

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

Fraternal Order of Police, Metropolitan Police
Department Labor Committee, D.C. Police Union

Case Number: _____

vs

Date: August 7th 2020

The District of Columbia, et al.

One of the defendants is being sued
in their official capacity.

Name: <i>(Please Print)</i> Anthony M. Conti and Daniel J. McCartin		Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) <input type="checkbox"/> Other: _____
Firm Name: Conti Penn LLC		
Telephone No.: 410-837-6999	Six digit Unified Bar No.: 479152/976580	

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
Demand: \$ _____ Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

COLLECTION CASES

- | | | |
|---|--|--|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Plff. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Plff. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation
Over \$25,000 Plff. Grants Consent | <input type="checkbox"/> 26 Insurance/Subrogation
Over \$25,000 Consent Denied |
| <input type="checkbox"/> 07 Personal Property | <input type="checkbox"/> 07 Insurance/Subrogation
Under \$25,000 Plff. Grants Consent | <input type="checkbox"/> 34 Insurance/Subrogation
Under \$25,000 Consent Denied |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 28 Motion to Confirm Arbitration
Award (Collection Cases Only) | |
| <input type="checkbox"/> 15 Special Education Fees | | |

B. PROPERTY TORTS

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|---|--|---|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile,
Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile,
Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

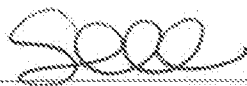
- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA)
(D.C. Code Title I, Chapter 6) |
| <input type="checkbox"/> 02 Att. Before Judgment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 33 Whistleblower |
| <input checked="" type="checkbox"/> 16 Declaratory Judgment | |

II.

- | | | |
|--|--|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-1 (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code §
2-1802.03 (h) or 32-1519 (a)] | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | <input type="checkbox"/> 20 Master Meter (D.C. Code §
42-3301, et seq.) | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature



Date



Superior Court of the District of Columbia
 CIVIL DIVISION
 Civil Actions Branch
 500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
 Telephone: (202) 879-1133 Website: www.dccourts.gov

Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union

Plaintiff

vs.

Case Number _____

The District of Columbia

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Anthony M. Conti; Daniel J. McCartin

Clerk of the Court

Name of Plaintiff's Attorney

Conti Fenn LLC

By _____

Address

36 S. Charles St., Ste. 2501, Baltimore, MD 21201

Deputy Clerk

410-837-6999

Date _____

Telephone

如需翻译, 请拨打电话 (202) 879-4828

Veillez appeler au (202) 879-4828 pour une traduction

Để có một bản dịch, hãy gọi (202) 879-4828

번역을 원하시면, (202) 879-4828로 전화하십시오. የአገልግሎት ቁጥር (202) 879-4828 ይደውሉ

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation

Vea al dorso la traducción al español



**Superior Court of the District of Columbia
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
Telephone: (202) 879-1133 Website: www.dccourts.gov**

Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union

Plaintiff

vs.

Case Number _____

Muriel Bowser, in her official capacity as Mayor of the District of Columbia

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

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Anthony M. Conti; Daniel J. McCartin

Clerk of the Court

Name of Plaintiff's Attorney

Conti Fenn LLC

By _____

Address

36 S. Charles St., Ste. 2501, Baltimore, MD 21201

Deputy Clerk

410-837-6999

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If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

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Vea al dorso la traducción al español

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

FRATERNAL ORDER OF POLICE,
METROPOLITAN POLICE DEPARTMENT
LABOR COMMITTEE, D.C. POLICE
UNION,

1524 Pennsylvania Avenue, S.E.
Washington, DC 20003,

Plaintiff,

Case Number

v.

THE DISTRICT OF COLUMBIA,

John Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004,

Serve:

Mayor Muriel Bowser
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004,

and

Karl A. Racine
Attorney General
for the District of Columbia
441 4th Street, N.W.
Washington, DC 20001,

MURIEL BOWSER, in her official capacity as
Mayor of the District of Columbia,

Serve:

Mayor Muriel Bowser
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004,

and

Karl A. Racine
Attorney General
for the District of Columbia
441 4th Street, N.W.
Washington, DC 20001,

Defendants.

