

# **EXHIBIT A**

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

PATRICK J. LYNCH, as President of the Police Benevolent Association of the City of New York, Inc., on behalf of himself and all officers with the rank of police officer employed by the City of New York, POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., ED MULLINS, as President of the Sergeants Benevolent Association of the City of New York, on behalf of himself and all officers with the rank of sergeant employed by the City of New York, and SERGEANTS BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK,

Index No.: 154653/2021

Plaintiffs-Petitioners,

-against-

NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD and FREDERICK DAVIE, in his Official Capacity as Chair of the New York City Civilian Complaint Review Board,

Defendants-Respondents.

**PROPOSED BRIEF OF AMICI CURIAE THE NEW YORK CIVIL LIBERTIES UNION  
AND THE AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF DEFENDANTS-  
RESPONDENTS THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD  
AND FREDERICK DAVIE**

New York Civil Liberties Union Foundation  
By: Guadalupe Victoria Aguirre  
Christopher Dunn  
125 Broad Street, Floor 19  
New York, N.Y. 10004  
Tel: (212) 607-3300  
Email: [laguirre@nyclu.org](mailto:laguirre@nyclu.org)

American Civil Liberties Union Foundation  
Women's Rights Project  
By: Sandra Park  
125 Broad Street, Floor 19  
New York, N.Y. 10004  
Tel: (212) 549-2500  
Email: [spark@aclu.org](mailto:spark@aclu.org)

Dated: July 29, 2018  
New York, N.Y.

*Counsel for Amici Curiae*

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## PRELIMINARY STATEMENT

The central issue before this Court is whether the New York City Civilian Complaint Review Board (“CCRB”) had sufficient justification for promulgating official rules authorizing the agency to investigate two areas of disturbing and destructive misconduct: police sexual violence<sup>1</sup> toward civilians and false official statements made by police during the course of the agency’s misconduct investigations. The answer is clearly yes, as explained persuasively by the brief filed by the New York City Law Department. Amici curiae the New York Civil Liberties Union and American Civil Liberties Union submit this brief to highlight the compelling reasons for civilian oversight over these types of complaints—the magnitude of the problems of police sexual violence and false statements and the New York City Police Department’s demonstrated inability and unwillingness to address these issues (a topic the Law Department understandably only adverts to, given that it also represents the NYPD).

The widespread problems of police sexual violence and false official statements have long existed. Recent high-profile incidents of police killings of Black people and other egregious forms of police misconduct nationwide have sparked the latest wave of public dialogues about police accountability. In New York, the persistence of police misconduct and a dire lack of meaningful accountability—in large part due to the NYPD’s entrenched institutional issues and mishandling of complaints—have severely undermined the public’s confidence in the government’s ability to police the police. New Yorkers have thus, through recent legislation and public protest, demanded changes to address these important issues.

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<sup>1</sup> Amici use the terms police sexual violence and sexual misconduct interchangeably in this brief because critiques of the term “sexual misconduct” explain how the use of “misconduct” tends to minimize the particularly harmful nature of these offenses.

Well aware of these pressing issues, particularly the need for robust civilian oversight over police sexual violence and false official statements, the CCRB promulgated rules to begin exercising its clear jurisdiction over these egregious forms of police violence and misconduct. In response, two police unions (“petitioners”) filed this suit to block the CCRB from permanently adopting these rules as part of their latest attempt to thwart the City’s efforts to promote meaningful police accountability and heed the public’s demands for change.

Although the petitioners seek to maintain an indefensible status quo, the CCRB’s 2021 rules are both rational and fall squarely within its authority and mandate. More importantly, the rules are critical steps toward reducing the rampant misconduct by NYPD officers that disproportionately impacts communities of color and other marginalized communities, promoting transparency, and increasing the public’s confidence in the City’s ability to meaningfully redress serious harm by officials who have immense power over the lives and liberties of New York City residents. Therefore, the Court should uphold the CCRB’s rules allowing it to investigate civilian complaints of police sexual violence and false official statements.

