

No. 132241

IN THE SUPREME COURT OF ILLINOIS

CHICAGO JOHN DINEEN LODGE #7,	)	On Appeal from the Appellate Court of
	)	Illinois, First Judicial District,
Plaintiff-Appellant,	)	No. 1-24-0875
	)	
v.	)	
	)	
CITY OF CHICAGO, DEPARTMENT	)	There on Appeal from the
OF POLICE, BRANDON JOHNSON, in	)	Circuit Court of Cook County,
his official capacity as MAYOR, LARRY	)	Chancery Division, Case No. 2024 CH
SNELLING, in his official capacity as	)	00093
Superintendent of the Chicago Police	)	
Department, and THE CHICAGO CITY	)	
COUNCIL,	)	Hon. Michael T. Mullen,
	)	Judge Presiding
Defendants-Appellees.	)	

BRIEF OF AMICUS CURIAE
ACADEMICS AND POLICY GROUPS FOR POLICE ACCOUNTABILITY
IN SUPPORT OF DEFENDANTS-APPELLEES

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Points and Authorities

I.	INTEREST OF AMICUS CURIAE	4
II.	BACKGROUND	6
III.	ARGUMENT	6
	<i>City of Chicago v. Fraternal Ord. of Police</i> , 2020 IL 124831	3
	<i>Am. Fed’n of State, Cty. & Mun. Emps., AFL-CIO v. Dep’t of Cent. Mgmt. Servs.</i> , 173 Ill. 2d 299 (1996).....	3
A.	THE APPELLATE COURT CORRECTLY HELD THAT ILLINOIS PUBLIC POLICY REQUIRES OPEN DISCIPLINARY PROCEEDINGS RELATED TO THE ALLEGED SERIOUS MISCONDUCT OF CHICAGO POLICE OFFICERS.....	7
	<i>Gaca v. City of Chicago</i> , 411 Ill. 146 (1952)	3
	<i>Conn. State Police Union v. Rovella</i> , 36 F.4th 54, 64 (2d Cir. 2022)	4
	<i>Sanitation & Recycling Indus., Inc. v. City of New York</i> , 107 F.3d 985, 994 (2d Cir. 1997)	4
	<i>Fraternal Order of Police v. District of Columbia</i> , 45 F.4th 954, 958–59 (D.C. Cir. 2022)	4
	<i>Chicago John Dineen Lodge No. 7 v. City of Chicago</i> , 2025 IL App (1st) 240875.....	4
1.	<i>The appellate court correctly concluded that Illinois statutory law reflects a well-defined and dominant public policy supporting transparency in policing.</i>	8
	5 ILCS 140/1	5
	Brief of Appellant, No. 132241 (Ill. Feb. 4, 2026).	5
	<i>In re Appointment of Special Prosecutor</i> , 2019 IL 122949.....	5
	<i>Matter of New York Civ. Liberties Union v. New York City Police Dep’t</i> , 50 N.Y.S.3d 365 (N.Y. App. Div. 1st Dep’t 2017).	5
	50 ILCS 705/1 et seq.....	6
	Ariel Hairston & Amy Thompson, <i>Two Years Since Taking Effect, Illinois’s New Police Officer Decertification Process is Stalled</i> , IMPACT FOR EQUITY (May 2024), https://impactforequity.org/report/issue-brief-safe-t-decertification/	6
	Hilary Rau, Kim Shayo Buchanan, Monique L. Dixon & Phillip Atiba Goff, <i>State Regulation of Policing: POST Commissions and Police Accountability</i> , 11 U.C. IRVINE L. REV. 1349, 1352 (2021)	6
	50 ILCS 705/6.1	6
	50 ILCS 705/6.3(h)	7
	Ill. Admin. Code tit. 20 § 1790.550(a).....	7
	50 ILCS 705/6.3(c)(2).....	7
	CA Penal Code § 13510.85(a)(4).....	7
2.	<i>Illinois courts have consistently recognized a well-defined and dominant public policy of transparency and accountability in policing.</i>	11
	<i>Palmateer v. Int’l Harvester Co.</i> , 85 Ill. 2d 124 (1981).....	7, 8
	<i>Velez v. Avis Rent A Car System, Inc.</i> , 308 Ill. App. 3d 923 (1st Dist. 1999)...	7

<i>Illinois State Police v. Fraternal Order of Police Troopers Lodge No. 41</i> , 323 Ill. App. 3d 322 (4th Dist. 2001)	8
<i>Davenport v. Bd. of Fire & Police Comm'rs of City of Peoria</i> , 2 Ill. App. 3d 864 (3d Dist. 1972)	8
<i>Turner v. Fletcher</i> , 302 Ill. App. 3d 1051 (4th Dist. 1999)	8
<i>City of Des Plaines v. Metro. All. of Police, Chapter No. 240</i> , 2015 IL App (1st) 140957	8
<i>City of Springfield, Ill. (Police Dep't) v. Springfield Police Benev. & Protective Ass'n, Unit No. 5</i> , 229 Ill. App. 3d 744 (4th Dist. 1992)	8
<i>City of Country Club Hills v. Charles</i> , 2020 IL App (1st) 200546	9
<i>Decatur Police Benevolent & Protective Ass'n Lab. Comm. v. City of Decatur</i> , 2012 IL App (4th) 110764	9
<i>Vill. of Oak Lawn v. Hum. Rts. Comm'n</i> , 133 Ill. App. 3d 221 (1st Dist. 1985)	9
<i>City of Chicago v. Fraternal Ord. of Police</i> , 2020 IL 124831	9
5 ILCS 160/1.5	9
3. <i>Illinois has expressed a well-defined and dominant public policy of transparency and accountability specifically for Chicago police in its litigation with the city over police reform.</i>	13
<i>Chicago John Dineen Lodge No. 7 v. City of Chicago</i> , 2025 IL App (1st) 240875	10
Compl., <i>State of Illinois v. City of Chicago</i> , No 17-cv-06260, Dck. No. 1 (N. D. Ill. Aug. 29, 2017)	10, 11, 12
<i>Palmateer v. Int'l Harvester Co.</i> , 85 Ill. 2d 124 (1981)	11
Ill. Const. 1970, Preamble	11
B. HISTORICALLY, THE STATE OF ILLINOIS HAS EVINCED PUBLIC POLICY THROUGH LEGISLATION THAT RECOGNIZES THAT CHICAGO'S POLICE ACCOUNTABILITY NEEDS ARE UNIQUE, WARRANTING ADDITIONAL SAFEGUARDS.	15
<i>DuBois v. Gibbons</i> , 2 Ill. 2d 392, 402 (1954)	12
<i>Rincon v. License Appeal Comm'n of City of Chicago</i> , 62 Ill. App. 3d 600, 606 (1978)	12
Ill. Rev. Stat. ch. 24, ¶ 1–15 (1949 State Bar ed.)	12
<i>Gaca v. City of Chicago</i> , 411 Ill. 146 (1952)	12
<i>Gould v. Campbell's Ambulance Serv., Inc.</i> , 111 Ill.2d 54 (1986)	12
<i>People ex. Rel. Adamowski v. Wilson</i> , 20 Ill.2d 568, 572 (1960)	13
65 ILCS 5/10-18.1	13
C. THE UNION HAS IDENTIFIED NO LEGAL RULE THAT REQUIRES PRIVATE ARBITRATION PROCEEDINGS	17
Brief of Appellant, No. 132241 (Ill. Feb. 4, 2026).	13
1. <i>FOIA's exemption related to disciplinary records is inapplicable to disciplinary proceedings.</i>	17
5 ILCS 140/7	14
<i>S. Illinoisan v. Illinois Dep't of Pub. Health</i> , 218 Ill. 2d 390, 416 (2006)	14
Brief of Appellant, No. 132241 (Ill. Feb. 4, 2026).	14, 15, 16, 17, 19
<i>Calloway v. Chicago Police Dep't</i> , 2022 IL App (1st) 210090, ¶ 16	15

<i>Chicago John Dineen Lodge No. 7 v. City of Chicago</i> , 2025 IL App (1st) 240875.....	15
<i>Kalven v. City of Chicago</i> , 2014 IL App (1st) 121846.....	15
5 ILCS 140/1.....	15
5 ILCS 120/1.....	16
2. <i>The Illinois Public Labor Relations Act (“IPLRA”) does not require private arbitration.</i>	19
5 ILCS 315/2.....	16
5 ILCS 315/1.....	16
5 ILCS 315/8.....	16
3. <i>Other than conjecture, the Union has established neither that State policy requires fast, informal and inexpensive arbitration nor that public proceedings would not be fast, informal, and inexpensive.</i>	20
Brief of Appellant, No. 132241 (Ill. Feb. 4, 2026).	16
4. <i>The Union’s reliance on the rules of the American Arbitration Association suggesting that arbitration proceedings should be private is entirely misplaced.</i>	20
Brief of Appellant, No. 132241 (Ill. Feb. 4, 2026).	17
<i>Am. Fed’n of State, Cty. & Mun. Emps., AFL-CIO v. Dep’t of Cent. Mgmt. Servs.</i> , 173 Ill. 2d 299 (1996).....	17
<i>Chicago John Dineen Lodge No. 7 v. City of Chicago</i> , 2025 IL App (1st) 240875.....	17
D. THE APPELLATE COURT CORRECTLY CONCLUDED THAT PRIVATE ARBITRATION PROCEEDINGS WOULD UNDERMINE ILLINOIS’ WELL-DEFINED AND DOMINANT POLICY OF TRANSPARENCY AND ACCOUNTABILITY RELATED TO POLICE DISCIPLINARY MATTERS.	21
<i>Chicago John Dineen Lodge No. 7 v. City of Chicago</i> , 2025 IL App (1st) 240875.....	18
<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555 (1980)	18
1. <i>Private arbitration proceedings would impair the public’s ability to assess the effectiveness of the various components of Chicago’s complex police accountability system.</i>	22
Brief of Appellant, No. 132241 (Ill. Feb. 4, 2026).	19
Rachel Moran & Jessica Hodge, <i>Law Enforcement Perspectives on Public Access to Misconduct Records</i> , 42 CARDOZO L. REV. 1237 (2021)	19
5 ILCS 140/1.....	20
Matthew Spencer, Note, <i>Restructuring Alternative Dispute Resolution Options to Improve Police Accountability</i> , 13 ALA. C.R. & C.L. L. REV. 145 (2021)	20
Compl., <i>State of Illinois v. City of Chicago</i> , No 17-cv-06260, Dck. No. 1 (N. D. Ill. Aug. 29, 2017)	20
2. <i>Lack of transparency around arbitration, a critical stage in the process for adjudicating serious police misconduct matters, will undermine public confidence in the accountability system.</i>	25
MCC Ch. 2-78.....	22
MCC Ch. 2-56, § 200 et seq.	22
MCC Ch. 2-84.....	22

MCC Ch. 2-80.....	22
Heather Cherone, <i>CPD Officer Who Shot Teen in 2017 Won't Be Fired—But Was Promoted After Costing Taxpayers \$590K</i> , WTTW, Dec. 5, 2025, https://news.wttw.com/2025/12/05/cpd-officer-who-shot-teen-2017-won-t-be-fired-was-promoted-after-costing-taxpayers-590k	22
Cook County State's Attorney's Office Police Involved Death Decision Memorandum Decedent: Terrell Eason (2024), https://www.cookcountystatesattorney.org/sites/g/files/ywwepo351/files/document/file/2024-08/Terrell%20Eason%20Memo.pdf	23
COPA, <i>Summary Report Log</i> , No. 1090087 (Apr. 29, 2020)	23
Chicago Police Board Request for Review Order No. 20RR02 (Oct. 15, 2020)	23
MCC § 2-78-130(a)(iii).....	23
Police Board of the City of Chicago, <i>Findings and Decisions in the Matter of Charges Filed Against Police Officer David Taylor and Police Officer Larry Lanier</i> , Nos. 21PB2990-1, 21PB2990-2 (June 15, 2023)	24
3. <i>Private arbitration proceedings would undermine Illinois public policy in other significant ways.</i>	28
<i>Rodriguez v. Weis</i> , 408 Ill.App.3d 663 (1st Dist. 2011).....	25
<i>Giglio v. United States</i> , 405 U.S. 150 (1972).....	25
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963).....	25
Rachel Moran, <i>Police Privacy</i> , 10 U.C. IRVINE L. REV. 153 (2019)	26
IV. CONCLUSION	29

I. INTEREST OF AMICUS CURIAE

The *Amici Curiae*, a coalition of academics, attorneys, former government officials and organizations (listed in Appendix A), respectfully offer the court an important and compelling perspective on the issues raised in this petition. The amici provided the court below with an in-depth discussion of the importance of an open process for adjudicating police misconduct within the context of complex disciplinary structures such as the one in place for the Chicago Police Department. Because the outcome of this matter has the potential to impact police accountability in Chicago and beyond, the petition has engendered a response from the Amici Curiae which include policing experts and police

accountability advocates from across the United States. The Amici Curiae offer a perspective that is grounded in research and first-hand experience working on police accountability challenges and will provide a point of view unlikely to be elucidated by either of the parties. For example, city lawyers play an important role in the disciplinary proceedings at issue here. First, they are responsible for promulgating the formal charges brought against CPD members. But, perhaps, more importantly, they also represent the city and CPD in arbitration proceedings. With all due respect to the dedicated group of lawyers who serve the city in this capacity, the city lawyers in this matter are unlikely to argue that public arbitration proceedings are necessary to evaluate the quality of their own department's performance.

As outlined in the brief that follows, the appellate court correctly found that the State of Illinois has an established public policy of not only ensuring that law enforcement officers are held accountable but also ensuring that the citizens of Illinois have access to the information they need to assess how well accountability systems are working in their communities. The Chicago Police Department ("CPD" or "the Department") has a troubled history when it comes to police accountability due in large part to a lack of transparency around disciplinary proceedings. As we did in the court below, the *Amicus Curiae* urge this court to find that allowing serious police misconduct matters to be adjudicated behind closed doors via private arbitration is inconsistent with established Illinois public policy supporting transparency around **Chicago's** police accountability systems. The Amici Curiae respectfully, but strongly, urge this court to affirm the appellate court ruling that arbitration of serious police misconduct matters involving members of the Chicago Police Department be open to the public.

II. BACKGROUND

In the proceedings below, the Amici Curiae previously provided a detailed overview of the disciplinary process at issue here. See Appendix B. Our goal was to provide the appellate court with an understanding of the issues and challenges inherent in Chicago's increasingly complex police oversight system. Rather than repeating that overview for this court, we will simply summarize the key takeaways and refer the court to our brief below for further detail. First, effectiveness and transparency for administrative disciplinary systems are necessary to foster trust in policing which is essential to public safety. Second, research conducted specifically in Chicago and elsewhere demonstrates that arbitration is an imperfect appellate mechanism for police discipline, thus requiring outside oversight to uncover systemic procedural flaws and correct unjust outcomes. Third, for decades, CPD has struggled to create an effective accountability system, necessitating constant external vigilance. Lastly, the current process for adjudicating serious disciplinary matters involving CPD officers is highly complex, involving multiple government entities and decision-makers. Thus, openness is required to enable the public to assess which entities and decision-makers are performing their duties with the requisite care and fairness.

III. ARGUMENT

While arbitration awards are generally afforded a substantial degree of deference, Illinois courts have vacated an arbitration award based on a collective bargaining agreement by applying "the common-law doctrine that a court may refuse to enforce contracts that violate law or public policy." *City of Chicago v. Fraternal Ord. of Police*, 2020 IL 124831, ¶ 25 (citing *Am. Fed'n of State, Cty. & Mun. Emps., AFL-CIO v. Dep't of Cent. Mgmt. Servs.*, 173 Ill. 2d 299, 306–07 (1996) (hereinafter *AFSCME*)) (hereinafter

Chicago v. FOP 2020). As this Court explained, “when public policy is at issue, it is the court’s responsibility to protect the public interest at stake.” *AFSCME*, 173 Ill. 2d at 333. When assessing whether an arbitration award should be vacated on public policy grounds, courts undertake a two-step analysis to determine: (1) whether there exists a relevant “well-defined and dominant public policy;” and (2) whether the arbitrator’s award contravenes the identified public policy. *Id.* at 307–08. The question at issue here is a matter of law which this court reviews *de novo*. *Chicago v. FOP 2020*, 2020 IL 124831, ¶ 26.

A. THE APPELLATE COURT CORRECTLY HELD THAT ILLINOIS PUBLIC POLICY REQUIRES OPEN DISCIPLINARY PROCEEDINGS RELATED TO THE ALLEGED SERIOUS MISCONDUCT OF CHICAGO POLICE OFFICERS.

“The people of the State of Illinois are vitally interested in law enforcement in the city of Chicago.”

Gaca v. City of Chicago, 411 Ill. 146, 154 (1952).

In various contexts, courts have recognized that addressing police misconduct is a “broad societal goal” of state government. *See, e.g., Conn. State Police Union v. Rovella*, 36 F.4th 54, 64 (2d Cir. 2022), *cert. denied sub nom. Conn. State Police Union v. Conn. Dep’t of Emerg. Servs. & Pub. Prot.*, 143 S. Ct. 215 (2022) (quoting *Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 994 (2d Cir. 1997)) (quotation marks omitted) (finding that the state of Connecticut evinced a legitimate public purpose of transparency regarding police misconduct when it enacted state law that overrode a non-disclosure provision of a collective bargaining agreement); *Fraternal Order of Police v. District of Columbia*, 45 F.4th 954, 958–59 (D.C. Cir. 2022) (recognizing that the city’s stated goal of enhancing police accountability was a legitimate policy upon which to base legislation requiring that disciplinary procedures were not to be the subject of collective bargaining). Here, the appellate court correctly concluded that the arbitrator’s award requiring private

arbitration proceedings for serious disciplinary matters violates “several unquestionably well-defined and dominant public policies established by statute and case law—namely, effective law enforcement and the exposure of crime to protect the citizens of this State, as well as police accountability and transparency.” *Chicago John Dineen Lodge No. 7 v. City of Chicago*, 2025 IL App (1st) 240875, ¶ 78 (hereinafter App. Ct. Op.).

1. The appellate court correctly concluded that Illinois statutory law reflects a well-defined and dominant public policy supporting transparency in policing.

- a. The appellate court properly relied on the Illinois FOIA statute as a reflection of the state’s public policy favoring an open government.

The appellate court correctly found that Illinois public policy favoring accountability and transparency in policing is rooted in the State’s FOIA statute. *Id.* ¶ 81. The appellate court noted that “[i]t is clear that it was the intention of the General Assembly to promote transparency in government.” *Id.* The Act explicitly states that it is the public policy of the State “that all persons are entitled to full and complete information regarding the affairs of government.” 5 ILCS 140/1. Further, the Illinois legislature expressed that “[i]t is a fundamental obligation of government to operate openly.” *Id.* Illinois courts have consistently recognized the State’s well-defined and dominant public policy of supporting transparency related to policing.

The union argues that Illinois’s FOIA suggests a public policy in favor of closed proceedings because the statute includes an exemption from disclosure for disciplinary records. Brief of Appellant at 21, No. 132241 (Ill. Feb. 4, 2026) (hereinafter FOP Ill. Br.). However, the FOIA statute speaks only to the disclosure of public *records*. See 5 ILCS 140/1 (“The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to *public records* promotes the transparency and

accountability of public bodies at all levels of government.”) (emphasis added). This court has explicitly stated that FOIA exemptions are to be narrowly construed. *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 25 (“FOIA’s exceptions to disclosure are to be construed narrowly so as not to defeat the intended statutory purpose.”) Other jurisdictions have recognized that a public policy favoring open proceedings is not in conflict with a state freedom of information statute that exempts disciplinary records from disclosure. For example, a New York intermediate appellate court has held that the fact that police board hearings are open to the public bears no relation to the fact that disciplinary records are exempt from disclosure under state FOIA law. *Matter of New York Civ. Liberties Union v. New York City Police Dep’t*, 50 N.Y.S.3d 365, 367 (N.Y. App. Div. 1st Dep’t 2017) (“The fact that NYPD disciplinary trials are open to the public does not remove the resulting decisions from the protective cloak of Civil Rights Law § 50-a. Whether the trials are public and whether the written disciplinary decisions arising therefrom are confidential are distinct questions governed by distinct statutes and regulations.” (citations omitted)).

