Schenectady Police Benevolent Assn. v City of Schenectady
2020 NY Slip Op 34346(U)
December 29, 2020
Supreme Court, Schenectady County
Docket Number: 2020-1411
Judge: Mark L. Powers

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

PRESENT: HON. MARK L. POWERS
SUPREME COURT JUSTICE

DECISION AND ORDER
Index No. 2020-1411
RJI No. 46-1-2020-0598

SCHENECTADY POLICE BENEVOLENT ASSOCIATION, On Behalf of BRIAN POMMER and On Behalf of All Other Similarly Situated Members of the SCHENECTADY POLICE BENEVOLENT ASSOCIATION, and BRIAN POMMER,

Petitioners-Plaintiffs,

-against-

CITY OF SCHENECTADY, MICHAEL C. EIDENS, in his official capacity as Public Safety Commissioner for the City of Schenectady, CITY OF SCHENECTADY POLICE DEPARTMENT,

Respondents-Defendants.

NOTICE:

PURSUANT TO ARTICLE *55* OF THE CIVIL PRACTICE LAW AND RULES, AN APPEAL FROM THIS JUDGMENT MUST BE TAKEN WITHIN 30 DAYS AFTER SERVICE BY A PARTY UPON THE APPELLANT OF A COPY OF THE JUDGMENT WITH PROOF OF ENTRY EXCEPT THAT WHERE SERVICE OF THE JUDGMENT IS BY MAIL PURSUANT TO RULE 2103(B)(2) or 2103(B)(6), THE ADDITIONAL FIVE DAYS PROVIDED SHALL APPLY, REGARDLESS OF WHICH PARTY SERVES THE JUDGMENT WITH NOTICE OF ENTRY.

APPEARANCES:

John P. Calareso, Jr., Esq., Gleason, Dunn, Walsh & O'Shea, 40 Beaver Street, Albany, N.Y. 12207; Counsel for Petitioners-Plaintiffs, Schenectady Police Benevolent Association, on behalf of Brian Pommer and on behalf of all other similarly situated members of the Schenectady Police Benevolent Association, and Brian Pommer;

Andrew B. Koldin, Esq., Assistant Corporation Counsel, City Hall, 105 Jay Street, Room 201, Schenectady, New York 12305; *Counsel for Respondents-Defendants,* City of Schenectady, Michael C. Eidens, in his official capacity as Public Safety Commissioner for the City of Schenectady, and the City of Schenectady Police Department;

Michael Sisitzky, Esq., Julissa Reynoso, Esq., Sofia Arguello, Esq., Lauren E. Duxstad, Esq., Brett Waters, Esq., Erin Baldwin, Esq., Samantha Ruppenthal, Esq., WINSTON & STRAWN LLP, 200 Park Avenue, New York, New York 10016; *Counsel for Intervenor-Party,* New York Civil Liberties Union.

HON. MARK L. POWERS, JSC

The issue before this Court is whether a police officer's personnel and disciplinary record, to the extent it contains uncharged or unsubstantiated allegations of misconduct, or founded charges resolved without professional discipline, must be disclosed in response to a *Freedom of Information Law (FOIL)* request, in light of the repeal of *Civil Rights Law (CRL) §50-a*, on June 12, 2020.

Certainly, the repeal, which took effect immediately, removed the blanket of secrecy with which law enforcement records, statewide, were previously cloaked in their entirety. However, the scope of the general public's reach, through the simple submission of a *FOIL* request, as far as the content of such records is the question now

put to municipalities around the state.[1]

At the outset, the Court recognizes that strong lobbying by advocacy groups, coupled with recent nationwide protests in the name of racial equality and demanding massive reform, were the catalysts for the statutory repeal of *CRL §50-a.* Indeed, our nation's recent history is forever marked by anger and sorrow surrounding controversial arrests involving the use and degree of force, particularly as against black men, women and children. Although not an exhaustive rendition, police-caused fatalities of minorities, which garnered national media attention, peaceful public outcry and/or violent social unrest include: the death of Eric Garner, on July 17, 2014, resulting from police choke hold, during arrest for selling untaxed cigarettes; the death of Tamir Rice, a child, on November 22, 2014, who was carrying a toy gun; the death of Freddie Gray, on April 19, 2015, caused by spinal cord injuries sustained while already in police custody; the death of Elijah McClain, on August 24, 2019, after being cuffed, administered ketamine (a sedative), and then held against the ground in a choke hold for more than fifteen minutes; the death of Breonna Taylor, on March 13, 2020, after officers blindly fired multiple shots into her home while executing a search warrant; the death of Daniel Prude, on March 23, 2020, after being held face down to the pavement in excess of two minutes with a "spit hood" over his head; and the death of George Floyd, on May 25,

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[1] Upon information and belief, at the time of this writing, on-line databases are in the process of development, geared toward improved and more efficient responses to FOIL requests, as well as reduced costs for compilation, reproduction, and consistent records retention policies. The extent, if any, to which such database design has been delayed by the on-going global health pandemic (COVID-19) is unknown to this Court.

