
New York Supreme Court

APPELLATE DIVISION – FOURTH DEPARTMENT

In the Matter of the Application of

ROCHESTER POLICE LOCUST CLUB, INC.,
MICHAEL MAZZEO, and KEVIN SIZER,

Petitioners-Respondents,

– against –

CITY OF ROCHESTER, LOVELY A. WARREN, as Mayor of the City of Rochester,
Respondents-Respondents,

COUNCIL OF THE CITY OF ROCHESTER,

Respondent-Appellant,

– and –

THE MONROE COUNTY BOARD OF ELECTIONS,

Respondent.

**BRIEF OF AMICUS CURIAE
NEW YORK CIVIL LIBERTIES UNION**

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PRELIMINARY STATEMENT

Civilian oversight of policing is an empty exercise if the police themselves have the ability to unilaterally reject the findings and recommendations of oversight bodies. The voters of Rochester, seeking meaningful, independent oversight of policing in their city, overwhelmingly chose to entrust the power of police discipline to an independent agency with binding authority to investigate and respond to allegations of misconduct. The court below eviscerated the enforcement powers invested in that agency by the voters. For all the reasons put forth by the respondent-appellant, the court wrongly deprived the City of Rochester of its power to establish civilian oversight of its own police force, and *amicus* urges this Court to reverse. *Amicus* writes separately to provide additional necessary detail regarding the history, context, and functioning of police oversight bodies like the one at issue in this appeal and to highlight the strong public policy interests that weigh in favor of reversal.

Courts have long recognized that the unique nature and power of police give rise to compelling public policy interests that must be considered when interpreting laws related to the discipline and removal of public employees. Police officers exercise an extraordinary degree of authority on behalf of the state. To guard against abuse, the systems for holding that authority in check must be similarly powerful and invested with transparent, public oversight. Existing systems that rely

on advisory civilian review boards have demonstrated themselves to be structurally incapable of holding police accountable, even in the most egregious cases where officers engage in excessive force.

Local governments like Rochester have created institutions of greater transparency and accountability largely in *response* to the failures of non-independent police discipline mechanisms. These local governments must have the power to design and implement systems that wield the authority necessary to protect members of the public from police misconduct. Particularly in light of recent and ongoing revelations regarding the killing of Daniel Prude at the hands of the Rochester Police—revelations that highlight the fatal shortcomings of a system that relies on the police to investigate themselves¹—such authority is essential.

The court below did not properly consider the immense harm to the public interest wrought by the invalidation of this crucial check and balance—one explicitly sought by the public whose safety the Rochester Police Department is sworn to protect. For these and all other reasons put forth by the respondent-appellant, this Court should reverse the decision below and should affirm the validity of Local Law No. 2.

¹ See Michael Wilson & Edgar Sandoval, *Documents Reveal How the Police Kept Daniel Prude's Death Quiet*, New York Times (Sept. 15, 2020), <https://www.nytimes.com/2020/09/15/nyregion/rochester-police-daniel-prude.html>.

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae the New York Civil Liberties Union (NYCLU), the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with more than 180,000 members and supporters. The NYCLU defends and protects civil rights and civil liberties, as embodied in the United States Constitution, New York State Constitution, and state and federal law. The NYCLU is committed to police transparency and accountability, and it has frequently engaged with communities, organizers, and policymakers throughout New York State on proposals to create or strengthen systems for independent oversight of law enforcement. For example, the NYCLU has regularly engaged with the New York City Civilian Complaint Review Board since its inception through public reporting, written correspondence, and participation in public meetings and has supported efforts to strengthen the Board's independence and ability to impose discipline on New York Police Department (NYPD) officers.²