VERIFIED COMPLAINT

The plaintiff, Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union (“D.C. Police Union”), by its attorneys Anthony Conti, Daniel McCartin, and the law firm Conti Fenn LLC, hereby brings this lawsuit against the defendants, The District of Columbia (“District”) and Mayor Muriel Bowser (“Mayor Bowser”) (collectively, the “Defendants”) seeking, among other things, emergency injunctive relief arising out of the unlawful provisions contained in the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020 (the “Act”) mandating that Mayor Bowser publicly release the following:

(I) Within 5 business days after an officer-involved death or serious use of force, publicly release the names and body-worn camera recordings of all officers who committed the officer-involved death or serious use of force; and

(II) By August 15, 2020, publicly release the names and body-worn camera recordings of all officers who have committed an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014.

In support of this Verified Complaint, the D.C. Police Union states the following:

I. Introduction

This Verified Complaint seeks an emergency injunction to prevent Mayor Bowser from publicly releasing body-worn camera recordings and names of officers involved in officer-involved death by August 15, 2020. Contemporaneous with the filing of this Complaint for

injunctive relief, the D.C. Police Union is filing and serving on the Defendants an Emergency Motion for a Temporary Restraining Order, also seeking a preliminary and permanent injunction enjoining Mayor Bowser from publicly releasing body-worn camera recordings and the names of officers involved in officer-involved death or serious use of force. Unless and until a restraining order is entered prohibiting Defendants' unlawful actions, the D.C. Police Union and its members will suffer irreparable harm.

II. **Parties**

1. The D.C. Police Union is a labor union with its principal place of business located at 1524 Pennsylvania Ave., S.E., Washington, DC 20003. The D.C. Police Union is the exclusive representative of all police officers, sergeants, investigators, detectives, and detective sergeants of the D.C. Metropolitan Police Department and is comprised of approximately 3,600 members. The D.C. Police Union sues on behalf of its members as well as on its own behalf.

2. The District is the government for the District of Columbia. The District is responsible for all of the official acts of the Council and the Mayor of the District of Columbia.

3. Muriel Bowser is the Mayor of the District of Columbia. The Mayor is "responsible for the proper execution of all laws relating to the District." D.C. Code § 1-204.22.

III. **Jurisdiction and Venue**

4. This Court may exercise jurisdiction and venue over the Defendants because all of the acts and omissions described herein occurred within the District of Columbia and are actions of the Government of the District of Columbia and its agents or agencies within its control.

IV.
Factual Background

5. The executive power of the District of Columbia is vested in the Mayor who is the chief executive officer of the District government. *See* D.C. Code § 1-204.22. As such, “it shall be the duty of the Mayor of the District of Columbia . . . (1) To preserve the public peace; (2) To prevent crime and arrest offenders; (3) To protect the rights of persons and of proper; . . . (10) To enforce and obey all laws and ordinances in force in the District, or any part thereof, which are properly applicable to police or health, and not inconsistent with the provisions of this title.” D.C. Code § 5-101.03.

6. Pursuant to the Comprehensive Merit Personnel Act (“CMPA”) the Metropolitan Police Department (“MPD”) is a “subordinate agency” under “the direct administrative control of the Mayor.” D.C. Code §1-603.01(17)(L).

7. In October 2014, the MPD established a Body-Worn Camera program. District of Columbia Code § 5-116.32 sets for the following authority of the Mayor to establish rules regarding public access to body-worn camera recordings:

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, and in accordance with this section, shall issue rules regarding the Metropolitan Police Department’s Body-Worn Camera Program. The rules, at a minimum, shall provide:

(1) Standards for public access to body-worn camera recordings.

D.C. Code § 5-116.32.

8. In addition, 24 DCMR §3900.10 set forth the following regulation regarding public release of body-worn camera recordings:

The Mayor may, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney’s Office for the District of Columbia, and the Office of the Attorney General, release BWC recordings that would otherwise not be releasable pursuant to a

FOIA request. Examples of matters of significant public interest include officer-involved shootings, serious use of force by an officer, and assaults on an officer requiring hospitalization.

