KATZ, J., dissenting. Both the fourth amendment to the United States constitution and article first, § 7, of the Connecticut constitution protect individuals against unreasonable searches and seizures. In this case, it is undisputed that the initial stop of the defendant, Christopher Jenkins, for improperly changing lanes was reasonable and, therefore, valid under both of these provisions. See *State* v. *Jenkins*, 104 Conn. App. 417, 427, 934 A.2d 281 (2007). The question before us is whether the subsequent consent search of the defendant's vehicle, conducted after Officer Michael Morgan, a detective with the Newington police department, had completed a check of the defendant's personal and vehicular information, asked the defendant to step out of the vehicle, frisked him and explained the ticket to him, also was reasonable. I do not contest the majority's conclusion in part II of its opinion that, under the weight of recent federal precedent, the scope of the traffic stop was not improper under the federal constitution. Such a development, however, clearly would constitute a move toward a more restrictive view of the fourth amendment than previously had been established under federal law. I disagree, however, with the majority's conclusion in part III of its opinion that the conduct in the present case did not violate the Connecticut constitution solely because Morgan's request for consent to search the defendant's vehicle did not measurably extend the *duration* of the traffic stop.[1] In my view, under article first, § 7, of the Connecticut constitution, before a police officer can shift the purpose and scope of a roadside detention from a routine traffic stop to a consent search, the officer must have reasonable and articulable suspicion of illegal activity unrelated to the initial traffic violation.[2] Accordingly, I respectfully dissent.

"It is well established that federal constitutional . . . law establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights. . . . *State* v. *Oquendo*, 223 Conn. 635, 649, 613 A.2d 1300 (1992). Moreover, we have held that [i]n the area of fundamental civil liberties—which includes all protections of the declaration of rights contained in article first of the Connecticut constitution—we sit as a court of last resort . . . . In such constitutional adjudication, our first referent is Connecticut law and the full panoply of rights Connecticut citizens have come to expect as their due. Accordingly, decisions of the United States Supreme Court defining fundamental rights are persuasive authority to be afforded respectful consideration, but they are to be followed by Connecticut courts only when they provide no less individual protection than is guaranteed by Connecticut law. . . .

State v. *Marsala*, 216 Conn. 150, 160, 579 A.2d 58 (1990). Recognizing that our state constitution is an instrument of progress . . . is intended to stand for a great length of time and should not be interpreted too narrowly or too literally . . . we have concluded in several cases that the state constitution provides broader protection of individual rights than does the federal constitution. See, e.g., [*State* v. *Oquendo*, supra], 652; *State* v. *Marsala*, supra, 171; *State* v. *Dukes*, 209 Conn. 98, 112, 547 A.2d 10 (1988), and cases cited therein." (Citation omitted; internal quotation marks omitted.) *State* v. *DeFusco*, 224 Conn. 627, 632, 620 A.2d 746 (1993). "Specifically, we have held that article first, § 7, affords protections to the citizens of this state beyond those provided by the fourth amendment to the federal constitution, as that provision has been interpreted by the United States Supreme Court. See *State* v. *Miller*, 227 Conn. 363, 379, 630 A.2d 1315 (1993); *State* v. *Geisler*, 222 Conn. 672, 690, 610 A.2d 1225 (1992); *State* v. *Marsala*, supra, [160–61]; *State* v. *Dukes*, supra, [122–23]." *State* v. *Wilkins*, 240 Conn. 489, 504–505, 692 A.2d 1233 (1997).

"The analytical framework by which we determine whether, in any given instance, our state constitution affords broader protection to our citizens than the federal constitutional minimum is well settled. In *State* v. *Geisler*, [supra, 222 Conn. 684–86], we enumerated the following six factors to be considered in determining that issue: (1) persuasive relevant federal precedents; (2) the text of the operative constitutional provisions; (3) historical insights into the intent of our constitutional forebears; (4) related Connecticut precedents; (5) persuasive precedents of other state courts; and (6) contemporary understandings of applicable economic and sociological norms, or as otherwise described, relevant public policies." (Internal quotation marks omitted.) *State* v. *McKenzie-Adams*, 281 Conn. 486, 509–10, 915 A.2d 822, cert. denied, 552 U.S. 888, 128 S. Ct. 248, 169 L. Ed. 2d 148 (2007).

I agree with the majority that neither the text nor the constitutional history of article first, § 7, support the defendant's claim to greater protections under the state constitution than the federal constitution. I disagree, however, with the majority's analyses of persuasive relevant federal precedents, related Connecticut precedents, the persuasive precedents of other state courts and contemporary understandings of public policy. I believe that these four factors necessitate a conclusion that article first, § 7, requires us to examine both the temporal and *substantive* scope of a routine traffic stop and that, more specifically, a consent search during a routine traffic stop is not valid unless there is a reasonable and articulable suspicion to believe that a detained driver or passenger has engaged in, or is about to engage in, criminal activity.

I

FEDERAL PRECEDENTS

As I previously have noted herein, I do not dispute the majority's conclusion that recent federal precedent suggests that the permissibility of a consent search following a routine traffic stop is dictated by the duration of the stop. For the reasons that follow, however, it is my view that such a holding constitutes a substantive departure from settled fourth amendment jurisprudence.

As both the majority and the state properly recognize, the reasonableness of traffic stops under the fourth amendment is analyzed under the framework established in *Terry* v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). See *Arizona* v. *Johnson*, 555 U.S. , 129 S. Ct. 781, 786, 172 L. Ed. 2d 694 (2009); *State* v. *Wilkins*, supra, 240 Conn. 508–509. Under *Terry*, "[c]ertain seizures are reasonable under the fourth amendment even in the absence of probable cause if there is a reasonable and articulable suspicion that a person has committed or is about to commit a crime. *Florida* v. *Royer*, 460 U.S. 491, 498, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983); *Terry* v. *Ohio*, [supra, 24] . . . . When a reasonable and articulable suspicion exists, the detaining officer may conduct an investigative stop of the suspect in order to confirm or dispel his suspicions." (Internal quotation marks omitted.) *State* v. *Brown*, 279 Conn. 493, 517, 903 A.2d 169 (2006).

