20-2789(L)

20-3177(XAP)

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNIFORMED FIRE OFFICERS ASSOCIATION, et al.,

Plaintiffs-Appellants,

v.

DE BLASIO, et al.,

Defendants-Appellees.

COMMUNITIES UNITED FOR POLICE REFORM

Intervenor-Defendant-Appellee-Cross-Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, No. 20-cv-05441

BRIEF OF AMICUS CURIAE JUSTICE COMMITTEE INC. IN SUPPORT OF DEFENDANTS-APPELLEES AND INTERVENOR-DEFENDANT-APPELLEE-CROSS-APPELLANT IN SUPPORT OF AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Justice Committee Inc. is a non-stock, non-profit corporation. No parent corporation or publicly traded company owns any stock in Justice Committee Inc.

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PRELIMINARY STATEMENT[1]

This is an interlocutory appeal of an order denying the request of law enforcement unions for a preliminary injunction to prevent the release of all NYPD misconduct and discipline records except for a narrow category of records reflecting final, litigated adjudications of wrongdoing. On a substantial record and after expedited discovery, briefing, and extensive oral argument, the district court declined to issue a preliminary injunction with respect to the vast majority of the records in question. A critical and dispositive issue was the court's finding that the balance of hardships and public interest weighed against the injunction. This substantiated and well-reasoned ruling was well within the court's discretion and accordingly should be affirmed.

The district court correctly found that the hardships alleged by the unions were unsupported and speculative. SPA 13-19; SPA 42. On the other side of the balance, the court held that an injunction would "disserve[] the public interest," because it would undermine the Legislature's June 2020 repeal of Section 50-a of the New York Civil Rights Law. For decades, Section 50-a had hidden most law

[1] Disclosure pursuant to FRAP 29(a)(4)(E) and Local Rule 29.1(b): No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing of submitting the brief; and no person other than Justice Committee, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.
All parties have consented to the filing of this amicus brief.

enforcement misconduct and discipline records from public scrutiny. The district court found that the repeal "was designed to promote transparency and accountability, to improve relations between New York's law enforcement communities and their first-responders and the actual communities of people that they serve, to aid law makers in arriving at policy making decisions, to aid underserved elements of New York's population and ultimately, to better protect the officers themselves." SPA 42-43.

On behalf of the victims of police violence and the families of those killed by NYPD officers, Justice Committee strongly supports affirmance of the district court's ruling. For much too long, Justice Committee members and constituents have tried in vain to obtain police discipline and misconduct records, only to see their efforts blocked by Section 50-a. Now that the statute has been repealed, the victims of police misconduct—as well as their families and advocates—should no longer be denied access to these records, which are critical to their understanding of what happened to them and their families, and to their efforts to seek justice from the perpetrators of violence. Accordingly, the district court's order should be affirmed in all respects.

INTEREST OF AMICUS CURIAE

Amicus Justice Committee Inc. has a strong interest in this case and submitted an amicus brief in the district court in opposition to the unions' motion

for a preliminary injunction. Justice Committee represents the constituents—"the actual communities of people" and the "underserved elements of New York's population"—in whose interest the district court denied the preliminary injunction. SPA 42-43. And Justice Committee has "promote[d] transparency and accountability" and "aid[ed] law makers in arriving at policy making decisions," including the repeal of Section 50-a. *Id.*

Justice Committee is a non-partisan non-profit grassroots organization dedicated to ending police violence and systemic racism in New York City. Since its founding in 1981, Justice Committee has supported family members of New Yorkers killed by police and empowered them to be advocates for social change. The organization's programs and strategies are led by more than 160 volunteer members who are people of color impacted by police and state violence. Justice Committee provides training and education programs, monitors and documents police activity, organizes for policy change to decrease police violence and promote community safety, and leads and participates in campaigns to end discriminatory policing. As part of its Families and Cases Program Area, Justice Committee advises survivors of police misconduct and violence and families who have lost loved ones to the police, provides resources and secures attorneys, and mobilizes communities in support of police accountability. To date, Justice Committee has provided support to hundreds of survivors and victims' families.

