

No. 124831

**IN THE
SUPREME COURT OF ILLINOIS**

THE CITY OF CHICAGO,

Respondent/Appellant

vs.

FRATERNAL ORDER OF POLICE, CHICAGO
LODGE, NO. 7,

Petitioner/Appellee

On appeal from the Appellate Court of Illinois,
First District, No. 1-17-2907
There heard on appeal from the Circuit Court of Cook County, Illinois
No. 2016 CH 9793
Honorable Sanjay T. Tailor, Judge Presiding

**AMICUS CURIAE BRIEF OF ORGANIZATIONS AND RELIGIOUS LEADERS THAT
REPRESENT VICTIMS OF CHICAGO POLICE MISCONDUCT, AND
ORGANIZATIONS AND DATA SCIENTISTS DEDICATED TO GOOD
GOVERNMENT**

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INTEREST OF THE AMICI CURIAE

Amici curiae are a coalition of legal aid organizations, community organizations, and civic groups who have members, clients, constituents, family members, and friends who have been subjected first-hand to police misconduct in Chicago. These amici, listed and described in the Appendix, are uniquely positioned to speak to the practical importance of preserving police misconduct records and singularly committed to ensuring that past abuse is remedied and future abuse is prevented.

ARGUMENT

I. Introduction

At stake in this appeal are hundreds of thousands of police misconduct records, which contain crucial information needed to remedy CPD's pattern and practice of civil rights violations and prevent future violations. It is a cruel reality that many people's lives have been impacted by the bad acts of officers within the Chicago Police Department and that the Department has shielded those officers from accountability. It is essential that those acts remain available to the people of Chicago, and all of Illinois, so that we may work to end CPD police misconduct. This has long been the goal of affected Amici and was also the focus of a Department of Justice (DOJ) investigation and a federal consent decree between the City of Chicago and the Attorney General of Illinois.

The preservation of police misconduct records provides essential information about institutional shortcomings and individual malfeasance. Because those records include narratives offering insight on the pattern and

practice of abuse within the Department, the records are necessary to determine the scope of needed reform, to monitor that reform, provide criminal defendants with impeachment material, and to enable individuals wrongly convicted as a result of police misconduct to challenge their convictions. In short, these records are needed to identify, remedy, and prevent past and future constitutional harms. Nor is this need abstract or hypothetical—the records are essential to monitor the dramatic reform of the Chicago Police Department taking place under the federal consent decree, and to bring justice to individuals and families whose lives have been broken by CPD abuse.

Long-standing Illinois public policy recognizes the need to maintain public records. This public policy, codified in Illinois statutes such as the Freedom of Information of Act (FOIA), the State Records Act (SRA), and the Local Records Act (LRA), requires preservation of these essential government documents to protect the constitutional rights of all individuals.

II. There is a well-defined and dominant Illinois public policy requiring preservation of these important government records.

Enforcing Section 8.4 of the Fraternal Order of Police collective bargaining agreement would violate Illinois public policy. While arbitral awards generally enjoy significant deference, this Court has recognized “a public policy exception to vacate arbitral awards which otherwise derive their essence from a collective-bargaining agreement.” *AFSCME v. Dep’t of Cent. Mgmt. Servs.*, 173 Ill. 2d 299, 304 (1996). More than a century ago,

the Court explained that “[t]he public policy of the state or of the nation is to be found in its Constitution and its statutes, and, when cases arise concerning matters upon which they are silent, then in its judicial decisions and the constant practice of the government officials.” *Zeigler v. Ill. Tr. & Sav. Bank*, 245 Ill. 180, 193 (1910).

In enacting the FOIA, the General Assembly declared that the public is entitled to full access to government records to ensure that the government is acting in the public interest: “[I]t is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees.” 5 ILCS 140/1 (2018).

Similarly, in the SRA, the General Assembly “declared to be the public policy of the State of Illinois” that “government records are a form of property whose ownership lies with the citizens of the State of Illinois,” that those records must be “maintained ... in support of the rights of those citizens and the operation of the State,” that such records are “with very few exemptions” to be available for use by the citizens, and that the records may not be disposed of unless in compliance with the SRA. 5 ILCS 160/1.5 (2018). Likewise, the LRA requires preservation of public records and enumerates specific processes to dispose of them. *See* 50 ILCS 205/7 (2018).

Together, these statutes announce an unmistakable public policy that government records are the property of the people of the State, they shall be maintained for the people’s use, and they may be destroyed only

when they lack sufficient value to merit retention. Under this longstanding state policy, the police misconduct complaints at issue in this case are public property.

Nor can there be any doubt over the extraordinary public value of these records. The United States Supreme Court has held that “[t]here is a strong public policy that favors exposing substantial allegations of police misconduct to the salutary effects of public scrutiny.” *Waller v. Georgia*, 467 U.S. 39, 47 (1984). Likewise, Illinois courts have repeatedly recognized the public importance of police misconduct records. *Fraternal Order of Police v. City of Chi.*, 2016 IL App (1st) 143884, ¶ 53; *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶ 16; *Gekas v. Williamson*, 393 Ill. App. 3d 573, 585 (4th Dist. 2009). Further, Illinois recognizes a distinct public policy favoring the investigation and prosecution of criminal offenses. *Palmateer v. Int’l Harvester Co.*, 85 Ill. 2d 124, 133 (1981). Retention of the police misconduct records plainly serves that interest as well.

In sum, it is difficult to imagine government records more important to the public interest than those describing complaints of police misconduct. As illustrated in the following sections, the significance of those records is only heightened here, given the tragic history and culture of violence perpetrated by members of the Chicago Police Department. Retention of these records is needed to foster reform, monitor ongoing reform efforts to ensure progress, and vindicate the rights of victims of police misconduct.

For these reasons, Section 8.4 of the collective bargaining agreement, requiring destruction of complaints about police misconduct after only five

years, is unenforceable as against clear and longstanding Illinois public policy.

