

IN THE COURT OF APPEALS OF MARYLAND

Misc. No. 6
September Term 2019

BALTIMORE CITY POLICE DEPARTMENT, et al.,

Appellants,

v.

IVAN POTTS,

Appellee.

ON CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

**BRIEF OF *AMICI CURIAE* PUBLIC JUSTICE CENTER, ACLU OF
MARYLAND, THE YOUTH, EDUCATION AND JUSTICE CLINIC AT THE
UNIVERSITY OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW,
AND THE BALTIMORE ACTION LEGAL TEAM,
IN SUPPORT OF APPELLEE**

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IDENTITY AND INTERESTS OF *AMICI CURIAE*¹

The **Public Justice Center** (PJC) is a non-profit civil rights and anti-poverty legal services organization dedicated to building a just society. Established in 1985, the PJC uses impact litigation, public education, and legislative advocacy to accomplish law reform for its clients and has established an Appellate Advocacy Project to expand and improve the representation of indigent and disadvantaged persons and civil rights issues before the Maryland state and federal appellate courts. It has also created a Race Equity Project to focus its legal advocacy on the continuing disparities caused by our nation's long history of institutional and structural racism. The PJC is committed to supporting victims of police violence. *See, e.g., Overbey v. Mayor & City Council of Balt.*, 930 F.3d 215 (4th Cir. 2019); *Sizer v. State*, 456 Md. 350 (2017); *Espina v. Jackson*, 442 Md. 311 (2015); *Balt. Bloc, et al v. Balt. Police Dep't, et al.*, Circuit Court for Baltimore City, Case No. 24-C-17-003680. The PJC has an interest in this case because of its commitment to ensuring that victims of police violence have effective access to court remedies for their injuries and that police departments are accountable to the communities they serve.

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

¹ All parties consented in writing to the filing of this brief by *Amici Curiae*.

founding in 1931, the ACLU of Maryland, which comprises approximately 45,000 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 receives numerous complaints from and frequently represents individuals whose rights have been violated through police misconduct. The ACLU of Maryland has also previously appeared before Maryland courts as direct counsel and *amicus curiae* seeking to protect against unlawful police actions. *See, e.g., King v. State*, 434 Md. 472 (2013); *Md. Dep't of State Police v. Md. State Conference of NAACP Branches*, 430 Md. 179 (2013); *State v. Andrews*, 227 Md. App. 350 (2016); *Espina v. Jackson*, 442 Md. 311 (2015); *Prince George's Cnty. v. Longtin*, 419 Md. 450 (2011); *Houghton v. Forrest*, 412 Md. 578 (2010); *Lee v. Cline*, 384 Md. 245 (2004); *Ashton v. Brown*, 339 Md. 70 (1995). Accordingly, the issues before the Court are of substantial concern to the ACLU and its members.

The Youth, Education and Justice Clinic (the Clinic) at the University of Maryland Francis King Carey School of Law represents and works with children who have been excluded from school through suspension, expulsion, and other means and works on research and policy projects aimed at keeping children in school, dismantling the “school to prison pipeline,” and improving the relationships between the Baltimore Police Department (BPD) and residents of Baltimore City. The Clinic has been involved in the various stages of Baltimore’s Consent Decree, including co-hosting, in September 2016, a community town hall meeting that featured dozens of Baltimore residents sharing

their experiences and relationships with BPD officers, providing oral testimony at a Public Fairness Hearing focused on the then-proposed consent decree in the United States District Court of Maryland on April 6, 2017, and providing public comments on draft BPD policies as part of the ongoing consent decree process. The Clinic has an interest in this case because of its commitment to ensuring that victims of police violence can speak freely and openly about their experiences to advance transparency, accountability and reform.

The Baltimore Action Legal Team (BALT) is a community lawyering organization that formed in April 2015 in response to a call from community organizations for legal assistance. BALT transitioned from providing emergency response services during the Baltimore Uprising to working towards addressing structural causes of its symptoms. BALT focuses on raising the conversation around structural racism and economic violence. This work includes close partnerships with community organizations in presenting legal education, policy advocacy, and providing legal representation. BALT operates under a 501(c)(3) fiscal agent. BALT has an interest in this case because of its commitment to ending state-sponsored violence.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

At its heart, the questions in this case boil down to this: Who polices the police? The answer is obvious: It is the law enforcement agencies that hired them, trained them, empowered them, and were supposed to supervise them, regulate their conduct, and ferret out their misconduct. It is a police department's promise to prevent police powers from

being abused that cloaks the judgments and actions of its officers in the presumption of legality, deference, and immunity from review. *That* is the significance of the badge.

The Baltimore Police Department (BPD) argues that, as a policy matter, the courts should absolve it of responsibility for the criminal misconduct in this case, by finding that the officers were not acting within the scope of their employment, in order to provide an adequate disincentive to such misbehavior. BPD ignores the fundamental fact that rejecting departmental liability would create perverse incentives for BPD and other police departments, which are the only entities in a position to detect and prevent officer misconduct. Doing so would also place the sole burden of securing financial compensation on the victims, who had no role in creating the problem, and who have been grievously injured by it. And it would ignore the fact that the law, sensibly, already gives BPD the power to create financial disincentives to willful misconduct through reimbursement by the individual officers for damages the government is required to pay when those officers act with actual malice (a standard surely satisfied by the criminal actions of the officers in this case). If there is a risk of non-collection, that risk should fall on BPD, which enabled the misconduct at issue here, not on the victims.

The most straightforward reading of the facts uncovered to date shows that members of Baltimore's Gun Trace Task Force (GTTF) were reckless and brazen, and their abuses were known to community members and to BPD officers and officials. Indeed, if not condoned outright, their tactics were ignored, because GTTF members got "results." GTTF misconduct flowed from the officers' status as law enforcement officials and all of the privileges, powers, and deference that follow the badge. BPD gave

them this power, failed to supervise them, and ignored complaints of flagrant wrongdoing.

