

APL-2023-00085
Monroe County Clerk's Index No. E2020009879
Appellate Division-Fourth Department Docket No. CA 21-01191

Court of Appeals
of the
State of New York

In the Matter of the Application of

NEW YORK CIVIL LIBERTIES UNION,

Petitioner-Respondent,

- against-

CITY OF ROCHESTER and ROCHESTER POLICE DEPARTMENT,

Respondents-Appellants.

**BRIEF FOR *AMICUS CURIAE* NAACP LEGAL DEFENSE &
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STATEMENT PURSUANT TO RULE 500.23(a)(4)(iii) OF THE RULES OF PRACTICE OF THE COURT OF APPEALS

The proposed *Amicus Curiae* –The NAACP Legal Defense & Educational Fund, Inc.–states that no party to the appeal or a party’s counsel has contributed content to the Brief or participated in the preparation of the Brief in any other manner; no party to the appeal or a party’s counsel has contributed money that was intended to fund preparation or submission of the proposed Brief of *Amicus Curiae*; and no person or entity, other than movant, has contributed money that was intended to fund preparation or submission of the proposed Brief of *Amicus Curiae*.

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STATEMENT OF INTEREST

Amicus curiae, the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), is the nation’s first and foremost civil rights law organization. Since its incorporation in 1940, LDF has fought to challenge laws, policies, and practices that discriminate against Black people and other communities of color. LDF’s work includes challenging racial profiling by police officers in New York and across the country, and advocating against the many ways in which police practices may disproportionately harm Black and Brown people. For example, in *Davis v. City of New York*, No. 10-cv-699 (S.D.N.Y.), LDF serves as class counsel for Black and Latinx public housing residents who are subjected to racial profiling and other unlawful trespass enforcement activities by the New York City Police Department (“NYPD”).

In this brief, *amicus* addresses the merits of the arguments before the court, the historic context of the legislation at issue, and the significant public interest at stake in this case, all of which strongly favor Respondent-Appellee’s (“NYCLU”) position that police personnel records related to “unsubstantiated” complaints should be subject to disclosure under New York’s Public Officers Law § 84 et. seq. (“FOIL”). LDF is well-suited to submit this brief due to its longstanding legal expertise and advocacy in the area of police misconduct, both in New York and around the country.

LDF submits this brief on behalf of itself, as *amicus curiae*, in support of Petitioner-Respondent in this case. No party contributed content to this brief. No party, party's counsel, person, or entity other than LDF contributed money to fund preparation or submission of the brief.

PRELIMINARY STATEMENT

In 2020, following the killings of George Floyd and Breonna Taylor, millions of people took to the streets in New York and around the country to protest police abuse and violence, particularly against Black people and other communities of color. A central demand of these large-scale demonstrations—the largest civil rights movement in American history—was transformative change to the flawed systems of police accountability in the United States, which fail too often to hold police officers accountable for misconduct. Some police departments, including several in New York, have exhibited a pattern of inadequate investigations that routinely absolve officers who have committed flagrant misconduct. As a result, abuses of power remain unchecked, leaving the distinct impression that police can violate the law with impunity. Communities of color, disproportionately targeted for abusive policing, bear the brunt of these failures in accountability. Too many New Yorkers, including Silvon Simmons in Rochester, Eric Garner in Staten Island, and William Henley in Buffalo, have fallen victim to

extreme acts police violence at the hands of officers with checkered disciplinary histories that included “unsubstantiated” complaints.

Following the 2020 uprisings, the New York State Legislature directly responded to public demands for racial justice, transparency, and accountability in law enforcement by repealing New York Civil Rights Law § 50-a (“Section 50-a”). Section 50-a, enacted in 1976, had been used for decades to shield police misconduct records from public disclosure and was among the most secretive laws of its kind in the country.¹ Section 50-a “[permitted] law enforcement officers to refuse disclosure of personnel records used to evaluate performance toward continued employment or promotion.”² The repeal of this law reflected a commonsense understanding that sunlight is the best disinfectant: public disclosure provides citizens and legislators with access to necessary information about flaws in existing systems of police accountability, deters future misconduct, and makes clear to the public that police misconduct should not be tolerated.

Appellant (“Rochester”) now asks this Court to undermine this vital reform and prevent the disclosure of police misconduct records related to

¹ N.Y. C.R. Law § 50-a (Consol.), available at <https://codes.findlaw.com/ny/civil-rights-law/cvr-sect-50-a/>; see also Jake Bittle, *The State Legislature May Repeal 50-a. Here’s What That Means.*, QUEENS DAILY EAGLE (June 4, 2020), <https://queenseagle.com/all/50a-repeal-new-york-police-records-queens>.

² N.Y. State Assembly Legis. Info, Summary of Bill A09332, https://nyassembly.gov/leg/?default_fld=&bn=9332&term=2015&Summary=Y&Memo=Y (last accessed July 5, 2024).

“unsubstantiated” allegations. Their argument flies in the face of FOIL’s plain language, which explicitly requires disclosure of complaints against public officials without consideration of whether those records are “unsubstantiated.” POL § 86(6). Rochester also attempts to improperly expand the term “invasion of privacy” and ascribe an illogical definition to the word “proceeding” in an attempt to shield records that should be publicly available under FOIL.

Broadly speaking, Rochester’s argument undermines the very reasons why Section 50-a was repealed in the first place. Much of the animating force behind the repeal was a well-founded distrust of internal police investigations and their conclusions. The mere fact that investigators deem an allegation “unsubstantiated” reveals little to nothing about the credibility of the charges or the diligence of the investigators. Without access to records relating to misconduct claims deemed “unsubstantiated,” the public is unable to discern whether serious misconduct is going unpunished and, consequently, whether substantive change is needed for true transparency and accountability.

Rochester’s effort to continue operating in secrecy is antithetical to the expressed will of the legislature and the people they represent. Accordingly, the Appellate Division’s decision must be affirmed.

ARGUMENT

I. ROCHESTER'S INTERPRETATION OF NEW YORK'S FOIL IS FLAWED AND WITHOUT MERIT.

FOIL is crucial to maintaining the people's trust in government. This Court has long held that "[t]o promote open government and public accountability, . . . FOIL imposes a broad duty on government to make its records available to the public." *Gould v N.Y.C. Police Dept.*, 89 NY2d 267, 274 (1996). This Court has found that pursuant to FOIL, "records of a public agency are presumptively open to public inspection . . . unless otherwise specifically exempted," "[e]xemptions are to be narrowly construed to provide maximum access," and that "the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access." *Cap. Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 (1986). Rochester now asks this Court to defy decades of jurisprudence to create a sweeping, categorical exemption from FOIL, without having to articulate a particularized or specific justification for doing so. None of the arguments put forth by Rochester justify such a stark departure.