2020, while pinned to the ground with an officer's knee against his neck for more than eight minutes, during arrest for possession of a counterfeit $20.00 bill. Each of these deaths (and others not specifically referenced herein) sparked large-scale demonstrations decrying police brutality and systemic racism.

The circumstances from which the instant matter emanates is, gratefully, not one in which a death resulted. However, on July 6, 2020, Patrolman Brian Pommer (hereinafter, "Patrolman Pommer"), a 46 year old white police officer, employed by the City of Schenectady Police Department since 2013, arrested Yugeshwar Gaindarpersaud (hereinafter, "Gaindarpersaud"), a 31 year old Indian man, in the course of questioning him about a neighbor dispute. Gaindarpersaud, who was unarmed, ran from Patrolman Pommer and, in response, Patrolman Pommer pursued Gaindarpersaud, subduing him with the use of physical force.[2]

Given that our nation was gripped in demonstrations over the death of George Floyd merely six weeks earlier, parallels were drawn, locally, with respect to Patrolman Pommer's arrest of Gainderpersaud, prompting public interest in Patrolman Pommer's prior disciplinary record, if any. Specifically, on July 8, 2020, Michael Goodwin, a journalist with the Times Union, a newspaper in wide general circulation within New York State's Capital District, submitted a *FOIL* request to the City's Records Access

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[2] Upon information and belief, Gaindarpersaud was charged with criminal mischief as to his neighbor and with resisting arrest as to Patrolman Pommer. These charges have since been dismissed or adjourned in contemplation of dismissal. Upon further information and belief, an internal investigation resulted in disciplinary charges brought against Patrolman Pommer, which have since been resolved with a six day suspension, without pay, and mandatory additional training.

Officer, seeking Patrolman Pommer's personnel record. On July 15, 2020 and September 30, 2020, respectively, the New York Civil Liberties Union (hereinafter, "the NYCLU") submitted *FOIL* requests, initially seeking Patrolman Pommer's disciplinary records and, subsequently, seeking the disciplinary records of all officers in the City's employ.

The instant combined *Civil Practice Law and Rules (CPLR) Article 78* special proceeding and declaratory judgment action, was brought on September 9, 2020, by the Schenectady Police Benevolent Association (hereinafter, "the PBA"), a labor organization and the exclusive representative for all police officers of the City of Schenectady, including Patrolman Pommer, (collectively, "the petitioners") seeking to prevent the City of Schenectady, its Public Safety Commissioner and its Police Department (hereinafter, collectively, "the respondents") from including particular documents, and those associated with them, within their response to the pending *FOIL* requests. The petitioners further seek to have this Court direct the respondents to redact any and all references to conduct which was uncharged, unfounded, unsubstantiated, settled without discipline and/or otherwise resolved or exonerated, from the records of all officers, including Patrolman Pommer, prior to any disclosure.

The particular documents at issue are: a Counseling Notice, dated April 15, 2020, which Patrolman Pommer received relative to his response to a domestic call on November 10, 2019; and a Notice of Potential Charges, drafted on May 4, 2020, which was never signed, dated, nor served upon Patrolman Pommer, but arose from his handling of a group gathering outside a local business (Bumpy's Polar Freeze), relative to COVID-19 restrictions and for which he received a Notice of Discipline on May 21,

2020, which was, in turn, resolved via a Settlement Agreement on June 1, 2020.

Based upon a good cause showing by petitioners that there was an imminent intention, on the respondents part, to disclose these records, in response to the *FOIL* requests, albeit in redacted form, this Court granted, on September 9, 2020 (commensurate with the commencement of the proceeding) a temporary restraining Order prohibiting any further release of information from Patrolman Pommer's personnel record. The Court also directed the Schenectady County Clerk to seal the filings relative to this matter, pursuant to *22 New York Code of Rules and Regulations (NYCRR) §216.1.*

Shortly thereafter, by a bench ruling on September 23, 2020, which was reduced to writing and signed as an Order of this Court on September 30, 2020, the respondents were directed to release those portions of Patrolman Pommer's disciplinary records as pertain to actual findings of misconduct, together with the evidence underlying such findings.

