

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE**

BUFFALO POLICE BENEVOLENT ASSOCIATION,  
INC.; and BUFFALO PROFESSIONAL  
FIREFIGHTERS ASSOCIATION INC., LOCAL 282,  
IAFF, AFL-CIO,

Petitioners/Plaintiffs,

vs.

BYRON W. BROWN, in his official capacity as Mayor  
of the City of Buffalo; the CITY OF BUFFALO;  
BYRON C. LOCKWOOD, in his official capacity as  
Commissioner of the Buffalo Police Department; the  
BUFFALO POLICE DEPARTMENT; WILLIAM  
RENALDO, in his official capacity as Commissioner of  
the Buffalo Fire Department; and the BUFFALO FIRE  
DEPARTMENT,

Respondents/Defendants.

INDEX NO: 807664/2020

Hon. Frank A. Sedita, III

**AFFIRMATION OF MICHAEL SISITZKY IN SUPPORT OF THE NEW YORK CIVIL  
LIBERTIES UNION'S MOTION TO INTERVENE**

Michael Sisitzky, an attorney admitted to practice law in the courts of New York, and not a party to the above-titled matter, affirms the following to be true under penalty of perjury:

1. I am lead policy counsel with the New York Civil Liberties Union Foundation. I submit this affirmation in support of the New York Civil Liberties Union's ("NYCLU") motion to intervene in this matter.
2. The NYCLU is a non-partisan, not-for-profit advocacy organization that is the New York state affiliate of the American Civil Liberties Union. Founded in 1951, the NYCLU now has

more than 120,000 members and supporters with nine offices around New York State, including an office in Buffalo.

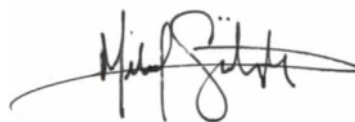
3. The mission of the NYCLU is to defend and protect civil rights and liberties as embodied in the United States Constitution, the New York State Constitution, and state and federal law. As part of that mission, the NYCLU is committed to police transparency and accountability and has frequently engaged with communities, organizers, and policymakers throughout New York State, including in Buffalo, on proposals to create or strengthen systems for independent oversight of law enforcement. The NYCLU's offices throughout New York State have engaged with local police departments and civilian or citizen review boards.
4. For decades, the NYCLU has been involved in work to promote government accountability and transparency. An important part of that work has been directed at law enforcement agencies, including the Buffalo Police Department. This work has included litigation, legislative advocacy, and public education.
5. The NYCLU routinely files requests for documents and data under the New York Freedom of Information Law (FOIL) and the federal Freedom of Information Act (FOIA). The NYCLU regularly releases to the public the information it obtains through its FOIL and FOIA requests as part of its advocacy and public education. It also produces and makes public reports as the result of obtaining such information. To take one relevant example, the NYCLU filed a FOIL request with 23 police departments in 2015, including the Buffalo Police Department, seeking 39 categories of records, including policies and data related to officer use of force, complaints about misconduct, and rules and procedures related to disciplinary investigations. The NYCLU released two public reports as a result of this FOIL project, including a report discussing police departments' responsiveness to FOIL and a

website in which the departments' FOIL productions were published and analyzed (*see TAKING COVER, How New York Police Departments Resist Transparency, available at [https://www.nyclu.org/sites/default/files/field\\_documents/taking\\_cover\\_20170918.pdf](https://www.nyclu.org/sites/default/files/field_documents/taking_cover_20170918.pdf)* Behind the Badge, Western Region Buffalo, *available at [https://www.behindthebadgeny.org/police\\_departments/buffalo/](https://www.behindthebadgeny.org/police_departments/buffalo/)*).

6. As part of its police accountability work, the NYCLU has been deeply involved in litigation and legislative advocacy concerning section 50-a of New York's Civil Rights Law. In my capacity, I led the NYCLU's multi-year campaign culminating in the June 2020 repeal of section 50-a and have personal knowledge concerning the repeal legislation and its intended effect of allowing for release of all records concerning police misconduct, including records described by plaintiffs as "Unsubstantiated and Pending Allegations."
7. The repeal of section 50-a made publicly available vast amounts of records and data related to police accountability that previously had been secret, including and as discussed at length during the legislative debates over the repeal legislation, records of unsubstantiated and pending allegations against officers (*see* Exhibit 1, transcript of New York State Assembly June 9, 2020, session; *see also* Exhibit 2, transcript of New York State Senate June 9, 2020, session). Respondents' release of such records would be entirely consistent with the plain text of the legislation and the expressed intent of the legislature.
8. The public interest in police accountability extends beyond knowing whether officers face disciplinary consequences for substantiated allegations of misconduct. The repeal of section 50-a was intended to allow a broader examination into the ways in which police disciplinary systems operate, writ large. Such comprehensive analysis would be impossible if the public were denied access to records concerning unsubstantiated and pending allegations, as the

continued secrecy of such records would forestall any effort to assess the sufficiency and integrity of the misconduct investigations that led to such outcomes, including whether systemic factors or resource issues that could be resolved through further policy or legislative efforts may have played a role.

9. Respondents are not well suited to defend these vital public interests given their history of non-responsiveness to FOIL requests and their past positions supporting an overly expansive and legally flawed interpretation of section 50-a. In response to the NYCLU's 2015 FOIL request seeking 39 items from the Buffalo Police Department, the Department constructively denied 27 items in whole or in part, including by withholding use of force and firearms use reports on the assertion that such reports were confidential under section 50-a. This interpretation of section 50-a had no basis in law, and these reports were only released after the NYCLU sued the Buffalo Police Department to compel disclosure. *See NYCLU v. Buffalo Police Department* (Index No. I 2016-40). The Buffalo Police Department's willingness to take such a position at obvious odds with the clear language and intent of FOIL and related statutes casts serious doubt on Respondents' ability to meaningfully defend the core transparency interests now at stake following the repeal of section 50-a.
10. Given the NYCLU's extensive work concerning FOIL and section 50-a more broadly and its work concerning the policies and practices of the Buffalo Police Department specifically, the NYCLU is well positioned to serve as respondent-intervenor in this matter.



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Michael Sisitzky

Dated: August 14, 2020  
New York, N.Y.