#### STATEMENT OF INTEREST OF AMICI CURIAE

The New York Civil Liberties Union (“NYCLU”) is the New York State affiliate of the American Civil Liberties Union. The NYCLU is a nonprofit, nonpartisan organization committed to the defense and protection of civil rights and civil liberties, with over 100,000 members across the State. The NYCLU has brought many court challenges seeking police accountability and transparency, including serving as lead counsel on *Ligon v. City of New York* (925 F Supp 2d 478 [SDNY 2013]), one of three landmark cases that exposed the NYPD’s unlawful use of stop-and-frisk tactics and racial profiling of Black and Latinx New Yorkers. The

NYCLU has regularly engaged with the CCRB from its inception through public reporting, written correspondence, and participation in public meetings and has consistently urged the Board to effectively and fairly investigate police misconduct and promote police transparency and accountability. The NYCLU is also deeply committed to the rights of women and members of the LGBTQI community, who are disproportionately the victims of police sexual violence.

The American Civil Liberties Union (“ACLU”) is a nationwide, non-partisan organization of more than a million members dedicated to preserving the Constitution and civil and human rights. The ACLU Women’s Rights Project, founded in 1972 by Ruth Bader Ginsburg, has been a leader in legal battles to ensure women’s full equality in American society. Through litigation, advocacy, grassroots mobilization, and public education, the Women’s Rights Project pushes for change and systemic reform in those institutions that perpetuate discrimination based on gender. The ACLU Women’s Rights Project has worked to strengthen police accountability for sexual violence, including successfully advocating for the Department of Justice to issue guidance on gender-biased policing of domestic violence and sexual assault in 2015 and promoting reforms of other police departments.

The NYCLU and the ACLU submitted an amicus brief in support of the CCRB’s 2018 resolution to begin investigating civilian complaints of police sexual violence. In 2021, they also testified in favor of the CCRB’s rules to begin investigating civilian complaints of police sexual violence and false official statements.

## ARGUMENT

### I. THE NYPD'S FAILURE TO ADDRESS THE WIDESPREAD PROBLEM OF POLICE SEXUAL VIOLENCE PROVIDES COMPELLING JUSTIFICATION FOR THE CCRB'S RULE CONCERNING INVESTIGATIONS INTO SEXUAL MISCONDUCT.

#### A. Police sexual violence is a widespread problem nationally and locally.

##### 1. Police sexual violence on a national scale.

Any discussion of the CCRB's rule about sexual misconduct must start with a full recognition of the magnitude of police sexual violence. Story after story reported in the media, as well as a growing number of nationwide studies, highlight this all-too-common form of police misconduct. In fact, research from a 2020 study from Bowling Green State University suggests that "cases of police sexual violence may not be aberrations from the norm within an otherwise honorable profession, but a much more common issue in policing theretofore intentionally hidden" (Philip M. Stinson et al., *The Situational Context of Police Sexual Violence: Data and Policy Implications*, Crim Justice Faculty Pubs. 59, 66 [2020] available at [https://scholarworks.bgsu.edu/crim\\_just\\_pub/117/?utm\\_source=scholarworks.bgsu.edu%2Fcrim\\_just\\_pub%2F117&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://scholarworks.bgsu.edu/crim_just_pub/117/?utm_source=scholarworks.bgsu.edu%2Fcrim_just_pub%2F117&utm_medium=PDF&utm_campaign=PDFCoverPages) ["Stinson Study"]). A Buffalo News Survey of over 700 cases of sexual misconduct by law-enforcement personnel over a 10-year period showed that, on average, a police officer is caught in an act of sexual misconduct at least every five days (Mathew Spina, *When a Protector Becomes a Predator*, Buffalo News, Nov. 22, 2015, available at <https://s3.amazonaws.com/bncore/projects/abusing-the-law/index.html>) ["Buffalo News Survey"]). Another nationwide study of police misconduct found that police sexual violence was the second most reported form of police misconduct (The Cato Institute Natl. Police Misconduct Statistics and Reporting Project, *2010 Police Misconduct Statistical Report* at 1, available at

<https://www.leg.state.nv.us/Session/77th2013/Exhibits/Assembly/JUD/AJUD338L.pdf>, formerly available at [https://www.unlawfulshield.com/statistics/2010-annual-report/#\\_Sexual\\_Misconduct](https://www.unlawfulshield.com/statistics/2010-annual-report/#_Sexual_Misconduct)).

