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Appellate Division–Fourth Department Docket No. CA 21-01191

Court of Appeals
of the
State of New York

In the Matter of the Application of NEW YORK CIVIL LIBERTIES UNION,

Petitioner-Respondent

– against –

CITY OF ROCHESTER, *et al.*,

Respondents-Appellants.

**PROPOSED BRIEF OF *AMICI CURIAE* REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 32 MEDIA ORGANIZATIONS**

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Pursuant to 22 N.Y.C.R.R. § 500.1(f), the undersigned counsel for *amici curiae* certify as follows:

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- Court TV Media, LLC
- ION Media Networks, Inc.
- ION Media Stations, Inc.
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- ION Media Networks Real Property, LLC
- ION Station Equipment, LLC
- ION Media Networks Operations, LLC
- ION Station Leases, LLC
- ION Media License Company, LLC
- ION Television License, LLC
- ION Media Boston License LLC
- Journal Holdings, Inc.
- Scribion Broadcasting Holdings, LLC
 - Scribion Broadcasting, LLC
 - Grit Media, LLC
 - Escape Media, LLC
 - Laff Media, LLC
 - Bounce Media, LLC
 - Trumpet 25, LLC
 - Brown Sugar, LLC
- Media Convergence Group, Inc.
- Scripps Ontario Holding Corporation
 - Nuvyyo, Inc.
 - Nuvyyo USA, LLC

- Scripps Broadcasting Holdings LLC
- Scripps-Howard Foundation (The)
- Scripps Licensing, Inc. (formerly, United Feature Syndicate, Inc.)
- Scripps Media, Inc.
- Scripps National Spelling Bee, Inc.
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- Albuquerque Publishing Company
- Alexandria Newspapers, Inc.
- American Influencer Awards, LLC
- Archant Community Media Limited
- Arizona News Service, LLC
- Baxter County Newspapers, Inc.
- Bizzy, Inc.

- Blue Dot Seats, LLC
- Boat Spinco, Inc.
- BridgeTower Media DLN, LLC
- BridgeTower Media Holding Company
- BridgeTower Media, LLC
- CA Alabama Holdings, Inc.
- CA Florida Holdings, LLC
- CA Louisiana Holdings, Inc.
- CA Massachusetts Holdings, Inc.
- CA North Carolina Holdings, Inc.
- CA South Carolina Holdings, Inc.
- Circle Centre Partners Limited Partnership
- Citizen Publishing Company
- CMGI (Moduslink)
- Copley Ohio Newspapers, Inc.
- Cummings Acquisition, LLC
- CyberInk, LLC
- Daily Journal of Commerce, Inc.
- Daily Reporter Publishing Company
- DB Acquisition, Inc.

- DB Arkansas Holdings, Inc.
- DB Iowa Holdings, Inc.
- DB North Carolina Holdings, Inc.
- DB Oklahoma Holdings, Inc.
- DB Tennessee Holdings, Inc.
- DB Texas Holdings, Inc.
- DB Washington Holdings, Inc.
- DealOn, LLC
- Des Moines Press Citizen LLC
- Des Moines Register and Tribune Company
- Desert Sun Publishing, LLC
- Desk Spinco, Inc.
- Detroit Free Press, Inc.
- Detroit Newspaper Partnership, L.P.
- DiGiCol, Inc.
- Dolco Acquisition, LLC
- DoorFront Direct, LLC
- ENHE Acquisition, LLC
- EnMotive Company LLC
- Enterprise NewsMedia Holding, LLC

- Enterprise NewsMedia, LLC
- Enterprise Publishing Company, LLC
- Evansville Courier Company, Inc.
- Federated Publications, Inc.
- Finance and Commerce, Inc.
- FoodBlogs, LLC
- Gannett GP Media, Inc.
- Gannett Holdings LLC
- Gannett International Communications, Inc.
- Gannett International Finance LLC
- Gannett International Finance LLP
- Gannett International Holdings LLP
- Gannett Media Corp.
- Gannett Media Services, LLC
- Gannett MHC Media, Inc.
- Gannett Missouri Publishing, Inc.
- Gannett Publishing Services, LLC
- Gannett Retail Advertising Group, Inc.
- Gannett River States Publishing Corporation
- Gannett Satellite Information Network, LLC

- Gannett SB, Inc.
- Gannett Supply Corporation
- Gannett U.K. Limited
- Gannett UK Media, LLC
- Gannett Ventures LLC
- Gannett Vermont Publishing, Inc.
- GateHouse Media Alaska Holdings, Inc.
- GateHouse Media Arkansas Holdings, Inc.
- GateHouse Media California Holdings, Inc.
- GateHouse Media Colorado Holdings, Inc.
- GateHouse Media Connecticut Holdings, Inc.
- GateHouse Media Corning Holdings, Inc.
- GateHouse Media Delaware Holdings, Inc.
- GateHouse Media Directories Holdings, Inc.
- GateHouse Media Freeport Holdings, Inc.
- GateHouse Media Georgia Holdings, Inc.
- GateHouse Media Holdco, LLC
- GateHouse Media Illinois Holdings II, Inc.
- GateHouse Media Illinois Holdings, Inc.
- GateHouse Media Indiana Holdings, Inc.

- GateHouse Media Intermediate Holdco, LLC
- GateHouse Media Iowa Holdings, Inc.
- GateHouse Media Kansas Holdings II, Inc.
- GateHouse Media Kansas Holdings, Inc.
- GateHouse Media Lansing Printing, Inc.
- GateHouse Media Louisiana Holdings, Inc.
- GateHouse Media Macomb Holdings, Inc.
- GateHouse Media Management Services, Inc.
- GateHouse Media Maryland Holdings, Inc.
- GateHouse Media Massachusetts I, Inc.
- GateHouse Media Massachusetts II, Inc.
- GateHouse Media Michigan Holdings II, Inc.
- GateHouse Media Michigan Holdings, Inc.
- GateHouse Media Minnesota Holdings, Inc.
- GateHouse Media Missouri Holdings II, Inc.
- GateHouse Media Missouri Holdings, Inc.
- GateHouse Media Nebraska Holdings, Inc.
- GateHouse Media New York Holdings, Inc.
- GateHouse Media North Dakota Holdings, Inc.
- GateHouse Media Ohio Holdings II, Inc.

- GateHouse Media Ohio Holdings, Inc.
- GateHouse Media Oklahoma Holdings, Inc.
- GateHouse Media Operating, LLC
- GateHouse Media Oregon Holdings, Inc.
- GateHouse Media Pennsylvania Holdings, Inc.
- GateHouse Media South Dakota Holdings, Inc.
- GateHouse Media Suburban Newspapers, Inc.
- GateHouse Media Tennessee Holdings, Inc.
- GateHouse Media Texas Holdings II, Inc.
- GateHouse Media Texas Holdings, Inc.
- GateHouse Media Virginia Holdings, Inc.
- GateHouse Media, LLC
- GCCC, LLC
- GCOE, LLC
- George W. Prescott Publishing Company, LLC
- GFHC, LLC
- GiddyUp Events LLC
- GNSS LLC
- Good Worldwide, Inc.
- Grateful Media, LLC

- Guam Publications, Incorporated
- Idaho Business Review, LLC
- Imagn Content Services, LLC
- Journal Community Publishing Group, Inc.
- Journal Media Group, Inc.
- Journal Sentinel Inc.
- Kickserv, LLC
- Lawyer's Weekly, LLC
- Liberty SMC, L.L.C.
- LMG Maine Holdings, Inc.
- LMG Massachusetts, Inc.
- LMG Nantucket, Inc.
- LMG National Publishing, Inc.
- LMG Rhode Island Holdings, Inc.
- LMG Stockton, Inc.
- Local Media Group Holdings LLC
- Local Media Group, Inc.
- LocaliQ Limited
- LOCALiQ LLC
- Loco Sports, LLC