A. Rochester's Position Contradicts the Plain Text of FOIL.

Rochester attempts to argue that only substantiated complaints are covered under FOIL. But the plain text of FOIL defines law enforcement disciplinary

records as “any record created in furtherance of a law enforcement disciplinary proceeding, including, but not limited to . . . the complaints, allegations, and charges against an employee[.]” POL § 86(6)(a). For example, Black’s Law Dictionary defines “allegation” as “a party’s formal statement of a factual matter as being true or provable, without its having yet been proved.”³ By its very nature, an allegation has not yet been substantiated. Following Rochester’s proposed approach would directly contradict the plain text of the statute.

B. Rochester Relies on Untenable Interpretations of the Terms “Invasion of Privacy” and “Proceeding.”

Rochester argues that concerns regarding “invasion[s] of privacy” may justify a department’s wholesale refusal to disclose information requested pursuant to FOIL. Respondent-Appellant’s Br. at 17-18. Unable to marshal support from FOIL’s text, Rochester bases its argument on a non-binding, advisory opinion by the Committee on Open Government (“COOG”), and one recent lower court decision that applied this “invasion of privacy” reasoning to public records requests after the repeal of Section 50-a. *Id.* at 11-12.

After Section 50-a was repealed, multiple courts have come to the contrary conclusion that “unsubstantiated” complaints are not categorically exempt from disclosure. See, e.g., *Matter of Newsday, LLC v Nassau Cnty Police Dep’t*, 222

³ Allegation Definition, *Black’s Law Dictionary* (12th ed.) (Westlaw, Secondary Sources).

A.D.3d 85 (2d Dep’t 2023); *Matter of N.Y. Civ. Liberties Union v N.Y.C. Dep’t of Corr.*, 213 A.D.3d 530 (1st Dep’t 2023); *Matter of N.Y. Civ. Liberties Union v. City of Syracuse*, 210 A.D.2d 1401 (4th Dep’t 2022). Further, COOG subsequently and explicitly rejected its previous argument in its 2022 annual report, stating that excluding unsubstantiated allegations erodes public trust and undermines confidence in government agencies.⁴ Rochester also fails to acknowledge that FOIL includes a long list of items that constitute an invasion of privacy, POL § 89(2)(b), which includes nothing to indicate that disclosing unsubstantiated complaints inherently creates a risk of an unwarranted invasion of privacy.⁵

⁴ Comm. on Open Gov’t, N.Y. Dep’t of State, 2022 Report to the Governor and State Legislature, at 7-8 (Dec. 2022), available at <https://opengovernment.ny.gov/system/files/documents/2022/12/2022-coog-annual-report-final.pdf> (last accessed July 4, 2024).

⁵ N.Y. Pub. Off. Law § 89(2) (McKinney) (“(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

- i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
- ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
- iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it;
- v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency;
- vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law;
- vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law; or

Rochester further argues that because unsubstantiated complaints do not result in a hearing or discipline, they do not qualify as “law enforcement disciplinary records.” Respondent-Appellant’s Br. at 14-15. FOIL defines “law enforcement disciplinary records” as “any record created in furtherance of a law enforcement disciplinary proceeding.” POL § 86(6). It further stipulates that the term “[l]aw enforcement disciplinary proceeding” means the commencement of any investigation and any subsequent hearing or disciplinary action conducted by a law enforcement agency.” *Id.* § 86(7). Both common reason and the legislature’s word choice dictate that the term “law enforcement disciplinary proceeding” therefore applies *both* to the investigatory period *and* to any subsequent hearings. Rochester’s interpretation—that a “proceeding” requires subsequent hearings—would create a paradoxical situation in which the status of a complaint is defined entirely by events that take place well after it is created. This could lead to absurd results, particularly given the long amount of time it may take for a complaint to yield subsequent hearings.⁶ Further, the legislature’s use of the term “any” implies that subsequent hearings or disciplinary action are optional items added to the definition of a “disciplinary proceeding” in order to expand, not limit, its scope.

viii. disclosure of law enforcement arrest or booking photographs of an individual, unless public release of such photographs will serve a specific law enforcement purpose and disclosure is not precluded by any state or federal laws.”).

⁶ Civil Service Law § 75(4) creates an 18-month statute of limitations for the commencement of disciplinary processes.

Because a complaint is a record that is created to initiate an investigation, it is therefore a law enforcement disciplinary record.

II. THE LEGISLATIVE INTENT OF REPEALING SECTION 50-A FAVORS THE DISCLOSURE OF “UNSUBSTANTIATED” RECORDS.

The plain text of FOIL supports NYCLU’s argument. However, if the Court finds the statute ambiguous, it can look to the purpose and history of Section 50-a’s repeal,⁷ which support the position that “unsubstantiated” complaints are now subject to disclosure under FOIL.

Prior to the repeal, New York was one of—if not *the*—most secretive state in the nation with regard to police personnel records. Until 2020, it was one of only two states with a statute that specifically exempted law enforcement officers’ personnel records from public disclosure.⁸ As COOG has observed, Section 50-a made “New York . . . virtually unique among the states in its refusal to apply the

⁷ If there is any ambiguity in the text of a statute, New York courts may examine records of legislative debates and “utilize [those] proceedings to ascertain the legislative intent”. N.Y Stat. § 125(a) (McKinney).