² See, e.g., The New York Civil Liberties Union, *Testimony Before the 2019 New York City Charter Revision Commission Regarding Police Accountability*, Mar. 7, 2019 (calling for reforms to the New York City Charter to increase the power and independence of the CCRB and remove or limit the police commissioner's authority over police discipline), available at <https://www.nyclu.org/en/publications/testimony-regarding-police-accountability>; The New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City 1994-2006* (2007) (analyzing the CCRB's failures and making recommendations for improvements in order to strengthen police accountability), available at https://www.nyclu.org/sites/default/files/publications/nyclu_pub_mission_failure.pdf; The New York Civil Liberties Union, *Report: Five Years of Civilian Review: A Mandate Unfulfilled* (1998) (same), available at <https://www.nyclu.org/sites/default/files/publications/NYCLU%20->

The NYCLU's offices throughout New York State have similarly engaged with local police departments and local civilian or citizen review boards, including in Rochester, where the NYCLU's Genesee Valley Chapter played a key role in advocating for the legislation at issue in this litigation. The NYCLU has also advocated for increased transparency surrounding issues of police misconduct and discipline, including playing a leading role in recent, successful advocacy efforts to repeal Civil Rights Law Section 50-a, which blocked public access to records of police misconduct.

BACKGROUND

This case involves an appeal from a Monroe County Supreme Court decision that prevented the City of Rochester from transferring the authority to discipline police officers from the Chief of the Rochester Police Department (“RPD”) to a newly established Police Accountability Board (“PAB”). On May 21, 2019, the Rochester City Council passed Local Law No. 2 of 2019 to create a PAB that, unlike the existing Civilian Review Board (“CRB”), would have full authority to

[%20Five%20Years%20of%20Civilian%20Review%20-%20A%20Mandate%20Unfulfilled%20July%205%2C%201993-%20July%205%2C%201998.pdf](https://www.nyclu.org/sites/default/files/publications/NYCLU.CivilianReviewPolicing.CaseStudyRep.1993.pdf); The New York Civil Liberties Union, *Report: Civilian Review of Policing: A Case Study* (1993) (recommending creation of independent CCRB and putting forth specific recommendations for its structure and function), available at <https://www.nyclu.org/sites/default/files/publications/NYCLU.CivilianReviewPolicing.CaseStudyRep.1993.pdf>.

investigate allegations of misconduct by RPD officers and issue binding decisions related to officer discipline.³ The proposal was put directly before the public in a November 2019 referendum, and Rochester residents overwhelmingly voted in support, with the measure being approved by more than 75 percent of the voters.⁴

The passage of Local Law No. 2 and its subsequent approval by voters was the result of years of organizing led by communities in Rochester, primarily communities of color, who had been directly impacted by police misconduct and who were rightly disillusioned with existing mechanisms for holding RPD officers accountable.⁵ On May 7, 2020, however, the trial court issued a decision eliminating the PAB's authority to conduct hearings and to discipline RPD officers, the central purpose behind the legislation.

³ James A. Brown, *Rochester City Council Approves Police Accountability Board*, Rochester City Newspaper, MAY 22, 2019, <https://www.rochestercitynewspaper.com/rochester/rochester-city-council-approves-police-accountability-board/content?oid=10316613>.

⁴ Brian Sharp, *Rochester Voters Approve Police Accountability Board, Setting Stage for Court Battle*, Democrat & Chronicle, Nov. 5, 2019, <https://www.democratandchronicle.com/story/news/2019/11/05/police-accountability-board-rochester-ny-election-results-passes-referendum-vote/4171703002/>.

⁵ See, e.g., Barbara Lacker-Ware and Theodore Forsyth, *The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York* (2017), <http://enoughisenough.rocus.org/wp-content/uploads/2017/02/The-Case-for-an-Independent-Police-Accountability-System-2.1.17-FINAL.pdf> (discussing the failings of the RPD and CRB to hold officers accountable and calling for the creation of a board with real disciplinary power).

