APL 2021-00184
Appellate Division, Fourth Department Docket No. CA 20-00826

Court of Appeals
of the
State of New York

In the matter of the Application of
ROCHESTER POLICE LOCUST CLUB, INC.,
MICHAEL MAZZEO AND KEVIN SIZER,

Petitioners-Respondents,

– against –

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

Respondents-Respondents,

(*caption continued on inside cover*)

.

BRIEF OF AMICUS CURIAE CITY OF KINGSTON

BARBARA GRAVES-POLLER
Corporation Counsel
of the City of Kingston
420 Broadway
Kingston, New York 12401
845.334.3947
bgraves@kingston-ny.gov

February 14, 2023

– and –

COUNCIL OF THE CITY OF ROCHESTER,

Respondent-Appellant,

– and –

THE MONROE COUNTY BOARD OF ELECTIONS,

Respondent.

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PRELIMINARY STATEMENT AND INTEREST OF THE CITY OF KINGSTON

The City of Rochester, long plagued by police discipline failures, responded to the public's demand for change. This litigation centers on Rochester's innovative effort to balance public employees' collective bargaining interests with the voters' call to action. The Appellate Division granted leave to pursue this appeal after determining that a 1985 charter revision, one stating that the Civil Service Law "covered" the "subject matter" of police discipline, irrevocably stripped Rochester of its previously delegated authority.

We submit that this record does not establish the Rochester City Council's unambiguous intent to disavow municipal power. In fact, the legislative body could not have fully understood the scope of its authority at that time. Though we largely agree with appellant's arguments, we believe this Court can and should reverse the Appellate Division's ruling without resolving broad questions of municipal power to surrender delegated authority.

The appellate court's view on "unambiguous" intent to revoke such authority threatens the City of Kingston's Common Council

and, if adopted by this Court, will diminish municipal problem-solving capacity over time. Further, Kingston maintains an active Police Commission that, as an extension of powers the State granted in our 1896 charter, plays a pivotal role in implementing disciplinary policy and safeguarding the public's trust in law enforcement. The Appellate Division's reasoning at issue here allows one error-laden allusion to State law to irrevocably constrain future legislative action on a local issue. This error will detrimentally impact our city and others.

Furthermore, the appellate court countermanded the will of Rochester's voters on how to address a pressing civil rights dilemma. The court below decided that collective bargaining rights trump Rochesterian's power to solve a quintessentially local problem within the scope of the city's previously delegated authority; but the law and key facts in this record counsel otherwise. This amicus brief highlights interpretive principles the Appellate Division overlooked and explains why this ruling raises serious concerns for the City of Kingston.

BACKGROUND

In recent years, the City of Kingston has struggled to reconcile its firm commitment to public employee protections with the need for robust police oversight. We note the following details from the record to demonstrate why this litigation and the Appellate Division's dangerous new standard matter to our city.

A. Rochester's Charter revisions

Rochester revised various police-related provisions in its charter between 1974 and the 2019 amendments at issue in this case (*see* Record on Appeal ("R") 353–54). The city also took steps to increase voters' control over governmental administration.[1] In 1985, it established a new Public Safety Administration that, among other things, enhanced its Police Chief's authority to enforce rules related to the Police Department (R324). Rochester's 1985 amendments also repealed a charter provision governing "charges and trials of policemen" (R317). The relevant language

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[1] *See Strong-Mayor System Returning to Rochester*, N.Y. TIMES (Nov. 11, 1984), https://www.nytimes.com/1984/11/11/nyregion/strong-mayor-system-returning-in-rochester.html (last visited Dec. 20, 2022).

stated that preexisting charter provisions were thereby amended and repealed "for the reason that this subject matter is covered in the Civil Service Law" (*id*.). No other material bearing upon the City Council's intent appears in this record.