⁸ Robert Lewis et al., *Is Police Misconduct a Secret in Your State?*, WNYC, (Oct. 15, 2015), <https://www.wnyc.org/story/police-misconduct-records/>; N.Y.C. Bar, Rep. on Legis. by the C.R. Comm., at 2 (June 9, 2020) available at <https://s3.amazonaws.com/documents.nycbar.org/files/2017285-50aPoliceRecordsTransparency.pdf> (“Delaware is the only other state in the country that also has a law comparable to CRL 50-a that restricts the scope of law enforcement information available to the public.”); see Del. Code Ann. tit. 11, § 9200(d) (2018). Prior to the passage of SB1421 (The Right to Know Act) in 2018, California also had a law enforcement specific statute, SB1436 (The “Pitchess Law”), which “made police officer personnel information confidential, including information relating to third-party complaints and resulting investigation reports.” Katherine J. Bies, *Let the Sunshine In: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 STAN. L. & POL’Y REV. 109, 128 (2017).

same transparency to police and other uniformed services as applies to all other public employees.”⁹

For years, advocates, victims, and family members of New Yorkers subjected to police misconduct tried to persuade the legislature to repeal Section 50-a.¹⁰ Then in 2020, after police officers killed George Floyd and Breonna Taylor, tens of millions of people took to the streets to demonstrate against police abuse and violence, particularly against communities of color.¹¹ Central to these protests was a demand for greater accountability and transparency.¹²

In New York, focus quickly turned toward repealing Section 50-a.¹³ A broad coalition of community groups, including labor unions, advocates for children, temples and church networks, public defenders, and civil rights organizations called for its repeal.¹⁴ The availability of disciplinary records, including

⁹ Comm. on Open Gov’t, N.Y. State, Dep’t of State, Annual Report to the Governor and State Legislature, at 5 (Dec. 2014),

<https://opengovernment.ny.gov/system/files/documents/2021/12/2014-annual-report.pdf>.

¹⁰ Rachel Silberstein, *Advocates Push for Repeal of 50-a Ahead of Session*, TIMES UNION (Dec. 24, 2018), <https://www.timesunion.com/news/article/NYS-50-a-13488713.php>.

¹¹ Larry Buchanan, et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

¹² Ashley Riegle, *Black Lives Matter Co-Founder Says What Protestors Want is Simple: Accountability*, ABC NEWS (June 2, 2020), <https://abc7.com/black-lives-matter-co-founder-says-what-protesters-want-is-simpleaccountability/6226038/>.

¹³ Annie McDonough, *Police Reform Activists and Experts React to 50-a Repeal*, CITY & STATE NEW YORK (June 12, 2020), <https://www.cityandstateny.com/policy/2020/06/police-reform-activists-and-experts-react-to-50-a-repeal/175908/>.

¹⁴ Letter to Majority Leader Stewart-Cousins and Speaker Heastie, Communities United for Police Reform (June 1, 2020), available at

“unsubstantiated” complaints, became particularly salient after records showed that Minneapolis Police Department Officer Derek Chauvin had 18 prior complaints filed against him before he killed George Floyd, only two of which resulted in discipline.¹⁵

Ultimately, the state legislature acted upon the demands from these largescale protests. After an overwhelming majority in the New York State Assembly and Senate voted to repeal Section 50-a, Governor Andrew Cuomo swiftly signed the repeal into law.¹⁶ In passing the repeal, Senator Jamaal Bailey explained on the floor of the State Senate that “the sun is finally starting to shine on injustice.”¹⁷

The bill to repeal Section 50-a states in its justification that:

“Due to the interpretation of § 50-a, records of complaints or findings of law enforcement misconduct that have not resulted in criminal charges against an officer are almost entirely inaccessible to the public or to victims of police brutality, excessive use of force, or other misconduct FOIL’s public policy goals, which are to make government agencies and their employees accountable to the public, are thus undermined. Police-involved killings by law enforcement officials who have had histories of misconduct

https://www.changethenypd.org/sites/default/files/snya_repeal50a_letter_to_leader_speaker_6-1-2020_final_-_85.pdf.

¹⁵ Tara Smith, *Governor signs bills aiming to address police misconduct following nationwide protests*, SUFFOLK TIMES (June 13, 2020),

<https://suffolktimes.timesreview.com/2020/06/governor-signs-bills-aiming-to-address-police-misconduct-following-nationwide-protests/>.

¹⁶ Cyril Josh Barker, *Cuomo Signs Bill Repealing 50-a*, N.Y. AMSTERDAM NEWS (June 11, 2020), <https://amsterdamnews.com/news/2020/06/11/state-legislators-vote-favor-repealing-50/>.

¹⁷ Slattery, *supra* n.16.

complaints, and in some cases recommendations of departmental charges, have increased the need to make these records more accessible.”¹⁸

The legislature intended for the repeal to give the public access to critical information about an officer’s past conduct. The justification decries the historic secrecy surrounding “records of complaints” *as well as* “findings”—distinguishing between these two types of records while giving them equal weight. It specifically mentions the “history of misconduct complaints” that only “in some cases” involve “recommendations of departmental charges,” demonstrating a specific intent to reach the full picture of complaints, including “unsubstantiated” complaints.¹⁹ As the First Department noted, “The repeal of Civil Rights Law § 50-a reflect[s] a strong legislative policy promoting transparency of police disciplinary records and eliminat[ing] any claim of confidentiality in them.” *Matter of NYP Holdings, Inc. v New York City Police Dept.*, 220 AD3d 487, 488 (1st Dept 2023) (internal citation omitted). The legislature clearly intended to promote the public’s access to the whole picture of police misconduct, not a narrow sliver.

III. PUBLIC DISCLOSURE OF “UNSUBSTANTIATED” DISCIPLINARY RECORDS SERVES THE PUBLIC INTEREST.

A. Police Accountability and Transparency Are Particularly Important to Address Racially-Biased Police Misconduct.

¹⁸ Senate Bill 2019-S8496, <https://www.nysenate.gov/legislation/bills/2019/S8496>.

¹⁹ *Id.*

Police misconduct, and the decision to shield misconduct from public view, disproportionately harms Black and Brown New Yorkers. In Rochester, for instance, while Black people have comprised approximately 40% of the population,²⁰ they accounted for approximately 65% of those subjected to police use of force between 2012 and 2015.²¹ A study of Rochester Police Department (“RPD”) use of force reports showed that force was more common and more severe in neighborhoods with higher percentages of Black and Hispanic residents.²² Strikingly, it found that “the odds of being subjected to high force, relative to low force, increase by 17.1%, on average, as neighborhood percentage of Black residents increases and by 17.7%, on average, as neighborhood percentage of Hispanic residents increases.”²³

Stark racial disparities have also pervaded RPD’s enforcement practices. Black people make up a highly disproportionate number of those stopped²⁴ and

²⁰ U.S. Census Bureau, Demographic & Hous. Estimates, Rochester, <https://data.census.gov/table?g=160XX00US3663000&y=2011>.

