

SJC-13386

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

CHRIS GRAHAM, JORGE LOPEZ, MEREDITH RYAN, KELLY AUER,
COMMITTEE FOR PUBLIC COUNSEL SERVICES,
and HAMPDEN COUNTY LAWYERS FOR JUSTICE,

Petitioners-Appellants,

v.

DISTRICT ATTORNEY OF HAMPDEN COUNTY,

Respondent-Appellee.

**ON RESERVATION AND REPORT FROM
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY**

**BRIEF *AMICI CURIAE* FOR THE PIONEER VALLEY PROJECT,
CITIZENS FOR JUVENILE JUSTICE, AND THE CRIMINAL
JUSTICE INSTITUTE AT HARVARD LAW SCHOOL IN
SUPPORT OF THE PETITIONERS-APPELLANTS**

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STATEMENTS OF INTEREST OF *AMICI CURIAE*

Pioneer Valley Project (“PVP”) has been building grassroots power for racial and economic justice in Springfield since 1996. PVP believes that people should have a say in the policy decisions that shape their lives and therefore should not avoid the exercise of power to promote justice and advance the common good. PVP is committed to transforming institutions which dehumanize and cause harm to communities of color and other historically marginalized groups. PVP organizes for and wins systemic changes that improve people’s lives in Springfield and in the region.

Citizens for Juvenile Justice (“CfJJ”) is the only statewide, independent, nonprofit organization working exclusively to improve the juvenile justice and other youth serving systems in Massachusetts. CfJJ’s mission is to advocate statewide systemic reform to achieve equitable youth justice. This includes promoting smart policies that advance the healthy development of children and youth so they can grow up to live as responsible and productive adults in our communities. CfJJ believes that both children in the system and public safety are best served by a fair and effective system that recognizes the ways children are different from

adults and that focuses primarily on rehabilitation rather than an overreliance on punitive approaches. Core to these ideas of fairness and equity is ensuring that young people are not negatively impacted by overzealous and biased policing, which research shows results in higher levels of anxiety and trauma in young people.

The Criminal Justice Institute at Harvard Law School (“CJI”) is the curriculum-based criminal defense clinical program of Harvard Law School, providing classroom instruction and hands-on experience for students who represent indigent adults and juvenile clients facing misdemeanor and felony charges in the Boston criminal courts.* CJI also researches issues in the criminal legal system, particularly those that impact poor people and people of color both nationally and in Massachusetts. CJI advances issues of importance to our clients which may affect their rights in court, as well as broader issues that impact the administration of justice in the criminal legal system. Ensuring that people accused of crimes have access to information about the credibility of police officers involved in their cases is essential to CJI’s mission.

* The Criminal Justice Institute does not represent the official views of Harvard Law School or Harvard University.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Judicial Court Rule 1:21, the Pioneer Valley Project and Citizens for Juvenile Justice represent that they are 501(c)(3) organizations under Federal law and the laws of the Commonwealth of Massachusetts. The Criminal Justice Institute represents that it is a clinical program of Harvard Law School, a 501(c)(3) organization. *Amici* do not issue any stock or have any parent corporation, and no publicly held corporation owns stock in amici.

PREPARATION OF AMICUS BRIEF

Pursuant to Appellate Rule 17(c)(5), *amici* and their counsel declare that:

- (a) no party or party's counsel authored this brief in whole or in part;
- (b) no party or party's counsel contributed money to fund preparing or submitting the brief;
- (c) no person or entity other than the *amici curiae* contributed money that was intended to fund preparing or submitting a brief; and
- (d) counsel has not represented any party in this case or in proceedings involving similar issues, or any party in a case or legal transaction at issue in the present appeal.

INTRODUCTION

“Racism and brutality are still a scourge we have yet to erase. Maybe this time?”¹

- Wayne E. Phaneuf, retired executive editor of *The Springfield Republican*, who grew up in Springfield’s McKnight neighborhood, reprinting a 1997 essay about Springfield police violence in June 2020

“The taxpayers of our city were lied to for a very long time because each time there was a new case of police misconduct they were told there was absolutely nothing wrong with the police department and yet here we are approving another \$5 million to settle police misconduct cases.”

- Springfield City Councilor Orlando Ramos, Nov. 2021²

The Hampden County District Attorney’s Office (“HCDAO” or “the Office”) opens its brief by contrasting the *rhetoric* and the *record* in this case. *Amici* write to redirect this Court’s attention to the *lived reality* of

¹ Phaneuf, *One People, One House: Injustices of police brutality in Springfield haunt us all*, MassLive (June 21, 2020), <https://www.masslive.com/opinion/2020/06/one-people-one-house-injustices-of-police-brutality-in-springfield-haunt-us-all.html>.

² Tuthill, *Springfield City Council approves \$5 million fund to settle police misconduct cases*, WAMC (Nov. 16, 2021), <https://www.wamc.org/news/2021-11-16/springfield-city-council-approves-5-million-fund-to-settle-police-misconduct-cases>.

Springfield community members. For decades, people of color have documented, protested, and organized to uproot a culture of violence within the Springfield Police Department (“SPD”).³ Other *amici* illuminate the scourge of wrongful convictions from official misconduct and propose constitutionally rooted rules of disclosure—rules about the balance of power between a government and its citizens. But at base, this

³ See, e.g., *Policing Our Community: Demonstrations in Springfield against police actions, 1965 to 2015*, MassLive (May 12, 2015), https://www.masslive.com/news/2015/05/policing_our_community_follow_i.html; Johnson, *Policing Our Community: Do lingering issues make Springfield ripe for unrest?*, MassLive (May 12, 2015), https://www.masslive.com/news/2015/05/policing_our_community_follow_i.html; Goonan, *Springfield groups call for open police commissioner process, urge mayor to consider allegations against 1 deputy chief*, MassLive (Mar. 17, 2014), https://www.masslive.com/news/2014/03/springfield_community_groups_c.html; Johnson, *SPD Blues: Springfield Police Department’s long history of misconduct, civil rights violations & lawsuits*, MassLive (Nov. 15, 2020), <https://www.masslive.com/springfield/2020/11/spd-blues-springfield-police-departments-long-history-of-misconduct-civil-rights-violations-lawsuits.html>; Johnson, *NAACP, Pioneer Valley Project criticize pace of Springfield police reform, call on DOJ to issue ‘consent decree,’* MassLive (Jan. 28, 2021), <https://www.masslive.com/police-fire/2021/01/naacp-pioneer-valley-project-criticize-pace-of-springfield-police-reform-call-on-doj-to-issue-consent-decree.html>; Swan, *Opinion, Springfield Police Department can’t fix a problem if it denies it exists* (Viewpoint), MassLive (Apr. 24, 2022), <https://www.masslive.com/opinion/2022/04/springfield-police-department-cant-fix-a-problem-if-it-denies-it-exists-viewpoint.html>.

case is about the vulnerable people who were punched, kicked, pistol-whipped, demeaned, and brutalized by a police force acting as violence workers, operating in a culture of impunity, and disregarding the humanity of the people they were sworn to protect. This includes people swept into criminal punishment, who in every case deserve to know whether the actors accusing them of wrongdoing—armed by the state, supported by our tax dollars, and charged with upholding the law—have *themselves* engaged in illegal behavior.