Nearly twenty years later, this Court's analysis in *Matter of Patrolmen's Benevolent Association of New York, Inc. v. New York State Public Employment Relations Board*, 6 N.Y.3d 563 (2006) *(PBA)* offered new guidance on the relationship between the Civil Service Law's collective bargaining provisions and preexisting laws like Rochester's City Charter. Specifically, *PBA* clarified how Civil Service Law § 76 accommodated, rather than supplanted, local laws then in effect.

Far from holding that the Taylor Law "covered" police discipline in every instance, *PBA* identified two policies of variable strength: "[w]hile the Taylor Law policy favoring collective bargaining is a strong one," this Court explained, "so is the policy favoring the authority of public officials over the police." *Id*. at 576. Even though "the need for authority over police officers will *sometimes* yield to the claims of collective bargaining," the *PBA*

court instructed, "the public interest in preserving official authority over the police *remains powerful*." *Id.* (emphasis added). Furthermore, *PBA* counseled that when "the Legislature has expressly committed disciplinary authority over a police department to local officials" based on preexisting local law, "police discipline may not be a subject of collective bargaining." *Id*. at 570.

Rochester's City Council could not have envisaged this guidance in 1985 when it cursorily referenced the Civil Service Law's "subject matter."

B. Rochester's 2019 Charter Amendments, approved by three-quarters of the electorate

In 2017, a nonprofit research group engaged by the Rochester City Council released a report entitled, "Police Oversight in Rochester—An Examination of Outcomes and Other Models," that summarized empirical research into the city's fraught history of police-community relations.[2] The researchers detailed a troubling

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[2] ERIKA ROSENBERG ET AL., CTR. FOR GOV'T RESEARCH, POLICE OVERSIGHT IN ROCHESTER—AN EXAMINATION OF OUTCOMES AND OTHER MODELS (2017), https://reports.cgr.org/details/1836 (last visited Dec. 20, 2022); *see also* Police Accountability Board, *About*, 2018, https://pabnow.github.io/about/. https://pabnow.github.io/about/ (last visited December 20, 2022).

history of racial profiling and excessive force incidents, along with describing the city's efforts to curb documented civil rights abuses (*id*.; R238–239).

The researchers further noted that "for several years," the city had not had "a Section 75 hearing," a process required when a uniformed officer denies the misconduct identified in a substantiated complaint *(id*. at 4). That review process remained "stalled," notwithstanding requirements set forth in "the City's contractual agreement with the Locust Club," Rochester's police union (*id.)*. When the report was published, ten substantiated misconduct complaints remained unresolved because no Section 75 hearing had been completed (*id.*). The union did not dispute those details of systemic dysfunction (*id.*).

Rochester then took action. Its City Council and Mayor developed disciplinary reform proposals and convened public hearings to elicit further input into the City's plan (R14, 240–41). Then, after considerable public debate, the City Council unanimously voted to approve favor of a local law that, subject to approval by the electors in a public referendum, would amend

Rochester's 1907 City Charter to create a nine-member Police Accountability Board ("the Board") (R24). Ultimately, more than three-quarters of Rochester's voters approved the proposed amendments in the city's November 2019 general election.[3]

The Board created therefrom exists "to fairly investigate and make determinations respecting complaints of misconduct involving sworn officers of the Rochester Police Department" (R125). Its authority is narrow by design. For one thing, the Board's investigative power does not divest Rochester's Mayor or Police Chief of authority to negotiate matters of officer hiring, assignment, promotion, salaries, or leave policies (R128).

Even in matters of discipline, the Board's authority is circumscribed. The Police Chief administers discipline and retains exclusive authority over day-to-day officer performance concerns such as attendance and administrative lapses unrelated to misconduct complaints (R126, 127). The Police Chief may also decide, on a case-by-case basis, whether to depart upward from any

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[3] *See Police Accountability Board Referendum Passes at the Ballot Box*, Spectrum News (Nov. 5, 2019), https://bit.ly/3P9JmdS.

discipline the Board imposes after an investigation and hearing (R134).

