

touch organization at odds with other law enforcement experts, national policy, and Baltimore City communities. Worse still, the FOP's positions do a disservice to the many law enforcement officers who are tarnished and hampered by the FOP's embodiment of the view that police believe they are above the law.

INTEREST OF AMICI

The American Civil Liberties Union of Maryland is the state affiliate of the American Civil Liberties Union (“ACLU”), a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation’s civil rights laws. Since its founding in 1931, the ACLU of Maryland, which is comprised of approximately 14,000 members throughout the state, has appeared before various courts and administrative bodies in numerous civil rights cases against the government or government officials, both as direct counsel and as amicus curiae. The issue before the Court is of vital interest to the ACLU of Maryland, as it frequently represents individuals whose rights have been violated by police, and has been deeply involved in police accountability efforts in Baltimore and around the state, in both the legislative and litigation arenas.

The Campaign for Justice, Safety & Jobs (“CJSJ”) is a diverse group of Baltimore, faith, civil rights, labor, and community organizations and leaders who came together to advocate for meaningful police reforms to promote transparency, accountability, and safety in Baltimore’s communities. The campaign includes over 25 powerful organizations representing thousands of Marylanders from Baltimore, including a diverse combination of local grassroots youth organizations, policy advocates, faith

instructions, and labor unions, all of whom are working together to advocate for police reform in Baltimore: 1199 SEIU, ACLU of Maryland, Amnesty International, Baltimore Algebra Project, Beats, Rhymes, and Relief, Bmore United, CASA, Citibloc, Communities United, Council on American-Islamic Relations, Equity Matters, Empowerment Temple, Freddie Gray Project, Fusion Group, Jews United for Justice, Justice League, Leaders of a Beautiful Struggle, Making Change, Maryland State Conference NAACP, Peace by Piece, Pleasant Hope Baptist Church, Power Inside, SEIU 32BJ, Southern Engagement Foundation, Ujima People's Progress, and Universal Zulu Nation.

FACTUAL AND LEGAL BACKGROUND

Seventeen years ago, in 1999, against the backdrop of extreme community frustration with Baltimore City police, the General Assembly created the Baltimore Civilian Review Board. *See generally* Code of Public Local Laws of Baltimore City ("PLL") §§ 16-41 - 16-54. The statute mandated that the Civilian Review Board do precisely what the FOP challenges in this case: receive and review internal affairs records concerning complaints. PLL §16-45(a) ("The Internal Investigative Division shall make a comprehensive investigation of each complaint and submit its Internal Investigative Division Report relating to the incident alleged to the Board within 90 days from the date of the complaint."); *Id.* §16-46(c)(1) ("The Board shall review the Internal Investigative Division's Report.").

Under the statute, the Civilian Review Board cannot impose discipline on any law enforcement officer. Rather, the statute contemplates that the CRB will make recommendations based on its independent review of Internal Affairs (IA) records.

These provisions were carefully crafted so as to not run afoul of the Law Enforcement Officers' Bill of Rights ("LEOBR"). *See* Docket No. 2, *Baltimore City Motion to Dismiss, or, In the Alternative, Motion for Summary Judgment* at 10-11 (citing legislative history).

The FOP explicitly acknowledges that, but for its receipt of the statutorily-mandated Internal Affairs casebooks, the Baltimore Civilian Review Board would be unable to carry out its duties. *See* Am. Compl., Docket No. 4 ¶ 79 ("To the best of Petitioners' knowledge, information and belief, the CRB needs the information from the IAD before it can conduct its investigation. Without receiving information from IAD the CRB would not be aware of allegations raised against the Petitioners, nor would it be aware of involved Officers or Citizens.") ¶ 79.

Nonetheless, despite the Maryland General Assembly's explicit statutory mandate that the Baltimore Police Department must provide the Civilian Review Board with Internal Affairs records, that the CRB must review such records, and the clear understanding that the CRB requires the records in order to carry out its duties, the FOP argues that all of these acts are unlawful under the Maryland Public Information Act ("MPIA") and the LEOBR. The FOP's position is that the Baltimore Police Department should be permanently barred from providing internal affairs records to the Civilian Review Board (as well as barred from assisting the Civilian Review Board in any way) and that the Civilian Review Board should be permanently barred from using any information, including internal affairs records, about police officers. This is the FOP's vision for "community oversight" of police in Baltimore.