III. Retention of the police misconduct complaints is essential to effectuate meaningful police reform.

Application of the public policy exception to the arbitrator's award in this case is necessary to foster reform of police practices. The misconduct complaints shed a critical and unique light on allegations of police abuse. As one federal court explained, "[t]he only way to end [police abuse] is to evaluate and reevaluate past practices." *Doe v. Marsalis*, 202 F.R.D. 233, 238 (N.D. Ill. 2008). And of course, it is impossible to do so without retaining misconduct records for later evaluation.

In the last five years, over 250,000 complaints about CPD officers have become public. Scholars, data scientists, and journalists continue to rely on these records to inform public policy, research, and public conversations about CPD reform. See *e.g.*, Rob Arthur, "Bad Chicago Cops Spread Their Misconduct Like a Disease," *The Intercept*, Aug. 16, 2018 (using records in study showing the effects of exposure to CPD misconduct on other officers); Paul Bleakley, "A Thin-Slice of Institutionalized Police Brutality: A Tradition of Excessive Force in the Chicago Police Department," 30 *Crim. L. F.* 425 (2019) (using CPD misconduct records to identify and study patterns of police misconduct); Olugbenga Ajilore and Shane Shirey, "Do #AllLivesMatter? An Evaluation of Race and Excessive Use of Force by Police," *Atlantic Economic Journal*, 2017 (relying on CPD misconduct records to study the role race plays in excessive force complaints); Kyle Rozema and Max Schanzenbach, "Good Cop, Bad Cop:

Using Civilian Allegations to Predict Police Misconduct,” *American Economic Journal*, May 2019 (relying on records to develop systems to predict and prevent future police misconduct).¹ This research and the resulting knowledge it has produced would not be possible without the records at issue in this case.

Perhaps most significantly, the federal consent decree between the City of Chicago and the Illinois Attorney General’s Office is meant to bring about dramatic and widespread reform at the CPD.² This decree came about after investigations by the DOJ and Chicago’s Police Accountability Task Force identified a “long, sad history of death, false imprisonment, physical and verbal abuse and general discontent about police actions in neighborhoods of color,” and finding a pattern and practice of racially-

¹ See also Marie Ouellet, Sadaf Hashimi, Jason Gravel, and Andrew Papachristos, “Network Exposure and Excessive Use of Force: Investigating the Social Transmission of Police Misconduct,” 18 *Criminology & Pub. Pol’y* 675 (2012) (using CPD misconduct records to study how officers’ peers serve as conduits through which misconduct is learned and transmitted); Elizabeth Andonoya, “Cycle of Misconduct: How Chicago has Repeatedly Failed to Police its Police,” 73 *Law. Guild Rev.* 2 (2016) (documenting tragic examples of people killed by police where previous complaints had been filed against the officers); Andrew Fan, “Chicago Police are 14 Times More Likely to Use Force Against Young Black Men than Against Whites,” *The Intercept*, Aug. 16, 2018 (using CPD misconduct data to analyze trends and racial disparities in police use of force), <https://theintercept.com/2018/08/16/chicago-police-misconduct-racial-disparity>.

² The consent decree was filed on January 31, 2019 as Docket Number 703-1 in *State of Ill. v. City of Chi.*, No. 17-cv-6260 (N.D. Ill.). The decree is also available at chicagopoliceconsentdecree.org.

disproportionate violence by CPD officers.³ Drawing upon the CPD misconduct records at issue, it found that African Americans are ten times more likely to have Chicago police officers use force against them than Whites but are only one-third as likely to have their complaints of excessive force sustained.⁴ The DOJ cited the CPD's lack of public accountability, its code of silence, its deficient investigations of police misconduct, and its failure to identify and deter abusive officers. DOJ Report at 75-84. The DOJ also highlighted the particular role that CPD's lack of transparency played in facilitating the systemic abuse, finding that it "has contributed to CPD's failure to identify and correct unlawful practices" and has bred "distrust between CPD and the public." *Id.* at 12. Similarly, the Task Force found "very little transparency" in the process CPD used to investigate allegations of police misconduct and found that officers easily "avoid meaningful consequences [for misconduct] due to an opaque, drawn out and unscrutinized disciplinary process." Task Force Report at 6-7.

³ See Police Accountability Task Force, Recommendations for Reform: Restoring Trust between the Chicago Police & the Communities They Serve ("Task Force Report") at 6-7 (2016), <https://perma.cc/7PHF-JNK8>; United States Department of Justice, Investigation of the Chicago Police Department ("DOJ Report") at 68-69, 145 (Jan. 13, 2017), [justice.gov/opa/file/925846/download](https://www.justice.gov/opa/file/925846/download).

⁴ DOJ Report at 68-69, 145. Understanding the value of the CPD misconduct records at issue to diagnosing and remedying CPD's pattern of unconstitutional policing, the DOJ took steps to ensure that the misconduct records in this case were preserved. *Fraternal Order of Police v. City of Chicago*, 2016 IL App (1st) 143884 at *3 (describing DOJ's notice to preserve officer misconduct complaint and disciplinary files).

The DOJ and City definitively acknowledged what Amici and those living in the Black and Brown neighborhoods have known for generations. They recognized in detail the mechanisms by which that knowledge, expressed in in part through citizen complaints of police abuse, has been disregarded and, in effect, made to disappear.

The consent decree recognizes that “[d]ata can empower CPD to engage in the type of critical self-examination essential to instilling and maintaining constitutional policing.” Consent Decree at ¶ 566. Allegations of misconduct will reveal patterns over decades of policing, and identify problematic cohorts of officers, populations who suffer most from abusive policing, and flaws within supervisory and investigative structure. Details from the investigation files may illuminate patterns of inefficiency or incompetence. Outcomes will show which complaints are more likely to be believed and what level of discipline officers face for misconduct. The consent decree also newly requires community input in the formulation of CPD policy. Consent Decree ¶ 633. Records of community complaints may verify community perspectives on historical abuses. The Department and the consent decree monitor need this historical data to better craft forward looking remedies.