SUMMARY OF ARGUMENT

History shows that when local officials are left to their own oversight, brutality targeting Springfield’s Black and Hispanic residents continues unabated—waxing until the next chorus of outrage and community action forces it to wane, cycling anew once met by official obstruction.⁴ Without this Court’s intervention, this pattern will endlessly reproduce. *Infra* at 18-32. And though well-documented in the

⁴ See, e.g., Pioneer Valley Project, Timeline of Police Misconduct & Community Response (2023), <https://static1.squarespace.com/static/63bc6f2694fcbb5b1eaccfd3/t/64d144b5567fe02886939004/1691436233184/PVP+Policing+Misconduct+and+Action+Timeline+30923+A.pdf>.

exonerations involving official misconduct from Springfield, see Br. of Amici Curiae New England Innocence Project, the Innocence Project, Inc., and the Boston College Innocence Program at 24-27, as well as individual cases that comprise the pattern and practice of excessive force found by the Department of Justice (“DOJ”)—which the City of Springfield has now formally settled through a Consent Decree, R4:37⁵—the racial targeting of this brutality has, to date, gone unaddressed. *Infra* at 32-37. *Amici* urge this Court to find that the Commonwealth’s burden to initiate a systematic review of systemic racism, brutality, and coverups in policing and prosecution in Springfield is met here, and that disclaiming the resources or the inclination to do so cannot serve as a shield to prosecutors’ existing obligations to honor defendants’ constitutional rights. *Infra* at 38-51.

⁵ See, e.g., Frenier, *In update a year after federal agreement, Springfield police now has a use of force review panel*, New Eng. Public Media (Mar. 24, 2023), <https://www.wbur.org/news/2023/03/24/force-use-springfield-police-justice-department>; Tuthill, *Springfield Police Dept. is making progress on reforms demanded by DOJ*, WAMC (Mar. 22, 2023), <https://www.wamc.org/news/2023-03-22/springfield-police-dept-is-making-progress-on-reforms-demanded-by-doj>.

I. The findings in the July 2020 Department of Justice Report only begin to capture a long history of excessive force against people of color by officers throughout the Springfield Police Department.

The Springfield Police Department (“SPD”) has a longstanding pattern of excessive force, racial targeting, and lack of accountability. Publicly reported incidents just scratch the surface of what Black and Latin residents of Springfield know to be longstanding patterns of violence, disrespect, and dehumanization evinced by the SPD. In the words of Pioneer Valley Project member Michael Anderson:

The broken relationship between our community and the Springfield Police Department is nothing new. The violence and brutality that the Black and Latin people have experienced at the hands of this system has been a staple in our community for many, many decades. As a child I would hear the stories of police misconduct and I was always told that it could be me.

Being a young teenager it was scary because I knew I had to be home before the street lights came on...not because of my mother’s curfew, but I didn’t want to be caught by the cops.

I found myself in this situation more times than I wanted. On one occasion I was walking with a few friends and the police pulled up and asked, “Where are you guys headed?!” That led to me being punched in the stomach and chest a few times, thrown into a police cruiser, and eventually left in

the middle of Blunt Park. Just imagine the feeling, the fear, and the trauma that experience gives you. It becomes engrained in your soul. All I could think of was my mom saying, “Just get home safe!” My friends and I made it into a game...Beat the police home before they beat you!! This is what the reality is for us in our community. This is what this system has created in our community. A level of distrust and unsavory memories that continue to haunt us. I will not say it’s all police officers, but this system protects the ones that brutalize and victimize the citizens of this community.⁶

The pattern of violence and coverups within the Springfield Police Department can be traced back much farther than ten years, and beyond the limited ambit of the Narcotics Bureau. This does not make the violence visited upon community members a “distant historical footnote,” Resp. Br. at 28—it illustrates an uninterrupted pattern. Tracing the history of publicized incidents that pre-date the period of review in the DOJ report is instructive because it shows a clear pattern: officers engage in violence targeted at people of color, community members are arrested and prosecuted, officers are never or only belatedly investigated, and

⁶ Statement by Michael Anderson submitted for inclusion in a letter by Pioneer Valley Project before the Single Justice in this matter. A similar statement appears at Michael Anderson, Pioneer Valley Project (PVP) Leader, Mass. Communities Action Network, <https://www.mcan.us/pvp-policing-michael-anderson>.

criminalized community members tend to experience harsher consequences than the officers who engaged in wrongdoing; even when there is video, officers have historically been cleared of misconduct or escaped consequences. Leadership has changed over the past five decades, but the pattern shown in past incidents, the DOJ report, and the history of this litigation is a constant. The past is prologue.

In July 1965, Black residents of Springfield outside the Octagon Lounge were met with excessive force and brutality while waiting outside the nightclub; eighteen people were arrested, and Black witnesses testified that “police lashed out with night sticks, fists, and feet; that they beat prisoners at the scene, on the way to the station, and inside police headquarters.’ . . . Later, the police would admit to ‘using clubs on two occasions against defendants struggling and fighting with them.”⁷

⁷ Tucker, “*What Happened in Springfield*”: *Housing, Police, and the 1965 Octagon Lounge Incident*, 75 *New Eng. J. Hist.* 121 (Fall 2018), https://3d899383-0554-4820-97ca-9fb3486ffc0c.filesusr.com/ugd/725a03_87f310c3ecb0497eb78f7836704d0b6b.pdf, citing Crocket, *What Happened in Springfield, What Caused It, What Next?*, *Bos. Globe*, Aug. 21, 1965, p. 2; Higgins, *The Five-Month Summer: A Report on Procedures of the Board of Police Commissioners of the City of Springfield, Massachusetts, for the Hearing and Decision of Allegations of Police Brutality by Persons Arrested July 16th–17th, 1965, at the Octagon Lounge, Hampden County Chapter of the Civil*

However, the police did not otherwise admit to many eyewitness reports. Community members and historians point to the July 1965 Octagon Lounge incident as one of the most significant flashpoints where Springfield's Black residents called power to account for the police department's brutality of Black residents.⁸ After months of investigations, charges, and witness testimony, "In the end, the six patrolmen and Sergeant Williams were all cleared of the charges against them."⁹ By contrast, twelve individuals who had been arrested at the Octagon Lounge on July 16, 1965 were found guilty of disturbing the peace; most were sentenced to a criminal fine.¹⁰

In September 1981, Clinton Thurston was killed by Springfield police officer Perry who shot a bullet through Mr. Thurston's brain during his attempt to evade arrest in a low-speed chase after 911 callers reported Mr. Thurston had abducted a woman who had a restraining order against him. See *Kibbe v. City of Springfield*, 777 F.2d 801, 802–03 (1st Cir.