- b. The Illinois statutory scheme for decertifying police officers is additional evidence of the State’s well-defined and dominant public policy regarding transparency and accountability in addressing serious police misconduct.

That Illinois has a public policy favoring open proceedings in police disciplinary matters is also inherent in the manner in which the State itself handles serious police misconduct. The Illinois Law Enforcement Training and Standards Board (“ILETSB”) is a statewide body that governs law enforcement certification and decertification. Illinois Police Training Act, 50 ILCS 705/1 *et seq.* Having a state-managed process for certifying and decertifying officers is essential to “accountability, public trust in law enforcement, and public safety.” Ariel Hairston & Amy Thompson, *Two Years Since Taking Effect*,

Illinois's New Police Officer Decertification Process is Stalled, IMPACT FOR EQUITY (May 2024), <https://impactforequity.org/report/issue-brief-safe-t-decertification/> (hereinafter *Impact for Equity Report on Decertification*). Like similar boards in other states across the United States, the ILETSB has the “unique power to protect communities against unethical, discriminatory, or abusive policing.” Hilary Rau, Kim Shayo Buchanan, Monique L. Dixon & Phillip Atiba Goff, *State Regulation of Policing: POST Commissions and Police Accountability*, 11 U.C. IRVINE L. REV. 1349, 1352 (2021). In 2021, when the Illinois legislature enacted the Illinois Safety, Accountability, Fairness and Equity (the “SAFE-T Act”), it included provisions that expanded the circumstances in which the ILETSB has the discretion to rescind a police officer’s state certification or waiver of certification, a requirement for holding a law enforcement position in the State. 50 ILCS 705/6.1. The statutory scheme governing the process for decertifying a police officer on the basis of serious misconduct includes an evidentiary hearing. 50 ILCS 705/6.3(h) (describing the “Formal Complaint Hearing” that is the basis for decertification proceedings). Per the Illinois Administrative Code, ***these hearings are open to the public***. Ill. Admin. Code tit. 20 § 1790.550(a) (“All hearings shall be open to the public unless required by statute to be otherwise.”). Open hearings are necessary and appropriate to allow for public scrutiny of the State’s processes. Moreover, by statute, citizens, not just police administrators, are permitted to notify the ILETSB of police misconduct that could be the basis for decertification. 50 ILCS 705/6.3(c)(2) (“Any person may also notify the Board of any conduct the person believes a law enforcement officer has committed.”). The State clearly recognizes that open proceedings are required to afford such citizen complainants the opportunity to witness the proceedings related to their complaints. It follows that

complainants who brought allegations leading to disciplinary charges that are being grieved should have the same opportunity, particularly in the most serious disciplinary matters at issue here. Illinois is not an outlier here. There are other states that require open proceedings related to the adjudication of serious police misconduct allegations that could lead to decertification. *See, e.g.*, CA Penal Code § 13510.85(a)(4) (noting that the hearings that could lead to decertification are public).

2. Illinois courts have consistently recognized a well-defined and dominant public policy of transparency and accountability in policing.

Illinois courts have consistently recognized that effective enforcement of the State's criminal law is an important and compelling public policy. *See, e.g., Palmateer v. Int'l Harvester Co.*, 85 Ill. 2d 124, 132 (1981); *Velez v. Avis Rent A Car System, Inc.*, 308 Ill. App. 3d 923, 928 (1st Dist. 1999); *Illinois State Police v. Fraternal Order of Police Troopers Lodge No. 41*, 323 Ill. App. 3d 322, 329–30 (4th Dist. 2001). In *Palmateer v. International Harvester Co.*, this court explicitly stated, “[t]here is no public policy more basic, nothing more implicit in the concept of ordered liberty, than the enforcement of a State's criminal code.” 85 Ill. 2d 124, 132 (1981) (citations omitted). Inherent in the State's public interest in effective enforcement of criminal law is law enforcement's need to maintain the trust and respect of the public, which can only be achieved through effective police discipline. *Davenport v. Bd. of Fire & Police Comm'rs of City of Peoria*, 2 Ill. App. 3d 864, 869 (3d Dist. 1972).

Illinois courts have also recognized that, without effective discipline, law enforcement agencies risk losing the respect of the public, thereby undermining their ability to enforce criminal law. *Id.* at 869–70. Illinois courts have also held that “[a]n effective

process for evaluating fitness of police officers is essential to ensuring public safety and maintaining a reliable, responsible police force.” *Turner v. Fletcher*, 302 Ill. App. 3d 1051, 1056 (4th Dist. 1999). As stated by the Appellate Court of Illinois, Third District, “[d]iscipline is not only vital but absolutely essential to [the police] force of armed men who protect the life and property of the citizens.” *Davenport*, 2 Ill. App. 3d at 869. Illinois courts have enforced Illinois’s well-established public policy to promote effective discipline by holding police officers accountable for using excessive force, *see City of Des Plaines v. Metro. All. of Police, Chapter No. 240*, 2015 IL App (1st) 140957, ¶ 24; *City of Springfield, Ill. (Police Dep’t) v. Springfield Police Benev. & Protective Ass’n, Unit No. 5*, 229 Ill. App. 3d 744, 751 (4th Dist. 1992) (stating that the use of excessive force by law enforcement officers is against public policy), an issue that is at the heart of the matters to be adjudicated via the arbitration that is the subject of this litigation. Illinois courts have also, for example, consistently recognized a public policy interest in weeding out untruthful law enforcement officers. *See, e.g., City of Country Club Hills v. Charles*, 2020 IL App (1st) 200546, ¶ 32 (noting that keeping untruthful police officers on the force creates liability issues for law enforcement agencies); *Decatur Police Benevolent & Protective Ass’n Lab. Comm. v. City of Decatur*, 2012 IL App (4th) 110764, ¶ 44 (finding it would be repugnant to public policy to continue employing an officer who has been found abusive and untruthful); *Vill. of Oak Lawn v. Hum. Rts. Comm’n*, 133 Ill. App. 3d 221, 224 (1st Dist. 1985) (noting that trustworthiness, reliability, good judgment, and integrity are all material qualifications for police work).

In another matter litigated between the parties, this court held that the destruction of police disciplinary records would violate the State’s well-defined public policy favoring

the proper retention of government records because “government records are a form of property whose ownership lies with the citizens and with the State of Illinois.” *Chicago v. FOP 2020*, 2020 IL 124831, ¶ 36 (quoting 5 ILCS 160/1.5). In so finding, the court overrode an arbitration award that would have enforced a collective bargaining provision requiring the destruction of Chicago Police Department disciplinary records after a finite period of time. *Id.* ¶ 42. The court found that the destruction of the disciplinary records would be incompatible with Illinois statutory law, including the Local Records Act. *Id.* In reaching this conclusion, this court reiterated the importance of public access to information about police discipline as expressed by the circuit court:

If the City is to be responsive to the citizenry, it must have access to historical police disciplinary and investigative records to make better-informed decisions on policing[.]

Id. ¶ 22. The same principle applies here. Public access to disciplinary proceedings is necessary to enable the public to make informed decisions on policing and police accountability.

3. Illinois has expressed a well-defined and dominant public policy of transparency and accountability specifically for Chicago police in its litigation with the city over police reform.

Illinois statutory and case law is not the only source of authority conveying Illinois’ public policy in favor of transparency and accountability in policing. The appellate court correctly recognized that State public policy is reflected in the litigation related to the consent decree between the city of Chicago and the State regarding police reform. App. Ct. Op. ¶ 81. (noting that “public policy in favor of such transparency was demonstrated by the adoption of the consent decree between the state and the City, which specifically stated that it aimed to ensure that the critically important job of policing in Chicago was done fairly, transparently, and without bias”). The State’s complaint, which initiated the litigation

against the City of Chicago and resulted in the Consent Decree, is a clear and unequivocal statement of Illinois' public policy. *See* Compl. ¶¶ 20–22, *State of Illinois v. City of Chicago*, No. 17-cv-06260, Dck. No. 1 (N. D. Ill. Aug. 29, 2017) (hereinafter *Illinois v. Chicago* Compl.). In the complaint, the Illinois Attorney General explicitly outlined the State's public policy goals in seeking reform of Department. The Attorney General stated that her purpose in initiating the litigation was to protect "[t]he interest in the health and well-being of Illinois residents – both physical and economic." *Id.* ¶ 20. The Attorney General explained that she was bringing the action to "defend the State of Illinois' quasi-sovereign interest in the prevention of present and future harm to its residents, including individuals who are, have been, or would be victims of the City's unconstitutional law enforcement practices." *Id.* ¶ 21. That the state was expressing its public policy objectives could not have been conveyed any clearer. As this court has stated, "[t]here is no public policy more important or fundamental than the one favoring the effective protection of the lives and property of citizens." *Palmateer*, 85 Ill. 2d at 132 (citing Ill. Const. 1970, Preamble).

In seeking court mandated reform of the Chicago Police Department, the Attorney General made clear that, to protect the citizens of Illinois, the State needed to take action to address CPD's unlawful policing that went unchecked by the City's deficient disciplinary apparatus. *Illinois v. Chicago* Compl. ¶¶ 21–22. The Attorney General specifically noted that CPD's accountability system was neither consistently holding officers accountable for engaging in misconduct, nor deterring officers from future misconduct. *Id.* ¶ 129. The Attorney General explained that the City's failure to address CPD's use of excessive force and racially discriminatory practices signaled to officers that they could engage in such misconduct with impunity. *Id.* ¶ 135. Further, the Attorney

General noted that State intervention was imperative because, despite the City's own attempts at reform, CPD's pattern of unconstitutional policing had persisted, resulting in an erosion community trust and confidence. *Id.* ¶ 135. The Attorney General also explicitly cited transparency as a key reform requirement among the court-enforceable actions to be sought through a consent decree. *Id.* ¶ 202 (noting that "[t]ransparency will also be a key feature of the consent decree that the State seeks").

These explicit policy statements made by the State in the context of this groundbreaking and high-stakes legal matter provide additional compelling evidence of the State's public policy in favor of transparency and accountability in policing in Chicago. To be sure, this court has previously acknowledged that, in the absence of a controlling state statute, other sources can establish public policy.¹

B. HISTORICALLY, THE STATE OF ILLINOIS HAS EVINCE PUBLIC POLICY THROUGH LEGISLATION THAT RECOGNIZES THAT CHICAGO'S POLICE ACCOUNTABILITY NEEDS ARE UNIQUE, WARRANTING ADDITIONAL SAFEGUARDS.

The Illinois legislature has frequently created statutory law reflecting that Chicago has "special or unique problems in connection with many activities which justify" a differential classification. *DuBois v. Gibbons*, 2 Ill. 2d 392, 402 (1954) (citing cases). Illinois courts have recognized and sanctioned these distinctions where there is a reasonable basis for them. *Rincon v. License Appeal Comm'n of City of Chicago*, 62 Ill. App. 3d 600, 606 (1978) (citing cases).

¹ In *Gould v. Campbell's Ambulance Serv., Inc.*, this Court acknowledged that sources other than state statutes could establish public policy. 111 Ill.2d 54, 57 (1986). More specifically, in *Gould*, this court left open the question of whether, in the absence of a controlling state statute, a local ordinance could establish public policy. *Id.* ("[N]or do we hold that an ordinance may not under any circumstances declare the mandated public policy required by *Palmateer*. We hold only that the relevant statutory provisions and the ordinance fail to show the existence of a clearly mandated public policy.").

There are numerous examples of Illinois legislating in response to Chicago's unique needs related to policing and police accountability. For example, in 1954, the legislature passed the Revised Cities and Villages Act, which included a provision requiring municipalities with a population in excess of 500,000 to indemnify their police officers for harms caused in the performance of their duties. Ill. Rev. Stat. ch. 24, ¶ 1–15 (1949 State Bar ed.). In *Gaca v. City of Chicago*, 411 Ill. 146 (1952), the city of Chicago argued that the statute contravened the Illinois constitutional provision prohibiting special laws and granting special privileges. *Id.* at 149. Further, the city argued that “all municipalities are agents of the State, performing an identical government function, and all should receive the same treatment at the hands of the legislature.” *Id.* However, this court rejected that argument, finding that the legislature could appropriately differentiate on the basis of population, particularly related to public safety matters. *Id.* at 151 (finding that “police protection is a matter of general concern to the whole State. Failure to detect and check crime in the more populous centers might leave the remainder of the State a prey to disorder and violence.”).

In 1960, in the wake of a corruption scandal involving brazen misconduct by Chicago police officers at all levels within the Department, the Chicago city council created the Chicago Police Board by municipal ordinance. *See People ex. Rel. Adamowski v. Wilson*, 20 Ill.2d 568, 572 (1960). The next year, the Illinois legislature sanctioned the Chicago Police Board's jurisdiction over serious disciplinary matters by enacting a state law that differentiated how disciplinary matters for Chicago police officers were to be handled. 65 ILCS 5/10-18.1 (“In any municipality of more than 500,000 population, no officer or employee of the police department in the classified civil service of the municipality whose

appointment has become complete may be removed or discharged, or suspended for more than 30 days except for cause upon written charges and after an opportunity to be heard in his own defense by the Police Board.”). In so doing, the Illinois legislature explicitly empowered the Chicago Police Board to devise its own rules of procedure, paving the way for the long-standing history of the open disciplinary proceedings at issue in this litigation. *Id.* (“The Police Board shall establish rules of procedure not inconsistent with this Section respecting notice of charges and the conduct of the hearings before the Police Board, or before any member thereof appointed by the Police Board to hear the charges.”).

C. THE UNION HAS IDENTIFIED NO LEGAL RULE THAT REQUIRES PRIVATE ARBITRATION PROCEEDINGS

The union claims that “the General Assembly has endeavored, as a matter of public policy, to keep labor arbitration fast, fair, informal, inexpensive – and private.” *Id.*; FOP Ill. Br.. They cite various authorities in support of the proposition that the goal of arbitration is faster adjudication at lower costs. However, the union cites no authority, indeed there is none, supporting that arbitration proceedings in serious police misconduct cases **must** be private. *See id.*

1. FOIA’s exemption related to disciplinary records is inapplicable to disciplinary proceedings.

The union argues that the Illinois FOIA statute “exempts employee disciplinary proceedings from public disclosure.” *Id.* at 21. The union’s reliance on FOIA as a source of law or public policy precluding open arbitration proceedings is entirely misplaced. To be sure, § 7 of the FOIA contains several exemptions from disclosure. *See* 5 ILCS 140/7. Relevant here, § 7(1)(n) exempts “[r]ecords relating to a public body’s adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.” *Id.* Still, § 7(1)(n) cannot be read

to favor private arbitration. FOIA § 7 outlines a list of items that are exempt from “inspection and copying” – actions directly applicable to “records,” but completely inapplicable to proceedings. *Id.* (outlining a list of items that “shall be exempt from inspection and copying”). As such, the provision clearly relates specifically to records and says nothing about how disciplinary proceedings should be handled. As this court has expressly stated, exemptions to the State FOIA statute must be narrowly construed because of the State’s overwhelming public policy mandating disclosure. *See S. Illinoisan v. Illinois Dep’t of Pub. Health*, 218 Ill. 2d 390, 416 (2006) (“Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people.”); *see also Calloway v. Chicago Police Dep’t*, 2022 IL App (1st) 210090, ¶ 16 (“FOIA is to be generally accorded liberal construction, while its exemptions are to be construed narrowly.”). The appellate court correctly recognized that the State has evinced a “public policy favoring police accountability and transparency” with “its roots in FOIA[,]” specifically noting that the FOIA statute clearly expressed the intention of the General Assembly to promote transparency in government. App. Ct. Op. ¶ 81.

The union also cites *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, for the proposition that arbitration proceedings “fall squarely within FOIA’s Section 7(1)(n) exemption.” FOP Ill. Br., at 22-23 (citing *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 13, *overruled on other grounds by Perry v. Dep’t of Fin. & Pro. Regul.*, 2018 IL 122349, ¶ 13). But *Kalven* provides no such support. The *Kalven* court notes that “only

records related to adjudications are exempt from disclosure” and the court later clearly refers to “documents,” which were at issue in the case. *Kalven*, 2014 IL App (1st) 121846, ¶ 13 (emphasis added).

Even if there was some ambiguity as to whether disciplinary proceedings fell within the cited FOIA exemption, which there is not, the legislative imperative that the State’s clearly elucidated public policy requiring full and complete transparency and accountability would take precedence. *See* 5 ILCS 140/1 (“It 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”). Furthermore, the union’s reliance on the Illinois Open Meetings Act, 5 ILCS 120, as law that requires private arbitration is also unfounded. *See* FOP Ill. Br., at 17. The Illinois legislature made clear that the Act was intended to “ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.” 5 ILCS 120/1. The Act clearly states that the exceptions to openness outlined in the statute “authorize but do not require the holding of a closed meeting to discuss a subject included within an enumerated exception.” *Id.*

2. The Illinois Public Labor Relations Act (“IPLRA”) does not require private arbitration.

The Union is correct in asserting that the IPLRA governs the “resolution of disputes arising under collective bargaining agreements.” 5 ILCS 315/2. However, IPLRA is no support for the union’s proposition that arbitration should be fast, informal and inexpensive – and thus, private. The IPLRA merely requires an alternative dispute resolution process that is “expeditious, equitable, and effective” *in comparison to an employee strike. Id.* (“[W]here the right of employees to strike is prohibited by law, it is necessary to afford an

alternate, expeditious, equitable and effective procedure for the resolution of labor disputes.”). There is no provision of the Act requiring private alternative dispute resolution proceedings. *See generally* 5 ILCS 315/1 *et seq.* IPLRA merely requires that a collective bargaining agreement “shall provide for final and binding arbitration” without any reference to the openness of any such proceedings. *Id.* § 315/8.

3. Other than conjecture, the Union has established neither that State policy requires fast, informal and inexpensive arbitration nor that public proceedings would not be fast, informal, and inexpensive.

The Union asserts that public arbitration proceedings would “directly undermine the goal of fast, informal, and inexpensive hearings.” FOP Ill. Br., at 18. Yet, the union offers only mere conjecture that public proceedings would be slower, less formal, and more expensive relative to private ones. Moreover, the union offers no support for why the goals of expediency, informality and cost-efficiency should take precedence over the State’s clearly articulated public policy goal of transparency.

4. The Union’s reliance on the rules of the American Arbitration Association suggesting that arbitration proceedings should be private is entirely misplaced.

The Union cites to the American Arbitration Association (“AAA”) Rules for the proposition that arbitration is inherently private. FOP Ill. Br., at 4. Further, the Union reiterates that the interest arbitrator, in crafting the interest arbitration award leading to this controversy, confirmed that “private hearings are required by AAA Rules and the National Academy of Arbitrators’ Code of Professional Responsibility. FOP Ill. Br., at 11. Notwithstanding the fact that the interest arbitrator improperly relied on authority outside the four corners of the collective bargaining agreement, the Union points to no source of law requiring the parties to follow either of these sets of rules. Because there is none. As

this court has made clear, a reviewing court is only bound to enforce an arbitration award where the award “draws its essence from the parties’ collective-bargaining agreement.” *AFSCME*, 173 Ill. 2d at 305. The appellate court properly concluded that the arbitrator relied on “arbitration rules governing private arbitrations that are not applicable to public government employees.” App. Ct. Op. ¶ 84.