- Long Island Business News, LLC
- Low Realty, LLC
- LRT Four Hundred, LLC
- Media Consortium, LLC
- Memphis Publishing Company
- Milwaukee Marathon LLC
- Mineral Daily News Tribune, Inc.
- Missouri Lawyers Media, LLC
- Moonlighting, Inc.
- Multimedia, Inc.
- New Media Holdings I LLC
- New Media Holdings II LLC
- New Media Ventures Group LLC
- New Orleans Publishing Group, L.L.C.
- News Leader, Inc.
- News.me Inc.
- Newsquest (Clyde & Forth Press) Limited
- Newsquest (Essex) Limited
- Newsquest (Herald & Times) Limited
- Newsquest (Herts and Bucks) Limited

- Newsquest (London & Essex) Limited
- Newsquest Capital Limited
- Newsquest Limited
- Newsquest Media (Southern) Limited
- Newsquest Media Group Limited
- Newsquest Pension Trustee Limited
- Newsquest Printing (Glasgow) Limited
- Newsquest Specialist Media Limited
- NOPG, L.L.C.
- PA Group Ltd.
- Pacific Media, Inc.
- Phoenix Newspapers, Inc.
- Placester, Inc.
- Press-Citizen Company, Inc.
- Reach plc
- ReachLocal Australia Pty Ltd
- ReachLocal Canada, Inc.
- ReachLocal DP, Inc.
- ReachLocal International GP LLC
- ReachLocal International, Inc.

- ReachLocal Mexico S. De R.L. de C.V.
- ReachLocal New Zealand Limited
- ReachLocal Services Private Limited
- ReachLocal, Inc.
- Reno Newspapers, Inc.
- Rugged Events Canada LTD
- Salinas Newspapers LLC
- Scripps NP Operating, LLC
- Scroll Labs Inc.
- Seacoast Newspapers, Inc.
- Sedona Publishing Company, Inc.
- Sopress Investments Limited
- Starline Printing Company, LLLP
- SureWest Directories
- Tap-on-it, LLC
- Terry Newspapers, Inc.
- Texas-New Mexico Newspapers, LLC
- Thanksgiving Ventures, LLC
- The Advertiser Company
- The Courier-Journal, Inc.

- The Daily Record Company, LLC
- The Desert Sun Publishing Co.
- The Journal Record Publishing Co., LLC
- The Mail Tribune, Inc.
- The Nickel of Medford, Inc.
- The NWS Company, LLC
- The Peoria Journal Star, Inc.
- The Sun Company of San Bernardino, California LLC
- The Times Herald Company
- ThriveHive, Inc.
- timeRAZOR, Inc. (d/b/a Gravy)
- TNI Partners
- TRL 2019 Limited
- UpCurve Cloud LLC
- UpCurve, Inc.
- USA Today Sports Media Group, LLC
- Ventures Endurance Events, LLC
- Ventures Endurance, LLC
- Visalia Newspapers LLC
- Weymouth Football Club

- William Trimble Limited
- Wordstream, Inc.
- WP Publishing
- W-Systems Corp.
- x.com, Inc.
- York Daily Record-York Sunday News LLC
- York Dispatch LLC
- York Newspaper Company
- York Newspapers Holdings, L.P.
- York Newspapers Holdings, LLC
- York Partnership Holdings, LLC

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The National Press Club is a not-for-profit corporation that has no parent company and issues no stock. It has no parent, subsidiaries, or affiliates.

The National Press Club Journalism Institute is a not-for-profit corporation that has no parent company and issues no stock. It has no parent, subsidiaries, or affiliates.

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 - Hello Society, LLC
 - Listen In Audio Inc.
 - Madison Paper Industries
 - New York Times Canada Ltd.
 - New York Times Digital LLC
 - Northern SC Paper Corporation
 - NYT Administradora de Bens e Servicos Ltda.
 - NYT Building Leasing Company LLC
 - NYT Capital, LLC
 - Midtown Insurance Company

- NYT Shared Service Center, Inc.
 - International Media Concepts, Inc.
- The New York Times Distribution Corporation
- The New York Times Sales Company
- The New York Times Syndication Sales Corporation
- NYT College Point LLC
- NYT Group Services, LLC
- NYT International LLC
 - New York Times Limited
 - New York Times (Zürich) GmbH
 - NYT B.V.
 - NYT France S.A.S.
 - International Herald Tribune U.S. Inc.
 - New York Times France-Kathimerini Commercial S.A.
 - The Herald Tribune - Ha'aretz Partnership
 - NYT Germany GmbH
 - NYT Hong Kong Limited
 - Beijing Shixun Zhihua Consulting Co. LTD.
 - NYT International News LLC

- NYT Japan GK
- NYT Singapore PTE LTD
- NYT Poland sp. z o.o.
- NYT News Bureau (India) Private Limited
- NYT Real Estate Company LLC
 - The New York Times Building LLC
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- Serial Productions LLC
- The Athletic Media Company
 - The Athletic Media Company Australia Pty Ltd.
 - The Athletic Media Company Canada Ltd
 - The Athletic Media Company UK Ltd.
 - The Athletic Media (Malaysia) SDN. BHD
- The New York Times Company Pty Limited
- Wirecutter, Inc.
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 - PRH Holdings LLC
 - Penguin Random House LLC
 - Random House Children’s Entertainment LLC
 - Golden Treasures LLC
 - Penguin Random House Grupo Editorial (USA) LLC
 - Sasquatch Books LLC
 - Frederick Warne & Co. LLC
 - Sourcebooks, LLC (52.99%)
 - DK Publishing LLC
 - RG Special Purpose LLC
 - Rebel Girls, Inc. (8.5%)
 - Playaway Products LLC
- Offset Paperback MFRS., Inc.
- Berryville Graphics, Inc.
- Coral Graphics Services, Inc.

- arvato systems North America, Inc
- arvato digital services llc
 - arvato entertainment llc
- Offset Paperback MFRS., Inc.
- BMG Rights Management (US) LLC
 - BMG Production Music, Inc.
 - R&B Music LLC (50%)
 - Rise Records, Inc.
 - BMG Audio Visual Productions LLC
 - This is Hit, Inc.
- Bertelsmann PRH Finance, Inc.
- Bertelsmann Digital Media Investments, Inc
- Bertelsmann Ventures, Inc.
 - BV Capital Fund II-A, L.P. (99%)
- Bertelsmann Digital Health, Inc.
- University Ventures Fund I, L.P. (47.27%)
- University Ventures Fund II, L.P. (55.1%)
- Stern Magazine Corp.
- Bertelsmann Accounting Services, Inc.
- RTL NY, Inc.

- Adjoe, Inc.
- Bertelsmann Health & Human Science Education LLC
 - Versidi, Inc.
 - Teach Us, Inc.
 - Arist Education System Fund LP (99.9997%)
 - Arist Education System LLC (85.0%)
 - Alliant International University, Inc.
 - SFLS, Inc.
- Bertelsmann Learning LLC
 - Relias LLC
- Bertelsmann Education Services LLC
 - Hotchalk LLC
- OCL Professional Education, Inc.
- Majorel USA Holding, Inc.
- Majorel USA, Inc.

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The Tully Center for Free Speech is a subsidiary of Syracuse University. The Tully Center has no affiliates or subsidiaries.

Vox Media, LLC's parent corporation is Vox Media Holdings, Inc. Ten percent or more of the stock of Vox Media Holdings, Inc. is owned by NBCUniversal Media LLC, a wholly-owned indirect subsidiary of Comcast Corporation, which is publicly traded, and its affiliates.