24 DCMR §3900.10.

9. On July 7, 2020, the Council of the District of Columbia approved and signed the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020 (the “Act”). The Act was passed on an emergency basis without any of the public notice and participation in rulemaking required for the passage of a law on a non-emergency basis. The Chair of the Council of the District of Columbia, Phil Mendelson, transmitted the Act to Mayor Bowser on July 9, 2020. On July 22, 2020, Mayor Bowser signed the Act.

10. Subtitle B of the Act amends D.C. Code § 5-116.33 by adding new subsections, which state as follows:

(B) The Mayor:

(i) Shall, except as provided in paragraph (2) of this subsection:

(I) Within 5 business days after an officer-involved death or serious use of force, publicly release the names and body-worn camera recordings of all officers who committed the officer-involved death or serious use of force; and

(II) By August 15, 2020, publicly release the names and body-worn camera recordings of all officers who have committed an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014.

11. Subtitle B of the Act also amends 24 DCMR §3900.10 by adding the following:

(a) Notwithstanding any other law, the Mayor:

(1) Shall, except as provided in paragraph (b) of this subsection:

(A) Within 5 business days after an officer-involved death or serious use of force, publicly release the names and BWC recordings of all officers who committed the officer-involved death or serious use of force; and

(B) By August 15, 2020, publicly release the names and BWC recordings of all officers who have committed an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014.

12. On June 8, 2020, Michael R. Sherwin, Acting United States Attorney for the District of Columbia, sent correspondence to Councilmember Charles Allen expressing serious concerns regarding the Act's provisions relating to body worn-camera footage. *See Exhibit 1.* Specifically, U.S. Attorney Sherwin expressed the following serious concerns:

USAO is concerned that this modification would, in fact, make it more difficult to investigate a serious officer-involved death or serious use of force. . . . The early publication of BWC could create a narrative that makes it difficult to conduct an investigation, as it may lead witnesses to a conclusion that affects their testimony.

* * * * *
Further, early release of BWC could inadvertently publicize the identities of the witnesses. . . . If the BWC were released unredacted, civilian privacy could be compromised, as BWC often contains personal details from civilians, including names, dates of birth, and contact information such as home addresses and telephone numbers.

Exhibit 1 at 3-4 (emphasis in original).

13. U.S. Attorney Sherwin further expressed significant concern regarding the mandatory language in the Act requiring the Mayor to release body-worn camera recordings, as follows:

Because there are situations where it could be appropriate for the Mayor, in consultation with the relevant agencies, to release BWC footage, the mandatory language of the bill ("shall") should be changed to permissive language ("may"), allowing the Mayor discretion to release BWC footage at an appropriate time, balancing the needs of the community to see the footage with the needs of prosecutors to accurately investigate what happened, and the security and privacy rights of civilian witnesses.

Exhibit 1 at 4.

14. U.S. Attorney Sherwin further expressed significant concern that the Act's requirement that the Mayor release the name and body-worn camera footage of the officer

involved would result in “unjust reputational harm” and would “unjustly malign an officer,” as follows:

Finally, the prosecution and the government should not malign any suspect, including an officer, while an investigation is pending. Indeed, as a rule, police and prosecutors do not publicly release the name of any individual under investigation unless and until the individual is charged. Thus, if the evidence does not support charges, the target of the investigation, who is presumed innocent, does not suffer unjust reputational harm. In contrast, when an officer is charged with a crime, his or her name is released. Because, after thorough investigation, a police-involved death or serious use of force investigation may not ultimately result in the criminal charge of an officer, a requirement that the Mayor categorically release all names of officers after 72 hours, regardless of the facts of the case or the nature of the officer’s actions, could unjustly malign an officer.