D. THE APPELLATE COURT CORRECTLY CONCLUDED THAT PRIVATE ARBITRATION PROCEEDINGS WOULD UNDERMINE ILLINOIS’ WELL-DEFINED AND DOMINANT POLICY OF TRANSPARENCY AND ACCOUNTABILITY RELATED TO POLICE DISCIPLINARY MATTERS.

The appellate court correctly concluded that “to suddenly shut the door after 60 years of open hearings, where serious misconduct by members of the Chicago Police Department is concerned, severely undermines the public policies” at issue here. App. Ct. Op. ¶ 82. By impairing public engagement in the police disciplinary process, private arbitration proceedings would undermine police accountability in several respects.

In *Richmond Newspapers, Inc. v. Virginia*, the seminal case on the right of public access to criminal trials under the First Amendment, the Supreme Court outlined numerous policy reasons for why public observation of criminal proceedings is fundamental to democracy. 448 U.S. 555 (1980) (plurality opinion). The imperatives supporting the need for public criminal trials are directly relevant in the context of the arbitration of serious police disciplinary matters. Analogizing the key factors outlined in *Richmond Newspapers*, open arbitration proceedings have the potential to:

- enhance community understanding of the fairness of the process;
- discourage bias or partiality in the arbitrator’s rulings;
- discourage perjury by both law enforcement and lay witnesses;
- allow an opportunity for rebuttal witnesses to identify themselves to counter incorrect testimony;
- provide the arbitrator, parties, and witnesses with outside scrutiny so as to motivate conscientiousness in the performance of their duties;

- instill public confidence in the disciplinary system;
- educate the public about the disciplinary system;
- allow victims an opportunity to observe to assess the fairness of the system; and
- have significant community therapeutic value.

Id. at 569–74. This last point is particularly important. When the misconduct at issue involves an incident of significant public awareness and concern, such as a fatal officer-involved shooting, an open proceeding is tremendously important to the community's ability to gain a collective understanding of what actually happened, that the City investigated the matter fairly and thoroughly, and that the outcome was just under the rules and the law.

1. Private arbitration proceedings would impair the public's ability to assess the effectiveness of the various components of Chicago's complex police accountability system.

The Union argues that the State's public policy in favor of open government does not require real time access to arbitration proceedings, but rather, would be satisfied by the production of the arbitrator's report of findings and discipline pursuant to the Freedom of Information Act. FOP Ill. Br., at 36–37. A written report is no substitute for first-hand observation of the adjudicative process in real time. By attending the proceedings, the public will have the opportunity to observe: the demeanor of witnesses, including the accused, the fairness with which the arbitrator manages the proceedings, the effectiveness of the lawyers presenting the case, and the strengths and weaknesses of the evidence presented. These are important considerations when assessing how well the disciplinary process is working in general, as well as how well the process worked in any particular case. This is the kind of information that would be impossible to capture in a written summary report. Moreover, the proceedings to be observed involve the substantive work and decision-making of several government entities and various decision-makers. Access

to public reports will not satisfy the public need to observe these important functions as they are transacted because that is the only way the public will be in a position to assess how each component of this complex system is performing its role and responsibilities. See Rachel Moran & Jessica Hodge, *Law Enforcement Perspectives on Public Access to Misconduct Records*, 42 CARDOZO L. REV. 1237, 1251 (2021) (noting that public access to misconduct information can “empower civilians, journalists, and advocacy groups to identify both problematic police officers . . . and patterns of violence in certain police departments”). Only by being present to hear and see the evidence first-hand, will the public be able to fully appreciate the nature and quality of the case as it is presented to the arbitrator. For example, reading summaries of witness testimony after the fact is no substitute for first-hand observation, particularly when witness credibility is a key factor in resolving factual disputes that are frequently outcome-determinative in police disciplinary matters. The longstanding practice of public hearings in these, the most serious disciplinary matters, is an essential part of allowing citizens to monitor government and make informed political judgments in real time, capabilities which are expressly stated public policy goals of the Illinois FOIA statute. 5 ILCS 140/1 (finding that transparency and access to information “is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest”).

Closed arbitration hearings will undermine the public’s ability to provide oversight of and feedback on the integrity of the disciplinary system. Matthew Spencer, Note, *Restructuring Alternative Dispute Resolution Options to Improve Police Accountability*, 13 ALA. C.R. & C.L. L. REV. 145, 161 (2021) (noting the public’s significant interest in

holding police officers accountable because the public provides the resources to them as state agents). Lack of sufficient oversight can allow flaws in the disciplinary system to go unchecked, allowing improper officer behavior to go undetected or unaddressed. *Illinois v. Chicago Compl.* ¶¶ 100–104; *see also id.* ¶¶ 166–172 (noting the need to assess the quality of the work conducted by the investigative oversight agency).

Second, public arbitration proceedings will enable citizens *and officers* to assess whether CPD is imposing discipline consistently and fairly. As noted in the Consent Decree, it is important that CPD members have confidence in the legitimacy of the system that holds them accountable. Officers, other than the accused, should have the opportunity to see how the system is working so they are better informed and can express their concerns about the system to the City and the Union.

Lastly, and quite importantly, public arbitration proceedings will enable citizens and officers to observe how fairly and equitably arbitrators are adjudicating these matters. Arbitration proceedings that take place behind closed doors can undermine accountability by shielding decision-making and negotiations. Unlike the broader criminal justice system, in which reviewing courts afford great deference to lower court factual determinations and legal conclusions, arbitrators hearing appeals of CPD disciplinary decisions have essentially *de novo* review of CPD disciplinary measures and their decision-making is subject to a highly deferential standard on review. Because arbitration outcomes are binding and can effectively end the grievance process, it is imperative that there be public oversight of the quality with which arbitrators are managing their significant responsibilities.

2. Lack of transparency around arbitration, a critical stage in the process for adjudicating serious police misconduct matters, will undermine public confidence in the accountability system.

Since the Chicago Police Board was created in 1960, proceedings related to the adjudication of serious police misconduct matters involving CPD officers have been publicly accessible. The Union claims this historical degree of transparency is irrelevant. That is certainly not the case. Chicagoans have relied on this level of transparency as important to accountability for the system. Conducting these proceedings behind closed doors is highly likely to contribute to an unnecessary and avoidable degree of skepticism about CPD's disciplinary process that will undermine trust and perceptions of legitimacy that are essential to public safety.

Chicago has one of the most complex police oversight systems in the country, with multiple entities working to promote effective policing and police accountability in various contexts. There are at least five separate and distinct government entities that impact the CPD disciplinary process: the Civilian Office of Police Accountability ("COPA"), the Office of the Inspector General, the Chicago Police Board, the Community Commission for Public Safety and Accountability, and the City of Chicago Department of Law. Municipal Code of Chicago ("MCC") Ch. 2-78 (establishing COPA); MCC Ch. 2-56, § 200 et seq. (establishing the Office of the Deputy Inspector General for Public Safety); MCC Ch. 2-84 (establishing the Chicago Police Board); MCC Ch. 2-80 (establishing the Community Commission for Public Safety and Accountability); *see, e.g., Heather Cherone, CPD Officer Who Shot Teen in 2017 Won't Be Fired—But Was Promoted After Costing Taxpayers \$590K, WTTW*, Dec. 5, 2025, <https://news.wttw.com/2025/12/05/cpd-officer-who-shot-teen-2017-won-t-be-fired-was-promoted-after-costing-taxpayers-590k>

(reporting that the city of Chicago’s Department of Law dropped disciplinary charges against a CPD officer involved in non-fatal shooting incident despite a finding by COPA that the officer had violated department policy). Conflicts regarding how disciplinary matters should be resolved between and among these entities do arise. Let us describe the proceedings in a recent case to illustrate why open arbitration proceedings are imperative when such conflicts arise.

In 2018, two CPD officers, David Taylor and Larry Lanier, were involved in the fatal shooting of Terrell Eason. *Cook County State’s Attorney’s Office Police Involved Death Decision Memorandum Decedent: Terrell Eason* (2024), <https://www.cookcountystatesattorney.org/sites/g/files/ywwepo351/files/document/file/2024-08/Terrell%20Eason%20Memo.pdf> (hereinafter *CCSAO Eason Memo*). After completing its investigation of the incident, COPA found that Eason had not posed an imminent threat to the officers and thus their use of deadly force was unjustified. COPA, *Summary Report Log*, No. 1090087 (Apr. 29, 2020). COPA recommended that both officers be fired. *Id.* However, the CPD Superintendent at the time, David Brown, disagreed with COPA’s findings and recommendation and suggested that each officer merely receive a reprimand. *Chicago Police Board Request for Review Order* No. 20RR02 (Oct. 15, 2020) (hereinafter *CPB Review Order*). By municipal law, when such “non-concurrences” occur between COPA and CPD, the matter is referred to a member of the Police Board for resolution. MCC § 2-78-130(a)(iii) (outlining the procedure for when a non-concurrence arises). After reviewing COPA’s findings and the Superintendent’s objections, the Police Board member randomly selected to resolve the matter sided with COPA and recommended that the case move forward to a full hearing before the Police Board. *CPB Review Order*.

The matter then moved to adjudication by the Police Board, over the Superintendent's objection. MCC § 2-78-130(a)(iii). The city's Department of Law ("DOL") was then responsible for filing the formal charges against the officers seeking termination and prosecuting the case against the officers in the Police Board proceedings—despite that the Police Superintendent did not want to fire the officers. Following the arbitration award, such matters will likely proceed to arbitration rather than adjudication by the Police Board.

In such serious matters, it is imperative that the arbitration proceedings are open so that the public can assess how diligently the DOL lawyers pursue the litigation to fulfill COPA's recommendation that the officers be terminated. In the Eason shooting matter, the Police Board ultimately determined that the officers' use of deadly force was justified and that they should not be terminated. *Police Board of the City of Chicago, Findings and Decisions in the Matter of Charges Filed Against Police Officer David Taylor and Police Officer Larry Lanier*, Nos. 21PB2990-1, 21PB2990-2 (June 15, 2023). Without these proceedings having been open to the public, and without the ability to observe the evidence as it was presented at the Police Board hearing, the public would not have been in a position to assess the legitimacy of the outcome. Without open proceedings, there would have been no way for the public or other interested observers to reconcile the outcome of the case, namely, that neither officer was terminated, with the findings made by COPA and the Police Board member who considered the Superintendent's objection. With private proceedings, it would not have been possible to assess for example, whether COPA's findings were inaccurate, or whether the DOL was ineffective at presenting the evidence COPA relied upon to make its findings.

3. Private arbitration proceedings would undermine Illinois public policy in other significant ways.

Closed arbitration hearings would limit the public's access to information about reportable police misconduct, undermining the State's decertification scheme. Like other state-wide commissions, the ILETSB can only act to decertify errant police officers when the board is made aware of the misconduct. Thus, providing citizens greater access to information about officer misconduct will enhance the ILETSB's ability to protect Illinois citizens from poorly performing or incompetent police officers.

Moreover, allowing public access to arbitration proceedings is important because there could be situations where an arbitrator finds an officer has, in fact, committed a serious misconduct that could merit the officer's decertification, but for whatever reason imposes no discipline. For the decertification system to be effective, it is imperative that those findings make their way to the ILETSB, which citizens or other observing officers will be in a position to do after having witnessed the arbitration proceedings. ILETSB relies on facts generated from local investigations to make its determinations regarding decertification. Private arbitration would limit its access to valuable information.

Private arbitration proceedings would also undermine the State's ability to comply with its constitutional and statutory obligations to provide favorable evidence to criminal defendants. As Illinois courts have acknowledged, a "police officer's credibility is inevitably an issue in the prosecution of crimes and in the [CPD's] defense of civil lawsuits." *Rodriguez v. Weis*, 408 Ill.App.3d 663, 671 (1st Dist. 2011). The State has a constitutional obligation to disclose information or evidence that is favorable to criminal defendants. In *Giglio v. United States*, 405 U.S. 150, 154 (1972), the U.S. Supreme Court held that the government's failure to disclose evidence that is material to the credibility of a government

witness, such as a police officer, is a constitutional violation akin to the failure to disclose exculpatory information as required by *Brady v. Maryland*, 373 U.S. 83 (1963). In addition to being a constitutional imperative, this disclosure requirement is codified in Illinois Supreme Court Rule 412. Public access to arbitration proceedings is important to ensure that the State is made aware of potential impeachment and exculpatory information that must be disclosed to criminal defendants. *See Rachel Moran, Police Privacy*, 10 U.C. IRVINE L. REV. 153, 192 (2019). This is particularly important for disciplinary matters involving allegations that the officer was untruthful in carrying out their duties by, for example, making false statements in reports or on the witness stand. An arbitrator could hear a case involving such allegations and find that, despite the fact that the officer lied on the job, they should not be disciplined. With private arbitration proceedings, the information about the officer's misconduct could be suppressed within the Department. Whereas, with public proceedings the information about the officer's untruthfulness could be observed and conveyed to the appropriate authorities.

IV. CONCLUSION

The arbitrator's award was a striking break from the decades-long history of open proceedings related to serious police misconduct for CPD officers. The appellate court correctly concluded that arbitration of serious misconduct cases should be transparent. Private arbitration would seriously undermine public oversight of and trust in Chicago's police accountability system, which, if history is any guide, continues to warrant robust community oversight and participation. Moreover, the State of Illinois has a vested interest in the proper adjudication of serious misconduct cases for several important public policy reasons. Such proceedings should remain open to protect Illinois citizens from police

misconduct, support trust in law enforcement and thereby enhance public safety. The Amici Curiae strongly urge the court to affirm the appellate court ruling requiring that arbitration proceedings of serious Chicago police misconduct cases be held open to the public. Holding otherwise would be a major setback for Chicago police reform and will likely undermine public safety.

Dated: May 20, 2026

Respectfully Submitted,

/s/ Loren V. Jones

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SUPREME COURT RULE 341(c)**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 containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 25 pages.

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No. 132241

IN THE SUPREME COURT OF ILLINOIS

CHICAGO JOHN DINEEN LODGE #7, Plaintiff-Appellant, v. CITY OF CHICAGO, DEPARTMENT OF POLICE, BRANDON JOHNSON, in his official capacity as MAYOR, LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department, and THE CHICAGO CITY COUNCIL, Defendants-Appellees.	) On Appeal from the Appellate Court of) Illinois, First Judicial District,) No. 1-24-0875))) There on Appeal from the) Circuit Court of Cook County,) Chancery Division, Case No. 2024 CH) 00093)) Hon. Michael T. Mullen,) Judge Presiding
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NOTICE OF FILING AND CERTIFICATE OF SERVICE FOR
AMICUS BRIEF

I certify that on May 20, 2026, I electronically filed the foregoing Motion for Leave to File Brief Amicus Curiae, accompanied by the proposed Amicus Brief, with the Clerk of the Court for the Illinois Supreme Court, using the Odyssey eFileIL system.

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Dated: May 20, 2026

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Loren V. Jones

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

Appendix A

The Proposed Amici are individuals and organizations that have worked on this policy issue both locally and nationally. They consist of the following individuals and organizations.

- a. **Sharon Fairley** is a professor and graduate of the University of Chicago Law School, who has taught at the Law School since 2015. She became a Professor from Practice in 2019. Professor Fairley's teaching responsibilities include criminal procedure, policing, and federal criminal law. Before joining the Law School, Professor Fairley spent eight years as a federal prosecutor with the United States Attorney's Office for the Northern District of Illinois, investigating and trying criminal cases involving illegal firearms possession, narcotics conspiracy, bank robbery/murder, murder for hire and economic espionage, among other criminal acts. She also served as the First Deputy Inspector General and General Counsel for the City of Chicago Office of the Inspector General. In December 2015, following the controversial officer-involved shooting death of Laquan McDonald, Professor Fairley was appointed to serve as the Chief Administrator of the Independent Police Review Authority (IPRA), the agency responsible for police misconduct investigations. She was also responsible for helping create and build Chicago's Civilian Office of Police Accountability (COPA), which replaced IPRA and of which she was the first head. Professor Fairley's areas of academic inquiry focus on criminal justice reform with an emphasis on constitutional policing and police accountability. She frequently writes and speaks about use of force by law enforcement, civilian oversight of law enforcement, and other police reform strategies.
- b. **Georgetown Center of Innovation in Community Safety** is a pioneering organization dedicated to promoting safer and more equitable communities through innovative approaches to public safety that emphasize restorative justice, public health and the needs of vulnerable populations. CICS works on programs to train police officers and leads the ABLE Project (Active Bystandership for Law Enforcement), a national program designed to prevent misconduct within law enforcement agencies. CICS is also deeply committed to policy reform and advocacy, working with local, state and national partners to advance policies that reduce racial disparities, protect civil rights and enhance public safety.
- c. **Impact for Equity**, formerly Business and Professional People for the Public Interest, has been a catalyst for racial, economic and social justice in Chicago and Illinois since its founding in 1969. It's areas of focus include the criminal justice system, police accountability and housing. Impact for Equality utilizes a combination of legal tools, police research, advocacy, organizing and convening to work towards transformational change. For example, the organization worked for years in partnership with the Grassroots Alliance for Police Accountability, eventually resulting in the 2021 passage (by the Chicago City Council) of the Empowering Communities for Public Safety Ordinance, which created a citywide

community oversight commission with responsibility for overseeing systematic reform of the Chicago Police Department and its related disciplinary agencies.

- d. **The Chicago Council of Lawyers** is a progressive bar association founded in 1969 to analyze and bring about reform in Chicago's legal systems. For the past 20 years the Council's Civil Liberties Committee has been deeply engaged in monitoring and reforming Chicago police oversight and disciplinary systems, including holding annual panels on that topic, negotiating with City and State legislators on reforms to those systems, advocating for the entry of the Chicago Consent Decree concerning the police department and related agencies, participating in various coalitions over the years to improve those systems and testifying on the present issue before the Chicago City Council.
- e. **Mark Iris** is a distinguished expert in police accountability, who received his Ph.D. from Northwestern University. From 1984 to 2004, he served as the Executive Director of the Chicago Police Board, where he monitored hundreds of police misconduct cases, including cases involving former Chicago Police Commander Jon Burge. In this role, he also participated in the City of Chicago's First Amendment Consent Decree, ensuring protections for citizens engaged in free speech. Iris' research focuses on use of data in law enforcement. Currently a Lecturer Emeritus in the Mathematical Methods in the Social Sciences Program at Northwestern University, he supervised students on research projects assisting police departments in various cities, including Los Angeles, Houston, Philadelphia, New York, and Chicago. These rigorous data analyses addressed a number of key aspects of police operations. Dr. Iris has also contributed extensively to academic discourse, with publications on police discipline, crime hot spots and law enforcement litigation, appearing in journals such as the Journal of Criminal Law and Criminology and Police Quarterly. He has also served as an expert witness in police- related litigation.
- f. **Christy Lopez** joined the Georgetown Law faculty as a distinguished Visitor from Practice in 2017 and became a Professor from Practice in 2020. From 2010 to 2017, Professor Lopez served as a Deputy Chief in Chief in the Special Litigation Section of the Civil Rights Division at the U.S. Department of Justice. Professor Lopez led the Section's group conducting pattern-or-practice investigations of police departments and other law enforcement agencies, including litigating and negotiating settlement agreements to resolve investigative findings. Professor Lopez directly led the team that investigated the Ferguson Police Department and was a primary drafter of the Ferguson Report and negotiator of the Ferguson consent decree. She also led investigations of many other law enforcement agencies, including the Chicago Police Department, the New Orleans Police Department, the Los Angeles Sheriff's Department, the Newark (New Jersey) Police Department, and the Missoula, Montana investigation. Throughout her career, Professor Lopez has been involved in police reform efforts at the state, local, and federal levels: she has conducted independent reviews of police shootings; served on the Maryland Attorney General's Task Force on Electronic Weapons; was a contributing writer on the Prison Rape Elimination Act (PREA) Commission Report on sexual violence

in prisons, jails, and lockups; was an Advisor and Project Fellow on the American Law Institute (ALI) Principles of Law, Policing; co-chaired the DC Police Reform Commission, and has served on various other commissions and working groups related to police standards and practices.