The United States Supreme Court had been careful, however, to limit the boundaries of such warrantless stops. The court acknowledged that it had "held in the past that a search which is reasonable at its inception may violate the [f]ourth [a]mendment by virtue of its intolerable intensity and scope. . . . The scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible." (Citations omitted; internal quotation marks omitted.) *Terry* v. *Ohio*, supra, 392 U.S. 17–19. Although the court declined to set out bright-line limitations on the scope of the search, it warned that "[t]he manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The [f]ourth [a]mendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation. . . . The entire deterrent purpose of the rule excluding evidence seized in violation of the [f]ourth [a]mendment rests on the assumption that limitations upon the fruit to be gathered tend to limit the quest itself." (Citation omitted; internal quotation marks omitted.) Id., 28–29. Subsequently, in *Florida* v. *Royer*, supra, 460 U.S. 500, the court clarified that "[t]he scope of [an investigative] detention must be carefully tailored to its underlying justification . . . [and the] investigative detention

must be temporary and last no longer than is necessary to effectuate the purpose of the stop."

Drawing from the scope analyses set forth in *Terry* and *Royer*, several federal courts had required that routine traffic stops, justified under *Terry*, be reasonable in both duration *and manner*. See, e.g., *United States* v. *Boyce*, 351 F.3d 1102, 1111 (11th Cir. 2003) ("[T]here are two possible tests for when a police investigation exceeds the scope of a routine traffic stop. . . . The first test comes from the Tenth Circuit and limits the questions a police officer may ask to those questions that are justified by reasonable suspicion of criminal activity or reasonable safety concerns. . . . The second test comes from the Fifth Circuit and holds that questions unrelated to the reason for the initial stop are only unlawful if they extend the duration of the initial seizure." [Citations omitted.]); *United States* v. *Holt*, 229 F.3d 931, 935 (10th Cir. 2000) ("the [United States] Supreme Court has indicated that although the permissible scope of an investigatory detention depends on the particular facts and circumstances of each case, it must in any case last no longer than is necessary to effectuate the purpose of the stop *and be carefully tailored to its underlying justification*" [emphasis added; internal quotation marks omitted]). Accordingly, these courts had required that, during a routine traffic stop, an "officer's actions must be reasonably related in scope to the circumstances which justified the interference in the first place. . . . The traffic stop may be expanded beyond its original purpose . . . if during the initial stop the detaining officer acquires reasonable suspicion of criminal activity, that is to say the officer must acquire a particularized and objective basis for suspecting the particular person stopped of criminal activity." (Citations omitted; internal quotation marks omitted.) *United States* v. *Clarkson*, 551 F.3d 1196, 1201 (10th Cir. 2009); see also *United States* v. *Henderson*, 463 F.3d 27, 46 (1st Cir. 2006) (concluding that traffic stop exceeded bounds of *Terry* stop because officer's "demand for [the defendant's] identifying information and his subsequent investigation of [the defendant] expanded the scope of the stop, changed the target of the stop, and prolonged the stop"); *United States* v. *Alix*, 630 F. Sup. 2d 145, 156 (D. Mass. 2009) (The District Court cited First Circuit cases that analyzed the scope of traffic stops and concluded that they "suggest a functional standard as well as a temporal one: What degree of intrusiveness and what duration was justified by the rationale for the stop?").

The United States Supreme Court recently seemed to refute this reasonableness in manner approach in *Arizona* v. *Johnson*, supra, 129 S. Ct. 790, wherein it addressed whether police questioning of a detained motorist during a traffic stop had exceeded the scope of the initial detention. Ultimately, the court stated a broad, unqualified conclusion that "[a]n officer's inquir-

ies into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." Id., 788. In reaching this conclusion, the court relied heavily on its prior decision in *Muehler* v. *Mena*, 544 U.S. 93, 96, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005), which in turn had relied on *Illinois* v. *Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005), neither of which involved *Terry* stops, or searches that were independent of the underlying justifications. See *Arizona* v. *Johnson*, supra, 790; *Muehler* v. *Mena*, supra, 101.[3]

The majority reads this recent jurisprudence as dictating that the requirement of reasonableness in *Terry* is satisfied as long as the duration of a routine traffic stop is not unreasonably extended. This conclusion, if correct; see footnote 3 of this dissenting opinion; indicates that the United States Supreme Court has departed significantly from its prior jurisprudence requiring *Terry* stops to be both substantively and temporally reasonable. I find the reasoning of *Royer* and the federal cases applying *Royer* to be persuasive because they best effectuate the scope limitation originally established in *Terry*, and consistently followed by this court. Accordingly, I believe that a more exacting analysis of the scope of a *Terry* stop than the purely temporal approach endorsed by the majority is required under the Connecticut constitution. Indeed, it is precisely in situations in which the United States Supreme Court has eschewed precedents protective of individual rights in favor of more permissive approaches that this court has found that the Connecticut constitution requires adherence to the earlier, more protective doctrines. See *State* v. *Linares*, 232 Conn. 345, 382–83, 655 A.2d 737 (1995) (rejecting modern "public forum" analysis established by United States Supreme Court in favor of traditional case-by-case balancing approach); *State* v. *Marsala*, supra, 216 Conn. 171 (rejecting good faith exception to exclusionary rule adopted by United States Supreme Court); *State* v. *Dukes*, supra, 209 Conn. 120 (disavowing *United States* v. *Robinson*, 414 U.S. 218, 234–35, 94 S. Ct. 467, 38 L. Ed. 2d 427 [1973], which allowed suspicionless full body searches in situations beyond full custodial arrest).