Exhibit 1 at 4 (emphasis added)

15. The release of the body-camera footage and names of officers will result in unjust reputational harm and will unjustly malign and permanently tarnish the reputation and good name of any officer that is later cleared of misconduct concerning the use of force. The affected officer will have no ability to salvage his reputation after the immediate release of his name and the body-worn camera footage. In addition to unjustly maligning an officer, the mandatory release of the names of officers and body-worn camera footage will place officers and the public at immediate risk of significant bodily harm. When officers justifiably use force against a criminal suspect, the immediate public release of the officer’s name and the body-worn camera footage will allow the suspect and their associates to identify the officer and potentially seek retribution against the officer and his or her family. Equally concerning is that the officer is known by the criminal suspect to be a primary witness for the prosecution, and thus a potential target of violence to obstruct the officer’s testimony. This threat of violence would apply equally to any civilian witnesses identified by criminal suspects on the body-worn camera footage whom

they want to prevent from testifying against them at a criminal trial. The release of the officer's name and other identifying information contained in the body-worn camera footage will further impermissibly invade the officer's fundamental right to privacy.

Count I
-Request for Declaratory Judgment and Injunctive Relief-
(Violation of the Separation of Powers)

16. Paragraphs 1-15 of this Verified Complaint are fully incorporated herein.

17. The executive power of the District of Columbia is vested in the Mayor who is the chief executive officer of the District government. *See* D.C. Code § 1-204.22. As such, "it shall be the duty of the Mayor of the District of Columbia . . . (1) To preserve the public peace; (2) To prevent crime and arrest offenders; (3) To protect the rights of persons and of proper; . . . (10) To enforce and obey all laws and ordinances in force in the District, or any part thereof, which are properly applicable to police or health, and not inconsistent with the provisions of this title." D.C. Code § 5-101.03.

18. Pursuant to the Comprehensive Merit Personnel Act ("CMPA") the Metropolitan Police Department ("MPD") is a "subordinate agency" under "the direct administrative control of the Mayor." D.C. Code §1-603.01(17)(L).

19. D.C. Code § 5-116.32 sets for the following authority of the Mayor to establish rules regarding public access to body-worn camera recordings:

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, and in accordance with this section, shall issue rules regarding the Metropolitan Police Department's Body-Worn Camera Program. The rules, at a minimum, shall provide:

(1) Standards for public access to body-worn camera recordings.

D.C. Code § 5-116.32.

20. Pursuant to D.C. Code § 1-301.44(b), the Council declared that is “recognizes the principle of separation of powers in the structure of the District of Columbia government.”

21. Subtitle B of the Act amends D.C. Code § 5-116.33 and 24 DCMR §3900.10 by adding new subsections that require and order the Mayor to release body-worn camera footage and the names of officers involved in officer-involved death or serious use of force. In doing so, the Council has improperly usurped the exclusive power of the Mayor to “preserve the public peace,” “prevent crimes and arrest offenders,” and “protect the rights of persons and of property,” as well as the Mayor’s “direct administrative control” over her subordinate agency, the MPD. As such, Subtitle B of the Act improperly usurps the exclusive power of the Mayor in violation of the separation of powers of the District of Columbia government recognized in D.C. Code § 1-301.44(b).

22. Subtitle B of the Act improperly infringes on and obstructs the Mayor’s ability to carry out her executive functions to “preserve the public peace” and “prevent crimes and arrest offenders,” because the immediate, mandatory release of body-worn camera footage and names of officers will “make it more difficult to investigate a serious officer-involved death or serious use of force.” **Exhibit 1** at 3 (emphasis in original).

23. Subtitle B of the Act further improperly infringes on and obstructs the Mayor’s ability to carry out her executive function to “protect the rights of persons and of property,” because the immediate, mandatory release of body-worn camera footage and names of officers will compromise the privacy rights of District citizens because “BWC often contains personal details from civilians, including names, dates of birth, and contact information such as home addresses and telephone numbers.” **Exhibit 1** at 4. In addition, criminal suspects will have the ability to review the body-worn camera footage to identify civilian witnesses to their crimes,

which will cause these civilian witnesses to become the potential targets of threats or violence to prevent their testimony.

24. Through Subtitle B of the Act, the Council has removed the necessary discretion the Mayor must have in executing her executive powers. The Council's elimination of the Mayor's discretion in executing her executive power precludes the Mayor from properly balancing "the needs of prosecutors to accurately investigate what happened, and the security and privacy rights of civilian witnesses." **Exhibit 1** at 4. As such, Subtitle B of the Act directly infringes on and obstructs the Mayor's ability to carry out her executive functions to "preserve the public peace," "prevent crimes and arrest offenders," and "protect the rights of persons and of property" by requiring her to immediately release body-worn camera footage and names of officers without any discretion permitted by the Mayor in executing her executive function.