- g. **Tracey Meares** is the Walton Hale Hamilton Professor of Law at Yale Law School. Prior to joining the Yale Law School faculty, she was the Max Pam Professor of Law and director of the Center for Studies in Criminal Justice at the University of Chicago Law School. She is a co-editor of the Annual Review of Criminology. Professor Meares has been a member of the National Research Council's Committee on Law and Justice. She was appointed by then-Attorney General Holder to serve on the Office of Justice Program's Science Advisory Board and by then-President Obama to the President's Task Force on 21st Century Policing. She was elected as a Fellow to the American Academy of Arts and Sciences in 2019 and also serves as a member of the Joyce Foundation's Board of Directors.
- h. **Rachel Moran** is an associate professor and founder of the Criminal and Juvenile Defense Clinic at the University of St. Thomas School of Law. Professor Moran's work focuses on police reform, issues pertaining to police accountability, and public access to records of police misconduct. Before coming to the University of St. Thomas, Professor Moran taught as a Clinical Fellow at the University of Denver Sturm College of Law's Criminal Defense Clinic and served as an adjunct professor at Chicago-Kent College of Law. After law school Professor Moran worked at a private criminal defense firm and as an assistant appellate defender with the Office of the Illinois State Appellate Defender, where she argued numerous criminal appeals in the Illinois Appellate courts and the Illinois Supreme Court.
- i. **Stephen Rushin** is the Judge Hubert Louis Will Professor of Law at the Chicago Loyola School of Law, where he focuses his research, writing and teaching in law enforcement reform and police accountability. He teaches a class on police accountability and has published an article on the problems with using arbitration in the police accountability system. He has also published a book on the difficulties with federal intervention in American police departments.
- j. **Randolph Stone** is a legal scholar and a former Clinical professor of Law at the University of Chicago Law School. His interests include criminal law, juvenile justice, the legal profession, indigent defense, race and criminal justice, evidence and trial advocacy. Before retirement Stone's leadership positions included Director of the Criminal & Juvenile Justice Clinic, Public Defender of Cook County and he was one of five criminal justice leaders who served on Mayor Rahm Emanuel's Police Accountability Task Force in 2015.
- k. **Seth Stoughton** is an Associate Professor at the University of South Carolina School of Law and a Core Faculty Member with the Rule of Law Collaborative. His study of policing primarily focuses on the use of force, agency and professional culture, training, law and policy. Professor Stoughton has served as an expert in a number of high profile police cases, including testifying in the criminal prosecution of Derek Chauvin, who was convicted of killing George Floyd. Prio to joining the faculty at South Carolina, Professor Stoughton was a Climenko Fellow and

Lecturer on Law at Harvard Law School. Before attending law school, Professor Stoughton was an officer with the Tallahassee Police Department for five years, where he trained other officers, wrote policies to govern the use of new technologies, and taught personal safety and self-defense courses in the community.

End of Appendix A

[APPENDIX B]

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APPELLATE COURT 1ST DISTRICT

No. 1-24-0875

**IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT**

CHICAGO JOHN DINEEN LODGE #7,

Plaintiff – Appellant,

v.

CITY OF CHICAGO, DEPARTMENT OF POLICE, BRANDON JOHNSON, in his official
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the Chicago Police Department, and the CHICAGO CITY COUNCIL,
Defendants – Appellees.

On Appeal from the Circuit Court of Cook County, Illinois,
Cook County Circuit, No. 2024-CH-00093
The Honorable Michael T. Mullen, Judge Presiding

**THE ACADEMICS AND POLICY GROUPS FOR POLICE ACCOUNTABILITY
MOTION FOR LEAVE TO SUBMIT JOINT AMICUS BRIEF**

Proposed Academic and Policy Amici Seth Stoughton, Sharon Fairley, Rachael Moran, Randolph Stone, Mark Iris, Tracey Meares, Stephen Rushin, Christy Lopez, Georgetown Center for Innovation in Community Safety, Impact for Equality and the Chicago Council of Lawyers hereby request leave of Court pursuant to Illinois Supreme Court Rule 345 to submit a joint amicus brief in support of the Defendants. Movants state as follows:

1. This case involves a question of significant public interest concerning the manner in which hearings on serious police disciplinary charges should be handled. This is an

important issue related to public safety that will not only affect Illinois citizens, but is relevant to a larger debate on this question that is occurring nationally.

2. The Proposed Amici are individuals and organizations that have worked on this policy issue both locally and nationally. They consist of the following individuals and organizations:

- a. **Seth Stoughton** is an Associate Professor at the University of South Carolina School of Law and a Core Faculty Member with the Rule of Law Collaborative. His study of policing primarily focuses on the use of force, agency and professional culture, training, law and policy. Professor Stoughton has served as an expert in a number of high profile police cases, including testifying in the criminal prosecution of Derek Chauvin, who was convicted of killing George Floyd. Prio to joining the faculty at South Carolina, Professor Stoughton was a Climenko Fellow and Lecturer on Law at Harvard Law School. Before attending law school, Professor Stoughton was an officer with the Tallahassee Police Department for five years, where he trained other officers, wrote policies to govern the use of new technologies, and taught personal safety and self-defense courses in the community.
- b. **Sharon Fairley** is a professor and graduate of the University of Chicago Law School, who has taught at the Law School since 2015. She became a Professor from Practice in 2019. Professor Fairley's teaching responsibilities include

criminal procedure, policing, and federal criminal law. Before joining the Law School, Professor Fairley spent eight years as a federal prosecutor with the United States Attorney's Office for the Northern District of Illinois, investigating and trying criminal cases involving illegal firearms possession, narcotics conspiracy, bank robbery/murder, murder for hire and economic espionage, among other criminal acts. She also served as the First Deputy Inspector General and General Counsel for the City of Chicago Office of the Inspector General. In December 2015, following the controversial officer-involved shooting death of Laquan McDonald, Professor Fairley was appointed to serve as the Chief Administrator of the Independent Police Review Authority (IPRA), the agency responsible for police misconduct investigations. She was also responsible for helping create and build Chicago's Civilian Office of Police Accountability (COPA), which replaced IPRA and of which she was the first head.

Professor Fairley's areas of academic inquiry focus on criminal justice reform with an emphasis on constitutional policing and police accountability. She frequently writes and speaks about use of force by law enforcement, civilian oversight of law enforcement, and other police reform strategies.

- c. **Rachel Moran** is an associate professor and founder of the Criminal and Juvenile Defense Clinic at the University of St. Thomas School of Law. Professor Moran's work focuses on police reform, issues pertaining to police accountability, and public access to records of police misconduct. Before coming to the University of St. Thomas, Professor Moran taught as a Clinical Fellow at the University of

Denver Sturm College of Law's Criminal Defense Clinic and served as an adjunct professor at Chicago-Kent College of Law. After law school Professor Moran worked at a private criminal defense firm as an assistant public defender with the Office of the Illinois State Appellate Defender, where she argued numerous criminal appeals in the Illinois Appellate courts and the Illinois Supreme Court.

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Intervention Systems, which track officers behavior to prevent misconduct.

Professor Iris has also contributed extensively to academic discourse, with publications on police discipline, crime hot spots and law enforcement litigation, appearing in journals such as the *Journal of Criminal Law and Criminology* and *Police Quarterly*. He has also served as an expert witness in police- related litigation.

- f. **Tracey Meares** is the Walton Hale Hamilton Professor of Law at Yale Law School. Prior to joining the Yale Law School faculty, she was the Max Pam Professor of Law and director of the Center for Studies in Criminal Justice at the University of Chicago Law School. She is a co-editor of the *Annual Review of Criminology*. Professor Meares has been a member of the National Research Council's Committee on Law and Justice. She was appointed by then-Attorney General Holder to serve on the Office of Justice Program's Science Advisory Board and by then-President Obama to the President's Task Force on 21st Century Policing. She was elected as a Fellow to the American Academy of Arts and Sciences in 2019 and also serves as a member of the Joyce Foundation's Board of Directors.
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in the police accountability system. He has also published a book on the difficulties with federal intervention in American police departments.

h. **Christy Lopez and the Georgetown Center of Innovation in Community**

Safety. Christy Lopez is a professor at Georgetown University, where she heads up the Georgetown Center for Innovation in Community Service (CICS) which is pioneering organization dedicated to promoting safer and more equitable communities through innovative approaches to public safety that emphasize restorative justice, public health and the needs of vulnerable populations. CICS works on programs to train police officers, and leads the ABLE Project (Active Bystandership for Law Enforcement), a national program designed to prevent misconduct within law enforcement agencies. CICS is also deeply committed to policy reform and advocacy, working with local, state and national partners to advance polices that reduce racial disparities, protect civil rights and enhance public safety.

i. **Impact for Equity**, formerly Business and Professional People for the Public Interest, has been a catalyst for racial, economic and social justice in Chicago and Illinois since its founding in 1969. It's areas of focus include the criminal justice system, police accountability and housing. Impact for Equality utilizes a combination of legal tools, police research, advocacy, organizing and convening to work towards transformational change. For example, the organization worked for years in partnership with the Grassroots Alliance for Police Accountability, eventually resulting I the 2021 passage (by the Chicago City Council) of the

Empowering Communities for Public safety Ordinance, which created a citywide community oversight commission with responsibility for overseeing systematic reform of the Chicago Police Department and its related disciplinary agencies.

- j. **The Chicago Council of Lawyers** is a progressive bar association founded in 1969 to analyze and bring about reform in Chicago's legal systems. For the past 20 years the Council's Civil Liberties Committee has been deeply engaged in monitoring and reforming Chicago police oversight and disciplinary systems, including holding annual panels on that topic, negotiating with City and State legislators on reforms to those systems, advocating for the entry of the Chicago Consent Decree concerning the police department and related agencies, participating in various coalitions over the years to improve those systems and testifying on the present issue before the Chicago City Council.
3. For the past hundred years, the citizens of Chicago have struggled to put in place an effective oversight system to prevent police misconduct and hold police officers accountable when they engaged in such misconduct. These efforts included the creation of the Chicago Police Board in the 1960s, a public agency to oversee the police discipline system, because of deficiencies in the prior oversight system. For the past 60 years the Chicago Police Board has permitted public access to proceedings in the most serious misconduct cases. Even after the passage of the Illinois Public Labor Relations Act in 1984, which generally provided for the private arbitration of unionized public employee grievances, the police union in Chicago agreed to keep that arrangement with the Chicago

Police Board in effect for the past 40 years. However, in its most recent set of contract negotiations, the police union now seeks to pull hearings in those serious disciplinary cases behind closed doors before private arbitrators. (This is part of a national trend by police unions to remove such proceedings from public view.)

4. If the union succeeds in this strategy, it will seriously set back efforts to improve the police oversight system in Chicago that have been made over the past decade and that are still underway. Permitting such hearings to be removed from public scrutiny would undermine both the effectiveness of those systems and the contribution they make to public safety in Chicago. These Amici are opposed to that effort and seek to explain for this Court's benefit the reasons for this, including some aspects of the system that neither the police union nor the City have any interest in pointing out.
5. A copy of these amici's proposed brief is attached to this motion.

Wherefore, these amici respectfully request leave to file the accompanying Amicus brief with this Court.

/s/ Loren V. Jones
 Loren V. Jones
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CERTIFICATE OF FILING AND SERVICE

I certify that on October 31, 2024, I electronically filed the foregoing Motion for Leave to File Brief Amicus Curiae In Support of Defendant- Appellees, accompanied by the proposed Amicus Brief, with the Clerk of the Court for the Illinois Supreme Court, using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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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 of Amici Curiae to be mailed with postage prepaid to the following address:

Cook County 1st District Appellate Courthouse
 160 North LaSalle St
 Chicago, IL.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

/s/ Loren V. Jones

No. 1-24-0875

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Defendants – Appellees.

On Appeal from the Circuit Court of Cook County, Illinois,
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The Honorable Michael T. Mullen, Judge Presiding

[PROPOSED] ORDER

IT IS HEREBY ORDERED that the Academics and Policy Groups for Police Accountability Motion for leave to file a brief as amici curiae in support of defendant-appellee City of Chicago is:

☐ granted / ☐ denied. DATED: ____ of _____, 2024

Judge

Judge

Judge

No. 1-24-0875

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**BRIEF OF AMICUS CURIAE
ACADEMICS AND POLICY GROUPS FOR POLICE ACCOUNTABILITY
IN SUPPORT OF DEFENDANTS-APPELLEES**

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TABLE OF CONTENTS

I.	INTEREST OF AMICUS CURIAE	
II.	BACKGROUND	2
A.	Effective and Transparent Administrative Police Disciplinary Systems are Essential to Community Trust in Policing Which is Essential to Public Safety.	3
1.	Administrative Disciplinary Systems are Essential to Police Accountability.....	3
2.	Transparency Related to Police Disciplinary Systems Builds Community Trust Which is Essential to Public Safety.....	6
B.	Research Demonstrates that Arbitration is an Imperfect Appellate Mechanism for Police Disciplinary Matters Thereby Requiring Public Observation To Ensure Fairness.	8
C.	Historically, CPD has Struggled to Achieve Effective Police Discipline, Necessitating Continued Public Vigilance.....	9
D.	The Current System for Adjudicating Serious Disciplinary Matters Involving CPD Members Is Highly Complex Requiring Ongoing Public Monitoring and Oversight.	12
E.	In Pushing for Arbitration as an Alternative to the Chicago Police Board, the Union Seeks to Reduce Accountability for CPD Officers.	14
III.	ARGUMENT.....	16
A.	The Circuit Court Correctly Concluded that the State of Illinois has a Well-defined and Dominant Public Policy Requiring Transparency and Accountability Related to Police Disciplinary Matters That Can Be Ascertained from Several Sources of Legal Authority.	17
1.	Illinois courts have recognized a well-defined and dominant public policy of holding law enforcement officers accountable for serious misconduct.	18
2.	Illinois's well-defined and dominant public policy of transparency and accountability in police disciplinary matters is clearly established by the State's litigation with the City of Chicago.	19
3.	Illinois courts have recognized a well-defined and dominant public policy in favor of an open, transparent government which applies to police discipline.	24
4.	The Illinois statutory scheme for decertifying police officers reflects a well-defined and dominant public policy regarding	

transparency and accountability in addressing serious police misconduct.....	25
B. The Circuit Court Correctly Concluded that Private Arbitration Proceedings Would Undermine Illinois' Well-defined and Dominant Policy of Transparency and Accountability Related to Police Disciplinary Matters.	26
1. Private arbitration proceedings would undermine Illinois's well-defined and dominant public policy of transparency and accountability for police disciplinary matters.....	28
a. Private arbitration proceedings would impair the public's ability to assess the effectiveness of the various components of Chicago's police accountability system.	28
b. Lack of transparency around arbitration, a critical stage in the process for adjudicating serious police misconduct matters, will undermine public confidence in the accountability system.	32
2. Private arbitration proceedings would undermine the effectiveness of Illinois' scheme for decertifying officers who commit serious misconduct.	33
3. Private Arbitration proceedings would undermine the States' ability to comply with its constitutional and statutory obligations to provide favorable evidence to criminal defendants.	34
C. Private Arbitration Proceedings are Neither Necessary nor Legally Required.....	36
IV. CONCLUSION	37

TABLE OF AUTHORITIES

<u>BACKGROUND</u>	2
Statutes	
720 ILCS 5/7-5(1).....	4
Municipal Codes	
Chicago Municipal Code § 2-56.....	11
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Illinois Constitutional Provisions	
Ill. Const. Art. I, § 25.....	34

Ill. Const. (1970), Art. I, § 25(a)	34
Illinois Statutes	
50 ILCS 705/6.1.....	25
50 ILCS 705/6.3(c)(2)	26
50 ILCS 705/6.3(d)	31
5 ILCS 315/2.....	34
5 ILCS 315.....	34
Illinois Rules	
IL. Supreme Court Rule 412.....	32
134 Ill. 2d R. 412.....	33
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<i>Palmateer v. Int’l Harvester Co.</i> , 85 Ill. 2d 124 (1981)	18
<i>Velez v. Avis Rent A Car System, Inc.</i> , 308 Ill.App.3d 923, 298 (1st Dist. 1999)....	18
<i>Illinois State Police v. Fraternal Order of Police Troopers Lodge No. 41</i> , 323 Ill.App.3d 322 (4th Dist. 2001).....	18
<i>Davenport v. Bd. of Fire & Police Comm’rs of City of Peoria</i> , 2 Ill. App. 3d 864 (3rd Dist. 1972).....	18
<i>Turner v. Fletcher</i> , 302 Ill. App. 3d 1051, 1056 (4th Dist. 1999).....	18
<i>City of Des Plaines v. Metro. All. of Police Chapter No. 240</i> , 2015 IL App (1st) 140957, ¶ 24, 30 N.E.3d 598, 605 (1st Dist. 2015).....	18
<i>City of Springfield, Ill. (Police Dep’t) v. Springfield Police Benev. & Protective Ass’n, Unit No. 5</i> , 229 Ill. App. 3d 744, 751, 593 N.E.2d 1056 (1992).....	18
<i>City of Country Club Hills v. Charles</i> , 2020 IL App (1st) 200546 (1st Dist. 2020).	18
<i>Decatur Police Benevolent & Protective Ass’n Lab. Comm. v. City of Decatur</i> , 2012 IL App (4th) 110764 (4th Dist. 2012).....	18
<i>Vill. of Oak Lawn v. Hum. Rts. Comm’n</i> , 133 Ill. App. 3d 221, 224 (1st Dist. 1985)	19
<i>State of Illinois v. City of Chicago</i> , NDIL, No 17-cv-06260, Docket #1.....	19, 20, 21, 23, 27
<i>Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia</i> , 812 F.2d 105, 116-17 (3d Cir. 1987).....	22
<i>Valio v. Bd. of Fire & Police Comm’rs of Vill. of Itasca</i> , 311 Ill. App. 3d 321, 331 (2nd Dist. 2000).....	27
<i>City of Country Club Hills v. Charles</i> , 2020 IL App. (1st) 200546 (2011).....	32
<i>People v. Cacini</i> , 2015 IL App. (1st) 130135.....	33
<i>People v. Porter-Boens</i> , 2013 IL App. (1st) 111074.....	33
<i>People v. Tyler</i> , 2015 IL App (1st) 123470.....	33

Case Filings

Appellant Brief, <i>Chicago John Dineen Lodge #7 v. City of Chicago, et. al</i> , No. 1-24-0875.....	22, 23, 26, 35
--	----------------

Other Authorities

Evan G. Hebert, <i>To Protect, Serve, and Inform: Freedom of Information Act Requests and Police Accountability</i> , 19 TEX. TECH. ADMIN. L.J. 271, 294 (2018)..	22
Illinois Police Training Act, codified at 50 ILCS 705.....	23
Ariel Hairston and Amy Thompson, <i>Two Years Since Taking Effect, Illinois's New Police Officer Decertification Process is Stalled</i> , IMPACT FOR EQUITY REPORT, May 2024.....	23, 24
Hilary Rau, Kim Shayo Buchanan, Monique L. Dixon, and Phillip Atiba Goff, <i>State Regulation of Policing: POST Commissions and Police Accountability</i> , 11 UC IRVINE L. REV. 1349, 1352 (2021).....	23, 31
Ben Grunwald, John Rappaport, <i>The Wandering Officer</i> , 129 YALE L.J. 1676 (2020).....	32
Farrah Anderson and Sam Stecklow, <i>Deputy charged with murder had previous employment issues</i> , ILL. TIMES, Aug. 1, 2024.....	32

I. INTEREST OF AMICUS CURIAE

The *Amici Curiae*, a coalition of academics, attorneys, former government officials and organizations (listed in Appendix A), respectfully offer the court an important and compelling perspective on the issues raised in this appeal based on an in-depth understanding of complex police accountability systems acquired from their collective experience and knowledge. This brief will discuss the importance of an open process for adjudicating police misconduct within the context of how these systems actually operate, considering the needs and concerns of the various stakeholders involved. Moreover, reflecting that the outcome of this matter has the potential to impact police accountability beyond Chicago, the *Amici Curiae* include policing experts from across the United States. Grounded in research and first-hand experience working on police accountability challenges, the *Amici Curiae* offer a point of view unlikely to be elucidated by any of the parties.