Now, BPD takes the position that because the officers' conduct was so extreme, it is not responsible for acts committed in the course of GTTF's official duties. This is contrary to the institutional framework of policing in this country, which is built on deference to the police. It also ignores the reality that police departments are best positioned to regulate officers' conduct, and nearly exclusively do. Rather than deterring future misconduct, BPD's approach would eviscerate incentives for police departments to police their own.

Liability in judgment under the Local Government Tort Claims Act (LGTCA) is the best way to ensure that police departments take responsibility for the foreseeable consequences of giving people weapons, body armor, cars with sirens, and tools for surveillance, and then failing to supervise them or investigate serious wrongdoing. In *Amici's* experience, police departments are far less likely to address abuses until they are facing litigation. They are reactive organizations. Without the threat of legal liability, there is little incentive for departments to invest in their internal accountability systems. In fact, there is far more incentive for police departments to ignore accountability altogether.

In a society that believes in the lawfulness of the police, a determination that law enforcement agencies are not liable when officers engage in the most extreme misconduct would create an unworkable and perverse set of incentives and outcomes. Police departments would be free to hire and promote "bad apple" officers for the purpose of

achieving “results” without bearing responsibility for the wreckage left in their wake. It would leave victims of the worst abuses with the fewest remedies, and no real ability to hold police departments accountable for placing them in harm’s way. Further, it would deepen decades of distrust between the police and Maryland’s Black and brown communities. In short, it would undermine the police’s ability to police effectively.

A systemic failure requires a systemic solution. Ensuring that victims of police misconduct are made whole will incentivize police departments across the state to address complaints of misconduct and make themselves accountable to the communities they serve.

ARGUMENT

I. POLICE DEPARTMENTS ARE THE ONLY ENTITIES THAT CAN DETECT AND PREVENT MISCONDUCT AND CRIMINAL ACTIVITY BY THEIR OFFICERS AND MUST BE INCENTIVIZED TO DO SO.

The American legal system affords great deference to the police in virtually every context and often immunizes police conduct from judicial review. *See, e.g.*, Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 Harv. L. Rev. 1995, 1997-98 (2017); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 Sup. Ct. Rev. 271, 324 (“The judiciary, moreover, has shied away from detailed regulation of police officers’ use of force, partly because it fears hampering law enforcement . . .”). Although BPD exerts immense control over its officers, on- or off-duty, civilian oversight is limited. Thus, the onus of oversight must fall on BPD, other police departments, and the government.

A. BPD regulates the conduct of its officers at all times.

As BPD concedes, members of the GTTF “could not have committed their torts but for their status as police officers.” Appellants’ Br. 32. Their badges gave those officers, who are otherwise ordinary people, the ability to act in ways that would otherwise be illegal. This power stems from the fact that, whether on- or off-duty, a police officer is always “on.” For example, in its rules and regulations, BPD notes that any conduct or misconduct, whether on- or off-duty, that “undermine[s] the good order” of BPD or discredits BPD constitutes “conduct unbecoming.” Baltimore Police Department, Rules and Regulations § 302.1 (hereinafter “BPD Policy”), *available at* <https://www.baltimorepolice.org/transparency/policies>. BPD Policy also empowers—indeed, requires—BPD officers to “stop and perform . . . necessary police duties” while off-duty. BPD Policy § 302.20 These police duties may include, but are not limited to, notifying the responsible law enforcement agency or taking direct police action. *Id.* The failure to do so, even off-duty, is considered a “neglect of duty.” *Id.* Further, BPD officers are permitted to carry their guns, even while off-duty. BPD Policy § 409.2. Such authority carries with it the potential to ripen into misconduct, regardless of whether an officer is on- or off-duty. Thus, BPD maintains the authority to control its officers’ actions at all times.²

² There is, however, no dispute that the misconduct of the GTTF was performed while on-duty.

B. Our system is structured to rely nearly exclusively on police departments to regulate police behavior.

The regulation of policing is largely kept secret. Thanks to the complex web of laws protecting police officers, the full picture of complaints about police behavior is rarely known to anyone except departmental leadership. Indeed, police departments regularly assert that police officers' jobs are unique and therefore deserving of special protections and immunity from transparency, external review or legal consequence. *See, e.g., Montgomery Cnty. v. Shropshire*, 420 Md. 362, 378 (2011); *Balt. City Police Dep't v. State*, 158 Md. App. 274 (2004); *Md. Dep't of State Police v. Dashiell*, 443 Md. 435 (2015). Because of this self-imposed secrecy, BPD and other police departments have an obligation to the public they serve to root out officer misconduct.

1. The law prevents anyone besides police from knowing or taking action in instances of wrongdoing.

Often, the police are only regulated after something egregious, like the conduct here, has become public. But even then, that regulation is largely obscured from public view. *See* Barry Friedman, *Secret Policing*, 2016 U. Chi. Legal F. 99, 105-06 (2016). When police misconduct comes to light, it is because of the courage of the victims and police whistleblowers. Absent significant changes in law and practice, communities and even people who have been harmed by police misconduct will remain poorly positioned to police the police. Therefore, departmental liability remains an essential mechanism to ensure police accountability.

