

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC-16-645**

FREDDY D'AGASTINO, *et al*

Petitioners,

vs.

THE CITY OF MIAMI, and
THE CITY OF MIAMI CIVILIAN INVESTIGATIVE PANEL,

Respondents.

On discretionary review of a decision of the
Third District Court of Appeal

**BRIEF OF AMICI CURIAE,
ACLU OF FLORIDA,
GREATER MIAMI CHAPTER OF ACLU OF FLORIDA,
MIAMI-DADE BRANCH OF NAACP, AND
NAT'L ASS'N OF CIVILIAN OVERSIGHT OF LAW ENFORCEMENT,
FILED IN SUPPORT OF RESPONDENTS**

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SUMMARY OF ARGUMENT

The police are granted immense authority to engage in actions that affect people's lives in order to protect public safety. Finding the balance between the exercise of that authority and the liberty interests of the people defines the challenge. The City of Miami Civilian Investigative Panel (CIP) is an important tool to help meet this challenge.

Traditional means of influencing police behavior available to the public are limited in effectiveness. The community perception is that when it comes to addressing questionable police shootings -- which have long plagued Miami -- the justice system is biased and unfair. This perception is fueled by the expansive protections provided by the Law Enforcement Officers' Bill of Rights (LEOBOR) to police officers under investigation internally by their departments, which contrast sharply with the experience of ordinary suspects under investigation in the criminal justice system. This favoritism, in turn, undermines the legitimacy of internal investigations and breeds community distrust in the justice system.

The CIP, by contrast, promotes transparency and accountability, which builds trust between the community and the police. It does this by ensuring public airing of complaints and providing procedural justice through a process in which complainants are treated with respect and dignity and recommendations are made based on facts and neutral principles, by fellow members of the community who --

unlike police who police themselves -- do not have a stake in the outcome. The CIP also benefits the police by increasing the prospect that incidents of misconduct will be effectively investigated by encouraging thoroughness in internal investigations and discouraging misconduct to begin with. The CIP thus enhances the legitimacy of the police, which, in turn, enhances the willingness of the community to obey the law and cooperate with the police, thereby promoting public safety.

The CIP process furthers the same fundamental interests as do state and federal constitutional guarantees of the people's right to petition the government for redress. The ability to complain about police misconduct, and to participate in the complaint's resolution, strengthens democracy.

ARGUMENT

INTRODUCTION

“Police officers are granted immense authority by the state” Rachel A. Harmon, *The Problem with Policing*, 110 Mich. L.R. 761, 762 (2012). They are empowered to enter homes and confiscate property. They are permitted to detain and arrest individuals. They even have the right, under limited circumstances, to take a life. Police officers are granted this great authority so they may act “to reduce fear, promote civil order, and pursue criminal justice.” *Id.* “The legal problem presented . . . is how to regulate police officers and departments to protect

individual liberty and minimize the social costs the police impose while promoting these ends.” *Id.* Finding the balance between protecting public safety and respecting the liberty interests of the public defines the challenge. The CIP is an important tool to help meet this challenge.

Argument I highlights the critical importance, on multiple levels, of the role played by the CIP in the community, not the least of which involves increasing trust between the community and the police. Argument II explains how the CIP embodies the constitutional right of the people to petition the government for redress of grievances.

A. Identification of *Amici Curiae* and Their Interest in this Case.

Amici American Civil Liberties Union of Florida (ACLU of Florida), the Greater Miami Chapter ACLU of Florida, the Miami-Dade Branch of the National Association for the Advancement of Colored People (NAACP), and the National Association for Civilian Oversight of Law Enforcement (NACOLE) file this brief in support of Respondents.

Amici support civilian oversight of law enforcement as a form of community engagement that builds community trust in the police and facilitates implementation of the constitutional right of the people to petition officials for the redress of grievances. Indeed, NACOLE’s core interest is to support civilian oversight entities across the United States. In 2001, the ACLU of Florida and its

Greater Miami Chapter, along with the Miami-Dade Branch of the NAACP and other local civic organizations, joined together to lobby for the creation of an entity that would provide independent civilian oversight of the police in the City of Miami. The resultant amendment to the City of Miami Charter mandated the establishment of civilian oversight. City Charter, §51.¹ In 2002, the City of Miami Commission fulfilled that mandate by enacting the ordinance that established the CIP. City Code, §§11.5-26-37.