²¹ *Rochester Police Department*, N.Y. CIV. LIBERTIES UNION (Aug. 18, 2021), <https://www.nyclu.org/data/rochester-police-department>.

²² Charles Lofaso, *The Effect of Race, Place, and Time on Police Use of Force: How Social Context Influences Legal Decision-Making*, at 129 (2020) (dissertation, The Ohio State University), https://etd.ohiolink.edu/acprod/odb_etd/ws/send_file/send?accession=osu1594479446661188&disposition=inline.

²³ *Id.* at 127.

²⁴ N.Y. Civ. Liberties Union, *supra* n.21 (In 2014, 64% of people stopped by police were people of color, and Black residents experienced police stops at a 58% higher rate than their white counterparts).

arrested by RPD.²⁵ Between 2012 and 2014, 89% of the 2,502 people arrested for possession of marijuana were people of color.²⁶ A 2021 report by the Monroe County Public Defender’s Office found that the overwhelming majority of tickets for certain minor infractions were issued in majority-minority areas of Rochester and that over 90% of these tickets were issued to Black residents.²⁷

Rochester is not alone. For decades, the New York City Police Department (“NYPD”) engaged in widespread racial profiling against Black and Latinx residents, eventually leading to a federal court to find that the department “[implemented] policies regarding stop and frisk in a manner that intentionally discriminate[d] based on race.”²⁸ These constitutional violations resulted in the appointment of an independent federal monitor in 2013, which is still in effect, to oversee the NYPD’s compliance with the United States Constitution.²⁹

Still, stark racial disparities continue in NYPD enforcement practices. Black people are stopped by NYPD officers at nearly twice the rate of the average city

²⁵ Katie Blum & Jill Paperno, *Stop the Stops: The Disparate Use and Impact of Police Pretext Stops on Individuals and Communities of Color*, Empire Justice Center Police Reform Project, at 48 (Jan. 2023) (noting that from January 2021 through July 2022, 69% of people arrested in Rochester were Black), <https://empirejustice.org/wp-content/uploads/2023/01/Stop-the-Stops-Preliminary-Report-Final-Final.pdf>.

²⁶ N.Y. Civ. Liberties Union, *supra* n.21.

²⁷ Monroe Cnty. Pub. Def.’s Off., Exec. Ord. 203 Report, at 4 (Mar. 1, 2021), <https://www.cityofrochester.gov/sites/default/files/migrated/uploadedFiles-Departments-Mayor--Documents-Appendix-H.pdf>.

²⁸ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 663 (S.D.N.Y. 2013).

²⁹ *Id.* at 668.

resident.³⁰ A 2017 analysis of over 500,000 NYPD stops showed that Black and Latinx people were more likely to be frisked and be subjected to force.³¹ A database of over 300,000 Civilian Complaint Review Board (“CCRB”) complaints indicates that roughly 80% of complaints against NYPD officers are filed by Black or Latinx people.³² Some units demonstrate even higher rates of racial disparities; 91% of complaints against Strategic Response Group officers were filed by people of color,³³ while the NYPD’s Neighborhood Safety Teams target Black and Hispanic people in 97% of the encounters they initiate.³⁴

Buffalo’s Black and Latinx communities also endure disparate treatment from their police force. Black people comprised 52% of all people arrested in Buffalo from 2013 to 2015, despite being just 38% of the population.³⁵ One study

³⁰ Alan Feuer, *Black New Yorkers Are Twice as Likely to Be Stopped by the Police, Data Shows*, N.Y. TIMES (Sep. 23, 2020), <https://www.nytimes.com/2020/09/23/nyregion/nypd-arrests-race.html>.

³¹ Philip Levchak, *Do Precinct Commanders Influence Stop-and-Frisk in New York City? A Multi-Level Analysis of Post-Stop Outcomes*. 34 JUSTICE QUARTERLY 377–406 (2017), available at <https://www.tandfonline.com/doi/abs/10.1080/07418825.2016.1162320>.

³² *NYPD Misconduct Complaint Database*, N.Y. CIV. LIBERTIES UNION (July 22, 2020), <https://www.nyclu.org/data/nypd-misconduct-database>.

³³ Press Release, *NYCLU, Advocates and Electeds Demand Answers from NYPD Strategic Response Group*, N. Y. CIV. LIBERTIES UNION (Mar. 1, 2023), <https://www.nyclu.org/press-release/nyclu-advocates-and-electeds-demand-answers-nypd-strategic-response-group>.

³⁴ Nineteenth Rep. of the Indep. Monitor at 2, *Davis v. City of New York*, 10-cv-0699-AT (June 5, 2023) ECF No. 915-1, <https://www.nypdmonitor.org/wp-content/uploads/2023/06/NST-Report.pdf>.

³⁵ Anjana Malhotra, *Unchecked Authority Without Accountability in Buffalo, New York: The Buffalo Police Department’s Widespread Pattern and Practice of Unconstitutional Discriminatory Policing, and the Human, Social and Economic Costs* 4, SUNY BUFFALO LAW SCHOOL (Aug. 30, 2017), executive summary available at <http://ipost.wpengine.netdna-cdn.com/wpcontent/uploads/2017/09/Final-executive-summary-for-release.pdf>.

found that between 2006 and 2015, Black people were greater than seven times more likely to be arrested by the Buffalo Police Department (“BPD”) for misdemeanor marijuana possession than white people.³⁶ In conducting arrests, Buffalo police routinely use more force against people of color.³⁷ Further, the City of Buffalo is currently facing litigation challenging the constitutionality of BPD checkpoints that allegedly target poor, predominantly Black neighborhoods for ticketing.³⁸ Deposition testimony in that case also revealed the widespread use of racially derogatory language among BPD officers, often without disciplinary consequences.³⁹

B. Failures to Substantiate Misconduct and Hold Officers Accountable Can Contribute to Harmful Outcomes.

When disciplinary systems do not hold police officers accountable for endangering public safety, those officers continue to abuse their authority. Indeed, officers with a history of shooting civilians are 51% more likely to do so again.⁴⁰

³⁶ *Id.* at 2.

³⁷ *15 Cases of Alleged Police Brutality, Excessive Force in WNY Since 2006*, WKBW BUFFALO (June 2, 2020), <https://www.wkbw.com/news/i-team/15-cases-of-alleged-police-brutality-excessive-force-in-wny-since-2006>.