For decades, Justice Committee has experienced first-hand the harm caused by lack of access to police disciplinary and misconduct records. Justice Committee members who have been victims of police violence or whose family members have been killed by police have been unable to obtain any information about prior misconduct by the police officers involved and often have been unable to obtain information about disciplinary proceedings—or lack thereof—related to their own cases. The unavailability of this information not only frustrates the basic human need to seek answers in the face of tragedy, but also directly undermines the ability of survivors and victims' families to seek accountability and obtain just compensation for the harms they have suffered at the hands of police officers. In addition, lack of access to misconduct and discipline records has stunted efforts to promote transparency and accountability for police misconduct, with the result that violent cops who might have been fired or seriously disciplined have instead remained on the street and continued to victimize New Yorkers.

Justice Committee was deeply involved in advocacy to repeal Section 50-a, beginning when repeal legislation was first introduced in the Assembly in 2016. In 2018 and 2019, the Committee submitted written memoranda to the state legislature and written testimony from its leadership and members providing first-hand accounts of the harmful impact of Section 50-a. Justice Committee and its

members also met with and called legislators, engaged in traditional and social media campaigns, and organized and participated in protests in support of repeal.

The preliminary injunction the unions continue to seek would erase the gains from repeal of Section 50-a and would inhibit the access to misconduct and discipline records for which Justice Committee and its members and clients have long fought. Consequently, Justice Committee has a keen interest in ensuring that the denial of a preliminary injunction is affirmed.

STANDARD OF REVIEW

Denial of a preliminary injunction is reviewed for abuse of discretion. *See, e.g., Triebwasser & Katz v. AT&T Co.*, 535 F.2d 1356, 1358 (2d Cir. 1976); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931-32 (1975). Abuse of discretion is "a highly deferential standard of review," which may consist of an error of law or a clearly erroneous finding of fact. *Attia v. Soc'y of New York Hosp.*, 12 F. App'x 78, 79 (2d Cir. 2001).

ARGUMENT

The district court's denial of a preliminary injunction was not an abuse of discretion, but rather was fully consistent with the facts and law. Among other dispositive findings, the district court correctly weighed the balance of hardships and the public interest, recognizing the paramount need for transparency and accountability for police officers.

Denial of the preliminary injunction served the public interest because it (1) ended the delay or denial of transparency for victims of police misconduct; (2) aided advocacy efforts for police reform and accountability; (3) promoted the safety of New York City residents by making it less likely that dangerous officers will remain on the street; and (4) effectuated the will of the popularly elected legislature. The district court's findings on these issues mandated its denial of a preliminary injunction. *See, e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

I. A preliminary injunction would delay or deny justice for victims of police misconduct.

In the wake of police violence, survivors and victims' families usually attempt to obtain information regarding involved officers' identification and misconduct records. One reason for seeking this information is to attempt to make sense of what has happened to them—to try to understand how they or their family members came to be victimized by the very public servants purportedly charged with preserving their safety. Another reason is to bolster demands for accountability and legal claims for compensation for the harms suffered at the hands of police. The lack of availability of these records through an easily accessible database, as the NYPD and Civilian Complaint Review Board (CCRB) are poised to make available, would make misconduct and discipline records significantly more difficult to obtain, and thus many survivors of police

misconduct and violence and victims' families, along with the general public, would continue to be barred from access. This was the consistent experience of survivors and victims' families who sought misconduct and discipline records prior to the repeal of Section 50-a. A preliminary injunction would continue to frustrate the efforts of survivors and victims' families to obtain justice, accountability, transparency, and compensation.

Requests for misconduct and discipline records under New York's Freedom of Information Law (FOIL) would not be an adequate alternative to public access to the NYPD's database of police misconduct records. The process for making and pursuing a FOIL request with the City of New York and CCRB for police misconduct records is complex and burdensome. Without legal assistance, the FOIL process is nearly inaccessible to survivors and victims' families. Even with that legal assistance, FOIL requests are likely to be rebuffed with rejection or partial-rejection letters, just as they were when Section 50-a was still in effect. Prior to repeal of Section 50-a, such responses were so common and the burden of continuing to seek records so great that in most cases Justice Committee did not actively encourage its members and clients to request records of police misconduct via FOIL.

Similarly, when survivors and victims' families pursue litigation against the NYPD and the City of New York, the unions' proposed preliminary injunction

would likely present the same roadblock to transparency that Section 50-a did before. Civil plaintiffs would have to negotiate for the partial release of heavily redacted records through discovery stipulations rather than having unobstructed access to the records they seek from a public database. As was the case prior to repeal of Section 50-a, civil plaintiffs would likely receive only limited access to misconduct and discipline records, which would unfairly prejudice victims' civil claims and perpetuate police misconduct by keeping the public in the dark about it.