Despite having a “complex” accountability system, BPD’s internal investigative processes are “shielded almost entirely from public view[.]” U.S. Dep’t of Justice, Civil

Rights Div., *Investigation of the Baltimore City Police Department* 139, 147 (Aug. 10, 2016), <https://www.justice.gov/crt/file/883296/download> (hereinafter DOJ Baltimore Report). Departments can legally choose to ignore some complaints altogether. For instance, police departments are not required to investigate complaints of misconduct brought more than a year after the incident. Md. Code Ann., Pub. Safety § 3-104 (c)(2) (“Unless a complaint is filed within 366 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken.”); *see also Balt. City Police Dep’t v. Andrew*, 318 Md. 3, 17 (1989) (holding that the statute does not prevent a police department from deciding on its own to investigate a later complaint). Even when victims have the courage to file a timely complaint, it is difficult for them to access the related records. *Dashiell*, 443 Md. at 439 (“the internal affairs records of an investigation into the conduct of a specifically identified state trooper is a ‘personnel record’ [exempt from disclosure] under . . . the Maryland Public Information Act”).

Maryland’s Law Enforcement Officers’ Bill of Rights (LEOBR) makes it virtually impossible for victims of police misconduct to investigate police officers. *See* Md. Code Ann., Pub. Safety § 3-101, et seq. Even a recent change in that law allows complainants to obtain only the most minimal information about the outcome of a misconduct investigation, limited to whether a charge was sustained or not sustained, and what if any discipline was imposed for a sustained complaint—and then only after the investigation is concluded. *See* Md. Code Ann., Pub. Safety § 3-207 (f)(2)(ii).

Even civilian review boards, which arose in response to a lack of police transparency, find it difficult to effectively hold the police accountable because of the LEOBR. *See, e.g.*, Md. Code Ann., Pub. Safety § 3-104 (b) (stating that the investigating officer for any investigation of a Maryland police officer should be a “sworn law enforcement officer” unless a different party is specifically designated by the Governor, Attorney General, or Attorney General’s designee). While Baltimore’s Civilian Review Board is empowered to review internal affairs investigations and make recommendations, the final decision for the discipline of a police officer rests with the police commissioner. Baltimore City Office of Civil Rights, *Complaint Procedure*, <https://civilrights.baltimorecity.gov/civilian-review-board/procedure#difference> (last accessed December 18, 2019).

2. Police culture also degrades transparency.

An internal culture of police secrecy can undermine a complaint before it ripens into an investigation or reaches the Civilian Review Board. The “thin blue line,” a code that discourages officers from reporting the errors, crimes, and brutality of fellow officers, provides the foundation for this culture of secrecy. Owen Doherty, *A Reform to Police Department Hiring: Preventing the Tragedy of Police Misconduct*, 68 Case W. Res. L. Rev. 1259, 1271 (2018). This cultural phenomenon devastates attempts at police accountability because self-reporting is essential to compliance. *See* Nancy M. Modesitt, *The Garcetti Virus*, 80 U. Cin. L. Rev. 137, 155 (2011) (“Employees are particularly effective at promoting compliance because of their placement and ability to detect unlawful behavior.”)

An officer's courage to report misconduct can indeed have harsh consequences. In the fall of 2011, a former BPD Detective in the Violent Crime Impact Division witnessed alleged excessive force by fellow officers, including his own sergeant. DOJ Baltimore Report at 152. When the detective asked another BPD sergeant whether to report the incident to internal affairs, the sergeant told him, "If you're a rat, your career here is done." *Id.* After he reported the incident, fellow officers labeled the detective a "rat" and supervisors denied his application to transfer to a different squad because he "snitched." *Id.* In 2014, a BPD lieutenant placed warning signs next to the desk of a Black BPD officer known for reporting misconduct. *Id.* The signs warned the officer to "stay in your lane," "worry about yourself," and "don't spread rumors!!!" On Maryland's Eastern Shore, Kelvin Sewell, the first Black police chief of Pocomoke City, faced retaliation after he defended another Black officer who faced race discrimination. Brief for National Organization of Black Law Enforcement Executives et al. as *Amici Curiae* Supporting Appellant at 1, *Sewell v. State*, 239 Md. App. 571 (2018).

In all these instances, police departments failed to protect honest officers who reported misconduct from retaliation. This leadership failure perpetuates and strengthens the thin blue line. *See* DOJ Baltimore Report at 128 ("[W]e found that BPD personnel sometimes discourage complaints from being filed and frequently conduct little or no investigation—even of serious misconduct allegations. As a result, a culture resistant to accountability persists throughout much of BPD, and many officers are reluctant to report misconduct for fear that doing so is fruitless and may provoke retaliation."). Only BPD

and other police departments can remedy this culture of silence and promote accountability.

3. Police departments and their leadership control the only realistic opportunities to detect and take action on wrongdoing, even if they have not adequately done so.

It goes without saying that BPD and other police departments exert complete control over the eligibility, screening, and hiring of officers, as well as communicating their expectations to those officers, and issuing the weapons that those officers use. Despite this, BPD attempts to blame “bad apples” for police misconduct instead of taking responsibility for its role as an institutional gatekeeper in allowing this systemic corruption to flourish. Given its extensive control over its officers, only BPD is positioned to root out misconduct and lift the veil of secrecy that currently shrouds instances of misconduct.

A persistent stock narrative, to which BPD subscribes, is that “bad apples,” not systemic failures, are to blame for police misconduct. David Jaros, *Criminal Doctrines of Faith*, 59 B.C. L. Rev. 2203, 2231 (2018). After the actions of the GTTF came to light, Baltimore’s former Mayor Catherine Pugh and former police Commissioner Darryl D. De Sousa described police misconduct as “very few bad apples that spoil the entire barrel.” Scott Dance, *De Sousa: Baltimore police corruption limited to a ‘very few bad apples,’* The Baltimore Sun (Feb. 2, 2018, 4:05 PM), <https://www.baltimoresun.com/news/crime/bs-md-desousa-annapolis-20180202-story.html>. In 2015, the legislative counsel for the Maryland Fraternal Order of Police praised the LEOBR because it rooted out bad apples and protected good police officers.