B. Operation of the CIP.

The CIP's primary mission is to exercise "*independent civilian* oversight of the sworn police department." City Code, §11.5-27(1) (emphasis added). The "independent civilian" -- that is, non-police -- perspective of the CIP process sets it apart from the current oversight conducted by the Internal Affairs division (IA) of the City of Miami Police Department (MPD).

In all that it does, the CIP is authorized only to make *recommendations*. See City Code, §11.5-27(3)(5)(9). It may *recommend* changes to policies and procedures regarding such matters as training, recruitment and the content of departmental orders. *Id.* at §11.5-27(3). It may investigate individual complaints alleging police misconduct and *recommend* disposition of those complaints. *Id.* at

¹ The Charter amendment was approved in a referendum vote by 73 per cent of the electorate. City of Miami Resolution No. 01-1198 (passed Nov, 15, 2001; accepting certification of result of special election for Charter Amendment No. 1, held on Nov. 6, 2001).

§11.5-27(5)(9). But it may not “interfere with any ongoing investigations.” *Id.* at §11.5-27(2).

The CIP’s consideration of allegations of misconduct must comply with strict procedural guidelines. *See* City Code, §11.5-31. These include a requirement that the CIP share any complaint with MPD within two days of its receipt. *Id.* at §11.5-31(1)(b). Also, unlike those investigated in the criminal justice system, before police officers subject to CIP investigation may be questioned, they must be informed of the allegations and provided a copy of the complaint. *Id.* at §11.5-33(b). Upon concluding its review or investigation of a complaint, the CIP must provide its findings and recommendation to the police chief, who has 30 days to respond, as well as to the officer and complainant as permitted by law. *Id.* at §11.5-31(5). Its meetings are open to the public. *Id.* at §11.5-30(a).

I. THE CIP IS UNIQUELY SITUATED TO PROMOTE TRANSPARENCY, ACCOUNTABILITY, AND TRUST IN THE CRIMINAL JUSTICE SYSTEM.

A. Traditional Means Available to the Public for Influencing Police Behavior Have Limited Effect.

The traditional means for positively influencing police behavior that are available to the community at large are the exclusionary rule and civil actions for damages. *See* Harmon, *supra*, at 761.

“[T]he ‘prime purpose’ of the [exclusionary] rule, if not the sole one, ‘is to deter future unlawful police conduct.’” *United States v. Janis*, 428 U.S. 433, 446

(1976) (quoting *United States v. Calandra*, 414 U.S. 338, 347 (1974)). The exclusionary rule does this by restricting admission of evidence obtained unconstitutionally. *E.g.*, *Mapp v. Ohio*, 367 U.S. 643 (1961) (holding that evidence obtained by unconstitutional means must be excluded at trial). It is invoked by criminal defendants almost exclusively in Fourth Amendment search and seizure cases. *Janis*, at 347. The rule's efficacy in preventing police abuse, however, remains purely speculative: "It has been unaided, unhappily, by any convincing empirical evidence on the effects of the rule." *Id.*

Just last term, a sharply divided Court sanctioned yet another exception to the exclusionary rule. *Utah v. Strieff*, 136 S.Ct. 2056 (2016) (holding that a person unconstitutionally detained may not invoke the exclusionary rule if, at some later point, police discover the suspect is subject to a previously issued warrant). Sounding a common theme, the majority in *Strieff* speculated that, should relaxation of the exclusionary rule encourage more police misconduct, "[s]uch misconduct would expose police to civil liability." *Id.* at 2059.

The common means for attempting to impose civil liability upon police for engaging in misconduct is found in 42 U.S.C. §1983. To be successful under §1983, a plaintiff must establish that a local or state governmental actor violated the plaintiff's federal constitutional rights. *See Monell v. Dep't of Soc. Serv. Of City of New York*, 436 U.S. 658 (1978). Section 1983, however, remains a woefully

inadequate means for influencing police behavior. This is because police abuse cases often require expensive, resource-intensive independent investigation, expert consultation and testimony, and extensive discovery with multiple depositions. While §1983 litigants may recover attorneys' fees under 42 U.S.C. §1988, the reach of §1988 was substantially pared back in *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health & Human Resources*, 532 U.S. 598 (2001). There, the Court eliminated the “catalyst theory,” under which a change in practice or policy sought by the plaintiff might entitle the plaintiff to an award of attorney fees. *Id.* Pursuant to *Buckhannon*, even after years of litigation and a full-blown trial, just moments before the jury returns a verdict, the government may agree to the equitable relief sought by plaintiff, and thereby defeat any fee claim.