The nature of an officer's occupation and authority helps explain the prevalence of police sexual violence. Such violence is often perpetrated when officers take advantage of the power they wield through their enforcement of laws (Stinson Study at 61–65 [describing police sexual violence as a subcultural norm and detailing how the “job provides easy opportunities for the perpetration of sex crimes.”]). Other sources also indicate that most incidents of police sexual violence toward civilians involves individuals in vulnerable situations or with particular vulnerabilities (*see, e.g.*, Buffalo News Survey [“In more than 70 percent of cases, officers wielded their authority over motorists, crime victims, informants, students and young people in job-shadowing programs.”]). Indeed, “[t]he targets of reported police sexual violence are overwhelmingly women, and typically women of color who are or are perceived to be involved in the drug or sex trades, or using drugs or alcohol, as well as people with prior arrest records, immigrants, people with limited English proficiency, people with disabilities and people who have previously been targeted for police sexual violence.” (Andrea J. Ritche, *Invisible No More: Police Violence Against Black Women and Women of Color* 112 [2017]; *see also* Deanna L. Wilkinson, *Local Social Ties and Willingness to Intervene: Textured Views Among Violent Urban Youth of Neighborhood Social Control Dynamics and Situations*, 24 *Justice Quarterly* 185 [2007] [survey of New York City youth in which almost half of those who reported sexual harassment by police were Black, Latinx, or Asian] [“Wilkinson Study”]). Police officers also commonly abuse their role by committing sexual violence against victims of domestic violence and others who seek their help (*see, e.g.*, *Commn. to Combat Police Corruption*, Nineteenth

Annual Report [Dec. 2019] [describing the case of an officer who “used his position of authority to gain access to a non-public domestic violence shelter [and] engaged in an intimate relationship with the subject of a previous emotionally disturbed person assignment”] [“CCPC 2019 Report”]).

Compounding the problem of police sexual violence is the likelihood that offending officers will reoffend and be able to act with impunity (*see, e.g.*, C.E. Rabe-Hemp & J. Braithwaite, *An Exploration of Recidivism and the Officer Shuffle in Police Sexual Violence*, 16 *Police Quarterly* [Issue 2] 127 [2013] [finding that more than 41 percent of police sexual violence cases surveyed were committed by recidivists with an average of four victims each and that many were able to keep their employment]).

Notwithstanding the public’s growing understanding of police sexual violence, because many survivors do not report these incidents, the extent of the gravity of the problem is highly underestimated (*see, e.g.*, Buffalo News Survey [“The numbers are almost certainly higher. Sex offenses go widely unreported even when cops are not suspects. Victims may be even less likely to support offense when they fear it will be their word versus an officer’s.”]; Timothy Maher, *Cops on the Make: Police Officers Using Their Job, Power, and Authority to Pursue Their Personal Sexual Interests*, 7 *J. Institute of Justice & Intl. Studies* 32, 36 [2007] [explaining that “deviant police misconduct . . . is a hidden behavior” and suggesting that 80 to 90 percent of rapes by police officers may go unreported]). Despite this issue, law-enforcement and other government officials acknowledge that police sexual violence is a grave problem that requires urgent action (*see e.g.*, Intl. Assn. of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide* at 1–2 [June 2011], available at <https://www.theiacp.org/resources/document/addressing-sexual-offenses-and-misconduct-by->

law-enforcement-executive-guide [stating that “cases of sexual misconduct by officers appear all too frequently in the news” and that the “problem of sexual misconduct by officers warrants the full attention of law enforcement leadership”] [“IACP Report”]; Dept. of Justice, Identifying and Preventing Gender Bias in Law Enforcement Responses to Sexual Assault and Domestic Violence at 21 [2015], available at <https://www.justice.gov/opa/file/799366/download> [recognizing that police sexual violence and inadequate discipline can undermine the legitimacy of law enforcement] [“DOJ Guidance”]).

Police sexual misconduct is also a recognized civil rights violation largely due to the immense power that law-enforcement officials wield over the public’s lives and liberties (*see* IACP Report at 2 [“Situations where officers . . . victimize those they are sworn to protect and serve amount to civil rights violation”]). It is thus precisely the type of offense that civilian review boards are, and should be, authorized to investigate. The Department of Justice has recognized that gender bias in law-enforcement responses to sexual violence, including failures of law-enforcement agencies to adequately investigate and respond to police sexual misconduct, may violate the Constitution’s Equal Protection guarantee and federal law (DOJ Guidance at 23–25). And courts consistently find that police sexual misconduct violates the Constitution (*see Rogers v. City of Little Rock*, 152 F3d 790, 793–94, 797 [8th Cir 1998] [holding that a police officer violated substantive due process when he stopped a driver for a traffic violation and subsequently followed her home and raped her]; *United States v. Morris*, 494 Fed Appx 574, 581 [6th Cir 2012] [“[I]t is more than obvious that the right to not be raped by a law enforcement officer lies at the core of the rights protected by the Due Process Clause”]; *Poe v Leonard*, 282 F3d 123, 139 [2d Cir 2002] [finding that a police officer violates a person’s constitutional right to bodily privacy when the officer attempts to view or otherwise document the person’s



unclothed body without their consent and where there is no proper law-enforcement interest in doing so]).