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INTEREST OF PROPOSED AMICI CURIAE

Lead amicus Reporters Committee for Freedom of the Press (“Reporters Committee”) is an unincorporated nonprofit association, founded by leading journalists and media lawyers in 1970, when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. Other proposed amici are 32 news and media organizations who report on or work in New York, or represent the interests of journalists and media entities that work in the state (collectively, “amici”):

- Advance Publications, Inc.
- American Broadcasting Companies, Inc.
- The Atlantic Monthly Group LLC
- BuzzFeed, Inc.
- The Center for Investigative Reporting (d/b/a Reveal)
- Dow Jones & Company, Inc.
- The E.W. Scripps Company
- Fox Television Stations, LLC
- Gannett Co., Inc.

- Hearst Corporation
- The Marshall Project
- National Newspaper Association
- The National Press Club
- The National Press Club Journalism Institute
- National Press Photographers Association
- NBCUniversal Media, LLC
- The New Jersey Press Association
- The New York News Publishers Association
- New York Public Radio
- The New York Times Company
- The New Yorker
- The News/Media Alliance
- Newsday LLC
- Nexstar Media, Inc.
- Online News Association
- Penguin Random House LLC
- Pro Publica, Inc.
- The Seattle Times Company
- Society of Professional Journalists

- TEGNA, Inc.
- The Tully Center for Free Speech
- Vox Media, LLC

This case presents issues of substantial importance to amici. Journalists rely on access to information about the conduct of law enforcement officials to report on matters of public concern. Access to records of police misconduct, like those at issue here, help journalists fulfill their constitutionally recognized responsibility to gather and report newsworthy information about the activities of government. Since the repeal of New York Civil Rights Law Section 50-a (“Section 50-a”), journalists and news organizations have sought to obtain, analyze, and report on information about the actions of law enforcement in New York that were long hidden from public view, thereby fulfilling the press’s role “as a powerful antidote to any abuses of power by government officials and as a constitutionally chosen means for keeping officials . . . responsible[.]” *Mills v. Alabama*, 384 U.S. 214, 219 [1966]. Amici therefore have a strong interest in the disposition of this appeal.

SUMMARY OF ARGUMENT

This case concerns whether a law enforcement entity may refuse to produce complaint records made public under New York’s Freedom of Information Law, N.Y. Pub. Off. Law §§ 84–90 (“FOIL”) by the repeal of Section 50-a. The Appellate Division, Fourth Department, correctly held that the Rochester Police

Department is not permitted to categorically withhold what Appellants refer to as “unsubstantiated complaints”¹ about its officers. *N.Y. C.L. Union v. City of Rochester*, 210 A.D.3d 1400 [4th Dept. 2022]. Nor may it refuse to produce misconduct records created prior to June 12, 2020. *Id.*

FOIL is intended to facilitate public access to government information and enable public oversight of government agencies and officials. *See, e.g.*, FOIL § 84 (“a free society is maintained . . . when the public is aware of governmental actions”). Despite FOIL’s aim of ensuring government transparency and accountability, one provision of the New York Civil Rights Law, Section 50-a, long shrouded law enforcement misconduct in secrecy. For more than 45 years, Section 50-a stymied newsgathering and reporting about how police investigate—or fail to investigate—allegations of misconduct, and law enforcement generally.

In 2020, a series of highly publicized police killings—including the shooting death of Breonna Taylor by police in Louisville, Kentucky, and the murder of George Floyd by police in Minneapolis, Minnesota—spurred a national conversation about race and law enforcement misconduct. In its wake, New York’s legislature responded to calls for reform by repealing Section 50-a. But despite the legislature’s decision to expand public access to information about law

¹ Like Petitioner-Respondent, amici understand Appellants’ use of the phrase “unsubstantiated complaint” to mean any complaint for which “Rochester itself has not reached a finding that misconduct occurred,” Pet. Br. at 2 n.1, and amici adopt that definition herein.

enforcement, access continues to be delayed or altogether denied. *See* Roy S. Gutterman, *Repeal, Replace, and Expose: A Case Study and Call for Public Records Transparency with Police Records in New York*, 52 Hofstra L. Rev. 677, 705 [2024] (noting that “[a]fter the repeal, law enforcement agencies and municipalities quickly reacted to the repeal with arguments that records of ‘unsubstantiated’ complaints or mere accusations that were incomplete or not fully investigated should be withheld because they would constitute an unwarranted invasion of privacy.”). Amici write to emphasize the urgent importance of public access to information like that at issue here, and to underline that access to law enforcement disciplinary records serves “a clear and vital public interest.” *Puig v. N.Y. State Police*, 80 Misc. 3d 383, 391 [N.Y. Sup. Ct. 2023] (citing *Legal Aid Soc. v. Recs. Access Officer*, No. 153748/2022, 2023 WL 3021949, at *4 [N.Y. Sup. Ct. Apr. 19, 2023]).

For the reasons herein, amici respectfully urge the Court to affirm the ruling of the Appellate Division, Fourth Department, that Appellants are obligated to produce records related to unsubstantiated complaints under FOIL in response to the request of Petitioner-Respondent New York Civil Liberties Union (“NYCLU”).

ARGUMENT

I. The Legislature repealed Section 50-a to create a presumption of openness, thereby enabling press and public access to all police officer complaint records and increasing law enforcement transparency.

In 1974, the New York Legislature enacted FOIL to equip “the public, individually and collectively . . . represented by a free press,” with the ability to understand, vet, and discuss the actions of state government. N.Y. Pub. Off. Law § 84; *see also N.Y. Laws. for Pub. Int. v. N.Y.C. Police Dep’t*, 64 Misc. 3d 671, 678 [N.Y. Sup. Ct. 2019] (quoting *Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 [1979]) (stating that “the public is vested with an inherent right to know” about its government). Two years later, Section 50-a was enacted to “prevent[] defense attorneys from impeaching officers by prior bad acts” in criminal trials. Cynthia H. Conti-Cook, *Defending the Public: Police Accountability in the Courtroom*, 46 Seton Hall L. Rev. 1063, 1070 [2016]. While the provision largely achieved that goal, it also had wide ranging, unintended consequences for FOIL. *Id.* Under Section 50-a, any police “personnel records”—used primarily to evaluate an officer for continued employment or promotion— were “confidential and not subject to inspection or review,” unless the officer granted permission for their release. N.Y. Civ. Rights Law § 50-a (repealed 2020). As interpreted by New York courts, this provision effectively sealed from public view records of officers’ job performance, including claims of misconduct, and provided law enforcement a “unique

protection” from the scrutiny that FOIL was meant to invite. Comm. on Open Government, State of N.Y. Dep’t of State, *Annual Report to the Governor and State Legislature* [Dec. 2014], at 3.

New Yorkers vocally opposed Section 50-a for decades, *see, e.g.*, Erin E. Evans, *Police Secrecy Law Keeps Public in the Dark About Police Misconduct*, NBC [May 19, 2019], <https://perma.cc/F2JS-M9LN> (covering calls to repeal Section 50-a after the police killing of Eric Garner in Staten Island), but criticism of the provision grew especially pointed and urgent in the wake of the murder of George Floyd on May 25, 2020. The proposed repeal of Section 50-a was brought to the legislative floor on June 10, 2020 and signed into law the same week. Chris Sommerfeldt, *Cuomo Signs Historic 50-a Repeal Bill, Making N.Y. Police Disciplinary Records Public After Decades of Secrecy*, N.Y. Daily News [June 12, 2020], <https://perma.cc/7JMZ-D9LG>.