Liberties Union of Massachusetts and the Boston College Law School, June 6, 1966, at 4–5.

⁸ *Id.* at 125, 131.

⁹ *Id.* at 145.

¹⁰ *Id.*

1985). During the chase, after Thurston avoided ineffectual police roadblocks, Officer Perry on a motorcycle fired two shots—one striking a nearby house, and the other striking Thurston in his brain. The car slowed to a stop, and in response:

An officer ordered Thurston out of the car; he was unresponsive. Nevertheless, an officer struck Thurston on the head with a flashlight, dragged him out of the car, and handcuffed him face down. Perry failed to report that he shot Thurston and the officers involved in Thurston’s transport to the hospital were not told that Thurston was shot.¹¹

This was not the only time a Springfield police officer would strike an unresponsive or restrained man with a flashlight and fail to disclose a violent (and in this case, lethal) assault.¹² Mr. Thurston’s sister brought

¹¹ Freeman, *Foreword—Police Misconduct and Kibbe v. City of Springfield*, 40 W. New Eng. L. Rev. 393, 397 (2018).

¹² Johnson, *Springfield Police Department launches criminal investigation of four officers who beat black suspect*, MassLive (Jan. 8, 2010), https://www.masslive.com/news/2010/01/springfield_police_department_5.html (“The Police Department is conducting a criminal investigation into the actions of four officers during a traffic stop in which 28-year-old black city man was beaten by a white officer with a flashlight, The Republican has learned. The incident was caught on video by an anonymous bystander, and the officer shown swinging the flashlight is identified in the arrest report as patrolman Jeffrey M. Asher.”); Gorlick, *Principal files police brutality lawsuit*, Associated Press (Jan. 11, 2005), <https://www.southcoasttoday.com/article/20050111/news/301119962>

a wrongful death lawsuit against multiple officers and the City of Springfield. At the district court level, only Officer Perry and the City of Springfield were found liable. The city appealed. The Court of Appeals held that the jury could reasonably have found it was the police department's gross negligence in training that caused premature use of deadly force against Mr. Thurston, and thus the City of Springfield could be held liable. The U.S. Supreme Court granted certiorari and heard oral argument, but later dismissed the writ as improvidently granted. *See generally City of Springfield v. Kibbe*, 480 U.S. 257 (1987). The jury had awarded one dollar in compensatory damages and five hundred dollars in punitive damages against the officer and compensatory damages in the amount of fifty thousand dollars against the City. *Kibbe*, 777 F.2d at 802.

In 1994, a Springfield police officer shot and killed Benjamin Schoolfield, a 20-year-old unarmed Black man, after a false report that the van he was driving was stolen. "A grand jury cleared Officer Brown

("Greer says the police hit him with what he believed to be nightsticks and a flashlight then handcuffed him behind his back and shackled his legs.").

of wrongdoing, and a police commission decided not to hold disciplinary hearings, so his friends and colleagues decided to give him a party at the Ale House, a downtown tavern.”¹³ “The party was publicized on bulletin boards at police headquarters by a poster that congratulated Brown for ‘a job well done’ and encouraged him ‘to keep up the good work.’”¹⁴ Schoolfield’s family filed a wrongful death civil suit and the City of Springfield ultimately settled the suit for \$700,000.¹⁵

In March 1997, a bystander filmed Patrolman Jeffrey Asher kicking a 47-year-old Black man named Roy Parker in the head while other officers held him down. The police were attempting to arrest Parker on a default warrant for a missed court appearance on a pending assault

¹³ *A Party for a Cleared Police Officer Stirs Up Racial Tension*, N.Y. Times (July 24, 1994), <https://www.nytimes.com/1994/07/24/us/a-party-for-a-cleared-police-officer-stirs-up-racial-tension.html>.

¹⁴ Donn, *Fallout Spreads After Party For Officer Who Shot Black Motorist*, Associated Press (July 6, 1994), <https://apnews.com/article/015675021e4c8945b237a62f46fa8ece>.

¹⁵ Turner, *Investigating the Springfield Police Department*, Valley Advocate (Jan. 19, 2012), <https://valleyadvocate.com/2012/01/19/investigating-the-springfield-police-department>.

charge.¹⁶ It took the police two weeks before they probed charges—officials “blamed the delay on the failure of witnesses to come forward.”¹⁷ The video triggered “public outcry and prompted state and federal investigations, but Asher was cleared of any criminal wrongdoing, suspended for one year without pay and ordered to undergo sensitivity training.”¹⁸ The other officers were not disciplined for failure to intervene.

In November 2004, a Black school principal named Douglas Greer was beaten by multiple officers when police responded to a call from a store clerk about an unresponsive motorist at a gas station; he was feeling disoriented and suffering a diabetic attack. “When the police arrived they broke the car windows and pulled Greer out through the shattered passenger’s side window even though his car doors were

¹⁶ Donn, *Officer caught kicking suspect on videotape suspended indefinitely*, Associated Press (Apr. 14, 1997), <https://apnews.com/article/e8339042760f73bd7c97b87b283d50c0>.

¹⁷ Flynn, *Man who filmed incident disputes police*, MassLive (Apr. 18, 1997), reprinted in *From the archives: Stories involving Springfield Police Officer Jeffrey M. Asher*, MassLive (Jan. 8, 2010), [https://www.masslive.com/news/2010/01/from the archives cases involv.html](https://www.masslive.com/news/2010/01/from-the-archives-cases-involv.html).

¹⁸ Phaneuf, *supra* note 1.

unlocked”¹⁹ The officers accused him of being high on drugs.²⁰ The officers involved in kicking, choking, and beating Greer—including with a flashlight—were Jeffrey Asher, James Kervick, James Shewchuck, and James Moriarty. Greer required 18 stitches to close lacerations in his head.²¹ All of the officers were cleared of wrongdoing in February 2005 by the Police Commission in a 3-2 vote, but Greer later won a \$180,000 settlement in response to a civil suit.²²

In July 2009, a 15-year-old Black kid named Delano M. Walker Jr. was on his phone talking to his girlfriend and walking with a couple of friends on bicycles when two Springfield police officers stopped them, investigating recent vehicle break-ins. Officer Sean Sullivan ordered Walker to get off the phone, and when he refused, Sullivan “lunged for his throat.”²³ At that point, Delano Walker backed away and into the path

¹⁹ Gorlick, *supra* note 12.

²⁰ *Id.*

²¹ *Police probing brutality charges made by Springfield principal*, Associated Press (Nov. 9, 2004), <https://www.seacoastonline.com/article/20041109/News/311099969> (“Greer is wearing a bandage on his head that covers 18 stitches.”).