II

CONNECTICUT PRECEDENTS

A review of this court's precedents indicates that we never before have adopted the broadly permissive approach to the scope of *Terry* stops, including routine traffic stops, championed by the state and suggested by the United States Supreme Court's recent decisions. This court consistently has concluded that, under our state constitution, a *Terry* stop must be both justified at inception and reasonably circumscribed. See *State*

v. *Wilkins*, supra, 240 Conn. 507 ("[a]rticle first, §§ 7 and 9, of our state constitution permit a police officer in appropriate circumstances *and in an appropriate manner* to detain an individual for investigative purposes even though there is no probable cause to make an arrest" [emphasis added]); *State* v. *Lamme*, 216 Conn. 172, 184, 579 A.2d 484 (1990) ("circumscribed nature" of *Terry* stop minimizes risk of due process violation under Connecticut constitution); *State* v. *Edwards*, 214 Conn. 57, 72, 570 A.2d 193 (1990) ("[a] *Terry* stop that is justified at its inception can become constitutionally infirm if it lasts longer or becomes more intrusive than necessary to complete the investigation for which that stop was made" [internal quotation marks omitted]); *State* v. *Carter*, 189 Conn. 611, 618, 458 A.2d 369 (1983) ("The results of the initial stop may arouse further suspicion or may dispel the questions in the officer's mind. If the latter is the case, the stop may go no further and the detained individual must be free to go. If, on the contrary, the officer's suspicions are confirmed or are further aroused, the stop may be prolonged and the scope enlarged *as required by the circumstances*." [Emphasis added; internal quotation marks omitted.]). This court never has adopted the purely temporal analysis set forth in *Caballes*, *Muehler* and *Johnson*, and, in fact, has yet to cite to these cases. Therefore, our precedents weigh in favor of a more exacting analysis of the scope of a *Terry* stop than the purely temporal approach endorsed by the majority.

Our jurisprudence also supports the specific rule that the defendant asks us to adopt—that an officer conducting a routine traffic stop must have a reasonable and articulable suspicion of criminal activity unrelated to the initial traffic stop before asking for consent to search a vehicle. This court has required that a *Terry* stop be grounded upon "reasonable and articulable suspicion that the individual has committed or is about to commit a crime"; (internal quotation marks omitted) *State* v. *Nash*, 278 Conn. 620, 632, 899 A.2d 1 (2006); while a *Terry* frisk requires that the officer has "a reasonable and articulable suspicion that a suspect is armed and dangerous before [he] may commence a protective patdown search during an investigative stop." Id., 633. Indeed, we have cautioned that, "[b]efore [a police officer] places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous." (Internal quotation marks omitted.) Id., 631. Like the transition from a *Terry* stop to a *Terry* frisk, the transition from a routine traffic stop to a consent search involves a shift in purpose and procedure. As such, our precedents suggest this shift must be grounded in reasonable suspicion relevant to the police encounter's

new direction, namely, reasonable and articulable suspicion of criminal activity unrelated to the initial routine traffic violation.

III

SISTER STATE PRECEDENTS

State courts have taken widely varying approaches to the proper analysis of the scope of a routine traffic stop. Some states either have expressly adopted the purely durational test under their state constitutions or have held that their state constitutions provide no greater rights than the federal constitution.[4] Others have determined that their constitutions require, generally, a more exacting analysis of the scope of routine traffic stops and therefore require such stops to be substantively reasonable under the circumstances.[5] A significant group of states has distinguished between acceptable investigatory techniques during a routine traffic stop and such techniques once the purpose of that traffic stop has been effectuated. Within this group, some states have, by statute, required a reasonable suspicion before consent searches may be undertaken after the purposes of the traffic stop have been effectuated.[6] Others have applied the same standard based on state or federal constitutional provisions.[7] More importantly, a persuasive minority has adopted the rule the defendant urges us to apply: that consent searches undertaken anytime during the course of a routine traffic violation be justified by reasonable and articulable suspicion of criminal activity independent of the initial traffic violation.

I begin with the several cases in which state courts have drawn from both federal and state constitutional provisions in limiting the scope of roadside traffic stops and requiring a reasonable and articulable suspicion of criminal activity unrelated to the initial stop before a police officer validly can ask for consent during a roadside search. In *State* v. *Smith* 286 Kan. 402, 419, 184 P.3d 890, cert. denied, U.S. , 129 S. Ct. 628, 172 L. Ed. 2d 639 (2008), the Kansas Supreme Court held that "we continue to adhere to our longstanding rule that consensual searches [unrelated to the grounds for a traffic stop] during the period of a detention for a traffic stop are invalid under the [f]ourth [a]mendment to the United States [c]onstitution and § 15 of the Kansas [c]onstitution [b]ill of [r]ights."[8] In *Commonwealth* v. *Strickler*, 563 Pa. 47, 69, 757 A.2d 884 (2000), the Pennsylvania Supreme Court, noted that "[a]rticle I, § 8 of the Pennsylvania [c]onstitution . . . would not sustain a consent search conducted in the context of, but which is wholly unrelated in its scope to, an ongoing detention, since there can be no constitutionally-valid detention independently or following a traffic or similar stop absent reasonable suspicion, see, e.g., *Commonwealth* v. *Melendez*, 544 Pa. 323, 329, [676 A.2d 226] (1996), and the scope of a detention is circumscribed

by the reasons that justify it." It is true that, for the purposes of the *Geisler* analysis, we are concerned only with sister state precedents relevant to the question of whether state constitutions afford more protections than the federal constitution. Each of these courts, however, expressly cited to the search and seizure provisions of its own state constitution and before framing its ultimate conclusion based on both state and federal constitutional provisions. Thus, although I recognize the limitation on the previously discussed precedents, I am nonetheless persuaded by their reasoning that the scope of a routine traffic stop should not be measured merely by its duration.

I next turn to the New Jersey Supreme Court's holding in *State* v. *Carty*, 170 N.J. 632, 790 A.2d 903 (2002). In that case, the court analyzed whether evidence discovered during a roadside consent search was admissible when the state trooper had requested consent without having an articulable suspicion of any criminal activity besides an initial speeding violation. The court first determined that "[r]oadside consent searches are . . . more akin to an investigatory stop that does involve a detention. Such a stop traditionally has required reasonable and articulable suspicion." Id., 640. The court then held that a consent search during a lawful motor vehicle stop is valid only if there is a "reasonable and articulable suspicion to believe that an errant motorist or passenger has engaged in, or is about to engage in, criminal activity." Id., 647. The court explained that "[t]he requirement of reasonable and articulable suspicion is derived from our [s]tate [c]onstitution[9] and serves to validate the continued detention associated with the search. It also serves the prophylactic purpose of preventing the police from turning a routine traffic stop into a fishing expedition for criminal activity unrelated to the stop." Id.