In repealing Section 50-a, the legislature was responding directly to New Yorkers’ calls for increased law enforcement transparency and accountability. *See* Bill No. A10611, Memorandum in Support of Legislation, N.Y. State Assembly (explaining that the bill stemmed from “[r]ecent events [that] highlighted the importance for the public to have access to information, specifically with regards to law enforcement disciplinary records”). The legislative history emphasizes that meaningful police accountability is predicated

on the public’s ability to understand not just individual incidents of officer misconduct, but also larger patterns of misconduct and institutional failures. N.Y. Senate, Floor Debate, 243rd N.Y. Leg., Reg Sess. [June 9, 2020] (“By repealing Section 50-a, we will make it possible to find out whether police departments have ignored repeated patterns and complaints about officers’ behavior.”); *id.* (“[the repeal] will change the culture of secrecy, the patterns of illegality that have been allowed to fester, and the legalized denial of accountability . . .”); Sen. Bill S8496, Memorandum in Support of Legislation, N.Y. State Assembly (“Due to the interpretation of § 50-a, records of complaints or findings of law enforcement misconduct that have not resulted in criminal charges against an officer are almost entirely inaccessible to the public or to victims of police brutality, excessive use of force, or other misconduct.”).

To that end, the text of the bill to repeal Section 50-a expressly makes all misconduct complaints presumptively public—without qualification. *See* 2020 Senate Bill 8496 (contrasting “complaints” with actual “findings” “of law enforcement misconduct” but making both types of records presumptively public, noting that Section 50-a had improperly “create[d] a legal shield that prohibits disclosure, even where it is know that misconduct has occurred”); *see also* *Newsday, LLC v. Nassau Cnty. Police Dep’t*, 222 A.D.3d 85, 91 [2d Dep’t 2023] (concluding “[n]otably,” that “unsubstantiated allegations or complaints are not

among either the mandated or the permissible redactions” from law enforcement disciplinary records, and noting that “[i]f the legislature had intended to exclude from disclosure complaints and allegations that were not substantiated, it would simply have stated as much” (citation omitted). As lawmakers recognized when considering the repeal of Section 50-a, a complaint may be deemed unsubstantiated for purposes of officer discipline, but that does not, alone, mean the officer acted properly or did not engage in conduct the public has a right to know; indeed, the legislature specifically contemplated this reality and drafted the repeal legislation accordingly. *See* N.Y. Assembly, Floor Debate, 243rd N.Y. Leg., Reg. Sess., at 100–101 (Assemblymember Ramos highlighting that while “not all complaints are true ... there is value in looking at the total picture” and that examining unsubstantiated complaints can help reveal “relevant patterns”). Access to unsubstantiated law enforcement records, furthermore, functions as a meaningful check on law enforcement’s own accountability systems—to be truly accountable, the process of investigating and substantiating a complaint should be open to public scrutiny and not confined only to those events that are most obviously misconduct, or only represent the most egregious behavior. Only then can the public and the press understand the “total picture.” *Id.*

Despite this clear mandate from the legislature, more than three years later, significant obstacles to public access to law enforcement disciplinary records

remain. *See, e.g.,* Asher Stockler, *Lawmakers Repealed 50-a in June 2020. Two Years Later, the Fight Has Just Begun*, Lohud [Apr. 6, 2022], <https://perma.cc/3CS4-QE3X>. Honoring the legislative intent behind the repeal of Section 50-a—to dramatically increase police transparency and accountability, including by making all misconduct complaints public—is a nearly impossible feat if only a small portion of disciplinary files are open to the press and public.

II. New York law expressly entitles the public to the complaint records at issue, and their disclosure would not constitute an “unwarranted invasion of privacy.”

Appellants argue that the “release of unsubstantiated complaints would constitute an unwarranted invasion of [officers’] personal privacy.” App. Br. at 9. That argument ignores not only the plain text of the bill that repealed Section 50-a, 2020 Senate Bill 8496, but also the limited privacy interests that public employees necessarily have in official records relating to the execution of their professional duties because their job performance is of such importance to the public. And as news reporting from New York and around the country demonstrate, unless this Court affirms the Fourth Department’s ruling, the press will be prevented from providing the public with valuable information and insight into how law enforcement is doing its job. It is for this purpose—public oversight of government agencies and officials—that FOIL was enacted in the first place.

A. Law enforcement officers have limited, if any, privacy interests in records that concern their competency to serve the public.

Appellants argue that FOIL's "unwarranted invasion of privacy exception," N.Y. Pub. Off. Law § 87[2][b], shields unsubstantiated complaints from disclosure. Nondisclosure, they argue, is crucial to protecting officers' private lives from unwarranted scrutiny. However, as courts have repeatedly recognized, law enforcement personnel have "a narrower right and expectation of privacy than average citizens" when it comes to information that concerns the fulfillment of their public duties and their fitness for service. *J. Pub. Co. v. Off. Of Special Prosecutor*, 131 Misc. 2d 417, 424 [N.Y. Sup. Ct. 1986]; *see also N.Y. 1 News v. Off. Of President of Borough of Staten Island*, 231 A.D.2d 524, 525 [2d Dep't 1996] ("Because employee discipline is clearly relevant to the work of the agency . . . access to these records should be granted").

Indeed, since the repeal of Section 50-a, New York courts repeatedly have held that disclosing law enforcement officers' unsubstantiated complaint records does not constitute an unwarranted invasion of privacy. In *Schenectady Police Benevolent Association v. City of Schenectady*, for example, the court held that "where job performance is concerned," "public employees have less entitlement to privacy than do non-public employees," given "the high priority placed on accountability." No. 2020-1411, 2020 WL 7978093, at *5 [N.Y. Sup. Ct. Dec. 29, 2020]. The court further found that "unsubstantiated charges"—even those with

“the possibility that veracity may be completely lacking”—are nonetheless “within the ambit of disclosure” under FOIL following the repeal of Section 50-a. *Id.* at *4–5. Likewise, in *Lockwood v. Nassau County Police Department*, the court found that “public employees,” including the police, “enjoy a lesser degree of privacy than others, for . . . they are required to be more accountable than others.” 78 Misc. 3d 1219(A) [N.Y. Sup. Ct. 2023]. Simply put, “as a general rule, to the extent that disciplinary records are relevant to the performance of a police officer’s official duties, they should now be available for disclosure.” *Id.*; *see also* *Newsday, LLC*, 222 A.D.3d at 92 (blanket denials of public access to unsubstantiated complaints made against law enforcement officers are not permitted under FOIL); *N.Y. C.L. Union v. N.Y. City Dep’t of Corr.*, 213 A.D.3d 530, 530 [1st Dept 2023] (same); *N.Y. C.L. Union v. City of Syracuse*, 210 A.D.3d 1401, 1403 [4th Dept 2022] (same); *N.Y. C.L. Union v. City of Rochester*, 210 A.D.3d 1400, 1401 [4th Dept. 2022] (same); *NYP Holdings, Inc. v. N.Y.C. Police Dep’t*, 77 Misc.3d 1211(A), at 4 [N.Y. Sup. Ct. 2023] (same) [hereinafter *NYP Holdings, Inc. I*], *aff’d on other grounds* 220 A.D.3d 487 [1st Dept. 2023] [hereinafter *NYP Holdings, Inc. II*].

Further, for the same reasons that unsubstantiated complaint records cannot be withheld in their entirety, they cannot be released with officer names redacted. Recently, in *New York Civil Liberties Union v. City of Yonkers*, the Supreme Court

of Westchester County expressly held that “the names of police officers involved in . . . unsubstantiated complaints” could not be redacted “pursuant to the privacy exemption.” Index No. 62677/2023, at *7 [Apr. 11, 2024] (citing N.Y. Pub. Off. Law § 86[6][b]). The court reasoned that the “unambiguous language of the statute”—which expressly included the names of those law enforcement officers complained against or charged with misconduct in the definition of “law enforcement disciplinary records”—prevented the agency from redacting officer names from the requested records. *Id.*; *see also N.Y. C.L. Union v. N.Y.C. Dep’t of Corr.*, No. 159851/2021, 2022 WL 1156208 [N.Y. Sup. Ct. Apr. 19, 2022] (ordering release of unsubstantiated claims with officer names). Moreover, when the legislature repealed Section 50-a, it also amended FOIL specifically to prevent disclosure of information constituting *true* unwarranted invasions of privacy, such as officers’ medical history, home addresses, or social security numbers. *See* N.Y. Pub. Off. L. § 87[4-a]. It is thus clear that FOIL does not exempt from disclosure either information—officer names—or categories of records—unsubstantiated complaints—that the legislature did not expressly name.