²² Johnson, *supra* note 12.

²³ Crimaldi & Murphy, *I could crush your [expletive] skull and [expletive] get away with it.* *A deep look at the Springfield police*, Bos. Globe (Sept. 1, 2018),

of an oncoming car, which struck and killed him. Police cleared Sullivan of wrongdoing and the Hampden County District Attorney's Office did not pursue charges. In a subsequent civil suit, a federal jury found Sullivan violated Walker's civil rights and awarded his family \$1.26 million;²⁴ the City settled for \$1 million to the boy's family. The officer was later promoted to Sergeant. As Delano Walker's mother, Kissa Owens, has repeatedly conveyed, she lost her son, and the officer got promoted.

In September 2009, Patrolman Danilo Feliciano assaulted his niece's boyfriend, 19-year-old Rolando Rivera, beating him and throwing bleach in his face.²⁵ Patrolman Pedro Mendez then falsified a police report, portraying Rivera as the aggressor in response to police coming to his apartment to investigate an alleged domestic incident between him

<https://www.bostonglobe.com/metro/2018/09/01/springfield-police-facing-civil-rights-probe/m7xG6NUxwFZ2o0gQwPqHVN/story.html>.

²⁴ Barry, *Mother of Delano Walker, Springfield teen struck and killed by car during confrontation with police, awarded \$1.3 million*, MassLive (Sept. 22, 2014), https://www.masslive.com/news/2014/09/mother_of_delano_walker_spring.html.

²⁵ Barry, *Springfield cops Danilo Feliciano, Pedro Mendez fired following charges of assault on Rolando Rivera of Springfield*, MassLive (Mar. 30, 2010), https://www.masslive.com/news/2010/03/2/springfield_cops_fired_follo.html.

and his girlfriend, Feliciano's niece. Both Feliciano and Mendez were fired and found to have violated departmental standards.²⁶ However, in a subsequent criminal prosecution Officer Feliciano was acquitted at trial in 2011.²⁷ Mr. Rivera was also criminally prosecuted for the incident—charged with assault and battery, assault on a police officer, and resisting arrest. He was acquitted at a 2012 jury trial—three years later—and all charges were then dismissed, but not before being incarcerated pretrial in connection with the case. *See* Springfield District Court, docket 0923CR008754.

In November 2009, 28-year-old Black man Melvin Jones III was beaten with a flashlight by officer Jeffrey Asher during a drug arrest after a traffic stop.²⁸ The incident was filmed by an anonymous bystander. Jones was hit at least 15 times by one officer swinging a metal flashlight while two others wrestled with him on the hood of a police car.²⁹ The Police Department began a criminal investigation into the actions of

²⁶ *Id.*

²⁷ Steele, *Danilo Feliciano, ex-Springfield cop, acquitted in assault trial*, MassLive (May 18, 2011), <https://www.masslive.com/news/2011/05/developing-danilo-feliciano-ex.html>.

²⁸ Johnson, *supra* note 12.

²⁹ *Id.*

four officers during the stop in January 2010. Ultimately, Asher was fired and criminally prosecuted; he was found guilty, ordered to serve 18 months in jail followed by two years probation, and ordered to undergo therapy for anger management.³⁰ His conviction was upheld on appeal.³¹ In response to a civil suit, the City of Springfield paid Mr. Jones a \$575,000 settlement.³² Although he was fired eight months after the assault, Asher was granted retirement with a disability pension the day before his official termination.³³ However, the City's retirement board later stripped him of his pension.³⁴

³⁰ Tuthill, *Ex-cop Sent to Jail For Flashlight Assault*, WAMC (Mar. 29, 2012), <https://www.wamc.org/post/ex-cop-sent-jail-flashlight-assault>.

³¹ Tuthill, *Ex-Cop's Appeal of Assault Conviction Denied*, WAMC (June 9, 2015), <https://www.wamc.org/post/ex-cops-appeal-assault-conviction-denied>.

³² *Springfield, Mass. to Pay 575,000 to Victim of Police Brutality*, NECN (Feb. 26, 2014), https://www.necn.com/news/local/necn_springfield_mass_to_pay_575_000_to_victim_of_police_brutality_necn/59310.

³³ Barry, *Fired Springfield cop Jeffrey Asher secured Massachusetts disability pension 1 day before termination*, MassLive (Oct. 23, 2010), https://www.masslive.com/news/2010/10/fired_springfield_cop_jeffrey.html.

³⁴ Goonan, *Ex-Springfield police officer Jeffrey Asher stripped of annual pension*, MassLive (Apr. 11, 2012), https://www.masslive.com/news/2012/04/ex-springfield_police_officer_jeffrey_asher_stripped_of_pension.html.

In January 2013, police officer Thomas Hervieux hit Lee Hutchins Sr. with a baton during a domestic disturbance. The police had come to his home early in the morning looking for his toddler grandson.³⁵ Mr. Hutchins was 47 and disabled and is a person of color. The incident escalated and two officers ended up in a struggle outside on the ground with Mr. Hutchins's son, Keith. Hutchins tried to intervene but then the officers maced him and then whacked him twice from behind with the baton. Mr. Hutchins was charged with disorderly conduct, assault and battery, and resisting arrest—charges of which he was acquitted about a year later. Officer Hervieux was never charged, even though he had been the subject of at least eight excessive force complaints prior to that night—though none of the eight cases led to discipline and none were presented to Springfield's Community Police Hearing Board. A federal jury trial on Mr. Hutchins's civil suit ended in a \$250,000 jury award.³⁶

³⁵ Cohen, *How Cities' Use-Of-Force Policies Vary, And A Police Culture Persists*, New Eng. Public Media (July 14, 2020), <https://www.nepm.org/post/how-cities-use-force-policies-vary-and-police-culture-persists>.

³⁶ Graham & Goonan, *City of Springfield was 'deliberately indifferent to civil rights of citizens,' federal jury says in police brutality case*, MassLive (Feb. 3, 2019), <https://www.masslive.com/news/2019/02/city-of-springfield-was-deliberately-indifferent-to-civil-rights-of-citizens-federal-jury-says-in-police-brutality-case.html>.

The chronology above provides context for other recent incidents, for example the 2019 investigation and criminal charges brought by the HCDAO for the violent assault and arrest of Jeffrey Bellamy, a 48-year-old Black man who was grabbed by the throat by Officer Jefferson Petrie while attempting to file a complaint about a parking ticket in 2017, and then wrestled and pushed to the ground by three additional officers (Colin Cochrane, Ruben Borrero, and Thomas Sheehan); Officer Petrie then wrote a false police report to cover up the incident, omitting the assault and charging Mr. Bellamy with resisting arrest and assault and battery on a police officer.³⁷ It took the HCDAO two years to review the surveillance video evidence of that incident from *within the police station*—and only after news media had obtained and released the video.³⁸ Mr. Bellamy had been criminally prosecuted (although charges

³⁷ Glaun, *Jerry Bellamy went to Springfield Police HQ to dispute parking ticket; was grabbed by throat, tackled by officers in confrontation*, MassLive (Feb. 19, 2019), <https://www.masslive.com/news/2019/02/jerry-bellamy-went-to-springfield-police-hq-to-dispute-parking-ticket-was-grabbed-by-throat-tackled-by-officers-in-confrontation.html>.

