic ethnicity from surnames. To carry out this imputation, we used a dataset from the U.S. Census Bureau that estimates the racial and ethnic distribution of people with a given surname for surnames occurring at least 100 times³⁷. To increase the matching rate, we performed minor string edits to the names, including removal of punctuation and suffixes (for example, ‘Jr.’ and ‘II’), and considered only the longest word in multi-part surnames. Following previous studies^{38,39}, we defined a name as ‘typically’ Hispanic if at least 75% of people with that name identified as Hispanic, and we note that 90% of those with typically Hispanic names identified as Hispanic in the 2000 Census.

Among drivers with typically Hispanic names, the proportion labelled as Hispanic in the raw data was quite low in Texas (37%), corroborating past results. For comparison, we considered Arizona and Colorado, the two other states that included driver name in the raw data. The proportion of drivers with typically Hispanic names labelled as Hispanic in the raw data was 70% in Colorado and 79% in Arizona, much higher than in Texas. Because of this known issue in the Texas data, we re-categorized as ‘Hispanic’ all drivers in Texas with Hispanic names who were originally labelled ‘white’ or who had missing race data; this method adds about 1.9 million stops of Hispanic drivers over the period 2011–2015. We did not re-categorize drivers in any other jurisdiction.

Veil-of-darkness analysis. In our veil-of-darkness analysis, we compared stop rates before sunset and after dusk—as is common when applying this test. Specifically, sunset is defined as the point in time where the sun dips below the horizon, and dusk (also known as the end of civil twilight) is the time when the sun is six degrees below the horizon and when it is generally considered to be ‘dark.’ As recommended by Grogger and Ridgeway²¹, we further restricted to stops that occurred during the ‘inter-twilight period’: the range from the earliest to the latest time that dusk occurs in the year. This range is approximately 17:00–22:00, although the precise values differ by location and year. All times in

the inter-twilight period are, by definition, light at least once in the year and dark at least once in the year. In Supplementary Table 1, we report the results of several variations of our primary veil-of-darkness model (for example, varying the degree of the natural spline from 1 to 6). The results were statistically significant and qualitatively similar in all cases.

Threshold test. The threshold test for discrimination was introduced by Simoiu et al.⁷ to mitigate the most serious shortcomings of benchmark and outcome analysis. The test is informed by a stylized model of officer behaviour. During each stop, officers observe a myriad of contextual factors—including the age, gender and race of the driver, and behavioural indicators of nervousness or evasiveness. We imagine that officers distil all these complex signals down to a single number, p , that represents their subjective estimate of the likelihood that the driver is carrying contraband. Based on these factors, officers are assumed to conduct a search if, and only if, their subjective estimate of finding contraband, p , exceeds a fixed, race-specific search threshold for each location (for example, county or district). Treating both the subjective probabilities and the search thresholds as latent, unobserved quantities, our goal is to infer them from data. The threshold test takes a Bayesian approach to estimating the parameters of this process, with the primary goal of inferring race-specific search thresholds for each location.

Under this model of officer behaviour, we interpret lower search thresholds for one group relative to another as evidence of discrimination. If, for example, officers have a lower threshold for searching black drivers than white drivers, that would indicate that they are willing to search black drivers on the basis of less evidence than for white drivers—and we would conclude that black drivers are being discriminated against. In the economics literature, this type of behaviour is often called taste-based discrimination²⁴ as opposed to statistical discrimination^{40,41}, in which officers might use a driver's race to improve their estimate that the driver is carrying contraband. Regardless of whether such information increases the efficiency of searches, officers are legally barred from using race to inform search decisions outside of circumscribed situations (for example, when acting on specific and reliable suspect descriptions that include race among other factors). The threshold test, however, aims to capture only taste-based discrimination, as is common in the empirical literature on discrimination.

In our work, we applied a computationally fast variant of the threshold test developed by Pierson et al.²², which we fit separately on both state patrol stops and municipal police stops. As described below, we modified the Pierson et al. test to include an additional hierarchical component. For example, while the original Pierson et al. model considered one state, and allowed parameters to vary by county (and race) within that state, our state patrol model considers multiple states, allowing parameters to vary by county (and race) within each state. Relevant information is partially pooled across both counties and states. Similarly, our municipal model considers multiple police departments, allowing parameters to vary by police district (and race) within each department.

To run the threshold test, we assume the following information is observed for each stop, i :

1. the race of the driver, r_i
2. the region—state (for the state patrol model) or city (for the municipal police model)—where the stop occurred, g_i (for example, Texas or Nashville)
3. the specific county (for the state patrol model) or district (for the municipal police model) where the stop occurred, d_i (for example, Harris County, TX or Hermitage Precinct, Nashville)
4. whether the stop resulted in a search, indicated by $S_i \in \{0, 1\}$, and
5. whether the stop resulted in contraband recovery, indicated by $H_i \in \{0, 1\}$

To formally describe the threshold test, we need to specify the parametric process of search and recovery, as well as the priors on those parameters. For ease of exposition, we present the model for state patrol stops, where stops occur in counties that are nested within states. The municipal stop model has the same structure, with districts corresponding to counties and cities corresponding to states. We start by describing the latent signal distributions on which officers base their search decisions, which we parameterize by the race and location of drivers. As detailed in Pierson et al.²², these signal distributions are modelled as homoskedastic discriminant distributions, a class of logit-normal mixture distributions supported on the unit interval $[0, 1]$. Discriminant distributions can closely approximate beta distributions, but they have properties that are computationally attractive. Each race- and county-specific signal distribution can be described using two parameters, which we denote by $\phi_{r,d}$ and $\delta_{r,d}$. In our setting, $\phi_{r,d} \in (0, 1)$ is the proportion of drivers of race r in county d that carry contraband; and $\delta_{r,d} > 0$ characterizes how difficult it is to identify drivers with contraband³⁴.

We impose additional structure on the signal distributions by assuming that $\phi_{r,d}$ and $\delta_{r,d}$ can be decomposed into additive race and location terms. Specifically, given parameters $\phi_{r,g}$ for each race group r and state g , and parameters ϕ_d for each county d , we set

$$\phi_{r,d} = \text{logit}^{-1}(\phi_{r,g[d]} + \phi_d)$$

where $g[d]$ denotes the state g in which county d lies. Similarly, for parameters $\delta_{r,g}$ and δ_d , we set

$$\delta_{r,d} = \exp(\delta_{r,g[d]} + \delta_d)$$

Following Pierson et al.²², we use hierarchical priors⁴² on the signal distributions that restrict geographical heterogeneity while allowing for base rates to differ across race groups. This choice substantially accelerates model fitting. In particular, we use the following priors:

$$\mu_\phi, \mu_\delta \sim N(0, 1)$$

$$\phi_d, \delta_d \sim N(0, 0.1^2)$$

$$\phi_{r,g} \sim N(\mu_\phi, 0.1^2)$$

$$\delta_{r,g} \sim N(\mu_\delta, 0.1^2)$$

Next we detail the structure of our search thresholds. In our informal description above, officers search drivers when their estimated likelihood of possessing contraband exceeds a specific race- and county-specific value $t_{r,d} \in (0, 1)$. For computational reasons, we map these thresholds from the unit interval to the real line via a monotonic transformation outlined in Pierson et al.²². For simplicity, we continue using the notation $t_{r,d}$ to denote these transformed values. As above, we set a hierarchical prior on the threshold values. Specifically, we have

$$t_{r,d} \sim N(t_r, \sigma_t^2)$$

$$t_r \sim N(0, 1),$$

$$\sigma_t \sim N(0, 1)$$

Finally, given this parametric model of signals and thresholds, we describe the underlying data-generating process, which mirrors our informal description above. For each stop i , we draw a signal p_i from the associated race- and location-specific discriminant distribution. If the signal p_i exceeds the race- and location-specific threshold t_{r_i,d_i} , then a search is conducted and $S_i = 1$; otherwise there is no search and $S_i = 0$. If a search is conducted, contraband is found with probability p_i in which case $H_i = 1$; otherwise, $H_i = 0$.

The hierarchical structure we employ allows us to make reasonable inferences even for locations with a relatively small number of stops. However, to ensure more statistically robust estimates, we limit our analysis to counties and districts with at least 50 searches per race group. To gauge the sensitivity of our results, we repeated our analysis with priors having 0.5× and 1.5× s.d. of the priors in our main analysis, and found nearly identical results under these transformations.

For both the state patrol and municipal department model, we perform posterior predictive checks to ensure that the models fit the data well. Specifically, for each county (state patrol model) or district (municipal department model) and race group, we compare the observed search and recovery rates to their expected values under the assumed data-generating process, with parameters drawn from the inferred posterior distribution. Such posterior predictive checks are a common approach for identifying and measuring systematic differences between a fitted Bayesian model and the data^{42,43}. Supplementary Fig. 1 shows the results of these posterior predictive checks. For both the state patrol model and the municipal department model, the prediction errors are minimal and similar across race groups.

Given the inferred race- and location-specific thresholds, $\hat{t}_{r,d}$, we define overall race-specific thresholds $\hat{t}_r$ for both states and municipal departments in two steps. First, for each state (municipal department) g , we compute an average $\hat{t}_{r,g}$ over all its counties (districts), weighting each threshold $\hat{t}_{r,d}$ by the proportion of stops in location d . Next, we calculate $\hat{t}_r$ as the unweighted average of all state thresholds $\hat{t}_{r,g}$ (or municipal thresholds) for race group r . In the second step, we take the unweighted average to account for differences in reporting practices across states, although our results are qualitatively similar under alternative averaging schemes.

Effects of legalization of marijuana. Measures legalizing recreational marijuana took effect on 9 December 2012 in Washington, and on 10 December 2012 in Colorado. In Colorado, an additional Senate bill was passed on 28 May 2013 ('Inferences for Marijuana and Driving Offenses', HB 13-1325) limiting the amount of tetrahydrocannabinol a person can have in their bloodstream to 5 ng ml⁻¹. Below we describe the data-processing choices we made when examining the effects of marijuana legalization, and then provide additional detail to supplement the analyses reported in Results.

When calculating the proportion of stops that resulted in drug-related offences, we excluded all alcohol-related violations or those relating to drug paraphernalia or drug-related felonies. More specifically, we excluded the following violation

Table 1 | Effects of legalization of recreational marijuana on search rates, as estimated using a difference-in-difference model. All race groups experienced a large drop in search rate

	Coefficient	s.e.	95% CI	P value
Effect of legalization on white drivers	-0.96	0.02	(-1.01, -0.92)	<0.001
Effect of legalization on black drivers	-0.98	0.06	(-1.09, -0.87)	<0.001
Effect of legalization on Hispanic drivers	-0.69	0.03	(-0.76, -0.63)	<0.001
Time (years)	-0.04	0.00	(-0.04, -0.04)	<0.001
Black driver	0.78	0.00	(0.77, 0.79)	<0.001
Hispanic driver	0.59	0.00	(0.58, 0.59)	<0.001

codes in Washington: 'Drugs paraphernalia—misdemeanor', 'DUI—Drugs W/Test', 'DUI—Drugs No Test', 'Veh Hom—DUI/Drug', 'Veh Assault—DUI/Drug', 'Drugs paraphernalia—felony' and 'Drugs—felony'. And, in Colorado, we excluded the following: 'Drove Vehicle While Under the Influence of Alcohol or Drugs or Both', 'Possession of Drug Paraphernalia' and 'Drove (Motor/Off-highway) Vehicle upon Highway When (License/Privilege to Drive) was Restrained for Express Consent or Alcohol/Drug Related Offense'.

Furthermore, when analysing search rates, we excluded impound, incident to arrest, protective frisk and warrant searches, as these types of search are not usually motivated by drug recovery. In Colorado, this means that we include both consent and probable cause searches. However, in Washington, we note that probable cause searches are barred because the state does not have an automobile exception for warrantless searches. For further context, it is acceptable in most states for police officers to conduct a (limited) warrantless search of a vehicle when officers have probable cause to believe that contraband or other evidence of a crime is in a vehicle, a policy known as the 'automobile exception' to the warrant requirement for searches. Washington, however, does not recognize this exception. Even if an officer has well-founded probable cause to believe that contraband or other evidence of a crime is in a vehicle, the officer still cannot search the vehicle without a warrant and must instead conduct the search pursuant to another exception to the warrant requirement, usually a driver's consent.

As discussed in Results, the proportion of stops resulting in a search fell substantially in both Colorado and Washington, while in 12 states where marijuana was not legalized, search rates did not show sharp drops at the end of 2012. To assess this pattern quantitatively, we fit the following difference-in-differences search model on the set of stops in the 14 states we consider here (Colorado, Washington and the 12 non-legalization states):

$$\Pr(Y_i = 1) = \text{logit}^{-1}(\beta_{state}^{state} + \beta_{race}^{race} + \beta_{time}^{time} t_i + \alpha_{race}^{race} Z_i)$$

where Y indicates whether a search was conducted, β_{state}^{state} and β_{race}^{race} are state and race fixed effects and β_{time}^{time} is a time trend, with t a continuous variable in units of years since legalization (for example, $t=0.5$ means 6 months post-legalization). The Z term indicates 'treatment' status—that is, $Z_i=1$ in Colorado and Washington for stops carried out during the post-legalization period, and $Z_i=0$ otherwise. Thus the key parameters of interest are the race-specific coefficients α_{race}^{race} . Table 1 lists coefficients for the fitted model. We found that α_{race}^{race} is large and negative for white, black and Hispanic drivers, suggesting that the observed drop in searches in Colorado and Washington was due to marijuana legalization in those states.

Despite marijuana legalization decreasing search rates for white, black and Hispanic drivers, Fig. 4 shows that the relative disparity between white and non-white drivers remains. In addition, Supplementary Fig. 3 shows that white drivers faced consistently higher search thresholds than black and Hispanic drivers, both before and after marijuana legalization. Supplementary Fig. 3 also shows that the threshold faced by all groups decreases after legalization (although not all drops are statistically significant). There are several possible explanations for this decrease. Officers may not have fully internalized the change of policy, searching people who would have been at risk of carrying contraband before legalization but who were no longer high risk after marijuana became legal. Alternatively, or in addition, officers may have become focused on more serious offences (such as drug trafficking), applying a lower threshold commensurate with the increase in the severity of the suspected crime. Finally, officers may have had more resources after being relieved of the task of policing marijuana possession, freeing them to make searches with a lower chance of finding contraband.

Reporting Summary. Further information on research design is available in the Nature Research Reporting Summary linked to this article.

Data availability

All data to reproduce the findings of this study are available at <https://openpolicing.stanford.edu>.

Code availability

All code to reproduce the findings of this study is available at <https://openpolicing.stanford.edu>.

Received: 23 August 2017; Accepted: 13 March 2020;

Published online: 4 May 2020

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Acknowledgements

We thank B. Bonilla, W. Kim, J. Nudell, S. Robertson and E. Sagara for their assistance throughout this project; we also thank A. Chohlas-Wood and A. Feller for their helpful feedback. This work was supported in part by the John S. and James L. Knight Foundation and by the Hellman Foundation. The funders had no role in study design, data collection and analysis, decision to publish or preparation of the manuscript.

Author contributions

E.P., C.S., J.O., S.C.-D., D.J., A.S., V.R., P.B., C.P., R.S. and S.G. designed research, performed research, analyzed data, and wrote the paper.

Competing interests

The authors declare no competing interests.

Additional information

Supplementary information is available for this paper at <https://doi.org/10.1038/s41562-020-0858-1>.

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Peer review information Primary handling editor: Aisha Bradshaw

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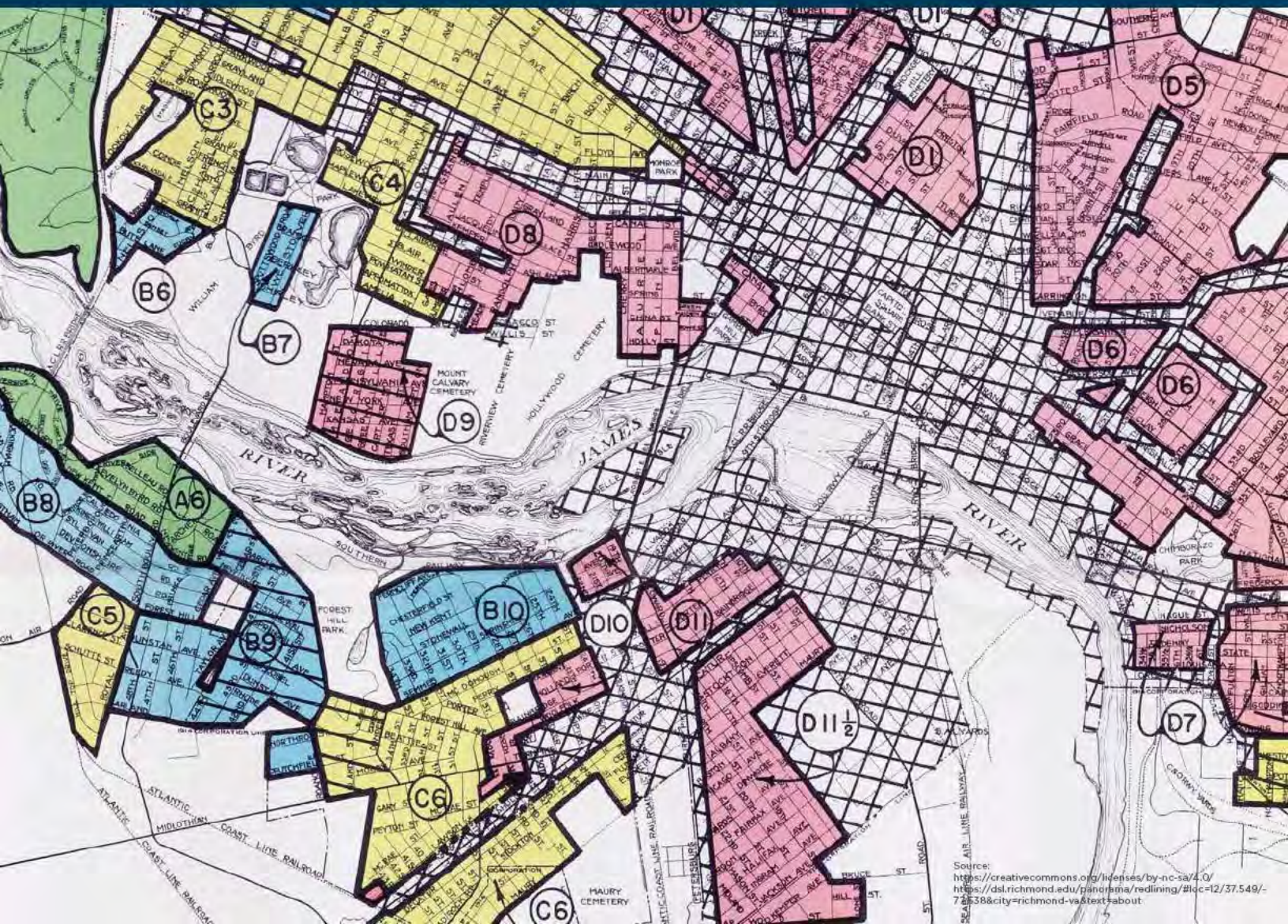
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ZONING AND SEGREGATION IN VIRGINIA: PART 1

Why Virginia Needs a Study of Zoning Laws and Their Connection to Segregation

By the McGuireWoods Zoning and Segregation Work Group¹



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Executive Summary

THE PROBLEM

Achieving racial justice in Virginia requires overcoming housing segregation. In many localities, neighborhoods are more racially segregated today than they were 50 years ago. Housing segregation affects education, job opportunities, family income, health and access to a quality life.

Elected officials throughout the United States, and Virginia lawmakers in particular, used zoning through most of the 20th century as a governmental tool to segregate African Americans. In combination with other discriminatory laws and governmental actions, zoning segregated Virginia communities. Zoning continues to reinforce patterns of segregation today despite the Fair Housing Act of 1968 prohibiting racial discrimination in housing. This historic and current housing segregation results in unequal access to civic resources.

Zoning laws now segregate communities by wealth and income. Because minority households statistically have less wealth as a direct result of segregationist zoning laws and other racially discriminatory policies, they are excluded from large parts of Virginia counties, cities and towns that are set aside for houses on large lots.

CALL TO ACTION

Zoning and planning laws in Virginia need to be revised to help address the legacy of 20th-century racism. The primary reform should be to increase housing opportunities for all people throughout Virginia's localities. Most of this can be accomplished by changing zoning and planning laws to allow more housing choices. Appropriate reform can occur without diminishing local governments' power to plan and zone. Decades of experience with mixed-use and mixed-density zoning show that housing opportunities can be increased without reducing property values in established neighborhoods.

THE STUDY

This paper documents the history of zoning and segregation in Virginia and the legacy of systemic racism preserved by zoning. Part 2 of the study will offer specific reforms to address this legacy.

ABOUT MCGUIREWOODS' ZONING AND SEGREGATION WORK GROUP

We are a group of real estate and zoning lawyers, land use planners and government relations consultants who are concerned about continuing segregation in our communities. We have come together to bring our collective experience to research zoning and segregation and propose reforms to address the legacy of segregation. McGuireWoods' Zoning and Segregation Work Group, along with the firm's [Racial Justice Task Force](#), strategizes with local leaders on how to work together to make racial equality a reality. The firm focuses on achieving long-lasting positive change in communities across the country where we live and work.



1. Introduction

Zoning segregates. Zoning separates into geographic districts the different uses, different building sizes and, indirectly, people with different levels of wealth and income. A primary purpose of zoning and land use regulation is to protect residential property values from perceived threats. These threats range from the intrusion of industrial or commercial uses, to changes in the ethnic, racial or economic status of neighbors. When zoning began in Virginia 110 years ago, the primary perceived threats were from the mixing of races and the presence of African Americans in white neighborhoods. Although explicit racial zoning ended in 1917, the legacy of systemic racism continues today.

In many Virginia jurisdictions, neighborhoods are more racially segregated today than they were 50 years ago. A recent demographic study concluded: "While the overall percent of black Virginians remained constant from 1970 to 2010, in more than 60% of localities the percent of black residents declined across these 40 years."² It further stated: "Across Virginia's three metro areas, residential racial segregation endures at moderate to high levels, and the pattern of segregation noted by scholars at the height of segregation — largely black urban centers surrounded by largely white suburbs — persists."³

Other factors such as redlining, private covenants, urban renewal, tax policies, etc., contributed to segregation during the 20th century,⁴ but zoning remains one of the few governmental actions that perpetuate segregation today.

Comprehensive plans and zoning ordinances throughout Virginia reinforce the division of residential areas by wealth and income. This reinforces racial segregation because of the wealth gap between white and minority populations. More importantly, this results in unequal access to civic resources including schools, parks, libraries, sanitation, transportation and other government services. Numerous studies have shown that, more than other factors, a child's residential ZIP code determines his or her educational and health outcomes.⁵ However, the postal code is just a label for a geographic area. The zoning districts largely determine the characteristics of a zip code by defining who can afford to live there.

Comprehensive plans and zoning ordinances can be changed to help remedy the legacy of racial and economic segregation without disrupting existing neighborhoods, mandating integration or spending public money. Many zoning districts have already evolved to allow mixed uses without harming property values or creating conflicts. The primary remedy for residential segregation is to allow more housing choices. This requires leadership at the state level to encourage and guide localities to make the needed revisions to their comprehensive plans and zoning ordinances.



Charles Jones, chairman of ACCESS (Action Coordinating Committee to End Segregation) displays a map of segregated housing found around area service installations May 12, 1967. (Photo by Tom Kelley/The Washington Post via Getty Images)

¹ Scott Adams, Sheri Akin, Tracy Baynard, Grace Chae, James Dyke, Lori Greenleaf, George Martin, Steven Mikulic, Greg Riegler, Jonathan Rak, Matthew Weinstein, Michael Van Atta.

² Michele Clabourn, Blacks in Virginia: Demographic Trends in Historical Context, Weldon Cooper Center for Public Service at p. 4 (2012).

³ *Id.* at 6.

⁴ Richard Rothstein, *The Color of Law: A Forgotten History of How our Government Segregated America* (2017).

⁵ See Daniel W. Belsky et al., *Genetics and the Geography of Health, Behaviour and Attainment* (2019).