As outlined in the brief, the State of Illinois has an established public policy of not only ensuring that law enforcement officers are held accountable but also ensuring that the citizens of Illinois have access to the information they need to assess how well accountability systems are working in their communities. The Chicago Police Department (“CPD” or “the Department”) has a troubled history when it comes to police accountability due in large part to a lack of transparency around disciplinary proceedings. The *Amicus Curiae* urge the court to consider that allowing serious police misconduct matters to be adjudicated behind closed doors via private arbitration is inconsistent with the historical practice of making these proceedings open to the public and are gravely concerned that doing so will undermine past and present police reform efforts. Moreover, transparency

regarding serious police misconduct matters through arbitration will in no way impair the due process rights owed to Chicago police officers as required by the collective bargaining agreements and other relevant legal authority. As will be discussed below, the Amici Curiae respectfully, but strongly, urge the court to affirm the district court ruling that arbitration of these matters be open to the public.

II. BACKGROUND

The Amici Curiae offer the following background information to provide the court with an understanding of the issues and challenges inherent in Chicago's increasingly complex police oversight system. First, in general, effectiveness and transparency for administrative disciplinary systems are necessary to foster trust in policing which is essential to public safety. Administrative disciplinary processes are essential to police accountability because police officers are infrequently held liable in criminal or civil law proceedings. Second, research conducted specifically in Chicago and elsewhere demonstrates that arbitration is an imperfect appellate mechanism for police discipline, thus requiring outside oversight to uncover systemic procedural flaws and correct unjust outcomes. Third, historically, CPD has struggled to create an effective police accountability system, necessitating constant external vigilance over the system. Lastly, the current process for adjudicating serious disciplinary matters involving CPD officers is highly complex, involving multiple government entities and decision-makers. Thus, openness is required to enable the public to assess which entities and decision-makers are performing their duties with the requisite care and fairness. These are among the most important considerations that the circuit court correctly recognized as creating a pressing need for open and transparent arbitration proceedings.

A. EFFECTIVE AND TRANSPARENT ADMINISTRATIVE POLICE DISCIPLINARY SYSTEMS ARE ESSENTIAL TO COMMUNITY TRUST IN POLICING WHICH IS ESSENTIAL TO PUBLIC SAFETY.

1. Administrative Disciplinary Systems are Essential to Police Accountability

There are three paths to potential sanctions for police officers who commit misconduct: criminal prosecution, civil liability, and administrative disciplinary action.

Today, officers are most frequently held accountable for misconduct, if at all, through administrative disciplinary action. It is well-established that the criminal justice system provides minimal accountability in police misconduct cases.¹ Prosecutors are often reluctant to charge police officers, and juries are often reluctant to convict them.² The civil court system also offers limited redress to victims of police misconduct because the doctrine of qualified immunity significantly limits the circumstances in which an officer is held liable.³ Moreover, there are some forms of serious misconduct that do not rise to the level of a criminal offense or create civil liability. For example, the administrative process may provide the only accountability mechanism through which officers whose speech (e.g. racist) or association (e.g. white supremacist organizations) make them unfit for law

¹ Kami Chavis Simmons, *Increasing Police Accountability: Restoring Trust and Legitimacy Through the Appointment of Independent Prosecutors*, 49 WASH. U. J.L. & POL'Y 137, 144 ("Criminal prosecutions of police officers are uncommon and judges and juries often exonerate the few officers who face prosecution.")

² Mark Berman, *When police kill people, they are rarely prosecuted and hard to convict*, WASH. POST, Apr. 4, 2021.

³ See, e.g., Matthew Spencer, *Restructuring Alternative Dispute Resolution Options to Improve Police Accountability*, 13 ALA. C.R. & C.L. L. REV. 145, 150(2021); Eliana Fleischer, *Stating the Obvious: Departmental Policies as Clearly Established Law*, 90 U. CHI. L. REV. 1435, 1436 (2023) (noting that qualified immunity is one of the most contentious barriers to successfully bringing a case against a government officer); Joanna Schwartz, *Shielded*, Viking Press, 2023, (detailing extensive unfairness of the qualified immunity doctrine as applied to police officers.)

enforcement employment.⁴ Thus, the administrative disciplinary process may be the only legal mechanism that results in a sanction against an officer who has committed serious misconduct.

The administrative disciplinary process is particularly important because it is the only legal mechanism through which law enforcement agencies enforce their own policies and codes of conduct. Law enforcement agency policies and codes of conduct often establish a higher standard of care than that set by constitutional or state statutory law⁵ because they are based on best practices in policing and are guided by community values.⁶

⁴ While neither racist speech nor association with violent far-right extremists, without more, is a crime or conduct that would result in civil liability, such conduct could violate police department policy. *See, e.g.*, Chicago Police Department, CPD's May 2023 Updates to Draft Amendments to G08-03 (May 2023), <https://www.chicago.gov/content/dam/city/depts/ccpsa/policies/CPD's-May-2023-Updates-to-Draft-Amendments-to-G08-03.pdf> (amending Chicago Police Department policy to prohibit participation, membership, or affiliation with criminal or biased organizations). These kinds of policy violations can result in serious disciplinary action, including termination. *See, e.g.*, City of Columbia (South Carolina) Police Department Press Release, Aug. 31, 2020 (announcing that an officer was fired after using a racial slur); *Seattle Police officer fired for off-duty racist comments*, ASSOC. PRESS, Jun. 24, 2024, available at: <https://www.nbcnews.com/news/asian-america/seattle-police-officer-fired-duty-racist-comments-rcna158673>; Rebecca Cohen, *San Jose police fire officer over 'disgusting' racist text messages, chief says*, NBC NEWS, Nov. 4, 2024, available at: <https://www.nbcnews.com/news/us-news/san-jose-police-officer-fired-disgusting-text-messages-rcna123675>; Robert Rodriguez, *'Woke witch hunt.' Ex-Fresno police officer, fired for Proud Boy ties, sues city*, FRESNO BEE, Aug. 4, 2021, available at: <https://www.fresnobee.com/news/local/article253251168.html>.

⁵ For example, the CPD use of force policy permits an officer to use deadly force against a fleeing person only where that person “poses an imminent threat” and only as a “last resort.” Chicago Police Department General Order 03-02 Section IV(D). Whereas, the Illinois state statute governing the use of force permits the use of deadly force against a fleeing subject under a broader set of circumstances. 720 ILCS 5/7-5(1).

⁶ *See, e.g.*, “National Association of Civilian Oversight of Law Enforcement Code of Ethics”, available at https://www.nacole_code_of_ethics; Paul a. Pastor, *Ethical Agency Cultures and Public Trust*, POLICE CHIEF ONLINE, Oct. 23, 2023 available at https://policechiefmagazine.org/ethical_agency_cultural.

Thus, it is only through the administrative disciplinary process that standards of conduct reflecting community-based values and best policing practices are enforced.

The administrative process is also the primary mechanism through which citizens have the power to seek redress for police abuse by filing a formal complaint directly with the police agency.⁷ The diligence with which law enforcement agencies investigate and take action to address citizen complaints is essential to community trust in policing and police accountability.⁸ When citizens feel complaints are not taken seriously, they are less likely to engage with law enforcement.⁹ Because community engagement has a direct impact on public safety¹⁰, it is imperative that cities like Chicago have well-functioning administrative accountability systems.

The arbitration process that is the subject of this litigation is a critical stage of the administrative disciplinary process for CPD officers. Pursuant to this process, the outcome of an arbitration decision will be, in most cases, the ultimate determination regarding whether a Chicago Police Officer will be held accountable for serious misconduct ... at all.

⁷ U.S. Department of Justice, Office of Community-Oriented Policing Services, *Building Trust Between the Police and the Citizens They Serve* (“U.S. DOJ Report”), at 20; available at: <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0724-pub.pdf>.

⁸ See, Rachel Moran, *In Police We Trust*, 62 VILL. L. REV. 953, 1001-102 (2017) (“Providing public access to information about misconduct complaints and resolutions would allow civilians the opportunity to assess whether their police department takes these complaints seriously, and would take a step toward removing police departments and officers from the veil of secrecy under which many of them currently operate.”)

⁹ U.S. DOJ Report, *supra* note 7, at 20.

¹⁰ See, e.g., Pooja , Di Giovanna and Pete Peterson, *Public Engagement for Public Safety*, Int’l City Managers Association, PM MAGAZINE, Oct. 1, 2023.

For these reasons, arbitration proceedings should at minimum be open, enabling the public to ascertain whether the administrative disciplinary process, which in most cases will conclude with arbitration, is fair and equitable.¹¹

2. Transparency Related to Police Disciplinary Systems Builds Community Trust Which is Essential to Public Safety

“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”¹²

Research conducted by Amici and others demonstrates that transparency related to police discipline supports and enhances community trust in policing which is essential to public safety.¹³ Communities are less likely to engage with law enforcement when they perceive law enforcement as lacking legitimacy.¹⁴ Today, police agencies should be

¹¹ Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1239 (2017); *see also*, Rachel Moran, *Police Privacy*, 10 UC IRVINE L. REV. 153, 185-86 (2019) (“when the public cannot access either records of allegations against officers or investigations into and assessments of those allegations, it cannot fairly judge whether its accountability system is working”).

¹² *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980).

¹³ *See, e.g.*, Ash Gautam, *Balancing Interests in Public Access to Police Disciplinary Records*, 100 TEX. L. REV. 1405, 1409 (2022) (“greater transparency leads to greater public trust in the police, which in turn boosts the legitimacy of police and improves public safety by increasing public compliance and cooperation with law enforcement”); David Trausch, *Real Transparency: Increased Public Access to Police Body-Camera Footage in Texas*, 60 S. TEX. L. REV. 373, 374 (2019) (“transparency is a very important component of building and maintaining trust between police and the communities they serve, safe and secure communities, and a functional criminal justice system”); Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community-Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1359–60 (2017) ([w]hen people believe they cannot rely on legal authorities, they take the law into their own hands and operate according to a “code of the streets”) (citing Elijah Anderson, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY*, at 66-67 (1999)).

¹⁴ Meares, *supra* note 13, at 1360; *see also*, Rachel Moran, *Police Privacy*, 10 UC IRVINE L. REV. 153, 185-86 (2019) (noting “a strong correlation between trusting the police and willingness to obey or assist police, such that communities with high trust of police may even be safer because of that trust”).

“focusing on providing transparency in order to gain public trust and cooperation.”¹⁵ Increased transparency can help restore legitimacy and trust.¹⁶

One of the cornerstone principles of procedural justice is that “people are motivated to comply with the law, cooperate with authorities, and engage with them when they are treated fairly.”¹⁷ Transparency is one of the key factors that citizens consider when assessing the fairness of police practices.¹⁸ As such, the public should have access to information that can be used to assess how equitable police are operating in their communities,¹⁹ which includes how police misconduct complaints are handled.

Scholars who study police accountability have argued that public access to information related to police discipline is essential to holding officers accountable.²⁰ There is evidence to support that the public harm caused by lack of transparency significantly outweighs any potential harm to the privacy of police officers.²¹

But it is not merely scholars who recognize the importance of transparency, police leaders are increasingly recognizing the importance of transparency.²² In Professor

¹⁵ Trausch, *supra* note 13, at 384.

¹⁶ Gabriella Leyhane, *To Serve and Protect: An Analysis of Recent Law Enforcement Legislation in Illinois and A Call for Reform*, 66 DEPAUL L. REV. 1133 (2017).

¹⁷ Tracey Meares, *Policing and Procedural Justice: Shaping Citizens’ Identities to Increase Democratic Participation*, 111 NW. U. L. REV. 1525, 1531 (2017).

¹⁸ *Id.* (noting that “people look for transparency and factuality in decision-making.”)

¹⁹ *Id.* (“[t]he public needs to have information that will allow them to make an assessment about whether they feel that the law is applied consistently and appropriately across people and situations”).

²⁰ Rachel Moran & Jessica Hodge, *Law Enforcement Perspectives on Public Access to Misconduct Records*, 42 CARDOZO L. REV. 1237, 1250–51 (2021).

²¹ *Id.* (citing Cynthia H. Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public*, 22 CUNY L. REV. 148, 175 (2019))

²² Rachel Moran, *Police Privacy*, 10 UC IRVINE L. REV. 153, 188 (2019) (noting “an unusual alliance of journalists, activists, lawmakers, and even police chiefs and police

Moran's research, a significant proportion of police leaders acknowledged that public disclosure of police disciplinary information can increase public trust and lead to improved community relations.²³ To be sure, police departments have accrued cognizable benefits from efforts at promoting transparency.²⁴

B. RESEARCH DEMONSTRATES THAT ARBITRATION IS AN IMPERFECT APPELLATE MECHANISM FOR POLICE DISCIPLINARY MATTERS THEREBY REQUIRING PUBLIC OBSERVATION TO ENSURE FAIRNESS.

Despite the arbitrator's irresponsible reference in the Award to published research that is critical of arbitration as "pure nonsense,"²⁵ several accomplished and highly respected scholars have found that arbitration as an appellate mechanism for police discipline is problematic.²⁶ It is well-documented that arbitrators in police misconduct cases frequently reverse or reduce disciplinary sanctions.²⁷ There are numerous examples of officers being terminated for committing serious acts of excessive force or gross misconduct, only to be reinstated through arbitration.²⁸

department lawyers is beginning to coalesce around the idea that increased transparency is important in improving public trust.")

²³ Moran & Hodge, *supra* note 20, at 1261.

²⁴ Kate Levine, *Discipline and Policing*, 68 DUKE. L.J. 839, 854 (2019).

²⁵ *In the Matter of the Arbitration between City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7*, L-MA- 18-016, AAA 01-22-0003-6534, Arb. Ref. 22.372, Supplemental Final Opinion and Award, Jan. 4, 2024 (the "Award").

²⁶ See, e.g. Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. 545 (2019); Mark Iris, *Police Discipline in Chicago: Arbitration or Arbitrary*, 89 J. CRIM. L. & CRIMINOLOGY 215 (1998); Joseph Ferguson and Deborah Witzburg, City of Chicago Office of Inspector General, *Review of the Disciplinary Grievance Procedure for Chicago Police Department Members*, May 2021.

²⁷ *Id.*

²⁸ Conor Friedersdorf, *How Police Unions and Arbitrators Keep Abusive Cops on the Street*, THE ATLANTIC (Dec. 2, 2014), available at: <https://www.theatlantic.com/politics/archive/2014/12/how-police-unions-keep-abusive-cops-on-the-street/383258/> (citing situations in Oakland, Philadelphia, Pittsburgh, Sarasota, Miami, Washington State, and Texas where abusive cops maintained their jobs after initially being fired by the police department).

As such, Loyola University Law Professor Stephen Rushin suggests that arbitration can be an “anti-democratic limitation on public oversight of law enforcement behavior” because it advances the decisions of arbitrators, a third party who may not even be a member of the community, over those of police supervisors or civilian oversight entities.²⁹ This is certainly the case in Chicago where the panel of five arbitrators called upon to arbitrate grievances lacks diversity: all five are male and at least four of the five are white.³⁰ At least three of the five members of the panel are apparently not Chicago residents, one of whom lives in another state.³¹ Moreover, the methods parties typically employ to select arbitrators create an incentive toward compromise that may systemically lead to reduced accountability such as terminations being downgraded to mere suspensions.³²

C. HISTORICALLY, CPD HAS STRUGGLED TO ACHIEVE EFFECTIVE POLICE DISCIPLINE, NECESSITATING CONTINUED PUBLIC VIGILANCE.

The challenges of creating and operating an effective system for holding police officers accountable has vexed the city of Chicago since at least the early 1900’s. In 1904, concerns about corruption, malfeasance and inefficiency within the police department prompted the mayor of Chicago to bring in a police expert from New York City to

²⁹ Rushin, *supra* note 11, at 1239.

³⁰ Statement of Chicago Police Board President Ghian Foreman, Dec. 7, 2023, available at: https://www.chicago.gov/city/en/depts/cpb/provdrs/police_discipline/news/2023/december/president-foreman-s-statement-on-arbitration-of-police-disciplin.html (noting that all five members of the panel are male and at least four are white).

³¹ *Id.*

³² Stephen Rushin, *Police Arbitration*, 74 VAND. L. REV. 1023, 1032 (2021).

investigate police discipline.³³ According to the expert, the problem was Chicago police force suffered from “practically no discipline.”³⁴

By the middle of the 20th century, there had been little, if any, improvement in the police department’s accountability efforts.³⁵ By then, the Chicago Civil Service Commission was responsible for police discipline and was not very effective at ridding the department of errant officers.³⁶ In 1961, the city council took responsibility for serious police misconduct matters away from the Civil Service Commission and gave it to the newly empaneled Chicago Police Board because the department had been “having great difficulty in removing allegedly incompetent officers through the channels of the Civil Service Commission.”³⁷ From this auspicious beginning, Chicago Police Board proceedings related to the adjudication of serious misconduct allegations have been open to the public.³⁸

In 2015, in the wake of the police accountability crisis arising from the officer-involved shooting of LaQuan McDonald, Mayor Rahm Emanuel empaneled a Police Accountability Task Force to identify potential solutions to the city’s decades-long police accountability challenges.³⁹ The task force engaged in a painstakingly thorough process

³³ Alexander R. Piper, *Report of Investigation of the Discipline and Administration of the Police Department of the City of Chicago*, Published by the City Club of Chicago, Mar. 17, 1904, at 3 (“Piper Report 1904”).

³⁴ Piper Report 1904, *supra* note 33, at 5.

³⁵ Donald E. J. MacNamara, *American Police Administration at Mid-Century*, Public Administration Review, Vol. 10, No. 3 (Summer, 1950), pp. 181-189, at 186.

³⁶ *Id.*

³⁷ Ralph Knoohuizen and the Chicago Law Enforcement Study Group, *The Chicago Police Board* (1973), at 5 (“Knoohuizen, Chicago Police Board”).

³⁸ Knoohuizen, Chicago Police Board, *supra* note 37, at 32.