ARGUMENT

The scope of local government authority to create and administer strong, independent systems for police oversight must be interpreted in light of the vast powers afforded to police officers. As the Court of Appeals has emphatically held, police officers have the authority to exercise state power in a manner unlike nearly any other public or private actor, and laws regarding police oversight must be interpreted in light of that unique power.⁶ Police have the power to temporarily detain and frisk people,⁷ to arrest them and subject them to potentially lifelong consequences by referral to the criminal legal system for prosecution,⁸ and to use force on behalf of the state in carrying out their official functions.⁹ Police officers who use deadly force are judged by different standards than members of the public¹⁰ in the rare cases where officer conduct is judged at all in the context of criminal fault. Interpreted with these powers in mind, Local Law No. 2 reflects a

⁶ See *Patrolmen's Benevolent Ass'n of City of New York, Inc. v. New York State Pub. Employment Relations Bd.*, 6 N.Y.3d 563, 576 (2006) (emphasizing “the quasi-military nature of a police force”) (citing *People ex rel. Masterson v. French*, 100 N.Y. 249, 299 (1888)).

⁷ N.Y. Crim. Proc. Law § 140.50 (McKinney).

⁸ See N.Y. Crim. Proc. Law § 140.10 (McKinney).

⁹ See N.Y. Penal Law § 35.30 (McKinney).

¹⁰ See *id.*

sound and legally appropriate public policy response to systemic failures to hold RPD officers accountable for misconduct.

I. Prior to the Enactment of Local Law No. 2, Existing Police Accountability Mechanisms in Rochester Were Inherently Limited and Ineffective

Mechanisms for holding police officers accountable when they abuse the extraordinary degree of authority granted to them by state law are limited. Accountability generally is pursued in one of three forums: the criminal legal system, internal police investigation, and civilian oversight entities. As set forth more fully below, criminal prosecutions of officers are vanishingly rare, and internal investigation units are at odds with the reality or perception of meaningful response to officer misconduct. Accordingly, the ability of local governments to hold the power of law enforcement in check depends on their ability to establish a powerful and independent civilian oversight system. This Court should assess this case with that strong public interest underpinning its analysis.

Criminal misconduct is generally within the jurisdiction of local district attorneys to investigate and prosecute, but given the close working relationship required between police and prosecutors, such investigations and prosecutions are rare.¹¹ Owing in part to these conflicts of interest and the need for a stronger

¹¹ Amelia Thomson-DeVeauz et al., *Why It's So Rare for Police Officers to Face Legal Consequences*, FiveThirtyEight, June 4, 2020, <https://fivethirtyeight.com/features/why-its-still->

degree of independent oversight for police officers, New York lawmakers have recognized the unique need for a separate, dedicated response to certain cases of alleged police misconduct through the criminal legal system. In 2015, the Governor issued an executive order appointing the Attorney General to act as special prosecutor, superseding the authority of district attorneys, in certain cases where police kill someone.¹² In 2020, the Legislature codified and expanded this executive order, passing into law a requirement that the Attorney General investigate all cases in which a police officer's acts or omissions may have caused a person's death.¹³ But these relatively recent enactments are all limited to the rare case of a police-related *death*; they do not and cannot correct the failures of the criminal legal system to provide a robust response to all other types of misconduct.

Internal affairs bureaus or similar divisions—in which police department employees investigate alleged instances of officer misconduct by their colleagues—also do not provide for a robust level of accountability because they

[so-rare-for-police-officers-to-face-legal-consequences-for-misconduct/](#) (noting that, in a database containing records from 2005 through March 2020, only 110 law enforcement officers nationwide had been charged with murder or manslaughter in relation to an on-duty shooting, despite the fact that there are approximately 1,000 incidents each year in which police fatally shoot people).

¹² N.Y. Comp. Codes R. & Regs. tit. 9, § 8.147.