Notably, the FOP's lawsuit, which is without any legal merit, comes on the heels of efforts to revitalize Baltimore's Civilian Review Board in an effort to build legitimacy and public trust in the wake of high-profile killings of civilians, exposés about the extent of uses of force, Baltimore's uprising, and longstanding complaints about police harassment. *See, e.g.,* Karen Houppert, *The Civilian Review Board Ups its Game*, Balt. City Paper, May 11, 2016 *available at* <http://www.citypaper.com/news/mobtownbeat/bcp-051116-mob-civilian-review-board-20160511-story.html>. The City's recommitment to its long-neglected Civilian Review Board flows from widespread acknowledgment of the deep need to repair community trust and broad consensus nationally among experts and law enforcement officials alike about civilian oversight's critical role. Over the course of the last year, the City has hired new leadership for the CRB, increased funding, hired independent investigators and recruited members for seats that have sat empty in previous years. Rather than embrace this critical effort of public officials, community leaders and the Baltimore Police Department to work together towards improving police practices and community faith in police, the FOP has opted for the course that contributed to bringing the City to this breaking point in the first place: Blanket denials that officers ever engage in wrongdoing and hardline resistance to any form of transparency or community oversight.

ARGUMENT

- I. **Neither the MPIO, nor the LEOBR, Prohibits the Baltimore Police Department From Cooperating With, or Sharing Information With, Baltimore's Civilian Review Board.**

Contrary to the FOP's assertions, neither the Maryland Public Information Act (MPIA) nor the LEOBR prevents the Baltimore City Civilian Review Board from reviewing any records pertaining to complaints and investigations of police misconduct.

A. The MPIA Does Not Apply to the BPD's transmittal of records, per a statutory mandate, that are required by the Baltimore Civilian Review Board to carry out its duties.

The MPIA's primary concern is the public's right of access to records pertaining to the business of government. *See* Md. Code, Gen. Prov. § 4-103(a) ("All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees."). The law provides a means through which members of the public can request government information, and establishes rules for government responses to those requests, including some restrictions. Application of the MPIA is triggered by a citizen's information request; it does not independently restrict disclosures nor create special privileges outside that limited context, as the FOP mistakenly thinks. *See, e.g., Shriner v. Annapolis City Police Department*, 2012 WL 959380 (D. Md. 2012) (Maryland Public Information Act does not create privilege against disclosure of personnel files in civil litigation); *Mezu v. Morgan State University*, 269 F.R.D. 565, 576 (D.Md.2010; ("[T]he MPIA does not bar discovery of otherwise discoverable documents."); *Robinson v. State* 354 Md. 287 (1999) (holding that IAD records must be produced in criminal case to protect constitutional rights of accused person). Put another way, the MPIA governs requests for public records when there is no other independent legal authority to obtain the records, and does not govern access when records are obtained pursuant to some other source of law.

Even if one assumed, *arguendo*, that the MPIA was relevant to the police department's ability to share files with the Civilian Review Board pursuant to state statute, the explicit language of the MPIA and basic rules of statutory construction make plain the permissibility of such sharing. It is axiomatic that, whenever possible, statutes are read in harmony. *See, e.g., Massey v. Galley*, 392 Md. 634, 650 n.7 (2006) (Even if the two statutes are "seemingly contradictory," it is a settled principle that courts should attempt to "harmonize" them, "giving meaning and effect to all parts of the statutory language and refraining from interpretations that render ... [them] contradictory.") (quoting *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 168 (2004)). By its own terms, the MPIA does not bar disclosure of Internal Affairs records to the Civilian Review Board, as the MPIA creates an exception to mandatory withholding of records where "otherwise provided by law." Md. Code, Gen. Prov. § 4-328 ("*Unless otherwise provided by law*, a custodian shall deny inspection of a part of a public record, as provided in this part.") (emphasis added). The Public Local Law, enacted by the General Assembly and expressly instructing the BPD to send Internal Affairs records to the Civilian Review Board, is precisely this other source of law that permits disclosure of the records *to the Civilian Review Board* even if they are not otherwise available. *See also Fields v. State*, 432 Md. 650, 678 (2013) (McDonald, J., concurring) (discussing "other law" provisions of MPIA and stating that "The bottom line is that the PIA always defers to 'other law.' ... If other law requires disclosure of a record, the record is disclosable under the PIA even if it falls within one of the PIA's many categories of exceptions to disclosure.")¹.