25. Subtitle B of the Act improperly infringes on and obstructs the Mayor's ability to carry out her executive functions to "preserve the public peace," "prevent crimes and arrest offenders," and "protect the rights of persons and of property," because the mandatory release of the names and body-worn camera footage will place D.C. Police Union members at immediate risk of significant bodily harm, unjustly malign officers, and unjustly subject officers to substantial reputational harm.

26. As such, Subtitle B of the Act represents an impermissible intrusion on the Mayor's authority and ability to perform her specifically delegated executive functions in violation of the separation of powers of the District of Columbia government recognized in the Home Rule Act and D.C. Code § 1-301.44(b). The Mayor has the exclusive power and duty to "preserve the public peace," "prevent crimes and arrest offenders," and "protect the rights of persons and of property." Subtitle B of the Act requires the Mayor to release of the names and

body-worn camera footage of officers involved in officer-involved death or serious use of force, which will directly impede her ability to carry out her essential functions and duties to prevent crime, arrest offenders, and protect the privacy rights of citizens of the District. The Mayor must be permitted to exercise discretion in the release of body-worn camera footage that will result in her inability to carry out her executive functions. As such, Subtitle B of the Act violates the separation of powers of the District of Columbia government recognized in the Home Rule Act and D.C. Code § 1-301.44(b).

27. Moreover, the United States Supreme Court has held that a violation of the separation of powers does not depend on the views of individual members of the executive branch or whether the encroached-upon branch approves of the encroachment, as follows:

Perhaps an individual President might find advantages in tying his own hands. But the separation of powers does not depend on the views of individual Presidents, nor on whether “the encroached-upon branch approves the encroachment,” *New York v. United States*, 505 U.S. 144, 182, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). The President can always choose to restrain himself in his dealings with subordinates. He cannot, however, choose to bind his successors by diminishing their powers, nor can he escape responsibility for his choices by pretending that they are not his own.

Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., 561 U.S. 477, 497 (2010) (internal citation omitted). As such, the D.C. Police Union has standing in this case to challenge the Act, which will directly irreparably harm its members.

28. Based on the foregoing, the D.C. Police Union is entitled to injunctive relief pursuant to D.C. Superior Court Rule of Civil Procedure 65 and D.C. Code § 2-510, enjoining the Mayor from publicly releasing the names and body-worn camera footage of officers involved in officer-involved death or serious use of force. Under the circumstances described in this Verified Complaint, the D.C. Police Union and its members will suffer, immediate, substantial,

and irreparable injury, including significant bodily harm and substantial reputational harm if this injunctive relief is not granted. The injuries that the D.C. Police Union and its members will suffer, far outweigh any injury that might be suffered by the Defendants or any other interested party if the requested injunctive relief is granted. Further, the D.C. Police Union will likely prevail on the merits of their claims against Defendants. Furthermore, the public interest supports the requested injunctive relief.

Count II

-Request for Declaratory Judgment and Injunctive Relief- **(Violation of the Due Process Guarantees of District of Columbia Home Rule Act)**

29. Paragraphs 1-28 of this Verified Complaint are fully incorporated herein.

30. All residents and employees of the District have due process rights which safeguard both procedural fairness as well as substantive and fundamental rights from government infringement, such as the fundamental right to privacy.

31. The District of Columbia Home Rule Act, D.C. Code § 1-203.02 states that “the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this chapter subject to all the restrictions and limitation imposed upon the states by the 10th section of the 1st article of the Constitution of the United States.”

32. Subtitle B of the Act violates the fundamental right to privacy held by D.C. Police Union members through the immediate, mandatory release of the names of officers and body-worn camera footage that will include further identifying information about the officers. The violation of this fundamental right to privacy could result in significant bodily harm to officers because the immediate public release of the officer’s name and the body-worn camera footage will allow criminal suspects and their associates to identify the officer and potentially seek

retribution against the officer and his or her family. In addition, the officer is known by the criminal suspect to be a primary witness for the prosecution, and thus a potential target of violence to obstruct the officer's testimony. The Act further fails to provide the affected officers with any mechanism to challenge the immediate release of their names or body-worn camera footage to attempt to protect their fundamental right to privacy and safety.