³⁸ Croteau, *Hampden District Attorney to review Springfield Police Department's handling of Jerry Bellamy arrest; Probe to review possible criminal behavior by police*, MassLive (Feb. 21, 2019), <https://www.masslive.com/news/2019/02/hampden-district-attorney-to->

were dismissed in 2017) and the officer allegedly had already been cleared of wrongdoing by the HCDAO in 2017, as well as by the civilian review board and the police department itself, until the video surfaced. The HCDAO then brought charges against Petrie,³⁹ and in March 2020 Officer Petrie pled to a Continuance Without a Finding on one charge of assaulting a civilian.⁴⁰

The cumulative weight of these incidents—and the intervention by the Massachusetts Attorney General’s Office and the DOJ when the

[review-springfield-police-departments-handling-of-jerry-bellamy-arrest-probe-to-review-possible-criminal-behavior-by-police.html](#).

³⁹ Glaun, *Springfield police officer Jefferson Petrie, cleared by Community Police Hearing Board after altercation, now charged with assault*, MassLive (June 4, 2019), <https://www.masslive.com/news/2019/06/springfield-police-officer-jefferson-petrie-cleared-by-community-police-hearing-board-after-altercation-now-charged-with-assault.html> (“The Hampden District Attorney’s Office also sought a count of filing a false report against Petrie, but the clerk did not approve that charge, a source familiar with the case told MassLive.”).

⁴⁰ Barry, *Springfield police officer admits to assault charge; federal lawsuit filed by man he grabbed by the throat during parking ticket dispute*, MassLive (July 21, 2020), <https://www.masslive.com/news/2020/07/springfield-police-officer-who-forced-man-out-of-station-by-the-throat-pleads-guilty-to-assault-incident-prompts-federal-lawsuit.html>; Palpini, *Springfield Police Officer Sentenced To Anger Management Classes Following Clash in Lobby*, Hampden Daily Voice (July 22, 2020), <https://dailyvoice.com/massachusetts/hampden/police-fire/springfield-police-officer-sentenced-to-anger-management-classes-following-clash-in-lobby/791228>.

District Attorney’s Office failed to act⁴¹—point to cultural, institutional, and systemic problems with *both* the SPD and the HCDAO. They are not isolated incidents; some involve repeat-offender officers who only faced consequences after multiple high-profile cases (Jeffrey Asher’s track record is a notable prelude to Gregg Bigda’s⁴²), others involve repeat tactics by different officers, and nearly all involve a pattern of dilatory investigation and a lack of curiosity on the part of city officials and county prosecutors to forestall police violence before it happens, to impose consequences for misconduct (including for officers who observed violence and failed to intervene), and to alter systems after the fact. These incidents span decades but share glaring commonalities.

⁴¹ Glaun, *Paul Cumby, allegedly beaten by off-duty Springfield police, frustrated after 33 months with no justice*, MassLive (Jan. 15, 2018), <https://www.masslive.com/news/2018/01/paul-cumby-allegedly-beaten-by.html> (“It has been nearly a year since District Attorney Anthony Gulluni announced that no criminal charges would be brought in the case, saying that while Cumby and his cousins were victims of an assault, the identifications of those who assaulted them were not strong enough to bring a case.”).

⁴² Krueger, *Gregg Bigda is the poster boy of police brutality in Springfield. But the city can’t — or won’t — fire him.*, Bos. Globe (Sept. 6, 2023), <https://www.bostonglobe.com/2023/09/06/metro/gregg-bigda-police-brutality-springfield>.

Local organizations have repeatedly called for independent investigations,⁴³ organized to change city procedures and personnel,⁴⁴ and fought to claim power for residents to level complaints and have their grievances redressed.⁴⁵ Yet these efforts have not interrupted longstanding patterns: “The city has paid millions to settle claims, while

⁴³ See, e.g., Saulmon, *Springfield NAACP branch issues position paper calling for mandatory independent investigations of all city police shootings*, MassLive (Dec. 17, 2011), <https://www.masslive.com/news/2011/12/springfield-naacp-branch-issue.html>; Johnson, *supra* note 3.

⁴⁴ *Petition created to remove Springfield Police Commissioner Cheryl Clapprod, mayor releases statement*, WWLP (July 8, 2020), <https://www.wwlp.com/news/local-news/hampden-county/petition-created-to-remove-springfield-police-commissioner-cheryl-clapprod-mayor-releases-statement>. The petition generated nearly 2,500 signatures. See *No Confidence Petition to Remove Springfield Police Commissioner Cheryl Clapprod*, <https://www.change.org/p/mayor-domenic-sarno-no-confidence-petition-to-remove-springfield-police-commissioner-cheryl-clapprod-5ead96c0-5ada-4a90-9b8e-2c4d779d37b0>.

⁴⁵ See, e.g., Johnson, *US Attorney Rachael Rollins tells Springfield audience federal consent decree will reshape, reform troubled police department*, MassLive (Apr. 28, 2022), <https://www.masslive.com/police-fire/2022/04/us-attorney-rachael-rollins-tells-springfield-audience-federal-consent-decree-will-reshape-reform-troubled-police-department.html> (“We have been so neglected for so long,” said Holly Richardson, a longtime community activist with Out Now, an advocacy group for gay, lesbian and queer youth.”); see generally UMass History, *Resisting Police Violence in Springfield & Beyond: Mothers, Scholars & QTPOC Speak Out*, YouTube, https://www.youtube.com/watch?v=OZFWNGdlTyM&ab_channel=UMassHistory.

civil suits filed against the police department allege many officers accused of serious misconduct have faced little to no discipline Some of them have been promoted, records show.”⁴⁶

People of color continue to be aggressively policed by officers and subject to police violence—for example the officer who repeatedly used a stun gun on a woman who told him she was pregnant in September 2020.⁴⁷ The idiom “one bad apple spoils the bunch” is all too true in Springfield. Research supports that idiomatic view—police violence spreads like a disease from individual officers throughout units and departments.⁴⁸

While the DOJ investigation did not evaluate whether the SPD violated Springfield community members’ equal protection rights, see

⁴⁶ Crimaldi & Murphy, *supra* note 23.