2. History of Zoning in Virginia

Zoning in Virginia began with racial segregation. The city of Richmond, using its charter powers, adopted the first ordinance dividing the city into separate blocks for white and “colored” in April 1911. Eleven months later, the General Assembly approved legislation enabling all cities and towns in Virginia to adopt segregation districts dividing blocks between white persons and “colored” persons.⁶ Norfolk, Ashland, Roanoke, Portsmouth⁷ and Falls Church⁸ adopted similar residential segregation statutes following Richmond. The Supreme Court of Virginia upheld these segregation districts in *Hopkins v. City of Richmond*, 117 Va. 692, 86 S.E. 139 (1915). Two years later, the U.S. Supreme Court ruled in *Buchanan v. Warley*, 245 U.S. 60 (1917), that explicit racial segregation zoning was unconstitutional.

In the wake of the *Buchanan* decision, racial zoning gave way to the broader notion of a race-based comprehensive planning process and racially informed zoning districts. The first zoning enabling statute, following the 1912 racial zoning statute, passed in 1922 and allowed cities to divide their land into districts to regulate the use of land and of buildings.⁹ This power was extended to towns (1926) and counties with higher population densities (1927).¹⁰ The *Buchanan* decision undermined the use of zoning to segregate explicitly by race but not the use of the planning process in the service of segregation. After 1917, cities preferred to engage professional planners to prepare racial zoning plans and to marshal the entire planning process to create the completely separate Black community.¹¹ Some early comprehensive plans, such as the 1928 comprehensive city plan for Roanoke, specifically called out “Areas for Colored Population.”¹²

Many of the first zoning maps in Virginia applied industrial zoning categories to areas of African American homes while applying residential protections to areas of white homes.¹³ The first zoning map of Alexandria applied industrial zoning to approximately 100 residential structures, the majority of which were occupied by “Negroes,”¹⁴ even though only 20 percent of the population was African American.¹⁵ Residential districts were also divided by minimum lot size and prohibitions on row houses¹⁶ or apartments. The majority of land in most localities was zoned exclusively for “single family” housing. In most cases, a minority household could not afford to purchase a house on a large lot and was forced to live in a concentrated neighborhood of higher density.

Much of the new housing built after World War II was located in large suburban developments funded by federally insured loans. Even after the U.S. Supreme Court banned enforcement of racial clauses in deeds and mutual agreements in 1948, the Federal Housing Administration and other federal agencies continued to deny federal insurance for developments open to racial minorities. Even when a minority household could afford to buy a new suburban home, it was denied that opportunity due to governmental participation in systemic racism.

⁶ 1912 Va. Acts Chapter 157.

⁷ Roger L. Rice, *Residential Segregation by Law, 1910-1917*, 34 J. of Southern Hist., 179 (1968).

⁸ <https://www.tinnerhill.org/educational-resources/2018/2/15/civil-rights-history-tinner-hill>

⁹ 1922 Va. Acts Chapter 43.

¹⁰ 1926 Va. Acts Chapter. 197; and 1927 Va. Acts Chapter. 15.

¹¹ Christopher Silver, *The Racial Origins of Zoning in American Cities*, in *Urban Planning and the African American Community: In the Shadows* (June Manning Thomas, Marsha Ritzdorf ed., 1997).

¹² *Id.* at 10.

¹³ See *West Brothers Brick Company, Inc. v. Alexandria* (1937) 169 Va. 271, 278.

¹⁴ Compare 1931 Alexandria Zoning Map and Real Property Survey and Low Income Housing Area Survey, Alexandria, Virginia, U.S. Works Progress Administration (1939).

¹⁵ Krystyn R. Moon, *The African American Housing Crisis in Alexandria, Virginia, 1930s-1960s*, 124 Va. Mag. of Hist. and Biography, 28 (2016).

¹⁶ Arlington's Land Use Policy and Zoning p. 3, Bulletin 4 Missing Middle Housing Study (2020).



By the early 1970s, many of the struggles of earlier decades persisted throughout Alexandria and the Washington, D.C., metropolitan region. A 1970 report generated by the Washington Suburban Institute on nearby Fairfax County argued that “institutional racism and land development are tied tightly together. So far they have resulted in excluding blacks from residence in the suburbs, in denying them adequate services when they do already live there, in denying them access to suburban employment centers and in their being feared and ostracized in the neighborhoods where they do live or attempt to live.”¹⁷

Although overt racism has been eliminated from zoning ordinances and comprehensive plans, the legacy of 20th-century racism remains.

3. How Zoning Segregates Economically

Zoning separates people geographically by wealth and income. Although zoning does not directly set the price of housing, it determines the size and characteristics of housing that may be built in a particular area. Zoning is a regulatory tool that defines the permitted use of property and the permitted types and sizes of buildings for specific geographic zones. Most localities have a range of residential zoning districts, each with a maximum permitted housing density expressed as dwelling units per acre and floor area ratio.¹⁸ Residential zoning districts also determine what types of housing are permitted, such as standalone homes (described as “single-family dwellings”), townhouses or apartment and condominium buildings. They prescribe maximum building heights, minimum yard sizes and minimum open space.

The amount of land needed for each house and cost of construction, in turn, largely determine the price. For example, here are the 2020 assessed average home prices in Fairfax County by housing type¹⁹:

Single-family detached homes – \$692,409

Townhouse/duplex properties – \$437,346

Condominiums – \$288,246

Virginia’s counties zone most of their land for low-density residential use. Fairfax County, the most populous county, sets aside approximately 79 percent of its land area for single-family housing.²⁰ Neighborhoods zoned exclusively for single-family detached housing are reserved for large lots and large homes, often with requirements for large yards. These restrictions limit the overall housing stock for large swaths of land, typically in an effort to preserve a rural or suburban character associated with low-density housing. Restricting the density of housing on large portions of a locality drives up housing prices by constraining supply. Consequently, zoning creates regulatory barriers to housing affordability and ultimately separates people by levels of wealth and income through the establishment of low-density residential zoning districts, often referred to as “exclusionary zoning.” Exclusionary zoning greatly exacerbates economic segregation by lowering overall housing production and by lowering the percentage of multifamily units in many suburbs.²¹



Hall's Hill was one of at least eleven black neighborhoods created in the Civil War era. Hall's Hill is one of only three able to survive as an African American community into the twenty-first century.

Source: <http://arlingtonhistoricalsociety.org/wp-content/uploads/2020/02/2015-3-Halls.pdf>

¹⁷ C. Cunningham, *Land Development and Racism in Fairfax County* (1970).

¹⁸ Floor area ratio equals building floor area divided by land area.

¹⁹ [2020 Real Estate Assessments Now Available; Average Residential Increase of 2.65%](#)

²⁰ Fairfax County Geographic Information System (2020).

²¹ Amab Chakraborty et al., *The Effects of High-density Zoning on Multifamily Housing Construction in the Suburbs of Six US Metropolitan Areas*, 47 *Urb. Studs.*, 43 (2010).

Segregation of housing by wealth and income perpetuates itself from generation to generation. Especially for lower- and middle-income Americans, home ownership was a primary means of building wealth in the 20th century and remains so today.²² Families who own their homes through mortgages subsidized by federal tax policy build wealth, which they pass on from generation to generation. Children raised in neighborhoods with high housing prices attend better schools and generally receive disproportionate benefits of “public goods.”²³

Adequate housing is fundamental for individual success, including employment, schooling, childcare and health.²⁴ At the same time, the extremely high cost of housing is a well-documented issue in Virginia.²⁵ Most families and individuals spend more on housing than anything else, with average households devoting one-quarter to one-third of income to housing expenditures, while lower-income households commonly devote up to half of their incomes to housing.²⁶

The high cost of single-family housing and related effects on certain lower-income populations is further exacerbated by the geography of sprawling suburban neighborhoods.²⁷ The prevalence in suburbs of large, single-family detached homes that are too expensive and spatially removed for lower-income households to consider not only propagates urban fringe development and sprawl, but also perpetuates disenfranchisement.²⁸ The potential for accessible employment opportunities, quality education, safety and access to public services are ultimately affected by a home’s geography.²⁹

4. How Zoning Segregates Racially

Zoning also contributes to racial segregation. As discussed above, zoning was one of the tools of explicit segregation in the 20th century. Today, zoning does not explicitly segregate; however, the legacy of segregation is perpetuated by the preservation of wealth and income segregation discussed above. Richard Rothstein’s important book — “The Color of Law: A Forgotten History of How Our Government Segregated America” — provides a comprehensive history of how segregation enforced by federal, state and local laws created a wealth gap. In 2016, the net worth of a typical white family was *nearly 10 times greater* than that of a Black family.³⁰

Simply stated, the wealth gap between white and minority populations perpetuates racial segregation. The previously described disparities in generational wealth have disproportionate impacts based on race. Underrepresented households initially precluded from living in single-family neighborhoods were deprived of opportunities to build generational wealth. The legacies of this deprivation of generational wealth continue to impair the ability of marginalized populations to pursue single-family housing as housing prices continue to rise. Single-family zoning districts include the same single-family neighborhoods with restrictive covenants specifically preventing minority residents from moving into the area. It can be said that there is a resulting dual housing market, reinforcing the racial disparities in the free housing market.³¹

²² Is Homeownership Still an Effective Means of Building Wealth for Low-income and Minority Households? Joint Center for Housing Studies, Harvard University (2013).

²³ Jessica Trounstein, *Segregation By Design: Local Politics and Inequality in American Cities* (2018).

²⁴ Sheila Crowley, *The Affordable Housing Crisis: Residential Mobility of Poor Families and School Mobility of Poor Children*, 72 J. of Negro Educ., 22 (2003).

²⁵ Wyatt Gordon, *Debate around statewide definition of affordable housing belies larger crisis*, Virginia Mercury (Sep. 28, 2020), <https://www.virginiamercury.com/2020/09/28/debate-around-statewide-definition-of-affordable-housing-belies-larger-crisis/>.

²⁶ John M. Guigley and Steven Raphael, *Is Housing Unaffordable? Why Isn't It More Affordable?* 18 J. of Econ. Perspectives, 191 (2004).

²⁷ Robert Lang and Paul K. Knox, *The New Metropolis: Rethinking Megalopolis*, 43 Regional Stud., 789 (2009).

David R. Morgan, and Patrice Mareshcal, *Central-City / Suburban Inequality and Metropolitan Political Fragmentation*, 34 Urb. Aff. Rev, 578 (1999).

²⁸ Rachel Garshick Kleit and Martha Galvez, *The Location Choices of Public Housing Residents Displaced by Redevelopment: Market Constraints, Personal Preferences, or Social Information?* 33 J. of Urb. Aff., 375 (2011).

²⁹ *Examining the Black-white wealth gap*, Brookings Institution (2020).

³¹ Fairfax County, Virginia Analysis of Impediments to Fair Housing Choice 2016-2020, September 2017.



Minority households are confined to poorer neighborhoods as a result of exclusionary zoning, furthering racial segregation and disparities.³³ Simultaneously, aging, ethnic and low-income suburbs often lose the battle for investment resources, generating poor employment access, lower educational achievement and other spatial disparities. These issues perpetuate the wealth gap and restrict the ability of minority households to pursue other housing options.

Conversely, offering a range of housing types, including “missing middle” housing types, provides options to meet demographic changes and promote diversity in communities. Numerous localities across the United States have acknowledged the direct relationship between zoning and racial inequity, and have made legislative and policy changes to provide additional housing options for a broader range of residents, particularly in single-family neighborhoods.³⁴ Incentivizing missing middle housing in single-family zoning districts in particular can create more affordable housing options, address segregation and inequality, and moderate overall housing costs.³⁵ Ultimately, housing is a racial justice issue, and exclusionary zoning practices have had a significant impact on wealth and racial inequity. Expanding housing choices is a crucial step to addressing these ingrained inequities.

5. Remedies for Segregation

As noted above, comprehensive plans and zoning ordinances throughout Virginia reinforce the division of residential areas by wealth and income. This type of economic segregation places limits and boundaries on transportation, employment opportunities, decent healthcare and schools. In Part 2 of this report, McGuireWoods' Zoning and Segregation Work Group will offer recommendations to change comprehensive planning and zoning laws to help remedy the legacy of segregation.

6. Conclusion

Zoning and planning laws in Virginia need to be revised to address the legacy of 20th-century racism. The primary reform should be to increase housing opportunities for all people throughout Virginia's localities. Most of this can be accomplished by changing zoning and planning laws to allow private sector developers to finance and construct new housing. Appropriate reform can occur without diminishing local governments' power to plan and zone. Decades of experience with mixed-use and mixed-density zoning show that increased housing opportunities can be provided without reducing property values in established neighborhoods.

McGuireWoods' Zoning and Segregation Work Group, along with the firm's Racial Justice Task Force, strategizes with local leaders on how to work together to make racial equality a reality. The firm focuses on achieving long-lasting positive change in communities across the country where we live and work.

³³ John Rennie Short, Bernadette Hanlon, and Thomas Vicino, *The Decline of Inner Suburbs: The New Suburban Gothic in the United States*, 3 *Geography Compass*, 641 (2007).

³⁴ The Missing Middle Housing Study, The Montgomery County Planning Department, The Maryland-National Capital Park and Planning Commission, September 2018.

³⁵ Single-family Zoning in the District of Columbia, District of Columbia Office of Planning, April 2020.

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Why is Richmond still segregated?

Richmond Times Dispatch (Virginia)

May 3, 2015 Sunday

2 Edition

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Section: COMMENTARY; Pg. 1E

Length: 8081 words

Byline: Staff

Body

The 56th RT-D Public Square drew a standing-room-only crowd for a dynamic discussion that looked back and forward: Why is Richmond so segregated? Held at The Times-Dispatch building on East Franklin Street, the daytime Square ran past its 90-minute deadline, fueled by a deep but civil discussion about one of Richmond's most confounding legacies.

Moderated by Times-Dispatch Publisher Tom Silvestri, the conversation began with presentations from John Moeser, a senior fellow at the Bonner Center for Civic engagement at the University of Richmond and an eminent professor of urban studies, and by Heather Mullins Crislip, president and CEO of Housing Opportunities Made Equal, a Richmond Region nonprofit that advocates for equal access to housing for everyone. Victor Branch, a member of the HOME board and the Richmond market president for Bank of America, spoke, as did Richmond Commonwealth's Attorney Michael Herring and Times-Dispatch columnist Michael Paul Williams. A vigorous session of questions and comments ensued. Today, we present some highlights. You can watch a video of the entire event on Richmond.com.

Tom Silvestri, publisher: ... We're going to explore, with your help, the issue of modern-day segregation in the region. We coincidentally have picked this topic because April is National Fair Housing Month. ... So in broad strokes today, why is Richmond still segregated? We'll explore the history. We'll understand some answers. We'll take some questions. And we'll explore reasons. We'll start by having a conversation with four speakers. ...

We have a renowned professor of urban studies who's been at this issue for many years. We have an attorney and an advocate for fair housing. We have a banking executive, who's orchestrated programs to reward neighborhood progress. And also with us is probably one of the main reasons you read The Times-Dispatch, a longtime journalist who writes about Richmond from the perspective of being a native Richmonder. ...

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So let me introduce our first speaker. ... John Moeser, a senior fellow at the Bonner Center for Civic Engagement at the University of Richmond, and a professor emeritus of urban studies and planning at VCU. ... John will give an overview of what led to Richmond becoming more segregated in the 20th century than it was in the 18th and 19th.

John Moeser: ... Today, Richmond is more segregated than it was in the 19th century. Remember, the 19th century was the period that included institutionalized slavery - and led Richmond to become the largest interstate slave market in the South. Yet when you examine 19th century maps that show where African-Americans lived, both free and slave, one is struck that the spatial distribution of race was scattered. Domestic servants lived near the places where they worked. Sometimes in separate quarters of their master's house. Slave owners who had a surplus of slaves - or slaves who otherwise would have been idled after planting and harvesting - would hire out slaves to work in Richmond's factories. Slaves had to find their own houses in the city, and so they often sought out places closest to work. Fundamentally, however, blacks and whites lived in proximity to each other, because for most of the 19th century Richmond was a small, geographically compact, walking city. That didn't change until the last quarter of the century, when, as you know, Richmond acquired the first commercially successful streetcar system.

The reason we're more segregated today is because of what happened in the 20th century. Blacks were no longer slaves, at least in the legal sense. They were hemmed in ... by Jim Crow laws that for many amounted to slavery. Richmond was the second city in the United States to adopt a race-based zoning code. It's interesting that it was a northern city that first adopted a race-based zoning code. It was Baltimore. In 1910, the city of Richmond zoned neighborhoods by race. Neighborhoods for whites, and neighborhoods for blacks. It was not long thereafter that the United States Supreme Court ruled that zoning law unconstitutional. But that ruling did not affect private individuals or private businesses. And that's when you began to see a reliance on private covenants, which I'll talk about in just a moment. In the 1920s, Richmond tried again to zone neighborhoods by race. But instead of referring to people by race, which they couldn't do now under that Supreme Court ruling, the zoning code referred to Virginia's Racial Integrity Law, that forbade interracial marriage. People could not live in neighborhoods whose residents they could not marry because Virginia forbade interracial marriages. Blacks couldn't live in white neighborhoods, or vice versa.

By the 1930s, Richmond neighborhoods were thoroughly segregated. Though the preservation of segregation now fell to local bankers and realtors, since the Supreme Court decisions forbade city government to use its own law-making authority to separate neighborhoods. Restrictive covenants, which I'd mentioned earlier, which had been used for years, proved to be particularly effective. These were restrictions written into the deeds of privately owned homes that prohibited white homeowners from selling their houses to blacks. And in many instances, to Jews. In 1948, the Supreme Court ruled again and nullified the use of these racist covenants. From the 1930s through the early 1960s, one of the major drivers of segregating neighborhoods was none other than the federal government itself. Urban planners were their accomplices. Redlining the construction of public housing and the location of public housing, highway construction, urban renewal, and economic development projects destroyed or bisected Richmond's black neighborhoods, displacing thousands of low income African-Americans, and squeezing them into East End Richmond, where most of the public housing has been located. Today, Richmond is more segregated

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than ever. This time by race, but more particularly by class. And the distances separated wealth and poverty are unprecedented.

Silvestri: ... Next up, we welcome Heather Mullins Crislip, who is the president and CEO of Housing Opportunities Made Equal. She'll give an overview ... and a detailed look of what we're talking about from the ground level.

Heather Mullins Crislip: ... I serve as president and CEO of Housing Opportunities Made Equal, also known as HOME. We are one of the oldest and largest private fair housing organizations in the country. And we've made very significant contributions to the national conversation on fair housing and on segregation. ... Segregation isn't an accident of history, or a matter of preference or choice. I hope to illuminate parts of the more modern history that brings this to light, and that afterwards we can discuss how to create a community that offers the same opportunity for housing and wealth creation to everyone. ...

In the wake of the Great Depression, and following a foreclosure crisis just like we experienced recently, the federal government established the Homeowner's Loan Corp., or sometimes known as HOLC. The purpose was to prevent foreclosures and to refinance mortgages. Until that time, mortgages typically were interest-only and culminated in a balloon payment, typically about five years after you purchased the home. And you can imagine how that limited everybody's opportunity for home ownership and wealth-creation, because not very many middle-class or even upper-middle-class families could accept terms like that and be able to manage them. The HOLC provided public underwriting for private mortgages and greatly extended the amortization period: from 15 to 25 years, offering a longer time frame for repayment, and a lower interest rate. The program is credited for saving over 1 million homes during the Great Depression and is the foundation of the 30-year standard mortgage that we come to expect today - and for establishing the home as the wealth-creation mechanism for the middle class.

It also is credited with coining the phrase "redlining." Redlining refers to the practice of denying or charging more for services like banking and insurance in minority neighborhoods. In the case of the HOLC ... in 239 cities used red lines to delineate neighborhoods not fit for investment. So, unfit to receive underwriting for standard mortgage financing. The HOLC graded neighborhoods based in significant part on their racial composition. ...

Areas outlined in red were graded D and were predominantly African-American and found in the inner city. And they therefore were ineligible for government-financed standard loans. Areas labeled type C were classified as working class and contained a larger number of whites. The vast majority of areas graded type A or B were populated solely by whites and were the areas that the HOLC was primarily targeting for mortgage underwriting. The underlying racism of the HOLC grading system, and the resulting lack of private investment in predominantly African-American neighborhoods, set us up with valuation systems for properties that still haunt us today. Neither the income of African-Americans living there nor their social class mattered. ... Jackson Ward, as you know, was considered the black Wall Street of the South. It was home to fabulous housing stock and gainfully employed residents. But it was graded D, and ineligible for public underwriting for mortgages.

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Redlining spread to the entire mortgage industry, excluding African-Americans from the most legitimate means of obtaining a mortgage - and the wealth creation and stability that home ownership affords. Every single African-American neighborhood in Richmond was graded D. And only two non-African-American neighborhoods were graded that way. ... Redlining paralyzed these communities, because they could no longer be financed. This meant that they would have lower property values. And others feared the loss of property values in their own communities, if their own communities integrated and financing became unavailable. This financial reality fueled fears of integration.

With plummeting property values in African-American neighborhoods, and private financing not available because it couldn't be underwritten, this is the other half of the U.S. housing policy story in Richmond. ... Instead of privately financed opportunities to create wealth through home ownership, there was the development of public housing. As part of Harry Truman's Fair Deal, the Housing Act of 1949 effectively served to concentrate poverty in the inner city, through the construction of public housing. By and large, public housing units were constructed in neighborhoods receiving a grade D by the HOLC. Since that time, efforts for federal housing subsidies have been relegated largely to the neighborhoods with the greatest poverty rates - in effect, containing poverty to the inner city. ... This focus on providing housing subsidies to residents most in need in receiving them is not misplaced. However, the unintended consequences of prolonged, concentrated poverty, are a serious detriment to the health of the region. ... This concentration is greatly exacerbated by the lack of a regional public transit system, which prevents residents of all income levels from accessing housing opportunities throughout the region. ...

White flight is the next chapter, following the United States Supreme Court's decision in 1954. *Brown v. Board of Education* declared state laws which established separate public schools for black and white children unconstitutional. While Richmond wasn't home to the worst of massive resistance, instead white families retreated to Henrico and Chesterfield counties and attempted to resist racial and ethnic integration. ...

This was a massive, massive shift. Between 1960 and 1970, the white population in Henrico County increased by 29 percent. For the following three decades, until 2000, the white population consistently decreased in Richmond. There are whole neighborhoods, like Highland Park, that turned over nearly 100 percent in 10 years. Blockbusting, a term for the business practice of encouraging whites to sell simply by implying that racial minorities are moving into the neighborhood, was employed. This fear was fueled by the implication of decreased property values, as established by redlining of financial underwriting in the previous decades.

In the period between 1970 and 1980, the percentage of whites in Chesterfield increased 85 percent. And from 1980 to 1990, the percentage increased by 41 percent. During these same periods, the percentage of whites in Richmond decreased by 27 percent and 16 percent, respectively. As Tom mentioned, April is Fair Housing Month. But there's a story behind that as well. This is because the Fair Housing Act was passed in April of 1968, just one week following the assassination of Martin Luther King Jr. Preventing housing discrimination had been proposed for years, but had not had the votes to pass or be included in the landmark 1964 Civil Rights Act. Martin Luther King had been a big proponent of fair housing, and was conducting testing to demonstrate the rates of housing discrimination, in just the weeks prior to his assassination. And Lyndon Johnson thought that the passing of the act

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was a fitting memorial as the cities rioted. The Fair Housing Act prohibits discrimination in a housing transaction because of your membership in a protected class. And I've listed up there the protected classes. ...

The act made redlining illegal. But the practices continued. And the effects of the decades-long underinvestment left a huge debt in African-American neighborhoods. HOME was founded shortly thereafter, and quickly established itself as an aggressive enforcer of the act. In the 1980s, we won a U.S. Supreme Court case, *Havens Realty Corp. v. Coleman*, that is largely considered one of the most important fair housing cases in the country. It allows private fair-housing organizations to challenge racial discrimination in court, establishing the private enforcement of the law, which is still the primary way in which the Fair Housing Act is enforced today. And not so long ago, in 1998, HOME also won the only redlining case ever to go to trial in Virginia, against Nationwide Insurance, for redlining African-American neighborhoods in the provision of homeowner's insurance. The jury verdict in that case was the largest award ever in the United States in a fair housing case and was cited for major reforms in the homeowners insurance practice across the country.