This principle is echoed in judicial decisions from other jurisdictions that have examined the scope of law enforcement officers’ privacy interests in information and documents related to the performance of their duties. In 1983, for example, the Wisconsin Supreme Court, evaluating a statute with a privacy

exemption not unlike New York's, held that "public official[s]," including police officers, are "subject to close public scrutiny." *State ex rel. Bilder v. Delavan Township*, 334 N.W.2d 252, 262 [Wis. 1983]. In that case, a police chief sought to prevent judicial proceedings pertaining to alleged official misconduct from being released to a local news outlet, but the court found that "[b]y accepting his public position" the police chief "ha[d], to a large extent, relinquished his right to keep confidential activities directly relating to his employment as a public law enforcement official." *Id.*; see also *Rawlins v. Hutchinson Publ'g Co.*, 543 P.2d 988, 993 [Kan. 1975] ("If a public figure foregoes his right of privacy as to his 'public appearances and activities,' a public official, a fortiori, has no right of privacy as to the manner in which he conducts himself in office.").

More recently, in 2021 the New Jersey Supreme Court affirmed an appeals court ruling that "releas[ing] confidential internal affairs records and information" does not "violate[] the rights of the State's law enforcement officers in the privacy of their personnel records." *In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6*, 240 A.3d 419, 446 [N.J. Super. Ct. App. Div. 2020], *aff'd*, 252 A.3d 135 [N.J. 2021]. The court concluded that

[b]ecause we entrust police officers to carry firearms, drive emergency vehicles, and exercis[e] the most awesome and dangerous power that a democratic state possesses with respect to its residents—the power to use lawful force to arrest and detain them, officers can expect

a higher degree of scrutiny of their performance, and have a lower expectation of privacy.

Id. at 148–49 (citations and quotation marks omitted). As the court explained, police officers have long been “distinguish[ed] . . . from other public employees by virtue of the public trust reposed in them to enforce and uphold the law,” *id.* at 157, and disclosure of disciplinary records serves a vital “need in a democratic society” for public oversight of police officers. *Id.* at 148; *see also Denv. Policemen’s Protective Ass’n v. Liechtenstein*, 660 F.2d 432, 435 [10th Cir. 1981] (finding police personnel records that “related simply to the officers’ work as police officers” were not protected from disclosure on privacy grounds).

Since Section 50-a’s repeal, disclosure of unsubstantiated complaints has not invited unwarranted scrutiny of police officers’ private lives. On the contrary, public oversight has improved law enforcement’s relationship with the public they serve. In Utica, for example, where unsubstantiated complaints are publicly accessible, the Utica Police Department has credited increased transparency with enabling it to take “swift and decisive action” on disciplinary matters. Spectrum News Staff, *Utica Police Officer Suspended for Alleged “Unauthorized” Force During Arrest*, Spectrum News 1 [Sept. 10, 2020], <https://perma.cc/KYF8-REDS>.

New York law mandates disclosure of law enforcement misconduct records consistent with the important role played by—and the commensurately diminished privacy interests of—law enforcement officers. This Court should reject any

attempt to resurrect Section 50-a's "legal shield" under the banner of "privacy." *Cf. Puig v. City of Middletown*, 71 Misc.3d 1098, 1108, 147 N.Y.S.3d 348, 356 [N.Y. Sup. Ct. 2021] (explaining that prior to Section 50-a's repeal, "the case law [interpreting Section 50-a] had created a 'legal shield' that prohibited disclosure" that "was contrary to, and undermined, FOIL's public policy goals.").

B. To the extent any privacy interest in these records exists, it is outweighed by the public's substantial interest in assessing officer competence, which the courts of New York and other states have recognized.

When evaluating claims of privacy in the context of FOIL, a court "must decide whether any invasion of privacy . . . is 'unwarranted' by balancing the privacy interests at stake against the public interest in disclosure of the information." *N.Y. Times Co. v. City of N.Y. Fire Dep't*, 4 N.Y.3d 477, 485 [2005]. Here, given the substantial public interest in unsubstantiated complaints, the balance weighs heavily in favor of disclosure.

1. New York law is clear: the public has a strong interest in access to unsubstantiated officer complaint records.

Since the repeal of Section 50-a, New York courts have recognized, time and again, the profound public interest in police disciplinary records. *See, e.g., Rickner PLLC v. City of New York*, No. 153903/2022, 2024 WL 1052852 [N.Y. Sup. Ct. Mar. 11, 2024] (ordering disclosure of 114 full officer disciplinary files). Many of these courts specifically have recognized the benefits to the public of

access to unsubstantiated complaints—benefits, they have found, that outweigh any minimal privacy interests in such records. *See, e.g., NYP Holdings, Inc. II*, 220 A.D.3d at 488 (explaining that the legislature’s purpose in repealing Section 50-a was to “promot[e] transparency of police disciplinary records and eliminate[] any claim of confidentiality in them” (emphasis added) (citation omitted)); *Gannett Co., Inc. v. City of Mount Vernon*, No. 60904/2022, at 2 [N.Y. Sup. Ct. Dec. 15, 2023] (holding that the repeal of Section 50-a mandated the disclosure of unsubstantiated complaints to news outlet); *see also Schenectady Police Benevolent Ass’n*, 2020 WL 7978093, at *4; *Lockwood*, 78 Misc. 3d 1219(A); *McDevitt v. Suffolk County*, 187 N.Y.S.3d 923 [N.Y. Sup. Ct. 2023]; *N.Y. C.L. Union v N.Y.C. Dep’t of Corr.*, No. 601626/2022, 2022 WL 1156208, at *1–2 [N.Y. Sup. Ct. Apr. 19, 2022] holding that privacy exemption in FOIL did not “shield[] the disclosure of unsubstantiated claims”); *Gonen v. NYPD*, No. 159794/2023, 2024 WL 778172 [N.Y. Sup. Ct. Jan. 31, 2024] (rejecting unwarranted invasion of privacy arguments for internal investigation files of police officer arrested for brandishing a weapon at children); *Newsday LLC*, 222 A.D.3d at 94 (privacy provisions in the Public Officers Law did not create a “categorical exemption from disclosure for unsubstantiated allegations or complaints of police misconduct”).

Indeed, under New York law, “a compelling public interest in the job performance of public officials . . . is found to outweigh the official’s personal privacy interests” “in most circumstances.” *Lockwood*, 78 Misc.3d 1219(A) at 6. And even if the “unwarranted invasion of privacy exception” to FOIL “allows agencies . . . to protect sensitive matters in which there is little or no public interest,” FOIL demands disclosure of nearly all other information of public interest, including “where a FOIL request concerns release of unsubstantiated allegations or complaints of professional misconduct.” *City of Syracuse*, 210 A.D.3d at 1404. In other words, there is nothing inherently “private” about unsubstantiated complaint records that permits the police to withhold them wholesale. *See id.*; *see also NYP Holdings Inc., II*, 220 A.D.3d at 488 (compelling NYPD to produce *all* disciplinary records for 144 officers because the “repeal of Civil Rights Law § 50-a . . . reflected a strong legislative policy promoting transparency of police disciplinary records and eliminated any claim of confidentiality in them”). And, as highlighted in Section III, below, concrete public benefits flow from the disclosure of documents that enable the press and public to evaluate whether police departments—which often function with little to no outside oversight—are upholding their obligations to the public. *See, e.g.*, Shaila Dewan & Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. Times [May 30, 2020], <https://perma.cc/FB27-4CPF>

(noting the “reluctance of investigators . . . to second-guess an officer’s split-second decision,” and the concomitant need for more effective, robust oversight).