¹³ 2020 N.Y. Laws ch. 95.

create inherent conflicts of interest; in essence, they ask the public to trust police departments to police themselves. Given their situation entirely within police department structures, such units have been subject to little meaningful oversight, and it is not evident that these units are successful in (or even intended for) proactively addressing officer misconduct.¹⁴

In Rochester, for example, the killing of Daniel Prude was initially the subject of an internal investigation by the RPD’s internal affairs division, the Professional Standards Section (“PSS”), that quickly—and quietly—cleared the officers involved of any wrongdoing. The outcome of this internal investigation was only revealed months later, alongside apparent attempts by RPD leadership to withhold information about Mr. Prude’s killing out of concern over losing control of the public narrative surrounding his death and the RPD’s response.¹⁵

Rochester is not alone. In New York City, a federal judge noted that “[t]he NYPD’s Internal Affairs Bureau (“IAB”) can, in theory, initiate its own investigations into alleged misconduct based on media reports, although no evidence was offered that IAB has in fact done this in response to the media

¹⁴ Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (1998), available at <https://www.hrw.org/legacy/reports98/police/uspo25.htm>.

¹⁵ Hannah Knowles et al., *Officials in Rochester, N.Y., Tried to Withhold Information about Daniel Prude’s Death,, Documents Show*, Washington Post (Sept. 16, 2020), <https://www.washingtonpost.com/nation/2020/09/15/daniel-prude-death-documents/>.

reports over the last decade concerning racially biased and/or constitutionally unjustified stops and frisks.”¹⁶ That a department may prioritize its public image and messaging over the interests of transparency and accountability raises serious questions about how any internal structures ostensibly responsible for holding officers to account for misconduct can be trusted to operate effectively.

In order to address some of the shortcomings of these inadequate forms of police oversight, civilian review boards began to emerge as early as the 1940s, but the trend toward their adoption did not fully take root until the 1960s and 1970s, coinciding with the Civil Rights Movement and shifting public attitudes toward police forces.¹⁷ These boards were envisioned as a potential solution for providing greater public oversight of police abuses by allowing for investigations into allegations of misconduct to be conducted by officials from outside police departments.

In practice, however, most boards’ actual powers have been quite limited. As discussed in a 2016 article surveying review boards in the nation’s largest municipalities, review boards generally fall into one of four categories: boards that independently investigate and either recommend or directly impose discipline,

¹⁶ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 617 (S.D.N.Y. 2013).

¹⁷ Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 Seton Hall L. Rev. 1033, 1040-41 (2016).

boards that review and make recommendations based on already concluded internal police investigation, boards that allow the public to appeal internal police findings, and boards that serve a limited auditor function.¹⁸ Review boards from the first category—with at least some role in actually setting or imposing discipline authority, like the PAB envisioned by Local Law No. 2—are widely acknowledged as the most effective, but they are among the least common.¹⁹ Rochester’s pre-PAB CRB fits within the second category described in this survey; its mandate has been to review and make recommendations based on investigations conducted by the RPD’s Professional Standards Section (“PSS”), while lacking any independent authority to investigate complaints as the initial fact-finder or the ability to issue binding determinations.²⁰

II. Police Departments Routinely Ignore the Recommendations of Civilian Review Boards that Lack Final Disciplinary Authority, Undermining Public Confidence in the Integrity of Disciplinary Decision-Making and in Civilian Oversight of the Police More Broadly

Local and independent civilian oversight is a necessary component for promoting fair and accountable policing. But for such oversight to be effective, it

¹⁸ *Id.* at 1041.

¹⁹ *Id.*

²⁰ City of Rochester, *Civilian Review Board – Rochester Police Department*, <https://www.cityofrochester.gov/CivilianReviewBoard/> (last visited November 13, 2020).

must entail real authority. Many review boards that follow the CRB model in Rochester or the current model in New York City have rightly been criticized as “notoriously weak,” owing to their inability to enforce their recommendations.²¹

a. Rochester’s History of the RPD Rejecting its CRB’s Discipline Recommendations

Data from Rochester CRB and PSS reports provides a useful backdrop for understanding the motivation behind Local Law No. 2 and the compelling public policy reasons justifying its reforms to the police disciplinary system in Rochester. According to the most recent report posted on the CRB’s website, the CRB sustained 19 allegations of officer misconduct in the first half of 2017.²² Because the CRB’s findings are merely advisory, the agency could not act on those findings, and instead was required to forward its recommended findings to the RPD for further action. The RPD Chief rejected nine of these findings, resulting in no discipline for officers the CRB believed should face some form of punishment.²³ Of particular note is the ultimate disposition of allegations

²¹ Shaila Dewan & Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. Times, May 30, 2020, <https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html>.