## 2. Police sexual violence in New York City

New York City also suffers from a crisis of police sexual violence. Though no entity currently collects reliable data on the scope of the problem within the NYPD, information reported by the CCRB and advocacy groups and high-profile reports detailing egregious acts of sexual violence by members of the NYPD reveal a city where police officers abuse the authority granted to them and sexually harass or assault civilians. According to recent reporting by the CCRB, there were 136 allegations of sexual misconduct against NYPD officers in 2019 (New York City Civilian Complaint Review Bd., 2019 Annual Report at 21 Figure 12, available at [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2019CCRB\\_AnnualReport.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019CCRB_AnnualReport.pdf) [“CCRB 2019 Annual Report”]). Yet these numbers likely underrepresent the gravity and prevalence of sexual violence committed by NYPD officers. Indeed, a study focusing on New York City youth found that two out of five young women surveyed had been sexually harassed by police (Wilkinson Study at 189), underscoring that the number of incidents of police sexual violence in New York City is likely staggering (*cf* Girls for Gender Equity, Overlooked in Plain Sight: Documented Police Violence Against Girls of Color at 4, [https://www.ggenyc.org/wp-content/uploads/2020/07/Overlooked-in-Plain-Sight\\_A-GGE-Report.pdf](https://www.ggenyc.org/wp-content/uploads/2020/07/Overlooked-in-Plain-Sight_A-GGE-Report.pdf) [conducting a review of publicly available data from the CCRB and noting “[p]olice violence against girls of color remains under-examined and under-documented”]).

The implications about the gravity of the problem in New York City are bolstered by numerous examples from media reports about sexual violence by NYPD officers. In one case, a

woman alleged that she suffered physical and sexual violence by NYPD officers after she engaged in a public demonstration against police brutality. The woman described having her shirt pulled up as she was tackled to the ground and “pounced” on by half-a-dozen officers. (Dean Moses, *BLM Protestor Accused NYPD Officers of Sexual Assault During Brooklyn Bridge March*, AMNY, May 6, 2021, available at <https://www.amny.com/new-york/manhattan/blm-protester-says-she-was-sexually-assaulted/>). When she informed the officers that they were pulling her shirt up and tried to pull it down, the officers told her to “stop resisting” (*id.*). Though she tried to explain that she was merely struggling to remain clothed and not resisting, she was struck in the back of her head, zip-tied, and had her shirt pulled completely over her head (*id.*). The report also describes how the officers then pulled down her pants, “paraded [her] to a nearby van” and made her stand there, naked, for 10 minutes (*id.*).

Police sexual violence against fellow officers shed additional light on the magnitude of the problem within the NYPD. For example, a recent media report on a female NYPD officer who filed a lawsuit against numerous former co-workers, including high-ranking supervisors and a union delegate, for subjecting her to years of horrific sexual harassment, sexual assault, and rape, portrays a department hostile to the stories of survivors and tolerant of sexual violence committed by those in their ranks (Tina Moore & Gabrielle Fonrouge, *Lawsuit Portrays a Culture of Rape, Sodomy and Sexual Harassment at the NYPD*, NY Post, June 15, 2021, available at <https://nypost.com/2021/06/15/suit-claims-culture-of-rape-sodomy-sexual-harassment-at-nypd/> [“NYPD Sexual Harassment Story”]). She also alleges that videos of her assaults were “regularly shared across the department in a group chat, where high-ranking officers . . . allegedly viewed the content but did nothing about it.” (*id.*). Attempts by the officer to report these incidents were met by inaction or accusations that she was lying (*id.*). Also

accompanying several of these incidents were degrading statements about her sexuality, her Dominican ancestry, as well as threats to her career and life (*id.*). And as of the date of the reporting, the officer was unaware of the status of the IAB's investigation (*id.*).

These abhorrent incidents are just two in a longer list of incidents that have made headlines over the span of decades (*see, e.g.,* Michael Brick, *Officer Is Found Guilty of Sexually Abusing Women While on Duty*, NY Times, Sept. 18, 2007, available at <https://www.nytimes.com/2007/09/18/nyregion/18cop.html>; Associated Press, *3 NYC Police Officers Charged in Sodomy Attack*, NBC News, Dec. 8, 2008, available at <https://www.nbcnews.com/id/wbna28112637>; Ben Yakas, *Woman Sues City for \$150M Claiming Cop Raped Her and Gave her Black Eye*, Gothamist, June 6, 2014, available at <https://gothamist.com/news/woman-sues-city-for-150m-claiming-cop-raped-her-gave-her-black-eye>).