Some courts also have recognized the perverse incentives that would be created by categorically exempting unsubstantiated complaints from FOIL: “agencies [could] withhold documents based upon their own determination that their release would constitute an unwarranted invasion of privacy”—i.e., by deeming most misconduct allegations unsubstantiated—and thus “subvert the goals of the legislation repealing [Section] 50-a.” *Lockwood*, 78 Misc. 3d 1219(A) at 8; *see also Schenectady Police Benevolent Ass’n*, 2020 WL 7978093, at *5 (“It may well be true that a public employee (including a police officer) . . . views a particular record as private or embarrassing or its disclosure as a personal safety risk but, it is nonetheless now within the ambit of disclosure.”).

Appellants make no attempt to refute the public’s strong interest in access to unsubstantiated complaint records. Nor could they. It is clear residents of Rochester have a powerful interest in what these documents would show. Since Rochester’s new Police Accountability Board (“PAB”) began investigating complaints of police misconduct in 2022, it reviewed and closed only four cases: three were “not sustained” and the fourth was determined to be “unfounded.” *Annual Report 2022-2023*, City of Rochester Police Accountability Board [2023], at 12. As Rochester outlet the *Democrat & Chronicle* reported, however, that does

not mean “misconduct did not occur—just that there was not enough evidence for investigators to verify the accusations or fully absolve the officer at the center of the complaint.” Kayla Canne, *Rochester’s Police Accountability Board Closed 4 Cases. The Details Won’t Be Public*, *Democrat & Chronicle* (Oct. 9, 2023), <https://tinyurl.com/4fz62m9a>. And when the *Democrat & Chronicle* filed a FOIL request for the related “investigation materials and findings,” the PAB denied the request. *Id.* Absent disclosure of such records, Rochester residents will remain in the dark as to why the independent review panel did not find wrongdoing in the small number of cases it has closed. Such secrecy undermines the legislature’s goal in repealing Section 50-a: to build trust of law enforcement within the communities they serve. *See* Bill No. A10611, Memorandum in Support of Legislation, N.Y. State Assembly (the “ability to FOIL [disciplinary] record[s] will lead to a greater trust between the public and law enforcement.”).

2. Courts nationwide recognize the weighty public interest in complaints of police misconduct, including those for which officers are not disciplined.

New York courts are not alone in concluding that the public’s significant interest in access to law enforcement disciplinary history outweighs any concerns about officer privacy.

Under South Carolina law, for instance, government records are made available to the press and public so they may “learn and report fully the activities

of their public officials”; records, the release of which would be an “unreasonable invasion of personal privacy,” however, are exempt from disclosure under the law. S.C. Code §§ 30-4-15, 30-4-40[C]. Interpreting that statutory language, the South Carolina Court of Appeals held that a “newspaper, in fulfilling its obligation to report on and hold to account those in public service, had a legitimate need to access” records that revealed how a Sheriff “respon[ded to] . . . allegations of misconduct by [his] deputies.” *Burton v. York Cnty. Sheriff’s Dep’t*, 594 S.E.2d 888, 895 [S.C. Ct. App. 2004]. These records, the court reasoned, reflected on the competency of law enforcement—an important public matter—which “outweigh[ed] [the department’s] desire to remain out of the public eye.” *Id.*

The Connecticut Supreme Court also has found that public employees’ privacy must often yield to public interests in access to public information:

[W]hen a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person’s reasonable expectation of privacy is diminished The public has a right to know not only who their public employees are, but also when their public employees are and are not performing their duties.

Perkins v. Freedom of Info. Comm’n, 635 A.2d 783, 792 [Conn. 1993]. This reasoning extends to police officers, in whom we vest significant power and authority in daily public life. In 1986, the Supreme Court of Connecticut held that “the public has a legitimate interest in the integrity of local police departments and in disclosure of how such departments investigate and evaluate citizen complaints

of police misconduct.” *City of Hartford v. Freedom of Info. Comm’n*, 518 A.2d 49, 57 [Conn. 1986].

In light of the substantial value to the public of information contained in records of police misconduct, including unsubstantiated misconduct allegations, and the limited (if any) privacy interests of Rochester police officers in such information, there is no reason to depart from the stated intent of the legislature to make such records available to the requesters here.

III. Access to complaints of police misconduct enable the press to report on law enforcement and provide the public and lawmakers with accurate information to shape reform.

Journalists are tasked with “guard[ing] against the miscarriage of justice by subjecting the police . . . to extensive public scrutiny and criticism,” *Sheppard v. Maxwell*, 384 U.S. 333, 350 [1966]. Appellants ask this Court to undermine that vital function, as well as the will of the legislature (and decisions of courts across the state) that have opened police misconduct records to press and public scrutiny under FOIL without qualification. *See* FOIL § 84 (access to government records “should not be thwarted by shrouding [them] with the cloak of secrecy or confidentiality”); *see also Fink*, 47 N.Y.2d at 571 (noting that FOIL “proceeds under the premise that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government”).

For decades, *amici* and other news organizations felt the effects of—and worked to break down—the barriers that Section 50-a posed for journalists attempting to report on law enforcement misconduct. See Rachel Moran, *Police Privacy*, 10 U.C. Irvine L. Rev. 153, 188 [2019] (“In the context of police misconduct records, an unusual alliance of journalists, activists, lawmakers, and even police chiefs and police department lawyers is beginning to coalesce around the idea that increased transparency is important in improving public trust.”); see also, e.g., Katie Townsend, *Penetrate the Secrecy Shield: New York State Law Must Stop Hiding Police Disciplinary Records from Public View*, N.Y. Daily News [May 8, 2019], <https://perma.cc/SH87-EMGA>; *Reporters Committee Letter Urges Immediate Repeal of Section 50-a of the New York Civil Rights Law*, Reporters Comm. for Freedom of the Press [June 7, 2020], <https://perma.cc/6XQN-4L93>; Editorial Board, *Overhaul the Law That Protects Bad Cops*, Times Union (Feb. 20, 2020), <https://tinyurl.com/5c8x2mx5>; Editorial Board, *Stop Hiding Police Misconduct in New York*, N.Y. Times [July 29, 2015], <https://tinyurl.com/u8m6n3sb>; Editorial Board, *Cop Misconduct Shouldn’t Be Kept A Secret*, Newsday [Sept. 9, 2015], <https://tinyurl.com/2mba4ux8>. And reporting from New York and across the country demonstrates precisely why press access to complaints of police misconduct—including unsubstantiated or otherwise dismissed complaints—is essential to keeping the public informed and able to hold

law enforcement accountable. *See* Andrew Ford, *I Cover Cops As An Investigative Reporter. Here Are Five Ways You Can Start Holding Your Department Accountable*, ProPublica [June 4, 2020], <https://www.propublica.org/article/i-cover-cops-as-an-investigative-reporter-here-are-five-ways-you-can-start-holding-your-department-accountable> (emphasizing the importance, and effectiveness, of journalists using public records to encourage police reform); *Live: Will New York Repeal 50-a, the Law That Protects Police Records?*, Times Union [June 8, 2020], <https://perma.cc/C8X7-VAY5> (news editors discussing the value of police personnel records to the press and public in New York).

A. In other jurisdictions, access to complaints of misconduct, including unsubstantiated or dismissed complaints, has generated groundbreaking journalism and been an impetus for change.