The consent decree also outlines the need for an effective Early Intervention System to enable the Police Department to identify problematic officers before they cause irreparable harm. In describing the criteria needed to identify an officer, the consent decree makes clear that an indicator may be “the number of misconduct complaints against an officer.”

Consent Decree at ¶ 588. Retention of misconduct complaints is thus important to the operation of the consent decree and its provisions seeking to identify officers before they commit violent acts.

Retention of those complaints is critical to the consent decree in other ways. Both the Illinois Attorney General and a coalition of civic groups are authorized to monitor and, if necessary, move to enforce the decree. *See, e.g., id.* at ¶¶ 668, 694, 709. Amici, the State of Illinois, and the people of Chicago need the misconduct records to implement the consent decree and remedy the Department's pattern and practice of civil rights violations. As one example, those records are essential to identifying and stopping officers who may be engaged in patterns of abuse. Such patterns generally reveal themselves over time, so access to older records is vital to discerning such patterns.⁵ Further, both the DOJ and the Police Accountability Task Force identified lack of transparency in disciplining officers as one of the root causes of the Department's problems. Destruction of misconduct complaints will only exacerbate the lack of transparency plaguing the Department, not reform it.

IV. Destruction of misconduct records would impair law enforcement and harm public safety.

"There is no public policy more important or more fundamental than the one favoring the effective protection of the lives and property of citizens." *Palmateer*, 85 Ill. 2d at 130. When abusive officers are not held accountable for their actions, public trust in the police erodes, interfering

⁵ See examples at pp.13 -16, *infra*.

with the ability of conscientious officers to build positive community relations and solve crime. The destruction of police misconduct records makes it more difficult to identify patterns of abuse by officers and to ensure that abusive officers have been disciplined. This, in turn, further degrades the public's trust in the police.

The DOJ investigation highlighted the relationship between the Chicago Police Department's pattern of civil rights violations and its inability to combat violent crime. DOJ Report at 139. Amici not only represent people most impacted by abuse from Chicago police officers, but they also represent people particularly impacted by violent crime in the city. The communities most ravaged by unchecked police abuse have also been upended by violence that has flourished as the result of ineffective policing. *Id.* at 142.

The Department's unchecked pattern of civil rights violations decimated public trust in the police. Residents in some of Chicago's neighborhoods reported that "they often feel that CPD polices too harshly in neighborhoods, and too often assumes that they are the perpetrators of crime." DOJ Report at 132; *see id.* at 144. When police lack trust or legitimacy in the community, they are less effective in addressing crime. As former Seattle Police Chief Norman Stamper explained, police misconduct makes communities less safe by diminishing public trust in law enforcement, straining community-police relations, and making citizens less likely to cooperate with, provide information to, and come to the aid of

the police.⁶ It is no surprise that the Chicago neighborhoods with the lowest clearance rates for violent crime also have the most complaints of police abuse.⁷

The threatened destruction of records desperately needed to reform the Police Department, build trust, and improve public safety would vitiate Illinois's most fundamental policy "favoring the effective protection of the lives and property of [its] citizens." *Palmateer*, 85 Ill. 2d at 130.

V. The destruction of misconduct records would eliminate important evidence needed to prove wrongful convictions and remedy serious constitutional violations.

As discussed above, police misconduct records are necessary to reveal patterns of abusive action that only appear over time. There are numerous examples of officers who we now know were engaged in patterns of egregious civil rights violations for years, but who were not held to account until long after the evidence of their abuse would have been destroyed under Section 8.4, such as the officers who engaged in systematic torture under Commander Jon Burge. *See United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999) ("It is now common knowledge that in

⁶ Affidavit of Norman Stamper, attached at Appendix - 15; see also Tom R. Tyler, Enhancing Police Legitimacy, 593 *Annals of the Am. Soc. of Polit. & Soc. Sci.* 84, 85 (2004); Jason Sunshine & Tom R. Tyler, The Role of Procedural Justice Legitimacy in Shaping Public Support for Policing, 37 *Law & Soc'y Rev.* 513, 517 (2003) (concluding that perception of police legitimacy predicts compliance with law as well as willingness to both cooperate with and empower police officers).

⁷ Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities*, 2016 *Univ. of Chi. L. Forum* 125, 155 n. 105 (2016).

the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions.”). While CPD torture began in the early 1970s and continued unabated over the span of three decades, public officials did not begin to acknowledge it until 1993, when Jon Burge was fired from the Police Department.⁸ The Chicago Public Schools now teach their students about this era of police torture as part of their history curriculum.⁹ Over 100 men, predominantly Black, were found to have been tortured.¹⁰ Dozens of those men have had their convictions overturned after being unjustly incarcerated for more than a decade.¹¹ Each of those men would still be in prison had the CPD misconduct records been destroyed under Section 8.4.

In 2009, the General Assembly created a new state agency, the Torture Inquiry and Relief Commission, to review convictions that may have been coerced by Burge or his underlings. *See* 775 ILCS 40/5 (2010).¹²

⁸ G. Flint Taylor, *A Long and Winding Road: The Struggle for Justice in the Chicago Police Torture Cases*, 17 *Loy. Pub. Int. L. Reporter* 178, (2012).

⁹ Thai Jones, *How Chicago’s Public Schools are Teaching the History of Police Torture*, *The New Yorker*, (Sep. 27, 2018).
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¹⁰ Chicago Torture Justice, <http://chicagotorturejustice.org/about-us/>.

¹¹ Kim D. Chanbonpin, *Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission*, 2015 *Loyola University Law Journal* Volume 45, Issue 4 (2014).