³⁹ Police Accountability Task Force, *Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities They Serve* (Apr. 13, 2016),

seeking input from citizens across the city and ultimately recommending a new oversight structure.⁴⁰ It included creating a new civilian investigative agency, now established as the Civilian Office of Police Accountability (COPA) and a new office of the Deputy Inspector General for Public Safety.⁴¹ In October 2016, the democratically elected City Council enacted an ordinance that established these two new oversight entities.⁴² By law, COPA has jurisdiction to conduct independent investigations, make findings, and recommend discipline for officers who are accused of certain kinds of police misconduct or involved in serious police-citizen encounters.⁴³ As will be described in Part II(D) *infra*, COPA investigations can lead to the CPD disciplinary decisions that can be appealed via the arbitration process at issue here.

The fatal shooting of LaQuan McDonald also prompted the Illinois Attorney General to request the United States Department of Justice (DOJ) to initiate an investigation of the Chicago Police Department.⁴⁴ The DOJ agreed to do so, and in January 2017, announced its findings, which included that “Chicago’s deficient police accountability systems contribute to CPD’s pattern or practice of unconstitutional conduct.”⁴⁵ When the DOJ failed to litigate the issue to seek reform, the Illinois Attorney General stepped in and filed a lawsuit through which, in April 2019, the City and the State

https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf, (PATF Report 2016), at 14 (labeling Chicago’s police accountability system as “broken” and “riddled with legal and practical barriers to accountability”).

⁴⁰ *Id.*

⁴¹ PATF Report 2016, *supra* note 39.

⁴² Chicago Municipal Code §§ 2-56 and 2-78.

⁴³ Chicago Municipal Code § 2-78-120.

⁴⁴ Mark Guarino, *Illinois attorney general asks Justice Department for civil rights investigation into Chicago police*, WASH. POST, Dec. 1, 2015.

⁴⁵ Dept of Justice, Investigation of the Chicago Police Department, Jan. 13, 2017, (“DOJ Findings Report”) at 46.

entered into a settlement agreement (“Consent Decree”) outlining numerous reforms to be implemented by CPD and the other entities that comprise Chicago’s police accountability infrastructure.⁴⁶

D. THE CURRENT SYSTEM FOR ADJUDICATING SERIOUS DISCIPLINARY MATTERS INVOLVING CPD MEMBERS IS HIGHLY COMPLEX REQUIRING ONGOING PUBLIC MONITORING AND OVERSIGHT.

At present, Chicago has one of the most complex police oversight systems in the country, with multiple entities working to promote effective policing and police accountability in various contexts.⁴⁷ As graphically depicted in Appendix B, Figure 1, there are at least five separate and distinct government entities that can impact the CPD disciplinary process: COPA, OIG, the Chicago Police Board, the Community Commission for Public Safety and Accountability (“CCPSA”), and the City of Chicago Department of Law.

As outlined in the proceedings below, prior to the most recent round of contract negotiations between the Union and the City, serious misconduct matters were adjudicated before the Chicago Police Board via public proceedings. Although the Illinois Public Relations Act, adopted in 1984, generally provides employees in public unions the right to arbitrate grievances, yet for the past forty years, the Chicago police union conceded and accepted that the Chicago Police Board had exclusive jurisdiction to publicly hear the most serious police disciplinary cases (those involving dismissal or suspension of a year or more). Now the police union has withdrawn that concession. Pursuant to the Arbitration Award,

⁴⁶ *Illinois v. City of Chicago*, No. 1:17-cv-06260 (N.D. Ill.), Dkt. 703-1 (“Consent Decree”).

⁴⁷ Sharon R. Fairley, *Survey Says: The Development of Civilian Oversight of Law Enforcement Skyrockets in the Wake of George Floyd’s Killing*, 31 S. CAL. REV. L. & SOC. JUST. 283, 300 (2022).

CPD officers accused of serious misconduct will now have the option to choose private arbitration over adjudication by the Chicago Police Board (and most officers currently facing serious disciplinary charges have opted for private arbitration.)⁴⁸ Even before this most recent development, the process for imposing serious discipline on CPD officers was quite complex.

As depicted in Appendix B, Figure 2, the process for adjudicating serious misconduct matters involves investigative work, analysis, and decision-making by several City of Chicago entities and decision-makers. There are three City entities with jurisdiction to investigate police misconduct matters: COPA, OIG, and CPD's Bureau of Internal Affairs.⁴⁹ Each of these entities conducts an investigation, makes findings, and recommends disciplinary action based on the evidence obtained.⁵⁰ Once a misconduct investigation is complete, the matter is referred to CPD leadership for review and concurrence.⁵¹ It is in the CPD Superintendent's discretion to determine whether a disciplinary sanction will be sought, and if so, what that sanction should be.⁵² Once the Superintendent has decided to impose serious discipline (a penalty of a suspension of 365 days or more, up to including separation from the Department), the matter is then handed

⁴⁸ According to the Chicago Police Board website as of September 22, 2024, motions to transfer cases to arbitration had been filed in at least 13 of the 18 cases currently pending before the Board.

⁴⁹ City of Chicago Municipal Code Chapters 2-78 (defining COPA's investigatory jurisdiction) and 2-56 (defining OIG's investigatory jurisdiction); City of Chicago, Office of the Inspector General, A Guide to the Disciplinary Process for Chicago Police Department Members, Sep. 2022, (CPD Discipline Overview) available at: <https://igchicago.org/cpd-disciplinary-overview/>.

⁵⁰ *Id.*

⁵¹ CPD Discipline Overview, *supra* note 30.

⁵² CPD Discipline Overview, *supra* note 30.

off to the city's Department of Law to draft and serve the formal charges on the officer.⁵³ Unless the officer agrees to accept the penalty, proceedings to adjudicate the matter commence.⁵⁴ It is then the responsibility of the Department of Law to prosecute the disciplinary matter before the adjudicating body. Pursuant to the Award, an officer will have the option to choose to have their case heard either by the Chicago Police Board, or by an arbitrator. Proceedings before the Chicago Police Board involve a public hearing, followed by decision-making by the 9-member board.⁵⁵ Prior to the arbitrator's award, private arbitration was not available for serious misconduct matters.⁵⁶ Since the arbitrators' decision, the vast majority of the officers facing serious disciplinary charges have sought to have their cases transferred from the Police Board to private arbitration, as the Chicago Police Board website confirms at the "Recent News" Section.⁵⁷

As will be discussed in Part III(B)(1)(a) *infra*, transparency around the proceedings and decision-making related to police discipline, particularly for the most serious disciplinary matters, is essential for the public to be in a position to assess how fairly and effectively each of the involved entities and decision-makers are fulfilling their respective roles and responsibilities.

⁵³ Chicago Discipline Overview, *supra* note 30, at 20.

⁵⁴ Chicago Discipline Overview, *supra* note 30, at 12.

⁵⁵ Chicago Discipline Overview, *supra* note 30, at 20.

⁵⁶ *Chicago John Dineen Lodge #7 v. City of Chicago, et. al.*, No. 2024CH00093, Mar. 21, 2024 ("Circuit Court Opinion") at 19 ("The more serious discipline cases, *i.e.* cases where discipline could result in dismissal or suspension in excess of 365 days, have always proceeded before the Police Board in an open forum.")

⁵⁷ See *supra* note 48.

E. IN PUSHING FOR ARBITRATION AS AN ALTERNATIVE TO THE CHICAGO POLICE BOARD, THE UNION SEEKS TO REDUCE ACCOUNTABILITY FOR CPD OFFICERS.

As DOJ outlined in its report of findings, throughout its history, the Chicago Police Board (the “Board”) has not always been effective at holding CPD officers accountable.⁵⁸ In fact, according to the DOJ, the Board “has a long history of overturning the Superintendent’s misconduct findings and proposed discipline.”⁵⁹ To be sure, there were significant flaws in the Board’s procedures and decision-making that undermined accountability.⁶⁰ However, the DOJ also noted, that trend had begun to change in the wake of reforms implemented after the LaQuan McDonald incident.⁶¹

Over the past 10 years, the union has come to see the Board as a less desirable forum, as the Board’s decision-making has continued to trend toward greater accountability. As depicted in Figure 1, among the cases in which the Department had sought to discharge an officer, the percentage of cases in which the Board had found the officer “not guilty” of the alleged misconduct fell from 21% during the five-year period of 2010 to 2014 to 12% during the most recent five-year period of 2019 to 2023.⁶² In addition, the percentage of cases in which officers have resigned prior to the resolution of the case before the Board increased from 18% during the five-year period of 2010 to 2014 to 26% to the five-year

⁵⁸ DOJ Findings Report, *supra* note 45, at 84.

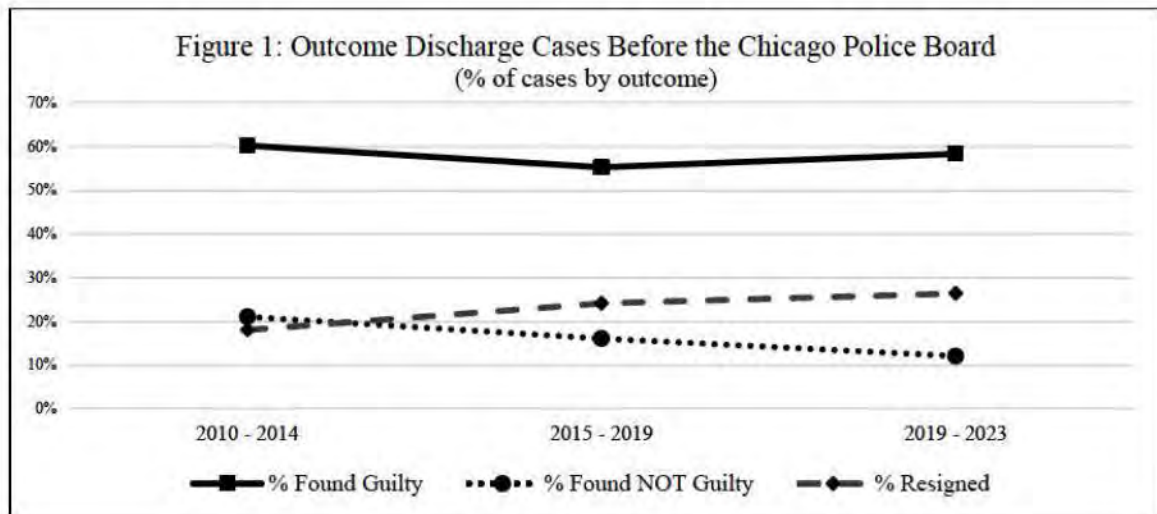
⁵⁹ DOJ Findings Report, *supra* note 45, at 84.

⁶⁰ DOJ Findings Report, *supra* note 45, at 9 (“[w]e also found deficiencies with the Chicago Police Board’s systems, which impair its ability to be an effective component of CPD’s accountability structure”).

⁶¹ DOJ Findings Report, *supra* note 45, at 87 (noting that, in 2016, the Board had tended to more frequently uphold the Superintendent’s discharge recommendations).

⁶² The data was obtained from Chicago Police Board Annual Reports from 2010 to 2023.

period of 2019 to 2023. All in all, in recent years, more officers have felt compelled to resign or been terminated through Board proceedings.



Based on this data, it is abundantly clear why, after decades of agreement to Chicago Police Board proceedings, the Union has recently sought arbitration as an alternative appellate mechanism. This matter was not brought to ensure Due Process rights for officers. Rather, the Union's goal here is to reduce the number of officers to be terminated or subject to lengthy suspensions despite having committed egregious policy violations such as the use of excessive force resulting in death and making false statements. This is yet another important consideration for why a transparent arbitration process is imperative to ensure that arbitration is fair and equitable for all constituencies, not just the officers.

III. ARGUMENT

While arbitration awards are generally afforded a substantial degree of deference, Illinois courts have vacated an arbitration award based on a collective bargaining agreement by applying "the common law doctrine that a court may refuse to enforce

contracts that violate law or public policy.”⁶³ As the Illinois Supreme Court explained, “[w]hen public policy is at issue, it is the court’s responsibility to protect the public interest at stake.”⁶⁴ When assessing whether an arbitration award should be vacated on public policy grounds, courts undertake a two-step analysis to determine: (1) whether there exists a relevant “well-defined and dominant public policy;” and (2) whether the arbitrator’s award contravenes the identified public policy.⁶⁵ The question at issue here is a matter of law which this court reviews *de novo*.⁶⁶ Here, the circuit court correctly concluded that the arbitrator’s award requiring private arbitration proceedings for serious disciplinary matters violates a well-defined and dominant Illinois public policy in favor of transparency and accountability related to police discipline, where serious misconduct impacting public safety is charged.⁶⁷

A. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT THE STATE OF ILLINOIS HAS A WELL-DEFINED AND DOMINANT PUBLIC POLICY REQUIRING TRANSPARENCY AND ACCOUNTABILITY RELATED TO POLICE DISCIPLINARY MATTERS THAT CAN BE ASCERTAINED FROM SEVERAL SOURCES OF LEGAL AUTHORITY.

The need for transparency and accountability regarding police discipline is so foundational that support for such policy can be found in numerous sources of Illinois law.

⁶³ *City of Chicago v. Fraternal Ord. of Police*, 2020 IL 124831, ¶ 25 (“*Chicago v. FOP 2020*”) (citing *American Federation of State, County & Municipal Employees., AFL-CIO v. Department of Central Management Services*, 173 Ill. 2d 299, 306-07, (1996) (“*AFSCME*”)).

⁶⁴ *AFSCME*, *supra* note 63, at 333.

⁶⁵ *Id.* at 308 (citing *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29 (1987)).

⁶⁶ *Chicago v. FOP 2020*, *supra* note 63.

⁶⁷ Circuit Court Opinion, *supra* note 56, at 15.

1. Illinois courts have recognized a well-defined and dominant public policy of holding law enforcement officers accountable for serious misconduct.

Illinois courts have consistently recognized that effective enforcement of the State's criminal law is an important and compelling public policy.⁶⁸ In *Palmateer v. International Harvester Co.*, the Illinois Supreme Court explicitly stated, "[t]here is no public policy more basic, nothing more implicit in the concept of ordered liberty, than the enforcement of a State's criminal code."⁶⁹ As outlined *supra* in Part II(A), inherent in the State's public interest in effective enforcement of criminal law, is law enforcement's need to maintain the trust and respect of the public, which can only be achieved through effective police discipline.⁷⁰

Illinois courts have recognized that, without effective discipline, law enforcement agencies risk losing the respect of the public, thereby undermining their ability to enforce criminal law.⁷¹ Illinois courts have also recognized that "[a]n effective process for evaluating fitness of police officers is essential to ensuring public safety and maintaining a reliable, responsible police force."⁷² As stated by the Appellate Court of Illinois, Third District, "[d]iscipline is not only vital but absolutely essential to [the police] force of armed men who protect the life and property of the citizens."⁷³ Illinois courts have enforced Illinois's well-established public policy to promote effective discipline by holding police

⁶⁸ See, e.g. *Palmateer v. Int'l Harvester Co.*, 85 Ill. 2d 124, 132 (1981); *Velez v. Avis Rent A Car System, Inc.*, 308 Ill.App.3d 923, 298 (1st Dist. 1999); *Illinois State Police v. Fraternal Order of Police Troopers Lodge No. 41*, 323 Ill.App.3d 322 (4th Dist. 2001).

⁶⁹ *Palmateer v. Int'l Harvester Co.*, 85 Ill. 2d 124, 132 (1981).

⁷⁰ *Davenport v. Bd. of Fire & Police Comm'rs of City of Peoria*, 2 Ill. App. 3d 864, 869 (3rd Dist. 1972).

⁷¹ *Id.* at 869-70

⁷² *Turner v. Fletcher*, 302 Ill. App. 3d 1051, 1056 (4th Dist. 1999)

⁷³ *Davenport v. Bd. of Fire & Police Comm'rs of City of Peoria*, 2 Ill. App. 3d at 869

officers accountable for using excessive force⁷⁴ an issue that is at the heart of the matters to be adjudicated via the arbitration that is the subject of this litigation. Illinois courts have also, for example, consistently recognized a public policy interest in weeding out untruthful law enforcement officers.⁷⁵

2. Illinois's well-defined and dominant public policy of transparency and accountability in police disciplinary matters is clearly established by the State's litigation with the City of Chicago.

Illinois case law is not the only legal authority conveying Illinois' public policy in favor of transparency and accountability. The lower court correctly concluded that "accountability and transparency as it relates to the CPD is a well-defined and dominant public policy of the State of Illinois."⁷⁶ The Attorney General's complaint which initiated the litigation against the City of Chicago which resulted in the current Consent Decree is clear evidence of Illinois' public policy.⁷⁷

In the Complaint, the Illinois Attorney General clearly and directly expressed the State's public policy goals in seeking reform of CPD. The Attorney General explicitly

⁷⁴ *City of Des Plaines v. Metro. All. of Police Chapter No. 240*, 2015 IL App (1st) 140957, ¶ 24, 30 N.E.3d 598, 605 (1st Dist. 2015); see also, *City of Springfield, Ill. (Police Dep't) v. Springfield Police Benev. & Protective Ass'n, Unit No. 5*, 229 Ill. App. 3d 744, 751, 593 N.E.2d 1056, 1060 (1992) (stating that the use of excessive force by law enforcement officers is against public policy).

⁷⁵ See, e.g. *City of Country Club Hills v. Charles*, 2020 IL App (1st) 200546, ¶ 32 (1st Dist. 2020) (noting that keeping untruthful police officers on the force creates liability issues for law enforcement agencies); *Decatur Police Benevolent & Protective Ass'n Lab. Comm. v. City of Decatur*, 2012 IL App (4th) 110764, ¶ 44 (4th Dist. 2012) (finding it would be repugnant to public policy to continue employing an officer who has been found abusive and untruthful); *Vill. of Oak Lawn v. Hum. Rts. Comm'n*, 133 Ill. App. 3d 221, 224 (1st Dist. 1985) (noting that trustworthiness, reliability, good judgment, and integrity are all material qualifications for police work).

⁷⁶ Circuit Court Opinion, *supra* note 56, at 17.

⁷⁷ *State of Illinois v. City of Chicago*, NDIL, No 17-cv-06260, Docket #1, Paragraph 20, Page 5 (Illinois v. Chicago Complaint)

stated that her purpose in initiating the litigation was to protect “[t]he interest in the health and well-being of Illinois residents – both physical and economic.”⁷⁸ The Attorney General explained that she was bringing the action to “defend the State of Illinois’ quasi-sovereign interest in the prevention of present and future harm to its residents, including individuals who are, have been, or would be victims of the City’s unconstitutional law enforcement practices.”⁷⁹ As the Illinois Supreme Court has unequivocally stated, “[t]here is no public policy more important or fundamental than the one favoring the effective protection of the lives and property of citizens.”⁸⁰

In the Complaint, the Attorney General made clear that, to protect the citizens of Illinois, the State needed to take action to address CPD’s unlawful policing that went unchecked by the City’s deficient disciplinary apparatus.⁸¹ The Attorney General specifically noted that CPD’s accountability system was neither consistently holding officers accountable for engaging in misconduct, nor deterring officers from future misconduct.⁸² The Attorney General explained that the City’s failure to address CPD’s use of excessive force and racially discriminatory practices signaled to officers that they could engage in such misconduct with impunity.⁸³ Further, the Attorney General made clear that State intervention was imperative because, despite the City’s own attempts at reform, CPD’s pattern of unconstitutional policing had persisted, resulting in an erosion community

⁷⁸ Illinois v. Chicago Complaint, *supra* note 77, at 5.

⁷⁹ Illinois v. Chicago Complaint, *supra* note 77, at 5.

⁸⁰ *Palmateer v. Int’l Harvester Co.*, 85 Ill. 2d 124, 132 (1981) (citing the Preamble of the Illinois Constitution).