¹ This is especially obvious in light of the clear grant of authority to the CRB to issue

Second, even if the public local law creating the CRB *did* conflict with the MPIA, the law is clear: the public local law prevails over public general law pursuant to Md. Code, Gen. Prov. § 1-206 (“Where a public general law and a public local law enacted by the General Assembly are in conflict, *the public local law shall prevail.*”) (emphasis added). This approach is further supported by other basic rules of statutory construction:

Under the standard rules of statutory construction, to the extent that there is a conflict between the two provisions, the later enacted provision ... prevails. *State v. Ghajari*, 346 Md. 101, 115, 695 A.2d 143 (1997); *cf.* Maryland Code, Article 1, § 17. Moreover, as a general rule, when a specific enactment and general enactment appear to cover the same subject, but conflict, the specific enactment prevails. *Smack v. Department of Health & Mental Hygiene*, 378 Md. 298, 306, 835 A.2d 1175 (2003).

Patton v. Wells Fargo Financial Maryland, Inc., 437 Md. 83, 107 (2014) (modification added). Here, the public local law is both the most recently-enacted and more specific statute than the MPIA. In sum, there is simply no basis for the FOP’s contention that the

subpoenas “to compel: (i) the attendance and testimony of a witness other than the accused officer; and (ii) the production of any book, record, or other document.” PLL 16-46(b)(1). Those who fail to comply may be compelled to comply by court. *Id.* at (b)(2). This authority provides an alternate source of “other law” authorizing disclosure. *See Fields v. State*, 432 Md. 650, 679 (2013) (McDonald, J., concurring) (noting that subpoena may provide source of “other law” authorizing disclosure exception to MPIA denial). As a practical matter, under the FOP’s approach, the CRB would have to compel production of internal affairs records in every case through subpoena. While the CRB could do this, such an approach is both inefficient and nonsensical in light of the CRB’s clear authority to receive the records.

² In addition to arguing that IAD casebooks cannot be disclosed due to the personnel

MPIA bars the Baltimore Police Department from providing Internal Affairs records to the Civilian Review Board, and these counts of the complaint should be dismissed.²

B. The LEOBR does not forbid the Civilian Review Board from carrying out its duties

The FOP also argues that the Civilian Review Board acts as an “arm or agent” of the Internal Affairs Division because the Baltimore Police Department, as required by PLL, provides the Board with Internal Affairs records. ¶¶ 77, 78, 80. According to the FOP, in this way the BPD “facilitates the illegal investigation and interrogation” of police in violation of LEOBR, Md. Code, Pub. Safety § 3-104(b).

By its own terms, the provision upon which FOP relies applies only to “(a) [t]he investigation or interrogation *by a law enforcement agency* of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal. *Id.* § 3-104(a). The Civilian Review Board is neither a “law enforcement agency,” *see id.* § 3-101(e) (listing “law enforcement agencies” that employ law enforcement officers protected by LEOBR); *e.g. Id. at* § 3-508(a)(4) (defining “law enforcement agency” as “an agency that is listed in § 3-101(e) of this title.”) nor does it have any authority to impose any kind of