The doctrine of “qualified immunity” for police officers also erects a potentially significant barrier to successful §1983 litigation. Under this doctrine, liability for damages only flows from a violation of a practice or procedure that is found to be “clearly established law” binding upon the sued officers. *E.g., Pearson v. Callahan*, 555 U.S. 223, 243-44 (2009). Qualified immunity must be litigated upfront, as a condition to proceeding further, and any decision favoring the plaintiff is immediately appealable. The result, in practical terms, is that §1983 litigation has limited utility in addressing police misconduct, which is often found by the courts not to involve clearly established federal rights.

Of course, where an allegation of police misconduct involves neither the Fourth Amendment nor a clearly established federal right, neither the exclusionary rule nor §1983 applies. As will be demonstrated below, the resulting vacuum cannot be filled by internal processes alone.²

B. The Internal Affairs Process, Particularly Given the Expansive Protections of LEOBOR, Does Not Promote Transparency, Accountability or Trust in the Justice System.

Instances in which a police officer kills a civilian are very much in the news these days, as is the fact that few police killings result in prosecutions. A comprehensive analysis of available data by the Washington Post in conjunction with researchers at Bowling Green State University documented that, out of *thousands* of police killings since 2005, only fifty-four officers had been charged or indicted through April 2015. Kate Levine, *How We Prosecute the Police*, 104 *Geo. L. J.* 745, 763-64 (2016) (Levine 1). One researcher noted, “To charge an

² Nor can it be filled by two other potential means of influencing police behavior -- criminal prosecutions and “pattern or practice” investigations by the Department of Justice (DOJ), pursuant to 42 U.S.C. §14141. Like IA investigations, these processes cannot be formally initiated or directed by members of the community. Moreover, as noted in Argument I.B., criminal prosecutions of police officers, even in cases involving the killing of civilians, rarely occur. And “pattern or practice” investigations -- which, in any event, do not resolve or even focus on individual instances of police misconduct -- have been subject to criticism for many failings, including bypassing community input, responding to political pressures at the federal level, and reaching only a relatively small number of local police departments. See Kami Chavis Simmons, *Cooperative Federalism and Police Reform*, 62 *Ala. L. Rev.* 323, 373-375 (2011).

officer in a fatal shooting, it takes something so egregious, so over the top that [the shooting] cannot be explained in any rational way.” *Id.* No wonder that:

our focus has never been more attuned to how often those entrusted with our security are violating it Police often appear to be above the law that they are tasked with upholding.

Kate Levine, *Police Suspects*, 115 Colum. L.R. 1197, 1198-99 (2016) (Levine 2).

See also Levine 1, *supra*, at 745 (“Focus on police conduct, in particular when and whether it should be criminal, is on the minds of scholars and political actors like never before.”)

This focus, however, is not new in the City of Miami. In announcing the campaign to bring civilian oversight to Miami in 2001, the ACLU of Florida quoted a leader in the local African-American community as stating:

We have witnessed an increasing number of very questionable police shootings since 1999, and the officers responsible are not being punished[. . . .]. There is a huge public outcry to put in place a process that makes these officers accountable for their actions.

Civil Rights Groups Unveil Proposal For Civilian Oversight of Scandal-Plagued

Miami Police Department, ACLU, (June 28, 2001) (last visited Sep. 27, 2016),

[https://www.aclu.org/news/civil-rights-groups-unveil-proposal-civilian-oversight-scandal-](https://www.aclu.org/news/civil-rights-groups-unveil-proposal-civilian-oversight-scandal-plagued-miami-police-department)

[plagued-miami-police-department](https://www.aclu.org/news/civil-rights-groups-unveil-proposal-civilian-oversight-scandal-plagued-miami-police-department). Nor is Miami’s history of police shootings limited to

that time period. In 2013, DOJ found that “MPD engage[d] in a pattern or practice

of excessive use of force with respect to firearm discharges” based on 33 occasions

between 2008 and 2011 when “MPD officers intentionally shot at individuals” --

and that “MPD ha[d] fully investigated only 24 of the[se] 33 shooting incidents.” [https:// www.justice.gov/sites/default/files/crt/legacy/2013/07/09/miami findings](https://www.justice.gov/sites/default/files/crt/legacy/2013/07/09/miami_findings) (July 9, 2013) (last visited Sep. 27, 2016).

In those years, as now, many members of the community perceived the justice system as “one of bias and unfairness.” *See* Levine 1, *supra*, at 768. Now, as then, many community members see a process that not only does a poor job of distinguishing between the guilty and innocent, but also overly punishes civilian defendants based upon bias and unfairness, while allowing police officers to go unpunished. *Id.* at 767-68.