³⁸ Mem. of Law in Supp. of Pls.’ Class Certification Mot., *Black Love Resists in the Rust v. City of Buffalo*, No. 1:18-cv-00719-CCR (W.D.N.Y. 2024), ECF No. 211.

³⁹ Press Release, *Failure to Discipline Rampant Use of N-Word by Buffalo Police Officers, Lack of Oversight Chronic*, CTR. FOR CONST. RTS. (Nov. 14, 2022), <https://ccrjustice.org/home/press-center/press-releases/failure-discipline-rampant-use-n-word-buffalo-police-officers-lack>.

⁴⁰ James P. McElvain & Augustine J. Kposowa, *Police Officer Characteristics and the Likelihood of Using Deadly Force*, 35 CRIM. JUST. & BEHAV. 505, 515 (Apr. 2008), available at <https://journals.sagepub.com/doi/abs/10.1177/0093854807313995>.

In New York City, these failures of accountability have had tragic consequences. A study of shootings by the NYPD showed that the “accumulation [of] negative marks” in an officer’s personnel file was “a leading indicator for shooting risk,” and that “officers rapidly accumulating negative marks in their file are at a more than three times greater risk of shooting.”⁴¹ Before NYPD Officer Daniel Pantaleo killed Eric Garner with a chokehold—an offense for which he was fired⁴²—he was the subject of 13 misconduct allegations.⁴³ The most recent complaint against Pantaleo before he killed Mr. Garner was an “unsubstantiated” complaint that he punched the complainant’s face while he was detained in handcuffs and lying on the ground.⁴⁴

In Rochester, the record of Officer Joseph Ferrigno demonstrates the public’s interest in an officer’s complete disciplinary history. In his first nine years on the force, Ferrigno accumulated 23 misconduct complaints, including excessive force complaints about breaking a woman’s ribs by body slamming her and

⁴¹ Greg Ridgeway, *Officer Risk Factors Associated with Police Shootings: A Matched Case-Control Study*, 3 STAT. & PUB. POL’Y 1, 5 (2016), available at <https://www.tandfonline.com/doi/full/10.1080/2330443X.2015.1129918?scroll=top&needAccess=true>.

⁴² Ashley Southall, *Daniel Pantaleo, Officer Who Held Eric Garner in Chokehold, Is Fired*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/nyregion/eric-garner-daniel-pantaleo-fired.html>.

⁴³ Daniel Pantaleo, 50-A.ORG, <https://www.50-a.org/officer/HJCT> (last accessed June 21, 2024).

⁴⁴ Complaint Rep., Case No. 201301769, Civilian Complaint Rev. Bd. (Sep. 22, 2021), https://www.50-a.org/documents/201301769_Complaint245CCRBRedacted_Redacted.pdf.

participating in the assault of a person in wheelchair.⁴⁵ By Ferrigno’s own account, he was never disciplined for these allegations, and he consistently received the support of the local police union.⁴⁶ His history of violence and misconduct culminated in the 2016 shooting of Silvon Simmons.⁴⁷ After mistakenly identifying Mr. Simmons as the subject of a criminal investigation, Ferrigno shot him three times from behind.⁴⁸ Under highly suspicious circumstances, Ferrigno claimed Simmons fired first,⁴⁹ but there was no DNA evidence linking Simmons to a weapon and there were no eyewitnesses besides Ferrigno, who again received the strong backing of the police union.⁵⁰ Ultimately, Mr. Simmons was cleared of all criminal charges stemming from this incident, and the trial judge wrote that “the jury’s verdict reflected a nearly complete rejection” of Officer Ferrigno’s version of events.⁵¹

⁴⁵ Lisa Girion & Reade Levinson, *A Cop Shoots a Black man, and a Police Union Flexes its Muscle*, REUTERS (Nov. 17, 2020), <https://www.reuters.com/investigates/special-report/usa-police-rochester-chapters/#:~:text=The%20Rochester%20Police%20Department%20cleared,what%20happened%2C%20his%20wife%20said.>

⁴⁶ *Id.*

⁴⁷ Gary Craig, *Federal Jury Rules That Police Actions Were Justified in Shooting of City Man*, DEMOCRAT & CHRONICLE (Apr. 26, 2024), <https://www.democratandchronicle.com/story/news/2024/04/26/federal-jury-rules-that-police-actions-were-justified-in-shooting-of-city-man/73465703007/>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Girion, *supra* n.45.

⁵¹ *Id.*

In Buffalo, an unhoused Black man named Willie Henley was shot by BPD Officer Karl Schultz in 2020 under highly questionable circumstances.⁵² While officers claimed Henley posed a threat, eyewitnesses contradicted that report, and videos suggest that Henley tried to peaceably walk away from officers before being shot by Officer Schultz only seconds later.⁵³ Prior to this shooting, Schultz had been the subject of 17 Internal Affairs investigations.⁵⁴ Of eight complaints for “use of force” or “excessive force,” seven resulted in a finding of “not sustained,” indicating neither guilt nor innocence.⁵⁵ Among these “not sustained” complaints was Schultz’s 2012 shooting of Wilson Morales, which left Morales paralyzed for life.⁵⁶ Although that complaint was “not sustained,” the city nevertheless paid \$4.5 million to settle Morales’ claim, the largest settlement of its kind in Buffalo’s history.⁵⁷

C. Public Access to Disciplinary Records, Including “Unsubstantiated” Complaints, Is a Necessary Tool for Accountability.

There is a “paramount public interest in a free flow of information to the people concerning public officials, their servants.” *Garrison v. Louisiana*, 379 U.S.

⁵² Geoff Kelly, *Saturday’s Shooting Wasn’t Buffalo Cop’s First*, INVESTIGATIVEPOST (Sep. 14, 2020), <https://www.investigativepost.org/2020/09/14/saturdays-shooting-wasnt-buffalo-cops-first/>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Karl Schultz Disciplinary Card (via InvestigativePost), <https://www.investigativepost.org/wp-content/uploads/2020/09/Karl-Schultz-Disciplinary-Card.pdf>.

⁵⁶ Kelly, *supra* n.52.

⁵⁷ *Id.*

64, 77 (1964). This interest manifestly extends to information about whether police officers conduct themselves properly while acting under color of law and while being paid with taxpayer money. *Id.* After all, police officers are not simply public officials. They have enormous power—the authority to stop, detain, arrest, and in some cases, use deadly force against members of the public—that is inherently “subject to potential abuse.” *United States v. Robinson*, 414 U.S. 218, 248 (1973) (Marshall, J. dissenting). When officers overstep their authority or misuse their power, they risk violating the most fundamental rights of members of the public.