Ovetta Wiggins, *After Baltimore riots, changes to police 'bill of rights' sought*, The Washington Post (August 24, 2015), https://www.washingtonpost.com/local/md-politics/police-reform-advocates-call-on-md-lawmakers-to-address-officer-misconduct/2015/08/24/e2775c88-4a67-11e5-846d-02792f854297_story.html. In urging this Court to adopt this narrative and allow it to evade responsibility for the systemic wrongdoing of its officers, BPD disregards reality, scape-goats officers, and puts communities, especially those of color, and even law enforcement officers, at risk. *See* Appellants' Br. 11.

The misconduct of GTTF members did not happen overnight. It developed over time, because of basic failures of police leadership—either failures to pay attention, or failures to care. As described *supra*, police officers' internal affairs files are secret, even from complainants, and, often, even in criminal and civil litigation. No one else, not even other public officials, possess the authority of the entities that hire and supervise police to notice, investigate, and act when police officers abuse the power of the badge. Who else can encourage officers to cooperate and self-report? Who else besides supervisors and internal affairs officials can detect whether an officer is fabricating statements or engaging in a pattern of troubling behavior? Who else can incentivize officers to cooperate?

Largely, the actions of the police and police departments operate within a black box of secrecy. Until this black box is opened to the public, the government is our only hope to root out the misconduct and unconstitutional policing practices such as those at issue here.

II. MARYLAND RESIDENTS WILL SUFFER IF POLICE DEPARTMENTS CAN DISCLAIM RESPONSIBILITY FOR POLICE ABUSES OF POWER ON THE BASIS THAT THE MISCONDUCT WAS SO EGREGIOUS AS TO BE CRIMINAL.

A. Victims of police abuse need and deserve meaningful relief.

Governmental accountability aids those most impacted by police misconduct. Unlike other forms of governmental misconduct, police misconduct can have serious, even deadly, consequences, affecting entire communities, and making policing more difficult. As a fundamental matter, victims of wrongdoing deserve to be made whole. Following BPD's logic would force victims to bear the burden of systemic failures, thus victimizing them a second time.

BPD is a joint tortfeasor that is responsible for the actions of GTTF members and should bear the burden of compensating the acknowledged victims. BPD *knew* for years that its officers engaged in misconduct, yet it failed to police them. *See* Brief for Victims of the Baltimore Police Department as *Amici Curiae* Supporting Appellee at 11. If, as BPD contends, its aim is to change the incentives of individual officers, then it is free to pursue the officers to reimburse the government. Maryland's LGTCA explicitly permits local governments to seek indemnification from officers who act with malice (defined as "ill will or improper motivation," Md. Code Ann., Cts. & Jud. Proc. § 5-301(b)), a standard certainly satisfied by the criminal conduct at issue in this case. *See also* Md. Code Ann., Cts. & Jud. Proc. § 5-302(b)(2)(i)-(ii) (providing for government liability in judgment but not indemnification of individual government employees). Simply put, the

burden of compensating the victims of egregious police misconduct should fall squarely on police departments, not on victims.

Without an acknowledgment of the wrongdoing by the actors responsible for the officers or promise of a remedy, victims of police misconduct may give up on speaking out, for fear the process is futile. See Richard Emery and Ilann Margalit Maazel, *Why Civil Rights Lawsuits Do Not Deter Police Misconduct: The Conundrum of Indemnification and a Proposed Solution*, Fordham Urb. L.J. 587, 596 (2000). This is especially so since victims of police misconduct may also fear retaliation for coming forward. In high-profile cases like the police-involved killings of Eric Garner, Walter Scott, Philando Castile and others, the people who recorded the misconduct have faced retaliation. Dragana Kaurin, *The Price of Filming Police Violence*, Vice (April 27, 2018, 9:00 AM), https://www.vice.com/en_us/article/evqw9z/filming-police-brutality-retaliation. In its Baltimore report, the DOJ highlighted the experience of a teenager who was stripped searched outside of a McDonald's, an experience the teenager believed was motivated by a complaint he filed against the same officer. DOJ Baltimore Report at 33. This burden weighs most heavily on communities of color which bear the brunt of police misconduct and are routinely silenced when they attempt to report misconduct. See Alexa P. Freeman, *Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality*, 47 Hastings L.J. 677 (1996) (describing that in communities of color, police misconduct is often “underreported, underinvestigated, underprosecuted, and underconvicted.”); Brief for the Public Justice Center et al. as *Amici Curiae* Supporting Plaintiffs-Appellants at 24, *Overby v. Mayor of Balt.*, 930 F.3d 215 (4th Cir. 2019)

(addressing the City's use of gag orders to silence victims of police misconduct). For these reasons, a Court ruling shielding departments from liability for the most egregious forms of misconduct is likely to discourage victims from coming forward to expose abuse they suffer, undermining efforts to protect against misconduct.

In *Amici's* experience with victims of police misconduct, when police departments blame "bad apples" instead of owning up to their own role in hiring and failing to train and manage those officers, victims are left unprotected and afraid. This undermines Baltimore's often-stated goal of repairing the decades of broken trust between BPD and Baltimore's residents. See Camila Domonoske, *After Damning Assessment of Police, Baltimore Mayor Says 'Long Journey Ahead,'* NPR (Aug. 10, 2016, 12:35 PM), <https://www.npr.org/sections/thetwo-way/2016/08/10/489478035/after-damning-assessment-of-police-baltimore-mayor-says-long-journey-ahead>. Departmental liability is the only way to ensure that BPD and the City bear responsibility for making victims of police misconduct whole.

B. Interpreting the scope of employment test to exclude the conduct of GTTF members would undermine the presumptions of lawfulness and deference that police say they need to do their job.