**B. The NYPD Has Demonstrated It Cannot and Will Not Adequately Investigate and Meaningfully Address Police Sexual Violence.**

Contributing to the crisis of police sexual violence by NYPD officers are entrenched institutional issues within the NYPD's Internal Affairs Bureau ("IAB"). These issues have prevented any meaningful accountability for police sexual violence and have contributed to the crisis of police sexual violence by NYPD officers. Damning evidence about the NYPD's gross inability and unwillingness to investigate civilian complaints fairly and thoroughly demonstrates how, contrary to the petitioners' arguments,<sup>2</sup> the CCRB's decision to handle sexual misconduct complaints is both rational *and* necessary.

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<sup>2</sup> The petitioners allege that the CCRB has not demonstrated that the existing status quo—having the IAB handle civilian complaints of police sexual violence—is inadequate and that the CCRB itself is ill prepared to take on these investigations (*see* Petitioners' Memorandum of Law at 25–26).

To start, independent assessments of IAB investigations have demonstrated significant deficiencies in the IAB's handling of misconduct investigations (*see, e.g.*, CCPC 2019 Report at 27–35 [identifying various deficiencies in the IAB's handling of investigations and noting that “the Commission’s satisfaction rate with the questioning in these interviews has declined significantly from 2014”]).<sup>3</sup> IAB’s deficiencies particularly effect its ability to thoroughly, impartially, and fairly handle investigations of serious misconduct that impacts marginalized communities (*see, e.g.*, NYC Dept of Investigation’s Inspector General for the NYPD, Complaints of Biased Policing in New York City: An Assessment of NYPD’s Investigations, Policies, and Training [June 2019] available at [https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt\\_62619.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf) [noting various deficiencies in the IAB’s handling of biased policing and racial profiling allegations, including the fact that the NYPD sustained not one out of 2,495 allegations of biased policing]).

The NYPD’s handling of cases of sexual violence committed by civilians provides further insight into why the NYPD cannot be trusted to fulfill the Charter’s mandate of fair, impartial, and confidence-inspiring investigations of police sexual violence (*see* NY City Charter § 440). A March 2018 NYC Department of Investigation Report found that the NYPD understaffs and under-resources its Special Victims Division (the division tasked with investigating sex crimes) and that, as a result, “many sexual assault cases are not properly investigated” (NYC Dept of Investigation’s Inspector General for the NYPD, An Investigation of NYPD’s Special Victims Division—Adult Sex Crimes at 1 [Mar. 27, 2018], available at [https://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDRReport\\_32718.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDRReport_32718.pdf). The Inspector General described NYPD’s systemic failures in this area, including the “shortening” and

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<sup>3</sup> Given the nature of sexual assault allegations—often turning on the testimony of witnesses—ensuring that investigators adhere to best interviewing practices is all the more critical.

“dilution” of investigations, as causing “re-traumatiz[ation] [of] victims” and as “negatively impact[ing] the reporting of sex crimes, thereby adversely affecting public safety” (*id.*). The report also described alarming instances that demonstrate a culture of disrespect and mistreatment of survivors that pushes them away from engaging with the investigatory process (*id.* at 28 [“Service providers and victim advocates described numerous instances in which inexperienced detectives or police officers responded insensitively, dismissively, or incredulously during . . . interviews”]).

Other reports corroborate accounts of NYPD mistreatment of sexual assault survivors (*see, e.g.,* Josh Saul, *These Women Say the New York City Police Department Is Failing Rape Victims*, Newsweek, Apr. 18, 2018, available at <https://www.newsweek.com/nypd-special-victims-rape-sexual-assault-police-crime-metoo-891393> [“About half of the nearly 700 sexual assault victims whom the nonprofit Crime Victims Treatment Center in New York City helps each year report some kind of negative interaction with the police, like the detectives appearing bored or dismissive or not calling them back for weeks”). This mistreatment is only compounded by abusive tactics like intimidation or retaliation when the offender is a police officer (*see, e.g.,* Andrea J. Ritchie, *Invisible No More* 119–20 [2017] [describing a story of a young woman who was groped by an arresting officer and mocked and threatened by another officer to whom she tried to report the abuse who told her that “he knew where she lived”]).