33. Subtitle B of the Act also violates the fundamental right to privacy held by all citizens of the District captured on the body-worn camera footage because, as noted by United States Attorney Sherwin, body-worn camera footage contains personal, private information about District citizens, including names, dates of birth, and contact information such as home addresses and telephone numbers. Criminal suspects will further have the ability to review the body-worn camera footage to identify civilian witnesses to their crimes, which will cause these civilian witnesses to become the potential targets of violence to prevent their testimony.

34. As a result, Subtitle B of the Act violates the due process protections contained in the Home Rule Act.

35. Based on the foregoing, the D.C. Police Union is entitled to injunctive relief pursuant to D.C. Superior Court Rule of Civil Procedure 65 and D.C. Code § 2-510, enjoining the Mayor from publicly releasing the names and body-worn camera footage of officers involved in officer-involved death or serious use of force. Under the circumstances described in this Verified Complaint, the D.C. Police Union and its members will suffer, immediate, substantial, and irreparable injury, including significant bodily harm and substantial reputational harm if this injunctive relief is not granted. The injuries that the D.C. Police Union and its members will suffer, far outweigh any injury that might be suffered by the Defendants or any other interested party if the requested injunctive relief is granted. Further, the D.C. Police Union will likely

prevail on the merits of their claims against Defendants. Furthermore, the public interest supports the requested injunctive relief.

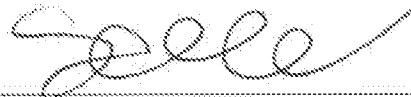
V.

Prayer For Relief On All Claims Set Forth In The Verified Complaint

WHEREFORE, the D.C. Police Union requests that the Court enter an Order:

1. Declaring that Subtitle B of the Act is invalid and violates the Separation of Powers principles set forth in D.C. Code 1-304.44(b), and the District of Columbia Home Rule Act, and striking the offensive provisions of the Act;
2. Declaring that Subtitle B of the Act is invalid and violates the due process guarantees of the District of Columbia Home Rule Act, and striking the offensive provisions of the Act;
3. Enjoining the Mayor from publicly releasing the names and body-worn camera footage of officers involved in officer-involved death or serious use of force;
4. Granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Attorneys for Plaintiff

VI.
Verification

I solemnly affirm under the penalties of perjury and under oath that the contents of the foregoing Verified Complaint are true and correct to the best of my knowledge, information, and belief.



Gregory Pemberton
Chairman, D.C. Police Union

Date: 8/7/20

Exhibit

1



U.S. Department of Justice

Michael R. Sherwin
Acting United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

June 8, 2020

VIA ELECTRONIC MAIL

The Honorable Charles Allen
Chairman
Committee on the Judiciary and Public Safety
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 110
Washington, DC 20004

Dear Chairman Allen:

Thank you for the opportunity to submit comments on behalf of the United States Attorney's Office for the District of Columbia on Bill 23-774 (the "Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020"). As members of this community, we are deeply disturbed by the death of George Floyd, and the circumstances surrounding his death. We support the fair and equitable treatment of individuals, regardless of race. In this time, we recommit ourselves to our duty as prosecutors—that is, to uphold the Constitution and the laws of the District of Columbia, and to serve justice for all. We support many of the goals of this emergency bill, which include ensuring accountability for police misconduct, and we commend the Council for its role in furthering this goal.

At the outset, we are concerned that by designating all of these proposals as emergency legislation, the Council is limiting the opportunity for the meaningful public and governmental input that the regular legislative process affords. Some of the proposals in this bill are significant policy proposals, and merit fulsome public engagement.