A narrowing of the bounds of scope of employment could significantly undermine the presumption of lawfulness police officers rely upon every day to do their job. While BPD argues that accountability could bankrupt the City, the far greater concern is that a ruling that limits governmental liability for police actions could place officers in a position in which residents second-guess them, questioning the legitimacy of police actions in real time. Individuals' views of the police are shaped "not just by what

[police] officers do, but by how they do it.” Caleb J. Robertson, *Restoring Public Confidence in the Criminal Justice System: Policing Prosecutions When Prosecutors Prosecute Police*, 67 Emory L.J. 853, 878 (2018). That explains why just a single high-profile incident of police misconduct can alter a community’s level of trust with the police beyond repair. William Farar, *Operation Candid Camera: The Rialto PD’s Body Worn Camera Experiment*, 81 The Police Chief, Jan. 2014, at 20.

Without departmental liability, officers may feel as though they can “police” with no regard for the consequences of their actions. *Bielevicz v. Dubinon*, 915 F.2d 845, 851 (3d Cir. 1990) (“it is logical to assume that continued official tolerance of repeated misconduct facilitates similar unlawful actions in the future.”). Without the legal liability disincentive, BPD and the City could continue to shirk responsibility for eradicating police misconduct. See Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 Geo. Wash. L. Rev. 453, 456 (2004) (noting that when “misconduct is found to be true . . . [officers’] departments deem the miscreants ‘rogue cops’ whose conduct does not reflect negatively on the organization from which they came.”). A resistance to accountability could continue to permeate BPD and officers could continue to remain silent about misconduct they witness.

All relevant stakeholders to policing in Baltimore and Maryland would suffer. See Nicholas Deb. Katzenbach, et al., *The Challenge of Crime in a Free Society* 115 (1967) (“[L]aw enforcement suffers. A police department suffers. A police department with a reputation for unfairness cannot promote justice. A police department with a reputation for dishonesty cannot combat crime effectively.”). The end result very well could be

people viewing the police as illegitimate and disregarding police orders in critical situations. Donald F. Tibbs, *Racial Profiling in the Era of Black Constitutionalism*, 23 Wash. & Lee J. Civil Rts. & Soc. Just. 181, 188 (2016) (“To be respected as legitimate, the police must treat the communities they serve as legitimate.”). The solution to this is institutional oversight, accountability, and police reform. See V. Noah Gimbel and Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 Cardozo L. Rev. 1453 (2019) (“Community policing begins with a commitment to building trust and mutual respect between police and communities.”).

CONCLUSION

If any real attempt at reconciliation between BPD and Baltimoreans is to be successful, there needs to be government accountability. The City’s short-term goal of avoiding financial liability for the actions of BPD’s officers is at odds with its stated goal of restoring trust in police and with enabling honest officers to police effectively and safely. *Amici* respectfully request that this Court find that the officers here were acting within the scope of their employment, requiring Baltimore City’s liability under the LGTCA.

Respectfully submitted,

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CITATION AND TEXT OF PERTINENT STATUTES & RULES

STATUTES

Md. Code Ann., Courts & Judicial Proceedings § 5-301

(a) **In general.** -- In this subtitle the following words have the meanings indicated.

(b) **Actual malice.** -- “Actual malice” means ill will or improper motivation.

(c) **Employee.** --

(1) “Employee” means any person who was employed by a local government at the time of the act or omission giving rise to potential liability against that person.

(2) “Employee” includes:

(i) Any employee, either within or without a classified service or merit system;

(ii) An appointed or elected official; or

(iii) A volunteer who, at the request of the local government, and under its control and direction, was providing services or performing duties.

(d) **Local government.** -- “Local government” means:

(1) A charter county as defined in Section 1-101 of the Local Government Article;

(2) A code county as defined in Section 1-101 of the Local Government Article;

(3) A board of county commissioners;

(4) Baltimore City;

(5) A municipality as defined in Section 1-101 of the Local Government Article;

(6) The Maryland-National Capital Park and Planning Commission;

(7) The Washington Suburban Sanitary Commission;

(8) The Northeast Maryland Waste Disposal Authority;

(9) A community college or board of trustees for a community college established or operating under Title 16 of the Education Article, not including Baltimore City Community College;

(10) A county public library or board of trustees of a county public library established or operating under Title 23, Subtitle 4 of the Education Article;

(11) The Enoch Pratt Free Library or Board of Trustees of the Enoch Pratt Free Library;

(12) The Washington County Free Library or the Board of Trustees of the Washington County Free Library;

(13) A special taxing district;

(14) A nonprofit community service corporation incorporated under State law that is authorized to collect charges or assessments;

(15) Housing authorities created under Division II of the Housing and Community Development Article;

(16) A sanitary district, sanitary commission, metropolitan commission, or other sewer or water authority established or operating under public local law or public general law;

(17) A regional development council;

- (18) The Howard County Economic Development Authority;
- (19) The Howard County Mental Health Authority;
- (20) A commercial district management authority established by a county or municipal corporation if provided under local law;
- (21) The Baltimore City Police Department;
- (22) A regional library resource center or a cooperative library corporation established under Title 23, Subtitle 2 of the Education Article;
- (23) Lexington Market, Inc., in Baltimore City;
- (24) The Baltimore Public Markets Corporation, in Baltimore City;
- (25) A nonprofit corporation serving as the local public transportation authority for Carroll County pursuant to a contract or memorandum of understanding with Carroll County;
- (26) The nonprofit corporation serving as the animal control and licensing authority for Carroll County pursuant to a contract or memorandum of understanding with Carroll County (the Humane Society of Carroll County, Inc.);
- (27) Garrett County Municipalities, Inc., in Garrett County;
- (28) The nonprofit corporation serving as the local public transportation authority for Garrett County pursuant to a contract or memorandum of understanding with Garrett County (Garrett County Community Action Committee, Inc.); and
- (29) The nonprofit corporation serving as the industrial development authority of Carroll County established under Title 12, Subtitle 1 of the Economic Development Article.