As the story about the female NYPD officer in pages 9–10 suggests, the NYPD has proven no better at handling internal allegations of sexual harassment by fellow officers. Sexual harassment within the NYPD appears to be rampant, and internal investigations of these claims are also deeply flawed, lead to retaliation, or for the few that are substantiated, minimal punishments (*see, e.g., id.*; Esha Ray & Leonard Greene, *Cop Claims NYPD Ignored Her Sexual*

*Harassment Complaints Against Fellow Officers, Lawsuit Says*, NY Daily News, Jul. 30, 2019, available at <https://www.nydailynews.com/new-york/ny-harassment-nypd-lawsuit-20190730-44cstbmx5vdqlosrkyuw57pkme-story.html>; Kendall Taggart, *This NYPD Officer Reported Sexual Harassment. Then She was Forced Into Rehab*, BuzzFeed News, Jul. 8, 2018, available at <https://www.buzzfeednews.com/article/kendalltaggart/this-nypd-officer-reported-sexual-harassment-then-she-was>; Mary McDonnell & Victoria Bekiempis *Bronx Sergeant Accused of Ceaseless Sexual Harassment That Led to Female Officer's Resignation, in Shocking \$54M Suit*, NY Daily News, Jan. 10, 2017, available at <https://www.nydailynews.com/new-york/bronx/54m-perv-suit-bronx-sarge-article-1.2943197>).

The limited publicly available information about NYPD investigations of sexual violence, both internal and external, portrays an agency grossly inept at handling these sensitive and serious matters. Notwithstanding continuous assessments of IAB's internal investigations and recommendations to try to improve the NYPD's ability to police itself, inadequacies, high levels of misconduct, and a dire lack of accountability and improvement persist.

**C. CCRB Investigations of Civilian Complaints of Police Sexual Violence Serve Distinct Values That Are Specifically Within the CCRB's Mission and Mandate.**

Given the pressing situation presented by the NYPD's mishandling of police sexual violence, investigations of civilian complaints of police sexual violence by independent agencies like the CCRB remain the best way to ensure these investigations are fair, impartial, and thorough. The CCRB's handling of these investigations also will help address the problem of underreporting of police sexual violence, increase transparency, and promote police accountability and much-needed institutional changes within the NYPD.

First, the NYPD's mishandling of complaints of police sexual violence undermines public confidence in the NYPD's ability to fairly handle these sensitive and serious matters. Having independent investigations over civilian complaints of police sexual violence thus furthers the "interest of the people of the city of New York and the [NYPD] that the investigation of complaints concerning misconduct by officers . . . towards members of the public be complete, thorough and impartial" by ensuring that this particularly harmful area of police misconduct will not be in the exclusive realm of an agency that has consistently failed New Yorkers when it comes to police sexual violence (*see* NY City Charter § 440[a]).

Second, as part of its mission, the CCRB must engage in community outreach and encourage community members to file complaints when they believe they have been victims of police misconduct (*see* New York City Civilian Complaint Review Bd., 2019 Annual Report 4, available at [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2019CCRB\\_AnnualReport.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019CCRB_AnnualReport.pdf)). Because sexual misconduct by the NYPD is a widespread, yet underreported issue, these efforts are particularly important. Only one-third of all sexual assaults are ever reported to the police (RAINN, *The Criminal Justice System: Statistics*, <https://www.rainn.org/statistics/criminal-justice-system>) and this percentage is likely far lower for sexual assaults perpetrated by the police (*see* DOJ Guidance at 21). The CCRB's handling of civilian complaints of police sexual violence therefore will help address the issue of underreporting of police sexual violence.

Third, the CCRB's engagement with the public is ever the more important given intense public scrutiny around policing and public demands for transparency about police misconduct and meaningful accountability. Because the CCRB is required to issue semi-annual reports "describing its activities" and "develop and administer an on-going program for the education of

the public” about its functions (NY City Charter at § 440 [c][6]–[7]), ensuring independent investigations by the CCRB of police sexual violence will necessarily increase transparency around this important issue. With increased transparency, the public will also be better informed and able to advocate for meaningful police accountability.

Finally, the CCRB can play a critical role in shaping NYPD policy by handling civilian complaints of police sexual violence. As discussed above, the NYPD does little to address police sexual violence. IAB is alarmingly opaque and does not publicly report on its sexual misconduct investigations. Through its tracking and regular reporting of the investigations it handles, combined with its mission of advocating for NYPD policy change, the CCRB will be better positioned to recommend much-needed policy changes within the NYPD.