Nor should survivors and victims' families have to rely on the discretion of the CCRB or district attorneys as to whether those offices choose to voluntarily provide records in the absence of a statute or rule requiring it. The district court was correct to allow city agencies to proceed with making police misconduct and discipline records easily accessible to the public so that survivors and victims' families can finally be assured of obtaining these records as they pursue accountability and justice.

II. A preliminary injunction would undermine police reform and accountability.

As the district court held, a preliminary injunction would undermine efforts "to promote accountability and transparency and impinge on elected officials' law-making ability by restricting their access to information." *See* SPA 42-43. For years, Justice Committee and its members have advocated for disclosure of misconduct and disciplinary records to combat the lack of accountability for police

brutality, and an injunction will prolong the obstruction of advocacy efforts for police reform and accountability and perpetuate the fear and anxiety of the community in connection with police violence.

Maintaining secrecy over police misconduct removes incentives for internal discipline and change. Sunshine, as has been demonstrated time and again, is the best disinfectant. Transparency breeds accountability. Public access to information puts pressure on public servants to conform their conduct to the public's expectations and on government agencies to implement changes to address or stave off valid public criticism. By the same token, when the actions of public servants, such as the police, are kept hidden from view—as they were by Section 50-a—they are more likely to engage in abusive conduct because they know they can do so without public scrutiny, and agencies such as the police department are disincentivized to impose meaningful discipline for misconduct.

Lack of access to records also hinders the public's ability to advocate for policy changes aimed at reducing police killings and saving lives. Making the case for policy reform requires concrete data, and lack of access to data has inhibited such efforts in the law enforcement context. For example, Justice Committee is participating in the Joint Remedial Process in the wake of the judicial finding, in *Floyd v. City of New York,* that the NYPD's stop-and-frisk practices were unconstitutional. As part of that process, Justice Committee has advocated for the

NYPD to develop, with community input, a meaningful disciplinary matrix that would be available to the public, and for the NYPD to document level one and two stops (in which a police officer may ask questions, but the person being questioned is free to refuse to answer or leave).[2] Justice Committee believes the NYPD has both a pattern of abusive policing in the context of those stops and a pattern of failing to discipline officers who engage in that abuse. Police misconduct records would strengthen Justice Committee's ability to make the case for an effective disciplinary matrix and the recording of level one and two stops, but those records have not been available due to Section 50-a.

In addition, Justice Committee was part of a coalition working to pass the Right to Know Act, City Council legislation addressing police searches and other encounters with the community. It took five years to get the legislation passed, and the legislation was heavily watered down. Access to police misconduct records would have enabled Justice Committee to bolster its case for the legislation with statistics showing police searching people without their consent, refusing to identify themselves when stopping people, and otherwise abusing their authority

[2] *See* Investigative Encounters Reference Guide (Sept. 16, 2015), http://nypdmonitor.org/wp-content/uploads/2016/02/InvestigativeEncountersRefGuideSept162015Approved.pdf.

during everyday encounters. Justice Committee believes that such records would have sped the enactment of stronger legislation.

III. A preliminary injunction would threaten the safety of New York City residents.

As the district court held, public access to all police misconduct and discipline records, not merely the small subset deemed acceptable by the unions, will promote the safety of "the actual communities of people" in the city, particularly "underserved elements of New York's population." *See* SPA 42-43. Limiting access to misconduct and discipline records reflecting only "proven and final disciplinary matters," *see* JA-54 ¶ 2, would not adequately protect the public against police misconduct and would continue to shield the disciplinary process from meaningful public scrutiny and reform. Contrary to the unions' assertions, there is enormous value to the public from access to all misconduct and discipline records, including information regarding "unsubstantiated, unfounded, exonerated, non-final, or resulted in a finding of not-guilty." Br. of Plaintiffs-Appellants, Doc. No. 204, at 15. Moreover, the unions' attempt to conceal from the public the results of settled disciplinary proceedings should be rejected, as such settlements may often evidence serious misconduct. Restrictions on public access would have the effect of preserving the systematic lack of meaningful discipline for misconduct that repeal of Section 50-a was meant to change.