Moreover, the Mayor and Police Chief play pivotal roles in establishing disciplinary standards for officers (R388). They, along with the police union, participate in an annual review of the disciplinary matrix the Board applies (*see id.*; R71). At the same time, the Board's procedures do not abridge any officer's right to union representation at investigative proceeding, the availability of administrative appeals, or officers' access to other procedural safeguards (*see* R71).

C. The Appellate Division's ruling

In May 2020, after more than 75% of Rochester's voters approved the referendum, Supreme Court deemed the charter revisions "unlawful" (R35). The court opined that the Board lacked power to conduct investigative hearings or discipline officers because it "is neither a designee of either the Mayor or the Police Chief, nor a police commander" (R34). The court further concluded that the changes impermissibly "inhibit[] the Mayor from engaging in collective bargaining with the Locust Club" (*id.*).

The Fourth Department affirmed Supreme Court's core findings (R425). The court acknowledged that "when the Taylor Law was adopted in 1967, the 1907 City Charter provision constituted a preexisting law on the subject of police discipline" (R431). Nevertheless, the appellate court distinguished this Court's analysis in *PBA* because it believed that Rochester "no longer qualifie[d] for the *PBA*-created exception to mandatory collective bargaining" (*id.*). In the Appellate Division's view, Rochester had "explicitly and unambiguously" relinquished its authority over police discipline delegated by the State in 1907 by amending its City Charter in 1985 and including a passing reference to the Civil Service Law's "subject matter" (R432).

ARGUMENT

KINGSTON AND OTHER CITIES WILL SUFFER IF THIS COURT ADOPTS THE APPELLATE DIVISION'S LOW BAR FOR "UNAMBIGUOUS" LEGISLATIVE INTENT.

The Appellate Division's broad generalizations about the relationship between State law and municipal charters cannot be reconciled with the realities of the legislative process in municipalities like ours. By ignoring how local bodies function,

overlooking important State policies, and disregarding bedrock democratic principles, the appellate court set a dangerous precedent for what constitutes unmistakable and unambiguous legislative action. The parties vehemently disagree as to whether Rochester possessed the power to amend its charter to surrender previously delegated authority. We, however, believe that this Court need not answer that question to reverse the appellate ruling. Regardless of whether Rochester had that power, this record fails to establish Rochester's "unambiguous" intent to do so in 1985.

A. The Fourth Department's analysis of legislative intent ignores the reality of how legislatures in smaller cities operate.

Kingston's Common Council, like Rochester's, consists of part-time elected officials who typically hold full-time jobs within the community.[4] Our Alderpersons share legal resources with the Mayor and every other municipal department. For example, our

[4] In fact, Rochester operated under a part-time, "weak mayor" form of government in 1985, under which the Mayor, City Administrator, and part-time City Council shared power. *See* Randy Petersen, *What Will Rochester See in its Next Mayor?*" Associated Press (October 29, 2018).

Office of Corporation Counsel employs a handful of attorneys and non-attorney staff, some of whom work part-time. *Id*. at ¶ 11.

One virtue of our part-time model of government is that eliminating a professional political class reduces the distance between policymakers and consumers of municipal services.[5] Part-time service also can allow a more diverse and representative range of community members to serve as elected officials while lessening fundraising constraints. This structure reinforces "the positive attributes of localism" and facilitates innovation on close-to-home issues.[6]

That said, "full-time, professional legislatures may have advantages over citizen legislatures in terms of resources, expertise, and experience[,]"[7] a reality we urge this Court to consider when deciding whether Rochester's 1985 City Council "explicitly and unambiguously" intended to relinquish long-held

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[5] *See* Kellen Zale, *Part-Time Government*, 80 Ohio State L.J. 987, 1020 (2019).

[6] *See* Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 Yale L. J. 954, 986 (2019).

[7] *See* Zale, *supra* note 5, at 1016 (acknowledging that "the very largest of U.S. cities are more likely to have a full-time city council" but that "the part-time model is otherwise the prevailing institutional design outcome across cities of all sizes").

municipal authority. The City of Kingston submits that, given the resource constraints endemic to part-time legislatures in leanly resourced municipalities, Rochester's passing reference to what the Civil Service Law supposedly 'covered' does not reflect "unambiguous" intent to surrender previously delegated power.