²² Center for Dispute Settlement, *Police Community Relations Program: Civilian Review Board 2017 Second Quarter Report*, 5 (2017), available at <https://www.cityofrochester.gov/CivilianReviewBoard/>.

²³ *Id.* at 4-5

concerning the use of force. Out of six instances where the CRB sustained a finding that an officer had improperly used force, the Chief rejected all but one of these recommendations.²⁴

The Chief's routine rejection of CRB recommendations is also evident in the most recently published report from PSS. The report documents that, in 2018, there were 18 allegations of misconduct in which the Chief did not concur with the findings of the CRB; two-thirds of these instances resulted in the Chief imposing no discipline for allegations that had been sustained by the CRB.²⁵ These reports provide no real analysis of the factors that led to such high rates of non-concurrence, but the level of disconnect between the Chief and the CRB were a core concern of the Rochester City Council members and the communities who supported transferring disciplinary authority to the PAB through Local Law No. 2.²⁶

²⁴ *Id.* at 4.

²⁵ Rochester Police Dep't Prof'l Standards Section, *2018 Annual Report on Police Complaints*, 7 (2019), available at <https://www.cityofrochester.gov/PSSAnnualReports/>.

²⁶ *See, e.g., City Council to submit legislation for police accountability board next month*, 13WHAM.com (Jan. 14, 2019) (quoting Rochester City Council member Mitch Gruber's statement that "this is about making discipline a more transparent function"), available at <https://13wham.com/news/local/city-council-to-submit-its-own-legislation-for-police-accountability-board-next-month>.

b. Across the State, Police Departments Routinely Reject the Recommendations of Civilian Review Boards That Lack Disciplinary Authority

Low rates of concurrence between review board recommendations and the ultimate disciplinary decisions made by police agency heads are not unique to Rochester. New York City provides another clear illustration of the limited effectiveness of oversight agencies that lack substantive authority. The New York City Civilian Complaint Review Board (“CCRB”) has authority to investigate and make findings and recommendations regarding complaints from the public that allege misconduct involving an NYPD officer’s use of force, abuse of authority, discourtesy, or use of offensive language.²⁷ Like the CRB in Rochester, New York City’s CCRB does not have the authority to act upon its findings and recommendations; rather, the Charter requires the agency to submit those recommendations to the police commissioner.²⁸ Once these recommendations reach the NYPD, they are subject to the police commissioner’s complete plenary discretion, with the City Charter and Administrative Code granting the commissioner “control of the . . . discipline of the department of the police force of the department.”²⁹

²⁷ N.Y.C. Charter 440(c)(1) (McKinney).

²⁸ *Id.*

²⁹ N.Y.C. Charter 434(a) (McKinney).

In 2007, an NYCLU report that analyzed data from 2000 through 2004 found that the NYPD rejected CCRB recommendations at a rate of 63 percent.³⁰ Since then, while the rates vary year to year, every annual report from the CCRB tells the same story: the NYPD Commissioner frequently disregards the recommendations of its oversight agency.³¹ Commenting on these trends, former CCRB chair Richard Emery said, “The CCRB very quickly becomes irrelevant because it’s no longer a meaningful part of the disciplinary process, and is just a palliative to people who complain with no real consequence.”³²

More recently, in 2018, BuzzFeed obtained and published leaked records of NYPD misconduct, including the records of at least 319 officers who were allowed

³⁰ The New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City 1994-2006*, 2 (2007), available at https://www.nyclu.org/sites/default/files/publications/nyclu_pub_mission_failure.pdf.