When the public is denied access to consequential public records, they cannot fully provide the kind of oversight that is necessary in a healthy, well-functioning democracy. And the public’s desire to exercise this oversight was on full display when Section 50-a was repealed, amid the largest protest movement for police accountability and transparency in our country’s history.

The availability of “unsubstantiated” complaints is a necessary component of this oversight. Too often, allegations are deemed “unsubstantiated” simply because the investigating entity concluded there was insufficient evidence to prove whether misconduct occurred, or because investigative procedures were slipshod or heavily biased in favor of clearing officers of wrongdoing. Carefully examining patterns of unsubstantiated complaints can reveal potential systemic problems in the investigations of complaints and in officer conduct or supervision. Moreover,

due to the pervasive flaws in police accountability systems, the bare fact that an allegation of misconduct has been deemed “unsubstantiated” tells the public little to nothing about the credibility of the underlying charges.

Perhaps because of these systemic failures, various institutions in New York acknowledge that the information in “unsubstantiated” complaints holds value. In state courts, unsubstantiated cases may be used for cross-examination, while unfounded and exonerated cases may not.⁵⁸ The NYPD itself has long considered both substantiated and unsubstantiated complaints when determining whether officers need to enter performance monitoring,⁵⁹ indicating that unsubstantiated complaints give the department cause for concern. And New York City’s collective bargaining agreement with law enforcement unions requires removal of unfounded and exonerated, but not unsubstantiated, cases from an officer’s personnel file.⁶⁰

⁵⁸ Unsubstantiated cases provide a good faith basis for further inquiry. *See, e.g., People v. Randolph*, 132 N.Y.S.3d 726 (Sup. Ct. Suffolk Cnty. 2020); *People v. Porter*, 142 N.Y.S.3d 703 (Crim. Ct. Bronx Cnty. 2020); *People v. McKinney*, 145 N.Y.S.3d 328 (Sup. Ct. Kings Cnty. 2021).

⁵⁹ *See* Resp. to Pls.’ Submissions on Dept’s Resp. to Ct. Ord. Regarding Facilitator’s Recommendation No. 1, at 9, *Floyd v. City of New York*, No. 08-cv-01034-AT, ECF No. 729-1.

⁶⁰ For example, Article XVI, Section 7(c) of the City of New York’s Collective Bargaining Agreements with the Patrolmen’s Benevolent Association and the Lieutenant’s Benevolent Association requires that “upon written request to the Chief of Personnel by the individual employee, remove from the Personal Folder . . . reports . . . which are classified ‘exonerated’ and/or ‘unfounded.’” *See* N.Y.C. Off. Lab. Relations, <https://www.nyc.gov/assets/olr/downloads/pdf/collectivebargaining/cbu79-police-patrolmens-benevolent-association-080106-to-073110.pdf>. There is no provision for removing cases which are closed as “unsubstantiated.” *See generally* Resp. and Reply Br. for Pls.-Appellants-Cross-Appellees at 48, *Uniformed Fire Officers Ass’n v. De Blasio*, No. 20-2789 (2d Cir. Nov. 19, 2020), ECF No. 357.

There is ample evidence that investigating bodies in New York are prone to the kinds of systemic failures that produce unjustly high rates of “unsubstantiated” complaints. A DOJ investigation of the Suffolk County Police Department (“SCPD”) in New York found serious flaws in the SCPD’s investigation of police misconduct complaints.⁶¹ In a 2011 letter, the DOJ identified a number of issues with SCPD’s handling of police misconduct complaints, including failures to (1) consistently investigate allegations of police misconduct, (2) maintain engagement with the complainant until resolution of the complaint, (3) properly track complaints, and (4) train supervisors on how to review and address the findings of internal misconduct investigations.⁶² In Buffalo, there is no independent body to implement discipline after findings of police misconduct, leaving the department to police itself,⁶³ which may contribute to a staggeringly low number of complaints resulting in discipline. One study found that BPD’s Internal Affairs Division cleared officers of wrongdoing in 93.5% of excessive force investigations between January 2014 and September 2016.⁶⁴ Anecdotal evidence indicates that BPD officers who report misconduct by fellow officers actually face discipline

⁶¹ U.S. Dep’t of Just., Suffolk Cnty. Police Dep’t Tech. Assistance Ltr. at 11 (Sept. 13 2011), available at https://www.justice.gov/sites/default/files/crt/legacy/2011/09/14/suffolkPD_TA_9-13-11.pdf.

⁶² *Id.*

⁶³ Daniela Porat, *Scant Oversight of Buffalo Police*, INVESTIGATIVEPOST (Feb. 15, 2017), <https://www.investigativepost.org/2017/02/15/scant-oversight-of-buffalo-police/>.

⁶⁴ *Id.*

themselves.⁶⁵ In fact, the Buffalo Police Commissioner admitted in a 2013 deposition that officers sometimes lie to protect their colleagues from misconduct complaints.⁶⁶

In New York City, the NYPD's Internal Affairs Bureau investigated 2,946 civilian complaints related to race-and-bias-based policing from 2014 through 2019 and *did not substantiate a single one*.⁶⁷ At the same time, the independent monitor identified a number of problems with the NYPD's handling of the investigations, such as “[n]ot interviewing the complainant, or witness, or subject and witness officers”; asking questions that “suggested the investigator had already reached a conclusion” and/or “doubted the validity of the complaint or the credibility of the complainant”; and “[n]ot following up on leads.”⁶⁸ The Office of the Inspector General for the NYPD likewise found serious deficiencies in the NYPD's investigation of complaints of biased policing.⁶⁹ According to the Inspector General, “[a]lthough low substantiation rates for biased policing

⁶⁵ Morgan McKay, *Bill to Protect Officers Who Report Police Misconduct*, SPECTRUM NEWS (June 12, 2020), <https://spectrumlocalnews.com/nys/central-ny/politics/2020/06/11/bill-to-protect-officers-who-report-police-misconduct->

⁶⁶ Craigraig, *supra* n.63.

⁶⁷ Corrected Tenth Rep. of Indep. Monitor at 73, *Davis v. City of New York*, 10-cv-0699-AT, ECF No. 497.

