



Press Freedom, Attorney Ethics, and Police Accountability All Championed in Baltimore Police “Gag Order” Case

*Amicus Briefs Filed in Appeals Court by Broad Range of Groups Challenging Free
Speech Restrictions on Victims of Police Abuse*

For immediate release:

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BALTIMORE – Significantly raising the profile of the serious First Amendment violations caused by the gag orders imposed by Baltimore City on survivors of police abuse and their attorneys in lawsuit settlements, a broad range of civil rights, civil liberties, media, and open government organizations and activists have filed “friend of the court” briefs with the United States Court of Appeals for the Fourth Circuit in support of a woman improperly denied half of her settlement award after responding to comments online about her experience of being brutalized by Baltimore police. Joining Ms. Overbey as a co-plaintiff in the case is the *Baltimore Brew*, a news organization denied its First Amendment and statutory rights to obtain newsworthy public information from victims of police abuses. The ACLU of Maryland is providing direct counsel to both plaintiffs, who are appealing to the Fourth Circuit from a Maryland district court decision dismissing their constitutional challenge to the gag orders.

The three *amicus* briefs focus on key areas implicated by the gag orders: freedom of the press, attorney ethics rules, and police accountability.

A weighty *amicus* brief was filed by the Reporters Committee for Freedom of the Press and 19 other influential media organizations: American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, Baltimore Sun, BuzzFeed, Center for Investigative Reporting, Gannett Co, International Documentary Association, Investigative Reporting program at UC Berkeley’s Graduate School of Journalism, Investigative Reporting Workshop at American University’s School of Communication, Maryland D.C. Delaware Broadcasters Association, Association of Magazine Media, National Press Photographers Association, Maryland-Delaware-District of Columbia Press Association, Online News Association, Tully Center for Free Speech, and Washington Post.

This press freedom *amicus* brief raises serious concerns with the U.S. District Court of Maryland's ruling that disregarded First Amendment protections for newsgatherers, which the organizations firmly believe should grant standing to the *Baltimore Brew* to challenge Baltimore City's gag order policy. The brief argues that Baltimore City's one-sided policy unconstitutionally restricts the media's ability to gather information from individuals settling police misconduct cases, preventing reporters from accurately and fairly reporting on an issue of significant public interest and importance. Also imposing mandatory "non-disparagement" clauses on individuals settling police misconduct cases goes against the clear policy of the Maryland legislature to maintain open access to government settlement agreements. State courts across the country, including Maryland, have consistently held that governments may not use confidentiality provisions in settlement agreements to prevent the disclosure of otherwise public documents.

"The Baltimore Police Department's policy of requiring what are essentially gag orders to settle cases of alleged police misconduct silences the voices of those who would otherwise speak out about an issue that's important to their community," said Katie Townsend, legal director for the Reporters Committee for Freedom of the Press. "It's essential that journalists and the public hear both sides when these allegations against law enforcement arise."

A separate *amicus* brief filed by the Howard University School of Law Civil Rights Clinic and Public Justice, addresses access to justice issues, detailing how the City of Baltimore's confidentiality clause violates Maryland's ethical rules for attorneys. The clause is so broadly worded that it prohibits attorneys from discussing their client's allegations – including publicly available facts – which unlawfully limits an attorney's ability to practice, the brief argues. By limiting what information an attorney may disclose in the future, the clause damages the quality of representation that future victims receive. For example, the gag orders block attorneys from being able to present "highly persuasive" evidence that a police department or officer's actions are part of a routine practice by the Department.

"It is disappointing that the City of Baltimore would continue to mandate that victims of police brutality agree to a provision which the Maryland Bar has found is unethical," said Ajmel Quereshi, Co-Director of Howard University School of Law's Civil Rights Clinic. "It is enough that these individuals have suffered at the hands of those who are supposed to protect them. They shouldn't have to agree to clauses which are prohibited by the Rules of Professional Conduct for attorneys."

Another important *amicus* brief gives a larger context for non-disparagement clauses in police misconduct settlement agreements, and how they contribute to the lack of police accountability in Baltimore, which is notorious for police violence. The brief makes clear the city's use of gag orders shield the BPD from public scrutiny and reduces BPD's incentive for reform. The *amicus* brief argues that these gag orders are used to conceal from the public the BPD's frequent unwarranted violence against civilians – particularly Black residents. This brief was filed by the Public Justice Center, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, the National Women's

Law Center, and Baltimore activist Tawanda Jones, sister of Tyrone West who was killed by Baltimore Police in 2013.

“Baltimore City’s use of gag orders serves only to protect police officers from being held accountable for brutalizing city residents,” said K’Shaani Smith, the Public Justice Center attorney who authored the brief. “By erasing the experiences of the many Black men, women, and children who have been harmed by BPD, the city’s policy has undoubtedly contributed to the culture of police violence in Baltimore.”

The case, filed in July 2017, was dismissed with insufficient consideration by now retired U.S. District Court Judge J. Frederick Motz. Saying that decision was flawed, Chief Judge James K. Breder then reopened the case and assigned it to Judge Marvin Garbis. In November, Judge Garbis ruled that *Baltimore Brew* lacked standing and that Ashley Overbey had waived her First Amendment rights when she signed a 2014 non-disclosure agreement with the city. The ACLU and *pro bono* counsel Crowell & Moring, LLP, have appealed that ruling.

Go to the ACLU of Maryland website to read ACLU’s appellate brief and the amicus briefs in support of *Overbey v. Baltimore*: www.aclu-md.org

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