Journalists have played a vital role in facilitating reform by using unsubstantiated or dismissed complaints to report on patterns of top-down malfeasance in the handling of disciplinary matters. *See* Moran, 10 UC Irvine L. Rev at 188 (discussing how, in Hawaii and California, despite significant barriers to access, news outlets uncovered failures to discipline or substantiate complaints; these investigations moved those states to change law enforcement policy so that civilians would not be left with “no ability to evaluate the fairness of the [disciplinary] process”). Articles identifying and analyzing systemic failures in law enforcement agencies’ handling of misconduct allegations offer the public

vital perspective on institutional failings and areas of needed change. *See, e.g.,* Shane Shifflett *et al.*, *Police Abuse Complaints by Black Chicagoans Dismissed Nearly 99 Percent of the Time*, Huffington Post [Dec. 7, 2015],

<https://perma.cc/8K2L-CLPU>. Such reporting not only advances public knowledge about government but also promotes accountability and can lead to reforms that build trust between police and the public. *See* Alexandria Neason, “*Officials Say...*”, *Colum. Journalism Rev.* [Dec. 3, 2019],

https://www.cjr.org/special_report/officials-say-chicago-police-joshua-beal.php

(noting that public pressure to reform the Chicago Police Department—following investigative reporting about departmental coverups and misinformation—prompted efforts to repair the “broke[n] trust between CPD and the community”).

For instance, in South Carolina, where police misconduct records are generally open to the public, *see supra* Section II(B)(2), local reporters covering police brutality issues have used such records to provide a better understanding of when and how South Carolina law enforcement entities discipline (or do not discipline) their officers. Covering a South Carolina police officer’s fatal shooting of an unarmed Black man in 2015, several news outlets reported that there had been two allegations of misconduct made against the officer prior to the fatal shooting, one of which involved excessive force for which the officer was not reprimanded. *See, e.g., Correction: Police Officer-Fatal Shooting-Key Players,*

Associated Press [Apr. 10, 2015], <https://tinyurl.com/ym44c44v>. Asked for comment, South Carolina police officials vowed to review the excessive force complaint. *Id.* With access to records of allegations of misconduct, the press was able to provide the public with a more robust understanding of the officer’s history and spurred local law enforcement to review its own handling of misconduct complaints. *See id.*; *see also* Tony Bartelme, *The Gray Zone: Some SC Public Officials Got Caught Doing the Wrong Thing—With Little or No Consequences*, Post & Courier [June 20, 2021], <https://tinyurl.com/2ennpjzy> (analyzing misconduct allegations against officers trained by the South Carolina Criminal Justice Academy and finding that though many infractions did not “make headlines,” they nonetheless represented “serious violations of ethical standards”).

In Connecticut, where the state Supreme Court has held that police misconduct complaints are of appreciable public interest and are open to the public, reporting that has relied on such records has resulted in beneficial reforms. In 2021, *The Connecticut Post* reported that from 2015 to 2020, more than “1,800 internal charges of alleged officer misconduct at 30 local police departments” resulted in little to no punishment. Bill Cummings, *CT’s Secretive Police Disciplinary System Rarely Leads to Serious Punishment*, CT Post [June 23, 2021], <https://tinyurl.com/2fsdxu58>. Reviewing thousands of allegations, the news outlet identified trends in how Connecticut police departments addressed (or declined to

address) claims against officers and reported on repeated misconduct by individual officers. *See id.* Days after the *Connecticut Post*'s investigation was published, state activists and lawmakers called for new legislation and other reforms to address "deficiencies in how police departments are held accountable." Bill Cummings, *Lawmakers Call for Reform After Hearst CT Investigation of Police Misconduct*, CT Post [June 29, 2021], <https://tinyurl.com/2ykjf9vz>.

B. In New York, journalists have helped shed light on misconduct and spurred police reform efforts.

As the New York legislature recognized, without access to all complaints of misconduct, including unsubstantiated ones, journalists cannot put incidents into perspective or give the public the necessary context to advocate for reform.

After Section 50-a was repealed, some New York law enforcement agencies made unsubstantiated complaints public without the need for litigation. Just a month after the repeal, investigative news outlet ProPublica published a database of complaints levied against NYPD officers through the city's Civilian Complaint Review Board ("CCRB"). Eric Umansky, *We're Publishing Thousands of Police Discipline Records That New York Kept Secret for Decades*, ProPublica [July 26, 2020], <https://perma.cc/67Z6-3BSX>. Using ProPublica's database, reporters at Gothamist reported that from 2010 to 2019, the CCRB found the majority of complaints that came before to be "unsubstantiated." *See* David Cruz, *Why the Majority of NYPD Misconduct Complaints End Up "Unsubstantiated,"* Gothamist

[Aug. 18, 2020], <https://tinyurl.com/mdxax9v6>. Gothamist’s reporting highlighted, among other things, two misconduct allegations where video footage showed officers initiating physical altercations with the complainants; in both cases, the complaints were dismissed by the CCRB as “unsubstantiated.” *Id.* Though the complaints would remain in the officers’ records, they did not face any formal discipline. *Id.*; *see also, e.g.*, N.Y. Senate, Floor Debate, 243rd N.Y. Leg., Reg. Sess. [June 9, 2020], at 1805–06 (debating the bill that would ultimately repeal Section 50-a, Senator Bailey noted that “in the City of New York roughly 3,000 individuals made complaints about racial profiling. Zero were substantiated.”).

The New York Times’ November 2020 analysis of CCRB complaint data similarly revealed that misconduct allegations often resulted in no disciplinary action. Ashley Southall *et al.*, *A Watchdog Accused Officers of Serious Misconduct. Few Were Punished.*, N.Y. Times [Nov. 15, 2020], <https://tinyurl.com/2s667rnn>. Analyzing two decades of misconduct charges—not including unsubstantiated complaints—the *Times* found that in 71% of cases before the CCRB, the NYPD “often used its power over the disciplinary process to nullify the review board’s determination that serious misconduct had occurred and that the stiffest punishment should be meted out.” *Id.* “These trends [went] largely unchanged” over the years, despite new mayoral administrations and promises to “rein[] in police misconduct.” *Id.* A month after the *Times*’ story was published,

the New York City Department of Investigation “recommended that policymakers revisit the police commissioner’s absolute authority over discipline” and five city councilmembers began drafting legislation to “shift final authority on discipline away from the commissioner.” Molly Simon & Eric Umansky, *Calls Increase for NYPD Commissioner to Be Stripped of Absolute Authority Over Officer Discipline*, ProPublica [Dec. 22, 2020], <https://tinyurl.com/mrx7j4fb>. Even though the *Times* did not have access to records of unsubstantiated complaints for its reporting, its investigation underlines that when journalists have access to underlying records, they can bring information to light that spurs important policy changes.

The people of Rochester are entitled to the opportunity to understand what law enforcement is doing in the name of public welfare and, where necessary, to hold officers to account. In a 2017 report titled “The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York” the authors noted that “[f]rom 2002 to 2015, only 2% of civilian complaints of unnecessary force [were] sustained by the Chief of Police.” Barbara Lacker-Ware & Theodore Forsyth, *The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York* [2017], at 6. That is, over thirteen years, 98% of unnecessary force complaints were labeled “unsubstantiated.” *See id.* To make the transparency and accountability that was intended by the repeal of Section 50-a a reality, the public


must know what the bulk of unsubstantiated complaints reveal about how police misconduct is—or is not—addressed in Rochester.

CONCLUSION

New York is home to the second largest number of law enforcement officers in the country. Without access to records of complaints of misconduct against those officers, including unsubstantiated ones, the press cannot inform the public about individual instances or patterns of alleged misconduct, or about how such allegations are handled by law enforcement agencies. Amici strongly urge the Court to affirm the Appellate Division’s ruling, which is consistent with the rulings of other New York courts, and conclude that upon the repeal of Section 50-a, all complaints of law enforcement misconduct are to be public, and that whatever minimal (if any) privacy interests that police officers may have in unsubstantiated complaints “must bow” to the substantial public interest in accessing them. *See Schenectady Police Benevolent Ass’n*, 2020 WL 7978093, at *4–5.