⁶⁸ *Id.* at 75.

⁶⁹ N.Y.C. Dep't of Investigation, *Complaints of Biased Policing in New York City: An Assessment of NYPD's Investigations, Policies, and Training 22-34* (June 2019), https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf.

complaints exist in other large U.S. cities, NYPD’s zero substantiation rate stands out.”⁷⁰

The CCRB, which also investigates certain cases of NYPD misconduct, has also demonstrated poor substantiation rates, reaching an “unsubstantiated” finding in approximately half of its investigations.⁷¹ The difference between a finding of “substantiated” versus “unsubstantiated” often rests simply on whether video evidence exists. A 2020 report showed that when no video evidence was available, the rate of unsubstantiated cases was high (51%) and the rate of substantiated cases was low (13%); when body-worn camera footage was available, the rate of unsubstantiated cases plummeted (23%), while the rate of substantiated cases increased dramatically (31%).⁷²

In Rochester, the RPD failed to implement adequate discipline in a number of disturbing instances of police misconduct. In 2013, Benny Warr was knocked

⁷⁰ *Id.* at 20.

⁷¹ David Cruz, *Why The Majority Of NYPD Misconduct Complaints End Up “Unsubstantiated,”* GOTHAMIST (Aug. 18, 2020), <https://gothamist.com/news/why-the-majority-of-nypd-misconduct-complaints-end-up-unsubstantiated> (“From 2010 through 2019, the CCRB reached conclusions in 17,325 complaints, with 8,775 of those complaints deemed unsubstantiated, according to figures provided by the agency, making it the most common determination. This contrasts with 2,933 cases deemed substantiated over that same time period.”)

⁷² N.Y.C. Civilian Complaint Rev. Bd., *Strengthening Accountability: The Impact of the NYPD’s Body-Worn Camera Program on CCRB Investigations*, at 70 (Feb. 2020), https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWCReport.pdf.

out of his wheelchair by RPD officers while waiting for a bus⁷³; RPD cleared the officers of wrongdoing,⁷⁴ although one was later found by a jury to have used excessive force.⁷⁵ After Officer Eliud Rodriguez falsely arrested three Black teenagers,⁷⁶ he was never disciplined, though the city paid \$50,000 to settle the resulting lawsuit.⁷⁷ In 2015, RPD officers badly injured unarmed 17-year-old Rickey Bryant in an apparent case of mistaken identity, allegedly knocking him off his bike, beating him, using pepper spray and a Taser on him, and ultimately breaking his left eye socket.⁷⁸ Rochester Police Chief Michael Ciminelli declared the allegations were “unprovable,”⁷⁹ although the city reached a \$360,000

⁷³ Iman Abid & Michael Sisitzky, *Rochester Could Break Through the Thin Blue Line Protecting Abusive Police*, AMERICAN CIV. LIB. UNION (Jan. 17, 2019),

<https://www.aclu.org/news/criminal-law-reform/rochester-could-break-through-thin-blue-line>.

⁷⁴ *Id.*

⁷⁵ Gary Craig & David Andreatta, *Jury Awards \$1 to Man in Wheelchair Who Sued Rochester Police For Excessive Force*, DEMOCRAT & CHRONICLE (Feb. 4, 2019),

<https://www.democratandchronicle.com/story/news/2019/02/04/benny-warr-rochester-police-brutality-verdict-federal-jury-wheelchair-dollar-james-sheppard/2769182002/>.

⁷⁶ Barbara Lacker-Ware & Theodore Forsyth, *The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York 47* (2017), available at <https://www.reuters.com/investigates/special-report/assets/usa-police-rochester-union/cpr-report.pdf>.

⁷⁷ Compl. at 73 (para. 234), *Hall v. Warren*, No. 6:21-cv-06296 (W.D.N.Y. Apr. 5, 2021), ECF No. 1.

⁷⁸ David Andreatta, *Andreatta: City Council Must Speak Out About Rickey Bryant*, DEMOCRAT & CHRONICLE (Sep. 29, 2017),

<https://www.democratandchronicle.com/story/news/local/columnists/andreatta/2017/09/29/andreatta-city-council-must-speak-out-rickey-bryant/717899001/>.

⁷⁹ Mary McCombs, *Police Chief Says Brutality 'Unprovable' in Rickey Bryant Investigation*, SPECTRUM NEWS (Apr. 12, 2017),

<https://spectrumlocalnews.com/nys/rochester/news/2017/04/12/rpd-says-police-brutality-investigation-is-complete--family-of-victim-says-otherwise>.

settlement with Mr. Bryant.⁸⁰ In 2016, the officer who tackled and pepper-sprayed Lentorya Parker as she picked her daughter up from school was never disciplined, nor was the officer who said, “[S]orry your mom’s an animal,” to Ms. Parker’s daughter during the incident.⁸¹ In 2017, after Rakim Yancey objected to Sergeant Timothy Pancoe’s use of racist language toward him, Pancoe and two colleagues maced and assaulted him so severely that he required hospitalization.⁸² The officers were never disciplined, and Pancoe was later promoted to lieutenant.⁸³

In multiple instances, the RPD promoted officers with violent or questionable incidents in their records. This includes promotions for the officers that killed Lawrence Rogers in 2002 after beating him and placing their knees on his neck,⁸⁴ and for the officer who shot 13-year-old Lashedica Mason in 2005 during an apparent mental health crisis.⁸⁵ After RPD Sergeant Ronald Malley participated in the assault of Russell Davis in 2006, Malley was put in charge of

⁸⁰ Rachel Barnhart, *City Paid Rickey Bryant \$360,000*, ROCHESTER FOR ALL (Nov. 16, 2018), <http://www.rochesterforall.com/city-paid-rickey-bryant-360000/>.

⁸¹ Lacker-Ware, *supra* n.76, at 57.

⁸² Yancey v. Panco, 6:20-CV-06149 EAW (W.D.N.Y. Mar. 8, 2021), <https://casetext.com/case/yancey-v-pancoe>.

⁸³ Compl., *Hall v. Warren*, *supra* n.77, at 75 (para. 237).

⁸⁴ Lacker-Ware, *supra* n.76, at 31.