Florida’s LEOBOR, §§112.531 *et seq.*, Fla. Stat., contributes to the community’s perception of unfairness in the justice system. LEOBOR provides extensive procedural safeguards to police officers under internal investigation by their own police departments. For example, LEOBOR prohibits use of good-cop-bad-cop interrogations, offensive language, threats of adverse consequences or promises of rewards, or lengthy periods of interrogation without “rest breaks.” *Id.* at §112.532(1) (setting forth laundry list of protections). LEOBOR also mandates that a police officer under IA investigation must be provided with *all* evidence gathered in the investigation “*before* the beginning of any investigative interview of that officer.” §112.532(1)(d) (emphasis added). At the same time, the officer is assured that the entire “contents of the complaint [to IA] and [its] investigation . . .

[will] remain confidential until such time as . . . a final determination whether or not to issue a notice of disciplinary action” is made. §112.532(4)(b).

This special treatment sharply contrasts with the process afforded ordinary people under investigation in the criminal justice system -- the process that serves as a yardstick for the community. The interrogation methods forbidden in IA investigations are hallmarks of typical tactics used by police when interrogating civilians suspected of criminal activity. And suspects under investigation by police typically do not gain access to the entire investigative file until *after* interrogation, *after* charges are filed, and *after* court proceedings are well underway. *See* Fla. R. Crim. P. 3.220. In fact, guilty pleas are often extracted from criminal defendants *before* they even know what evidence, including exculpatory evidence, exists. And while Florida’s public records law, §119, *et. seq.*, Fla. Stat., keeps some “criminal investigative information” exempt from disclosure, §119.011(3)(b), there are many exceptions to that exemption, *see id.* at §119.011(3)(c). Moreover, as soon as charges are formally filed in the criminal justice system, those charges are subject to public scrutiny, and, in the phase in which guilt or innocence is decided, transparency is the constitutionally compelled norm. *Richmond Newspapers, Inc. v Virginia*, 448 U.S. 555, 573 (1990) (holding that “presumption of openness inheres in the very nature of a criminal trial under our system of justice.”)

The special treatment police officers receive during LEOBOR-governed IA investigations results in a two-tier system in which police are protected internally from the very methods they themselves impose upon others externally. Levine 2, *supra*, at 1209-10. This favoritism is generally perceived by the community to be unfair, which, in turn, breeds distrust in the justice system. *Id.* at 1209. Indeed, given that views of the justice system are shaped not by results in individual cases, but rather by whether the process that determines those results is perceived as fair, Levine 2, *supra*, at 1211, a perception of unequal treatment may do more to decrease trust and confidence in the justice system than actual outcomes. *Id.* The bottom line is that rather than enhancing the legitimacy of the internal investigative process, the way that IA functions under its LEOBOR protections promotes “a lack of transparency, lack of participation by ordinary citizens, and a [consequent] lack of accountability for police and prosecutors.” Levine 2, *supra*, at 1197.

To be clear, *amici* do not question the decision of state policy makers to provide the police with expansive protections through LEOBOR. Rather, *amici* maintain that the decision of the citizens of the City of Miami to create the CIP, which offers a separate and distinct means of outside *independent civilian* -- *i.e.*,

non-police -- review of police conduct and practices, is understandable under the circumstances experienced in the City of Miami and should also be respected.³

C. Civilian Oversight of the Police Promotes Transparency and Accountability, Thereby Enhancing Trust in the Justice System.

Robust civilian oversight of law enforcement, such as that provided by the CIP, offers a host of benefits to all stakeholders, including increased transparency and accountability, which, in turn, leads to increased trust.

1. Benefits to complainants. The CIP process helps complainants feel validated through increased transparency and accountability. Peter Finn, DOJ, Office of Justice Programs, *Citizen Review of Police: Approaches and Implementation*, 7-8 (2001). As noted above, the integrity of the process matters more than actual outcomes. In contrast to the IA process, the CIP operates openly, with public airing of its consideration of the complaints before it. *See* City Code §11.5-30(a). During the CIP process, a complainant may review information and reports gathered by the CIP, including information generated by IA once IA's process is complete, and learn what factors the CIP's considers relevant to the case.