² In addition to arguing that IAD casebooks cannot be disclosed due to the personnel records exemption to the MPIA, the FOP also argues that IA records cannot be disclosed because the LEOBR renders them confidential and disclosure would thus be contrary to a State statute. The FOP argues that the LEOBR’s provision governing disclosure of records to officers renders the records “confidential” because in order to receive a copy, officers must sign an agreement to keep them confidential. This argument was specifically rejected in *Maryland State Police v. Dashiell*, 443 Md. 435 (2015), where the MSP argued that internal affairs investigation records could not be disclosed under the MPIA, claiming that the identical provision of the LEOBR rendered the records confidential. The Court of Appeals stated that that “Section 3–104(n) ... is inapposite to this situation, and we agree with the Court of Special Appeals that the LEOBR ‘does not govern whether documents from an internal investigation are subject to disclosure to third parties under the MPIA.’” *Id.* at 450 n. 13 (citation omitted).

disciplinary action. *See* §16-48 (a) (“The head of the appropriate law enforcement unit has final decision-making responsibility for the appropriate disciplinary action in each case...”); §16-50 (“The procedures established under this subheading may not be construed to affect or change the methods and procedures for suspension or dismissal of police officers.”).

The FOP’s bald allegation that the CRB acts as an “arm or agent” of the IAD because the General Assembly mandated that the CRB receive and review IA records is without merit as a matter of both common sense and the most cursory review of agency law.³ *See, e.g.*, 2 M.L.E. Agents and Factors § 13 (describing requirements of agency relationship, including, most critically, intent of both parties; in absence of written agreement, looking to whether agent “is subject to principal’s right of control”; has “duty to act primarily for the benefit of principal”; and agent holds power to “alter legal relations of the principal.”).

Moreover, even if, by some stretch, the work of the CRB *did* somehow trigger potential disciplinary action independent of the IAB’s own investigation, PLL §16-51 provides safeguard language ensuring that the protections of the LEOBR would attach in such an instance: “A police officer may not be penalized or affected adversely in any way as a result of the procedures established under this subheading without having been first afforded proper written notice of the charges lodged against the officer and the right to a hearing before the Police Trial Board in accordance with due process of law.”

³ The FOP’s position is especially absurd in light of the widely-acknowledged and longstanding lack of resources devoted to the Baltimore Civilian Review Board in comparison to the Baltimore Police. In 2015, for example, the budget for internal affairs alone was about 40 times that of the Civilian Review Board. *See* Houppert, *supra*.

II. The FOP's Extreme Positions Are Out of Touch with Best Practices Promoted by Law Enforcement Experts, Public Opinion, Sound Policy, and National Trends, All of Which Emphasize the Need to Build Trust in Police Through Civilian Oversight.

A. Public Trust and Perceived Legitimacy are Essential to Effective Law Enforcement but Severely Eroded in Baltimore and Across the Country

Public officials and law enforcement experts agree that public confidence in police is essential for witness cooperation, information gathering, and other basic aspects of effective law enforcement. In the words of Chuck Wexler, a former police officer who heads the Police Executive Research Forum: "Police departments cannot do a good job if they do not have a high level of trust from all of their various communities. Police rely on help from residents to find out what is happening in the neighborhoods and to work with community members to solve local problems." Chuck Wexler, *Community-Police Relationships: An Essential Element of Moving Forward* in Police Executive Research Forum, *Advice from Police Chiefs and Community Leaders on Building Trust: "Ask for Help, Work Together, and Show Respect"* at 4 (March 2016), <http://www.policeforum.org/assets/policecommunitytrust.pdf>; see also Institute for Community-Police Relations at the International Association of Chiefs of Police ("No single factor has been more crucial to reducing crime levels than the partnership between law enforcement agencies and the communities they serve. In order for law enforcement to be truly effective, police agencies cannot operate alone; they must have the active support and assistance of citizens and communities."), www.iacp.org/icpr; U.S. Dep't of Justice Office of Community Oriented Policing Services, *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement* at 7 (2014), <http://www.theiacp.org/portals/0/pdfs/>

BuildingTrust.pdf (community trust is “the key to effective policing.”). Indeed, “a Police Foundation survey found that over 95 percent of rank-and-file police officers believe that the most effective way to control crime is by working with citizens and communities.” U.S. Commission on Civil Rights, *Revisiting Who Is Guarding the Guardians? A Report on Police Practices and Civil Rights in America* at 57 (November 2000) (citation omitted), <https://www.ncjrs.gov/pdffiles1/bja/249021.pdf>.