⁸⁵ Brian Sharp & Sean Lahman, *Who is Mark Simmons? Meet the Interim Chief of the Rochester Police Department (Again)*, DEMOCRAT & CHRONICLE (Sep. 14, 2020), <https://www.democratandchronicle.com/story/news/2020/09/14/mark-simmons-new-rochester-n-y-police-chief-interim-replace-laron-singletary-daniel-prude/5800015002/>.

investigating the incident, determined the complaints “unfounded,” and was later promoted to lieutenant.⁸⁶

D. Other Jurisdictions Permit Access to Disciplinary Records Regardless of Outcomes.

While New York police personnel records were shrouded in secrecy for decades under Section 50-a, other jurisdictions acknowledged and honored the public’s right to access the kind of information at issue in this case. Greater transparency has proven to be beneficial in times when communities must respond to acts of police violence and misconduct.

In Minnesota, for instance, the public has access to “the existence and status of any complaints or charges against” an officer, “regardless of whether the complaint or charge resulted in a disciplinary action,” as well as “the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action.”⁸⁷ After Derrick Chauvin killed George Floyd, the public discovered—as a result of Minnesota’s more transparent approach—that Chauvin had been the subject of at least 17 prior complaints, including for shooting a civilian.⁸⁸ The revelation that only two of

⁸⁶ Lacker-Ware, *supra* n.76, at 17.

⁸⁷ Minn. Stat. § 13.43(2)

⁸⁸ 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>.

those complaints resulted in discipline, and that the stiffest punishment Chauvin received was a letter of reprimand, fueled calls for reform of the Minneapolis Police Department's dysfunctional disciplinary system.⁸⁹

In October 2014, Chicago police officer Jason Van Dyke shot and killed Black teenager Laquan McDonald.⁹⁰ As a result of Illinois' comparatively transparent approach to police disciplinary records, Chicagoans were quickly able to question whether there had been a breakdown in Chicago's police disciplinary system. The public learned Van Dyke had been the subject of civilian complaints on at least 20 occasions,⁹¹ including allegations of using racial slurs and multiple excessive force complaints, including one in which a Black Chicagoan was awarded \$350,000 after Van Dyke used such extreme force that the man needed shoulder surgery.⁹² And they learned that none had resulted in discipline.

Following public outrage, Van Dyke was swiftly stripped of his police powers, and

⁸⁹ *Id.*

⁹⁰ Monica Davey & Mitch Smith, *Chicago Protests Mostly Peaceful After Video of Police Shooting Is Released*, N.Y. TIMES (Nov. 24, 2015), <https://www.nytimes.com/2015/11/25/us/chicago-officer-charged-in-death-of-black-teenager-official-says.html>.

⁹¹ Elliot C. McLaughlin, *Chicago Officer Had History of Complaints Before Laquan McDonald Shooting*, CNN (Nov. 26, 2015), <https://www.cnn.com/2015/11/25/us/jason-van-dyke-previous-complaints-lawsuits/>.

⁹² *Id.*

he and three other members of the Chicago Police Department were ultimately fired for their role in Laquan McDonald's murder.⁹³

In December 2022, the Council of the District of Columbia passed the Comprehensive Policing and Justice Reform Amendment Act, a major overhaul meant to provide greater police transparency and accountability in Washington, D.C.⁹⁴ The law defines “disciplinary records” to include complaints, regardless of whether or how they are ultimately adjudicated, and stipulates that “disciplinary records shall not be categorically denied or redacted on the basis that it constitutes an unwarranted invasion of a personal privacy[.]”⁹⁵ Recently, the *Washington Post* sued the District of Columbia pursuant to these transparency provisions, in order to compel the disclosure of Officer Brett Parson's disciplinary records after he was criminally charged with unlawful sexual activity with a minor.⁹⁶ In considering the case, Judge Maurice Ross noted that D.C.'s arguments against disclosure constituted a “pre-George Floyd view of FOIA” that had “been repudiated by recent legislative action and a whole mood change within the city and the

⁹³ Herbert G. McCann, *4 Chicago Officers Fired for Laquan McDonald Shooting Cover-Up*, NPR (July 19, 2019), <https://www.pbs.org/newshour/nation/4-chicago-officers-fired-for-laquan-mcdonald-shooting-cover-up>.

⁹⁴ D.C. Laws 24-345, D.C. Act 24-781 (2023), <https://code.dccouncil.gov/us/dc/council/laws/24-345>.

⁹⁵ *Id.*

⁹⁶ Nathan Jones, *When Government Officials Withhold Records, the Public Pays the Price*, WASH. POST (Dec. 14, 2023), <https://www.washingtonpost.com/investigations/2023/12/14/foia-dc-police-misconduct-brett-parson/>.

country.”⁹⁷ Judge Ross relied, at least in part, on the significant public interest in Officer Parson’s personnel history in ordering the disclosure of Parson’s disciplinary records, which revealed 12 misconduct allegations from 2003 to 2017—only one of which had been sustained—including complaints of excessive force and even threatening a teenage girl with violence.⁹⁸ As the *Post* noted in its exposé, “[t]hanks to the D.C. Freedom of Information Act—and Judge Ross’s willingness to enforce it—the public now has fuller knowledge of Parson’s history as an officer, as well as how the department handled his misconduct.”⁹⁹

In contrast, after Daniel Pantaleo choked Eric Garner to death, not even Garner’s family could obtain access to Pantaleo’s disciplinary records. Attempts by the family’s attorneys to secure those records under FOIL were rejected by the NYPD, citing Section 50-a.¹⁰⁰ It was not until after the repeal of Section 50-a that the CCRB released the records, and the public finally learned that Pantaleo was the subject of no fewer than 17 complaints in the five years before he killed Mr. Garner.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Erin E. Evans, *Police Secrecy Law Keeps Public in the Dark About Police Misconduct*, NBC NEWS (May 19, 2019), <https://www.nbcnews.com/news/us-news/police-secrecy-law-keeps-public-dark-about-policemisconduct-n1006786>.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the Appellate Division, Fourth Department.

Respectfully Submitted



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Dated: July 8, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: July 8, 2024

A handwritten signature in black ink, appearing to read "David Moss". The signature is written in a cursive style with a large initial "D" and "M".

David Moss

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

**AFFIDAVIT OF SERVICE
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I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On July 8, 2024

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Sworn to before me on July 8, 2024



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**DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f) OF THE
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The proposed *Amicus Curiae* –The NAACP Legal Defense & Educational Fund, Inc.–states that that it is a non-profit corporation with no parent corporation, subsidiaries, or affiliates.