I'm going to fast-forward a few decades now, to talk a little bit about the impact in the most recent housing crisis. ... The sub-prime lending spree that precipitated the foreclosure crisis, and the near-collapse of the U.S. economy, had disastrous effects on minority neighborhoods across the country. Touted as a way to expand homeownership opportunities to families that wouldn't qualify for traditional mortgage products, sub-prime lending had the effect of stripping away any remaining wealth in minority neighborhoods. Remember that traditional financing has historically been difficult to obtain in these communities. But now, there is another threat. And that is reverse redlining. Which is the targeting of minority communities for inferior loan products. ...

According to publicly available mortgage data, from 2004 to 2011, 107,000 home mortgages were originated for owner-occupied purchases in the Richmond region. ... Of those 107,000 loans, 12 percent, or about 13,000, were considered subprime. Comparing these loans against the minority composition of the neighborhoods in which they were made reveals startling disparities. Subprime loans accounted for just 5 percent of the total number of loans made in neighborhoods having less than 20 percent minority population. In contrast, subprime loans constituted 31 percent of the total number of loans in neighborhoods having greater than 20 percent minority population.

Not only is it clear that minorities who got loans were more likely to receive a subprime loan than their white counterparts, they were also more likely to be denied outright. In 2006, at the height of the lending frenzy, blacks were denied home purchase loans nearly 19 percent of the time, compared to just 6 percent of whites. Nationally, the Center for Responsible Lending found that even taking into account individual credit scores and other characteristics, Hispanic and African-American borrowers were more than 30 percent more likely to receive a subprime loan, regardless of their credit.

This is the other half of the housing crisis story. With subprime loans, we ended up with large numbers of foreclosures. Subprime mortgages nationally made up for about 60 percent of the foreclosures during the housing crisis. The subprime mortgage lending industry was, by and large, nonselective when it came to originating inferior mortgage products. And the majority of subprime loans made in the region were to whites, because they make up a large majority of the overall mortgage market. However, there are numerous high-profile examples that exist that

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show that subprime lenders purposely targeted minority neighborhoods and communities throughout country. In Richmond, our segregated housing patterns, subprime lending, the collapse of the economy, and the resultant foreclosure epidemic disproportionately impacted African-American neighborhoods in our region. ...

Given the fact that there are three times as many white homeowners in the region as there are African-American, the concentration of foreclosures in predominantly African-American neighborhoods is reason for serious consideration as to the future of wealth-building opportunities provided to minorities in our region. Even if foreclosures represented nothing more than a one-time cost to the families, these findings would be very troubling. But the costs are extensive, multifaceted and long term, extending far beyond individual families to their neighborhoods, their neighbors, communities, the cities and the states. To have this damage concentrated in the same neighborhoods that we have historically underinvested in is devastating.

I hope that what you can see is that we still have two systems in place. One where private and stable, inexpensive financing is available to allow middle-class families to create wealth, and one where we developed public housing without the opportunity for wealth creation, and private financing and wealth creation still fall short. Both systems took public investment. But the opportunities that they've created for citizens are vastly different. And the lingering financial and social costs are huge.

My final observation is this: Public policy on housing established these systems and the very real fears that integration caused property values to drop. The legacy is much lower home ownership rates for African-Americans in the region. The most recent data shows this isn't changing post-housing crisis. In the city of Richmond, where 40 percent of the population is white, whites received 70 percent of the home-purchase and refinanced loans in 2013. The wealth and prosperity of the region depends on creating opportunities for stability and wealth-creation for our families. And for all of our families. And building a housing system that supports that goal is really critical.

Silvestri: ... I don't know whether this is a good segue for a bank executive. (LAUGHTER) But you're a brave man, Victor Branch, who has a new job of being the market president for Bank of America, and will share his perspective.

Victor Branch: I am a brave soul to come behind Heather after those sobering statistics. ... I wear two hats today. One as the Bank of America leader in the Richmond region, my paid full-time job. But my other job, full-time job, is serving on the board of Housing Opportunities Made Equal. I have been a part of that organization since the mid-'90s and am so proud of the work that they have produced over these many, many years. ... So I come to you with my passion for fair and equal housing. And I don't carry the whole industry's weight on my shoulders today, given our history in giving those statistics. But I say the future is bright. ... The inspiring thing about realizing that our segregated patterns are the result of policy decisions is that we have the opportunity to change them. We own this, people. There are things that we can do to have a more prosperous and integrated community. Chief among them are the development of more affordable housing in high-opportunity neighborhoods. And for my industry, providing credit and home ownership opportunities to everyone in the community. It makes good business sense. (APPLAUSE). I've been a proud member of the board of Housing Opportunities Made Equal for many years,

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because fair housing has the power to transform communities. In addition to their critical work enforcing the fair housing laws, they also provide much-needed services to vulnerable populations in our community. HOME provides home ownership education to about 300 low- and moderate-income individuals annually, and also provides foreclosure prevention services with the support of banks like Bank of America, to those 300 individuals.

This work is critical to getting to the inequalities we just heard about. Brandeis University released a 25-year study in 2013 that ... demonstrated why lagging home-ownership rates by African-American and lagging property values in African-American neighborhoods matter. They tracked 1,700 individuals for 25 years and found that the total wealth gap between the white and African-American families nearly tripled, increasing from \$85,000 in 1974, to \$236,000 in 2009. Their key finding was that the biggest cause of those inequities was from the difference in housing. In particular, they cited as the largest factors as having the ability to live in neighborhoods where values are likely to increase, and the number of years ownership. We have to figure out how to take on these issues as a community. And I know that Richmond, happy RVA, has the ability to do this. ...

Silvestri: Michael Paul Williams, will you please join me and give your perspective? You've been covering this a long time, and you are the native Richmonder here. ... You're an objective journalist but you have a column. You've seen it on both sides. What's your perspective on this issue?

Michael Paul Williams, Times-Dispatch columnist: ... I lived in Byrd Park. Back then, we called it the West End. (LAUGHTER) Yeah, the real West End. I lived in a house less than half a block from Fountain Lake in Byrd Park. And a beautiful neighborhood for a kid to grow up in the late 1950s, early 1960s. Totally black neighborhood. And at some point, my Mom told me that when she moved into the neighborhood in the 1950s, as it turns out not coincidentally after Brown, when a lot of these forces were at work, she was the second black homeowner to purchase a house in that neighborhood. This is Maplewood Avenue. And six months later, it was an entirely black community. So, that speaks to the blockbusting that was going on.

But I didn't know that. I was a kid. I was delighted to live in such close proximity to Byrd Park, Maymont park. I guess probably at one point, I may have wondered, "Why do we have such a great neighborhood? Why would anyone give this up?" So, it was paradise. And I lived this paradise for the first nine or 10 years of my life, and then I was told we were moving. And I was just crestfallen. I mean, for one, I was leaving my friends. But I was also leaving this wonderful environment. And around this time, we just started hearing talk about the expressway. The expressway. They were building the downtown expressway, and it would shave off a good chunk of Byrd Park near the lake, take out blocks of Grayland and Parkwood Avenue. The barbershop that I would go to was on Davis Avenue, between Rosewood and Idlewood. That was gone. Some of the homes were taken out. So our home would have been spared. It was spared. It stays till this day. My Mom's like, "I can't deal with this construction. My nerves are bad. I don't want to be a part of this. We're moving."

So in October 1967, we moved out to Henrico County, out to Glen Allen. Old Glen Allen. The real Glen Allen. (LAUGHTER) But lest you think that this represented some time where, "Oh, OK, we're close to the Fair Housing

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Act, and they're moving out to this integrated (neighborhood)," no. The neighborhood we moved out into in Henrico was every bit as black as the neighborhood we left in the West End. It was off Hungary Road. So, I moved from one neighborhood to the next. And it was a very nice neighborhood. New homes. Some of the most prominent African-Americans in Richmond. Judge (James) Sheffield lived across the street. ... Just kind of a little post note - a few years after we moved out, what would be one of the few really concentrated public housing communities that I would ever see in Henrico was built right behind our neighborhood. Try to imagine that. Our neighborhood at one point in the 1960s was being pointed to as an example of one of the most affluent black neighborhoods in the South. And here we have a public housing community going up right behind it. Which I guess speaks to the kind of investment and disinvestment that was going on.

Michael Herring, Richmond commonwealth's attorney: ... The last time I was watching this data (being presented), I have to admit to you, a lightbulb goes off. I'm thinking, "Oh, my gosh. Where have I seen these images before?" And I knew I had seen them through Heather's presentation. But then it occurred to me, I've seen them at intel meetings with the police department. There are two maps (in the booklet that HOME passed out to the Public Square audience). One shows poverty rate and school segregation. The image on page 23 shows what I like to call "opportunity deserts and poverty reservoirs." What's fascinating to me is that the concentration of violent crime, and therefore the disproportionate consumption of taxpayer dollars for crime fighting, is in the same areas where you see the opportunity deserts, and the disparity in income and educational resources.

And so I'm sitting there going, "Oh, my gosh. Oh, my gosh. What is the implication for me?" And what I have come to conclude - and this is probably not going to sit well with a lot of folks in this audience - is that the business that I am in is in a business to nowhere. People grade the effectiveness of law enforcement in several ways. One of them is to eliminate or reduce crime. Another is to eliminate offenders from the community. And the principle way that we do that is to incarcerate them or felonize them.

Felons cost you money. Whether you incarcerate them or support them as second-class citizens down the road, felons are more expensive, because their capacity to yield is significantly diminished as a result of the felony. The felony rate in the opportunity deserts is sky-high. The felony rate in the areas where there's so much disparity in income and educational resources is sky-high. And so I'm really struggling with how to do this. But I've got a feeling that Richmond is going to derive a much higher yield if we felonize as a last resort. Wait a minute, because it's complicated. As opposed to letting felonies be the default.

And you don't have time for me to go on and on about this. But I don't know how to do it yet. Because we don't have systemic alternatives to the crime-fighting model that we have in place.

Ted Groves, Richmond: I'm the Kids Count director of Voices for Virginia's Children. ... We monitor the well-being of Virginia's children by each locality over time, on about 100 indicators of child well-being. And we're in the middle of producing a report that looks at the disparity of child economic well-being through a lens of race, place and family

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structure. And if we look at how children are doing in Virginia overall, things look reasonably OK. But when you disaggregate this data by race, place and family structure, we see these huge disparities - in poverty and near-poverty. And those factors kind of interrelated. One of the areas that we see an effect on children is segregation and poverty. And particularly in education. Education's always been the cornerstone of freedom and democracy, and economic security. But our children are hampered by segregated neighborhoods, with locally controlled schools, largely locally funded schools, that are segregated by race and socio-economic status: 71 percent of the black children of Virginia go to predominantly black schools. That's quite a bit of segregation in this day and age. And those schools are largely underfunded. We have seen segregated urban schools with concentrated poverty. Research shows us that children just do not do well in schools with concentrated poverty. The education research ... says that the largest influence for performance of kids is concentrated poverty in the schools, more so than the individual poverty status of kids.

The children in Virginia, disadvantaged children, have twice the disparity level of children that aren't disadvantaged, in reading at the third-grade level. And we know that reading's important at the third-grade level for long-term success and academic success of kids. To sort of sum it up, ... let me just say that segregated neighborhoods result in segregated schools, which result in segregated outcomes for kids by race and socio-economic status.

Walt Pulliam Jr., Henrico: How does gentrification, such as Church Hill or Woodland Heights, play into this issue?

John Moeser: Gentrification of neighborhoods is contributing to suburban poverty. The increases in rents in many of the neighborhoods as income goes up - income is going up, in many heretofore high-poverty census tracts. Income is going up, poverty is going down in some of those census tracts. And there are only two places where people now can find any supply of affordable housing.

One place is South Richmond. But most often, and where you have the greatest supply, are the inner suburbs of Henrico and Chesterfield counties. And so what you have is, as the income goes up in the city, and in some cases as poverty begins to go down, it's like squeezing a balloon. The poverty begins to spread out into the suburbs. And in those areas, income just crashes.

The fortunes now between the city and the suburbs have been completely reversed. But to put a positive note on this, I view, right now, gentrifying neighborhoods as a wonderful opportunity, if we will take advantage of it. Fundamentally, in my view, what we need are mixed-income neighborhoods. No more separation, no more segregation. Where people live in community. People of different incomes. Now, if we very purposely develop affordable housing in those gentrifying census tracts, you can achieve that.

Martha Rollins, Richmond: As I look at the history in this - I live in Byrd Park. Same house for 45 years. Belong to the Carillon Civic Association, which has sort of an exciting history in this housing thing. But looking at the history of

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our country and our city, so much of where we are today has been intentional, beginning in the 1600s, in money trumping humanity. And I just wonder if it's time for in some way to throw into the mix the question of restitution, in a way that we could not just change policy, but try to make amends for our many, many mistakes.

David Lindsay, Richmond: I live in Ginter Park. And I'm a graduate of John Marshall High School. I have a scholarship fund in my name that I give every year for education. ... A better solution to this problem, for me, is educating the kids. And by educating your kids, then you're going to get a better person. And with that better person, they may not stay within that region. They may not be trapped within that region, as we call public housing. And through your education, you have a better person. ... So, I wonder if support - more support toward the education field with our kids, to better them, making better people, so they could have better lives, maybe that would be the solution to this housing problem that we have. Because they brought up the fact about low income. And the low income, that's because of lack of education.

Michael Herring: I think Mr. Lindsay has a valid point. My understanding of the amount of money that we spend to educate a child, as compared to the amount of money you spend to incarcerate a person, is that the latter is multiples of the former. That doesn't make a lot of sense to me, because it says you're spending money on the back end, to correct a harm that is almost irreparable if the person's convicted of a felony. Because it has lifetime consequences. So, I think that we're likely to get a much higher yield if we spend the money on the front end in areas of education. But we have to resist the temptation to grab onto catchy sound bites that it are easy to get behind. And so, it's easy to say, "Put more money in education." It's a lot harder to figure out how to spend that money effectively. As my mother used to say to me, you don't throw good money after bad. Right? I think if people had the solution, we'd be implementing it. There aren't many school districts around the country that have figured out how to correct the harm done by under-performing or low-performing districts which happen to be in areas of low resource.

Thad Williamson, director of the Mayor's Office of Community Wealth Building in Richmond: ... What we've learned through this community process ... is there's not a single strategy. It would be misleading to suggest that. It's a holistic picture. All these things are clearly related, between housing, education, economic opportunity. They all have to be tracked at the same time, tackled at the same time. But it's important to know that your city does have an office. It's implementing a strategic plan to tackle these things at once. It's just important for the community to understand the magnitude of what that means. We all understand, this is a long-term effort. And we in the administration that work on this have a heavy responsibility to get it off to best possible start. Which we're doing our best to do.

But there are five pieces of it, I think each one of which are transformational, especially taken together. So, one, the social enterprise piece that Dr. Moeser just mentioned. Second, the start of a potential regional transportation system. ... Third, my office has done a lot of work with the Richmond Public Schools on developing a better plan for

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early childhood. Clearly that's a key area from any anti-poverty perspective, where a lot more resources need to go, and a lot more intelligent application of what we do have. So we have a collaboration called Richmond Early Childhood Cabinet, already up and running with the schools. Fourth, ... there's this concept of RVA future, which would be the beginning of our Promise Scholarship Program. So if the budget passes in its current form, starting next year in the high schools there will be dedicated future centers to connect students, starting in ninth grade, and have a conversation every year with every student in those high schools about their life after high school. And understanding that there is life after high school, and you have to begin planning for it now. And understanding, what's the difference between a pipe dream and a realistic plan. And understanding that your choices and performance, even in ninth grade, have long term consequences. Again, RPS has fully been on board with that, so we're very excited about that. And we hope to add a scholarship component to that.

The fifth piece, the hardest, most complicated, you'll need many forums: public housing transformation. To directly target the topic. How do you actually undo this legacy? Extremely hard. Because there's a development component, and there's a human-being component. And historically, the human-being component has not been done well at all. So if it's going to happen, as the mayor's committed, every piece of it has to be done well, and especially the first time, so it's a model for the future. Again, a big challenge. A lot of challenging issues involved, both from the resource point of view and strategy point of view. We're going to need the entire community behind it and engaged in it.

Ray Bryant, Chesterfield: I was raised up in public housing. Thank God for public housing when I was raised up in it. Quite a few people became very successful from public housing. When they were doing what they had to do to guide us and guide the parents to raise us in a way that you attended school and got the education.

But I came here today is to say, a lot of you in this room caused the problem that we are in. A lot of you in this room is causing the problem that we're going to remain in. Yes, it is intentionally being done as we speak right now. How can you de-concentrate poverty, moving people all the way around on the edge of the city, between Henrico and Chesterfield, and then make the place look like a Hostess Cupcake. Chocolate on the outside, and white all in the middle of it? Why are you doing this type of thing? A lot of your universities are the ones that are training the people that come out and do the planning in your cities. And I talk to you, Mr. John Moeser. That y'all need to do something about the universities. This is where a lot of this stuff is coming from. ... I want you to know that, get into your universities and train those individuals that could have some sympathy for the community that is at large. I came down by the home - the elderly home just recently, on the way here. And half of them were sitting on the outside of the elderly home. You talk about bus transportation. You took the grandmamas, and threw them all out there - took them off of Broad Street. And put them down. I just don't understand it. After all these years, I've come back around to see all this stuff coming back again. It's the same thing.

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Lily Estes, Richmond: I'm a community strategist. ... Dr. Moeser and I, we agree on many things. But on de-concentration of poverty, we don't agree. I do believe that there is great effort in trying to correct the harm that was done by intentionally moving of African-American people, poor people, into public housing - and how we correct that going forward.

I want to applaud all the people in the room here. But I want to also ask you - I don't like the word "challenge" - but I want to ask you to really do your own homework. You have to really look at what's been happening, and how we apply remedies to time-specific issues. We can't run in front of and try to solve something without the current information on the ground now. De-concentration of poverty - in a community where 26 percent (are in poverty), that's what we are talking about for poverty in this city - people cannot afford. It was intentionally done. We have to tell ourselves the truth about what was done. People in different institutions. This is institutional intention, discrimination, generational neglect, over and over. Mutated, disaffected, whatever other kind of metaphor we want to use to describe this.

And we have to correct it at the fundamental root. ... I worked on trying to get a documentary on the life of Oliver Hill created years ago. And during Massive Resistance, when they closed the schools down in Prince Edward County, we were trying to interview some of the people that were affected by that. But what really struck out with me is that you take somebody who's stopped school in the seventh, eighth, 12th grade. Close the school down for five years, come back, re-open the school. Their life really hasn't been changed that much.

But when you talk about the irreparable harm of closing a school for five years for a child that's been in kindergarten, and they go back to school in his fifth or sixth grade, they don't have the fundamentals. That's what we're looking at. When you fall off the cliff of trying to educate people and then come back and try to repair their remedy with dysfunctional, functional obsolescence kinds of things, we've got to be truthful about what we are doing. And I hope that we can have more of these town halls to talk about solutions of where we go with solving this realistically. It ain't about the money. You know, we can have all concentrated black communities. I ain't trying to move in your community at all. But I want appropriate resources in my community, among my cultural people, that we deserve. That's sort of reparation.

Charles Otey, Richmond: ... I think racism has brought about segregation. I'm not an angry black man. I'm not running around here talking about "white folks this, white folks that." Because that would be unfair to say all white folks are this. If I could say all white folks are something, it would be unfair to say all black folks are something. You can't never say all about anything, because you don't know all.

But what I do know is that I've been around here 60 years. And because of racism, we have subliminal stuff in back of our mind that brings about segregation. I was raised in the West End, I was raised in Church Hill, in Chimborazo. And when I go over to Church Hill now - (LAUGHTER). But I understand the history, you understand? I understand, because at first white people were predominantly over in Church Hill. Then black folks became predominant over at Church Hill. Now, white folks again. You understand. When I go into 7-Eleven in the morning, I may be one or two

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or three people that speaks English in 7-Eleven. I think I'm a foreigner in 7-Eleven in the morning, you understand? But I know that racism exists in our society. And I think racism exists here, but I think we are getting better as people. I think when the old heads die off, it'll be a little better. Because the young people ain't getting up here and talking about black, white. They talk about economics and how to live and love each other. We're still stuck. The older people are still stuck into that racism mindset. Segregationist mindset. You know, I love all people, man. Because I think if everybody's afforded the same opportunity, we can prosper. ...

I'm going to close with this: All the black folks left Church Hill. Well, I can't say all, but a whole bunch of them. I would like to know where they've gone. (LAUGHTER) ...

Michael Paul Williams: I might be able to answer part of that. I'm no expert. But there are more black people in the suburbs now than in the city itself. By far. So, that's where they went.

And the question was raised about what one policy I would be in favor of to change things. I don't think you can change things if the structural framework for what got us here is still here. I would blow up this "independent city." I think a lot of what has facilitated what we're talking about is the fact that we have jurisdictions that function like Balkanized nations. There are these artificial walls - and you don't see it in any other state but Virginia. So, I'd blow up the independent-cities thing. Richmond needs to be a part of Henrico. Maybe Southside needs to be part of Chesterfield. But it just doesn't make any sense, and it enables a lot of what we've talked about, in my view.

Dale Jones, Richmond: I've lived here in Richmond since 1964. And I have an answer, partially, why is Richmond still segregated. It's very simple. Because the majority of the people want it that way.

Silvestri: Well, what does that mean?

Jones: That means, until you change the heart of the individual - just go out on Sunday morning in Richmond and see where people go to church. They go to segregated churches. And until that's changed, you're not going to change segregation.

Winnie Westbrook, Richmond: I have lived in Richmond since '76. And I live in a neighborhood that is primarily white. I think that I want to say this as succinctly as I can. And it comes first from what my pastor has said: that you can put perfume on a pig. You can put flowers on a pig. You can put bows and ribbons on a pig. But the bottom line is that it's still a pig. And the pig, for me, is fear. And fear of race, fear of poverty and fear of felons. Moving into your neighborhood. And my question is to Michael (Herring). There is this "ban the box," which I think is good legislation. How do we get folks beyond the pig of fear, poverty and the felons? To just say, "I'm going to take a chance. I'm going to take a chance, or I'm not fearful. I can hire this person." That would certainly have an impact on education. That would certainly have an impact on housing. ...

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Michael Herring: The point of "ban the box" and similar initiatives is to ensure against discrimination of felons. In other words, to make sure that a person gets a look, notwithstanding a felony conviction. And I think that makes sense, to be honest. But as you have no doubt figured out with me, I don't have many simple answers. And so, far be it for me to impose my value judgment on another agency or institution. I will hire felons in the Commonwealth's Attorney Office, but I know prosecutors around the state who won't. And I can understand why they aren't comfortable doing it.

Culturally, Virginians - and I think Americans - have a misinformed view of felons. We tend to think a felon is a felon is a felon. And that is not the case. So when we come back, or when you all begin to - when you're ready for a real, substantive conversation about your justice system, and more importantly the impact of felonization, I think that's a better time to take up the question of how we overcome the fear, or live with felons.

Nichele Carver, Henrico: ... I live in Eastern Henrico, in the Varina area. And I'm in a middle-class suburb that's predominantly African-American. In fact, there's only one family that's not, out of the 300 homes. ... I heard on NPR that just by virtue of my neighborhood being predominantly African-American, our home values are lower. So the same size home in Glen Allen is worth more than my home. My question is: What can we do on a community level, to try to make these assessments more equal, or fair?

Heather Crislip: It's very complicated. The main thing I can do is just confirm that. And I think it's a legacy of inferior financing, and fear. And fear of property values going down. It's very complicated. I think better integration would make a big difference. I think greater awareness of that fact would make a big difference. I think - yeah, we need to change it, and it's true.

Mary Atkins, Richmond: I'm a citizen of Richmond as long as I can hold out financially. I'd like to see something addressed more about the powers that be helping people keep their homes, instead of rolling out the red carpet for people to shove them out. Anyone who thinks gentrification is a pleasant thing hasn't experienced it from the inside out. In six years, my house - I moved into cutesy-town, aka Carytown, because it was a mixed neighborhood. And it was beautiful. A working-class neighborhood. Now, it's an open air strip mall. I mean, plastic. The neighbors are not. Why are flip sale artists even - why is that even allowed? I mean, 500 percent in six years. I never had a credit card in my 70 years. I never took out a loan, I never bought anything on time. Now, I'm on welfare. I don't think I can stay in this city. I can see why everybody's leaving it. I want my neighbors back. Even the druggies and the shooters are better than what is coming in around me, with their noses stuck up in the air, acting like I'm something that they ought to scrape off their feet. And I'm sorry to be so direct, but it's painful to be on the wrong side of gentrification. And I think the government needs to address that. ...