Maryland law enforcement officials have also emphasized this point. As Commissioner Kevin Davis noted when he was appointed Interim Chief of the Baltimore Police Department and as other police officials have echoed, “We are only as strong as our relationships with the community.” *Advice from Police Chiefs, supra*, at 36. See also Vanessa Junkin, *Trust is 'Paramount,' Says Officer at Community Forum*, DelmarvaNow.Com, Oct. 23, 2015 (“Transparency is important, said Lt. Ryan Bricker, the Salisbury barrack commander for the Maryland State Police, and community trust is ‘paramount.’”), <http://www.delmarvanow.com/story/news/local/maryland/2015/10/19/policing-community-forum/74235194/>. International City/County Management Association, *Police, the Community, and the Local Government Manager Transcript* (2015) (Montgomery County Police Chief Thomas Manger emphasizing “how much easier” officers’ jobs are “if the community has confidence and trust in them.”), available at http://icma.org/en/Article/106426/Police_the_Community_and_the_Local_Government_Manager.

Yet in Baltimore and across the country, it is plain that public trust in the police is at an all-time low and that there is a grave need for remedial efforts to address this problem. See, e.g., *Advice from Police Chiefs, supra*, at 71 (Summarizing consensus of

law enforcement and community leaders from across the country that “the state of community-police relations in many cities is not good.”). Baltimore’s Commissioners have themselves acknowledged this crisis, citing both the history and current practices in policing such as zero tolerance policies and race discrimination as contributing to this deep distrust. Commissioner Kevin Davis has said that police “don’t have the trust that we yearn for from our communities.” Ed Gunts, *Police Commissioner Davis: We Have “Most Prepared Police Department in America” in Event of More Unrest*, BaltimoreBrew.com (Dec. 3, 2015), <https://baltimorebrew.com/2015/12/03/police-commissioner-davis-we-have-most-prepared-police-department-in-america-in-event-of-more-unrest/>. And during his tenure, former Baltimore Police Commissioner Anthony Batts also acknowledged the poor relationship between police and the community. Justin Fenton, *Police Commissioner Batts Says Police Need to Tackle Racism to Build Trust*, Balt. Sun (Feb. 13, 2105), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-batts-speaks-20150213-story.html>.

B. Public Distrust is Fueled in Part by Blanket Denials of Wrongdoing, the Code of Silence and the Perceived Inability and Unwillingness of Police to Police Themselves Even in the Most Extreme Cases

One of the most significant contributing factors to this distrust is the prevailing public opinion that police departments do not sufficiently hold officers accountable for misconduct. For example, in a 2014 national poll conducted by the Pew Research Center, 91 percent of Blacks and 58 percent of whites surveyed said that police departments do a poor or only fair job of holding officers accountable for misconduct. Pew Research Center, *Few Say Police Forces Nationally Do Well in Treating Races Equally* (Aug. 25, 2014), available at <http://www.people-press.org/2014/08/25/few-say->

police-forces-nationally-do-well-in-treating-races-equally/; see also *Advice from Police Chiefs, supra*, at 71 (“Many community members do not trust the criminal justice system or police agencies’ Internal Affairs processes to investigate, discipline, or prosecute officers who engage in misconduct.”).