I agree with the majority that *Carty* differs from the present case on three grounds: (1) the New Jersey Supreme Court consistently has afforded a higher level of scrutiny to consent searches than does the United States Supreme Court; (2) the New Jersey police were subject to both a federal decree and state police policy limiting coercive investigatory techniques; and (3) the court had before it an extensive factual record demonstrating the violation of the federal decree and state police policy. Despite these distinctions, however, there are several reasons why *Carty* is relevant and persuasive. First, although this court has not afforded greater protections than the federal courts concerning consent searches *specifically*, this court also has found that the Connecticut constitution provides greater protection against official searches and seizures, *generally*. See *State* v. *Wilkins*, supra, 240 Conn. 504–505; *State* v. *Miller*, supra, 227 Conn. 379–80; *State* v. *Geisler*, supra, 222 Conn. 690; *State* v. *Marsala*, supra, 216 Conn. 159–60; *State* v. *Dukes*, supra, 209 Conn. 122–23. Sec-

ond, although the New Jersey Supreme Court notes that its holding is consistent with the consent decree and state police policy limiting coercive investigatory techniques, it does not rely exclusively upon them. *State* v. *Carty*, supra, 170 N.J. 647. Finally, much of the data before the court merely corroborated significant legal scholarship, of which we may take judicial notice,[10] demonstrating the psychological pressure faced by detained motorists and the ways in which that pressure may be manipulated to obtain consent to search. Id., 644–45. Indeed, the court's analysis emphasized the universal impact of consent searches, observing that "[m]any persons, perhaps most, would view the request of a police officer to make a search as having the force of law. . . . In the context of motor vehicle stops, where the individual is at the side of the road and confronted by a uniformed officer seeking to search his or her vehicle, it is not a stretch of the imagination to assume that the individual feels compelled to consent." (Citation omitted; internal quotation marks omitted.) Id., 644. I therefore find the New Jersey Supreme Court's well reasoned and thorough opinion to have significant persuasive weight within the context of the *Geisler* analysis.

I also find persuasive the Minnesota Supreme Court's decision requiring that officers have reasonable and articulable suspicion of criminal activity independent of the initial traffic violation before asking for consent to search during a traffic stop. See *State* v. *Fort*, 660 N.W.2d 415, 418–19 (Minn. 2003). Therein, the court noted that "the scope and duration of a traffic stop investigation must be limited to the justification for the stop." Id., 418. It relied on an earlier case, *State* v. *Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002), for support. The court explained: "In *Wiegand*, the defendants were stopped for a burned-out headlight, but the police conducted a search using a narcotics-detection dog in the absence of reasonable articulable suspicion of drug-related activity. [Id., 128–29, 137]. We reversed the defendants' convictions holding, among other things, that under [a]rticle [first], [§] 10, of the Minnesota [c]onstitution any expansion of the scope or duration of a traffic stop must be justified by a reasonable articulable suspicion of other criminal activity. [Id., 135]." *State* v. *Fort*, supra, 418–19. Under this framework, although the initial traffic stop was proper, "the investigative questioning, consent inquiry, and subsequent search went beyond the scope of the traffic stop and was unsupported by any reasonable articulable suspicion." Id., 419. Accordingly, the court affirmed the trial court's order suppressing evidence discovered during the consent search.[11]

Similarly, the Court of Appeals of Alaska recently held that "an officer's questions about other potential crimes, and an officer's requests for permission to conduct a search, are significant events under the search

and seizure provision of the Alaska [c]onstitution, [article first, § 14]. More specifically, we conclude that, under the circumstances presented in this case, the officer conducting the traffic stop was prohibited from requesting [the defendant's] permission to conduct a search that was (1) unrelated to the basis for the stop and (2) not otherwise supported by a reasonable suspicion of criminality." *Brown* v. *State*, 182 P.3d 624, 626 (Alaska App. 2008). In reaching this conclusion, the court acknowledged that federal precedents, including *Muehler* v. *Mena*, supra, 544 U.S. 93, did not prevent the officer from engaging in a consent search completely unrelated to the initial traffic stop. *Brown* v. *State*, supra, 629 ("we conclude that federal law does not afford sufficient protection to motorists who are asked to consent to a search of their person, their vehicle, or their belongings during a traffic stop"). The court noted, however, that the Alaska Supreme Court and Court of Appeals repeatedly had interpreted article first, § 14, of that state's constitution to provide greater protection to the citizens of Alaska than that provided by the fourth amendment to the federal constitution. Id., 633. Drawing from state search and seizure jurisprudence interpreting the Alaska constitution, as well as public policy concerns and sister state precedent, the court concluded that the Alaska constitution "must be interpreted to grant broader protections than its federal counterpart" in situations involving consent searches during routine traffic stops.[12] Id., 634.

IV

RELEVANT PUBLIC POLICY

Routine requests to search a detained motorist, in the absence of any suspicion of criminal activity beyond an initial traffic violation, represent a real and disturbing burden on motorists[13] and a substantial breach of privacy. See *Ohio* v. *Robinette*, 519 U.S. 33, 48, 117 S. Ct. 417, 136 L. Ed. 2d 347 (1996) (Stevens, J., dissenting) ("I . . . assume that motorists—even those who are not carrying contraband—have an interest in preserving the privacy of their vehicles and possessions from the prying eyes of a curious stranger"); *Brown* v. *State*, supra, 182 P.3d 630 ("These searches result in a substantial interruption of motorists' travels. Because drugs are easily concealed in crevices, behind paneling, and under seats and carpeting, a search for drugs can be a painstaking business."); *State* v. *Retherford*, 93 Ohio App. 3d 586, 593–94, 639 N.E.2d 498 (1994) (noting that motorists are routinely delayed in travels and asked to relinquish right of privacy in vehicles and luggage); *O'Boyle* v. *State*, 117 P.3d 401, 415 (Wyo. 2005) ("*Terry* has been whittled away to the point that in some jurisdictions routine traffic stops are commonly turned into drug investigations through a variety of techniques including . . . seeking consent for a full roadside exploration of the motorist's car . . . . The result is a