## **II. THE NYPD’S FAILURE TO ADDRESS THE WIDESPREAD PROBLEM OF FALSEHOODS BY ITS OFFICERS PROVIDES COMPELLING JUSTIFICATION FOR THE CCRB’S RULE CONCERNING INVESTIGATIONS INTO FALSE OFFICIAL STATEMENTS.**

### **A. False Official Statements by Members of the NYPD Represent a Serious Problem.**

As with the case of sexual police violence, various sources portray a department where false official statements by officers are commonplace and reveal an institutional culture that ignores or tolerates this serious abuse of authority. For example, in 2019 an Independent Panel of experts (“the Panel”) that the NYPD itself appointed conducted a review of the NYPD’s internal disciplinary system and described false official statements as an issue “repeatedly brought to the Panel’s attention” (Hon. Mary Jo White et al., *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* at 38, [Jan. 25, 2019], available at <https://www.independentpanelreportnypd.net/assets/report.pdf> [“Independent Panel Report”]). The Panel reported concerns about “lax enforcement and practices that enable bad actors to



escape accountability” and certain practices that contribute to “a culture in which false statements are condoned” (*id.* at 40–41). The report also raised concerns that NYPD supervisors tolerated the practice of “handing off” arrests—when an arresting officer allows a colleague to prepare an arrest report, enter his or her name as the “arresting officer,” resulting in earned overtime—which “promotes a culture in which more egregious falsehoods occur” (*id.*).

Data released by the CCRB and reported in the media confirm the prevalence of false official statements by the NYPD. Between 2014 and 2019, the CCRB noted nearly 150 false official statement allegations (*see* George Joseph, *The CCRB Tells the NYPD Which Cops Have Lied. Usually, Nothing Happens*, Gothamist, Oct. 31, 2019, available at <https://gothamist.com/news/ccrb-tells-nypd-which-cops-have-lied-usually-nothing-happens>). A 2015 report by WNYC similarly highlighted more than 120 NYPD officers with at least one documented credibility issue within ten years of the report (Robert Lewis & Noah Veltman, *The Hard Truth About Cops Who Lie*, WNYC, Oct. 13, 2015, available at <https://www.wnyc.org/story/hard-truth-about-cops-who-lie/>).

False official statements by the NYPD are particularly serious because they can have life-changing consequences for civilians and represent a betrayal of public trust. A 2018 investigation by the New York Times highlighted cases in which officers have lied about the whereabouts of guns, barged into apartments and conducted searches, only to testify otherwise later, or give firsthand accounts of crimes or arrests that they did not in fact witness (Joseph Goldstein, *‘Testilying’ by Police: A Stubborn Problem*, NY Times, Mar. 18, 2018, available at <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html>). As the investigation explains, these false statements increase the likelihood that the innocent will face criminal sanctions and diminish the overall legitimacy and credibility of the NYPD (*id.*; *see also*

New York City Civilian Complaint Review Bd., *Memorandum Re: Changing Rules to Include Sexual Misconduct and Untruthful Statements Made Against Members of the Public as Part of Abuse of Authority*, at 5 [Jan. 8, 2021], available at [https://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/board/2021/01132021\\_memo\\_proposedrules.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/2021/01132021_memo_proposedrules.pdf)). In addition, a civilian target of a false official statement can suffer from adverse credibility findings, which is particularly important if the individual is complaining of police misconduct. These outcomes underscore the gravity of the problem of false official statements and emphasize the need for effective and independent oversight of false official statements.

**B. The NYPD Has Demonstrated That It Cannot and Will Not Adequately Investigate and Meaningfully Address False Official Statements By Its Officers.**

The CCRB's independent investigation of false official statements is critical because, as noted above, the NYPD not only has failed to meaningfully address this issue but has promoted an institutional culture that ignores and tolerates falsehoods by its officers. These concerns relate in large part to the NYPD's leniency toward officers accused of making false official statements (*see* Independent Panel Report at 39–40). For example, the Panel noted the NYPD's almost exclusive use of a lenient, permissive section of the patrol guide that serves as a “catch-all provision” and merely prohibits an officer from “[e]ngaging in conduct prejudicial to the good order, efficiency, or discipline of the Department,” when charging an officer with false official statements (*see id.*). This section was regularly used over a stricter provision that specifically addresses false statements and for which the presumptive penalty is dismissal from the force when it involves a “material matter” (*see id.*). The Panel also was concerned with the NYPD's reluctance to collect evidence from other law-enforcement agencies that could provide the basis for false statement charges and explained that the NYPD often does not charge officers with