(e) Regional development council. --

- (1) “Regional development council” means a regional or municipal council established under Title 13 of the Economic Development Article.
- (2) “Regional development council” includes:
 - (i) The Baltimore Metropolitan Council;
 - (ii) The Mid-Shore Regional Council;
 - (iii) The Upper Shore Regional Council;
 - (iv) The Tri-County Council for the Lower Eastern Shore of Maryland;
 - (v) The Tri-County Council for Southern Maryland; and
 - (vi) The Tri-County Council for Western Maryland.

Md. Code Ann., Courts & Judicial Proceedings § 5-302

(a) Government to provide legal defense to employees. -- Each local government shall provide for its employees a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government.

(b) Immunity; exceptions. --

(1) Except as provided in paragraph (2) of this subsection, a person may not execute against an employee on a judgment rendered for tortious acts or omissions committed by the employee within the scope of employment with a local government.

(2)

(i) An employee shall be fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice.

(ii) In such circumstances the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under Section 5-303(b)(1) of this subtitle.

(c) Effect of Workers' Compensation Act. -- If the injury sustained is compensable under the Maryland Workers' Compensation Act, an employee may not sue a fellow employee for tortious acts or omissions committed within the scope of employment.

(d) Cooperation by employee. --

(1) The rights and immunities granted to an employee are contingent on the employee's cooperation in the defense of any action.

(2) If the employee does not cooperate, the employee forfeits any and all rights and immunities accruing to the employee under subsection (b) of this section.

Md. Code Ann., Pub. Safety § 3-101

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Chief. --

(1) "Chief" means the head of a law enforcement agency.

(2) "Chief" includes the officer designated by the head of a law enforcement agency.

(c) Hearing. --

(1) "Hearing" means a proceeding during an investigation conducted by a hearing board to take testimony or receive other evidence.

(2) "Hearing" does not include an interrogation at which no testimony is taken under oath.

(d) Hearing board. -- "Hearing board" means a board that is authorized by the chief to hold a hearing on a complaint against a law enforcement officer.

(e) Law enforcement officer. --

(1) "Law enforcement officer" means an individual who:

(i) in an official capacity is authorized by law to make arrests; and

(ii) is a member of one of the following law enforcement agencies:

1. the Department of State Police;

2. the Police Department of Baltimore City;

3. the Baltimore City School Police Force;
 4. the Baltimore City Watershed Police Force;
 5. the police department, bureau, or force of a county;
 6. the police department, bureau, or force of a municipal corporation;
 7. the office of the sheriff of a county;
 8. the police department, bureau, or force of a bicounty agency;
 9. the Maryland Transportation Authority Police;
 10. the police forces of the Department of Transportation;
 11. the police forces of the Department of Natural Resources;
 12. the Field Enforcement Bureau of the Comptroller's Office;
 13. the Housing Authority of Baltimore City Police Force;
 14. the Crofton Police Department;
 15. the police force of the Maryland Department of Health;
 16. the police force of the Maryland Capitol Police of the Department of General Services;
 17. the police forces of the University System of Maryland;
 18. the police force of Morgan State University;
 19. the office of State Fire Marshal;
 20. the Ocean Pines Police Department;
 21. the police force of the Baltimore City Community College;
 22. the police force of the Hagerstown Community College;
 23. the Internal Investigation Unit of the Department of Public Safety and Correctional Services;
 24. the Warrant Apprehension Unit of the Division of Parole and Probation in the Department of Public Safety and Correctional Services;
 25. the police force of the Anne Arundel Community College; or
 26. the police department of the Johns Hopkins University established in accordance with Title 24, Subtitle 12 of the Education Article.
- (2) "Law enforcement officer" does not include:
- (i) an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
 - (ii) an individual who serves at the pleasure of the appointing authority of a charter county;
 - (iii) the police chief of a municipal corporation;
 - (iv) an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer's duties is made;
 - (v) a Montgomery County fire and explosive investigator as defined in Section 2-208.1 of the Criminal Procedure Article;
 - (vi) an Anne Arundel County or City of Annapolis fire and explosive investigator as defined in Section 2-208.2 of the Criminal Procedure Article;
 - (vii) a Prince George's County fire and explosive investigator as defined in Section 2-208.3 of the Criminal Procedure Article;

- (viii) a Worcester County fire and explosive investigator as defined in Section 2-208.4 of the Criminal Procedure Article;
- (ix) a City of Hagerstown fire and explosive investigator as defined in Section 2-208.5 of the Criminal Procedure Article;
- (x) a Howard County fire and explosive investigator as defined in Section 2-208.6 of the Criminal Procedure Article; or
- (xi) the Chief of Police of the police department of the Johns Hopkins University established in accordance with Title 24, Subtitle 12 of the Education Article.

Md. Code Ann., Pub. Safety § 3-104

(a) In general. -- The 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 shall be conducted in accordance with this section.

(b) Interrogating or investigating officer. -- For purposes of this section, the investigating officer or interrogating officer shall be:

- (1) a sworn law enforcement officer; or
- (2) if requested by the Governor, the Attorney General or Attorney General's designee.

(c) Complaint that alleges brutality. --

(1) A complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties may not be investigated unless the complaint is signed and sworn to, under penalty of perjury, by:

- (i) the aggrieved individual;
- (ii) a member of the aggrieved individual's immediate family;
- (iii) an individual with firsthand knowledge obtained because the individual:
 - 1. was present at and observed the alleged incident; or
 - 2. has a video recording of the incident that, to the best of the individual's knowledge, is unaltered; or
- (iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.

(2) Unless a complaint is filed within 366 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken.

(d) Disclosures to law enforcement officer under investigation. --

(1) The law enforcement officer under investigation shall be informed of the name, rank, and command of:

- (i) the law enforcement officer in charge of the investigation;
- (ii) the interrogating officer; and
- (iii) each individual present during an interrogation.