Perhaps in a city with far greater resources, a court might assume that legislators had been fully briefed on the Taylor Law's terms and exceptions. In New York City, for example, each full-time City Councilmember employs their own staff and receives support from a dedicated Office of General Counsel.[8] In addition, each committee within the local legislative body has access to a team that includes staff attorneys and policy analysts who actively support the legislative process. *Id.* Not only that, a separate Law Department employs hundreds of attorneys, including "a counseling unit that advises the Mayor, other elected officials, and City agencies on issues concerning virtually every area of municipal

[8] New York City Council, *Legislation*, https://council.nyc.gov/legislation/ (last accessed Dec. 20, 2022).

law."[9] This is not how legislative action proceeds in smaller municipalities with part-time elected officials.

Kingston's Common Council relies heavily on non-lawyer department heads with experience implementing local policy to help develop draft legislation on nuts-and-bolts local issues. When, however, our Council contemplates action of permanent, citywide significance, it takes a different tack. Our local legislators marshal resources and create a public record that resembles Rochester's 2019 deliberative process—*not* the passing reference included in Rochester's 1985 law. In 2020, for example, our Council similarly responded to public demands for police accountability reform. Any court reviewing the record of the resulting resolution would unearth ample evidence of legislative intent to reconfigure existing power dynamics and to adequately address divergent perspectives on the issue, engage relevant stakeholders in the drafting process.

Here, the record shows that Rochester facilitated robust debate in 2019, considered proposals from its Mayor, gathered

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[9] New York City Law Department, *Legal Counsel Division*, https://www1.nyc.gov/site/law/divisions/legal-counsel.page (last accessed Dec. 20, 2022).

public input at open meetings, and entertained the Locust Club's comments before putting the matter to a Council vote (*see* R228, 241-42).[10] *That* is how a legislative body contemplates permanent, significant changes to existing authority. The Appellate Division incorrectly assumed, absent proof that Rochester's City Council knowingly intended to relinquish any power, that the legislative body "explicitly and unambiguously" did so. We perceive real danger in the court's approach.

As explained above, small municipalities and part-time legislatures lack resources to fine-tune each phrase in draft legislation. This, however, rarely impedes local government action. Indeed, this Court's guidance, if faithfully applied, should protect Kingston's Common Council and other modestly resourced legislative bodies from inadvertently surrendering power or thwarting future legislative action on local problems. The City of Kingston fears that affirming the Appellate Division's ruling would

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[10] *See also* Mary Anna Towler, *Could a Citizen Board Discipline Rochester Police? Lawyers Disagree*, ROCHESTER CITY NEWSPAPER (June 21, 2018), https://www.rochestercitynewspaper.com/rochester/could-a-citizen-board-discipline-rochester-police-lawyers-disagree/Content?oid=6914313.

open the floodgates to claims that our Common Council "unambiguously" intended to abrogate rights this Court has yet to define. We urge this Court conclude otherwise and, in so doing, protect municipal legislative authority to innovate in this and other critical areas of local concern.

B. Given how smaller municipalities actually function, the record compels reversal here, regardless of whether Rochester had power to amend to surrender previously delegated authority.

The Appellate Division needlessly waded into the thicket of questions surrounding municipal power to revoke State delegated authority. Yet, the record and this Court's precedent point to a sound, alternative approach to resolving the questions presented in this litigation.

1. This record fails to establish "unambiguous" legislative intent.

Rochester's 1985 amendments revised local laws "for the reason that this subject matter is covered in the Civil Service Law" (R317). That is a far cry from the level of specificity this Court has found indicative of a legislature's unambiguous intent. *See, e.g.,*

Ballentine v. Koch, 89 N.Y.2d 51, 56 (1996). In other words, this is not one of the "the clearest of cases" in which a court may infer a legislature's motives. *Ball v. State*, 41 N.Y.2d 617, 622 (1977); *see also* N.Y. Stat. § 391.