making false statements even when the facts warrant such a charge (*id.* at 40). Compounding the problem, in most cases where officers were charged and found to have violated the stricter patrol guide provision, the NYPD's trial commissioners recommended punishments short of dismissal, despite the presumptive penalty (*id.* [citing CCPC, Eighteenth Annual Report of the Commission at 113–116 [August 2017], available at <https://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf>]). The Panel's report thus puts in stark relief the NYPD's unwillingness to adequately investigate and discipline false official statements.

Media reports underscore this failure. As one story reported, in the period between 2010 and 2018, the NYPD upheld only two of the 81 accusations by the CCRB of false statements by an officer (Joseph Goldstein, *Promotions, Not Punishments, for Officers Accused of Lying*, NY Times, Mar. 19, 2018, available at <https://www.nytimes.com/2018/03/19/nyregion/new-york-police-perjury-promotions.html>). Perhaps most telling, the NYPD's lack of effective oversight has caused New York City District Attorneys in all five boroughs to take matters into their own hands, creating police witness-exclusion lists to avoid seeking testimony from NYPD officers with histories of making false statements (George Joseph, *Staten Island Prosecutors Are Creating A List of Cops They Don't Trust To Testify*, Gothamist, Feb. 17, 2020, available at <https://gothamist.com/news/staten-island-prosecutors-are-creating-a-list-of-copsthey-dont-trust-to-testify>). As these accounts make clear, past efforts to investigate and meaningfully discipline false official statements have been woefully inadequate, adding urgency to the CCRB's oversight of allegations of such misconduct.

**C. CCRB Investigations of False Official Statements that Arise During the Course of Their Investigations Serve Distinct Values That Are Specifically Within the CCRB's Mission and Mandate.**

Even in the absence of the systemic issues within the NYPD's internal investigations, investigating false official statements furthers the CCRB's mandate of promoting fair and impartial investigations, transparency, and better NYPD policies for the same reasons discussed in Section I.C. Moreover, as the Final Report of the 2019 New York City Charter Revision Commission explains, false statements "undermine the vital accountability process that the CCRB was created to ensure" (Final Report of the 2019 New York City Charter Revision Commission 55, [August 2, 2019], available at [https://static1.squarespace.com/static/5bfc4cecf7fde7d3719c06/t/5d83dffbf8b08c5b3087ecc4/1568923645088/Final+Report\\_8.2.pdf](https://static1.squarespace.com/static/5bfc4cecf7fde7d3719c06/t/5d83dffbf8b08c5b3087ecc4/1568923645088/Final+Report_8.2.pdf)). The NYPD has proven itself to be incapable of providing that accountability in the context of false official statements. In contrast, the CCRB's independent oversight promotes public confidence that inquiries into false official statements will be impartial and transparent and will allow the CCRB to make better policy recommendations that will meaningfully address such misconduct.<sup>4</sup>

### **CONCLUSION**

The CCRB's investigation of complaints of police sexual violence and false official statements is rational, lawful, and immensely important given the plethora of evidence regarding the NYPD's rampant problem of police sexual violence and false official statements and mishandling of internal investigations. Therefore, the Court should uphold the CCRB's 2021 rules allowing for the CCRB's independent investigation of such conduct.

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<sup>4</sup> Amici acknowledge that the CCRB intends to investigate false official statements that occur during the course of their investigations, and while this will only partially address the rampant problem of false official statements by NYPD officers, it is a critical step toward increased transparency, police accountability, and improved policies.

Respectfully Submitted,



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New York Civil Liberties Union Foundation  
By: Guadalupe Victoria Aguirre  
Christopher Dunn  
125 Broad St., Floor 19  
New York, NY 10004  
Tel: (212) 607-3300  
Fax: (212) 607-3318  
Email: [laguirre@nyclu.org](mailto:laguirre@nyclu.org)

American Civil Liberties Union Foundation  
Women's Rights Project  
By: Sandra S. Park  
125 Broad Street, Floor 18  
New York, NY 10004  
Tel: (212) 549-2500  
Email: [spark@aclu.org](mailto:spark@aclu.org)

Date: July 29, 2021  
New York, NY


*Counsel for Amici Curiae*

On the brief: Roberto Tavel

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Guadalupe V. Aguirre

*Counsel for Amici Curiae*