⁸¹ Illinois v. Chicago Complaint, *supra* note 77, at 5.

⁸² Illinois v. Chicago Complaint, *supra* note 77, at 21.

⁸³ Illinois v. Chicago Complaint, *supra* note 77, at 22.

trust and confidence.⁸⁴ The Attorney General also explicitly cited transparency as a key reform requirement among the court-enforceable actions to be sought through a consent decree.⁸⁵

As the circuit court aptly pointed out, the Consent Decree, which was the product of negotiations between the State and the City, clearly reflects the State’s public policy goals as to the necessary reforms that must be implemented by CPD.⁸⁶ The reforms agreed to by CPD and outlined in the Consent Decree clearly prioritize transparency and accountability and establish an expectation of continued, if not, increased public engagement in accountability procedures.⁸⁷

As identified by the circuit court, there are numerous provisions within the Consent Decree that promote the State’s public policy of transparency and accountability regarding police discipline.⁸⁸ For example, the Consent Decree requires that “the process for submitting *and pursuing* complaints that allege violations of CPD policy or the law by CPD members is open and accessible for all individuals who wish to file complaints.”⁸⁹ Further, the Consent Decree states that “[m]eaningful community involvement is imperative to CPD accountability and transparency.”⁹⁰ The Consent Decree acknowledges the importance of past and ongoing community involvement in police reform and police

⁸⁴ Illinois v. Chicago Complaint, *supra* note 77, at 31.

⁸⁵ Illinois v. Chicago Complaint, *supra* note 77, at 31 (noting at Paragraph 202, that “[t]ransparency will also be a key feature of the consent decree that the State seeks”).

⁸⁶ Circuit Court Opinion, *supra* note 56, at 17.

⁸⁷ Consent Decree, *supra* note 46 (The Consent Decree contains a section titled “Accountability and Transparency” which includes numerous provisions related to the handling of misconduct complaints and investigations.)

⁸⁸ Circuit Court Opinion, *supra* note 56, at 17-18.

⁸⁹ Consent Decree, *supra* note 46, ¶ 421 (emphasis added).

⁹⁰ Consent Decree, *supra* note 46, ¶ 422.

accountability and establishes an expectation that community engagement and collaboration on the issues will continue into the future.⁹¹

The Illinois public policy as reflected in the content of the Consent Decree is well-founded.⁹² The public policy need for public participation in disciplinary proceedings is widely recognized.⁹³ The lack of transparency related to the investigation of police misconduct directly undermines public trust in police agencies.⁹⁴ Public monitoring can provide an important source of external accountability.⁹⁵

The Union argues that the Consent Decree cannot be viewed as conveying state-wide public policy because the agreement and its requirements merely create obligations that are specific to Chicago.⁹⁶ This argument makes no sense. To be sure, in filing suit against the City, the Attorney General made clear that the State can and does act locally to achieve its broader public policy goals.⁹⁷ Further, the Attorney General explicitly referred to the City's unconstitutional policing as a threat to the State of Illinois's public policy and

⁹¹ Consent Decree, *supra* note 46, ¶ 422.

⁹² Moran, *supra* note 22, at 187 (noting that “[p]reventing corruption and ensuring accountability of public servants like police officers are generally recognized as ‘strong public interests.’” (citing *Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia*, 812 F.2d 105, 116-17 (3d Cir. 1987)).

⁹³ See, e.g. Rushin, *Police Union Contracts*, *supra* note 11, at 1249; see also, Evan G. Hebert, *To Protect, Serve, and Inform: Freedom of Information Act Requests and Police Accountability*, 19 TEX. TECH. ADMIN. L.J. 271, 294 (2018) (“In the context of community-police relations, reviewing patterns of civilian complaints and internal investigations can reveal aberrations in police conduct that deviate from acceptable practices.”)

⁹⁴ Hebert, *supra* note 93, at 272.

⁹⁵ Hebert, *supra* note 93, at 294.

⁹⁶ Appellant Brief, *Chicago John Dineen Lodge #7 v. City of Chicago, et. al*, No. 1-24-0875 (“Union Brief”), at 26.

⁹⁷ *Illinois v. Chicago Complaint*, *supra* note 77, at 5 (“The Attorney General enforces the public policy of the State of Illinois to secure for all of its residents the freedom from discrimination against any individual because of his or her race, color, or national origin in connection with law enforcement.”)

the nondiscriminatory treatment of its residents.⁹⁸ The Attorney General also specifically identified the constitutional harm to Illinois residents that results from CPD's systemic failure to hold officers accountable.⁹⁹

3. Illinois courts have recognized a well-defined and dominant public policy in favor of an open, transparent government which applies to police discipline.

A public policy of transparency regarding police misconduct proceedings flows directly from the State's commitment to an open and transparent government. In another matter litigated between the parties, the Illinois Supreme Court held that the destruction of police disciplinary records would violate the State's well-defined public policy favoring the proper retention of government records because "government records are a form of property whose ownership lies with the citizens and with the State of Illinois."¹⁰⁰ In so finding, the court overrode an arbitration award that would have enforced a collective bargaining provision requiring the destruction of Chicago Police Department disciplinary records after a finite period of time.¹⁰¹ The court found that the destruction of the disciplinary records would be incompatible with Illinois statutory law, including the Local Records Act.¹⁰² In reaching this conclusion, the Supreme Court reiterated the importance of public access to police disciplinary records as expressed by the circuit court:

Destruction of important public records, such as the policy disciplinary files at issue here, undermines principles of government transparency that are so vital to the rule of law. If the City is to be responsive to the citizenry, it must

⁹⁸ Illinois v. Chicago Complaint, *supra* note 77, at 5.

⁹⁹ Illinois v. Chicago Complaint, *supra* note 77, at 13 ("As a direct and proximate result of CPD's systemic failure to provide officers with adequate training, supervision, accountability, and mental health support, numerous Illinois residents have been subjected to a repeated pattern of unconstitutional uses of force.")

¹⁰⁰ *Chicago v. FOP 2020*, *supra* note 63, ¶ 36.

¹⁰¹ *Id.* at ¶ 42.

¹⁰² *Id.*

have access to historical police disciplinary and investigative records to make better-informed decisions on policing.¹⁰³

The same principle applies here. Access to information related to police discipline should be publicly available to enable the public to make informed decisions on policing.

4. The Illinois statutory scheme for decertifying police officers reflects a well-defined and dominant public policy regarding transparency and accountability in addressing serious police misconduct.

The Illinois Law Enforcement Training and Standards Board (“ILETSB”), is a statewide body that governs law enforcement certification and decertification.¹⁰⁴ Having a state-managed process for certifying and decertifying officers is essential to “accountability, public trust in law enforcement, and public safety.”¹⁰⁵ Like similar boards in other states across the U.S., the ILETSB has the “unique power to protect communities against unethical, discriminatory, or abusive policing.”¹⁰⁶ Importantly, the ILETSB has the power to prevent harmful officers from committing further harm where their police agency fails to act.¹⁰⁷

In 2021, when the Illinois legislature enacted the Illinois Safety, Accountability, Fairness and Equity-Today Act (the “SAFE-T Act”), it included provisions that expand the circumstances in which the ILETSB has the discretion to rescind a police officer’s state

¹⁰³ *Id.* at ¶ 22.

¹⁰⁴ Illinois Police Training Act, codified at 50 ILCS 705.

¹⁰⁵ Ariel Hairston and Amy Thompson, *Two Years Since Taking Effect, Illinois’s New Police Officer Decertification Process is Stalled*, IMPACT FOR EQUITY REPORT, May 2024 (“Impact for Equity Report on Decertification”), available online at: <chrome-extension://efaidnbmninnibpcapjpcglclefindmkaj/https://www.impactforequity.org/wp-content/uploads/2024/05/Issue-Brief-SAFE-T-Act-Decertification.pdf>

¹⁰⁶ Hilary Rau, Kim Shayo Buchanan, Monique L. Dixon, and Phillip Atiba Goff, *State Regulation of Policing: POST Commissions and Police Accountability*, 11 UC IRVINE L. REV. 1349, 1352 (2021).

¹⁰⁷ Rau, et. al., *supra* note 106, at 1381.

certification or waiver of certification, a requirement for holding a law enforcement position in the state.¹⁰⁸ In particular, the SAFE-T Act made it possible for citizens, not just police administrators, to notify the ILETSB of police misconduct that could be the basis for decertification.¹⁰⁹

In addition, as outlined by Impact for Equity in their recent report on the status of Illinois' new decertification scheme, when enacting the SAFE-T Act, the Illinois legislature incorporated two mechanisms that promote transparency: annual reporting and new databases on officer conduct.¹¹⁰

This statutory scheme is strong evidence of the State's public policy of transparency related to police misconduct and public involvement in proceedings related to holding Illinois police officers accountable.

B. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT PRIVATE ARBITRATION PROCEEDINGS WOULD UNDERMINE ILLINOIS' WELL-DEFINED AND DOMINANT POLICY OF TRANSPARENCY AND ACCOUNTABILITY RELATED TO POLICE DISCIPLINARY MATTERS.

By impairing public engagement in the police disciplinary process, private arbitration proceedings would undermine police accountability in several respects. In *Richmond Newspapers, Inc. v. Virginia*, the seminal case on the right of public access to criminal trials under the First Amendment, the Supreme Court outlined numerous policy reasons why public observation of criminal proceedings are fundamental to democracy.¹¹¹ The imperatives supporting the need for public criminal trials are directly relevant in the

¹⁰⁸ 50 ILCS 705/6.1

¹⁰⁹ 50 ILCS 705/6.3(c)(2) ("Any person may also notify the Board of any conduct the person believes a law enforcement officer has committed.")

¹¹⁰ Impact for Equity Report on Decertification, *supra* note 105, at 6-7.

¹¹¹ 448 U.S. 555 (1980).

context of the arbitration of police disciplinary matters. Analogizing the key factors outlined in *Richmond Newspapers*, open arbitration proceedings have the potential to:

- enhance community understanding of the fairness of the process;
- discourage bias or partiality in the arbitrator's rulings;
- discourage perjury by both law enforcement and lay witnesses;
- allow an opportunity for rebuttal witnesses to identify themselves to counter incorrect testimony;
- provide the arbitrator, parties, and witnesses with outside scrutiny so as to motivate conscientiousness in the performance of their duties;
- instill public confidence in the disciplinary system;
- educate the public about the disciplinary system;
- allow victims an opportunity to observe to assess the fairness of the system; and
- have significant community therapeutic value.

This last point is particularly important. When the misconduct at issue involves an incident of significant public awareness and concern, such as a fatal officer-involved shooting, an open proceeding is tremendously important to the community's ability to gain a collective understanding of what actually happened, that the City investigated the matter fairly and thoroughly, and that the outcome was just under the rules and the law.

As will be outlined below, private arbitration proceedings would violate Illinois public policy in several respects. First, private arbitration proceedings would impair public monitoring and assessment of Chicago's complex police accountability system eroding trust which is essential to public safety. Second, private arbitration proceedings would undermine the effectiveness of the State's decertification system which relies, in part, on citizen information about police misconduct. Lastly, private arbitration proceedings would impede the public's ability to learn about and report police misconduct to ensure the State fulfills its obligation to provide favorable evidence to criminal defendants.

1. Private arbitration proceedings would undermine Illinois' well-defined and dominant public policy of transparency and accountability for police disciplinary matters

a. Private arbitration proceedings would impair the public's ability to assess the effectiveness of the various components of Chicago's police accountability system.

Open arbitration proceedings and reporting are necessary for citizens to be in a position to assess how well the disciplinary system is working such that reforms can be sought where and when necessary.¹¹² As the Attorney General stated in the Complaint, achieving the kind of “real, lasting reform” that is necessary to rebuild community confidence in CPD requires significant oversight.¹¹³

The Union argues that the State's public policy in favor of open government does not require real time access to arbitration proceedings, but rather, would be satisfied by the production of the arbitrator's report of findings and discipline pursuant to the Freedom of Information Act.¹¹⁴ However, access to public reports will not satisfy the public need to observe these important disciplinary proceedings as they occur. Open arbitration proceedings are necessary to assess how well each component of the accountability system is performing.

As discussed *supra* in Part I(D), the process of adjudicating serious CPD misconduct matters is too complicated to be reflected in a report. It involves the substantive work and decision-making of several government entities and various decision-makers. Closed arbitration hearings will undermine the public's ability to provide oversight of and

¹¹² See, Moran & Hodge, *supra* note 20, at 1251 (noting that public access to misconduct information can “empower civilians, journalists, and advocacy groups to identify both problematic police officers ... and patterns of violence in certain police departments.”)

¹¹³ Illinois v. Chicago Complaint, *supra* note 77, at 31.

¹¹⁴ Union Brief, *supra* note 96, at 36.

feedback on the integrity of the carefully crafted disciplinary system that the city of Chicago has created through democratic processes.¹¹⁵ Lack of sufficient oversight can allow flaws in the disciplinary system to go unchecked allowing improper officer behavior to go undetected or unaddressed.¹¹⁶ “A robust and well-functioning accountability system in which CPD members are held to the highest standards of integrity is critical to CPD’s legitimacy.”¹¹⁷

Illinois courts have also recognized the importance of quality disciplinary investigations.¹¹⁸ Public arbitration proceedings will enable citizens to observe the thoroughness and fairness of the investigations conducted by each of the three entities (COPA, BIA, and OIG) based on the evidence presented at arbitration hearings. Historically, lack of transparency regarding the disciplinary investigations conducted by COPA’s predecessor agency, the Independent Police Review Authority (“IPRA”) and by CPD’s BIA contributed to the City’s failure to identify and correct unlawful police practices, which engendered public distrust in CPD.¹¹⁹ Only by being present to hear and see the evidence first-hand, will the public be able to fully appreciate the nature and quality of the case as it is presented to the arbitrator. For example, reading summaries of witness testimony after the fact is no substitute for first-hand observation, particularly when witness

¹¹⁵ Spencer, *supra* note 3, at 161 (noting the public’s significant interest in holding police officers accountable because the public provides the resources to them as state agents).

¹¹⁶ Illinois v. Chicago Complaint, *supra* note 77, at 17 (noting the need to properly monitor activity and complaints); *see also*, Illinois v. Chicago Complaint, *supra* note 77, at 26 (noting the need to assess the quality of the work conducted by the investigative oversight agency).

¹¹⁷ Consent Decree, *supra* note 46, ¶ 420.

¹¹⁸ *Valio v. Bd. of Fire & Police Comm'rs of Vill. of Itasca*, 311 Ill. App. 3d 321, 331 (2nd Dist. 2000) (“A police department must be able to conduct accurate investigations of its officers engaged in questionable police conduct.”)

¹¹⁹ DOJ Findings Report, *supra* note 45, at 12.

credibility is a key factor in resolving factual disputes that are frequently outcome-determinative in police disciplinary matters.

Second, public arbitration proceedings will enable citizens *and officers* to assess whether CPD is imposing discipline consistently and fairly. It is important that CPD members have confidence in the legitimacy of the system that holds them accountable.”¹²⁰ Officers, other than the accused, should have the opportunity to see how the system is working so they are better informed and can express their concerns about the system to the City and the Union.

Third, public arbitration will enable citizens to assess how well the Department of Law is managing the process of charging officers and presenting evidence before the arbitrator. For example, there could be cases in which COPA conducts a thorough investigation gathering strong evidence of serious misconduct, but then the Department of Law is delayed in filing charges against the officer such that by the time the case is presented to the arbitrator, the case is weakened, by, for example a lost witness, and the arbitrator finds insufficient evidence to impose discipline. Public arbitration proceedings will create visibility around these kinds of systemic deficiencies because the public will be in a position to observe the case presented to the arbitrator as compared to the case outlined by the COPA investigative report.

The Chicago Department of Law is also inherently subject to conflicting objectives in determining which disciplinary complaints to pursue diligently because that same department is also responsible for defending Chicago police officers in both State and

¹²⁰ Consent Decree, *supra* note 46, ¶ 420.

Federal courts in litigation resulting from officers' actions giving rise to civil rights and tort litigation. In light of those conflicting responsibilities, public oversight is especially important.

Lastly, and quite importantly, public arbitration proceedings will enable citizens and officers to observe how fairly and equitably arbitrators are adjudicating these matters. Arbitration proceedings that take place behind closed doors can undermine accountability by shielding decision-making and negotiations.¹²¹ Unlike the broader criminal justice system, in which reviewing courts afford great deference to lower court factual determinations and legal conclusions, arbitrators hearing appeals of CPD disciplinary decisions have essentially *de novo* review.¹²² Because their arbitration outcomes are binding and can effectively end the litigation, it is imperative that there be effective oversight of the quality with which these non-representative actors are managing their significant responsibilities.¹²³  finding public arbitration proceedings unwarranted or unnecessary, the arbitrator below may merely have sought to avoid this additional scrutiny for himself and his colleagues. There is simply no principled reason why any such arbitrations cannot be conducted in public.

¹²¹ Spencer, *supra* note 3, at 161 (“[T]he traditional aims of arbitrations being more private in nature may serve as a counterproductive solution through shielding decision making and negotiations from public accountability.”)

¹²² Rushin, *supra* note 26, at 576-77 (noting that “arbitration on appeal provides officers with an opportunity to relitigate disciplinary matters with little deference to decisions made by police supervisors, city officials, or civilian review boards.”)

¹²³ Spencer, *supra* note 3, at 175 (advocating for public transparency and accountability in arbitration proceedings).

b. Lack of transparency around arbitration, a critical stage in the process for adjudicating serious police misconduct matters, will undermine public confidence in the accountability system.

As outlined above, since 1960 when the Chicago Police Board was created, proceedings related to the adjudication of serious police misconduct matters involving CPD officers have been publicly accessible.¹²⁴ As the DOJ noted, transparency related to Chicago Police Board proceedings was intended to enhance the public's and police officers' confidence in the process for handling serious police misconduct allegations."¹²⁵ In particular, the openness with which the Board adjudicated matters was viewed as a positive attribute when compared to the opacity of private arbitration.¹²⁶ The Union claims this historical degree of transparency is irrelevant because Police Board jurisdiction over these matters will essentially disappear under the new regime. That certainly may be the case, given that the vast majority of officers are likely aware that arbitrators tend to reduce or eliminate the disciplinary action and thus would be unlikely to choose adjudication by the Board over arbitration. Yet, that is even more reason to reinforce the long-standing history of transparency regarding matters that involve serious issues and incidents of great public concern.

2. Private arbitration proceedings would undermine the effectiveness of Illinois' scheme for decertifying officers who commit serious misconduct.

Like other state-wide commissions, the ILETSB can only act to decertify errant police officers when the board is made aware of the misconduct. Thus, providing citizens greater access to information about officer misconduct will enhance the ILETSB's ability

¹²⁴ See Knoohuizen, Chicago Police Board, *supra* note 38.

¹²⁵ DOJ Findings Report, *supra* note 45, at 92.

¹²⁶ DOJ Findings Report, *supra* note 45, at 91.

to protect Illinois citizens from poorly performing or incompetent police officers.¹²⁷ Closed arbitration hearings would limit the public's access to information about reportable police misconduct.

A citizen's ability to effectively exercise their statutory right to alert the ILETSB to misconduct warranting decertification could be extremely difficult without access to arbitration proceedings. When making these notifications, the ILETSB directs citizens to provide information that might only be made available to them through the observation of arbitration proceedings. For example, among other facts and information, the ILETSB asks citizens to provide:

- The full name, badge number, and physical description of the officer
- The full names, addresses, and physical descriptions of any witnesses
- A concise statement of facts that describe the alleged violation.¹²⁸

Moreover, allowing public access to arbitration proceedings is important because there could be situations where an arbitrator finds an officer has, in fact, committed a violation that would be grounds for decertification, but for whatever reason imposes no discipline. For the decertification system to be effective, it is imperative that those findings make their way to the ILETSB, which citizens or other observing officers will be in a position to do after having witnessed the arbitration proceedings. ILETSB relies on facts generated from local investigations to make its determinations regarding decertification. Private arbitration would limit its access to valuable information.