¹² The statute has since been amended to apply to claims of torture committed by an officer in Cook County. 775 ILCS 40/5 (2018).

At the time the Commission was created, Burge had been retired for 15 years, so every relevant document was well outside the time limit contained in Section 8.4 of the FOP collective bargaining agreement. The Commission's primary means of fulfilling its mission is to examine the type of documents at issue here, including complaints dating back to the 1970s—records that could be destroyed if the arbitrator's decision stands. About 500 cases are currently pending before the Commission, many brought by men who may have been tortured decades ago and are still sitting in prison.¹³ These records are essential for litigating the truth.¹⁴

Another example is Chicago Police Sergeant Ronald Watts, convicted in 2013 of theft of government funds.¹⁵ Watts had terrorized residents of Chicago's Ida B. Wells Homes, a housing project on the south side, shaking

¹³ Tony Anderson, convicted in 1990. Javan Deloney, convicted in 1994. Jerome Johnson, convicted in 1995. Abdul Muhammad, convicted in 2001. Gerald Reed, convicted in 1990. Decisions of the State of Illinois Torture Inquiry and Relief Commission and supporting documents can be found at: <https://www2.illinois.gov/sites/tirc/Pages/TIRCDDecision.aspx>

¹⁴ Courts have specifically recognized that many of these older allegations of abuse were not reasonably discoverable at the time suppression hearings were taking place and thus must be explored now. *See People v. Tyler*, 2015 IL App (1 Dist., 2015) '1162 (ruling admissible at post-conviction proceedings even those abuse allegations that occurred prior to defendant's suppression hearing because "we cannot say that defendant would have discovered it through due diligence. Many of these cases went through the court system over years and many of the allegations did not surface until *many years later*."') (Emphasis added.)

¹⁵ Jason Meisner, Former Chicago Cop Gets 22 Months for Stealing from FBI Informant, Chicago Tribune, (Oct. 9, 2013). <https://www.chicagotribune.com/news/ct-xpm-2013-10-09-chi-former-chicago-cop-gets-22-months-for-stealing-from-fbi-informant-20131009-story.html>.

down drug dealers, brutalizing residents, and planting evidence on innocent people.¹⁶ As a result of police misconduct by Watts and his crew, 95 convictions have been overturned and 75 people have been exonerated.¹⁷ One of those people is Ben Baker, who Watts ripped from his family and put in prison. Baker spent nine years in prison before he was exonerated and released.¹⁸ Much of the evidence that helped to prove his wrongful conviction would have been destroyed under Section 8.4.

In another scandal, members of the Special Operations Section (“SOS”), an elite unit of the Chicago Police Department, targeted immigrant and other vulnerable families for the SOS members’ financial gain over a period of 15 years. They broke into and illegally searched homes, robbed people of their belongings, and made false arrests. More than 110 felony cases were dismissed as a result of their criminal behavior.¹⁹ While their pattern of abuse began as early as 1994, many of the officers were not convicted of their crimes until 2011, long after their records would have

¹⁶ Jamie Kalven, Operation Brass Tax: Corrupt Chicago Police were Taxing Drug Dealers and Targeting their Rivals, *The Intercept*, (Oct. 6, 2016). <https://theintercept.com/2016/10/06/corrupt-chicago-police-were-taxing-drug-dealers-and-targeting-their-rivals>.

¹⁷ Chip Mitchell, 13 More Convictions Tied to Corrupt Chicago Officers Overturned, *WBEZ News*, (Feb. 11, 2020). <https://www.wbez.org/shows/wbez-news/13-more-convictions-tied-to-corrupt-chicago-officers-overturned/4dc42be8-0ebb-40a5-abfa-d475bfa73b9f>.

¹⁸ Jennifer Gonnerman, How One Woman’s Fight to Save her Family Helped Lead to a Mass Exoneration, *The New Yorker* (May 28, 2018).

¹⁹ Maurice Possley, When Cops Go Bad, Everyone Pays, *Chicago Tribune*, (Oct. 22, 2006). <https://www.chicagotribune.com/news/ct-xpm-2006-10-22-0610210288-story.html>.

been destroyed under Section 8.4.²⁰ SOS officer Jerome Finnigan earned 175 complaints over his 25-year career. Six other SOS officers together amassed 250 complaints, only five of which resulted in discipline.²¹ Over 200 of the complaints made against SOS officers took place before 2001, and under Section 8.4, those records would have been destroyed as well.

And in 2017, 51 people came forward publicly and accused former Chicago Police Department officer Reynaldo Guevara of framing them for murder.²² Guevara had more complaints against him than 70% of the Department, but because he retired in 2005, every one of those reports would have been destroyed under Section 8.4.²³ So far, 19 people have been exonerated in cases tied to Guevara.²⁴

²⁰ Levin Hillel, The Chicago Police Department Hailed him as one of their Finest. Then They Decided he was One of their Worst, *Playboy Magazine*, Apr. 2012.

²¹ John Hagedorn *et al.*, Crime, Corruption and Cover-ups in the Chicago Police Department, Anti-Corruption Report, at 12-13, https://pols.uic.edu/wp-content/uploads/sites/273/2018/10/ac_policecorruptionb6e6.pdf.

²² Melissa Segura, A Chicago Cop Is Accused of Framing 51 People for Murder. Now, The Fight for Justice, *BuzzFeed News*, (Apr. 4, 2017). <https://www.buzzfeednews.com/article/melissasegura/detective-guevaras-witnesses>.

²³ Invisible Institute, Citizens Police Data Project, <https://cpdp.co/officer/10972/reynaldo-guevara/>.

²⁴ Grace Hauck, Man Claims Chicago Cop Framed Him for Murder at 15. Lawyers Say They Can Prove It, *USA Today*, (Sep. 18, 2019). <https://www.usatoday.com/story/news/nation/2019/09/18/chicago-police-detective-reynaldo-guevara-framed-teen-report-suggests/2362373001/>.