These perceptions are grounded in reality. See, e.g., Joanna C. Schwartz, *Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decision-Making*, 57 UCLA L. Rev. 1023, 791-92, 870-872 (2010) (noting that available information shows serious inadequacies in internal affairs investigations generally and that outside reviews typically identify significant issues). As explained by one of the nation’s first police monitors, “police officers [tend] to become uncooperative when faced with an investigation, creating what has been called the ‘blue wall’ to enforce a code of silence by intimidating any officer who shows any willingness to cooperate with investigators or point the finger at a fellow officer.” Merrick Bob, *Internal and External Police Oversight in the United States* at 6 (2002), available at <http://www.prearesourcecenter.org/sites/default/files/library/internalandexternalpoliceoversightintheunitedstates.pdf>. Distrust is thus fostered by the widespread “code of loyalty that requires police officers to either corroborate the lies of their fellow officers or remain silent about them.” Judith A.M. Scully, *Rotten Apple or Rotten Barrel?: The Role of Civil Rights Lawyers in Ending the Culture of Police Violence*, 21 Nat’l Black L.J. 137, 143 (2009); see also Alison L. Patton, *The Endless Cycle of Abuse: Why § 1983 is Ineffective in Deterring Police Brutality*, 44 Hastings L.J. 753, 778-79 (1993); Christopher Cooper, *Yes, Virginia, There is a Police Code of Silence: Prosecuting Police Officers and the Police Subculture*, 45 Crim. L. Bull. 277, 280 (2009).

Officers themselves acknowledge this culture; in a survey of officers from 121 different police departments, only 39 percent believe that officers would report serious criminal violations committed by other officers. *See* Scully, *supra*, at 143. And, indeed, officers who break the code often experience retaliation. *See, e.g.*, Cooper at 282-84 (describing incidents where officers who reported misconduct by fellow officers were accused of perjury and deceived death threats); Radley Balko, *Why Cops Aren't Whistleblowers*, Reason.Com (Feb. 2011), *available at* <http://reason.com/archives/2011/01/25/why-cops-arent-whistleblowers> (compiling incidents of retaliation against police) (“It may be true that abusive cops are few and far between, as police organizations typically claim. The problem is that other cops rarely hold them accountable ...”).⁴

The Baltimore FOP has done little to dispel these views. Rather, the Baltimore FOP has only furthered distrust through blanket denials of any wrongdoing by officers regardless of context and its full-blown opposition to any and all forms of community transparency. As explained by the editorial board of the *Baltimore Sun*,

“Since the unrest that followed Freddie Gray’s death last year, some officers have crouched farther behind the thin blue line, adopting an attitude of victimization at the hands of the city’s political leaders, prosecutors and residents of crime-torn neighborhoods who are now quick to question and videotape everything they do. The city police union has

⁴ Former Baltimore Police Department Officer Joseph Crystal was retaliated against for reporting another officer’s assault on a handcuffed suspect. He alleges that he was harrassed, including finding a dead rat on the windshield of his car at his home, refused backup when out on patrol, and moved to an undesirable beat. Rich Schapiro, *‘If you Snitch, Your Career is Done’: Former Baltimore Cop Says He Was Harrassed, Labeled a ‘Rat’ After Attempt to Root Out Police Brutality*, N.Y. Daily News, Jan. 14, 2015. *See also* The Real News Network, *Whistleblower: Modern Policing Rooted in Racist Policies*, Sept. 13, 2015 (former BPD officer Michael Wood discussing culture of Baltimore Police), *available at* http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=14707.

repeatedly fostered an us v. them mentality, most recently in a pair of tweets (since deleted) gloating about the acquittal of one of the officers charged in Gray’s death but also in statements referring to the prosecutions as ‘malicious,’ protesters as a ‘lynch mob,’ and the police on the street as ‘more afraid of going to jail for doing their jobs properly than they are of getting shot on duty.’”

Editorial, *Dallas Must Bring Us Together*, Balt. Sun (Jul. 9, 2016), available at <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-dallas-shootings-20160709-story.html>. Indeed, the FOP has, in partnership with the Maryland FOP, sought to defeat every attempt to improve police accountability in the legislature.⁵ See, e.g., Mark Puente, *Baltimore Police Contract Hurts Accountability, Study Says*, Balt. Sun (May 24, 2015), available at <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-walker-bpd-report-20150524-story.html>.

C. Outside of the FOP, there is Near-Universal Agreement that Transparency and Civilian Oversight Are Essential to Public Trust and Perceived Legitimacy of Law Enforcement.