⁴⁷ *Video: Springfield Police officer uses stun gun on pregnant woman multiple times during arrest*, WWLP (Jan. 13, 2021), <https://www.wwlp.com/news/local-news/hampden-county/video-springfield-police-officer-tases-pregnant-woman-multiple-times-during-arrest-at-hotel>; Becker, *Springfield Police Officer Criminally Charged After Taser-ing Pregnant Woman*, WBUR (Jan. 14, 2021), <https://www.wbur.org/news/2021/01/14/springfield-police-taser-pregnant-woman>.

⁴⁸ Arthur, *Bad Chicago Cops Spread Their Misconduct Like A Disease*, Intercept (Aug. 16, 2018), <https://theintercept.com/2018/08/16/chicago-police-misconduct-social-network>.

R4:13 (finding a “Pattern or Practice of Unreasonable Force in Violation of the Fourth Amendment”); cf. Pet. Br. at 18, a renewed investigation by the Commonwealth may well produce sufficient information to support such a violation. The incidents of brutality described in the DOJ report targeted people of color, and the Consent Decree requires data collection including officers’ use of force disaggregated by the perceived race and ethnicity of the subject. See generally R4:33-101.

Petitioners’ call for a review of all cases involving charges of resisting arrest, disorderly conduct, or assault and battery on a police officer, see Pet. Br. at 10, 19, 35, follows social science research, the historical SPD patterns detailed above, and what community members have long known to be true: police officers disproportionately charge people of color with these “crimes of disrespect,” and have historically invented such charges to cover up *their own* violence and brutality.⁴⁹ The

⁴⁹ ACLU of Mass., Facts Over Fear 18 (2019), https://www.aclum.org/sites/default/files/20180319_dtp-final.pdf (finding Black people charged with disorderly conduct, trespass, and resisting arrest at three times the rate for White people in Suffolk County); Holmes, *Resisting Arrest and Racism: The Crime of Disrespect*, 85 UMKC L. Rev. 625 (2016); Cacho & Melamed, *How Police Abuse the Charge of Resisting Arrest*, Bos. Rev. (June 29, 2020), <https://www.bostonreview.net/articles/lisa-cacho-jodi-melamed-resisting-arrest>; Arthur, *New Data Shows Police*

Commonwealth must investigate and carefully scrutinize whether there is a pattern of racial targeting in any police abuses.

II. The Hampden County District Attorney's Office must bear the burdens it claims are, at once, insignificant and insurmountable.

People accused of crimes are members of the community, and it is an indefensible balance of power to expect them to bring forward claims for redress based on concealed information within the Government's control. See *Commonwealth v. Tucceri*, 412 Mass. 401, 406 (1992) (“[P]rosecutors, who are agents of the State and often have access to information that defendants may not have, should be encouraged to disclose exculpatory evidence that in fairness defendants should have for their defense”). The Special Master's Report recognized this Catch-22: “[I]t is difficult to envision how the issues presented here would or could arise in an individual criminal case. ... [T]he criminal cases in which these issues would have most significance would be those in which the defendant lacks the information necessary to present the matter to a

Use More Force Against Black Citizens Even Though Whites Resist More, Slate (May 30, 2019), <https://slate.com/news-and-politics/2019/05/chicago-police-department-consent-decree-black-lives-matter-resistance.html>.

court for ruling.” Report of the Special Master at 75-76 (Oct. 18, 2022). See also Pet. Br. at 9 (“Defendants who are unaware of relevant credibility determinations, due to the HCDAO’s policy of withholding them, will not know to litigate the issue. And defendants who learn of those determinations may be told that they have nothing left to litigate.”) The onus must be on *the Commonwealth* to disrupt, root and branch, the toxic culture of misrepresentations, falsehoods, and violence in the Springfield Police Department, and to ensure that judicial findings or information that bear on the credibility of police witnesses reach every case that could be affected. See *Commonwealth v. Pope*, 489 Mass. 790, 798 (2022) (duty to disclose encompasses “any facts that would tend to exculpate the defendant or tend to diminish his or her culpability”), quoting *Matter of Grand Jury Investigation*, 485 Mass. 641, 649 (2020).

The HCDAO washes its hands of any continuing obligation to investigate because it claims any further investigation would not uncover evidence that defendants do not already have, yet the investigation is too large in scope and too costly to undertake. It is the statutory and constitutional obligation of any prosecuting office to ensure the adequacy of probable cause in every criminal case, to prove allegations beyond a

reasonable doubt, and to undertake prosecutions based on reliable evidence. Further, “It is well established that the Commonwealth has a duty to learn of and disclose to a defendant any exculpatory evidence that is ‘held by agents of the prosecution team,’” including police officers involved in the investigation or who will be relied upon as witnesses. *Commonwealth v. Ware*, 471 Mass. 85, 95 (2015) (citation omitted); *Commonwealth v. Collins*, 470 Mass. 255, 267 (2014). Yet “the HCDAO has determined that any factual investigation would be an irresponsible use of its limited and specialized resources, and would detract from its mission to prosecute criminals in Hampden County.” Resp. Br. at 30. This statement is wrong for two reasons. First, the mission of a prosecuting office, and the ethical duty of prosecutors, is to “seek justice”—not to “prosecute criminals.” *Commonwealth v. Smith*, 387 Mass. 900, 905 (1983); *Smith v. Commonwealth*, 331 Mass. 585, 591 (1954) (describing district attorney’s duty to regard the constitutional rights of the accused). Second, payroll records of the Hampden District Attorney show that over the past two years, the Office has paid more than half a million dollars

to Libby Hoopes (and later Libby Hoopes Brooks) for legal services,⁵⁰ presumably to defend against this litigation and for ongoing litigation against the DOJ. The Office has argued throughout this case that any further investigation would be cost prohibitive. The fact that the Office has chosen to spend more than half a million dollars litigating these suits (rather than undertaking its own investigation) begs the question whether the fiscal barrier is merely a mirage.

The Office also inaccurately states that Petitioners have failed to identify individual defendants whose rights have been affected by police misconduct, implying the scope of harms must be minimal and no further investigation is needed. Compare Resp. Br. at 5, 8, with Pet. Reply at 7-8. However, (1) Petitioners have identified multiple affected cases, and (2) even if Petitioners had not identified a single person, the failure to