A. Misconduct and discipline records are relevant even where allegations did not result in discipline.

Misconduct and discipline records of law enforcement officers are relevant to holding officers accountable even where corroborating evidence is not available or no disciplinary action is taken. Numerous police officers involved in killings and violence have had multiple unsubstantiated allegations against them, and records of those allegations are highly relevant to ensure accountability and protect communities from harm. Examples of NYPD officers who had records of alleged misconduct prior to being involved in killings of New Yorkers amply illustrate this point.

In June 2012, Officer Phillip Atkins fatally shot an unarmed Black woman, Shantel Davis, while she was sitting in a car.[3] From March 2004 to February 2012, Officer Atkins had been the subject of 41 allegations of misconduct, 37 of which were found to be "unsubstantiated."[4] Surely, the sheer number of allegations against Officer Atkins was an indication that he may have been prone to using

[3] Matt Flegenheimer & Wendy Ruderman, "Shot by Officer After Car Crash, Woman Dies," N.Y. TIMES (June 14, 2012) (available at https://www.nytimes.com/2012/06/15/nyregion/woman-shot-by-police-in-brooklyn-after-car-crash.html (last visited Oct. 26, 2020)).

[4] PROPUBLICA, Case 1:20-cv-05441-KPF Document 155 Filed 08/14/20 Page 1 of 3 (available at https://projects.propublica.org/nypd-ccrb/officer/18605-phillip-atkins (last visited Aug. 11, 2020)).

excessive force. To suggest that the large number of allegations is entirely irrelevant because most of them were deemed unsubstantiated strains credulity.

Former NYPD Officer Richard Haste fatally shot teenager Ramarley Graham in 2012. Over the course of 13 months, Officer Haste had had six unsubstantiated CCRB complaints lodged against him.[5]

In March 2013, NYPD Sergeant Mourad Mourad and Detective Jovaniel Cordova were both involved in the fatal shooting of 16-year-old Kimani Gray. Together, the officers fired eleven shots, including seven that struck Kimani.[6] Prior to killing Kimani, Sergeant Mourad and Detective Cordova were named as defendants in five federal law suits alleging various civil rights violations and both had prior involvement in at least one officer-involved shooting.[7] Before killing Kimani Gray, Sergeant Mourad received a total of fourteen allegations, all of

[5] Carimah Townes, "Exclusive Documents: Officer had an 'unusual' number of complaints before he killed Ramarley Graham," THINK PROGRESS (Mar. 28, 2017) (available at https://archive.thinkprogress.org/richard-haste-disciplinary-record-474f77eb8d19/ (last visited Oct. 26, 2020)).

[6] J. David Goodman, "Anger in East Flatbush Persists Over Teenager's Killing by the Police," N.Y. TIMES (Mar. 13, 2013) (available at https://www.nytimes.com/2013/03/14/nyregion/teenager-killed-by-new-york-police-was-shot-7-times.html (last visited Oct. 26, 2020).

[7] John Marzulli, "Both cops involved in shooting of Kimani Gray, 16, in East Flatbush named in federal lawsuits," N.Y. DAILY NEWS (Mar. 15, 2013) (https://www.nydailynews.com/new-york/brooklyn/cops-killed-kimani-gray-named-federal-lawsuits-article-1.1290342 (last visited Oct. 26, 2020).

which were found unsubstantiated or in which Mourad was exonerated.[8] Detective Cordova had a total of thirteen allegations, eleven of which were unsubstantiated, prior to the shooting, and he has since had *another* complaint involving abuse of authority, which was substantiated.[9] The volume and seriousness of allegations and federal lawsuits against Sergeant Mourad and Detective Cordova should have been an indication to the NYPD of problematic behavior.

The NYPD's failure to hold police officers accountable for even the most egregious misconduct is highlighted by the Department's treatment of Officer Daniel Pantaleo. In July 2014, Officer Daniel Pantaleo used a prohibited chokehold on Eric Garner.[10] Despite Mr. Garner's plea of "I can't breathe" and collapse to the ground, Officer Pantaleo continued excessive and unnecessary force.[11] Prior to killing Mr. Garner, Officer Pantaleo had an extensive record of eighteen total CCRB allegations, including four substantiated allegations of misconduct in which Officer Pantaleo's penalty was instruction, forfeited vacation,

[8] PROPUBLICA (available at https://projects.propublica.org/nypd-ccrb/officer/23282-mourad-mourad (last visited Aug. 12, 2020)).