The availability of meaningful civilian oversight of police misconduct investigations has been widely recognized by courts, law enforcement, and community leaders as a primary component of establishing and maintaining trust between the public and the police. By affording community members a window and in some cases a role in how police hold themselves accountable, there is a greater likelihood that investigations

⁵ These efforts are not limited to legislative efforts, but also to negotiations of FOP contracts in ways that limit accountability. See, e.g., Jayne Miller, *Police contract negotiations exposes hole in reform law*, WBAL TV (Jun 8., 2016) (Noting that despite legislation permitting civilians to sit on police disciplinary boards and support of high-ranking officials, FOP is refusing to accept changes to contract provisions barring civilian involvement), available at <http://www.wbaltv.com/news/police-contract-negotiations-exposes-hole-in-reform-law/39963144>; see also Chicago Police Accountability Task Force, *Executive Summary* at 15 (“The collective bargaining agreements between the police unions and the City have essentially turned the code of silence into official policy.”), available at https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_Executive_Summary_4_13_16-1.pdf;

will be meaningful and that the public will trust their outcomes. It is for these reasons that Baltimore’s community members have repeatedly identified civilian oversight as an essential step forward. *See generally, e.g.,* West Baltimore Coalition on Police Misconduct and the No Boundaries Coalition, *Over-Policed, Yet Underserved: The People’s Findings Regarding Police Misconduct in Baltimore* (2016), available at <http://www.noboundariescoalition.com/wp-content/uploads/2016/03/No-Boundaries-Layout-Web-1.pdf> (documenting police abuses and identifying civilian oversight as a key reform measure).

Courts have emphasized that the “citizenry’s full and fair assessment of a police department’s internal investigation of its officers actions promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights.” *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 787 N.E.2d 602, 607 (Mass. App. Ct. 2003). *See also, e.g., Jones v. Jennings*, 788 P.2d 732, 738 (Alaska 1990) (“There is perhaps no more compelling justification for public access to documents regarding citizen complaints against police officers than preserving democratic values and fostering the public’s trust in those charged with enforcing the law.”). Shrouding police investigations in secrecy reinforces the perception that such investigations are biased and meaningless. *Mercy v. Cnty. of Suffolk*, 93 F.R.D. 520, 522 (E.D.N.Y. 1982) (“No legitimate purpose is served by conducting the investigations under a veil of near-total secrecy.”). *See also Kelly v. City of San Jose*, 114 F.R.D. 653, 665 (N.D. Cal. 1987) (“[T]here is a real possibility that officers working in closed systems will feel less pressure to be honest than officers who know that they may be forced to defend what they say and report.”).

Likewise, virtually every major national convening of law enforcement, experts, public officials and community leaders has emphasized the importance of transparency and civilian oversight in building public confidence in police. *See, e.g., Final Report of the President's Task Force on 21st Century Policing*, at 85, 89 (May, 2015), available at http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (Recommendation 1.3: "Law enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy."); Recommendation 2.8: "Some form of civilian oversight of law enforcement is important in order to strengthen trust within the community."); *Advice from Police Chiefs, supra*, at 73 ("Transparency is critically important."); International Association of Chiefs of Police, *National Policy Summit on Community-Police Relations: Advancing a Culture of Cohesion and Trust* at 16 (2015), available at http://www.theiacp.org/Portals/0/documents/pdfs/CommunityPoliceRelationsSummitReport_web.pdf ("Building relationships with the community requires meaningful inclusion of and partnership with community members in conducting the business of the police department. More than simply participating in ancillary programs, true partnership describes institutionalized inclusion of citizens in the business of the police department. This partnership not only demonstrates transparency within the department, but also provides perspective from community members who may have traditionally been excluded."); *Revisiting Who Will Guard the Guardians?, supra*, at 53-54 ("[C]ivilian review boards are critical to the success of external controls over police misconduct. Civilian review boards provide a means of maintaining internal regulation of police practices and evaluating a police officer's performance.").