In fact, it is impossible to discern the City Council's precise understanding of "covered" in this context. The Taylor Law certainly speaks to the "subject matter" of public employee discipline and, therefore, covers the topic. At the same time, the law did not automatically cover Rochester, a municipality with preexisting local law on the issue. If Rochester's legislators believed otherwise, they were wrong, as this Court explained in *PBA*.

Remarkably, the Appellate Division opined that such an error "would be irrelevant" (R432). The court, however, cited no authority for its view that the City Council's error would have no bearing on a court's interpretation of legislative intent. The opposite is true. *Cf. People v. Van Buren*, 4 N.Y.3d 640, 652 (2005) (Smith, J., dissenting) (describing relationship between 1906 statute and mistaken understanding of 1983 Legislature responsible for

drafting amendments and arguing against interpretation giving retroactive effect to Legislature's mistaken belief).

Paradoxically, the Fourth Department also characterized the 1985 City Council's action as an "explicit and unambiguous" surrender of its charter-conferred authority (R432). This, too, defies reason. Rochester's 1985 City Council *never* referenced Civil Service Law § 76(4), nor did it express its desire to relinquish retained power carved out in that provision. The Locust Club failed to proffer other evidence of the City Council's intent with respect to this specific issue.

Reviewing courts should not speculate about legislative intent to repeal existing laws except in the clearest of cases. *Ball,* 41 N.Y.2d at 622. Indeed, "repeal by implication. … will be decreed only where a clear intent appears to effect that purpose." *Cimo v. State*, 306 N.Y. 143, 148 (1953); *see also Home Tel. & Tel. Co. v. City of Los Angeles*, 211 U.S. 265, 273 (1908) (stating that any attempt by a municipality to surrender delegated authority by contract must be "closely scrutinized", and will be invalid unless the authority to make such a surrender has also been delegated by the

state). Nothing in this record remotely suggests that in 1985, Rochester understood and intended to permanently disavow its delegated authority. Two established principles should have compelled a contrary conclusion.

First, a legislative body may not limit its successor's authority. *See Farrington v. Pinckney*, 1 N.Y.2d 74, 82 (1956) ("If the 1955 Legislature erred, it is for subsequent Legislatures to cure the error and not for the judiciary to undertake to do it."); *see also Matter of Karedes v. Colella*, 100 N.Y.2d 45, 50 (2003) ("Elected officials must be free to exercise legislative and governmental powers in accordance with their own discretion and ordinarily may not do so in a manner that limits the same discretionary right of their successors to exercise those powers"); *Morin v. Foster*, 45 N.Y.2d 287, 293 (1978) (elected officials "may not so exercise their powers as to limit the same discretionary right of their successors to exercise that power and must transmit that power to their successors unimpaired"); N.Y. Stat. § 2 ("The power to enact necessarily implies the power to repeal, and one Legislature cannot

be limited or bound by the actions of a previous one"). The lower court gave back-of-the-hand treatment to this principle.

Second, legislative bodies are "presumed to be aware of the law in existence at the time of an enactment." *Matter of Amorosi v. S. Colonie Indep. Cent. Sch. Dist.*, 9 N.Y.3d 367, 375 (2007); *B & F Bldg. Corp. v. Liebig*, 76 N.Y.2d 689, 693 (1990) (presuming Legislature's knowledge "of the law in existence at the time of an enactment" and that any legislative action "abrogated the common law *only* to the extent that the *clear import* of the language of the statute requires") (emphasis added). A city council, however, cannot divine where the law will stand decades hence. Here, Rochester's 1985 City Council could not have meaningfully or "unambiguously" revoked authority years *before* this Court clarified the relationship between the Taylor Law and its City Charter.