³¹ The agency’s reports show that, in cases where the CCRB recommended a penalty other than formal charges the NYPD either imposed no discipline or issued a weaker penalty than recommended in 50 percent of cases in 2014, 38 percent of cases in 2015, 34 percent of cases in 2016, 58 percent of cases in 2017, and 48 percent of cases in 2018. In more serious cases where the CCRB recommended formal charges, final discipline was consistent with CCRB recommendations in only 18 percent of cases in 2014, 31 percent of cases in 2015, 40 percent of cases in 2016, 27 percent of cases in 2017, and 38 percent of cases in N.Y.C. Civilian Complaint Review Bd., *Annual Report: 2018*, 40-41 (2019), available at https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2018CCRB_AnnualReport.pdf.

³² Benjamin Mueller, *Police, at Odds with Oversight Board, Reject More of Its Penalties*, N.Y. Times, Apr. 12, 2018, <https://www.nytimes.com/2018/04/12/nyregion/police-at-odds-with-oversight-board-reject-more-of-its-penalties.html>.

to keep their jobs even after being found guilty of committing fireable offenses.³³

Only a handful of the more than 100 officers accused of the presumptively fireable offense of making false statements about a material matter were terminated.³⁴

In a similar analysis, the CCRB tracked 81 cases between 2010 and 2018 involving complaints that an officer had made a false statement and found that the NYPD's IAB imposed discipline in only two cases.³⁵ In fact, public concern over the NYPD's handling of these cases informed the drafting of a ballot measure to grant the CCRB new jurisdiction over false statements made in the course of CCRB proceedings, which was overwhelmingly approved by New York City voters.³⁶

Even more stark is the finding of a recent report from office of the New York State Office of the Attorney General. The report revealed that the CCRB

³³ Kendall Taggart & Mike Hayes, *Secret NYPD Files: Officers Who Lie and Brutally Beat People can Keep their Jobs*, BuzzFeed News, Mar. 5, 2018, <https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious#.ckLYB7aBJq>.

³⁴ Kendall Taggart & Mike Hayes, *Here's Why BuzzFeed News is Publishing Thousands of Secret NYPD Documents*, BuzzFeed News, Apr. 16, 2018, <https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database-explainer#.puDxrrJyp>.

³⁵ 2019 N.Y.C. Charter Revision Comm'n, *Preliminary Staff Report*, 23 (2019), available at <https://static1.squarespace.com/static/5bfc4cecf7fde7d3719c06/t/5cbe86c2e4966bc917c36e0f/1555990215645/PreliminaryStaffReport2019.pdf>.

³⁶ Vivian Wang, *N.Y. Election Results: Voters Approve All 5 Ballot Measures*, N.Y. Times, Nov. 5, 2019, <https://www.nytimes.com/2019/11/05/nyregion/ny-nj-election-results.html>.

recommended that more than 600 officers be suspended or terminated between 2014 and 2018.³⁷ However, the NYPD Commissioner elected to not follow any of the CCRB's recommendations to terminate officers, and only eight of these cases resulted in the next most serious penalty—suspension of more than one month and/or “dismissal probation”³⁸—being imposed.³⁹

The Attorney General noted that “[t]he fact that CCRB is not the ultimate decision-maker on issues of discipline seriously undermines its ability to ensure true accountability” and concluded that the NYPD should no longer retain control over the final outcome of disciplinary proceedings, calling instead for that power to be transferred to the CCRB.⁴⁰ Her report notes that “real, transparent accountability and oversight for officers who abuse their power” is essential “[t]o build and earn community trust,” and that “[i]ndividuals whose rights have been violated by

³⁷ N.Y. State Office of the Attorney Gen., *Preliminary Report on the New York City Police Department’s Response to Demonstrations Following the Death of George Floyd*, 41 (2020), available at <https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf>.

³⁸ Dismissal probation is a penalty in which the officer is dismissed but the NYPD delays imposing that dismissal for a one-year period, during which the officer is placed on probation and is subject to summary dismissal for further misconduct occurring during that one-year probationary period. See New York City Police Dep’t, *Discipline in the NYPD: 2019*, 6 (2020), available at https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/discipline/discipline-in-the-nypd-2019.pdf.