⁵⁰ CTHRU – Statewide Spending, Hampden District Attorney’s Office, (H09) ATTORNEYS/LEGAL SERVICES broken down by Vendor, [https://cthruspending.mass.gov/#!/year/All%20Years/explore/0-/department/HAMPDEN+DISTRICT+ATTORNEY+\(WES\)/0-/cabinet_secretariat/DISTRICT+ATTORNEY/0-barChart/appropriation_type/\(1CS\)+DIRECT+APPROPRIATIONS~SUBSIDIARIZED/0-barChart/appropriation_name/\(03400500\)+HAMPDEN+DISTRICT+ATTORNEY'S+OFFICE/0-barChart/object_class/\(HH\)+CONSULTANT+SVCS+\(TO+DEPTS\)/0-barChart/object_code/\(H09\)+ATTORNEYS~LEGAL+SERVICES/0-barChart/vendor](https://cthruspending.mass.gov/#!/year/All%20Years/explore/0-/department/HAMPDEN+DISTRICT+ATTORNEY+(WES)/0-/cabinet_secretariat/DISTRICT+ATTORNEY/0-barChart/appropriation_type/(1CS)+DIRECT+APPROPRIATIONS~SUBSIDIARIZED/0-barChart/appropriation_name/(03400500)+HAMPDEN+DISTRICT+ATTORNEY'S+OFFICE/0-barChart/object_class/(HH)+CONSULTANT+SVCS+(TO+DEPTS)/0-barChart/object_code/(H09)+ATTORNEYS~LEGAL+SERVICES/0-barChart/vendor).

investigate lies at the feet of *the Commonwealth*. *Tucceri*, 412 Mass. at 410 (“the omissions of defense counsel . . . do not relieve the prosecution of its obligation to disclose exculpatory evidence”). The absence of investigation may well be the *cause* of not identifying more people who were harmed.

At the root, the problem is that the HCDAO still takes the SPD at its word. See Resp. Br. at 21 (“Even a cursory comparison of the DOJ descriptions with **the actual SPD documents** demonstrates that the DOJ’s inferences and conclusions are at best, debatable, and at worst, wrong.” (emphasis added)). It seems naïve to cite SPD documents as primary sources of truth to counter an investigation into whether officers filed false police reports. HCDAO’s continuing bias in favor of SPD is perhaps best exemplified by its reliance on the Kent Rebuttal as an objective counterpoint to the DOJ report, despite Deputy Chief Kent’s self-serving bias as a target of the investigation. See generally *Amicus* Br. of MACDL at 14-21; Pet. Br. at 11, 24-25, 35.

Under this blanket of prosecutorial protection, the SPD continues to orchestrate efforts to hide misconduct from public view. This cannot be permitted to inure to the Commonwealth’s benefit. Pet. Reply at 20.

Three weeks before oral argument in this matter, when the new Peace Officer Standards and Training (“POST”) Commission finally released a public database of officers who had been disciplined for misconduct, on *the day of its release* the Springfield Police Department immediately attempted to *remove nearly half* of the identified Springfield officers—who had been subject to retraining as a disciplinary consequence—again trying to shield evidence of misconduct from accountability.⁵¹ SPD endeavors to weaken an already incomplete database.⁵² It is wrong to put the onus on individual defendants to discover hidden misconduct within a police department so single-mindedly focused on secrecy—and the

⁵¹ Van Buskirk, *Springfield Police Department wants hundreds of records removed from discipline database*, Bos. Herald (Aug. 22, 2023), <https://www.bostonherald.com/2023/08/22/springfield-police-department-wants-hundreds-of-records-removed-from-discipline-database>; Katcher & Barry, *Springfield Police at odds with state over officer misconduct data*, MassLive (Aug. 23, 2023), <https://www.masslive.com/springfield/2023/08/springfield-police-at-odds-with-state-over-officer-misconduct-data.html>.

⁵² Becker & Jarmanning, *Mass. police misconduct database is released, but excludes many complaints*, WBUR (Aug. 22, 2023), <https://www.wbur.org/news/2023/08/22/mass-police-misconduct-database-post-complaints>; Jarmanning, *Ousted Mass. police chiefs missing from state discipline database*, WBUR (Aug. 25, 2023), <https://www.wbur.org/news/2023/08/25/police-chiefs-state-discipline-database-post>.

HCDAO's documented disinterest in exploring the full scope of that secrecy, see Pet. Br. at 51-54; Resp. Br. at 31, or even entertaining the possibility that more wrongdoing might be unearthed by further exploration, is against the public interest.

Consider HCDAO's discussion of Gregg Bigda, who despite an infamous history of misconduct is still paid by the SPD:⁵³ "Whatever the Bigda misconduct may have been, it was not undisclosed." Resp. Br. at 8. Cf. Pet. Br. at 18. This perfectly encapsulates HCDAO's approach here. "Whatever" the misconduct, HCDAO knows it has already done its part. But how can the Office know "whatever" was disclosed if they do not define it? Rather than endeavoring to uncover the full scope of misconduct, see Pet. Br. at 41-43, HCDAO argues that the public nature of the allegations and trials somehow insulated prosecutors from continuing *Brady* or *Giglio* obligations to investigate and disclose credible complaints that Detective Bigda kicked a child while making an arrest. See Resp. Br. at 13-14. Cf. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972). Elsewhere, the

⁵³ See, e.g., Krueger, *supra* note 42.

HCDAO touts its years-delayed, basic compliance and presents as a *fait accompli* that all such discovery will go nowhere. The HCDAO trumpets spending “hundreds of hours making disclosures in some 8000 cases,” Resp. Br. at 6, but has always said that information was already known and zero cases would be affected by it, Resp. Br. at 31—which, even if true, does not absolve HCDAO of its *Brady* and *Giglio* obligations.

All told, HCDAO targets its ire not at the actors on the prosecution team who engaged in a pattern of brutality and coverups within the SPD now memorialized in a Consent Decree, but at the federal agency that took the initiative to investigate it. See Resp. Br. at 7 (“Petitioners have ... [not] offered assistance or support to the HCDAO in its efforts to pry further details from the Department of Justice”). If HCDAO endeavors to “pry further details” about police misconduct, it should use its leverage against the SPD. Instead, HCDAO engages in hair-splitting with the DOJ’s characterizations of violence, disputing how exactly an officer made physical contact with an unarmed child. See Resp. Br. at 22-23. This is the tenor of the HCDAO’s treatment of the premise that it bears responsibility to investigate the fact that SPD officers assaulted community members and then hid their misconduct. HCDAO seems to

apply a standard of “beyond a shadow of a doubt” to material subject to its *Brady* and *Giglio* obligations. This is not the law.

Despite sustained community organizing, there is still no robust independent oversight of the SPD, and this compounds the necessity of HCDAO fulfilling its duty of inquiry in every criminal case. Even after the reinstatement of the Springfield police commission, finally allowed after this Court prevented the mayor from continuing to block city council action, *City Council of Springfield v. Mayor of Springfield*, 489 Mass. 184 (2022), community members have been shut out of the process,⁵⁴ and “[t]hirteen months later, the situation is a mess.”⁵⁵ Over the last few years, even after the Massachusetts Attorney’s General Office and the DOJ initiated civil and criminal probes into SPD officers, officers

⁵⁴ Kinney, *Springfield Mayor Domenic Sarno appoints 5 to Police Commission; disappoints those who sought community input*, MassLive (Mar. 1, 2022), <https://www.masslive.com/news/2022/03/springfield-mayor-domenic-sarno-appoints-5-to-police-commission-disappoints-those-who-sought-community-input.html>.