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Crislip: I'm so grateful for everyone for coming out and having a passionate conversation about this. I think it needs to be the start of many more. And about purposefully, how we develop housing, and how we pay attention to how housing patterns underlie our education system, what happens with crime. And how if we make great decisions about housing and where we put it, and what opportunities we give people, we can have the best possible region.

Graphic

Victor Branch, Richmond market president for Bank of America and a HOME board member, spoke about the future during the Public Square at The Times-Dispatch on April 23. DANIEL SANGJIB MIN/RTD Heather Mullins Crislip, president and CEO of Housing Opportunities Made Equal, gave a presentation about housing trends in the Richmond Region. DANIEL SANGJIB MIN/RTD More than 200 people attended the 56th Public Square on April 23 at The Times-Dispatch building downtown. DANIEL SANGJIB MIN/Times-Dispatch Michael Herring, Richmond commonwealth's attorney, discussed the links between crime, poverty, segregation and education. DANIEL SANGJIB MIN/RTD John Moeser of the University of Richmond professor, an urban studies expert, explained the historical origins of racially segregated housing in the Richmond area. DANIEL SANGJIB MIN/RTD Heather Mullins Crislip, president and CEO of Housing Opportunities Made Equal, answers a question from the audience as moderator Tom Silvestri, left, publisher of The Times-Dispatch, and John Moeser of the University of Richmo

Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: HOLDING COMPANIES (91%); COLLEGE & UNIVERSITY PROFESSORS (89%); ETHNIC & CULTURAL STUDIES (89%); WRITERS (89%); HOUSING ASSISTANCE (88%); AFRICAN AMERICANS (78%); HUMAN RIGHTS VIOLATIONS (78%); JOURNALISM (78%); SLAVERY (78%); TEACHER RETIREMENT (75%); EXECUTIVES (74%); LAWYERS (73%)

Company: BANK OF AMERICA CORP (56%)

Organization: UNIVERSITY OF RICHMOND (57%)

Industry: NAICS551111 OFFICES OF BANK HOLDING COMPANIES (56%); NAICS522110 COMMERCIAL

Why is Richmond still segregated?

BANKING (56%); SIC6712 OFFICES OF BANK HOLDING COMPANIES (56%); BANKING & FINANCE (91%); COLLEGE & UNIVERSITY PROFESSORS (89%); WRITERS (89%); RESIDENTIAL PROPERTY (74%); LAWYERS (73%); NEWSPAPER PUBLISHING (73%)

Geographic: RICHMOND, VA, USA (92%); VIRGINIA, USA (92%); UNITED STATES (79%)

Load-Date: May 4, 2015

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**TRAFFIC ARREST PATTERN;
IN CHESTERFIELD, 29% ARE BLACK AND ALMOST 69% ARE WHITE**

Richmond Times Dispatch (Virginia)

July 15, 2001 Sunday City Edition

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Section: AREA/STATE; Pg. B-3

Length: 1410 words

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Body

Nearly 29 percent of the drivers arrested for *traffic* offenses last year in Chesterfield County were black and almost 69 percent were white, internal *police* records show.

In an effort to gauge whether Chesterfield *police* officers are engaging in *racial* profiling, or arresting a disproportionate number of minorities, county *police* officials analyzed by *race* the department's *traffic*-stop arrests.

They show that 28.7 percent of the 37,928 people arrested in 2000 for *traffic*-related offenses, including drunken driving, were black. Nearly 69 percent were white.

Chesterfield *police* Chief Carl R. Baker said he's comfortable with those numbers and believes they show his department does not stop and arrest motorists based on their *race*.

"I don't think it will ever be an agency problem here," said Baker, Chesterfield's chief since 1996. "It may be an individual officer problem, but it will never be an agency problem."

Baker said he's not concerned that the *racial* mix of people arrested for *traffic* offenses doesn't mirror the county's *racial* demographics. According to the 2000 census, 76.7 percent of Chesterfield's 259,903 residents are white and 17.8 percent are black.

"That's a horrible assumption - that everybody we stop lives in Chesterfield County," Baker said. "Our daily population is over a million people, so obviously they're not all coming from Chesterfield. Our transient demographics are not the same as our resident demographics."



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The department's review of *traffic* arrest data may be the closest Chesterfield *police* officials come to conducting a so-called *racial*-profiling study. For now, Baker said he has no plans to conduct a formal study of *traffic* stops - unlike several other local law enforcement agencies, including the state *police*.

"I think I can summarize it this way," Baker said. "We get very, very few complaints on biased *policing*. We investigate every complaint. [And] we will continue to monitor our stats as we collect them. But right now, I don't see a problem."

As the issue of *racial* profiling has gathered momentum nationwide, an increasing number of *police* agencies are conducting their own *traffic*-stop studies, requiring officers to record the *race* of all drivers they *pull* over, question and sometimes arrest.

Richmond police had such a study done last year with the help of a Virginia Commonwealth University professor, although *Police* Chief Jerry Oliver was less than pleased with its results. He viewed the study as flawed and based on incomplete data. The study showed that 64 percent of the 2,673 drivers stopped during a six-week period were black, compared with 32 percent who were white.

Similarly, Henrico County *police* conducted their own study last year, also with the help of a VCU professor. Chief Henry W. Stanley Jr. said he was comfortable with the results, which showed that 56.3 percent of the 10,345 drivers stopped during the study period were white, while 38.6 percent were black.

At the urging of Del. Roger J. McClure, R-Fairfax, state *police* Superintendent W. Gerald Massengill agreed this year to begin collecting information on the *race* of each driver his troopers stop throughout the state. The department began collecting the information in May and expects to release five or six months worth of data this fall.

During a recent conference on *racial* profiling sponsored by the state *police* and the Virginia attorney general's office, officials with the National Organization of Black Law Enforcement Executives, or NOBLE, urged their law enforcement colleagues to conduct formal *traffic*-stop studies. In their daylong presentation, NOBLE officials said a department's willingness to collect such data has symbolic benefits that can instill public trust and confidence.

"The courage to mandate data collection can improve accountability systems, fortify organizational values, and help 'operationalize' the Law Enforcement Code of Ethics," NOBLE says in its training literature. "Data analysis can be crucial in diagnosing types and levels of bias within an organization, as well as developing systems to remove bias."

The organization believes that "the value of data collection clearly outweighs the associated time or costs," but the group also acknowledges that data collection done poorly or analyzed poorly "can lead to misunderstandings at best and mistaken policies at worst."

Baker said Chesterfield officers do not record the *race* of every driver they stop, but they are required to list the *race* of every driver they arrest - information that is forwarded to the state *police* and then the FBI for crime reporting purposes.

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A category for Hispanic drivers does not exist in the crime reporting guidelines. Therefore, officers record an Hispanic driver as "black" if he appears to be Negroid, or "white" if he appears to be Caucasian.

Some law enforcement officials are reluctant to conduct *traffic*-stop studies because no one has developed comprehensive standards in collecting and analyzing the data. Critics believe many of the studies conducted are flawed and meaningless because they compare only the number of minority stops with some crude overall population measure.

Other criteria need to be factored into such studies, critics say, citing population patterns on roads, *racial* demographics of crime, *police* deployment patterns and *racial* driving patterns, among other things.

The Rev. Gerald O. Glenn, pastor of Chesterfield's New Deliverance Evangelistic Church and an activist in county *race* relations, said the *traffic* and criminal arrest numbers gathered by *police* should be used as a springboard to study the issue in more depth.

"I think it would be in the interest of any progressive law enforcement agency to examine this," said Glenn, former director of the Virginia Department of Juvenile Justice. "I can say as an *African-American* and a former *police* officer [that] there historically has been in our community a distrust of *police*, and often times when blacks are stopped, they just intuitively think it was based" on *race*.

"And so, to allay those fears, I think any progressive *police* agency would be well versed in saying, 'Hey, we want to get on the front end of this thing before it happens. We want to let you all know that we're concerned enough about the minorities in our communities that we want to allay anybody's fears.' That's being proactive, not reactive."

Kelly E. Miller, vice chairman of the Chesterfield Board of Supervisors, said he's not convinced a formal study is needed.

"I don't believe in just going out and doing studies for the sake of doing studies," Miller said. "There needs to be some basis for why we would do that. And I would certainly want to coordinate with *police* before I made a statement regarding such a study. But at this point in time, I see no need for it."

"I haven't had any complaints made to me in any form that would indicate that there was a problem in Chesterfield County."

MOTORISTS STOPPED

Here is the *racial* breakdown of motorists stopped for *traffic* offenses in Chesterfield County from January 1999 through May 2001:

In 1999, 68.9 percent of the 35,840 motorists arrested were white, 28.6 percent were black, 1.7 percent were Asian, 0.13 percent were native American and 0.53 percent were of unknown *race*.

In 2000, 68.9 percent of the 37,928 motorists arrested were white, 28.7 percent were black, 1.9 percent were Asian, 0.12 percent were native American and 0.20 percent were unknown.

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During the first five months of 2001, 68.6 percent were white, 28.8 percent were black, 2 percent were Asian, 0.26 percent were native American and 0.42 percent were unknown.

PEOPLE ARRESTED

Here is the *racial* breakdown of people arrested for criminal offenses in Chesterfield County from January 1999 through May 2001:

In 1999, 64.3 percent of the 20,378 people arrested were white, 35.7 percent were black, 1.4 percent were Asian, 0.19 percent were native American and 0.41 percent were of unknown *race*.

In 2000, 62.9 percent of the 21,321 people arrested were white, 35.4 percent were black, 1.3 percent were Asian, 0.08 percent were native American and 0.25 percent were unknown.

During the first five months of 2001, 61.5 percent of the 9,053 people arrested were white, 36.4 percent were black, 1.5 percent were Asian, 0.08 percent were native American and 0.28 percent were unknown.

Source: Chesterfield County *police*.

Note: Hispanic drivers were lumped into white or black categories, depending on how the officer perceived the driver's *race*.

Graphic

PHOTO

Classification

Language: ENGLISH

Subject: ARRESTS (94%); CRIMINAL OFFENSES (94%); NEGATIVE PERSONAL NEWS (93%); **RACE** & ETHNICITY (92%); VEHICULAR OFFENSES (91%); CRIME, LAW ENFORCEMENT & CORRECTIONS (90%); LAW ENFORCEMENT (90%); **POLICE** FORCES (90%); **RACIAL** PROFILING (90%); DEMOGRAPHIC GROUPS (89%); DRIVING & **TRAFFIC** LAWS (89%); **POLICE** MISCONDUCT (89%); POPULATION & DEMOGRAPHICS (89%); PUBLIC OFFICIALS (89%); MINORITY GROUPS (78%); DRIVING WHILE INTOXICATED (73%); COLLEGE & UNIVERSITY PROFESSORS (60%)

Industry: VEHICLE **TRAFFIC** (90%); DRIVING & **TRAFFIC** LAWS (89%); COLLEGE & UNIVERSITY PROFESSORS (60%)

TRAFFIC ARREST PATTERN;IN CHESTERFIELD, 29% ARE BLACK AND ALMOST 69% ARE WHITE

Geographic: *RICHMOND*, VA, USA (59%); VIRGINIA, USA (93%)

Load-Date: July 20, 2001

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3/8/2022

**RICHMOND TRANSPARENCY AND ACCOUNTABILITY
PROJECT (RTAP)**

OUR STREETS, OUR SAY: POLICING IN RICHMOND



PUBLISHED JUNE 2019

Acknowledgements

RTAP would like to acknowledge the two years of work by its members that led to the public release of the information contained in this report, with special thanks to Dr. Liz Coston and Amanda Hales for the data analysis and visuals that have made it accessible to the broader community. Further thanks to Derek Keaton, Ellie Riegel, and Sean Tenaglia for their assistance in drafting. Last but not least, RTAP is grateful for all the community members who shared their stories of policing in Richmond because we know institutions of power are not the only keepers of data and truth.

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Executive Summary

The Richmond Transparency and Accountability Project (RTAP) is a coalition of policy analysts, legal experts, and directly-impacted community members striving to build safer, healthier communities by organizing for a more transparent and accountable police department. Despite priding itself as a model of “community policing,” the Richmond Police Department (RPD) has a tense history with the Black and Brown communities it’s intended to protect. This fractured relationship has recently been highlighted by several high profile incidents of police hostility and violence towards people of color as well as by an ongoing lack of transparency regarding RPD’s internal data.

After years of letters, meetings, and public pressure from RTAP, RPD finally began releasing internal data in early 2018 and continuing through 2019 regarding four key areas: citizen complaints, use of force, pedestrian contact, and traffic stops. The data paints a picture of dramatic racial inequality in police contact with civilians, racially disparate use of force, and an ineffective civilian complaint process. To address these issues, increase accountability, and take steps to repair a legacy of mistrust, RTAP demands three core changes to RPD: (1) prioritize the community input needed to capture and share more robust, better quality data; (2) ban predictive policing; and (3) expand civilian oversight.



Background

RTAP'S MEMBERS

RTAP's coalition members are the Legal Aid Justice Center (LAJC), New Virginia Majority (NVM), Southerners on New Ground (SONG), Dr. Liz Coston with Virginia Commonwealth University, and concerned community members from neighborhoods directly impacted by disparate policing.

The Richmond Transparency and Accountability Project (RTAP) strives to build safer, healthier communities by organizing for a more transparent, accountable, and fair police department. RTAP organizes Black and Brown people, legal experts, and policy analysts to achieve policing practices that reduce physical, economic, and emotional trauma on the most policed neighborhoods in the city.

In 2016, New Virginia Majority (NVM) organizers canvassed residents in Blackwell, asking them what needs to be improved in the neighborhood. After hearing from over 700 residents, improved police-community relations emerged as the top issue; NVM decided to organize for community oversight of the police department. RTAP came together when NVM and Southerners on New Ground realized they shared the same goal of increasing police accountability in Richmond.

At organization-led community meetings, people had the opportunity to share their experiences of policing in Richmond and showed support for civilian oversight. Nevertheless, when these stories were shared with former Richmond Police Chief Alfred Durham and some City Council members, their response was that data was needed to "prove" problems with policing practices.¹ RTAP set out to obtain that data using FOIA and community pressure via letters and petitions (*see Fig. 1*).

¹Tom Nash, *Requester's Voice: Richmond Transparency and Accountability Project*, (May 15, 2019), <https://www.muckrock.com/news/archives/2019/may/15/rv-virginia-rtap/>.

.....

RTAP'S PUSH FOR DATA

The data released between January 2018 and March of 2019 underscores RPD's problematic policing of Richmond in four key areas: civilian complaints, use of force, traffic stops, and pedestrian stops.

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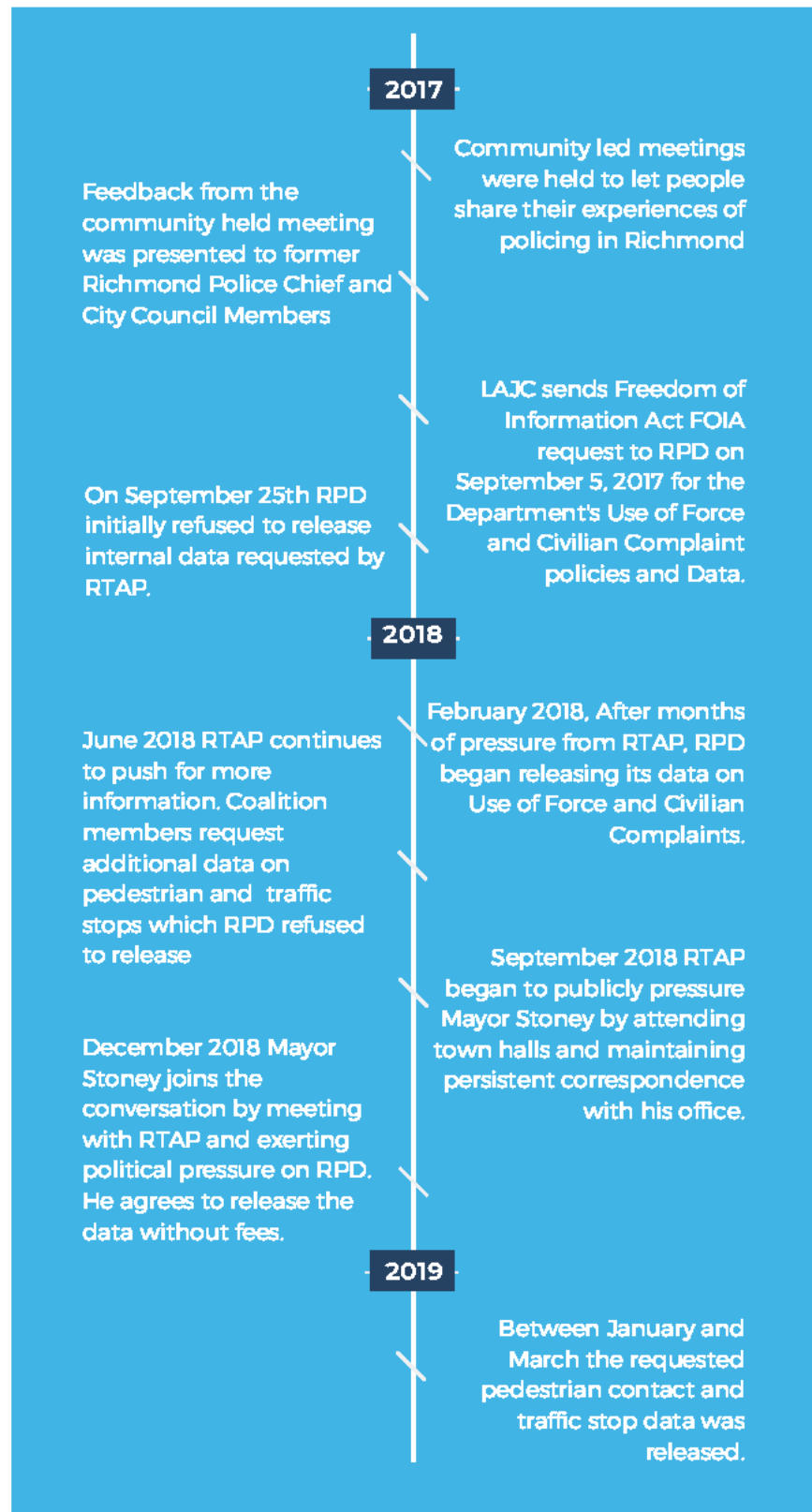


FIGURE 1

Why RPD's History Demands Transparency & Accountability

I. RPD Abuses Create Mistrust in Community

RPD'S TROUBLING TRACK RECORD

While RPD touts community policing, the negative experiences reported by communities of color, as well as the lack of transparency from the Department, do not align with the goals of a community policing model.

The Richmond Police Department has, for years, prided itself as a model for "community policing," "making use of photo ops, carefully crafting press statements, and stressing the racial diversity of their officers,"² but its history tells a different story. Negative experiences reported by communities of color, as well as the lack of transparency from the Department, undermine RPD's claim to be a model of community policing. RPD's fractured relationship with the community, and in turn the community's distrust of those intended to protect them, has come to the forefront in recent years with several high-profile incidents.

WHEN RPD FAILS, THE COMMUNITY SUFFERS



MARCUS-DAVID PETERS
SOURCE: LEGACY.COM // 2018

Marcus-David Peters - On May 14, 2018, Marcus-David Peters, a 24-year old beloved teacher and honors graduate of VCU, was shot by a Richmond police officer while he was clearly in the middle of a mental health crisis, which the officer acknowledged before shooting Mr. Peters. This incident exposed the failure of police training in responding to mental health emergencies, and highlights the need for a non-law enforcement response to such incidents.

² *Poverty, Crisis, and Police Murder in Richmond, It's Going Down* (June 5, 2018), <https://itsgoingdown.org/poverty-crisis-and-police-murder-in-richmond-virginia/>



MCKHYL DICKERSON
SOURCE: RVA MAG // 2018

McKhyl Dickerson- On May 9, 2018, Dickerson, a 14 year old Black boy with autism and an auditory processing disorder, was playing with his uncle outside when a hit and run in which they were not involved unfolded. Officers followed McKhyl home, slamming him into his own wall, and then beating and handcuffing him in front of his grandmother. All of this occurred as she begged them to stop, desperately explaining her grandson's inability to comprehend why he was being followed and assaulted.



MARKIYA SIMONE DICKSON
SOURCE: NBC12; FAMILY
PHOTO // 2019

Markiya Simone Dickson- On Sunday May 26, 2019, 9 year old Markiya Dickson was killed by an outbreak of gunfire at a large community cookout in South Richmond's Carter Jones Park. An 11 year old boy was also shot in the incident. When bringing her to the hospital, Dickson's father and another man were unjustly handcuffed by police. Residents expressed their frustration after the shooting, noting how members of the Black community are treated with suspicion by the police, even when trying to save a life in the midst of a senseless tragedy.



ALBERT HILL MIDDLE SCHOOL
FRONT SIGN
SOURCE: WTVR // 2019

Albert Hill Middle School- On March 28, 2019, a Richmond police officer drove up to three Albert Hill students outside of the school building to question them about a comment he thought one of them made. In response to the students' denials the officer replied: "Just wait 'til your asses turn 18. Then it's mine." His remarks were met with backlash from parents and residents concerned about police relations with Black residents, particularly children. The officer apologized in a meeting with the students involved and was removed from his Museum District patrol, but backed out of a planned school assembly to address the Albert Hill student body.

These incidents, along with clashes with protesters and an increasingly militarized force, have only served to heighten a sense of mistrust among community members.^{3 4}

II. Analysis of Publicly Released RPD Data

Furthermore, RPD's resistance to making its data publicly available (see Fig. 1) and the flawed data it has released in the face of community pressure, are causes for alarm. Data released by RPD between January 2018 and March 2019 underscores RPD's problematic policing of the Richmond community in four key areas: citizen complaints, use of force, pedestrian contacts, and traffic stops.

CIVILIAN COMPLAINT DATA

Findings on Complaints Against Officers: While RPD policy states that complaints against officers should be resolved within 30 days, less than 20% of all complaints are handled in this timeframe. In 2018, it was common for investigations of complaints to take 4 months or more.

Time to Close Complaints Jan-Aug 2018

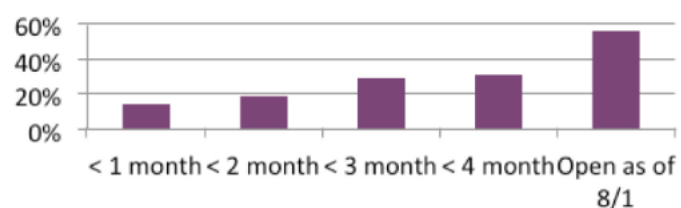


FIGURE 2

³ Mark Bowes, *Police or Soldiers? Agencies Locally and Across Virginia have Weapons of War*, *Richmond Times-Dispatch* (Aug. 23, 2014), https://www.richmond.com/news/local/police-or-soldiers-agencies-locally-and-across-virginia-have-weapons/article_Od063dce-2b48-11e4-a2ee-0017a43b2370.html

⁴ Graham Moomaw & Michael Martz, *Police Detain Five, Charge One Outside Trump's Richmond Rally Friday*, *Richmond Times-Dispatch* (June 11, 2016), https://www.richmond.com/news/local/city-of-richmond/police-detain-five-charge-one-outside-trump-s-richmond-rally/article_9bb7219a-ab25-5b12-a2b4-94f2298abb2f.html

USE OF FORCE DATA

Findings on Use of Force Data: Data from 2017 and 2018 demonstrates that RPD officers are more likely to use force against Black civilians. While the City of Richmond is 48% Black, more than 75% of all use of force cases involve Black civilians.