These views have also been adopted and promoted by leading law enforcement agencies and managers. *See, e.g.*, Kris E. Pitcher, Andre Birotte Jr., and Django Sibley, *Developing Effective Interactions*, *The Police Chief* 77, 48 (May 2010), available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2084&issue_id=52010 (“[C]ivilian involvement can result in enhanced community trust for a law enforcement agency. When communities know that an agency’s internal investigation will be scrutinized by non-police overseers, their confidence in the integrity of the investigation and any resulting adjudication of an officer’s actions is enhanced.”); *Building Trust Between the Police and the Citizens They Serve*, *supra*, at 7 (“Police chiefs who are transparent (i.e., clear, concise, and open about their department’s Internal Affairs process) with their constituencies, acknowledge misconduct, appropriately deal with misconduct when it occurs, and include the public in the response to misconduct will not only obtain, but also sustain, the respect and confidence of the citizens in their jurisdictions.”); Testimony of Brian Buchner, President, National Association for Civilian Oversight of Law Enforcement, in *Final Report of the President’s Task Force on 21st Century Policing*, *supra*, at 26 (“Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public’s trust.”). Indeed, it is now standard practice for the Department of Justice’s Special Litigation Division to require some form of community oversight in its settlements and consent decrees with troubled police departments. *See, e.g.*, United States Department of Justice, Special Litigation Section, Cases and Matters, Law Enforcement Agencies (2016), <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#police>.

Both the initial creation and more recent reinvigoration of Baltimore's Civilian Review Board have been intended to advance public trust through increased transparency and accountability. Yet, rather than working with community leaders and city officials to acknowledge the crisis, promote transparency, and built needed trust, the FOP takes extreme positions that undermine efforts of the Department and the community to come together. FOP's suit fighting the disclosure of IA records even to the Civilian Review Board, which has been expressly granted the authority to review such records, perpetuates the public's distrust of police and its belief that police are not adequately addressing misconduct—whether or not that is the reality. Disclosure could reveal, as the FOP claims, thorough and professional investigations in which officers are appropriately disciplined. But so long as the FOP keeps fighting every effort to permit anyone to review such records, the public receives no information to suggest that the police are, in fact, appropriately addressing misconduct and the existing distrust will remain the same. The refusal to release information regarding internal investigations of misconduct and resistance to involvement from the community thus continues to fuel the perception that police are doing nothing to address misconduct in their ranks, critically damaging their relationship with the community, particularly communities of color. *See* Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bills of Rights*, 14 B.U. Pub. Int. L.J. 185, 201-02 (2005) (discussing the persistent refusal of police departments to permit any oversight of internal affairs investigations despite repeated calls for such oversight).

Moreover, the FOP's groundless challenge illustrates how damaging a role the FOP has played and continues to play in thwarting genuine efforts to build trust between

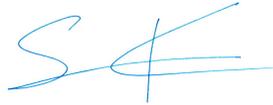
community members and Baltimore police. Civilian review serves many functions, one of which is to protect those who file complaints against the police by 1) providing an alternate forum in which victims of police misconduct may file formal complaints, 2) helping to protect against retaliatory investigations of complainants, and 3) improving trust that police internal affairs investigations are substantive. Their primary purpose is to “watch the watchers” in police—helping to ensure that internal affairs investigations are not corrupted by the overwhelming institutional culture of the “blue wall.”

Rather than protecting the legitimate rights of officers, the FOP is seeking to place police above the law, fighting tooth and nail even the most basic efforts to recover public trust, and attacking even the most barebones institutions in place specifically to protect public trust. In stark contrast to the many officials, community members and other groups working to build healthier relationships between Baltimore residents and police, the FOP is devoting its efforts to defeating longstanding mechanisms for basic oversight. The FOP owes more to the residents of Baltimore and to the officers it purports to represent.

CONCLUSION

For the foregoing reasons, Amici respectfully request that the Court dismiss Petitioners' Amended Complaint and Deny Petitioners' Request for a Temporary Restraining Order and Show Cause Order.

Respectfully submitted this 12th day of July, 2016.



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