2. The appellate court improperly narrowed the Taylor Law's carve-out for preexisting local laws.

We understand the status of delegated power in 1967 as the fulcrum upon which the State's twin interests in collective bargaining and local disciplinary control balance. Insofar as this

appeal turns on the question of when a preexisting charter provision or other local law must have been "in force" to preserve municipal authority under *PBA*, the City of Kingston agrees with appellants (*see* Brief for Respondent-Appellant ("App. Br.") 19–20).

Critically, the Appellate Division opined on whether Rochester's delegated authority remained "in force" in 2019 without grappling with the Civil Service Law's silence on this exact issue. The Civil Service Law does not address the impact that post-1967 changes to preexisting laws would have on municipalities with delegated police disciplinary authority. The law's silence on this issue should have inclined the Appellate Division towards a more restrained approach, consistent with the language and intent of the law's carve-out, rather than an interpretation that heightens "in force" requirements.

It is well-settled that "where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." *ACE Sec. Corp. v. DB Structured Prods., Inc.*, 38 N.Y.3d 643, 651 (2022) (citing *Town of*

Aurora v. Vill. of E. Aurora, 32 N.Y.3d 366, 372–373 (2018)); *Pajak v. Pajak*, 56 N.Y.2d 394, 397 (1982) ("The failure of the Legislature to include a matter within a particular statute is an indication that its exclusion was intended"). This established interpretive principle militates against the appellate court's understanding of when Rochester's law needed to be "in force" to preserve delegated authority. Because the Legislature clearly stated that the Taylor Law did not displace Rochester's authority in 1967, the Appellate Division had no textual basis for imposing additional requirements on Rochester to preserve delegated power.

By reading new requirements into the statute, the Appellate Division also overlooked normative considerations enshrined in our State Constitution.[11] In New York, like many other states, prevailing constitutional norms require a liberal construction of home rule provisions related to local matters.[12] *See* N.Y. Const., art.

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[11] *See generally* Davidson, *supra* note 6, at 984-986.

[12] *See generally* Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 Mich. L. Rev. 859, 927 (2021) (recommending that State overrides of local initiatives "should be subject to heightened scrutiny"); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 Columbia L. Rev. 1, 112 (1990).

IX, § 3(c). That liberal interpretation requirement counsels against imposing additional requirements on Rochester to retain its delegated authority over local police oversight that the Taylor Law left intact.

When the State delegated authority over police discipline to Rochester in 1907, then affirmed that preexisting delegation by way of Civil Service Law § 76(4)'s carve-out, the State made police discipline "a prohibited subject of bargaining" for the city. *Matter of City of Schenectady v. N.Y. State Pub. Emp't Relations Bd.*, 30 N.Y.3d 109, 114–15 (2017). Rochester's Common Council lacked clarity on this point in 1985 and likely misconceived the carve-out for its charter, as appellants suggest (*see* App. Br. 33).

Later, this Court clarified that municipalities with retained authority over police discipline are prohibited from bargaining over police discipline. Therefore, the Appellate Division should have understood Rochester's 1985 actions as an attempt to refine the city's authority during a time when the law was unsettled—not an "unambiguous" act of disavowing charter-conferred power to engage in prohibited negotiations.

3. Any ambiguities in Rochester's charter should be interpreted to protect public welfare and facilitate local control of police discipline—important state policies.

Our State delegated police oversight authority to Rochester (and other municipalities) for reasons the Appellate Division misunderstood. *See* R432 (mischaracterizing Rochester's pre-1985 charter as "a grandfathered law … fossilized in the municipal codebooks"). [13] In reality, New York has a policy of "favoring strong disciplinary authority for those in charge of police forces" to prevent oversight failures that allow civil rights abuses to go unpunished. *Schenectady*, 30 N.Y.3d at 114–15. This aligns with our State's constitutional home rule provisions, which confer broad police power upon local governments relating to the welfare of their citizens. *N.Y. State Club Ass'n, Inc. v. City of N.Y.*, 69 N.Y.2d 211, 217 (1987), *aff'd*, 487 U.S. 1 (1988).