The U.S. Attorney's Office for the District of Columbia (USAO) also has concerns regarding proposals in this bill relating to body-worn camera (BWC) footage. First, the bill

proposes modifying D.C. Municipal Regulation 24-3900.9 as follows: “Members may not review their BWC recordings or BWC recordings that have been shared with them to assist in initial report writing, ~~except in cases involving a police shooting.~~”

As a threshold matter, it bears emphasizing that the existing Regulation already contains an exception for cases involving a police shooting. This means that, where there is a police shooting, an MPD member is precluded from reviewing his or her own BWC recording before writing an initial report. Indeed, in certain situations, the online platform storing MPD BWC footage “locks” the videos for review by officials, precluding officers from viewing that footage, and precluding others from viewing that footage without permission. USAO supports expanding the exception in the existing Regulation to encompass cases involving officer conduct that result in serious injury or death, even where there is no firearm involved. USAO therefore supports amending the Regulation as follows: “Members may review their BWC recordings or BWC recordings that have been shared with them to assist in initial report writing, except in cases involving a police shooting, or in cases involving officer-involved death or serious bodily injury.”

USAO’s concerns below, therefore, only apply to cases that do not involve a police shooting, or officer-involved death or serious bodily injury. These include homicides, sexual abuse, domestic violence, robberies, burglaries, assaults, and other violent crimes committed by civilians against other civilians.

USAO’s primary objective is to ensure the accuracy of the initial police report. Particularly in less serious cases, where a detective may not be assigned, the initial police report is a crucial way to inform prosecutors, the defense, and judges about the facts of the case. Officer accuracy in report writing is paramount, and USAO is concerned about any change in law that could infringe on accuracy. Frequently, the language in the initial police report is the same language used in a *Gerstein* affidavit filed in court or in an arrest or search warrant, upon which judges rely when making decisions that affect a person’s liberty and privacy.¹ The accuracy of an affidavit establishing probable cause or in support of an arrest or search warrant is essential.

Although not all officers currently rely on their BWC footage in preparing their initial police reports, there is good reason why officers may rely on their BWC footage in preparing their initial police reports. Such use is often to be encouraged in that it has the capacity to improve the accuracy of the report. Officers often capture civilian conduct and interviews on BWC. Civilian interviews can be lengthy, and may be difficult to remember in detail or to record in officer notes. It is important that officers accurately capture in their initial reports what civilian victims, witnesses, and defendants have said. Inaccuracies in capturing civilian witness statements will not only inappropriately undermine officer credibility at a hearing or at trial, but may also inappropriately undermine civilian credibility at a hearing or trial, when the defense attempts to impeach a civilian witness based on the conflicting statements as documented in the

¹ A *Gerstein* affidavit, which is sworn to by a law enforcement officer, is a document filed in court setting forth the facts of a case that provides a basis for the judicial finding of probable cause. A judicial finding of probable cause is required for pretrial detention.

officer's initial report. Further, BWC footage may contain exculpatory material, and it is very important that officers capture exculpatory material in their initial reports. This could include exculpatory statements made by civilian witnesses, exculpatory evidence captured on video, and exculpatory suspects that could exonerate the accused.

The bill also eliminates an officer's ability to review another officer's BWC footage in preparing an initial police report. Review of another officer's BWC footage can be an important investigatory step in not only ascertaining the full scope of conduct, but in ascertaining what charges would be appropriate. Further, the bill is unclear as to whether a detective may review a patrol officer's BWC while preparing the detective's initial report, which is often a more comprehensive report. Such review should not be precluded inadvertently by this bill.

Finally, if officers are not permitted to review BWC footage before writing a report, officers may be incentivized to write very brief initial reports that do not contain meaningful details, to the detriment of prosecutors seeking to make just charging decisions, defense counsel arguing probable cause and release conditions, and judges making probable cause and hold determinations.