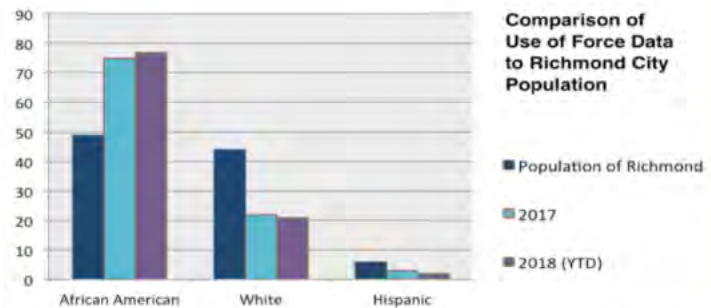


FIGURE 3

PEDESTRIAN CONTACT DATA

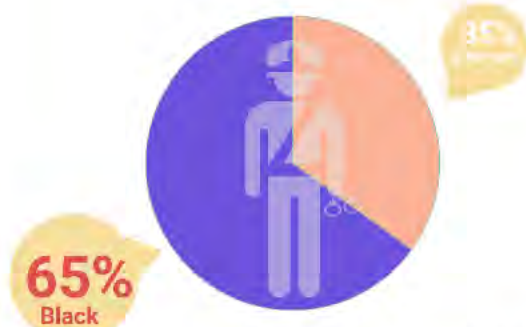


FIGURE 4

Total FIRs: 65% of the 27,432 police contacts documented in RPD's Field Interview Reports (FIRs) between January 2017 and October 2018 involved Black people. That equates to roughly *1 out of every 6 Black people* in Richmond getting stopped during this timeframe.



FIGURE 5

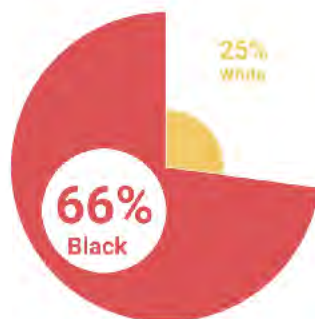


FIGURE 6

Suspicious Activities: There was a total of 3,539 "Suspicious Activities" Field Interview Reports (FIRs) in the pedestrian stop data sets released by RPD. Black people comprised 66% of all Suspicious Activities FIRs, while white people only accounted for 25%. In other words, Black people were perceived as allegedly engaging in "Suspicious Activities" at a rate that is *2.7x higher* than white people.

PEDESTRIAN CONTACT DATA

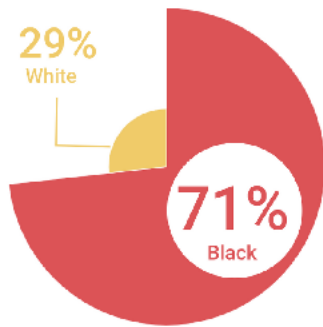


FIGURE 7

Suspicious Persons: There was a total of 4,605 "Suspicious Persons" Field Interview Reports (FIRs) in the pedestrian stop data sets released by the Richmond Police Department. Black people comprised 71% of all Suspicious Persons FIRs, while white people only accounted for 29%. This means Black people were perceived as "Suspicious Persons" at a rate that is **2.7x higher** than white people.

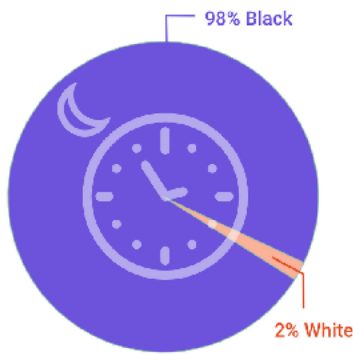


FIGURE 8

Curfew Violations: 98% of all curfew violation Field Interview Reports involved Black youth -- particularly young Black boys. By comparison - according to the National League of Cities: "In 2014, black youth made up around 15 percent of the under 18 population, yet represented almost 50 percent of the curfew arrests in cities across the country."

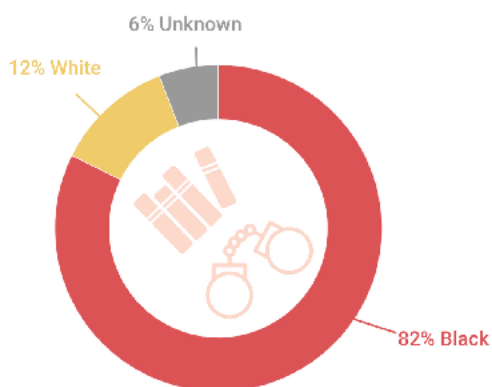


FIGURE 9

Truancy Violations: 82% of the alleged truancy violation reports involved Black people, particularly young Black boys. Comparatively, white people made up only 12% of the reports in this category. Based on the data, Black people were stopped for alleged truancy violations at a rate **7x higher** than white people.

TRAFFIC STOP DATA



FIGURE 10

Traffic Arrests: Black people accounted for **75%** of all traffic arrests from January 2017 - October 2018, meaning Black people were **30.7% more likely** to be arrested during a traffic stop than white people. This racial imbalance is on par with national trends which show that Black people are **31% more likely** to be pulled over than white people.

DISPARITIES IN POLICING

An overwhelming majority of community members who come in contact with RPD are Black, even though only 48% of Richmond's population is Black.

This data—analyzed by Dr. Coston and their team at VCU—paints a troubling picture of racially disparate policing in terms of RPD's use of force and pedestrian and traffic stops, as well as and an ineffective civilian complaint process.⁵ An overwhelming majority of community members who come in contact with RPD are Black, even though only 48% of Richmond's population is Black.

CIVILIAN TAX DOLLARS DESERVE CIVILIAN OVERSIGHT!

RPD receives the second largest portion of the city's budget of any agency; increased attention and accountability is imperative in the face of well-documented policing failures. Providing for greater civilian oversight and data transparency between RPD and the residents it serves is overdue.

⁵ Critically, Field Interview Reports do not indicate that any crime has been committed. For example, multiple curfew violation FIRs were for youth actually 18 or over and therefore not subject to the curfew ordinance.

Moving Forward: RTAP's Core Demands

.....

THE PROCESS TOWARDS PROGRESS

RTAP's demands represent important first steps the city can make toward the ultimate goal of promoting racial justice and the safety, health, and well-being of Richmond's Black and Brown residents.

.....

Considering RPD's role in the community, its lack of transparency and no shortage of high profile policing failures, further action is necessary to increase police accountability and take steps to heal feelings of mistrust within the Richmond community. The below RTAP demands represent the first steps the city can take in the long process toward promoting racial justice and the safety, health, and well-being of Richmond's Black and Brown residents. Policing abuses have lasting emotional and economic impacts on community members. This is evident in the lives of those who have shared their stories with RTAP coalition members. The city must act swiftly to end these abuses and implement policies to protect individuals in Richmond from legal violations and racially disparate policing.

RTAP understands that creating healthy and thriving Black and Brown communities requires a solution that combines reforming law enforcement practices with increased investment in community-based solutions that eliminate the need for law enforcement intervention in the first place. This approach is supported by research showing that communities of color favor solutions that "reduce the police role and replace it with empowered communities working to solve their own problems"⁶ through public health, educational, employment and affordable housing-focused remedies.⁷

⁶Alex S. Vitale, *We Don't Just Need Nicer Cops. We Need Fewer Cops.*, The Nation (Dec. 4, 2014), <https://www.thenation.com/article/we-dont-just-need-nicer-cops-we-need-fewer-cops/>.

⁷*More Black than Blue: Politics and Power in the 2019 Black Census*, Black Futures Lab, <https://blackfutureslab.org/wp-content/uploads/2019/05/More-Black-than-Blue.pdf>.

.....

**IMPROVE DATA
CAPTURE**

We can only ensure a data system that provides robust, better quality, and publicly available data if the community is involved in shaping that system on the front end.

.....

1. Prioritize Community Input In Order To Capture & Share More Robust, Better Quality Data

- While RPD's recent data releases serve as a starting point for transparency, they also raise many questions about the methodology and quality of data collection.⁸ Questions, such as "How many incidents lead to a search?" or "How many searches lead to an arrest?", remain difficult to answer based on the current data capture practices. RPD's decision to revise its records management system for the first time in over a decade provides an opportunity for a step in the right direction, increasing accountability and transparency. However, we can only ensure a data system that provides robust, better quality, and publicly available data if the community is involved in shaping that system on the front end.

2. Ban Predictive Policing - While RTAP advocates for better data, changes should not result in the collection of certain kinds of information that can be harmful and/or biased. RPD's contract with SOMA Global to provide the new records management system raises concern; SOMA Global markets itself as a leading provider of technologies, such as predictive policing and invasive tracking practices, that have proven harmful to minority communities.⁹ Predictive policing uses software analysis of data from past police activity to predict potential crime hot spots and offenders. That data frequently reflects biased, and sometimes unconstitutional, policing practices, making it unreliable.¹⁰

⁸ For instance, Dr. Coston's review of Use of Force data identified discrepancies in RPD's reporting of officer uses of force, to include the initial omission of Officer Michael Nyantaki's deployment of a taser and discharge of a firearm during his confrontation with Marcus-David Peters.

⁹ *The City of Richmond Enters Into an Agreement with SOMA Global to Provide Public Safety Solutions in Virginia*, CISION PRWeb (Jan. 29, 2019), <https://bit.ly/2wFlt86>

¹⁰ Rashida Richardson, Jason M. Schultz & Kate Crawford, *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, N.Y.U. L.Rev. (May 2019), <https://www.nyulawreview.org/wp-content/uploads/2019/04/NYULawReview-94-Richardson-Schultz-Crawford.pdf>.

BIAS IN, BIAS OUT:
SAY NO TO
PREDICTIVE
POLICING

Predictive policing uses data reflecting biased, and sometimes unconstitutional, policing practices, making it unreliable. Moreover, predictive policing is known to perpetuate systems of racially biased and inaccurate data collection.

Predictive policing can be racially biased and inaccurate, as demonstrated by discrepancies between predictive targets and actual estimated users of illicit drugs in Oakland, CA (see Fig. 11).¹¹ Black residents of Oakland were targeted at a significantly higher rate than whites based on predictive data analysis, but estimates reflect the opposite reality- whites were significantly more likely to be users.

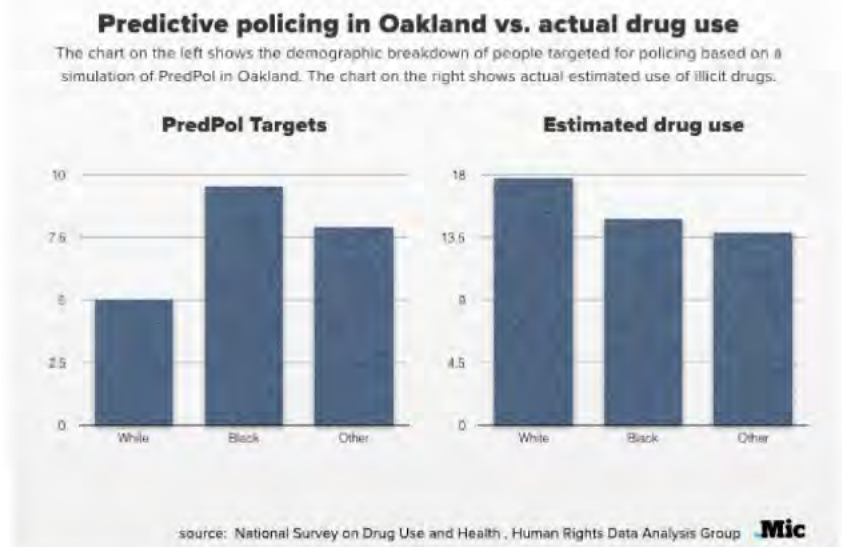


FIGURE 11

At a local town hall meeting, Richmond citizens overwhelmingly stated that they do not want RPD to use this technology to police the community.¹² While RPD should work to gather and analyze more robust data, they must avoid predictive policing to continue to build positive relations and foster transparency with civilians.

¹¹ Jack Smith IV, (Exclusive) Crime-Prediction Tool PredPol Amplifies Racially Biased Policing, Study Shows, (Oct. 9, 2016), <https://www.mic.com/articles/156286/crime-prediction-tool-pred-pol-only-amplifies-racially-biased-policing-study-shows>.

¹² Information drawn from RTAP's Townhall Feedback survey

.....

**ESTABLISH
ACCOUNTABILITY
MEASURES**

Meaningful civilian oversight would enhance public safety by providing transparency and accountability over RPD.

.....

3. Establish Civilian Oversight - Civilian oversight remains of paramount importance in Richmond, without which RPD will continue to police itself without any meaningful accountability. According to the New York Times, 7 of the 9 cities most similar to Richmond (based on population, employment opportunities, and geographic metrics) have some form of civilian oversight for their police departments.¹³ Although there is no one-size-fits-all type of civilian oversight, RTAP advocates for a system which helps to enhance public safety, broadly understood; provides meaningful responses to civilian complaints; and promotes trust through continued transparency and open communication between RPD and the Richmond community.

**QUESTIONS
ABOUT THE
REPORT?**

Please send all inquiries about the report and any information herein to richmondvatap@gmail.com.



Civilian oversight would help to hold leaders and officers accountable for their actions and keep community members informed of decisions and policies that affect their neighborhoods. Oversight can be accomplished in multiple ways, from civilian review boards engaging in review of civilian complaints about alleged misconduct to independent auditing offices that have access to the full scope of police data and can solicit community input to make recommendations for improving police practices.¹⁴

¹³ Jed Kolko & Josh Katz, *What is your City's Twin?*, *New York Times: The Upshot* (Apr. 3, 2018), <https://www.nytimes.com/interactive/2018/04/03/upshot/what-is-your-citys-twin.html>. See also, *National Association for Civilian Oversight of Law Enforcement*, www.nacole.org (last visited Jun. 2019) (Various community oversight models have been put in place across the nation, with Fairfax County, Virginia Beach, and Charlottesville representing three local examples within the Commonwealth).

¹⁴ Chapter 4: *Alternative Models for Police Disciplinary Procedure, Coping with Police Misconduct: Citizen Involvement in Officer Disciplinary Procedures*, <https://www.usccr.gov/pubs/sac/vv0104/ch4.htm>; Peter Flinn, *Citizen Review of Police: Approaches and Implementation*, *National Institute of Justice* (March 2001), <https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>.



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,

v.

Criminal Action No. 3:21cr42

KEITH RODNEY MOORE,
Defendant.

MEMORANDUM ORDER

The Court dismissed this case because the evidence showed that the City of Richmond's Police Department ("RPD") officers disproportionately pull over Black drivers. The government now asks the Court to reconsider its conclusion. (*See* ECF No. 128.)

The motion to reconsider fails for several reasons. First, it does little more than reargue points the Court has already considered. Second, it asks the Court to reevaluate the testimony of the government's expert, whom the Court found unpersuasive. Third, it is based on a factual contention that lacks evidentiary support: that stopping Black drivers somehow drives down serious crime in the City. The Court, therefore, will deny the government's motion.

A. The Government Does Not Meet the Legal Standard for a Motion to Reconsider

"It is within the sole discretion of the Court as to whether the granting of a motion to reconsider is appropriate." *United States v. Dickerson*, 971 F. Supp. 1023, 1024 (E.D. Va. 1997). "A motion to reconsider cannot appropriately be granted where the moving party simply seeks to have the Court 'rethink what the Court ha[s] already thought through—rightly or wrongly.'" *Id.* (quoting *Above the Belt, Inc. v. Mel Bohannon Roofing, Inf.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). Because no provision in the Federal Rules of Criminal Procedure governs motions for reconsideration, district courts are "guided by the standard set in the Civil Rules." *Id.*; *see* Fed. R. Civ. P. 59(e). The government must therefore provide at least one of the

following three grounds for reconsideration: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available [at the time of the Court’s ruling]; or (3) to correct a clear error of law.” *Dickerson*, 971 F. Supp. at 1024 (quoting *Hutchison v. Staton*, 994 F.2d 1075, 1081 (4th Cir. 1993)).

The government’s motion does not purport to “accommodate an intervening change in controlling law,” and it does not introduce new evidence. *See id.* It instead disagrees with the Court’s “analytical” findings on Keith Rodney Moore’s selective enforcement claim. (ECF No. 128, at 2.)¹ Its three arguments in this regard fail.

First, the government points out that no one in RPD said in writing that RPD officers should discriminate against Black drivers. Of course, at this point in our nation’s history, no one in their right mind would write down such a suggestion. But the evidence in the record shows conclusively that, at the relevant time, Black drivers got the lion’s share of stops; Black drivers made up 77 percent of the stops and were over 5 times more likely to be stopped than white drivers. That RPD did not have a written directive to disproportionately stop Black drivers does not mean that it did not have a practice of doing exactly that. An “invidious discriminatory purpose may often be inferred from the totality of the relevant facts.” *See Washington v. Davis*, 426 U.S. 229, 242 (1976). Here, Moore relied on statistical, historical, and circumstantial evidence to show selective enforcement. So the first ground for reconsideration fails.

Second, the government asks the Court to reexamine its view of the government’s proffered expert witness, whom the Court did not find credible or persuasive. The Court

¹ This sort of argument is precisely why courts generally forbid motions that simply ask the judge to “rethink” what has been decided. Nowhere is this procedural error more apparent than in the government’s argument about “benchmarks,” raised solely in its reply memorandum. This argument was thoroughly addressed in the Court’s Opinion dismissing the case, and will not be addressed here.

observed the expert's demeanor on the witness stand, and considered the substance of his testimony. It found that he did not come to the case with an open mind. The government's expert essentially testified that no amount of evidence could persuade him that the police dealt unfairly with Black motorists. He criticized Moore's expert for using a statistical method that he himself had used. And he could not suggest any legitimate reason for the disproportionate effect of traffic stops on Richmond's Black drivers. The Court rejected his testimony and sees no reason to reconsider its finding.

Third, the government suggests that RPD officers stop a lot of Black motorists because they are executing some sort of grand strategy to stop crime in parts of Richmond with a high Black population. This argument fails for three reasons. First, the government presented no evidence that such a strategy exists. Second, the government presented no evidence that stopping drivers cuts down the number of crimes committed. Third, the existence of this undisclosed strategy does not begin to explain another undisputed fact in the record: RPD officers disproportionately stop Black drivers in predominately white sections of the City, as well as in predominately Black communities. This cannot be part of the City's supposed anticrime strategy.

The Court notes that the Virginia Department of Criminal Justice Services has released new information suggesting a gradual decrease in the percentage of traffic stops of Black drivers. *See Luca Powell, Police Pulling Over Fewer Black Drivers*, Richmond Times-Dispatch, March 11, 2024, at A1–A2. This new information takes the air out of the argument that the police use traffic stops to quell crime in the City. In any event, the evidence in this case revealed that, in the six months leading up to Moore's arrest, Black drivers were over five times as likely to be stopped in Richmond than white motorists. And the government never supplemented the

record with evidence that reveals a decreasing disparity between white and Black drivers stopped by RPD officers. So, the third ground for reconsideration fails.

B. The Government's List of Frightening Effects of the Court's Decision

Additionally, the government threatens horrible consequences of the Court's decision.² It suggests that RPD may become discouraged and stop fighting crime, and may even redirect its efforts away from protecting Black citizens. Again, the Court will note that no government witness testified that RPD has some strategy to prevent violent crime by targeting Black drivers throughout Richmond. And, more importantly, the Court has a responsibility to protect the constitutional rights of Moore and other Black drivers. If the City has a grand scheme to stop crime by stopping Black motorists, the scheme cannot exist at the expense of human freedom.

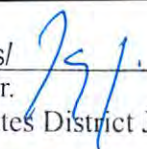
The government argues, correctly, that Black citizens deserve a City with less crime. Much to the credit of the Police Department, they are receiving that. But they also deserve a City where they can go to church, school, and the grocery store without fear of the police picking on them. The time has come for this practice to end.

The Court DENIES the government's motion. (ECF No. 128.)

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 11 March 2024
Richmond, VA



John A. Gibney, Jr.
Senior United States District Judge

² The government does not suggest this as a ground to change the Court's prior Opinion, but rather to remind the Court that its decisions have a real effect on life in the City.

2024 WL 552794

Only the Westlaw citation is currently available.
United States District Court, E.D. Virginia,
Richmond Division.

UNITED STATES of America,
v.
Keith Rodney MOORE, Defendant.

Criminal Action No. 3:21cr42

|
Signed February 12, 2024

Synopsis

Background: After police found a gun in his car during traffic stop, defendant was indicted for possessing a firearm and ammunition as a convicted felon. Defendant, a Black driver, moved to dismiss indictment for selective enforcement, claiming that area police officers selectively stopped Black people, and government moved to exclude both of defendant's experts.

Holdings: The District Court, [John A. Gibney, Jr., J.](#), held that:

testimony of expert in statistics and methodology, race and gender, and criminal legal system was reliable, and thus admissible;

testimony of expert in local history of race and politics was admissible;

expert testimony established that police department's actions caused a discriminatory effect; and

defendant met his burden of showing discriminatory purpose.

Motions to exclude denied; motion to dismiss granted.

Procedural Posture(s): Pre-Trial Hearing Motion.

Attorneys and Law Firms

[Kevin Spencer Elliker](#), U.S. Attorney, Hunton Andrews Kurth LLP, Richmond, VA, Erik Sean Siebert, [Shea Matthew Gibbons](#), Jessica Diane Aber, United States Attorney's Office, Richmond, VA, for United States of America.

OPINION

[John A. Gibney, Jr.](#), Senior United States District Judge

*1 Black drivers have a problem in Richmond, Virginia. Richmond Police Department (“RPD”) officers stop Black drivers five times more frequently than white drivers. The defendant in this case, Keith Rodney Moore, is one of the Black drivers stopped by RPD officers. On December 5, 2020, RPD officers pulled Moore over in the Highland Park neighborhood of Richmond. Moore fled the scene, but the officers caught him, arrested him, and ultimately found a gun in Moore's car.

On May 4, 2021, a grand jury indicted Moore for possessing a firearm and ammunition as a convicted felon. Moore has moved to dismiss the indictment, claiming that RPD's officers selectively stop Black people, and that this selective enforcement led to his current charges. (ECF Nos. 32, 66.) As part of his evidence, Moore introduced two experts, Dr. Eli Coston and Dr. Marvin Chiles. The government has moved to exclude both. (ECF Nos. 70, 82.) These three motions—Moore's motion to dismiss the indictment, and the government's two motions to exclude—pend before the Court.

The Court will deny the government's motions to exclude the defense experts' testimony. Both experts offer relevant evidence. Coston's data and analysis is reliable. And, using reliable sources to develop his testimony, Chiles provided insights into Richmond's institutional character.

Additionally, the Court will grant Moore's motion to dismiss the indictment on selective enforcement grounds. Moore presents abundant evidence that Black drivers represent a disproportionate share of the individuals pulled over for traffic stops in Richmond. Moore has shown both elements of a selective enforcement claim: discriminatory intent and discriminatory effect.

I. MOTIONS TO EXCLUDE THE DEFENDANTS' EXPERTS

First, the Court will address the government's motions to exclude the testimony of Dr. Coston and Dr. Chiles.

A. Legal Standard for Expert Testimony

Federal Rule of Evidence 702 permits expert testimony “in the form of an opinion or otherwise” by—

[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education ... if the proponent demonstrates to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702.¹ In other words, the Court must ensure that expert testimony is both relevant and reliable.

1. Relevance

*2 “Relevant evidence, of course, is evidence that helps ‘the trier of fact to understand the evidence or to determine a fact in issue.’ ”  *Nease v. Ford Motor Co.*, 848 F.3d 219, 229 (4th Cir. 2017) (quoting  *Daubert*, 509 U.S. 579, 591, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)). The first step to determine relevance is to under what is “in issue.” See  *id.* On this, the parties differ, leading them to different conclusions about the relevance of any particular evidence.

The government views this case under the principles governing selective prosecution cases—cases where the state chooses to prosecute defendants of one race, but not to take cases to court involving people of another race. In selective prosecution cases, the party challenging prosecution must meet a very heavy burden to show that people who committed the same behavior face different legal consequences in court—some get prosecuted, and others go scot-free. A litigant asserting a selective prosecution claim must demonstrate nearly identical underlying criminal behavior of comparators, and he must show that discriminatory intent led to different

treatment.  *United States v. Armstrong*, 517 U.S. 456, 465, 458, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996).