Other Chicago Police Department officers who have been involved in unnecessary killings of Chicago citizens have lengthy records of misconduct complaints against them. Jason Van Dyke was convicted of murdering Laquan McDonald. He had 25 complaints of misconduct against him.²⁵ Alvin Weems shot and killed a young man at a train station. He had 14 misconduct complaints against him.²⁶ Dante Servin was controversially acquitted after killing Rekia Boyd because the judge declared that he should have been charged with first degree murder instead of manslaughter. He had more misconduct complaints than 92% of other officers, and all but five were older than five years old.²⁷

Unfortunately, these examples are not exhaustive. More than four-fifths—81%—of exonerations in Cook County are the result of police misconduct.²⁸ In Illinois, there have been 221 documented exonerations costing individuals 2,493 years in prison, and taxpayers nearly a half billion dollars in payouts as a result of wrongful imprisonments.²⁹ Each of the many Chicago police officers who we now know routinely falsely arrested

²⁵ Invisible Institute, Citizens Police Data Project, <https://www.cdmdp.co/officer/29310/jason-van-dyke/>.

²⁶ Invisible Institute, Citizens Police Data Project, <https://cpdp.co/officer/30293/alvin-weems/>.

²⁷ Invisible Institute, Citizens Police Data Project, <https://cpdp.co/officer/26022/dante-servin/>.

²⁸ Preliminary Findings by the National Registry of Exonerations (unpublished) (verified by email on 2/11/20 by Samuel Gross, Senior Editor of the Registry, Thomas and Mabel Long Professor Emeritus of Law

²⁹ National Registry of Exonerations' 2018 report: <https://www.law.umich.edu/special/exoneration/Documents/NRE.20000.Years.Report.pdf>

people and coerced confessions have two things in common: (1) they have inflicted grievous harm on Amici and the thousands of families they represent, and (2) none of them were held accountable for their abuses until long after their pattern of unconstitutional and criminal conduct had begun.

In addition to remedying wrongful convictions, the retention of police misconduct records will assist with preventing wrongful convictions in the first instance. In its 2017 investigation, the United States Department of Justice determined that the Chicago Police Department has no system in place to track and share information related to the credibility of police officer witnesses, despite it being required under *Giglio v. United States*, 405 U.S. 150 (1972).³⁰ In the absence of such a system, original records of misconduct provide the only opportunity for criminal defendants to identify and impeach police officer witnesses who have a history of lying on the witness stand or during investigations. The destruction of records sought by the FOP in this case would prevent the Department from creating a robust version of this constitutionally required system. Individual defendants will also be unable to conduct their own investigations into the credibility of officers testifying against them. The harm that the loss of this evidence would cause cannot be understated.

Moreover, the FOP's desired destruction of CPD misconduct records would prevent Amici and the people of Illinois from identifying and remedying the harm caused by *other* police officers engaged in patterns of abuse. As the DOJ report attests, Jon Burge, SOS and Ronald Watts were

³⁰ See DOJ Report at 76-77.

far from the only officers who routinely abused their power to hurt people. Other officers engaged in ongoing abuse have yet to be stopped. If there is any lesson to be learned from these CPD scandals, it is that patterns occur over time and all too often have taken years before they are addressed. If this Court sustains FOP's appeal, the very evidence necessary to identify and put an end to these patterns would forever be gone.

Retention of police misconduct records enables identification of patterns of abuse. This evidence, in turn, can be used to reverse wrongful convictions, stop further abuse before it happens, and vindicate the constitutional rights of the victims of abuse. Illinois public policy strongly supports retention of those documents, and the arbitrator's decision to the contrary violates that policy.

CONCLUSION

For these reasons, Amici urge this Court to hold that the arbitrator's decision violates well-established Illinois public policy.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 18 pages or words.

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APPENDIX

AMICI CURIAE

1. *The ACLU of Illinois* is a non-profit, non-partisan, statewide organization located in Chicago, Illinois. The ACLU is dedicated to protecting and expanding the civil rights and civil liberties enshrined in the United States Constitution, the Illinois Constitution, and state and federal civil rights laws. The ACLU advocates on behalf of people harmed by unconstitutional policing practices in the City of Chicago, including practices that disproportionately impact people of color.
2. *Black Lives Matter Chicago* is an organization that fights for justice with families most impacted by race-based violence and marginalization of Black communities, while working to create just and equitable systems. Black Lives Matter Chicago works to end state violence and criminalization of Black communities by deconstructing the white supremacist, capitalist patriarchy.
3. *Blocks Together (BT)* is a membership-based community organizing group in the West Humboldt Park (WHP) neighborhood on Chicago's West Side. Since 1995, BT has empowered residents to work together for systematic changes that bring concrete improvement to their lives.
4. *Brighton Park Neighborhood Council (BPNC)* is a community-based, grassroots organization on Chicago's southwest side, a predominantly Latinx and immigrant community. They work to empower their community and build its capacity by providing school and community-based services and programs.

5. *Chicago Urban League* is an independent, not-for-profit civil rights organization. CUL has more than 15,000 constituents in the Chicago metropolitan area. The pattern and practice of police brutality in Chicago has caused grievous harm to the individuals, families, and communities served by the CUL, and has severely diminished their safety and opportunities for economic, educational, and social progress.
6. *Community Renewal Society (CRS)* is a faith-based organization that represents at least 10,000 people through its approximately 70-member congregations, more than 30 of which are in Chicago. CRS is a 135-year-old organization that works with people and communities to address racism and poverty. One of CRS's primary campaigns is police accountability and reform.
7. *Communities United* is an organization that uses grassroots community organizing to alleviate social inequality. Its mission is to develop local leaders to address issues and bring about policy change on a variety of social justice issues. Communities United addresses the following issue areas through its organizing: immigrants' rights, affordable housing, public education, healthcare, violence prevention and gang involvement of young people, and workers' rights.
8. *Justice for Families (JFF)* is a working group of Black Lives Matter: Chicago. JFF is 100% volunteer run and are committed to working with families impacted by police and state violence.