³⁹ *Id.*

⁴⁰ *Id.* at 40-41

police must have direct recourse to meaningful justice that is transparently and *independently administered*. This must include a more effective mechanism for delivering discipline and a more robust public review process.”⁴¹

An independent panel that conducted a review of the NYPD's disciplinary system in 2019 came to a similar conclusion. It noted that the ability of a police commissioner to depart from the recommended decisions of an oversight agency “may undermine the legitimacy of the trial process” as well as “the confidence of the public and other constituencies in the integrity, fairness, and robustness” of disciplinary decision-making.⁴²

The concerns raised by the Attorney General and independent panel, while focused on the NYPD, expose universal concerns related to civilian oversight of policing more broadly, and those concerns are borne out by polling data.

According to a Pew Research Center survey conducted from June 16-22, 2020, only 31 percent of those surveyed believed that police departments do a good or excellent job when it comes to holding officers accountable for misconduct.⁴³

⁴¹ *Id.* at 40 (emphasis added).

⁴² The Honorable Mary Jo White et al, *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department*, 27-28 (2019), available at <https://www.independentpanelreportnypd.net/assets/report.pdf>.

⁴³ *Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct*, Pew Research Center, July 9, 2020, <https://www.pewresearch.org/politics/2020/07/09/majority-of-public-favors-giving-civilians-the-power-to-sue-police-officers-for-misconduct/>. That lack of confidence appears to be shared by officers themselves. A 2016 survey found that 53 percent of

While this quantitative data is helpful to understanding the extent to which police departments reject the recommendations of oversight agencies and impose lesser (or no) sanctions, more granular information on the details of specific cases in which those recommendations have been overturned can provide important insight into the human impact of such practices. These cases highlight how accountability systems in which final decision-making authority is left to the discretion of police leadership and in which civilian oversight agencies have no real power—like Rochester’s prior to Local Law 2, and like New York City’s—have been woefully unsuccessful in securing meaningful disciplinary penalties, even in egregious cases of misconduct.

In July 2014, NYPD Officer Daniel Pantaleo killed Eric Garner after placing him in a chokehold. Pantaleo’s disciplinary records were ultimately leaked to the media in 2017, and they revealed that Pantaleo had seven disciplinary complaints and 14 individual allegations made against him before he had ever put Eric Garner in a fatal chokehold.⁴⁴ The CCRB had substantiated four of the allegations and

officers viewed their agency’s disciplinary processes as fair, and that only 27 percent of officers believed those systems held officers accountable. Rich Morin et al, *Behind the Badge*, Pew Research Center, Jan. 11, 2017, <https://www.pewsocialtrends.org/2017/01/11/behind-the-badge/>.

⁴⁴ Carimah Townes & Jack Jenkins, *Exclusive Documents: The Disturbing Secret History of the NYPD Officer Who Killed Eric Garner*, ThinkProgress, Mar. 21, 2017, <https://thinkprogress.org/daniel-pantaleo-records-75833e6168f3/>.

recommended the most serious penalty in all four.⁴⁵ Ultimately, Pantaleo lost two vacations as a result of one such allegation, while another resulted in no discipline being imposed.⁴⁶ In the other two substantiated allegations, rather than accept the CCRB's recommendation to pursue formal disciplinary charges, the NYPD issued “instructions” to Pantaleo, the weakest possible disciplinary penalty available.⁴⁷ Once Pantaleo’s record became public, it was described as “among the worst on the force,” and the NYPD faced renewed criticism for its pattern of disregarding CCRB recommendations.⁴⁸

Different versions of this same narrative are common. A public records request in New York City recently revealed that one officer had been the subject of 60 CCRB allegations, including at least two allegations where the agency recommended formal charges be brought against him; the NYPD gave him a promotion.⁴⁹ Outside of New York City, after one Buffalo Police Department lieutenant was filmed leveling vulgar insults against a woman, the public learned

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Tana Ganeva, *NYPD's Culture of Impunity Sees an Officer Repeatedly Accused of Physical and Sexual Abuse Rising through the Ranks*, The Intercept, July 6, 2020, <https://theintercept.com/2020/07/06/nypd-culture-of-impunity/>.

of the existence of 36 prior complaints against him.⁵⁰ These long complaint histories raise serious questions about the effectiveness of the Buffalo Police Department's and NYPD's approach to discipline, and records like these may well form the basis for calls for greater reform in those cities.