far cry from a straightforward and unadorned traffic stop . . . .'' [Citations omitted; internal quotation marks omitted.]); R. Whorf, ''Consent Searches Following Routine Traffic Stops: The Troubled Jurisprudence of a Doomed Drug Interdiction Technique,'' 28 Ohio N.U. L. Rev. 1, 18–20 (2001–2002) (discussing how consent searches, especially suspicionless consent searches, infringe on dignitary interests). Although, ostensibly, a driver in this situation may refuse consent, most detained motorists will feel compelled to grant permission to search their vehicles, regardless of whether they in fact are carrying contraband. See 4 W. LaFave, Search and Seizure (4th Ed. 2004) § 9.3 (e), p. 395 and notes; *Brown* v. *State*, supra, 630 (listing studies demonstrating that ''the vast majority of motorists who are subjected to this type of request will accede to the officer and allow the search''); *State* v. *Carty*, supra, 170 N.J. 644–45 (noting that ''[i]n the context of motor vehicle stops, where the individual is at the side of the road and confronted by a uniformed officer seeking to search his or her vehicle, it is not a stretch of the imagination to assume that the individual feels compelled to consent'' and listing studies indicating that nearly 95 percent of detained motorists granted consent to search). Recognizing these concerns, many states have enacted statutory provisions protecting motorists detained because of a routine traffic violation from consent searches except when the circumstances evidence criminal activity independent of the traffic violation. See footnote 6 of this dissenting opinion.

Although we have no specific data evidencing the frequency of consent searches during routine traffic stops in Connecticut, the fact that so many people must drive in order to fulfill their daily work, family and educational needs means that many Connecticut citizens may be subject to requests for consent searches and the significant interruption that such searches entail. See *Brown* v. *State*, supra, 182 P.3d 631–32 (''because most people need to travel by car, and because of the near-inevitability that people will commit traffic infractions, the 'routine' traffic stop has become the doorway to widespread and probing searches of persons, vehicles, and luggage''). Moreover, research suggests that these searches have in fact become more frequent, in part because of the dual wars on drugs and terrorism. See *Brown* v. *State*, supra, 629 (listing ''[c]ases from other states [that] show that this police practice is not an isolated phenomenon''); 4 W. LaFave, supra, p. 395 (''[r]equesting consent has apparently become yet another part of the 'routine' of 'routine traffic stops' ''); S. Lazos Vargas, ''Missouri, The 'War on Terrorism' and Immigrants: Legal Challenges Post 9/11,'' 67 Mo. L. Rev. 775, 813, 826 (2002). I therefore conclude that there are strong public policy arguments weighing in favor of limiting consent searches undertaken during routine traffic stops.

V

CONCLUSION

Having reviewed the relevant *Geisler* factors, I conclude that article first, § 7, of the Connecticut constitution provides greater protection than the federal constitution with respect to consent searches during routine traffic stops in that it requires that the scope of a *Terry* stop be reasonable both in substance and duration. This conclusion is supported by this court's long emphasis on the overall reasonableness of *Terry* searches, especially in light of the uncertain and conflicting dictates of federal law, as well as persuasive sister state precedents and contemporary public policy concerns. In order to effectuate the requirement that *Terry* stops be both substantively and temporally reasonable in scope, I further conclude that a consent search during[14] a routine traffic stop is not valid unless there is a reasonable and articulable suspicion to believe that a detained driver or passenger has engaged in, or is about to engage in, criminal activity.

In determining whether reasonable and articulable suspicion exists, "a court must consider if, relying on the whole picture, the detaining officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity. . . . [A] court must examine the specific information available to the police officer at the time of the initial intrusion and any rational inferences to be derived therefrom." (Internal quotation marks omitted.) *State* v. *Batts*, 281 Conn. 682, 691–92, 916 A.2d 788, cert. denied, 552 U.S. 1048, 128 S. Ct. 667, 169 L. Ed. 2d 524 (2007). Although a trial court's findings of facts in connection with a suppression hearing are entitled to deference, the determination of whether reasonable and articulable suspicion existed is a question of law, subject to plenary review. See *State* v. *Brown*, supra, 279 Conn. 516 ("The defendant challenges not the trial court's factual findings but, rather, its legal conclusions that the actions of the police constitutionally were valid. These conclusions are subject to plenary review.").

In the present case, the Appellate Court thoroughly reviewed the circumstances surrounding the stop and concluded as a matter of law that the state "did not establish that [Officer] Morgan had reasonable suspicion to expand the scope of the stop into an inquiry of whether the defendant was engaged in illegal activity unrelated to the underlying stop or that Morgan was proceeding on anything more than a mere hunch." *State* v. *Jenkins*, supra, 104 Conn. App. 434. My own review of the record leads me to the same conclusion. Accordingly, I conclude that the consent search was invalid under article first, § 7, of the Connecticut constitution. Therefore, I respectfully dissent from the majority's decision reversing the judgment of the Appellate Court.

[1] I agree with the majority's conclusion in part I of its opinion that, because

the defendant failed to create an adequate record before the trial court regarding the validity of the patdown search, the Appellate Court improperly considered that conduct in analyzing the defendant's claims regarding the vehicle search, other than as a historical fact.

[2] In addition to asking the court to adopt this standard under the state constitution, the defendant requests that this court adopt the following rules: (1) an officer conducting a routine traffic stop that has not elevated into a justifiable investigatory stop must inform the motorist that he is free to leave and free to refuse consent to search as a prerequisite to obtaining consent after the traffic stop has ended; (2) the state must show that any exchange between an officer and a motorist clearly and unambiguously supports the conclusion that the motorist actually consented to the search performed; and (3) the state should be held to a higher standard of proof for consent searches that occur during routine, noncriminal traffic stops. The defendant has offered no analysis directly addressing these claims or any case law that would tend to support them. I therefore decline to address them.

[3] In *Muehler* v. *Mena*, supra, 544 U.S. 101, the court noted: "Our recent opinion in *Illinois* v. *Caballes*, [supra, 543 U.S. 405], is instructive. There, we held that a dog sniff performed during a traffic stop does not violate the [f]ourth [a]mendment. We noted that a lawful seizure can become unlawful if it is prolonged beyond the time reasonably required to complete that mission, but accepted the state court's determination that the duration of the stop was not extended by the dog sniff. . . . Because we held that a dog sniff was not a search subject to the [f]ourth [a]mendment, we rejected the notion that the shift in purpose from a lawful traffic stop into a drug investigation was unlawful because it was not supported by any reasonable suspicion. . . . Likewise here, the initial . . . detention was lawful; the Court of Appeals did not find that the questioning extended the time [the defendant] was detained. Thus no additional [f]ourth [a]mendment justification for inquiring about [the defendant's] immigration status was required." (Citations omitted; internal quotation marks omitted.)