9. *Network 49* is a community-led organization committed to organizing and advocating for policies and elected leadership that advance a high quality of community life, benefiting all residents in the 49th Ward of the City of Chicago.
10. *Next Steps* is an advocacy group whose mission is to ensure that people with lived experience of homelessness, mental illness, substance use, and/or substance abuse lead the development and implementation of health care, housing, and social policies at the state and local levels. A core tenet of Next Steps is: “nothing about us without us.” Next Steps works to include people with lived experience of severe mental illness at every table, as laws are made, when policy is discussed and decided, while funding is allocated, and where education is delivered.
11. *ONE Northside* is a community organization whose mission is to achieve racial, social, and economic justice. To that end, ONE Northside practices community organizing in the areas of violence prevention, public education, affordable housing, healthcare and mental health justice, youth empowerment, and economic justice. ONE Northside engages community members from the Rogers Park, Edgewater, Uptown, Ravenswood, North Center, Lakeview, and Lincoln Park neighborhoods of Chicago. These diverse communities are home to some of the populations most vulnerable to the Chicago Police Department’s unconstitutional practices—racial minorities, people with disabilities, immigrants, and low-income individuals. ONE

Northside is a membership organization, with about 100 organizational members and more than 600 individual members in Chicago.

12. *Westside Branch of the NAACP* is a membership organization based on the West Side of Chicago that is part of the oldest national civil rights organization in the United States. The Illinois State Conference of the NAACP coordinates activities throughout the State of Illinois. The NAACP's mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination, including but not limited to racially biased police practices.

13. *Women's All Points Bulletin* is a human rights and community policing non-profit organization that provides services, education, and training to eradicate all forms of violence against women during policing encounters.

14. *411 Movement for Pierre Loury* is an organization formed in response to the fatal shooting of 16-year-old Pierre Loury by Chicago Police. It was created as a response to the problematic culture of violence being committed in the city of Chicago by the civil servants that are contracted to serve, protect, and uphold the law.

15. *Asian Americans Advancing Justice* advocates for an America in which all Americans can benefit equally from, and contribute to, the American dream. Its mission is to advance the civil and human rights for Asian Americans and to build and promote a fair and equitable society for all.

16. *Rev. Ira Acree* has pastored the Greater St. John Bible Church on Chicago's Westside for more than 25 years. He's a tireless advocate for empowerment, championing principles of entrepreneurship, education, economics and evangelism.

17. *Better Government Association (BGA)* a non-partisan, nonprofit news organization and civic advocate working for transparency, efficiency and accountability in government in Chicago and across Illinois. The BGA uncovers waste and wrongdoing in government, holds elected officials accountable, litigates for open records and meetings, advocates for good government and empowers citizens to engage and act.

18. *Bluhm Legal Clinic at Northwestern University Pritzker School of Law* houses over 20 clinics within 13 centers and is widely recognized as one of the most comprehensive and effective clinical programs in the country. Each year, hundreds of clients receive assistance from Bluhm Legal Clinic students. The range of clients served is wide reaching including teenagers tangled in an unjust juvenile legal system and entrepreneurs in need of affordable legal advice. The Bluhm Legal Clinic is internationally recognized for its involvement in legal reform, and for advancing the goal of providing a skilled, ethical, and public-spirited legal profession integral to a society that values and promotes justice.

19. *Center on Wrongful Convictions (CWC) Northwestern University Pritzker School of Law* is dedicated to identifying and rectifying wrongful convictions

and other serious miscarriages of justice. To date, the Center has exonerated more than forty innocent men, women, and children from states around the country, and it receives thousands of inquiries a year. The CWC also houses some of the nation's leading legal experts on false confessions and police interrogations and has helped exonerate more than twenty false confessors.

20. *Chicago Appleseed Fund for Justice* works to identify barriers for unrepresented parties and inequities for everyone when accessing the courts in Cook County. The Fund for Justice focuses on improving court processes for those with or without representation- whether for a divorce or child support matter, a criminal charge, or eviction.

21. *Chicago Data Collaborative* is a cooperative effort by newsrooms, academics, and nonprofit researchers to help each other understand our criminal justice system. Together, they work to get data from public agencies, organize and document that data, and link the data together. Criminal justice involves a complex network of different institutions. By sharing capacity and organizing data from multiple points of contact—including investigatory stops, arrests, court cases, and lockup—they seek to paint a comprehensive portrait of the system as a whole. Member organizations include Injustice Watch, DataMade, Lucy Parsons Lab, Invisible Institute, Chicago Appleseed Fund for Justice, Metropolitan Planning Council, Northwestern Pritzker School of Law Bluhm Legal Clinic, and the Chicago Reporter.

22. *Chicago Lawyers' Committee on Civil Rights* are civil rights lawyers and advocates working to secure racial equity and economic opportunity for all. They provide legal representation through partnerships with the private bar, and collaborate with grassroots organizations and other advocacy groups to implement community-based solutions that advance civil rights.
23. *Chicago Torture Justice Center* seeks to address the traumas of police violence and institutionalized racism through access to healing and wellness services, trauma-informed resources, and community connection. The Center is a part of and supports a movement to end all forms of police violence. It is a community center for Chicago police torture survivors. CTJC was established as a result of a historic Reparations Ordinance passed by the Chicago City Council in May 2015.
24. *The Cook County Public Defender's Office* protects the fundamental rights, liberties and dignity of each person whose case has been entrusted to them by providing the legal representation. The Office provides legal representation to indigent persons in criminal cases in Cook County, many of whom have been victims of Chicago police abuse.
25. *Enlace Chicago* convenes, organizes, and builds the capacity of Little Village stakeholders to confront systemic inequities and barriers to economic and social access. Enlace is committed to accountability and transparency to ensure integrity, believes in building community power through collaboration

and grassroots leadership, promotes livable communities with access and opportunity for all, and values social justice and systems change.