Here, Moore contends something different: that the police selectively stop Black drivers. Although stops do not necessarily lead to prosecutions,² they are nevertheless extraordinarily intrusive actions that make “most everyone ... nervous.” See *United States v. Palmer*, 820 F.3d 640, 652 n.7 (4th Cir. 2016). Most people driving down the road see themselves in a private cocoon, alone with their thoughts, their plans, their music, their audio books. Whatever comfort a driver and her passenger may feel in their car vanishes when the police approach. A sense of discomfort of seeing blue lights behind one's car only begins the intrusion. The police approach the car and typically look through it to see what the driver has with him or her. They demand identification, and then check the person's record. They ask questions: “Where are you going? Where are you coming from? Do you have anything illegal in your car?” E.g.,  *Rodriguez v. United States*, 575 U.S. 348, 352, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015);  *United States v. Bowman*, 884 F.3d 200, 214 (4th Cir. 2018); *United States v. Ramirez-Solis*, 518 F. Supp. 3d 896, 902-03 (W.D. Va. 2021); *United States v. Williams*, 321 F. Supp. 3d 594, 604 (D.S.C. 2018).

The Fourth Circuit has cited  *Armstrong* in selective enforcement cases. But it has yet to squarely address whether a defendant asserting that a police officer stopped him due to his race must identify comparator drivers who were not stopped to successfully assert a selective enforcement claim. The Fourth Circuit has, however, suggested that requiring evidence of similarly situated individuals in this context would create an impossible standard: “[a]s for the statistics’ failure to identify individuals who were not stopped, such data is not recorded by the county—and, indeed, would likely be impossible to track. How could something that was not done possibly be tracked?” *Johnson v. Holmes*, 782 F. App'x 269, 270 (4th Cir. 2019). The Court doubts that the Fourth Circuit intends to require defendants, such as Moore, to put forth evidence that it has explicitly deemed impossible to collect: evidence of white individuals that RPD officers could have—but chose not to—stop. See *id.* Thus, the Court will not require Moore to provide evidence of similarly situated individuals to prove his selective enforcement claim. Rather, to establish selective enforcement, Moore must prove, by a preponderance of the evidence, that RPD's stopping process has a discriminatory effect and was motivated by a

discriminatory purpose. In doing so, Moore can use statistics to establish his claim. These issues define the evidentiary limits for determining the relevance of expert testimony.

2. *Reliability*

*3 To prove reliability, the proponent must show that the expert bases their testimony “on scientific, technical, or other specialized knowledge and not on belief or speculation,” and any of the expert’s “inferences must be derived using scientific or other valid methods.” *Belville v. Ford Motor Co.*, 919 F.3d 224, 232–33 (4th Cir. 2019) (quoting  *Oglesby v. Gen. Motors Corp.*, 190 F.3d 244, 250 (4th Cir. 1999)).

 *Daubert* provides four non-exhaustive guideposts for the Court to consider in its reliability analysis: (1) whether the theory or technique “can be (and has been) tested”; (2) “whether the theory or technique has been subjected to peer review and publication”; (3) whether the technique’s “known or potential rate of error” affects its usefulness; and (4) whether the community has widely accepted the theory or technique.  *Nease*, 848 F.3d at 229 (quoting  *Daubert*, 509 U.S. at 593-94, 113 S.Ct. 2786). “[A] trial court has ‘broad latitude’ to determine whether these factors are ‘reasonable measures of reliability in a particular case.’ ”  *Id.*

B. Dr. Eli Coston

Dr. Coston, an assistant professor at Virginia Commonwealth University, “ha[s] specialty research areas in statistics and methodology, race and gender, as well as the criminal legal system.” (Hr’g Tr. 18:9–11, July 18, 2022). Dr. Coston reviewed data that RPD provided to Moore. Coston assessed racial disparities in RPD’s traffic stops and concluded that “[t]hroughout almost every step of a traffic stop, from the likelihood that a driver is pulled over, to the actions taken during the stop, to the eventual outcome of that stop, Black drivers are at a significant disadvantage compared to White drivers.” (ECF No. 66-1, at 11.)

Coston testified that RPD data revealed that, in Richmond, Black drivers were “5.13 times more likely to be stopped” than white drivers. (Hr’g Tr. 56, July 18, 2022.) Of stopped drivers, 77 percent of the drivers were Black, and 14.6

percent were white. (Hr’g Tr. 57:11–12, July 18, 2022.) Dr. Coston conducted a chi-square analysis of the RPD data and determined that there was a “statistically significant relationship” between a stopped driver’s race and whether that driver was ultimately arrested. (Hr’g Tr. 58:4–5, July 18, 2022.) Then, Dr. Coston explained that “[w]hen we talk about statistical significance we are saying that the relationship that exists in our sample also exists in a larger population.” (Hr’g Tr. 67:2–4, July 18, 2022.) In other words, a statistically significant relationship is reliable to extrapolate from and make conclusions about the broader population.

After the Court asked whether “there was a strong substantive relationship between race and being stopped,” Dr. Coston explained that “there exists a large disparity here. With this particular type of data, though, just the frequency and percents we can’t determine statistical significance.” (Hr’g Tr. 62:2–5, July 18, 2022.) Dr. Coston clarified that, to determine the statistical significance of the relationship between a driver’s race and the rate at which they were stopped, “we would have to know also what the population of drivers who were not stopped was.” (Hr’g Tr. 62:11–13, July 18, 2022.)

The government moves to exclude Coston’s testimony because Coston relied on flawed data, committed statistical errors in their analysis, employed an unreliable benchmark, and used a statistical technique that cannot show causation. Having reviewed Coston’s report and the data on which Coston relies, the Court finds the expert testimony reliable and thus admissible.

1. *The Data*

*4 The government first argues that Dr. Coston relied on flawed data gathered under the Virginia Community Policing Act (“VCPA”). The VCPA—signed in April 2020—prohibits law enforcement officers from taking actions based solely on an individual’s “real or perceived race.” 2020 Va. Acts ch. 1165 (Apr. 11, 2020) (codified at [Va. Code § 52-30.1](#)).

During the relevant time period—July 1, 2020, through December 6, 2020—the VCPA required officers to collect the following information during traffic stops:

- (i) the race, ethnicity, age, and gender of the person stopped;
- (ii) the reason for the stop;

- (iii) the location of the stop;
- (iv) whether a warning, written citation, or summons was issued or whether any person was arrested;
- (v) if a warning, written citation, or summons was issued or an arrest was made, the warning provided, violation charged, or crime charged; and
- (vi) whether the vehicle or any person was searched.

Id. (codified at Va. Code § 52-30.2, -30.4).³ The VCPA also established a publicly available Community Policing Reporting Database to aggregate the collected data and required the Virginia Department of Criminal Justice Services (“DCJS”) to periodically review and report on the data to the Governor, General Assembly, and Attorney General.  Va. Code § 9.1-192(B) (then-codified at Va. Code § 9.1-191, also codified at *id.* §§ 15.2-1609.10, 15.2-1722.1, 52-30.3).

Some local agencies faced challenges implementing the VCPA's mandate to record data. (*See, e.g.*, Hr'g Tr. 263:4–266:6, July 19, 2022.) Many police departments' initial submissions contained technical errors, missing information, or duplicate⁴ entries. (*See id.* at 270:22–271:16.) RPD managed to avoid many of the data collection challenges smaller state agencies faced, thus mitigating the potential for error in the data set and making the data useful. For example, each RPD vehicle had a Computer Aided Dispatch System,⁵ and the Virginia State Police Data Analysis & Reporting Team (“DART”) manager had previously established direct contact with an RPD representative regarding data collection prior to the implementation of the VCPA. (*Id.* at 278:6–11, 13–18.) Further, when RPD submitted files that contained invalid records, RPD “quickly fixed” any quality control issues. (*Id.* at 270:5–7.)⁶

*5 Dr. Coston is an expert in the field of statistics.⁷ Coston is fully capable to use RPD's data to form a trustworthy and reliable opinion. Thus, despite the inherently imperfect nature of any data collection system that relies on individual input, the RPD data on which Coston relied passes muster under  *Daubert*.⁸ Clearly, this evidence helps “ ‘the trier of fact to understand the evidence or to determine [the] fact in issue’ ” in this case. *See*  *Nease*, 848 F.3d at 229 (quoting  *Daubert*, 509 U.S. at 591, 113 S.Ct. 2786).

2. *Statistical Errors*

The government also argues that Dr. Coston improperly relied on duplicate data and records that omitted certain data points. Specifically, of the 2,582 analyzed traffic stops, the government identifies “321 instances of exact duplicates in [Dr.] Coston's data set” and 346 stops that did not include at least one data point (for example, age, gender, or whether a search or arrest occurred). (ECF No. 70, at 12.) After receiving the government's analysis of the alleged duplicate entries, Coston removed the alleged duplicates and conducted the analysis again. Because Coston's conclusions remained the same after removing the duplications,⁹ the initial reliance on these duplicates did not render the analysis unreliable. The Court also finds immaterial the fact that some of the entries did not include one or more data point unrelated to race. Moore brings a selective enforcement claim based on *race*: it is that data point—not whether the driver was male, female, eighteen years old, or sixty years old—that affects the Court's analysis in this case. The Court, therefore, concludes that the alleged statistical issues did not undermine the reliability of Dr. Coston's conclusions.

3. *Benchmark*

Dr. Coston used census data, often referred to as “benchmark data,” in analyzing the facts in this case.¹⁰ Use of census information in racial profiling cases is widely accepted and often cited in published works and thus satisfies  *Daubert*'s requirements. Census data, the government contends, does not accurately represent the racial composition of drivers in each area: first, the data includes “many people ... who are not even licensed to drive”; second, the demographics of the individuals who drive in a particular region do not necessarily reflect the demographics of the individuals who live in that region. (ECF No. 70, at 2; *see also* ECF No. 70-1 (Dr. Michael Smith's rebuttal report).) Rather than relying on census data, the government argues that Dr. Coston should have used more reliable benchmarks such as direct observation, a “veil of darkness” analysis,¹¹ or data from traffic accidents.

*6 DCJS refers to this as the “benchmark problem,” (*see* ECF No. 72-1, at 68), but the government's suggestion does not solve it. “No one has yet found an accurate way to” determine “the number of drivers in each racial ... group who are actually driving on the road and subject

to being stopped.” (*Id.*) Few studies use the first method the government suggests—direct observation—because it requires significant investments of both time and money. (Hr’g Tr. 96:7–9, July 18, 2022; Hr’g Tr. 233:18–234:7, July 19, 2022.) And Dr. Coston could not use the second method—a “veil of darkness” analysis—because RPD failed to provide data that would have allowed Dr. Coston to do so. Finally, “there is no Richmond-specific traffic crash benchmark data available.” (ECF No. 72, at 12.)

Moreover, although census data does not provide a flawless comparison, Moore has demonstrated that researchers in the racial profiling field rely on census data as a benchmark.¹² (ECF No. 72, at 12 (citing the DCJS 2021 report (relying on age-adjusted census data); Dr. Smith’s 2001 report; a 2009 report on racial profiling in Houston, Texas; and a 2015 report on racial profiling in New York City).); see [Nease](#), 848 F.3d at 229 (quoting [Daubert](#), 509 U.S. at 593–94, 113 S.Ct. 2786) (explaining that one “guidepost[] in assessing expert testimony is whether “the community has widely accepted the theory or technique.”). In light of its use in this field (including by the government’s expert), the Court finds Dr. Coston’s use of this benchmark reliable.

4. *Statistical Methods*

Dr. Coston used a chi-square analysis¹³ to determine whether a relationship existed between a driver’s race and the primary result of the stop and then, after doing so, used Kendall’s Tau and Cramer’s V to determine the strength of that relationship.¹⁴ The government’s expert, Dr. Smith, critiques this analysis, arguing that it “can only tell ... that two variables are related to one another; it cannot be used to conclude that one variable has any causal effect on the other.” (ECF No. 70-1, at 5.)

But Dr. Coston uses these analyses for that exact permitted purpose: that is, to determine the relationship between two variables. Dr. Coston does not purport to determine whether race *caused* a particular stop (and, in fact, a regression analysis would not have reached causation either).¹⁵ (Hr’g Tr. 134:25–135:1, 12–19, July 18, 2022; Hr’g Tr. 65:23–66:3, July 19, 2022 (Dr. Smith’s conclusion that a researcher cannot “conclude that there is racial discrimination in an individual stop based on aggregate analysis”); ECF No. 70-1, at 7).¹⁶ Because Dr. Coston performed the chi-square test, Kendall’s

Tau, and Cramer’s V in accordance with generally accepted research standards, these methods are acceptable under [Daubert](#). See [Nease](#), 848 F.3d at 229 (holding a court has wide discretion in assessing whether certain guideposts—including whether the research community has accepted the technique—make an expert’s testimony reliable). Based on the foregoing, the Court finds Dr. Coston’s testimony reliable and will deny the government’s motion to exclude it.

C. Dr. Marvin Chiles

*7 Dr. Chiles, an assistant professor of history at Old Dominion University, offers testimony that no one can refute: he explains Richmond’s history of segregation and bigotry. Dr. Chiles specializes in “[r]ace [and] politics in the 20th century ... specifically in Richmond.” Hr’g Tr. 10:1–2, Oct. 28, 2022.) He said that “the tide of history” caused Black and white Richmonders to move to the neighborhoods in which they live: “[it] is not by happenstance that [B]lacks and whites live segregated in Richmond.” (Hr’g Tr. 56:11–57:11, Oct. 28, 2022.)

To show that community members presently feel the effects of “Richmond’s overtly racist past,” Dr. Chiles discussed the historical process of “forc[ing] or coaxi[ng]” Black and white individuals into the neighborhoods they reside in today. (ECF No. 107, at 8; Hr’g Tr. 57:8–11, Oct. 28, 2022.) Dr. Chiles explained that the city’s transit system in the early twentieth century “reinforce[d]” the idea that “although slavery is no longer [in Richmond], segregation will be here to replace it.” (Hr’g Tr. 19:1–3, Oct. 28, 2022.) He also discussed the ramifications of the 1911 law that “officially segregated residential areas in the City of Richmond,” explaining that although the *Buchanan v. Warley* Court explicitly outlawed racially based zoning laws in 1917, Richmond continued to encourage residential segregation throughout the twentieth century. (*Id.* at 20:9–24:19.) Chiles testified that Richmond’s City Council sought to “remove [B]lack people from the core of the City,” and Black families moved east, while white families moved to the west and suburbs. (*Id.* at 24:7–19, 25:15–21.) This movement occurred, in part, due to “block busting,” selective advertising, redlining, and development of Richmond’s downtown. (*Id.* at 25:19–33:7.)

Turning to police activity, in 1977, Richmond’s City Council and “a non-profit business coalition” sought to “attract industry back” to Richmond. (*Id.* at 46:21–47:16.) Members of this joint endeavor surveyed “various neighborhoods” in

Richmond to determine how to do so. (*Id.* at 47:18–48:6.) Because the surveys' responses indicated that “crime [was Richmond's] biggest issue,” Richmond “began creating task force[s] ... designed to target high crime areas, *or what they [thought] were high crime areas.*”¹⁷ (*Id.* at 48:1–10, 21–22 (emphasis added).) This program prompted RPD to “focus[] exclusively on [B]lack neighborhoods.” (*Id.* at 49:5–7.) Dr. Chiles clarified that, in the late twentieth century, Black neighborhoods experienced “more crime” because individuals in those neighborhoods “ha[d] been segregated, confined, [and] given ... an inferior education that doesn't allow them to compete in a traditional economy like everyone else [W]hen you have that happening for generations ... crime is going to be the natural result, especially disproportionate to the rest of the City.” (*Id.* at 53:6–14, 19–23.) He explained that, as a result, RPD began “sitting [at housing projects], waiting, watching” for crime.” (*Id.* at 66:17–20.)

1. Relevance of Dr. Chiles's Testimony

Essentially, the government says that all the bad things Richmond did are ancient history, and that they have nothing to do with traffic enforcement in 2020. Thus, it says that Dr. Chiles's testimony fails the relevance part of the  *Daubert* test.

*8 Moore counters that “the fact that the first, second, and fourth police precincts line up almost exactly with the [B]lack neighborhoods in Richmond, while the third police precinct lines up almost exactly with the white neighborhoods in Richmond is relevant to Mr. Moore's equal protection challenge.” (ECF No. 86, at 1.) After RPD told Moore that it had no records “that would assist the Court in more directly understanding the relationship between the racial segregation of Richmond's neighborhoods and the location of the police precincts,” Moore contacted Dr. Chiles. (*Id.* at 3–4.)

At the October 28, 2022, hearing, Dr. Chiles discussed Richmond's history of racial segregation in its residential neighborhoods before reviewing RPD's history of policing Black individuals. First, Dr. Chiles detailed Richmond's racial segregation in the nineteenth and twentieth centuries. He then detailed the history of RPD's “[m]ilitarization” in Black neighborhoods. (Hr'g Tr. 48:22–50:11, October 28, 2022.)

The Court agrees with Moore's contention that RPD's failure to keep records “makes Dr. Chiles's circumstantial evidence much more probative than it otherwise might be.” (See ECF No. 107, at 5 n.1.) Dr. Chiles's testimony regarding the history of racialized policing in Richmond is important to Moore's defense because RPD did not maintain the documents that would have “present[ed] direct evidence” of racial discrimination in establishing Richmond's police precincts.

(See ECF No. 86, at 4–5); see also  *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). In  *Arlington*, the Court said that “[t]he historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes.”  429 U.S. at 267, 97 S.Ct. 555. Accordingly, Dr. Chiles's testimony is relevant and necessary to assess Moore's selective enforcement claim.

2. Supportability of Dr. Chiles's Testimony

The government also asserts that [Rule 702](#) restricts Dr. Chiles's testimony “because his sources do not match his rhetoric.” (ECF No. 103, at 4.) In this respect, the government says that one of Dr. Chiles's findings cites an irrelevant source that does not support this assertion. (*Id.* at 6.) Dr. Chiles, however, explained his citation error. (Hr'g Tr. 98:23–100:5, 103:20–104:18, October 28, 2022.) Moreover, when the government confronted Dr. Chiles with this error, he provided additional source material to support his claim. The government provides no reason to disbelieve or reject Dr. Chiles's citation error in light of this explanation. Accordingly, the irrelevant source does not call into doubt Dr. Chiles's conclusions.

In addition, the government argues that Dr. Chiles “wrongly ascribes all police enforcement to racism,” and he fails to consider “another far more plausible explanation ... that criminal activity is unfortunately disproportionately concentrated in Richmond's minority neighborhoods.” (ECF No. 103, at 4, 6.) To support its contention, the government provides a map showing “the locations of Richmond city murders,” noting that “89% of the murders in Richmond since January 1, 2018[,] occurred in precincts 1, 2, and 4.” (*Id.* at 7–8.) Interestingly, however, the government did not call a witness from RPD to explain that the department has a legitimate strategy of stopping Black drivers. Nor does the government produce evidence that stopping Black drivers cuts into the murder rate, or the rate of any other felony. And

nothing explains the fact that even in predominantly white neighborhoods, RPD stops Black drivers at roughly the same disproportionate rate.

*9 Chiles detailed the overtly racist past of Richmond that prompted RPD's enhanced focus on certain minority neighborhoods in Richmond. RPD's focus on Black neighborhoods occurred shortly after it purportedly "decentralized all of its patrol functions and instituted a Neighborhood Precinct Plan" in which three of four RPD precincts "correspond to the nearly entirely [B]lack neighborhoods in Richmond." (*Compare id.* at 47:21–49:19, with ECF No. 66, at 6.) Accordingly, the Court finds that Dr. Chiles's testimony corroborates Moore's contention that "[RPD] is pulling over [B]lack drivers five times more often than white drivers because those drivers are [B]lack." (ECF No. 107, at 10.)¹⁸

Dr. Chiles's testimony forms part of the mosaic of a background leading to disproportionate traffic stops of Black drivers. The Court, therefore, admits his testimony.

II. MOTION TO DISMISS THE INDICTMENT

The Court will next turn to Moore's motion to dismiss the indictment against him under the Fourteenth Amendment. Moore asks the Court to dismiss the indictment because RPD selectively enforces traffic laws against Black people, and the practice of selective stops led to his charges.

The Equal Protection Clause of the Fourteenth Amendment "prohibits selective enforcement of the law based on considerations such as race."  *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). To establish an Equal Protection violation, a claimant must show that the action he challenges (1) had a discriminatory effect and (2) was motivated by discriminatory intent.  *Vill. of Arlington Heights*, 429 U.S. at 264-66, 97 S.Ct. 555.

As discussed above, to put the Court's analysis in the proper context, it must first return to the critical distinction between selective prosecution claims and the selective enforcement claim that Moore alleges here: in a claim of selective stops, a defendant need not name similarly situated drivers who committed traffic violations but were not stopped. In contrast, to successfully assert a selective prosecution claim, a defendant must provide "clear evidence" of the "different

treatment of similarly situated persons."  *Armstrong*, 517 U.S. at 465, 470, 116 S.Ct. 1480.

Moore argues that the Fourth Circuit has yet to "h[o]ld after pointed consideration that a challenger must prove selective *enforcement* by 'clear evidence.' " (ECF No. 73, at 2 (citing  *United States v. Mason*, 774 F.3d 824 (4th Cir. 2014)) (emphasis added).) The Fourth Circuit has discussed  *Armstrong's* requirement that defendants point to similarly situated individuals who were not prosecuted when reviewing a selective enforcement claim. See *United States v. Suarez*, 321 F. App'x 302 (4th Cir. 2009). But Moore asserts that the Fourth Circuit's "passing reference" to  *Armstrong* in that case does not bind this Court in its analysis of his selective enforcement claim. (ECF No. 66, at 5 n.3.)

The Court agrees with Moore. As noted above, the Fourth Circuit has discussed  *Armstrong* in selective enforcement cases, but it has not squarely held that a Black driver pulled over due to his race must specifically identify similarly situated white drivers who were not stopped to prevail on his selective enforcement claim. In fact, the Fourth Circuit has suggested that to adopt the government's position would create an impossible standard: no one could show drivers who committed traffic violations but were *not* stopped. See *Johnson*, 782 F. App'x at 270.

*10 Shortly after the Supreme Court decided  *Armstrong*, the Fourth Circuit reviewed a selective enforcement case. See *United States v. Bullock*, 94 F.3d 896 (4th Cir. 1996). In *Bullock*, the Fourth Circuit cited the  *Armstrong* standard for selective prosecution claims, but it did not discuss the differences between selective prosecution and selective enforcement claims, nor did it explicitly adopt  *Armstrong* for selective enforcement cases. See *id.* at 899. And in subsequent selective enforcement cases, the Fourth Circuit cited *Bullock* and discussed the  *Armstrong* standard without articulating the steps district courts in this circuit should take in analyzing selective enforcement claims. *E.g.*,  *Mason*, 774 F.3d at 829 (4th Cir. 2014) (citing *Bullock*, 94 F.3d at 899);  *United States v. Hare*, 820 F.3d 93, 99 (4th Cir. 2016) (citing *Bullock*, 94 F.3d at 900)).

But in *Johnson v. Holmes*, the Fourth Circuit did address the evidentiary burden in a selective enforcement case. In

Johnson, plaintiffs brought a § 1983 Equal Protection action, asserting that a police officer had selectively enforced traffic laws against them. 782 F. App'x at 270–71. Like Moore, the plaintiffs supplied statistical evidence to support their contention that the police unlawfully considered their race in choosing to stop them. The *Johnson* court explained that “[t]he ultimate question presented in this case is exactly what ... statistics must show in order to meet the similarly situated requirement,” and it opined that the county had not recorded data of drivers “who were not stopped” because this data “would likely be impossible to track.” *Id.* at 279. The Fourth Circuit reversed the district court's decision to exclude the statistical evidence because it could not “conclude on the current record that no legitimate enforcement factors [were] identifiable on the face of the statistics.” *Id.* at 282. Thus, though Fourth Circuit precedent remains unclear about the precise standard that Moore must satisfy when asserting his selective enforcement claim, it has not foreclosed the possibility of using statistical evidence to satisfy Moore's burden.

