

ANSWER TO QUESTION NO. 5

A. Sobriety Checkpoints Under the Michigan Constitution: The discussion whether sobriety checkpoints are constitutionally permissible under the Michigan Constitution does not end with the determination that such conduct does not violate the Fourth Amendment to the United States Constitution. The Michigan Constitution of 1963, contains a provision prohibiting unreasonable searches and seizures. Specifically, Const 1963, art 1, §11, provides in pertinent part:

"The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation."

While the above-quoted provision is similar to the Fourth Amendment of the United States Constitution, it is not identical to it. Michigan courts are obligated to interpret the Michigan Constitution independent of the rights and protections afforded under the United States Constitution. "When there is a clash of competing rights under the state and federal constitutions, the Supremacy Clause, art VI, cl 2, [of the United States Constitution] dictates that the federal right prevails." *Sitz v Dep't of State Police*, 443 Mich 744, 760 (1993) (*Sitz II*). However, where a right is given under the United States Constitution, it does not necessarily follow that a state constitution must be interpreted as providing the identical right. *Id.* "[B]ecause these texts were written at different times by different people, the protections afforded [under each document] may be greater, lesser, or the same." *Id.* at 762 (citations omitted). Michigan "courts are not obligated to accept what [is] deemed to be a major contradiction of citizen protections under [the Michigan Constitution simply because the United States Supreme Court has chosen to do so [in its interpretation of the United States Constitution]. *Id.* at 763.

In *People v Collins*, 438 Mich 8, 25 (1991), the Michigan Supreme Court held that the prohibition against unreasonable searches and seizures found in Const 1963, art 1, §11, should "be construed to provide the same protection as that secured by the Fourth Amendment, absent 'compelling reason' to impose a different interpretation." A compelling reason exists where there is a "principled basis in this history of [Michigan] jurisprudence for the creation of new rights." *Sitz II, supra* at 763.

In *Sitz II, supra*, the Michigan Supreme Court specifically considered the constitutionality of sobriety checkpoints and concluded there existed compelling reason to interpret Const 1963, art 1, §11, to provide greater protection than the protection afforded under the Fourth Amendment to the United States Constitution. Specifically, the Michigan Supreme Court observed that the Michigan Constitution has historically been interpreted to provide the people traveling on public roadways the fullest protection available under the law. *Id.*, at 775, citing *Pinkerton v Verberg*, 78 Mich 573, 584 (1889). Further, the Michigan Constitution has historically been interpreted to distinguish between searches and seizures made for administrative or regulatory purposes from searches and seizures involving criminal investigations. The Michigan Supreme Court noted that "seizures with the primary goal of enforcing criminal law have generally required some level of suspicion." *Id.*, at 778 (Citation omitted) . The Michigan Supreme Court also cited several cases in which it discussed and reaffirmed the notion that reasonable cause is required to stop or search cars operated on Michigan's public roadways. *E.g.*, *People ex rel Attorney General v Lansing Municipal Judge*, 327 Mich 410 (1950) (striking down as unconstitutional a statute that permitted certain searches, including some involving automobiles, without a warrant); *People v Stein*, 265 Mich 610 (1933) (observing that "[i]f conditions demand a special rule of search on highways, the remedy is by amendment of the [Michigan] Constitution"); *People v Roache*, 237 Mich 215, 222 (1927) (stating "[n]o one will contend that an officer may promiscuously stop automobiles upon the public highway and demand the driver's license merely as a subterfuge to invade the constitutional right of the traveler to be secure against unreasonable search and seizure_"); *People v Kamhout*, 227 Mich 172, 187-188 (1924) (stating that police officers "have no right to stop and search an automobile * * * for the purpose of ascertaining whether it is being used [to further illegal activity] unless they have * * * reasonable grounds of suspicion * * * as would induce in any prudent man, an honest belief that the law is being violated").

The Michigan Supreme Court concluded that the jurisprudence and constitutional history of Michigan provided a compelling reason to interpret the prohibition against unreasonable searches and seizures found in the Michigan Constitution more expansively than the protection afforded under the Fourth Amendment to the United States Constitution. Thus, the Michigan Supreme Court held that sobriety checkpoints violate Const 1963, art 1, §11. *Spitz II, supra* at 778. For these reasons, the ACLU likely will prevail in its claim that the Michigan Constitution bars the implementation of sobriety checkpoints on Michigan roadways.

B. Sobriety Checkpoints Under the United States Constitution:

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures absent a warrant issued upon a showing of probable cause. An exception to the warrant requirement allows searches or seizures of automobiles when there is probable cause to believe that evidence of a crime will be found in a lawfully stopped vehicle or that the vehicle contains or is contraband. *Florida v White*, 526 US 559, 563-565 (1999). The

Fourteenth Amendment to the United States Constitution imposes upon the various states the protections provided under the Fourth

Amendment. Here, the Michigan State Police plan to stop every vehicle at a designated time and place in order to investigate whether the driver is intoxicated and operating the vehicle in violation of Michigan law. These stops, regardless of duration, constitute seizures within the meaning of the Fourth Amendment. *United States v Martinez-Fuerte*, 428 US 543, 556 (1976) (holding a Fourth Amendment "seizure" occurs when a vehicle is stopped at an illegal alien checkpoint). No warrant was issued authorizing these seizures and no probable cause existed to justify the police action. Thus the dispositive issue regarding the constitutionality of the proposed sobriety checkpoint under the Fourth Amendment is whether the warrantless activity proposed by police is reasonable. *Michigan State Police v Sitz*, 496 US 444, 450 (1990).

When determining the reasonableness under the Fourth Amendment of a warrantless seizure, courts employ a three-part balancing test derived from *Brown v Texas*, 443 US 47 (1979). Applying the Brown factors in the context of the facts presented here, a reviewing court should consider the following three factors: (1) the interest of the state in preventing accidents caused by drunk drivers; (2) the level of intrusion and delay imposed upon motorists passing through the checkpoint; and (3) the effectiveness of sobriety checkpoints in achieving the state's goal.

In *Sitz, supra*, the Supreme Court of the United States applied these three factors to determine that roadside sobriety testing does not offend the Fourth Amendment to the United States Constitution.

The Supreme Court observed that states have a "grave and legitimate" interest in curbing drunk driving. Statistical evidence supports the conclusion that thousands of highway deaths are caused by intoxicated drivers. *Sitz, supra* at 451.

The Supreme Court also concluded that the level of intrusion and delay imposed upon motorists passing through the checkpoint was reasonable--less than one minute. The Supreme Court emphasized, "the circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their

approach may frighten motorists. At traffic checkpoints, the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." *Sitz, supra* at 453, quoting *People v Ortiz*, 422 US 891, 894-895 (1975).

The Supreme Court also concluded that sobriety checkpoints are an effective method of advancing the interests of the state to diminish drunk driving. The question whether sobriety checkpoints are effective is distinct from the issue whether they are the best method of deterring drunk driving. The Supreme Court noted that deference must be given to local "governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers." *Sitz, supra* at 454.

For these reasons, the ACLU will not likely prevail in its attempt to prevent sobriety checkpoints as being violative of the United States Constitution.