Because neither *Muehler* nor *Caballes* involved a separate search under the fourth amendment, the United States Supreme Court cases relied on by the state and the majority do not squarely address the proper analysis of a shift in purpose between a lawful *Terry* stop and a consent search. Nonetheless, because I recognize that the weight of federal precedent after *Arizona* v. *Johnson*, supra, 129 S. Ct. 790, tends toward applying a purely durational analysis to both police inquiries and requests for consent made within a routine traffic stop; see *United States* v. *Everett*, 601 F.3d 484, 489–90 (6th Cir. 2010); *United States* v. *Taylor*, 596 F.3d 373, 375–76 (7th Cir. 2010); *United States* v. *Rivera*, 570 F.3d 1009, 1013–15 (8th Cir. 2009); *United States* v. *Cousin*, United States District Court, Docket No.1:09-CR-89, 2010 U.S. Dist. LEXIS 3688, *8–10 (E.D. Tenn. January 19, 2010); *United States* v. *Mbodji*, United States District Court, Docket No. 1:09-CR-29, 2010 U.S. Dist. LEXIS 53356, *13–14 (E.D. Tenn. January 8, 2010); *United States* v. *McBride*, United States District Court, Docket No. 1:09-CR-21-TS, 2009 U.S. Dist. LEXIS 113405, *12–13 (N.D. Ind. December 4, 2009); I do not contest the majority's conclusion regarding federal law.

[4] See *State* v. *Teagle*, 217 Ariz. 17, 23, 170 P.3d 266 (App. 2007) ("any additional delay attributable to asking for defendant's consent was de minimus and did not unreasonably extend the traffic stop"); *People* v. *Vibanco*, 151 Cal. App. 4th 1, 14, 60 Cal. Rptr. 3d 1 (2007) ("[i]nvestigative activities beyond the original purpose of a traffic stop . . . are permissible as long as they do not prolong the stop beyond the time it would otherwise take"); *Holland* v. *States*, 696 So. 2d 757, 759 (Fla. 1997) ("the conformity clause [of article first, § 12, of the Florida constitution] not only binds the Florida courts to follow the United States Supreme Court's interpretation of the [f]ourth [a]mendment to the United States [c]onstitution but also to 'provide no greater protection than those interpretations' "); *People* v. *Harris*, 288 Ill. 2d 222, 237, 886 N.E.2d 947 (2008) (adopting durational test for scope of inquiry of traffic stop); *Colbert* v. *Commonwealth*, 43 S.W.3d 777, 778 (Ky.) (Kentucky constitutional protections offer no greater protection than fourth amendment), cert. denied, 534 U.S. 964, 122 S. Ct. 375, 151 L. Ed. 2d 285 (2001); *State* v. *Patterson*, 868 A.2d 188, 191 (Me.) (fourth amendment and article first, § 5, of Maine constitution "offer identical protection against unreasonable searches and seizures"), cert. denied, 546 U.S. 815, 126 S. Ct. 339, 163 L. Ed. 2d 51 (2005); *People* v. *Chapman*, 425 Mich. 245, 252, 387 N.W.2d 835 (1986) (Michigan constitution generally provides no greater protections than fourth amendment); *State* v. *Robinette*, 80 Ohio St. 3d 234,

238, 685 N.E.2d 762 (1997) (protections of Ohio constitution are coextensive with fourth amendment); *State* v. *Cox*, 171 S.W.3d 174, 181–82 (Tenn. 2005) (applying durational test to scope of routine traffic stop and declining to adopt rule requiring reasonable suspicion for consent searches during such stops).

[5] In *State* v. *Washington*, 898 N.E.2d 1200, 1206 (Ind. 2008), the Indiana Supreme Court held that, under the Indiana constitution, a consent search during a routine traffic stop must be substantively reasonable. The reasonableness inquiry turns "on a balance of: (1) the degree of concern, suspicion, or knowledge that a violation has occurred, (2) the degree of intrusion the method of search or seizure imposes on the citizen's ordinary activities, and (3) the extent of law enforcement needs." (Internal quotation marks omitted.) Id.

In *State* v. *McKinnon-Andrews*, 151 N.H. 19, 25, 846 A.2d 1198 (2004), the New Hampshire Supreme Court adopted a three factor test to determine whether the permissible scope of a routine traffic stop has been exceeded: "(1) the question is reasonably related to the initial justification for the stop; (2) the law enforcement officer had a reasonable articulable suspicion that would justify the question; and (3) in light of all the circumstances, the question impermissibly prolonged the detention or changed its fundamental nature." See also *State* v. *Carbo*, 151 N.H. 550, 552, 864 A.2d 344 (2004) ("In *McKinnon-Andrews*, we dealt with the issue of expanding the scope of a police stop by adopting a three-part test to evaluate the validity of the police conduct. . . . This test is designed to regulate police conduct by not allowing police to fundamentally alter . . . the nature of the stop by converting it into a general inquisition about past, present and future wrongdoing, absent an independent basis for reasonable suspicion or probable cause." [Citation omitted; internal quotation marks omitted.]).

In *State* v. *McClendon*, 350 N.C. 630, 636, 517 S.E.2d 128 (1999), the North Carolina Supreme Court held: "As we have stated previously, [a]rticle I, [§] 20 of our North Carolina [c]onstitution, like the [f]ourth [a]mendment [to the federal constitution], protects against unreasonable searches and seizures. . . . In order to further detain a person after lawfully stopping him, an officer must have reasonable suspicion, based on specific and articulable facts, that criminal activity is afoot." (Citation omitted.) Although *McClendon* involved a dog sniff, I nonetheless find it persuasive as a general statement of the court's approach to the scope of a routine traffic stop.