(2) Before an interrogation, the law enforcement officer under investigation shall be informed in writing of the nature of the investigation.

(e) Disclosures to law enforcement officer under arrest. -- If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall be informed completely of all of the law enforcement officer's rights before the interrogation begins.

(f) Time of interrogation. -- Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty.

(g) Place of interrogation. --

(1) The interrogation shall take place:

(i) at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer; or

(ii) at another reasonable and appropriate place.

(2) The law enforcement officer under investigation may waive the right described in paragraph (1)(i) of this subsection.

(h) Conduct of interrogation. --

(1) All questions directed to the law enforcement officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation consistent with paragraph (2) of this subsection.

(2) Each session of interrogation shall:

(i) be for a reasonable period; and

(ii) allow for personal necessities and rest periods as reasonably necessary.

(i) Threat of transfer, dismissal, or disciplinary action prohibited. -- The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

(j) Right to counsel. --

(1)

(i) On request, the law enforcement officer under interrogation has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation.

(ii) The law enforcement officer may waive the right described in subparagraph (i) of this paragraph.

(2)

(i) The interrogation shall be suspended for a period not exceeding 5 business days until representation is obtained.

(ii) Within that 5 business day period, the chief for good cause shown may extend the period for obtaining representation.

(3) During the interrogation, the law enforcement officer's counsel or representative may:

(i) request a recess at any time to consult with the law enforcement officer;

(ii) object to any question posed; and

(iii) state on the record outside the presence of the law enforcement officer the reason for the objection.

(k) Record of interrogation. --

(1) A complete record shall be kept of the entire interrogation, including all recess periods, of the law enforcement officer.

(2) The record may be written, taped, or transcribed.

(3) On completion of the investigation, and on request of the law enforcement officer under investigation or the law enforcement officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.

(l) Tests and examinations -- In general. --

(1) The law enforcement agency may order the law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation.

(2) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal.

(3) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the law enforcement officer.

(m) Tests and examinations -- Polygraph examinations. --

(1) If the law enforcement agency orders the law enforcement officer to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the law enforcement agency and the law enforcement officer agree to the admission of the results.

(2) The law enforcement officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner if:

(i) the questions to be asked are reviewed with the law enforcement officer or the counsel or representative before the administration of the examination;

- (ii) the counsel or representative is allowed to observe the administration of the examination; and
- (iii) a copy of the final report of the examination by the certified polygraph examiner is made available to the law enforcement officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the examination.

(n) Information provided on completion of investigation. --

(1) On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be:

(i) notified of the name of each witness and of each charge and specification against the law enforcement officer; and

(ii) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to:

1. execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer; and

2. pay a reasonable charge for the cost of reproducing the material.

(2) The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer under this subsection:

(i) the identity of confidential sources;

(ii) nonexculpatory information; and

(iii) recommendations as to charges, disposition, or punishment.

(o) Adverse material. --

(1) The law enforcement agency may not insert adverse material into a file of the law enforcement officer, except the file of the internal investigation or the intelligence division, unless the law enforcement officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.

(2) The law enforcement officer may waive the right described in paragraph (1) of this subsection.

Md. Code Ann., State Government § 10-616

(a) Offer. -- In accordance with the record retention and disposal schedules, a public official shall offer to the Archives any public record of the official that no longer is needed, such as:

(1) an original paper;

(2) a book;

(3) a file;

(4) a record of a court of record for which an accurate transcript is in use;

(5) a record that relates to the internal management of or otherwise is a housekeeping record for an office of a clerk of court or register of wills; or

(6) any other written or recorded materials regardless of their physical form or characteristics.

(b) Records inventory. -- Records accepted for transfer to the Archives shall be accompanied by a records inventory.

(c) Destruction. --

(1) With the written approval of the State Archivist, a public official may destroy the record that the public official offers under this section, but the Archives declines to accept.

(2) After records are destroyed, the public official shall send to the Archives:

(i) a list of the records that were destroyed; and

(ii) a certificate of destruction.

(3)

(i) The State Archivist shall keep each list of the records destroyed under this subsection.

(ii) The list shall be available for public inspection at reasonable times.

Md. Code Ann., Pub. Safety § 3-207

(a) In general. -- The Commission has the following powers and duties:

(1) to establish standards for the approval and continuation of approval of schools that conduct police entrance-level and in-service training courses required by the Commission, including State, regional, county, and municipal training schools;

(2) to approve and issue certificates of approval to police training schools;

(3) to inspect police training schools;

(4) to revoke, for cause, the approval or certificate of approval issued to a police training school;

(5) to establish the following for police training schools:

(i) curriculum;

(ii) minimum courses of study;

(iii) attendance requirements;

(iv) eligibility requirements;

(v) equipment and facilities;

(vi) standards of operation; and

(vii) minimum qualifications for instructors;

(6) to require, for entrance-level police training and at least every 3 years for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special training, attention to, and study of the application and enforcement of:

(i) the criminal laws concerning rape and sexual offenses, including the sexual abuse and exploitation of children and related evidentiary procedures;

(ii) the criminal laws concerning human trafficking, including services and support available to victims and the rights and appropriate treatment of victims;

(iii) the contact with and treatment of victims of crimes and delinquent acts;