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CERTIFICATION OF WORD COUNT

Counsel certifies that this brief has a total word count of 6,577 words, excluding the portions of the brief not included in the total under the rules, and that it thus complies with the word limit under Rule 500.13(c)(1).

APPENDIX

STATEMENTS OF INTEREST OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 to protect First Amendment freedoms and the newsgathering rights of journalists.

Advance Publications, Inc. is a diversified privately-held company that operates and invests in a broad range of media, communications and technology businesses. Its operating businesses include Condé Nast's global magazine and digital brand portfolio, including titles such as *Vogue*, *Vanity Fair*, *The New Yorker*, *Wired*, and *GQ*, local news media companies producing newspapers and digital properties in 10 different metro areas and states, and *American City Business Journals*, publisher of business journals in over 40 cities.

American Broadcasting Companies, Inc. is a broad-based communications company. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations that regularly gather and report news to the public. ABC News produces the television programs *World News with David Muir*, *Good Morning America*, *Nightline*, *20/20*, and *This Week*, among others.

The Atlantic Monthly Group LLC is the publisher of *The Atlantic* and TheAtlantic.com. Founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others, *The Atlantic* continues its 160-

year tradition of publishing award-winning journalism that challenges assumptions and pursues truth, covering national and international affairs, politics and public policy, business, culture, technology and related areas.

BuzzFeed, Inc. is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

The Center for Investigative Reporting, Inc. (d/b/a Reveal) is the nation's oldest nonprofit investigative newsroom in the country that runs the brands Mother Jones, Reveal, and CIR Studios. Mother Jones is a reader-supported news magazine and website known for ground-breaking investigative and in-depth journalism on issues of national and global significance. Reveal produces investigative journalism for the Reveal national public radio show and podcast, and CIR Studios produces feature length documentaries distributed on Netflix, Hulu and other streaming channels. Reveal often works in collaboration with other newsrooms across the country.

Dow Jones & Company, Inc. is the world's leading provider of news and business information. Through The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information

services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

The E.W. Scripps Company is the nation's fourth-largest local TV broadcaster, operating a portfolio of 61 stations in 41 markets. Scripps also owns Scripps Networks, which reaches nearly every American through the national news outlets Court TV and Newsy and popular entertainment brands ION, Bounce, Grit, Laff and Court TV Mystery. The company also runs an award-winning investigative reporting newsroom in Washington, D.C., and is the longtime steward of the Scripps National Spelling Bee.

Fox Television Stations, LLC, directly and through affiliated companies, owns and operates 28 local television stations throughout the United States. The 28 stations have a collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market. Edit Statement of Interest.

Gannett is the largest local newspaper company in the United States. Our more than 200 local daily brands in 43 states — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

Hearst is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include

ownership of 15 daily and more than 30 weekly newspapers, including the San Francisco Chronicle, Houston Chronicle, and Albany Times Union; hundreds of magazines around the world, including Cosmopolitan, Good Housekeeping, ELLE, Harper's BAZAAR and O, The Oprah Magazine; 31 television stations such as KCRA-TV in Sacramento, Calif. and KSBW-TV in Monterey/Salinas, CA, which reach a combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

The Marshall Project is a nonpartisan, nonprofit news organization that seeks to create and sustain a sense of national urgency about the U.S. criminal justice system. We achieve this through award-winning journalism, partnerships with other news outlets and public forums. In all of our work we strive to educate and enlarge the audience of people who care about the state of criminal justice.

National Newspaper Association is a 2,000 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, FL.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

NBCUniversal Media, LLC is one of the world's leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned- television stations, including WNBC in New York, that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the "Today" show, "NBC Nightly News with Lester Holt," "Dateline NBC," and "Meet the Press" and operates NBCNews.com.

The New Jersey Press Association ("NJPA") is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. It has a membership composed of daily newspapers, affiliate newspapers, weekly newspapers, digital news websites, as well as corporate and non-profit associate members. NJPA is a membership association formed to advance the interests of newspapers and to increase awareness of the benefits of newspaper readership. The mission of NJPA is to help newspapers remain editorially strong, financially sound and free of outside influence. NJPA pursues these goals in every way possible, as a service both to its members and to the people of New Jersey.

The New York News Publishers Association is a trade association which represents daily, weekly and online newspapers throughout New York State. It was formed in 1927 to advance the freedom of the press and to represent the interests of the newspaper industry.

With an urban vibrancy and a global perspective, **New York Public Radio** (“NYPR”) produces innovative, critically-acclaimed programming for local and national broadcast, on-demand and live streaming audiences. NYPR’s brands include WNYC, WQXR, WNYC Studios, Gothamist, New Jersey Public Radio, and the Jerome L. Greene Performance Space. The WNYC newsroom and Gothamist produce award-winning local journalism for New York City, New Jersey and the surrounding region. WQXR, the City’s only all-classical radio station broadcasts new and archival classical recordings and makes live performances from New York City’s esteemed performance venues available to all. The Jerome L. Greene Performance Space channels the collective genius of NYC to produce forward-looking live art, theater, and discussion in an intimate venue. WNYC Studios is a premier producer of on-demand and national broadcast audio, and home to some of the industry’s most impactful award-winning podcasts and national radio shows, including *Radiolab*, *On the Media*, *The New Yorker Radio Hour*, and

Notes from America, among others. Further information about programs, podcasts, and stations may be found at www.nypublicradio.org.

The New York Times Company is the publisher of *The New York Times* and operates the news website nytimes.com.

The New Yorker is an award-winning magazine of general interest, published weekly in print, digital, and online. Its writers regularly use information provided by sources, confidential and non-confidential, to report on matters of state, national, and international importance.

The News/Media Alliance represents over 2,200 diverse publishers in the U.S. and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed news since before the Constitutional Convention. Its membership creates quality journalistic content that accounts for nearly 90 percent of daily newspaper circulation in the U.S., over 500 individual magazine brands, and dozens of digital-only properties. The Alliance diligently advocates for newspapers, magazine, and digital publishers, on issues that affect them today.

Newsday LLC (“Newsday”) is the publisher of the daily newspaper, Newsday, and related news websites. Newsday is one of the nation’s largest daily newspapers, serving Long Island through its portfolio of print and digital products.

Newsday has received 19 Pulitzer Prizes and other esteemed awards for outstanding journalism.

Nexstar Media Inc. (“Nexstar”) is a leading diversified media company that leverages localism to bring new services and value to consumers and advertisers through its traditional media, digital and mobile media platforms. Nexstar owns, operates, programs or provides sales and other services to 199 television stations and related digital multicast signals reaching 116 markets or approximately 62% of all U.S. television households.

The Online News Association (“ONA”) is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

Penguin Random House LLC publishes adult and children’s fiction and nonfiction in print and digital trade book form in the U.S. The Penguin Random House global family of companies employ more than 10,000 people across almost 250 editorially and creatively independent imprints and publishing houses that collectively publish more than 15,000 new titles annually. Its publishing lists include more than 60 Nobel Prize laureates and hundreds of the world’s most widely

read authors, among whom are many investigative journalists covering domestic politics, the justice system, business and international affairs.

Pro Publica, Inc. (“ProPublica”) is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with the *Yakima Herald-Republic* and *Walla Walla Union-Bulletin*, all in Washington state.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi,

SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

TEGNA Inc. owns or services (through shared service agreements or other similar agreements) 64 television stations in 52 markets, including WGRZ-TV in New York.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

Vox Media, LLC owns New York Magazine and several web sites, including Vox, The Verge, The Cut, Vulture, SB Nation, and Eater, with 170 million unique monthly visitors.