In *State* v. *Cunningham*, 183 Vt. 401, 409–10, 954 A.2d 1290 (2008), the Vermont Supreme Court held that, "[u]nder both the [f]ourth [a]mendment and [a]rticle 11 [of the Vermont constitution], a traffic stop is a seizure and must be supported by a reasonable suspicion of criminal activity. . . . We also inquire into whether [the subsequent investigation] was reasonably related in scope to the circumstances which justified the interference in the first place. . . . An investigative stop, based at its inception on a reasonable suspicion, may reveal further information that justifies greater restrictions on a suspect's liberty, up to and including arrest." (Citations omitted; internal quotation marks omitted.) The majority attempts to distinguish *Cunningham* because it concerned a dog sniff rather than a consent search. I nonetheless find it persuasive as a general statement of the court's approach to the scope of a routine traffic stop.

Similarly, in *O'Boyle* v. *State*, 117 P.3d 401, 410–12 (Wyo. 2005), the Wyoming Supreme Court held that article first, § 4, of the Wyoming constitution requires that searches conducted during routine traffic stops, including consent searches, be reasonable under the circumstances. The majority attempts to distinguish *O'Boyle* on the ground that the decision was dependent on local factors. While the Wyoming Supreme Court did look to the impact of drug interdiction traffic stops on Interstate 80, a national drug trafficking route that bisects the state, the court grounded its decision on prior precedents interpreting the state's constitutional search and seizure protections as well as general policy concerns favoring the protection of citizens' privacy rights. Id., 411.

Although these cases do not require the exact relief the defendant in the present case seeks, they nonetheless are persuasive evidence that suspicion of a traffic violation, without more, does not authorize free ranging roadside investigations fettered only by temporal limitations.

[6] See Ala. Code § 32-1-4 (Cum. Sup. 2009) ("[e]xcept when an arresting officer cites a person with an [electronic ticket], the officer shall, upon the giving by such person of a sufficient written bond, approved by the arresting officer, to appear at such time and place, forthwith release the person from custody"); Mont. Code Ann. § 46-5-403 (2007) ("[a] stop authorized by [§] 46-5-401 or [§] 46-6-411 may not last longer than is necessary to effectuate the purpose of the stop"); Or. Rev. Stat. § 810.410 (3) (2007) ("A police officer . . . [c] May make an inquiry into circumstances arising during the

course of a detention and investigation under paragraph [b] of this subsection that give rise to a reasonable suspicion of criminal activity. . . . [e] May request consent to search in relation to the circumstances referred to in paragraph [c] of this subsection or to search for items of evidence otherwise subject to search or seizure under [Or. Rev. Stat.] § 133.535."); R.I. Gen. Laws § 31-21.2-5 (b) (Sup. 2009) ("[n]o operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity"); Wash. Rev. Code § 46.61.021 (2) (2008) ("[w]henever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction"); see also *State* v *McPherson*, 892 So. 2d 448, 451 (Ala. Crim. App. 2004) (under Ala. Code § 32-1-4 [1975], once officer has completed ticketing driver, "[t]he officer may further detain the driver only if he has probable cause to arrest the driver for some other non-traffic offense . . . or has a reasonable suspicion of the driver's involvement in some other criminal activity justifying further detention for investigatory purposes" [citation omitted]); *Sims* v. *State*, 356 Ark. 507, 513, 514, 157 S.W.3d 530 (2004) (The court relied in part on Ark. R. Crim. P. 3.1 to conclude that "as part of a valid traffic stop, a police officer may detain a traffic offender while the officer completes certain routine tasks, such as computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or warning. . . . During this process, the officer may ask the motorist routine questions . . . [including] whether the officer may search the vehicle, and he may act on whatever information is volunteered. . . . [O]nce the purposes of the initial traffic stop [were] completed, the officer could not further detain the vehicle or its occupants unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention."); *State* v. *Case*, 338 Mont. 87, 95, 162 P.3d 849 (2007) (noting that under Mont. Code Ann. § 46-5-403, routine traffic stop cannot exceed time necessary to effectuate purpose of stop).

[7] See *People* v. *Brandon*, 140 P.3d 15, 19–20 (Colo. App. 2005) (drawing on state and federal law in concluding that "[o]nce the underlying basis for an initial traffic stop has concluded . . . [l]engthening the detention for further questioning beyond that related to the initial stop is permissible if [1] the officer has an objectively reasonable and articulable suspicion illegal activity has occurred or is occurring; or [2] the initial detention has become a consensual encounter"); *Commonwealth* v. *Torres*, 424 Mass. 153, 158, 674 N.E.2d 638 (1997) (relying on both federal and state constitutional provisions in concluding that "[i]t is well settled that a police inquiry in a routine traffic stop must end on the production of a valid license and registration unless the police have grounds for inferring that either the operator or his passengers were involved in the commission of a crime . . . or engaged in other suspicious conduct" [internal quotation marks omitted]); *State* v. *King*, 157 S.W.3d 656, 662 (Mo. App. 2004) (Relying on federal constitution in concluding that "[t]he [traffic stop] may only last for the time necessary for the law enforcement officer to conduct a reasonable investigation of the traffic violation . . . . Once the traffic stop is completed, the person detained must be permitted to leave unless the law enforcement officer has an objectively reasonable suspicion, based on specific, articulable facts, that the person is involved in criminal activity." [Citations omitted.]); *State* v. *Draganescu*, 276 Neb. 448, 461, 755 N.W.2d 57 (2008) (Relying on state constitutional grounds set forth in *State* v. *Louthan*, 275 Neb. 101, 744 N.W.2d 454 [2008], in concluding that "[t]o detain a motorist for further investigation past the time reasonably necessary to conduct a routine investigation incident to a traffic stop, an officer must have a reasonable, articulable suspicion that the motorist is involved in criminal activity unrelated to the traffic violation. Reasonable suspicion for further detention must exist after the point that an officer issues a citation.").

The majority suggests that the analytical approach set forth in these cases is not implicated in the present case because the factual predicate in this case is an *ongoing* traffic stop. I believe that they nonetheless illuminate our sister courts' discomfort with overreaching in connection with traffic stops, but, because I would conclude that the Connecticut constitution requires a rule limiting the use of consent searches at any point during a routine traffic stop, I do not primarily rely on these cases.