³ Petitioners urge this Court to gut the CIP's powers to investigate and make recommendations based upon chimeric conflicts between the CIP and LEOBOR investigatory processes. Given that at least fourteen states have adopted measures similar if not identical to Florida's LEOBOR, and countless municipalities and counties have also enacted or accepted as "part of negotiated agreements" similar provisions, Levine 2, *supra* at 1123-24, the impact of the Court's decision in this case is likely to extend beyond Miami's borders.

At the conclusion of the CIP process, the complainant learns the basis of the CIP's findings. *Id.* at §11.5-31(4), (5).

Moreover, the CIP affords complainants “procedural justice.” Procedural justice is based on four central principles: ‘treating people with dignity and respect, giving citizens a voice during encounters, being neutral in decision-making, and conveying trustworthy motives.’” DOJ, Office of Community Oriented Policing Services (COPS), National Initiative for Building Community Trust and Justice, *Procedural Justice*, 1 (2015). The CIP process reflects and embodies these principles. It gives complainants the opportunity to tell their side of the story in a forum where they are treated with dignity and respect and where recommendations are made based upon facts and neutral principles, by fellow members of the community who do not have a stake in the outcome. This last element bears emphasis: one of the most important features of the CIP process is that it presents an alternative to the police policing the police.⁴ The experience of procedural justice through the CIP process thus assures the public that investigations have been done fairly, thoroughly and objectively.

⁴ The CIP is comprised of 13 members: 12 “civilian[s] . . . nominated by the public and appointed by the city commission,” and “an appointee of the chief of police who is *not* a City of Miami police officer,” City Charter, §51(A) (emphasis added). Its overall composition reflects the city’s demographics and diverse communities. City Code, §11.5-28(a). In short, the CIP is a body of *civilians* – just as its name implies – and, hence, provides an *independent* viewpoint as to what may or may not constitute police misconduct.

2. Benefits to Law Enforcement. While it might occasionally cause discomfort, the police undoubtedly benefit from external oversight. Impervious to the infamous blue wall of silence, outside observers may be more able and willing than an officer's own colleagues to identify internal biases and even collusion. Civilian oversight thus increases the prospect that individual officers who engage in misconduct will be effectively investigated. Moreover, knowing that an outside investigation may occur inevitably encourages IA investigators to be even more thorough, thereby improving the IA process itself. Finn, *supra*, at 9-10. And, knowing their actions will be scrutinized by civilians outside the IA system discourages police from engaging in misconduct. *Id.* at 12. As a cumulative result, civilian oversight helps to manage, if not diminish, risk for the City.

Police, as well as the entire community, further benefit from policies that are “reflective of community values and [do] not lead to practices that result in disparate impacts on various segments of the community.” Janice Delaney & Fay Elkins, DOJ, COPS, *Final Report of the President's Task Force on 21st Century Policing*, 19 (2015). To be effective, such policies must be communicated to and meaningfully shared with the community. *Id.* These measures are especially important in communities unduly affected by crime, which invariably are the same ones disproportionately populated by persons of color and persons living in poverty -- in other words, the very persons most frequently excluded from the

policy-making process. *See id.* at 20. Given the requirement that CIP membership reflect the city's demographics and adequately represent its diverse communities, City Code, §11.5-28(a), and the CIP's authority to provide input related to the MPD'S policies and procedures, *id.* at §11.5-27(3), the CIP is perfectly situated to assist in these matters.

Additionally, the CIP's independence enables it to serve as an intermediary between law enforcement and the communities served by it. Delaney & Elkins, *supra*, 26. The cooperation between citizens and police encouraged by the CIP system creates relationships that inform each stakeholder group of the other group's concerns and interests. Finn, *supra*, 8, 9.

3. Trust. Perhaps the most vital role of the CIP is its ability to build trust in the justice system among community members, particularly community members who have historically suffered mistreatment at the hands of those in power; *i.e.*, persons who are poor and persons of color. By providing the community with procedural justice in the review and investigation of police conduct, the CIP actually enhances the legitimacy of the police. *See* Tom Tyler, *Why People Obey the Law*, Princeton University Press, 279 (2006) (studies have found that people “base their assessments of the legitimacy of the police, the courts and the law on the procedural justice of authorities.”) This legitimacy, in turn, enhances the willingness of the community to obey the law and cooperate with the police in

fighting crime; in other words, it directly promotes public safety. *See Procedural Justice, supra*, at 1 (“Mounting evidence shows that community perceptions of procedural justice, through their influence on all . . . aspects of people’s relationship with the law and the police, can have a significant impact on public safety.”) Simply put, “when citizens do not trust the justice system, they have less incentive to follow the law.” Levine 2, *supra*, at 1211. Trust in the system is thus critical to public safety. It is also critical to democracy itself:

Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.