[9] PROPUBLICA (available at https://projects.propublica.org/nypd-ccrb/officer/35868-jovaniel-cordova (last visited Aug. 12, 2020)).

[10] "Timeline of key events in Eric Garner chokehold death," ASSOCIATED PRESS (July 16, 2019) (available at https://apnews.com/ec7ac5a664d74cdab852d639c0da08f4 (last visited Oct. 26, 2020)).

[11] *See id.*

or no penalty at all.[12] Remarkably, the NYPD did not begin disciplinary proceedings against Officer Pantaleo until 2018, more than four years after Mr. Garner's death, three years after New York City reached a settlement with Mr. Garner's family, and months after federal prosecutors recommended charges against him.[13] Officer Pantaleo was finally fired by the NYPD in July 2019, one day before the fifth anniversary of Mr. Garner's death.[14]

Officer Wayne Isaacs was off duty when he fatally shot Delrawn Small in July 2016 in front of Mr. Small's partner and three children.[15] While Officer Isaacs' disciplinary history has never been released, other individuals have filed civil suits against Officer Isaacs for misconduct. *See, e.g.*, *Footman v. City of New York et al.*, No. 1:14-cv-06594-JBW-JO (E.D.N.Y.); *Whaley v. City of New York et al.*, No. 1:14-cv-07334-JG-RER (E.D.N.Y.).

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[12] Carimah Townes & Jack Jenkins, "Exclusive Documents: The disturbing secret history of the NYPD officer who killed Eric Garner," THINK PROGRESS (Mar. 21, 2017) (available at https://archive.thinkprogress.org/daniel-pantaleo-records-75833e6168f3/ (last visited Oct. 26, 2020)).

[13] See note 9, *supra*.

[14] *Id.*

[15] Ross Keith, Ben Kochman, & Thomas Tracy, "N.Y. Attorney General probes video of Delrawn Small being shot by off-duty cop within seconds of approaching officer's car," N.Y. DAILY NEWS (July 8, 2016) (available at https://www.nydailynews.com/new-york/nyc-crime/ag-probes-video-victim-delrawn-small-punching-off-duty-cop-article-1.2704876 (last visited Oct. 26, 2020)).

Former Officer Francis Livoti was sentenced to seven and a half years in prison for violating the civil rights of Anthony Baez by using an illegal chokehold.[16] The sentencing judge indicated that the nine prior police brutality complaints against Officer Livoti should have "alert[ed] those in charge to the fact that Mr. Livoti should be off the streets, if not off the force" and instead, the NYPD allowed Officer Livoti to continue patrolling "knowing that one day a real tragedy would occur."[17]

The unions' overly sweeping access restriction would include CCRB complaints that go to mediation, since they do not result in adjudicated findings of wrongdoing, no matter how serious and well founded the allegations. Complainants to the CCRB have a choice of whether to request investigation or mediation, and mediation has no path to accountability for the officers involved in the incident. For that reason, Justice Committee advises its members and clients not to choose mediation if they want accountability, but many complainants do not have the benefit of that advice, and in some cases complainants may be steered toward mediation by investigators. Consequently, complaints that go to mediation include allegations that would have resulted in discipline had they instead been

[16] Benjamin Weiser, "Former Officer Gets 7 1/2 Years In Man's Death," N.Y. TIMES (Oct. 9, 1998) (available at https://www.nytimes.com/1998/10/09/nyregion/former-officer-gets-7-1-2-years-in-man-s-death.html (last visited Oct. 26, 2020)).

[17] *Id.*

investigated. The relevance that such allegations would have in exposing and protecting the public from police officers prone to misconduct is obvious, and the district court's ruling avoids arbitrary concealment of those allegations.

Finally, access to discipline and misconduct records is essential for the peace of mind of New York City residents. Justice Committee's members and clients routinely express their grave concern that police officers who have engaged in misconduct—often violent or deadly—remain on the streets. Survivors of police misconduct and violence and victims' families often seek misconduct and discipline records simply to have an understanding of whether some disciplinary action has been taken, or if instead they remain at risk from the police officers who victimized them or killed their loved ones. Despite the repeal of Section 50-a, a preliminary injunction would continue to prevent the release of this information, which would perpetuate and exacerbate fear and anxiety within communities over their safety from police brutality.