⁵⁵ Editorial, *It’s past time for floundering Police Commission and city of Springfield to get it right (Editorial)*, MassLive (Mar. 28, 2023), <https://www.masslive.com/opinion/2023/03/its-past-time-for-floundering-police-commission-and-city-of-springfield-to-get-it-right-editorial.html>.

involved in instances of violence and cover-ups have been promoted⁵⁶ or reinstated while criminal indictments remained pending or even after conviction.⁵⁷ Relying only on the published findings of other entities, therefore, cannot stand in for the HCDAO's *Brady* and *Giglio* obligations. See *Drumgold v. Callahan*, 707 F.3d 28, 38 (1st Cir. 2013) (“[L]aw enforcement officers have a correlative duty to turn over to the prosecutor any material evidence that is favorable to a defendant. Evidence is favorable to a defendant if it is either exculpatory or impeaching in nature.”) (citations omitted).

In its brief, *Amicus* Institute for Justice thoroughly explains the steep barriers that frequently prevent victims of police violence from receiving appropriate recompense, but nevertheless Springfield paid over

⁵⁶ See Barry, *Springfield police officers with dubious disciplinary records make list of prospective sergeants*, MassLive (Feb. 13, 2018), https://www.masslive.com/news/2018/02/new_list_of_police_sergeant_pr.html.

⁵⁷ Tuthill, *Mayor Sarno Apologizes For Reinstating Springfield Cops Accused In Racially Charged Case*, WAMC (June 16, 2020), <https://www.wamc.org/post/mayor-sarno-apologizes-reinstating-springfield-cops-accused-racially-charged-case>; Frenier, *Sarno critical of reinstatement of two Springfield police officers*, New Eng. Public Media (Nov. 23, 2022), <https://www.mainepublic.org/2022-11-23/sarno-critical-of-reinstatement-of-two-springfield-police-officers>.

\$5 million in legal settlements between 2006 and 2019 to victims of police misconduct,⁵⁸ and recently authorized *another* \$5 million for the next round of forecasted future payouts.⁵⁹ The culture of violence visited upon the public by the SPD is so deeply entrenched that the City budgets for misconduct settlements—rather than proactively rooting out the violence of policing through a City budget aimed at reducing the discretion and power of the police and investing in community needs,⁶⁰ the City is paying for the violence *and* paying to account for the violence as a cost of doing business. Meanwhile, the City did not budget for its police commission

⁵⁸ Arnett & Crimaldi, *‘One of the worst police departments in the country’: Reign of brutality brings a reckoning in Springfield*, Bos. Globe (July 25, 2020), <https://www.bostonglobe.com/2020/07/25/metro/one-worst-police-departments-country>.

⁵⁹ Tuthill, *supra* note 2.

⁶⁰ Tuthill, *Springfield city councilors balk at ‘blank check’ for police misconduct cases*, WAMC (Oct. 6, 2021), <https://www.wamc.org/news/2021-10-06/springfield-city-councilors-balk-at-blank-check-for-police-misconduct-cases>; Hook, *Mass. city mulls creation of non-police crisis response team*, MassLive (June 18, 2021), <https://www.ems1.com/mental-health/articles/mass-city-mulls-creation-of-non-police-crisis-response-team-IvBNXXiWaDLqWpzV>; Munford, *Here’s what student leaders say about the need for mental health services in Springfield public schools*, MassLive (Apr. 27, 2023), <https://www.masslive.com/news/2023/04/heres-what-students-leaders-say-about-the-need-for-mental-health-services-in-springfield-public-schools.html>.

this year,⁶¹ required under the DOJ Consent Decree, despite known existing resource constraints.⁶² Where the violence is funded, and the monitoring body not, institutional resources in Springfield continue to support the culture of secrecy surrounding the SPD.

As the Springfield NAACP detailed in a 2011 position paper to the HCDAO calling for independent investigations for every police shooting, the SPD and the HCDAO have a symbiotic relationship;⁶³ prosecutors rely on and bolster police credibility in order to bring cases and sustain convictions. Thus, “a potential conflict arises when a district attorney’s office is called upon to review or prosecute police misconduct. That

⁶¹ Tuthill, *Councilors question lack of funding for Springfield Board of Police Commissioners*, WAMC (June 5, 2023), <https://www.wamc.org/news/2023-06-05/councilors-question-lack-of-funding-for-springfield-board-of-police-commissioners>.

⁶² Frenier, *Springfield police commissioners tell city councilors they need more help, resources from the city*, New Eng. Public Media (Sept. 20, 2022), <https://www.nepm.org/regional-news/2022-09-20/springfield-police-commissioners-tell-city-councilors-they-need-more-help-resources-from-the-city>.

⁶³ Turner, *supra* note 15 (“The symbiotic relationship that the district attorney’s office shares with the police department has demonstrated over the years both the reluctance of the office to vigorously pursue investigations into the police or to prosecute misconduct,’ Swan wrote. ‘It has also historically demonstrated a perceived willingness to almost rubberstamp the findings of internal investigations conducted by the Springfield Police Department.’”).

conflict is compounded when the only witnesses to potential police misconduct are themselves charged in the same incident.”⁶⁴ In the past, the HCDAO has conceded that this apparent conflict of interest impedes community trust: “‘There’s never going to be a right answer for police investigating police,’ [DA Mastroianni] said. Even bringing in the state police or the Attorney General could be problematic, given that those agencies sometimes work closely with prosecutors or municipal police.”⁶⁵

HCDAO appears wary to search for additional instances of misconduct because doing so would risk undermining criminal prosecutions and losing police witnesses that reliably help the Office secure convictions, which HCDAO has described as its core “mission”. Resp. Br. at 30. See also *id.* at 13 (“As a result of [Bigda’s] unavailability, the HCDAO was forced to dismiss a number of drug prosecutions.”). Perhaps the scope of potential misconduct within the SPD disincentivizes the HCDAO from conducting *any* investigation for fear of what they

⁶⁴ Saulmon, *supra* note 43.

⁶⁵ Turner, *supra* note 15 (“Mastroianni, who has spoken about the matter to Swan, said he understands the NAACP’s concerns about conflict of interest, particularly given cases of police abuse in recent years.”).

might unearth. A renewed pronouncement from this Court about the duty of prosecutors to inquire into and turn over wrongdoing by members of the prosecution team—including police witnesses—is necessary to shift that pattern.

CONCLUSION

The Commonwealth must investigate and remedy the systemic violations of rights core to equal citizenship, trust in institutions, and equal justice in Springfield.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs and appendices, including, but not limited to those specified in Rule 16(k), 17, and 20. It complies with the type-volume limitation of Rule 20(2)(C) as it contains 7,069 non-excluded words. It complies with the type-style requirements of Rule 20 because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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