Like the plaintiff in *Johnson*, Moore has no way of showing that RPD officers observed white drivers who committed similar offenses and then chose not to stop them. *See id.*

Thus, although  *Armstrong* concluded that “[t]he similarly situated requirement does not make selective-prosecution claims impossible to prove,” *see*  517 U.S. at 464, 116 S.Ct. 1480, imposing that requirement *does* create an insurmountable burden for Moore and other Black drivers who assert selective enforcement claims. *See*   *Chavez v. Ill. State Police*, 251 F.3d 612, 638–39 (7th Cir. 2001) (“In a civil racial profiling case ... the similarly situated requirement might be impossible to prove. In a meritorious selective prosecution claim, a criminal defendant would be able to name others arrested for the same offense who were not prosecuted by the arresting law enforcement agency; conversely, plaintiffs who allege that they were stopped due to racial profiling would not, barring some type of test operation, be able to provide the names of other similarly situated motorists who were not stopped.”).

The Court also looks to other courts' decisions dealing with selective enforcement claims. For example, the U.S. Court of Appeals for the Seventh Circuit explicitly grappled with the impossibility of rigidly applying  *Armstrong* to selective enforcement claims. The Seventh Circuit held that claimants asserting selective enforcement must prove (1) discriminatory intent and (2) discriminatory effect only by a preponderance

of the evidence. *Conley v. United States*, 5 F.4th 781, 791–92 (7th Cir. 2021). To prove discriminatory effect, claimants need not identify similarly situated individuals of a different race who were not targeted or “satisfy  *Armstrong's* burden to identify comparators to prove discriminatory effect on the merits.” *Id.* at 792. Instead, the Seventh Circuit concluded that “statistics can be a ‘useful tool’ that can establish discriminatory effect and provide powerful evidence of discriminatory intent if race can be isolated from other confounding variables.” *Id.* at 796–97.

*11 The Court finds *Conley* persuasive. Thus, to show that RPD selectively enforced traffic laws against him due to his race, Moore must prove, by a preponderance of the evidence, that RPD's “enforcement process ‘had a discriminatory effect and that it was motivated by a discriminatory purpose.’” *See Cent. Radio Co. v. City of Norfolk*, 811 F.3d 625, 634–635 (4th Cir. 2016) (quoting  *Wayte v. United States*, 470 U.S. 598, 608, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985)). And in light of the Fourth Circuit's decision in *Johnson*, the Court considers the testimony of both Dr. Coston and Dr. Chiles together as evidence of the discriminatory effect and discriminatory intent of RPD's stops to analyze Moore's challenge.

A. Discriminatory Effect

Statistical evidence can show discriminatory effect. *See, e.g.,*  *Yick Wo v. Hopkins*, 118 U.S. 356, 374, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). The statistics provided in this case make abundantly clear the disparate impact of traffic stops on Black drivers in Richmond. From July 2020 through December 2020, “Black drivers were 5.13 times more likely to be stopped” than white drivers. (ECF No. 66-1, at 5.) Once RPD officers stopped those Black drivers, they were far more likely to search Black drivers and their cars than they were to search white drivers. And, once stopped, “Black drivers were 12.67 times more likely than White drivers to be arrested as a result of the stop.” (*Id.* at 6.) Black drivers felt the discriminatory effect of RPD's traffic enforcement throughout Richmond: regardless of whether Black drivers moved through a predominantly Black or a predominantly white neighborhood, they were more likely to be pulled over than a white driver. Dr. Coston determined that these relationships exist after analyzing six months of data beginning in July 2020. (*See* ECF No. 72, at 7 (citing ECF No. 66-6, at 11) (explaining that police officers arrested a disproportionate percentage of Black drivers).) Moreover,

Dr. Chiles's testimony regarding Richmond's history of racialized policing informs the Court's understanding of why three of Richmond's four police precincts overlay the City's predominately Black communities.

Dr. Coston's analysis and Dr. Chiles's supplemental testimony clearly evince disparities in the effects of RPD's policing practices; the experts' testimony establishes that RPD's actions cause a discriminatory effect. Moore thus succeeds in satisfying this element of his selective enforcement claim.

B. Discriminatory Purpose

Moore must also prove that such effect was, “at least in part,” motivated by a discriminatory purpose. *Cent. Radio Co.*, 811 F.3d at 635. Here, Moore has presented no evidence of the four officers' invidious or bad faith.¹⁹ But “inferences ... drawn from valid relevant statistical evidence of disparate impact or other circumstantial evidence” may help show discriminatory purpose. *United States v. Avery*, 137 F.3d 343, 355 (6th Cir. 1997); see also *Vill. of Arlington Heights*, 429 U.S. at 266, 97 S.Ct. 555 (examining discriminatory purpose “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available”). The Fourth Circuit has “recognized several factors as probative in determining discriminatory intent.” *Cent. Radio Co.*, 811 F.3d at 635. These include:

- (1) evidence of a “consistent pattern” of actions by the decisionmaking body disparately impacting members of a particular class of persons;
- (2) historical background of the decision, which may take into account any history of discrimination by the decisionmaking body or the jurisdiction it represents;
- (3) the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures;
- and (4) contemporary statements by decisionmakers on the record or in minutes of their meetings.

*12 *Id.* (quoting *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 819 (4th Cir. 1995)). The Court finds that, through Dr. Coston's and Dr. Chiles's testimony, Moore successfully presents evidence of the first two factors: (1) “evidence of a ‘consistent pattern’ of actions” by RPD that “disparately impact[s]” Black drivers in Richmond; and (2) the “history of discrimination” by RPD and in Richmond itself. *See id.*

Moore's statistics evince that RPD police officers stop Black drivers at a rate that far exceeds the rate at which they stop white drivers.²⁰ This correlation, on its own, does not prove causation.²¹ “But that does not mean evidence of a correlation is *per se* irrelevant.” *Johnson v. Holmes*, No. 3:16cv16, 2022 WL 3599850, at *4 (W.D. Va. Aug. 23, 2022) (citing *Etherton v. Owners Ins. Co.*, 829 F.3d 1209, 1220 (10th Cir. 2016)).

In analyzing the statistics in this case, Dr. Coston never asserted that race caused a particular stop. Instead, Dr. Coston determined the relationship between a driver's race and the primary result of a traffic stop. As discussed, the government “highlight[ed] any inconsistencies on cross-examination,” but the Court nonetheless finds Dr. Coston's testimony reliable. *See supra* Part III.B; *Johnson*, 2022 WL 3599850, at *4 (“In [*Valencia*], the Fifth Circuit held that the district court did not abuse its discretion in admitting expert testimony about correlations ‘Whether a particular opinion is relevant and reliable thus does not simply turn on whether the expert asserts a casual or correlative relationship, but is closely tied to the law and facts at issue in a given case.’ ” (quoting *United States v. Valencia*, 600 F.3d 389, 425 (5th Cir. 2010))).

To further support his claim, Moore cites to Richmond's racially segregated and discriminatory history. He reviews the Confederate foundations of RPD before discussing Richmond's racialized zoning, redlining. And he discusses the establishment of three RPD precincts that overlap Black neighborhoods in Richmond and a fourth RPD “precinct [that] aligns exactly with the boundaries of the white section of Richmond.” (ECF No. 66, at 6, 12.) He also asserts that studies have shown that RPD officers have “stop[ped] far more [B]lack drivers than white drivers for traffic offenses” “[f]or at least twenty years.” (*Id.*) Moore also argues that “Virginia would not have enacted the Community Policing Act but for a valid concern regarding racial profiling in

Virginia.” (ECF No. 72, at 7.) And, at the October 28, 2022, hearing, Dr. Chiles testified that the historical segregation of the City of Richmond is the product of “the tide of history.” (Hr’g Tr. 56:11–57:11, Oct. 28, 2022.)

*13 The absence of certain evidence is telling. The government did produce evidence that serious crimes occur in predominantly Black neighborhoods. But no one from RPD testified that it had a strategy to quell major crime by stopping Black motorists. No one testified that modern criminology demonstrates that picking on motorists somehow makes cities safer. And, most significantly, no one explained why Black motorists are disproportionately stopped in white areas of Richmond, where the crime rate is lower.

The data showing that RPD stops Black drivers five times as often as it stops white drivers, coupled with the evidence of Richmond’s history of discrimination, reveals that RPD’s discriminatory purpose contributed to its officers’ decision to stop Moore. Moore therefore succeeds in meeting his burden of showing discriminatory purpose.

* * *

As noted above, in 2020, the Commonwealth of Virginia began to require police to keep track of the race of people stopped. This data was essential to this case. It shows a

disgraceful disparity in enforcement of traffic laws, with Black drivers getting the short end of the stick. Richmond is not the only locality with this problem; the state wide statistics show a remarkable record of picking on Black drivers. And subsequent reports by the Commonwealth show that the trend continues. One would think that Virginia’s citizens would cry out in protest over this situation, but they don’t.

Moore, however, did raise this issue. He has successfully shown both the discriminatory effect and discriminatory purpose elements required for his selective enforcement claim. The Court will therefore grant his motion to dismiss the indictment.

III. CONCLUSION

For the foregoing reasons, the Court will deny the government’s motions to exclude Dr. Eli Coston and Dr. Marvin Chiles, (ECF Nos. 70, 82), and grant Moore’s motion to dismiss the indictment, (ECF Nos. 32, 66).

The Court will issue an appropriate Order.

All Citations

--- F.Supp.3d ----, 2024 WL 552794

Footnotes

- 1 “Rule 702 applies whether the trier of fact is a judge or a jury.” *UGI Sunbury LLC v. A Permanent Easement for 1.7575 Acres*, 949 F.3d 825, 833 (3d Cir. 2020). But the standards relax when the judge sits as the trier of fact: “where the factfinder and the gatekeeper are the same, the court does not err in admitting evidence subject to the ability later to exclude it or disregard it if it turns out not to meet the standard of reliability established by Rule 702.” *Larosa v. Pecora*, No. 1:07cv78, 2009 WL 3460101, at *3 (N.D.W. Va. Mar. 2, 2009) (quoting  *In re Salem*, 465 F.3d 767, 777 (7th Cir. 2006)). The Court also has “wide discretion” to determine “[w]hether an expert will assist the factfinder ... ‘particularly when the court sits as the trier of fact, for [it] is then in the best position to know whether expert testimony would help [it] understand the case.’” *Sun Yung Lee v. Clarendon*, 453 F. App’x 270, 278 (4th Cir. 2011) (quoting *Mercado v. Austin Police Dep’t*, 754 F.2d 1266, 1269 (5th Cir. 1985)) (second and third alterations in original).
- 2 Indeed, the evidence in this case shows that most traffic stops do not result in charges that go to traffic court.
- 3 Amendments to the law, effective July 1, 2021, expanded both the scope of the activities to which this data collection applies and the type of information officers must collect. 2020 Va. Acts, Spec. Sess. I, ch. 37 (Oct.

8, 2020). The 2021 amendments also require officers to submit the data they collect to “the Department of State Police for inclusion in the Community Policing Reporting Database.” *Id.*

4 The Virginia State Police Data Analysis & Reporting Team (“DART”) asked officers to record only the most egregious offense with which they charged an individual and to submit the entire traffic stop record as one entry. But in some cases, officers who cited one individual for multiple offenses would nevertheless submit an entry for each cited offense. This resulted in multiple entries for the same traffic stop. (Hr’g Tr. 271:11–16, July 19, 2022.)

5 This system allows officers to electronically input data during a traffic stop. (*Id.* at 278:1–5.)

6 RPD’s delay in submitting some of the VCPA data does not affect the Court’s analysis of whether the final, corrected data proves sufficient under  *Daubert*.

7 The government does not challenge Dr. Coston’s expertise in the field of statistics.

8 The government raises—and the Court firmly rejects—two other arguments regarding the data quality in this case. The government first argues that the collected race data is unreliable because the officers had to either ask the individual for their race or “guess” it without any guidance or training on racial identification. (ECF No. 70, at 6.) But the government presents no evidence that law enforcement officers cannot distinguish between Black and white individuals, and, regardless of their ability to do so, RPD police officers’ *perception* of an individual’s race remains markedly relevant to a selective enforcement analysis. The Court has practiced law for many years, both as a judge and as a trial attorney; police officers simply do not have a problem identifying the race of people they meet.

Second, the government asserts that during the initial data collection under the VCPA, RPD expended many of its resources responding to the pandemic and to racial justice protests. (ECF No. 70, at 7.) Though the Court does not doubt that RPD did so, the government has not shown how these challenges affected the quality of the data RPD ultimately submitted.

9 This finding does not surprise the Court, given that 76.8% of the alleged duplicate entries identified the driver as Black and 14.5% of the entries identified the driver as white. These statistics mirror Dr. Coston’s finding that 77% of traffic stops in Richmond from July through December 2020 involved Black drivers and 14% of traffic stops in Richmond from the same time period involved white drivers.

10 Dr. Coston used this benchmark only for certain aspects of the analysis. (*Cf.* ECF No. 66-1, at 5, 10; Hr’g Tr. 126:20–23, July 18, 2022 (Dr. Coston “did [not] use the benchmarking for the statistical analyses”).)

11 The “veil of darkness” analysis compares the number of minority drivers stopped during daylight hours to those stopped during nighttime hours. “Theoretically, if more minority drivers are stopped during daylight hours when police can more easily ascertain their race, then this provides evidence of possible racial bias, particularly if there are no differences in the rates at which white drivers are stopped during the day compared to at night.” (ECF No. 70-1 (Dr. Smith’s rebuttal report), at 2.)

12 The DCJS 2021 report, which also relied on census data (in that case, adjusted for age), “yielded the same results as Dr. Coston’s analysis.” (*Id.* at 13; see also ECF No. 66-1, at 11; ECF No. 72-1, at 8 (“[S]tatewide, Black and Hispanic drivers in Virginia were disproportionately stopped by law enforcement when compared to other drivers between July 1, 2020, and March 31, 2021.”).)

- 13 The chi-square analysis indicates whether “there is a significant relationship between the variables.” (ECF No. 66-1, at 5.) A chi-square analysis is appropriate where, as here, “the data contain[] high levels of multicollinearity (indicating interrelationships among the independent variables).” (*Id.* at 4.)
- 14 “[T]he Cramer's V or Kendall's Tau indicates how strong [an] association is (with larger numbers in terms of absolute value indicating a stronger association).” (ECF No. 66-1, at 5.)
- 15 In its statutorily mandated 2021 report, DCJS noted that data limitations hindered “the ability of DCJS staff to conduct any complex statistical analysis of the data, or to draw any firm conclusions about the existence and prevalence of the practice of bias-based profiling in a given agency or jurisdiction.” (ECF No. 72-1, at 4–5.) In relying on the RPD data from July through December 2020, Dr. Coston similarly concludes that they “cannot say whether a specific traffic stop was the result of racial bias or racial profiling.” (ECF No. 66-1, at 12.)
- 16 Coston also explains that one could not use the data RPD provided to perform a regression analysis because, based on that data, that analysis would have failed to comply with the rules and assumptions underlying that test. In other words, inappropriately using the RPD data in a regression analysis would yield unreliable results. (Hr'g Tr. 44:17–45:17, 46:16–47:1, July 18, 2022.)
- 17 At the hearing, the Court asked Chiles “how [the City] identified African-American areas as high crime areas.” (*Id.* at 50:19–20.) Chiles responded that he could not confirm that the City had data—outside of the survey responses that detailed public opinion—that helped it determine which neighborhoods were high-crime neighborhoods. (*Id.* at 50:19–52:21.)
- 18 The government asserts that Moore “ignores Dr. Coston's admission ... that adjusting the date range for traffic stops to include more than just the first five months of flawed data collection significantly reduces the raw statistical disparity.” (ECF No. 108, at 4 n.2.) At the October 28, 2022, hearing, the Court rejected the government's assertion, explaining that the data from the “first full year” reveals a significant disparity between the percentage of Black and white individuals that the police pulled over. (Hr'g Tr. 120:19–121:10, Oct. 28, 2022.)
- 19 RPD officers pulled Moore over for having suspicious temporary tags after stopping two other individuals the same night whose cars had the same exact temporary tag number.
- 20 (ECF No. 72-1, at 8) (“Black and Hispanic drivers in Virginia were disproportionately stopped by law enforcement when compared to other drivers between July 1, 2020, and March 31, 2021”).)
- 21 “Correlation is not causation.”  *Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 173, 123 S.Ct. 1210, 155 L.Ed.2d 261 (2003) (Kennedy, J., concurring);  *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Pracs. & Prod. Liab. Litig.*, 174 F. Supp. 3d 911, 934 (D.S.C. 2016) (collecting cases explaining “that an association is insufficient to prove causation”).

United States v. Moore – the Richmond Police Department, Traffic Stops, and Selective Enforcement

Laura Koenig, *Assistant Federal Public Defender in Richmond, Virginia*

DISCUSSION OVERVIEW

I. How investigating a case for a Fourth Amendment suppression motion led to evidence of an Equal Protection Violation

- a. Traffic stop intertwined with two other stops that evening by same police task force
- b. Discovery request for videos of other traffic stops
- c. Subpoena to police department for all other tickets, reports, and communication logs from that police task force night of the stop

II. Making the best use of publicly available information and community resources

- a. Virginia Community Policing Act
- b. UVA Racial Dot Map (now use arcgis.com)
- c. Supplemental suppression motion based on Equal Protection Claim
 - i. **USE** materials on fd.org! for the law
 - ii. *Conley v. United States*, 5 F.4th 781, 789 (7th Cir. 2021)

III. Getting connected with statistician

- a. Larger defense community brainstorming session

- b. Gathering transcripts, articles, reports
- IV. Dr. Coston's work with Richmond Transparency and Accountability Project ("RTAP")**
 - a. Lengthy FOIA request battles
 - b. Knowing what data you need to ask for
 - c. Getting the data (information we got from subpoena vs. what was available through Virginia Community Policing Act)
- V. Dr. Coston's statistical work in this case**
 - a. Statistical methods
 - b. Effective use of maps in report
 - c. Findings
- VI. Finding best expert for historical evidence**
 - a. Talked to **A LOT** of people
 - b. Dr. Chiles' published articles
 - c. Dr. Chiles' report
- VII. Trial court litigation and decision**
 - a. ATTACHMENTS!
 - b. Lots and lots of briefing and a client willing to hang in there
 - c. Three days of evidentiary hearings

- d. Government expert who conceded he would **NEVER** find race played role in policing no matter the statistics

VIII. The appellate court decision: when life gives us lemons, we make lemonade

- a. Key parts of Fourth Circuit opinion
- b. Road map for future challenges

IX. How YOU can use this!

145 F.4th 572

United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellant,

v.

Keith Rodney MOORE, Defendant - Appellee.

[National Police Accountability Project](#); [Julian](#);

[American Civil Liberties Union Foundation](#);

[American Civil Liberties Union Foundation](#)

[of Virginia](#); Richmond Transparency and

Accountability Project, Amici Supporting Appellee.

No. 24-4201

|

Argued: March 14, 2025

|

Decided: August 1, 2025

Synopsis

Background: In prosecution for being felon in possession of firearm, the United States District Court for the Eastern District of Virginia, [John A. Gibney, Jr., J.](#), [716 F.Supp.3d 415](#), dismissed indictment, and government appealed.

Holdings: The Court of Appeals, [Niemeyer](#), Circuit Judge, held that:

officers' decision to arrest defendant for knowingly displaying fake license tag was not based on race, and

statistical evidence was insufficient to establish racially discriminatory purpose.

Reversed and remanded.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. [John A. Gibney, Jr.](#), Senior District Judge. (3:21-cr-00042-JAG-1)

Attorneys and Law Firms

ARGUED: [Jacqueline Romy Bechara](#), OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellant. Rohiniyurie Tashima, GOODWIN PROCTER,

LLP, Washington, D.C., for Appellee. ON BRIEF: Jessica D. Aber, United States Attorney, [Shea M. Gibbons](#), Assistant United States Attorney, Erik S. Siebert, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellant. Patrick L. Bryant, Alexandria, Virginia, Laura J. Koenig, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Richmond, Virginia; [Brian T. Burgess](#), Kaley Preciado, GOODWIN PROCTER LLP, Washington, D.C., for Appellee. [Lauren Bonds](#), Keisha James Eliana Machefsky, Devontae W. Torriente, NATIONAL POLICE ACCOUNTABILITY PROJECT, Kansas City, Kansas; Jill Collen Jefferson, JULIAN, Hattiesburg, Mississippi, for Amici National Police Accountability Project and JULIAN. [Geri Greenspan](#), [Eden B. Heilman](#), AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA, Richmond, Virginia; [Jenn Rolnick Borchetta](#), [Brandon Buskey](#), AMERICAN CIVIL LIBERTIES UNION FOUNDATION, New York, New York, for Amici American Civil Liberties Union Foundation and American Civil Liberties Union Foundation of Virginia. Maisie Osteen, LEGAL AID JUSTICE CENTER, Richmond, Virginia, for Amicus Richmond Transparency and Accountability Project.

Before [NIEMEYER](#), [HARRIS](#), and [BERNER](#), Circuit Judges.

Opinion

Reversed and remanded by published opinion. Judge [Niemeyer](#) wrote the opinion, in which Judge [Harris](#) and Judge [Berner](#) joined.

[NIEMEYER](#), Circuit Judge:

***574** The district court dismissed Keith Moore's indictment for the illegal possession of a firearm because, as it found, the traffic stop leading to Moore's arrest was made because Moore was Black. The government appeals.

When Richmond, Virginia, police officers observed a vehicle with the temporary license tag number 11134Y, they concluded that it was a fake tag because, within the preceding hours, they had stopped two other vehicles with the identical temporary tag number. The officers activated the lights on their patrol car to institute a stop, but the driver, Keith Moore, failed to stop and instead fled, running several stop signs before crashing into a curb. Moore then exited the vehicle, leaving the engine running and the door open, and ran on foot. After the officers caught and detained him, they observed a

gun on the floorboard of Moore's vehicle. Following a records check that revealed that Moore had previously been convicted of a felony, they arrested him for the illegal possession of a firearm. A federal grand jury subsequently indicted Moore for violation of 18 U.S.C. § 922(g)(1).

Moore filed a motion to suppress, contending that the traffic stop had violated his Fourth Amendment rights and that the officers interrogated him in violation of his *Miranda* rights. During a hearing on the motion, Moore presented evidence that all traffic stops made that day by the officers who arrested him were made in predominantly Black neighborhoods, suggesting that the police had targeted him because he was Black, in violation of the Equal Protection Clause of the Fourteenth Amendment.

The court authorized further investigation and briefing, and after conducting several *575 hearings and receiving testimony from both parties, including expert testimony, it dismissed Moore's indictment on the ground that it was the product of selective law enforcement against Black drivers. While the court found that the police officers had probable cause to stop Moore and that there was no evidence of their "invidious or bad faith," it nonetheless relied on statistical evidence that Black drivers were 5.13 times more likely to be stopped in Richmond than White drivers, viewed in the context of Richmond's history of racial discrimination, to conclude that Moore had "successfully shown both the discriminatory effect and discriminatory purpose elements required for [a] selective enforcement claim."

After a thorough examination of the record, we conclude that the evidence was insufficient to show that Moore's stop and arrest were the product of racially discriminatory purpose, in violation of the Equal Protection Clause. Accordingly, we reverse and remand with instructions to reinstate the indictment.

I

A

While on patrol on December 5, 2020, in the Fourth Precinct of Richmond, Virginia, four officers with the Richmond Police Department encountered three different cars displaying the same temporary tag number, 11134Y. The officers were members of the Fourth Precinct's Focus Mission Team, a unit

whose primary goal was getting guns and drugs off the streets of Richmond.

First, at approximately 5:45 p.m., the officers stopped a white Cadillac sedan because its headlights were off. During the stop, the officers asked the driver whether he had any weapons or drugs in the car, shined flashlights throughout the car, and patted down the front-seat passenger after he had exited the car. When the officers entered the vehicle's temporary tag number, 11134Y, into a database, the database failed to return a result, indicating that the tag was fake. The driver then volunteered to park the car rather than continuing to drive it, but the officers let him go on his way with a warning.

About an hour later, the same officers stopped a second car displaying a temporary tag with the same number, 11134Y. One of the officers asked the driver about her tag and informed her that another car had been displaying a license tag with the same number. The officers nonetheless believed her explanation and also let her go on her way.

Yet a few hours later, at around 9:45 p.m., the officers observed a white Chrysler 300 pull out from a gas station and abruptly stop when the driver saw the officers' vehicle. One of the officers observed that the car had a temporary license tag, again with the same number, 11134Y, that they had now seen twice before on other vehicles. The officers activated the lights on the patrol car to initiate a stop, but this driver failed to stop. Instead, he fled, running several stop signs before crashing into a curb. The driver then exited his car, leaving it running and the door open, and ran on foot. The officers chased him down and detained him. When they observed a gun on the floorboard of the car and determined that the driver, Keith Moore, had previously been convicted of a felony, they arrested him.