Public access to misconduct and discipline records will enable accountability for police officers who have escaped consequences for unlawful behavior due to past inaction by the NYPD, and will build pressure on the department to avoid the same malfeasance in the future.

B. Public access to all misconduct and discipline records is essential because of the NYPD's failure to hold police accountable for misconduct.

The distinction the unions draw between accusations that have resulted in adjudicated discipline and those that have not sweeps far too broadly, and ignores the reality that the failure of most allegations to lead to any meaningful disciplinary action is the *result* of ongoing lack of access to misconduct and discipline records. As the district court recognized, this is precisely the problem that the New York State Legislature determined to solve by lifting the veil of secrecy from the police disciplinary process "to promote transparency and accountability." *See* SPA 42.

For years, victims of police violence and abuse, family members whose loved ones were killed by police, and concerned members of the community have expressed outrage that allegations of misconduct rarely result in serious discipline or other consequences for the police officers involved. One of the principal reasons for seeking increased access to misconduct and discipline records through repeal of Section 50-a was to expose the lack of meaningful discipline and pressure the NYPD to hold police officers accountable for misconduct.

The unions' requested preliminary injunction would effectively block necessary reform by continuing a vicious cycle: officers are not disciplined adequately for misconduct; in the absence of discipline, records of allegations against those officers are not released; and the lack of transparency stymies

pressure for greater accountability. To break this cycle, shine a light on the NYPD's broken disciplinary system, and carry out the will of the legislature, this Court should affirm the district court's sound ruling, which allows all NYPD misconduct and discipline records to be published online.

IV. A preliminary injunction would be at odds with the intent of the legislature's repeal of Section 50-a.

New York State repealed Section 50-a to promote transparency and accountability for police misconduct. *See* SPA 42. Justice Committee and its members spent hundreds of hours organizing and educating New Yorkers on the deleterious effects of Section 50-a, preparing written testimony and memoranda, traveling to Albany for hearings and lobbying meetings, engaging in traditional and social media campaigns, and organizing and participating in protests, all on behalf of survivors of police misconduct and violence and victims' families. An injunction preventing city agencies from publishing most law enforcement misconduct and discipline records contravenes the intent of the repeal of Section 50-a and would undo the hard work that led to repeal.

Those who were involved in the repeal effort understood that the intended result of the repeal was the full disclosure of all records concerning disciplinary matters, including those that are "unsubstantiated, unfounded, exonerated, non-final, or resulted in a finding of not-guilty." *See* Doc. No. 204 at 15. Indeed, Justice Committee specifically addressed the limitations of a partial amendment to

Section 50-a as being insufficient to hold law enforcement accountable; instead, Justice Committee urged legislators to repeal Section 50-a in its entirety to ensure transparency and access to information. The legislature considered all of the alleged harms asserted by the unions in this litigation (*see* SPA 43) against all of the evidence it had before it— including an escalating public distrust of racially discriminatory police violence and police secrecy—and found that the asserted interests of police offers accused of misconduct are outweighed by what the district court correctly recognized as the "strong governmental interests in accountability and transparency." *See* SPA 37.

V. The Unions' position ignores the public interest.

The unions pay scant attention to the balance of hardships and the public interest. Relying exclusively on the purported private contractual and reputational interests of police officers, the unions argue that "the City would face no hardship whatsoever beyond mere delay in the release of these materials." Br. of Plaintiffs-Appellants, Doc. No. 204, at 59-60. This argument evinces a fundamental misunderstanding of the "public interest," which goes well beyond the City's interests. The unions fail to rebut or even meaningfully engage with the critical public interests described above (and in our amicus brief in the district court), or with the district court's detailed findings on many of these key points. *See* SPA 42-43.

CONCLUSION

In denying a preliminary injunction, the district court rejected the unions' attempt to drag the police disciplinary system back into the shadows just as the legislature decreed that it must emerge into the light. The court below soundly exercised its discretion in holding that continued denial of public access to police misconduct and discipline records would undermine accountability and transparency in the police disciplinary system, fairness and closure for survivors of police misconduct and violence and victims' families, and safety and confidence in the criminal justice system for all New Yorkers. For these reasons, Justice Committee respectfully urges the Court to affirm the district court's denial of the preliminary injunction.

Dated: November 5 2020
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CERTIFICATE OF COMPLIANCE

1. This brief complies with Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because this brief contains 4,911 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: November 5, 2020
New York, NY

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