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[13] The term "grandfathering" is defined in BLACK'S LAW DICTIONARY, 718 (8th ed. 2004), but we note one jurisdiction's choice to describe these legislative exemptions using alternative language in light of their problematic history. *See Comstock v. Zoning Bd. of Appeals of Gloucester*, 98 Mass. App. Ct. 168, 173 n.11 (2020), *lv. denied*, 486 Mass. 1106 (Oct. 22, 2020) (explaining origin of term "grandfather clause" in post-Civil War voter suppression practices).

To the extent the appellate court perceived any ambiguity in the City Council's 1985 amendments, it should have resolved those questions in a manner that protects the public from harm. *See Meyers Bros. Parking Sys., Inc. v. Sherman*, 87 A.D.2d 562, 563 (1st Dep't 1982), *aff'd*, 57 N.Y.2d 653 (1982) (resolving statutory ambiguity to ensure penalties adequately protected "public safety" consistent with legislative intent); *People ex rel. Royal Bank of Can. v. Loughman*, 226 A.D. 593, 595–96 (3d Dep't 1929), *aff'd sub nom. People ex rel Royal Bank of Can. v. Loughman*, 254 N.Y. 512 (1930) ("canons of construction require the avoidance of … the prejudice of the public interests"); N.Y. Stat. §§ 144, 152 ("A construction which tends to sacrifice or prejudice the public interest … is to be avoided"). Allowing Rochester the flexibility to reform its police disciplinary procedures and redress possible civil rights violations best advances this goal.

Furthermore, the court misconstrued the Civil Service Law's plain language, which unambiguously states, "*[n]othing* contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any … charter provision relating to

the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division." Civil Service Law § 76 (emphasis added). To hold otherwise and impose additional requirements for leaving local disciplinary authority intact runs counter to both the Civil Service Law's directive and this Court's holding in *PBA*.

The Taylor Law was crafted to give "due weight to the public interest" and encourage "politically viable" solutions to labor issues.[14] The Governor's contemporaneous report on the draft legislation emphasized public employees' "obligation to recognize that collective negotiations must be conducted within the framework of our democratic structure out of which the civil service idea has evolved." *Id*. at 12. In other words, this legislation was conceived to layer strong support for collective bargaining atop an existing democratic infrastructure. It was not designed to override the State's policy of ensuring that, through locally implemented,

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[14] STATE OF N.Y., GOVERNOR'S COMMITTEE ON PUBLIC EMPLOYEE RELATIONS—FINAL REPORT, 42 (1966). GOVERNOR'S COMMITTEE, *supra* note 7, at 42.

democratic measures, municipalities with previously delegated authority could explore local approaches to police discipline.

As this Court has previously held, the State policy of "favoring strong disciplinary authority for those in charge of police forces" controls where, as in Rochester, a preexisting law committing police discipline to local officials existed when the Taylor Law went into effect. *Schenectady*, 30 N.Y.3d at 114–15. The Appellate Division failed to heed this Court's clear instruction.

It bears repeating that Rochester's 2019 City Council took a surgical approach to police oversight, one that safeguarded officers' core due process rights. The city created an independent body that solicits continuous input from the Police Chief to formulate disciplinary standards and relies on the Chief to either implement discipline or independently impose a heavier punishment (R134). The Board investigates a subset of potential disciplinary issues (R127), and its case-specific findings will have no impact on New Yorkers outside of Rochester. Had the Appellate Division adhered to settled statutory interpretation principles and constitutional norms, it would not have found the Board—the voter-approved

solution to intractable civil rights problems within one city's borders—preempted by State law.

CONCLUSION

For the aforementioned reasons, this Court should reverse the Appellate Division's ruling.

Dated: Kingston, New York
February 14, 2023

By: _____

BARBARA GRAVES-POLLER
Corporation Counsel
420 Broadway
Kingston, New York 12401
845.334.3947
bgraves@kingston-ny.gov

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