A federal grand jury returned an indictment charging Moore in one count with possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1).

B

Moore filed a motion to suppress, arguing that the traffic stop violated his Fourth *576 Amendment rights and that the officers impermissibly interrogated him before and after providing him with *Miranda* warnings. The suppression motion also noted that the neighborhood where Moore was arrested had "almost exclusively black residents" and claimed

that the officers with the Fourth Precinct's Focus Mission Team had been "looking for traffic infractions that night in hopes that the traffic stops" would reveal evidence of more serious crimes.

The district court held an evidentiary hearing on Moore's motion in July 2021, and the government presented testimony from the four officers involved in the stop, as well as two others who had assisted their pursuit of Moore. Moore also presented evidence that the Focus Mission Team had conducted traffic stops on the day of his arrest exclusively in a predominantly Black neighborhood and that Black drivers were, on average, pulled over more frequently than White drivers. At the conclusion of the hearing, Moore requested an opportunity to submit supplemental briefing, and the district court granted the request.

In his supplemental brief, Moore argued for the first time that the indictment should be dismissed because the police officers had violated his Fourteenth Amendment right to equal protection by targeting him and other Black residents of the Fourth Precinct, using pretextual traffic stops to search their cars. While Moore acknowledged that he had to show, in order to state a selective-enforcement claim under the Equal Protection Clause, that the officers' action had a discriminatory *effect* and was motivated by a discriminatory *purpose* (quoting *United States v. Mason*, 774 F.3d 824, 829 (4th Cir. 2014)), he contended that he had satisfied both prongs. He argued first that the vast disparity in the rates at which the Richmond Police Department stopped Black drivers as opposed to White drivers constituted evidence of a "discriminatory effect on black drivers in Richmond," and second, that "[t]he stark numbers and heavy-handed policing ... of minority neighborhoods in Richmond" justified "an inference of discriminatory intent." The government responded to the supplemental brief, arguing that Moore's selective-enforcement claim was untimely and that, in any event, his evidence fell "far short of [the] high standard for proving racially animated selective law enforcement."

At a hearing following this briefing, the court suggested that Moore's motion should be expanded and that "a more fulsome examination of the statistical data" would be helpful. It directed Moore to consult with an expert.

Moore thereafter retained Dr. Eli Coston, an assistant professor in the Department of Gender, Sexuality, and Women's Studies at Virginia Commonwealth University. Dr. Coston prepared a report analyzing traffic stops that the

Richmond Police Department conducted from July 1, 2020, through December 6, 2020. Those data, which had been collected pursuant to the Virginia Community Policing Act, indicated that of the 2,500 relevant traffic stops conducted in Richmond, 77% involved Black drivers, while 14.16% involved White drivers. Based on those numbers, Dr. Coston concluded that "Black drivers were 5.13 times more likely to be stopped" than White drivers. The data, according to Dr. Coston, also revealed a "somewhat weak" but still "important" relationship between race and the likelihood of being pulled over, as well as the eventual outcome of a given stop. Dr. Coston noted, however, that the report could not determine whether any "specific traffic stop was the result of racial bias or racial profiling."

***577** Dr. Coston also prepared a set of maps that examined the racial demographics of the areas of Richmond where traffic stops were most frequently conducted. Based on the maps, Dr. Coston stated that the stops of Black drivers were more likely to be clustered near one another, while the stops of White drivers were "distributed throughout the city and less likely to show as clusters." In addition, the few clusters of White-driver stops that existed occurred in predominantly White neighborhoods, whereas the clusters of Black-driver stops were "distributed throughout the city" and not limited to majority-Black neighborhoods.

In addition to Dr. Coston, Moore also retained a second expert, Dr. Marvin Chiles, an Assistant Professor of African American History at Old Dominion University. Dr. Chiles prepared a report in which he detailed the history of racial segregation in Richmond, focusing on the period from 1865 through the 1980s. He noted that although "[a] combination of federal law and local activism [had] helped curb systemic residential segregation between the 1960s and 1980s," the stain of Richmond's segregated past "remains etched into the city's landscape," with most "working-class and underclass blacks [still living] in racially homogenous enclaves in Richmond." Dr. Chiles also described how the Richmond Police Department had targeted and overpoliced Black citizens over the years. He noted, for example, that an effort to revitalize downtown Richmond in the 1980s led to the development of a "new police strategy, as dictated by black political leaders," of increased "policing of black neighborhoods." Dr. Chiles's report contained no relevant information specific to the Richmond Police Department that post-dated 1989.

The government retained its own expert, Dr. Michael Smith, a professor of criminology and criminal justice at the University of Texas at San Antonio, who challenged Dr. Coston's statistical analysis. In his report, Dr. Smith stated that Dr. Coston's conclusions were "unsupported by the data and analysis" and relied "upon elementary statistical techniques that no experienced social scientist familiar with racial disparity research in policing would rely on to draw inferences of bias." He explained that "examining the raw percentages of drivers stopped by race is meaningless unless, at a minimum, those percentages can be compared against an estimate of the population of *drivers* in the jurisdiction of interest" and that, in addition, "the population of persons who *live* in an area often serves as a poor representation of persons who *drive* in an area or who are *at risk* for being stopped by the police." Dr. Smith also critiqued Dr. Coston for using statistical methods that could not control for confounding variables like poverty or residence in a high-crime area, noting that "[p]olice typically deploy more officers to neighborhoods with higher crime rates" and that such "police deployment variables often correlate with race and ethnicity in America's urban neighborhoods."

The district court held an evidentiary hearing on Moore's selective-enforcement claim on July 18 and 19, 2022, and again on October 28, 2022, to admit additional evidence. While on the stand, Dr. Coston testified that "when we look at large scale patterns what we can say is whether or not Black people are disproportionately stopped at higher rates [and] disproportionately experience adverse outcomes when they are stopped." But Dr. Coston clarified, "I am not making conclusions about [the] causation" of the disparity and certainly not opining that "Mr. Moore was stopped because he was an African-American."

*578 C

After conducting these numerous hearings, the district court issued two memorandum opinions. In the first, dated November 13, 2023, the court granted in part and denied in part Moore's motion to suppress. The court denied Moore's Fourth Amendment claim, noting that "Moore's temporary tags had the same number as those of two other drivers the officers had stopped that night" and explaining that "[b]ecause the officers suspected Moore had violated a traffic law," they were legally justified in stopping Moore's vehicle. With respect to Moore's *Miranda* claim, the court held that

some statements should be suppressed but that others could be admitted.

But in the second opinion, dated February 12, 2024, the district court granted Moore's motion to dismiss the indictment for selective enforcement in violation of the Equal Protection Clause, concluding that Moore had adequately supported his contention that Richmond Police Department "officers selectively stop Black people, and that this selective enforcement led to his current charges." The court began by denying motions filed by the government to exclude the testimony of Dr. Coston and Dr. Chiles. It then turned to the merits, stating: "Moore must prove, by a preponderance of the evidence," that the Richmond Police Department's "enforcement process 'had a discriminatory effect and that it was motivated by a discriminatory purpose.'" (Quoting *Cent. Radio Co. v. City of Norfolk*, 811 F.3d 625, 634–35 (4th Cir. 2016)).

The court found that the testimony of Moore's expert witnesses established that the Richmond Police Department's traffic stops produce a *discriminatory effect*, stating that "[t]he statistics provided in this case make abundantly clear the disparate impact of traffic stops on Black drivers in Richmond." And the court determined that the same evidence sufficed to show *discriminatory purpose* as well. It acknowledged that "Moore ha[d] presented no evidence of the four officers' invidious or bad faith," observing that the officers had, rather, "pulled Moore over for having suspicious temporary tags." But the court concluded that it could still infer discriminatory purpose from "(1) evidence of a consistent pattern of actions by the Richmond Police Department that disparately impacts Black drivers in Richmond; and (2) the history of discrimination by the Richmond Police Department and in Richmond itself." (Cleaned up). The court emphasized that "Moore's statistics evince that [Richmond Police Department] police officers stop Black drivers at a rate that far exceeds the rate at which they stop white drivers." And it observed that Moore had supported his claim with evidence of "Richmond's racially segregated and discriminatory history." This evidence included the fact that three of Richmond's four police precincts "overlap Black neighborhoods," while a fourth "aligns exactly with the boundaries of the white section of Richmond."

In sum, the court found that "[t]he data showing that [the Richmond Police Department] stops Black drivers five times as often as it stops white drivers, coupled with the

evidence of Richmond's history of discrimination, reveals that [the Richmond Police Department's] discriminatory purpose contributed to its officers' decision to stop Moore." Thus, it held that Moore had established that the Richmond police had selectively enforced traffic laws against Black drivers, including Moore himself, in violation of the Equal Protection Clause. On that basis, it dismissed the indictment against him.

The government filed a motion for reconsideration, arguing that the court had ***579** improperly inferred that the Richmond Police Department "had orchestrated an intentionally discriminatory campaign to stop more Black drivers" and that "the practical effect of [its] opinion may well be to discourage [the Richmond Police Department] ... from actively policing the most violent areas of our City." The district court denied the government's motion, explaining that it had "dismissed this case because the evidence showed that [Richmond Police Department] officers disproportionately pull over Black drivers" and declaring that "[t]he time has come for this practice to end."

From the district court's order dismissing the indictment dated February 12, 2024, and order denying the government's motion for reconsideration dated March 11, 2024, the government filed this appeal.

II

The sole issue before us is whether Moore provided sufficient evidence to show that his traffic stop and arrest on December 5, 2020, were the result of racially selective law enforcement, in violation of the Equal Protection Clause of the Fourteenth Amendment.

The Equal Protection Clause "prohibits selective enforcement of the law based on considerations such as race." *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). In *Whren*, the Supreme Court acknowledged that a constitutional violation would occur were "police officers [to] decide which motorists to stop based on decidedly impermissible factors, such as the race of the car's occupants." *Id.* at 810, 116 S.Ct. 1769. It made clear that "the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment." *Id.* at 813, 116 S.Ct. 1769. It is now well established that to prevail on such a claim, a claimant must prove both (1) that the officers' enforcement had a discriminatory effect and (2) that it was motivated by

discriminatory purpose. See *United States v. Mason*, 774 F.3d 824, 829 (4th Cir. 2014) (quoting *United States v. Armstrong*, 517 U.S. 456, 465, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996)); *United States v. Hare*, 820 F.3d 93, 98–99 (4th Cir. 2016).

We have held selective-enforcement claims to a demanding standard of proof because such claims "ask a court to exercise judicial power over a special province of the Executive." *Mason*, 774 F.3d at 829–30 (cleaned up). Inasmuch as such a claim poses "the great danger of unnecessarily impairing the performance of a core executive constitutional function," the party bringing the claim "must demonstrate *clear evidence* of racially animated selective law enforcement. This standard is intended to be a demanding and rigorous one." *Id.* at 830 (emphasis added) (cleaned up); see also *Hare*, 820 F.3d at 98–99.

In sum, Moore must carry the burden of showing, by clear evidence, that his traffic stop had a discriminatory effect and was motivated by a discriminatory purpose or intent.

The government contends that Moore failed to carry his burden as to both prongs. It focuses mainly, however, on Moore's failure to show discriminatory purpose in making the stop. Noting the lack of evidence that race played any role in Moore's traffic stop, the government argues that the statistical evidence that Moore presented was insufficient to overcome that evidentiary gap. It claims that the statistical evidence lacked an appropriate benchmark for comparison between Black and White drivers and that Moore's historical evidence left off in 1989, making it irrelevant to a stop conducted in 2020. The government reasons that to conclude ***580** that the statistical evidence presented in this case was sufficient to overcome the lack of evidence of discriminatory intent "would mean that any Black driver stopped by [a Richmond Police Department] officer could prove discriminatory purpose based on the exact same statistical and historical evidence, regardless of the actual motives of the officer who stopped his car." The consequence would be to jeopardize the ability of Richmond Police Department officers to enforce traffic laws against Black drivers in Richmond.

Moore defends the district court's decision, pointing to the substantial "circumstantial evidence" that he was stopped pretextually and "on the basis of his race." He points to the practices of the Fourth Precinct's Focus Mission Team in patrolling predominantly Black neighborhoods and in habitually employing pretextual stops as an excuse to

ferret out more serious crimes, like gun and drug offenses. Additionally, he highlights the statistical evidence that showed that while Black and White residents each make up roughly one-half of Richmond's population, Black drivers were the subject of 77% of the traffic stops and thus were "5.13 times more likely to be stopped" than White drivers. Finally, Moore contends that the history of discrimination in Richmond supplies important context through which to understand the statistical evidence.

We begin with the main issue that the government has presented, whether the evidence showed that the Richmond police officers who stopped Moore were motivated by a discriminatory purpose, *i.e.*, whether they had racial animus. This requires proof "that the decisionmaker ... selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979); *see also Hare*, 820 F.3d at 100 n.6. Since the officers as individuals, and not the Richmond Police Department, made the decision to stop Moore, it is the officers' motivation that must be examined. Indeed, Moore only challenges *their* decision to stop his car and not any police department policy or order. *See McCleskey v. Kemp*, 481 U.S. 279, 292–93, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987) ("[T]o prevail under the Equal Protection Clause, [a party] must prove that the decisionmakers in *his* case acted with discriminatory purpose").

The evidence shows that when the officers observed a vehicle bearing a temporary license tag with the number 11134Y, they had probable cause to believe that the tag was fake because they had stopped two other vehicles with the same temporary tag number only hours before. No one disputes that knowingly displaying a fake license tag violates the law. *See Va. Code Ann. § 46.2-612(B)(1)*. And while the officers merely gave warnings to the first two drivers whom they had stopped, Moore's circumstances were different. Moore did not stop when required to do so, but rather fled. Following a car chase, Moore crashed into a curb and abandoned his car, leaving his door open and engine running and thus enabling the officers to see a gun lying on the floorboard. No aspect of this sequence suggests that race played a role in the decision to initiate the traffic stop or to arrest Moore for the illegal possession of a gun.

In light of this evidence, the district court appropriately found that the officers had probable cause to stop Moore and that there was no evidence that they made their decision based

on race. The court stated, "Moore has presented no evidence of the four officers' invidious or bad faith." Indeed, based on its review of video footage of the traffic stop, the court observed ***581** that "the police essentially treated him with great respect."

Based on these facts of record and the district court's finding, we conclude that there is a complete absence of evidence that the officers acted with discriminatory purpose. And because Moore's equal protection claim requires *clear evidence* that he was stopped because he was Black, it should fail for that reason alone.

The district court, however, did not limit its analysis to the question whether Moore was stopped because of his race. It chose to consider circumstantial evidence relating to police stops in Richmond more generally, remarking that "there is a problem in Virginia that needs to be addressed." The court thus undertook to treat Moore's motion as a programmatic challenge to the fairness of traffic stops made by the Richmond Police Department. And in doing so, the court drew on its personal observations:

[Y]ou know, I have been sitting up here now for ten years looking at these cases and I have never had a case with a white driver. Never in ten years.... And when I drive in other places in the City, I frequently see stops with young African-American men standing outside their cars. And I just think it is an intolerable situation. It is intolerable that the City puts up with it.

With these observations, the court lamented, "One would think that Virginia's citizens would cry out in protest over this situation, but they don't." Consequently, the court announced, "The time has come for this practice to end." Thus, despite finding no evidence of racial animus on the part of the police officers who stopped Moore, the court invited Moore to present more generalized evidence about traffic stops in Richmond, and based on Moore's statistical and historical evidence, it found that the Richmond Police Department acted with a racially discriminatory purpose. Evaluating that evidence rather uncritically, the court explained:

Moore's statistics evince that RPD police officers stop Black drivers at a rate that far exceeds the rate at which they stop white drivers. This correlation, on its own, does not prove causation. But that does not mean evidence of a correlation is *per se* irrelevant.

* * *

In analyzing the statistics in this case, Dr. Coston never asserted that race caused a particular stop. Instead, Dr. Coston determined the relationship between a driver's race and the primary result of a traffic stop.

* * *

To further support his claim, Moore cites to Richmond's racially segregated and discriminatory history.... Dr. Chiles testified that the historical segregation of the City of Richmond is the product of "the tide of history."

* * *

The data showing that RPD stops Black drivers five times as often as it stops white drivers, coupled with the evidence of Richmond's history of discrimination, reveals that RPD's discriminatory purpose contributed to its officers' decision to stop Moore. Moore therefore succeeds in meeting his burden of showing discriminatory purpose.

(Citation omitted).

We conclude that the court's expansion of the inquiry was unjustified by the evidence and that the evidence, even if taken at face value, was insufficient to show a discriminatory purpose — on the part of either the arresting officers or the Richmond Police Department as a whole.

First, the statistical evidence concerning the relationship between race and *582 the likelihood of a traffic stop was not strong. Dr. Coston described the relationship between the variables, as indicated by results of statistical analyses known as chi-square tests, as "important" but "somewhat weak." Moreover, the disparities themselves did not paint a materially different picture. While the fact that Black drivers constituted 77% of the drivers stopped in Richmond may have been striking at first blush, the figure represented only a naked statistical disparity, and both this court and the Supreme Court have declined to infer a violation of the Equal Protection Clause from statistical disparities far starker than any presented here. *See, e.g., Feeney*, 442 U.S. at 270,

99 S.Ct. 2282 (98% of those eligible for a benefit were men); *Armstrong*, 517 U.S. at 459, 116 S.Ct. 1480 (100% of the office's 24 drug conspiracy prosecutions closed in a given year involved Black defendants); *Hare*, 820 F.3d at 99 (100% of defendants prosecuted in stash-house sting cases in Maryland were Black); *United States v. Venable*, 666 F.3d 893, 903 (4th Cir. 2012) (87% of defendants charged with specific firearm offenses in a division were Black); *United States v. Olvis*, 97 F.3d 739, 742 (4th Cir. 1996) (more than 90% of those indicted in the area for crack cocaine trafficking were Black). Although statistical disparities might bear some relevance to a broader question, they generally cannot, as Dr. Coston conceded, show that any one decision was motivated by racial animus. Thus, a finding of discriminatory intent or purpose based solely on naked statistical disparities "remains the exceedingly rare exception to the general rule." *United States v. Thorpe*, 471 F.3d 652, 661 (6th Cir. 2006); *see also Olvis*, 97 F.3d at 746 (noting the "general rule" that statistical evidence is inadequate to prove discriminatory purpose in cases implicating "discretionary judgments essential to the criminal justice process" (cleaned up)). Yet, the district court relied mainly on this naked statistical disparity to conclude that Moore was stopped because he was Black.

Second, the basis on which Dr. Coston compared White and Black drivers was also weak. While Dr. Coston compared the frequency with which drivers of each race were stopped in a 6-month window in 2020, this type of data could say little about whether any specific driver was stopped because he was Black, in part because Dr. Coston provided no data about the proportion of *drivers* in Richmond who were Black. Thus, if one were to show, hypothetically, that 65% of the drivers *stopped* in Jonesville were Black when 65% of the *drivers* in Jonesville were Black, the 65%-of-drivers-stopped statistic establishes nothing, because there is no disparity. We have repeatedly noted that "raw data" lacking "an appropriate basis for comparison" cannot satisfy any element of an Equal Protection claim. *Olvis*, 97 F.3d at 745; *accord Hare*, 820 F.3d at 99–100; *Venable*, 666 F.3d at 903. And we have specifically disclaimed reliance on statistics that fail to account for "the number of blacks who were actually committing [a specific type of crime] or whether a greater percentage of whites could have been prosecuted for such crimes." *Olvis*, 97 F.3d at 745. To be sure, we have noted that the absence of an appropriate benchmark is not necessarily *dispositive* with respect to selective-enforcement claims, mindful that such claims are not as conducive to data retention as are selective-prosecution claims. *See Hare*, 820 F.3d at 100–01. But the lack of any sound basis for comparison still weighs against

finding clear evidence of animus in this case. See [Mason](#), 774 F.3d at 830.

Third, the potential for recognized confounding variables to distort the relationship between race and traffic stops greatly undermined the probative value of Dr. Coston's *583 statistical evidence. Statistics can shed light on the presence of “discriminatory intent *if* race can be isolated from other confounding variables.” [Conley v. United States](#), 5 F.4th 781, 796 (7th Cir. 2021) (emphasis added). But Dr. Coston acknowledged that the statistical test applied, unlike other available methods, could not control for confounding variables, such as poverty, residence in a high-crime area of town, and existing arrest warrants. That lack of control may not be dispositive in every case, but it is particularly damaging here, where evidence in the record suggested that the Richmond Police Department's traffic stops tended to cluster in high-crime areas, and further evidence indicated that controlling for confounding variables has, in some studies, made racial disparities in traffic-stop outcomes “disappear[].”

Finally, the existence of probable cause to stop Moore makes it even less likely that the traffic stop was motivated by discriminatory purpose. As we have noted, there is a conceptual “overlap” between Fourth Amendment claims and selective-enforcement challenges. [Mason](#), 774 F.3d at 831. When an officer has probable cause to effect a stop, particularly for an unusual and glaring traffic offense such as the one at issue here, we do not think it inevitable or even likely that the officer's first thought will concern the race of the suspect, as opposed to, for instance, the offense transpiring before his eyes. Thus, where, as here, officers have probable cause to stop a defendant, it is “even less likely” the defendant's selective-enforcement claim could succeed. *Id.* This is particularly so when the record is devoid of any evidence revealing “significant departures from normal procedures,” which might, if present, suggest that the existence of probable cause was not the actual motive for the stop. See [Cent. Radio Co.](#), 811 F.3d at 635 (quoting [Sylvia Dev. Corp. v. Calvert County](#), 48 F.3d 810, 819 (4th Cir. 1995)). Here, the officers observed three cars bearing identical temporary license tag numbers in one night, giving them cause to believe that the drivers were knowingly displaying fake tags, in violation of [Virginia Code § 46.2-612\(B\)\(1\)](#). The officers thus attempted to stop each of the three cars to question the driver about the tag. This sequence of events is striking only for its normalcy. Indeed,

we expect that the public would be surprised had the officers *not* stopped Moore in the circumstances presented.

For all these reasons, we conclude that Moore's statistical evidence fails to show, to any degree, that the officers who stopped Moore acted with discriminatory purpose.

Moore nonetheless argues that “the historical evidence Dr. Chiles proffered provides additional evidentiary support of discriminatory purpose by providing the historical context in which the statistical evidence should be understood.” But Moore's historical evidence failed to tether past discrimination to this case at all. Indeed, the evidence that he presented does not even broach the 21st century; Dr. Chiles candidly admitted that he did not have any evidence “[b]eyond 1989” regarding the relationship between racial bias and the Richmond Police Department's practices. This concession renders Dr. Chiles's testimony virtually irrelevant. As the Supreme Court has observed, “[U]nless historical evidence is *reasonably contemporaneous* with the challenged decision” — here, the decision to stop Moore — “it has little probative value.” [McCleskey](#), 481 U.S. at 298 n.20, 107 S.Ct. 1756 (emphasis added).

In short, because Moore has challenged a single decision that the district court recognized was not animated by racial *584 prejudice, it is difficult to see the relevance of the expert testimony offered by Moore to the issue at hand, especially when that testimony concededly did not point to the reason why the officers stopped Moore. Moreover, were we to accept that the data presented by the expert witnesses were sufficient to dismiss Moore's indictment, those same data would, without more, justify dismissing *every* prosecution arising from the traffic stop of a Black person in Richmond. Such a notion is untenable.

* * *

In addressing Moore's selective-enforcement claim, the district court should have remained focused on whether Moore was stopped on December 5, 2020, because he was Black. The court, however, out of a more general concern about discriminatory law enforcement in Richmond, invited the inquiry to transform into a broad investigation into the Richmond Police Department's traffic enforcement practices of a kind more suited for a legislative committee. While we do not dismiss the court's larger concern, we conclude that the record in this case did not justify dismissing the indictment against Moore for selective enforcement. And as Moore failed

to introduce evidence sufficient to show that he was stopped on the basis of race, we need not address his evidence to show discriminatory effect.

IT IS SO ORDERED.

We reverse the order of the district court and remand with instructions to reinstate the indictment.

All Citations

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