Second, the bill proposes modifying D.C. Municipal Regulation 24-3900.10 as follows: "Notwithstanding any other law, (The Mayor; (a) Shall: (1) Within 72 hours after an officer-involved death or the serious use of force, publicly release the names and BWC recordings of all officers who committed the officer-involved death or serious use of force; and (2) By July 1, 2020, publicly release the names and BWC recordings of all officers who have committed an officer-involved death since the BWC Program was created; and (b) may, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney's Office for the District of Columbia, and the Office of the Attorney General, publicly release any other BWC recordings that may not ~~would otherwise not be releasable pursuant to a FOIA request. Examples of matters of significant public interest include officer-involved shootings, serious use of force by an officer, and assaults on an officer requiring hospitalization.~~"

USAO is concerned that this modification would, in fact, make it more difficult to investigate a serious officer-involved death or serious use of force. Such a result, of course, would be contrary to our shared goal of ensuring officer accountability for misconduct. Once the BWC footage is public, both the officer involved and any civilians involved would be able to watch it. It would be virtually impossible for USAO to conduct a full investigation within 72 hours, as a full investigation could include all relevant parties, including involved civilians, testifying before the grand jury.² The early publication of BWC could create a narrative that makes it difficult to conduct an investigation, as it may lead witnesses to a conclusion that affects their testimony.

² For example, for an officer-involved death or serious use of force case that occurred at 5:00 p.m. on a Friday, 64 of the allotted 72 hours would pass before a grand jury was even sitting again to begin hearing witness testimony.

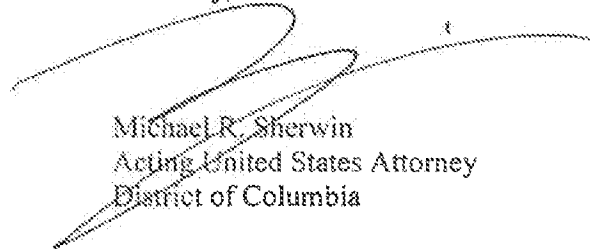
Further, early release of BWC could inadvertently publicize the identities of the witnesses. To ensure police accountability, it is crucial that witnesses cooperate. Even with redaction of witness names (which the proposed legislation does not currently provide for), the neighborhood or location where an incident took place would be visible, which could lead to a situation where witness identities were improperly exposed. Further, even if redactions are permitted by the legislation, 72 hours may not be enough time to conduct redactions of all relevant BWC footage, particularly if there is extensive BWC footage of an incident from numerous officers. If the BWC were released unredacted, civilian privacy could be compromised, as BWC often contains personal details from civilians, including names, dates of birth, and contact information such as home addresses and telephone numbers.

Because there are situations where it could be appropriate for the Mayor, in consultation with the relevant agencies, to release BWC footage, the mandatory language of the bill ("shall") should be changed to permissive language ("may"), allowing the Mayor discretion to release BWC footage at an appropriate time, balancing the needs of the community to see the footage with the needs of prosecutors to accurately investigate what happened, and the security and privacy rights of civilian witnesses.

Finally, the prosecution and the government should not malign any suspect, including an officer, while an investigation is pending. Indeed, as a rule, police and prosecutors do not publicly release the name of any individual under investigation unless and until the individual is charged. Thus, if the evidence does not support charges, the target of the investigation, who is presumed innocent, does not suffer unjust reputational harm. In contrast, when an officer is charged with a crime, his or her name is released. Because, after thorough investigation, a police-involved death or serious use of force investigation may not ultimately result in the criminal charge of an officer, a requirement that the Mayor categorically release all names of officers after 72 hours, regardless of the facts of the case or the nature of the officer's actions, could unjustly malign an officer.

We look forward to continuing to work with the Council to ensure that our laws are just and equitable.

Sincerely,



Michael R. Sherwin
Acting United States Attorney
District of Columbia

cc: The Honorable Muriel Bowser, Mayor
The Honorable Kevin Donahue, Deputy Mayor
for Public Safety and Justice and Deputy City Administrator

The Honorable Phil Mendelson, Chairman
The Honorable Kenyan McDuffie, Chairman Pro Tempore
The Honorable Anita Bonds, Councilmember, Judiciary Committee
The Honorable Mary M. Cheh, Councilmember, Judiciary Committee
The Honorable Vincent C. Gray, Councilmember, Judiciary Committee
The Honorable David Grosso, Councilmember
The Honorable Brianne Nadeau, Councilmember
The Honorable Elissa Silverman, Councilmember
The Honorable Brandon T. Todd, Councilmember
The Honorable Robert C. White, Jr., Councilmember
The Honorable Trayon White, Sr., Councilmember
The Honorable Karl A. Racine, Attorney General for the District of Columbia