[8] Subsequently in *State* v. *Morlock*, 289 Kan. 980, 988–89, 218 P.3d 801 (2009), the Kansas Supreme Court noted that: "[T]he *Muehler* [c]ourt's test of 'no extension' of the detention's duration was expanded [four] years later by the *Johnson* [c]ourt to become a test of 'no measurable extension.'

Johnson also eliminated any doubt that the *Muehler* rationale applied to traffic stops. . . . *Johnson* therefore also confirmed that an officer's inquiries into matters unrelated to the justification for the stop did not necessarily require reasonable suspicion." (Citations omitted.) The court's analysis was confined, however, to the federal constitution, and did not address any limitations imposed by the state constitution or undermine its requirement that reasonable and articulable suspicion of criminal activity unrelated to the initial stop must exist before a police officer validly can ask for consent during a routine traffic stop.

[9] Like the Connecticut constitution, article first, paragraph seven, of the New Jersey constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

[10] Indeed, the majority takes notice of many of these studies in its discussion of the *Geisler* factor relating to public policy.

[11] Although the majority suggests that *Fort* is undermined because *Wiegand* no longer would be good law after *Illinois* v. *Caballes*, supra, 543 U.S. 405, that conclusion is unwarranted because the court in *Fort* grounded its reliance on *Wiegand* on the proposition that "*under* [*article first, § 10*], *of the Minnesota* [*c*]*onstitution* any expansion of the scope or duration of a traffic stop must be justified by a reasonable articulable suspicion of other criminal activity." (Emphasis added.) *State* v. *Fort*, supra, 660 N.W.2d 419.

[12] Despite this specific language, the majority dismisses the import of *Brown* v. *State*, supra, 182 P.3d 624, because the Alaska Court of Appeals ultimately concluded that, under the specific facts of the case, it "need not decide whether [the state constitution] should be interpreted to completely preclude requests for searches during a routine traffic stop unless the search is related to the ground for the stop or is otherwise supported by a reasonable suspicion of criminality. We leave that question for another day. Because [the defendant's] case presents a particularly egregious example of this police practice, our holding in [the defendant's] case can be more narrow." Id., 634.

In revisiting *Brown*, the Alaska Court of Appeals has characterized that case as setting forth various considerations, not a per se rule that the detention becomes unreasonable—and thus constitutionally invalid—if the duration, manner, or scope of the investigation lasts longer than necessary to effectuate the purpose of the stop. See *Murphy* v. *Anchorage*, Alaska Court of Appeals, Docket No. A-10345, No. 5576, 2010 Alaska App. LEXIS 28, *11–12 (March 17, 2010) (memorandum decision); *Bostwick* v. *State*, Alaska Court of Appeals, Docket No. A-10224, No. 5569, 2010 Alaska App. LEXIS 21, *6–7 (February 24, 2010) (memorandum decision); *Skjervem* v. *State*, 215 P.3d 1101, 1105 (Alaska App. 2009). In my view, the Alaska court's qualification on the reach of the holding in *Brown* is insufficient to discount the persuasive value of the court's analysis in that case. That analysis emphasized the importance of considering the substantive reasonableness of a routine traffic stop, and highlighted the dangers of suspicionless consent searches during such stops. By contrast, the court's subsequent case-by-case application of factors seems arbitrary and inconsistent with the per se rules adopted by other states specifically to counter the same dangers. Moreover, even if the nondurational factors articulated in *Brown* are relied on by that court only occasionally, such an approach is inconsistent with the majority's per se rule that duration is the *only* factor relevant for fourth amendment purposes.

[13] The defendant and the amicus curiae focus much of their analysis of relevant policy considerations on what this court has labeled the "insidious specter of [racial] profiling." (Internal quotation marks omitted.) *State* v. *Donahue*, 251 Conn. 636, 648, 742 A.2d 775 (1999), cert. denied, 531 U.S. 924, 121 S. Ct. 299, 148 L. Ed. 2d 240 (2000). While I agree with the state that the record does not support a finding of racial bias in this particular case, I note the body of research demonstrating the way consent searches during routine traffic stops function as tools of racial and ethnic profiling, and the disproportionate impact of such searches on minority drivers. See, e.g., J. Burkoff, "Search Me?," 39 Tex. Tech. L. Rev. 1109, 1123 (2007) ("consent searches which are undertaken largely upon the basis of an individual's race, class, or ethnicity have increasingly become a major social and political concern in the United States, and rightly so"); D. Harris, " 'Driving While Black' and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops," 87 J. Crim. L. & Criminology 544, 546–47 (1997)

(discussing police use of traffic code to stop disproportionate number of African-American and Hispanic drivers); A. Mucchetti, "Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities," 8 Harv. Latino L. Rev. 1, 2 (2005) ("The criminalization of race takes on special meaning in the context of traffic stops. Statistics and studies overwhelmingly support the contention that racial profiling . . . has occurred for decades on our nation's streets and highways."); W. Oliver, "With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling," 74 Tul. L. Rev. 1409, 1411 (2000) (discussing use of pretextual stops and consent searches).

[14] As the majority notes, some courts have held that the timing of the questioning and request for consent have independent constitutional significance, and therefore require additional justification for inquiries made after a discrete event signals the end of the traffic stop or after the purposes of the traffic stop have been effectuated. See footnote 7 of this dissenting opinion. In the present case, Officer Morgan retained the defendant's license and paperwork while he asked him to step out of the car, frisked him, and asked for consent to search the car. Under the approach of some of our sister states, such a search would be legitimate because Morgan had not yet concluded the traffic stop.

Although I find the reasoning of these courts and their concerns with police overreaching to be persuasive, I believe that they do not go far enough in protecting the rights of drivers under article first, § 7, of the Connecticut constitution, because an unsubstantiated, suspicionless consent search exceeds the permissible scope of a routine traffic stop and violates a driver's privacy whether it is conducted within the first thirty seconds or the last thirty seconds of that encounter. Moreover, this approach vests police with the power to determine, by either prolonging or expediting the requirements of the routine traffic stop, when additional justification is needed. Therefore, I adopt the reasoning articulated by the New Jersey Supreme Court: "A suspicionless consent search shall be deemed unconstitutional whether it preceded or followed completion of the lawful traffic stop." *State* v. *Carty*, supra, 170 N.J. 647.