26. *The Exoneration Project of the University of Chicago Law School* is dedicated to restoring justice. Beyond assisting its clients with their claims of actual innocence in court, it also strives to shed light on the problems in the criminal legal system that allow innocent people to be convicted of crimes they did not commit by advocating for greater accountability in the justice system. It works with community-minded organizations to advocate for our exonerees so that they are able to re-enter society with the support they need to succeed.

27. *First Defense Legal Aid* provides legal assistance to indigent people in Chicago police custody. It mobilizes lawyers and overpoliced community members to fill gaps in public defense and create, protect, and engage replicable alternatives to the criminal system starting with its entry points.

28. *Injustice Watch* is a non-partisan, not-for-profit, multimedia journalism organization that conducts in-depth research exposing institutional failures that obstruct justice and equality. Its team of investigative reports combines data journalism with conventional reporting to delve into crucial criminal and social justice issues.

29. *Invisible Institute* is a journalism production company on the South Side of Chicago. It works to enhance the capacity of citizens to hold public institutions accountable. Among the tactics it employs are investigative

reporting, multimedia storytelling, human rights documentation, the curation of public information, and the orchestration of difficult public conversations. Its work coheres around a central principle: we as citizens have co-responsibility with the government for maintaining respect for human rights and, when abuses occur, for demanding redress.

30. *Jamie Kalven* is a journalist and human rights activist who has reported extensively on patterns of police abuse in Chicago. He was the plaintiff in *Kalven v. City of Chicago*, in which this Court ruled that police misconduct records are subject to release under the Illinois Freedom of Information Act (FOIA).

31. *Jewish Council on Urban Affairs* is a Jewish organization working to transform Chicago into a city free of poverty, racism and antisemitism, by mobilizing the Jewish community to be a powerful voice for economic and racial justice. With a membership of nearly 2,000 across Chicagoland, they bring a committed base to three main program areas: issue-based campaigns, youth engagement and community investment.

32. *John Conroy* is a journalist who has covered the Chicago police torture scandal for more than two decades. He is currently the Roderick and Solange Senior Investigator at Northwestern Pritzker School of Law's MacArthur Justice Center.

33. *Let Us Breathe Collective* is an alliance of artists and activists organizing through a creative lens to imagine a world without prisons and police. The

Collective produces cultural events and direct actions that disrupt oppressive systems, amplify marginalized voices, and serve people and communities most directly harmed by mass incarceration, police violence, and systemic injustice.

34. Rabbi Seth Limmer serves as Senior Rabbi of the Chicago Sinai

Congregation, a reform Judaism congregation that has been fighting for social justice in Chicago for over 150 years.

35. Lucy Parsons Lab is a collaboration between data scientists, transparency

activists, artists, & technologists that operates in Chicago and the San Francisco Bay Area. They work at the intersection of digital rights and on-the-streets issues. Their main lines of work include providing digital security trainings, pursuing police accountability, researching the use of civil asset forfeiture, and filing public records requests.

36. MacArthur Justice Center is one of the premier civil rights law firms in the

United States. The MacArthur Justice Center has led battles against myriad civil rights injustices, including police misconduct (leading the charge to appoint a special prosecutor in the Jon Burge torture cases in Chicago), executions (helping to abolish the Illinois death penalty), fighting for the rights of the indigent in the criminal justice system, and vindicating the civil rights of persons who have been wrongfully convicted.

37. The Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law

School, established in 1957, is one of the oldest law school clinics in the

United States. It provides free legal services to people typically denied access to justice, and seeks to reform legal education and the legal system to be more responsive to the interests of the poor. The Civil Rights and Police Accountability Project within the Mandel Clinic is one of the nation's leading law school civil rights clinics. Its mission is to improve police accountability and service in Chicago, challenge discrimination, and remedy fundamental issues of injustice in our criminal system, while teaching students all that it means to be a lawyer.

38. Metropolitan Planning Council (MPC) has been dedicated to shaping a more equitable, sustainable, and prosperous greater Chicago region for over 80 years. MPC focuses on economic development, vibrant neighborhoods, quality housing and transportation choices, and well-managed natural assets. MPC bridges gaps between government, community, and business leaders, enabling them to more powerfully join forces and collectively improve the region.

39. Organized Communities against Deportation is an undocumented-led group that organizes against deportations, detention, criminalization, and incarceration of Black, brown, and immigrant communities in Chicago and surrounding areas.

40. People's Law Office (PLO) has been fighting for the civil rights of victims of police brutality, wrongful convictions, false arrest, and other government abuses for over 40 years. PLO has represented wrongfully imprisoned people

and individuals awaiting the death penalty, and has uncovered secret abuses by police and government officials.

41. *Policing in Chicago Research Group* is a collaborative, community engaged research workshop that brings faculty and students at the University of Illinois at Chicago into dialogue with community organizations to study policing in Chicago.

42. *Resist. Reimagine. Rebuild. Coalition (R3 Coalition) Chicago* is a coalition of Chicago-based groups and individuals, formed in November of 2016, committed to building relationships and strategies for responding to the current racist and proto-fascist political moment.

43. *Father Pfleger of Saint Sabina's*, a congregation and faith community on the South Side of Chicago committed to reducing violence and promoting peace. In the course of his ministry, Father Pfleger has been recognized across the nation for his commitment to equality and stance against injustice. Some of the awards and honors he has received include: "Keeper of the Dream", Rainbow/Push; "Thurgood Marshall Award", National Black Prosecutors Association; and the "Rosa Parks Award" from the SCLC.