These and other cases reveal deeply flawed systems of accountability, especially weighed against the public interest in ensuring that quasi-military police forces are wielding their power responsibly. It is imperative, given the life-altering or potentially life-ending consequences of police misconduct, that the public have recourse to alter these systems when these systems no longer advance the public interest in accountability.

Calls for such reforms are growing throughout New York State, and the resolution of this case will have a profound impact on movements for police

⁵⁰ Daniel Telvock, *What the Records of a Buffalo Police Lieutenant are Revealing about his History on the Force*, WIVB, July 8, 2020, <https://www.wivb.com/news/local-news/buffalo/what-the-records-of-a-buffalo-police-lieutenant-are-revealing-about-his-history-on-the-force/>.

accountability in places like Syracuse,⁵¹ Kingston,⁵² Albany,⁵³ New York City,⁵⁴ and others, where communities and lawmakers are weighing proposals for strengthening and empowering police oversight agencies. Local Law No. 2 was ahead of this curve in Rochester, but looking ahead the reforms it enacted will be vital to the public interest in providing for independent and meaningful oversight of police across New York State.

CONCLUSION

The Rochester City Council, mayor, and the more than 75 percent of voters who approved Local Law No. 2 had every reason to question the continued value of a civilian review board structure that, by its very nature, lent itself to being disregarded. Local Law No. 2 was intended to replace this structure with a system that meaningfully responded to community needs and concerns and that would

⁵¹ Chris Baker, *Activists Hammer Walsh with Demands, Frustrations in Marathon Police Reform Meeting*, Syracuse.com, July 2, 2020, <https://www.syracuse.com/crime/2020/07/activists-hammer-walsh-with-demands-frustrations-in-marathon-police-reform-meeting.html>.

⁵² Ariél Zangla, *Kingston Mayor Signs Police Accountability Legislation*, Daily Freeman, July 7, 2020, https://www.dailyfreeman.com/news/local-news/kingston-mayor-signs-police-accountability-legislation/article_52974b26-c0a2-11ea-abcf-ab6f9f60e0d1.html.

⁵³ Steve Hughes, *Albany's Police Review Board may Get New Powers*, Albany Times Union, June 17, 2020, <https://www.timesunion.com/news/article/Albany-s-police-review-board-may-get-new-powers-15347807.php>.

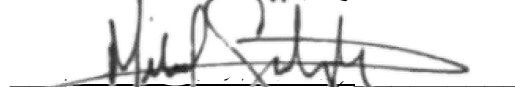
⁵⁴ Amir Khafagy, *Amid Calls to Reform Police, New York Activists and Lawmakers Demand an Elected Civilian Complaint Review Board*, The Appeal, June 29, 2020, <https://theappeal.org/amid-calls-to-reform-police-new-york-activists-and-lawmakers-demand-an-elected-civilian-complaint-review-board/>.

better serve the critical goal of inspiring public trust and confidence in the operations and effectiveness of local government. Those goals and values should not be discounted in the Court's assessment of the law's validity.

The public interest in a police disciplinary system that has sufficient independence and authority to function as a meaningful check against the extraordinary amount of power afforded to police officers is critical to the resolution of this case. The court below did not properly consider these vital considerations, but this Court can correct that error and vindicate the public interest in establishing effective mechanisms for civilian oversight of law enforcement. For these reasons, *amicus* urges the Court to reverse the decision of the Supreme Court.

Dated: November 13, 2020
New York, New York

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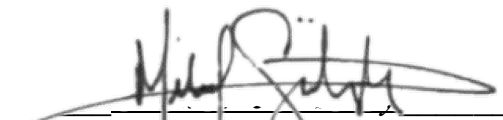
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