Delaney & Elkins, *supra*, at 5.

In sum, there is no question that the CIP benefits all stakeholders by increasing transparency and accountability. This translates into greater trust of the justice system. Greater trust means more cooperation between the community and the police and a stronger democracy.

II. CIVILIAN OVERSIGHT OF LAW ENFORCEMENT EMBODIES THE CONSTITUTIONAL RIGHT OF CITIZENS TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.

The First Amendment to the United States Constitution provides that:

Congress shall make no law . . . abridging . . . freedom of speech, or of the press; or the right of the people peaceably to assemble, and to *petition the Government for a redress of grievances.*

U.S. Const., amend. I (emphasis added.) “The right to petition is among the most precious of the liberties guaranteed by the Bill of Rights.” *McDonald v. Smith*, 472 U.S. 479, 486 (1985). One hundred forty years ago, the Court found that the right to petition was implicit in “[t]he very idea of government, republican in its form.” *United States v. Cruikshank*, 92 U.S. 542, 552 (1876). Indeed, this right is fundamental to representative democracy itself. *California Motor Transp. Co. v. Trucking LTD*, 404 U.S. 508, 510 (1972).

The Florida Constitution, too, guarantees this precious right to “the people.” Fla. Const. Art. 1, §5 (“The people shall have the right peaceably to assemble, to instruct their representatives, and to *petition for redress of grievances* (emphasis added)); *e.g.*, *Krivanek v. Take Back Tampa Political Comm.*, 625 So. 2d 840, 843 (Fla. 1993) (noting that while the state constitutional right may be subject to reasonable regulation, “[g]iven its constitutional underpinnings, the right to petition is inherent and absolute”).

The right to petition promotes peaceable resolution of deeply held disagreements by protecting even “vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270-71 (1964).⁵ Key to the case on appeal, the right to petition

⁵ Because this right is “intimately connected, both in origin and in purpose, with the . . . First Amendment rights of free speech and free press,” even an incidental infringement must be avoided unless a compelling reason dictates

extends to “*all* departments of the Government,” not merely to access to the courts. *California Motor Transp.*, 404 U.S. at 510 (emphasis added).

The CIP advances the very same interests that underlie the constitutional right to petition the government for redress of grievances. Indeed, by allowing civilians to formally complain about police misconduct and then participate in the investigation and resolution of such complaints by a governmental entity comprised of citizens representing Miami’s diverse communities, the CIP is quintessentially a vehicle for the exercise of that right. Just as the right to petition is a right to protest governmental action, so too is the CIP an avenue through which the community can express its dissatisfaction with police activity. Just as the right to petition is fundamental to representative democracy, so too does civilian oversight of law enforcement enhance trust between the police and the community that is “essential in a democracy.” *See Delaney & Elkins, supra*, at 5. Just as the right to petition provides a peaceful means to present disputes to government officials, so too do the relationships and trust developed through civilian oversight serve to decrease animosity and quell anger.⁶ The violence, for example,

otherwise. *United Mine Workers of Am., Dist. 12 v. Illinois State Bar Ass’n*, 389 U.S. 217, 222 (1967). An infringement of the right to petition may not stand unless it is necessary to avoid an actual “clear and present danger.” *Thomas v. Collins*, 332 U.S. 516, 530 (1945).

⁶ And just as the CIP can only recommend, so too the right to petition guarantees only access, not a response. *See We the People Found. v. United States*, 485 F.3d 140, 143 (D.C. Cir. 2007).

immediately following incidents of alleged police misconduct in Ferguson, Baltimore and Charlotte, attests to the critical need for more opportunities for trust-building relationships nurtured through civilian oversight, not fewer. Preservation of the CIP will protect an important resource for the meaningful peaceful exercise of the fundamental right of the people to seek redress of grievances.

CONCLUSION

The IA process, in which the police police the police, coupled with the LEOBOR's favoritism, contributes to the community's distrust of the justice system. The CIP, by contrast, enhances transparency and accountability, and, above all, helps build trust between the community and the police. *Amici* respectfully request that this Court bear in mind the critical role the CIP plays in promoting public safety and strengthening our democracy as it adjudicates the substantive issues before it.

Respectfully Submitted:

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Amici hereby certify that this brief complies with the type size, font, and spacing requirements set forth in Fla. R. App. P. 9.210(a)(2).

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