44. *Truth, Hope, and Justice Initiative* was created by civil rights lawyer Andrew Stroth of the Action Injury Law Group. The Initiative is a social justice movement and digital media project developed to share the stories of mothers and families across the country who have been impacted by police violence. On May 10, 2018, the Truth, Hope and Justice Initiative led a group of over

100 mothers to march on Capitol Hill in Washington D.C. and met with Members of Congress to advocate for police reform and new legislation in America.

4. As Chief of Police of the Seattle Police Department I was responsible for executive leadership of the 1,800-member organization, and all policies, practices, and priorities of the agency.

5. During the last five years (1989-1993) of my tenure with the 2,800-member San Diego Police Department (SDPD), I served as the Executive Assistant Chief of Police. In that capacity, I was charged with running all day-to-day operations of the agency, including activities relevant to the issues addressed in this affidavit: internal affairs, media relations, labor relations, legal liaison, and community relations.

6. Prior to my appointment to the second-in-command position of SDPD, I was one of four deputy chiefs. At that rank, I headed, successively, each of the agency's bureaus: Management Services, Field Operations (all uniformed officers), Personnel Services, and Criminal Investigations.

7. From 1977 to 1982, I was SDPD's Ombudsman and Special Advisor to the Chief of Police. In this capacity, in addition to internally-focused duties (conflict resolution, facilitation of problem-solving workshops, work-related employee counseling), I worked with local and national media, and with citizens and police officers to help resolve media-relations issues and community-police tensions.

Opinions

8. Throughout my police career, including on-site observations of numerous American law enforcement agencies, I witnessed the effects of organizational "transparency," or a lack thereof, on public safety, internal accountability, and the community-police relationship.

9. In my professional experience, most police departments habitually rebuff efforts to convince, or cause, them to release information about internal discipline. They object particularly to the release of the names of officers who have engaged in patterns of excessive force, racial or other forms of discrimination, or other abuses of authority.

10. In my professional opinion, this resistance is shortsighted in the extreme. The police department is the most visible, arguably most important face of city government. If it operates or is perceived to operate in secrecy, refusing to share vital information with the people it exists to serve, it courts widespread misunderstanding, suspicion, and mistrust within the community.

11. I have observed that, throughout the country, a small number of police officers do, in fact, accumulate far more citizen complaints and sustained allegations of misconduct than their peers. The behavior of these few officers has a deleterious, disproportionate impact on public safety, organizational effectiveness, efficiency, officer safety and morale, and the community-police relationship. I have personally witnessed and studied these effects. I have also observed how the timely release of the offending officers' names, in concert with swift and appropriate disciplinary action, makes a huge difference in the public's trust in and respect for the local police agency.

12. A public's lack of trust in its police department, particularly in neighborhoods with historically strained community-police relations, invariably produces deeply damaging effects. I have observed that mistrustful residents are far less likely to call the police when they have been victimized by crime, or are in need of other emergency services. They are less likely to provide witness information, inform the police of the whereabouts of criminal suspects, report a dishonest or abusive police officer, join in

community-police efforts to prevent crime and violence, or come to the aid of a police officer in trouble.

13. In my experience, refusing to release the names of abusive police officers produces a major credibility gap for the city and its police department. Not only does it lead to complaints of a “cover up,” or raise questions about “what else they might be hiding,” it reduces overall citizen confidence in and support for the City in general.

14. In San Diego and Seattle, my colleagues and I routinely released or disclosed the names of officers involved in official misconduct. This policy and practice was informed by a fundamental conviction that policing is the public’s business, that the public has a right and a need to know how its police department works to prevent and to handle citizen complaints of official police wrongdoing. This policy generated little controversy, and became an accepted way of doing business, resulting in greater public trust.

15. I am in full accord with policies designed to withhold information contained in open personnel investigations, and to refuse to release home addresses, phone numbers, and social security numbers of affected personnel.

16. We grant enormous discretion to our police officers. They choose when to stop a person, write a citation, make an arrest, pull their firearms, take a life. Ideally, we select our officers carefully, train them well, equip them to do the job properly and safely, and hold them to reasonable standards of performance and conduct. When something goes wrong—from discourtesy to excessive force to discriminatory or criminal behavior—the entire system suffers. Of inestimable value in preventing this kind of behavior is an informed public.

17. It is my professional opinion that the Chicago Police Department's release of the material requested by Mr. Kalven would strongly promote the public interest, improve police accountability, and ultimately enhance public safety in Chicago.

18. I was asked by Mr. Craig Futterman to provide this affidavit. In preparation for the affidavit I reviewed the complaint in this case, along with the attached Freedom of Information Act requests and the Chicago Police Department's responses to them. I also reviewed Mr. Kalven's affidavit, and no other case materials.

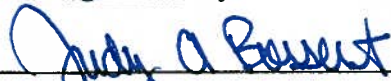
19. My rate is \$400 per hour, and I have billed the Mandel Legal Aid Clinic \$1,200 for my time on this case.

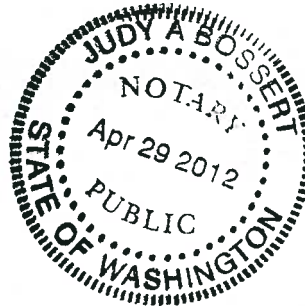
I attest that the above statement is true and correct to the best of my knowledge and belief.



Norm Stamper, Ph.D.

SIGNED and SWORN to before
me this 8TH day of July, 2011


Notary Public



NOTICE OF FILING AND PROOF OF SERVICE

I hereby certify that on February 13, 2020, I caused the foregoing Brief of Amici Curiae to be filed with the Supreme Court of Illinois using the Court's electronic filing system and that the same was sent via mail and email to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned also states that she will cause thirteen copies of the Brief to be mailed with postage prepaid addressed to:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this notice of filing and certificate of service are true and correct.

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