- (iv) the notices, services, support, and rights available to victims and victims' representatives under State law; and
- (v) the notification of victims of identity fraud and related crimes of their rights under federal law;
- (7) to certify and issue appropriate certificates to qualified instructors for police training schools authorized by the Commission to offer police training programs;
- (8) to verify that police officers have satisfactorily completed training programs and issue diplomas to those police officers;
- (9) to conduct and operate police training schools authorized by the Commission to offer police training programs;
- (10) to make a continuous study of entrance-level and in-service training methods and procedures;
- (11) to consult with and accept the cooperation of any recognized federal, State, or municipal law enforcement agency or educational institution;
- (12) to consult and cooperate with universities, colleges, and institutions in the State to develop specialized courses of study for police officers in police science and police administration;
- (13) to consult and cooperate with other agencies and units of the State concerned with police training;
- (14) to develop, with the cooperation of the Office of the Chief Medical Examiner and the Federal Bureau of Investigation, a uniform missing person report form to be available for use by each law enforcement agency of the State on or before October 1, 2008;
- (15) to require, for entrance-level police training and annually for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include, for police officers who are issued an electronic control device by a law enforcement agency, special training in the proper use of electronic control devices, as defined in Section 4-109 of the Criminal Law Article, consistent with established law enforcement standards and federal and State constitutional provisions;
- (16) to require, for entrance-level police training and, as determined by the Commission, for in-service level training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include, consistent with established law enforcement standards and federal and State constitutional provisions:
 - (i) training in lifesaving techniques, including Cardiopulmonary Resuscitation (CPR);
 - (ii) training in the proper level and use of force;
 - (iii) training regarding sensitivity to cultural and gender diversity; and
 - (iv) training regarding individuals with physical, intellectual, developmental, and psychiatric disabilities;
- (17) to require, for entrance-level police training and at least every 2 years for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special

training, attention to, and study of the application of antidiscrimination and use of force de-escalation training;

(18) to develop, with the cooperation of the Office of the Attorney General, the Governor's Office of Crime Control and Prevention, and the Federal Trade Commission, a uniform identity fraud reporting form that:

(i) makes transmitted data available on or before October 1, 2011, for use by each law enforcement agency of State and local government; and

(ii) may authorize the data to be transmitted to the Consumer Sentinel program in the Federal Trade Commission;

(19) to adopt and recommend a set of best practices and standards for use of force;

(20) to evaluate and modernize recruitment standards and practices of law enforcement agencies to increase diversity within those law enforcement agencies and develop strategies for recruiting women and African American, Hispanic or Latino, and other minority candidates;

(21) to develop standards for the mandatory psychological consultation with a law enforcement officer who was actively involved in an incident when another person was seriously injured or killed as a result of an accident or a shooting or has returned from combat deployment;

(22) to require:

(i) a statement condemning motorcycle profiling to be included in existing written policies regarding other profiling; and

(ii) for entrance-level police training and for in-service level training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include, consistent with established law enforcement standards and federal and State constitutional provisions, training related to motorcycle profiling in conjunction with existing training regarding other profiling;

(23) to perform any other act, including adopting regulations, that is necessary or appropriate to carry out the powers and duties of the Commission under this subtitle; and

(24) to consult and cooperate with commanders of SWAT teams to develop standards for training and deployment of SWAT teams and of law enforcement officers who are not members of a SWAT team who conduct no-knock warrant service in the State based on best practices in the State and nationwide.

(b) Reports of incidents. --

(1) The Commission shall develop a system by which law enforcement agencies report to the Commission on the number of serious officer-involved incidents each year, the number of officers disciplined each year, and the type of discipline administered to those officers.

(2) The Commission shall annually summarize the information submitted by law enforcement agencies and:

(i) post the summary, excluding the names of officers and other involved parties, on a website maintained by the Commission; and

(ii) submit the summary to the General Assembly, as provided in Section 2-1257 of the State Government Article.

(c) Confidential hotline. -- In consultation with the Maryland Department of Health, the Commission shall establish a confidential hotline that is available for police officers and other law enforcement personnel to contact and speak with a trained peer law enforcement officer or a mental health professional who may provide initial counseling advice and confidential referral to appropriate services.

(d) Police Complaint Mediation Program. -- The Commission shall:

(1) establish a Police Complaint Mediation Program to which a law enforcement agency may refer a nonviolent complaint made against a police officer out of the standard complaint process;

(2) refer a complaint referred to the Program to voluntary mediation conducted by an independent mediation service; and

(3) adopt regulations to implement the Program, including criteria concerning eligibility for referral of complaints.

(e) Establishment of best practices for community policing program. --

(1) The Commission shall develop best practices for the establishment and implementation of a community policing program in each jurisdiction.

(2) The Commission shall develop a system by which each local law enforcement agency annually files a detailed description of the law enforcement agency's community policing program.

(3) The Commission shall annually:

(i) review each community policing program filed in accordance with Section 3-517 of this title; and

(ii) provide each agency with any comments that the Commission has to improve the agency's community policing program.

(f) Establishment of citizen complaint process. --

(1) The Commission shall develop a uniform citizen complaint process to be followed by each law enforcement agency.

(2) The uniform complaint process shall:

(i) be simple;

(ii) require that a complainant be informed of the final disposition of the complainant's complaint and any discipline imposed as a result; and

(iii) be posted on the websites of the Commission and each law enforcement agency.

(g) Training program on police procedures. -- The Commission shall develop and administer a training program on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures for citizens who intend to qualify to participate as a member of a hearing board under Section 3-107 of this title.

(h) Distribution of victim's representation notification form. -- The Commission shall distribute the victim's representation notification form developed by the Governor's Office of Crime Control and Prevention under Section 12-206.1(e) of the Transportation Article to each law enforcement agency in the State.

(i) Training and certification curriculum for surrender of firearms. -- The Commission, in consultation with the Maryland State's Attorneys' Association, shall develop and maintain a uniform, statewide training and certification curriculum to ensure use of best practices in investigating compliance with court orders to surrender regulated firearms, rifles, and shotguns under Section 6-234 of the Criminal Procedure Article.

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 4,609 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2019, I mailed first class, postage prepaid, two copies of the foregoing Brief of *Amici Curiae* to:

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