Moreover, note that, even if the arbitrator finds an officer committed serious misconduct and should be terminated, that officer might still seek employment at a law

¹²⁷ Rau, et. al., *supra* note 106, at 1384.

¹²⁸ 50 ILCS 705/6.3(d).

enforcement agency somewhere else in the state.¹²⁹ It is possible that the officer's agency may not report the termination to the ILETSB. The recent fatal officer-involved shooting of Sonya Massey by a Sangamon County Sheriff's Deputy is a poignant reminder of this. The deputy who killed Ms. Massey had a troubled history of serious misconduct moving between six central Illinois police agencies in just four years prior to being hired by the Sangamon County Sheriff.¹³⁰ Yet, for some reason, this information was not shared across the agencies. Citizens who have had the opportunity to witness arbitration proceedings would be in a more informed position to report misconduct worthy of decertification to the state such that the system is not solely reliant on the diligence with which law enforcement agencies fulfill their reporting obligations.

3. Private Arbitration proceedings would undermine the States' ability to comply with its constitutional and statutory obligations to provide favorable evidence to criminal defendants.

As this court has acknowledged, a "police officer's credibility is inevitably an issue in the prosecution of crimes and in the police department's defense of civil lawsuits."¹³¹ The State of Illinois has a constitutional obligation to disclose information or evidence that is favorable to criminal defendants.¹³² In *Giglio v. United States*, the U.S. Supreme Court held that the government's failure to disclose evidence that is material to the credibility of a government witness, such as a police officer, is a constitutional violation akin to the failure to disclose exculpatory information as required by *Brady v. Maryland*.¹³³ In

¹²⁹ Ben Grunwald, John Rappaport, *The Wandering Officer*, 129 YALE L.J. 1676 (2020).

¹³⁰ Farrah Anderson and Sam Stecklow, *Deputy charged with murder had previous employment issues*, ILL. TIMES, Aug. 1, 2024.

¹³¹ *City of Country Club Hills v. Charles*, 2020 IL App. (1st) 200546, ¶ 24 (citing *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (2011)).

¹³² IL. Supreme Court Rule 412.

¹³³ 405 U.S. 150 (1972).

addition to being a constitutional imperative, this disclosure requirement is codified in Illinois Supreme Court Rule 412.¹³⁴

As this court has stated, “[p]rior allegations of police misconduct may be deemed relevant to impeach an officer on the issues of bias, interest or motive to testify falsely.”¹³⁵ For example, in *People v. Tyler*, a criminal defendant argued that he deserved a new trial because the government withheld evidence of systemic police misconduct, which evidence was material and likely to change the result at trial.¹³⁶ The court agreed with the defendant, but ultimately denied the *Brady* claim because there was no evidence to suggest that the prosecutor was aware of the information.¹³⁷ This particular case is relevant to the debate in this matter because it demonstrates that sometimes prosecutors are not made aware of impeachment material related to law enforcement.

Public access to arbitration proceedings is important to ensure that the State is made aware of potential impeachment and exculpatory information that must be disclosed to criminal defendants.¹³⁸ This is particularly important for disciplinary matters involving allegations that the officer was untruthful in carrying out their duties by, for example, making false statements in reports or on the witness stand. An arbitrator could hear a case involving such allegations and find that, despite the fact that the officer lied on the job, they should not be disciplined. With private arbitration proceedings, the information about

¹³⁴ 134 Ill. 2d R. 412.

¹³⁵ *People v. Cacini*, 2015 IL App. (1st) 130135, ¶ 66 (citing *People v. Porter-Boens*, 2013 IL App. (1st) 111074, ¶ 11).

¹³⁶ *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 209-211 (recognizing that the information was material to the prosecution but denying the *Brady* claim on the basis that the law enforcement agency was unaware of the evidence at the time of the prosecution).

¹³⁷ *Id.*

¹³⁸ *See, Moran, supra* note 22, at 192.

the officer's misconduct could be suppressed within the Department. Whereas, with public proceedings the information about the officer's untruthfulness could be observed and conveyed to the appropriate authorities.

C. PRIVATE ARBITRATION PROCEEDINGS ARE NEITHER NECESSARY NOR LEGALLY REQUIRED.

There is neither need nor legal requirement for privacy in arbitration related to police misconduct.¹³⁹ The Union cites the Illinois Public Relations Act ("IPLRA") and the Worker's Rights Amendment to the Illinois Constitution to argue that arbitration should be private. Neither supports the Union's position on this issue. The Illinois Public Labor Relations Act was enacted to regulate labor relations between public employers and employees including issues related to conditions of employment, such as discipline, and dispute related to collective bargaining agreements.¹⁴⁰ The Worker's Rights Amendment reinforces the fundamental right of workers to collectively bargain to negotiate working conditions and "to protect their economic welfare and safety at work."¹⁴¹ Although both sources of law are relevant to the issue of arbitration as a method of dispute resolution, neither requires private arbitration proceedings.¹⁴²

The Union relies on Section 15 of the IPLRA for the proposition that the IPLRA takes precedence over any contrary ordinances, rules or policies and, thus, the IPLRA preference for arbitration should be honored over and above any public policy of transparency.¹⁴³ This argument is unavailing. First, there is nothing in the IPLRA that

¹³⁹ Spencer, *supra* note 3, at 175 ("the need for privacy in police arbitrations is non-existent").

¹⁴⁰ 5 ILCS 315/2.

¹⁴¹ Ill. Const. Art. I, § 25.

¹⁴² See 5 ILCS 315; Ill. Const. (1970), Art. I, § 25(a).

¹⁴³ Union Brief, *supra* note 96, at 34.

requires private arbitration. Second, the Illinois Supreme Court has already rejected this argument. In *Chicago v. FOP 2020*, that court noted that under such a reading of Section 15, “the public-policy exception established and applied by this court in numerous decisions would cease to exist.”¹⁴⁴

IV. CONCLUSION

The arbitrator’s award, which was delivered in a manner indicative of questionable impartiality,¹⁴⁵ was a striking break from the decades-long history of open proceedings related to serious police misconduct for CPD officers. The circuit court correctly concluded that arbitration of serious misconduct cases should be transparent. The prospect of open arbitration proceedings would in no way impair the due process rights of officers in their grievances. However, private arbitration would seriously undermine public oversight of and trust in Chicago’s police accountability system, which, if history is any guide, continues to warrant robust community oversight and participation. Moreover, the State of Illinois has a vested interest in the proper adjudication of serious misconduct cases for several important public policy reasons. Such proceedings should remain open to support trust in law enforcement and thereby enhance public safety, to ensure that citizens of Illinois can exercise their power to participate in the State’s decertification scheme as the legislature has intended, and to ensure information flows to the State, enabling it to fulfill its constitutional obligations to criminal defendants. The Amici Curiae strongly urge

¹⁴⁴ *Chicago v. FOP 2020*, *supra* note 63, ¶47.

¹⁴⁵ In the Award, the arbitrator accused Mayor Johnson and members of the City Council, who collectively voted to reject the arbitrator’s initial award, of violating their oath of office and ignoring the rule of law. Award, *supra* note 25, at 61. In addition, the arbitrator referred to the City’s rejection of the initial award as “Chicago’s Version of ‘The Big Lie.’” *Id.* This commentary was highly inappropriate for a neutral arbiter.

the court to affirm the circuit court ruling requiring that arbitration proceedings of serious Chicago police misconduct cases be held open to the public. Holding otherwise would be a major setback for Chicago police reform and will likely undermine public safety.

Date: October 31, 2024

Respectfully Submitted,

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SUPREME COURT RULE 341(c)
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 containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 37 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on October 31, 2024, I electronically filed the foregoing Amicus Brief In Support of Defendant- Appellees, accompanied by the proposed Amicus Brief, with the Clerk of the Court for the Illinois Supreme Court, using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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

Cook County 1st District Appellate Courthouse
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Chicago, IL.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

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Appendix A

The Proposed Amici are individuals and organizations that have worked on this policy issue both locally and nationally. They consist of the following individuals and organizations.

- a. **Sharon Fairley** is a professor and graduate of the University of Chicago Law School, who has taught at the Law School since 2015. She became a Professor from Practice in 2019. Professor Fairley's teaching responsibilities include criminal procedure, policing, and federal criminal law. Before joining the Law School, Professor Fairley spent eight years as a federal prosecutor with the United States Attorney's Office for the Northern District of Illinois, investigating and trying criminal cases involving illegal firearms possession, narcotics conspiracy, bank robbery/murder, murder for hire and economic espionage, among other criminal acts. She also served as the First Deputy Inspector General and General Counsel for the City of Chicago Office of the Inspector General. In December 2015, following the controversial officer-involved shooting death of Laquan McDonald, Professor Fairley was appointed to serve as the Chief Administrator of the Independent Police Review Authority (IPRA), the agency responsible for police misconduct investigations. She was also responsible for helping create and build Chicago's Civilian Office of Police Accountability (COPA), which replaced IPRA and of which she was the first head. Professor Fairley's areas of academic inquiry focus on criminal justice reform with an emphasis on constitutional policing and police accountability. She frequently writes and speaks about use of force by law enforcement, civilian oversight of law enforcement, and other police reform strategies.
- b. **Georgetown Center of Innovation in Community Safety** is a pioneering organization dedicated to promoting safer and more equitable communities through innovative approaches to public safety that emphasize restorative justice, public health and the needs of vulnerable populations. CICS works on programs to train police officers and leads the ABLE Project (Active Bystandership for Law Enforcement), a national program designed to prevent misconduct within law enforcement agencies. CICS is also deeply committed to policy reform and advocacy, working with local, state and national partners to advance policies that reduce racial disparities, protect civil rights and enhance public safety.
- c. **Impact for Equity**, formerly Business and Professional People for the Public Interest, has been a catalyst for racial, economic and social justice in Chicago and Illinois since its founding in 1969. It's areas of focus include the criminal justice system, police accountability and housing. Impact for Equality utilizes a combination of legal tools, police research, advocacy, organizing and convening to work towards transformational change. For example, the organization worked for

years in partnership with the Grassroots Alliance for Police Accountability, eventually resulting in the 2021 passage (by the Chicago City Council) of the Empowering Communities for Public Safety Ordinance, which created a citywide community oversight commission with responsibility for overseeing systematic reform of the Chicago Police Department and its related disciplinary agencies.

- d. **The Chicago Council of Lawyers** is a progressive bar association founded in 1969 to analyze and bring about reform in Chicago's legal systems. For the past 20 years the Council's Civil Liberties Committee has been deeply engaged in monitoring and reforming Chicago police oversight and disciplinary systems, including holding annual panels on that topic, negotiating with City and State legislators on reforms to those systems, advocating for the entry of the Chicago Consent Decree concerning the police department and related agencies, participating in various coalitions over the years to improve those systems and testifying on the present issue before the Chicago City Council.
- e. **Mark Iris** is a distinguished expert in police accountability, who received his Ph.D. from Northwestern University. From 1984 to 2004, he served as the Executive Director of the Chicago Police Board, where he monitored hundreds of police misconduct cases, including cases involving former Chicago Police Cmdr. Jon Burge. In this role he also participated in the City of Chicago's First Amendment Consent Decree, ensuring protections for citizens engaged in free speech. Iris' research focuses on use of data in law enforcement. Currently a Lecturer Emeritus in Mathematical Methods in the Social Sciences at Northwestern University, he works with students on projects assisting police departments in cities like New York, Los Angeles and Chicago that assess Early Intervention Systems, which track officers' behavior to prevent misconduct. Professor Iris has also contributed extensively to academic discourse, with publications on police discipline, crime hot spots and law enforcement litigation, appearing in journals such as the *Journal of Criminal Law and Criminology* and *Police Quarterly*. He has also served as an expert witness in police-related litigation.
- f. **Christy Lopez** joined the Georgetown Law faculty as a distinguished Visitor from Practice in 2017 and became a Professor from Practice in 2020. From 2010 to 2017, Professor Lopez served as a Deputy Chief in Chief in the Special Litigation Section of the Civil Rights Division at the U.S. Department of Justice. Professor Lopez led the Section's group conducting pattern-or-practice investigations of police departments and other law enforcement agencies, including litigating and negotiating settlement agreements to resolve investigative findings. Professor Lopez directly led the team that investigated the Ferguson Police Department and was a primary drafter of the Ferguson Report and negotiator of the Ferguson consent decree. She also led investigations of many other law enforcement agencies, including the Chicago Police Department, the New Orleans Police Department, the Los Angeles Sheriff's Department, the Newark (New Jersey) Police Department, and the Missoula, Montana investigation. Throughout her career, Professor Lopez has been involved in police reform efforts at the state, local,

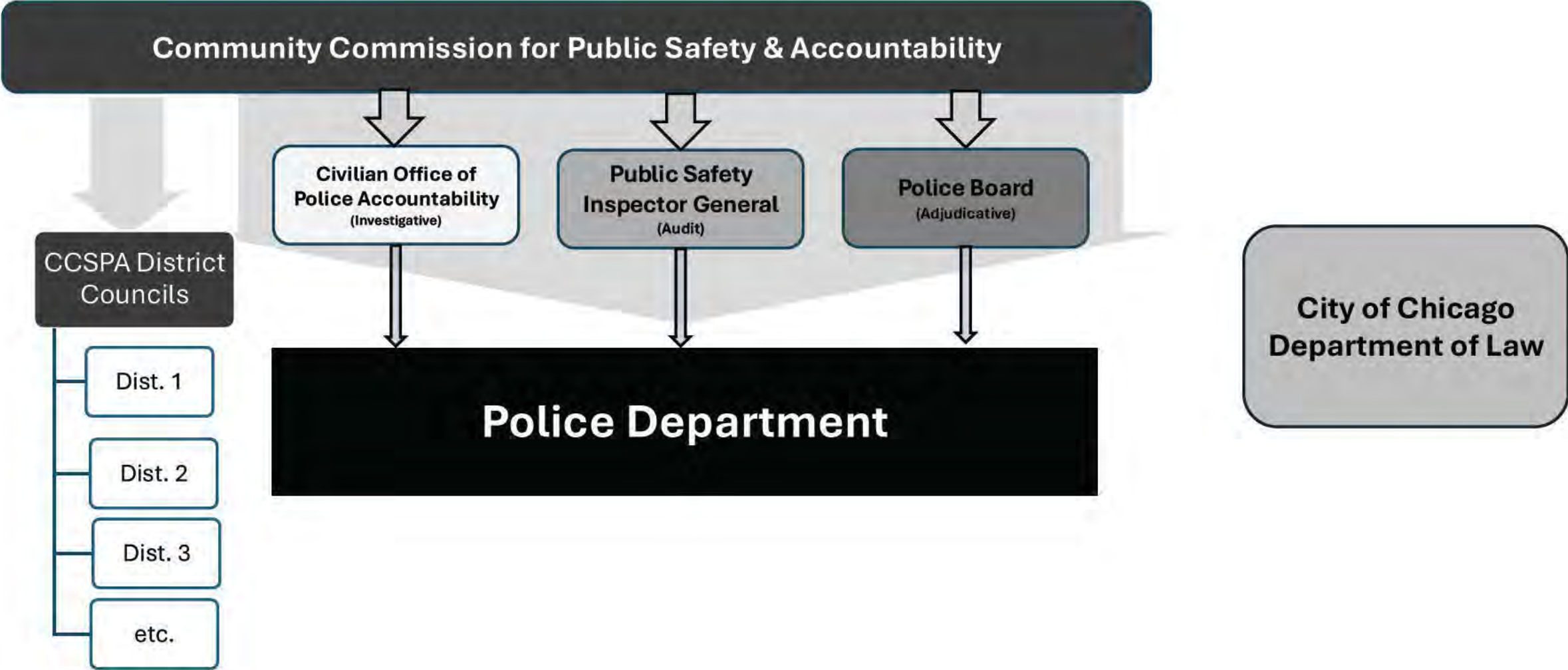
and federal levels: she has conducted independent reviews of police shootings; served on the Maryland Attorney General's Task Force on Electronic Weapons; was a contributing writer on the Prison Rape Elimination Act (PREA) Commission Report on sexual violence in prisons, jails, and lockups; was an Advisor and Project Fellow on the American Law Institute (ALI) Principles of Law, Policing; co-chaired the DC Police Reform Commission, and has served on various other commissions and working groups related to police standards and practices.

- g. **Tracey Meares** is the Walton Hale Hamilton Professor of Law at Yale Law School. Prior to joining the Yale Law School faculty, she was the Max Pam Professor of Law and director of the Center for Studies in Criminal Justice at the University of Chicago Law School. She is a co-editor of the *Annual Review of Criminology*. Professor Meares has been a member of the National Research Council's Committee on Law and Justice. She was appointed by then-Attorney General Holder to serve on the Office of Justice Program's Science Advisory Board and by then-President Obama to the President's Task Force on 21st Century Policing. She was elected as a Fellow to the American Academy of Arts and Sciences in 2019 and also serves as a member of the Joyce Foundation's Board of Directors.
- h. **Rachel Moran** is an associate professor and founder of the Criminal and Juvenile Defense Clinic at the University of St. Thomas School of Law. Professor Moran's work focuses on police reform, issues pertaining to police accountability, and public access to records of police misconduct. Before coming to the University of St. Thomas, Professor Moran taught as a Clinical Fellow at the University of Denver Sturm College of Law's Criminal Defense Clinic and served as an adjunct professor at Chicago-Kent College of Law. After law school Professor Moran worked at a private criminal defense firm and as an assistant appellate defender with the Office of the Illinois State Appellate Defender, where she argued numerous criminal appeals in the Illinois Appellate courts and the Illinois Supreme Court.
- i. **Stephen Rushin** is the Judge Hubert Louis Will Professor of Law at the Chicago Loyola School of Law, where he focuses his research, writing and teaching in law enforcement reform and police accountability. He teaches a class on police accountability and has published an article on the problems with using arbitration in the police accountability system. He has also published a book on the difficulties with federal intervention in American police departments.
- j. **Randolph Stone** is a legal scholar and a former Clinical professor of Law at the University of Chicago Law School. His interests include criminal law, juvenile justice, the legal profession, indigent defense, race and criminal justice, evidence and trial advocacy. Before retirement Stone's leadership positions included Director of the Criminal & Juvenile Justice Clinic, Public Defender of Cook County and he was one of five criminal justice leaders who served on Mayor Rahm Emanuel's Police Accountability Task Force in 2015.

- k. **Seth Stoughton** is an Associate Professor at the University of South Carolina School of Law and a Core Faculty Member with the Rule of Law Collaborative. His study of policing primarily focuses on the use of force, agency and professional culture, training, law and policy. Professor Stoughton has served as an expert in a number of high profile police cases, including testifying in the criminal prosecution of Derek Chauvin, who was convicted of killing George Floyd. Prio to joining the faculty at South Carolina, Professor Stoughton was a Climenko Fellow and Lecturer on Law at Harvard Law School. Before attending law school, Professor Stoughton was an officer with the Tallahassee Police Department for five years, where he trained other officers, wrote policies to govern the use of new technologies, and taught personal safety and self-defense courses in the community.

Appendix B: Figure 1

Chicago Police Accountability System: 2020 to Present



Appendix B: Figure 2

CPD Disciplinary Process Overview (for serious misconduct cases)