The New York Civil Liberties Union (NYCLU) submitted a formal motion seeking intervenor-party status, via Order to Show Cause (OSC) filed on October 13, 2020. This application was granted, without genuine opposition, and pursuant to this Court's discretion, under *CPLR §7802(d).*

THE LAW AND DISCUSSION

The *Freedom of Information Law (FOIL),* codified at *New York State Public Officers Law Article 6, §§84-90*, is rooted in a presumption favoring access to all agency records,

without the need of the person requesting access to provide any reason. In short, absent an express statutory exception allowing an agency to withhold disclosure of any requested public record, its availability is presumed. The theory is that "public records belong to the public."

The implementation of *FOIL* is overseen by the New York State Committee on Open Government and this Committee issues advisory opinions, extolling the importance of transparency so as to expose agency abuses which pose threats to public health and safety.

Throughout the more than 40 year reign of *CRL 50-a,* - - from its enactment in 1976 until its repeal in 2020 - - , police disciplinary records were shielded from the public eye (unless an officer consented to their disclosure or a Court Order was obtained). *CRL §50-a's* existence squarely secured police misconduct records and, especially, placed them beyond the reach of those who might otherwise use them for impeachment purposes. Importantly, their non-disclosure did not turn on whether misconduct was substantiated, nor whether discipline was imposed, nor whether charges were merely under consideration. Rather, *CRL §50-a* rendered <u>all</u> records of police conduct or misconduct essentially invulnerable.

Moreover, despite litigation to repudiate or, at least, scale back *CRL 50-a's* blanket safeguard against disclosure, its protections, prior to 2020, continued to receive expansive interpretation by the New York State Court of Appeals. *See, e.g., Matter of Prisoners' Legal Servs. of N.Y. v. New York State Dept. of Correctional Services, 73 NY2d 26 [Ct.*

of Appeals, 1988], wherein the high Court ruled that inmate grievances against correction officers constituted the "very sort of record intended to be kept confidential under *CRL §50-a. See also Matter of Daily Gazette Co. v. City of Schenectady, 93 NY2d 145 [Ct. of Appeals, 1999]*, wherein the high Court ruled that records of police officers, who engaged in unruly conduct while off-duty, were protected from disclosure in light of the risk that such records might otherwise be used to "embarrass or humiliate" them. In fact, it was merely two years ago, in a holding viewed as "the high water mark" for the protection afforded police personnel records, that the high Court again reiterated the need to shield police officers from the disclosure of potentially embarrassing records. *See Matter of New York Civ. Liberties Union v. New York City Police Dept, 32 NY3d 556 [Ct. of Appeals, 2018]*, wherein civilian complaints made to a review board, which may or may not be referred for discipline, were held non-disclosable based upon *CRL §50-a.*

In a nutshell, *CRL §50-a* was interpreted broadly and applied so as to afford maximum confidentiality to all law enforcement disciplinary records. State lawmakers, however, responding to public demand, dramatically changed the landscape on June 12, 2020. On this date, a package of sweeping statutory reforms was enacted in combination with the complete repeal of *CRL §50-a.* The measures taken by the legislature were widely lauded as a giant leap forward in government accountability and transparency, focused on restoring the public's trust in the integrity of our police force.

As a result, access to law enforcement personnel records, including disciplinary history, is now governed by *FOIL* alone, with key provisions of *FOIL* having been

amended accordingly. Specifically, there are newly enacted provisions to *POL §86,* to wit: the addition of subdivision (6) *[defining "law enforcement disciplinary records"];* the addition of subdivision (7) *[defining "law enforcement disciplinary proceeding"];* the addition of subdivision (8) *[defining "law enforcement agency"]* and the addition of subdivision (9) *[defining "technical infraction"].* There are also newly enacted provisions to *POL §87* to wit: the addition of subdivisions *(4-a)* and *(4-b) [providing for the mandatory or discretionary redaction of certain information prior to release].* New provisions were also adopted in *POL §89,* to wit: the addition of subdivisions *(2-b) and (2-c) [likewise each providing for certain redactions prior to release].*[3] At the same time, *POL §87(2)(b),* which provides an exemption for records which "if disclosed, would constitute an unwarranted invasion of personal privacy," was not changed. It is, however, *POL §89(2)(b)* which sets forth a non-exhaustive list of the types of information which, if released, would constitute "an unwarranted invasion of personal privacy."

Thus, with the repeal of *CRL §50-a, FOIL* requests for law enforcement personnel records are now to be considered in a light that makes them available *unless* a particular record, or portion thereof, falls within a recently enacted statutory exception or a pre-existing one which the legislature left unaltered. It is *POL §87(2)(b)'s* exceptions for records that, if disclosed, would constitute an "unwarranted invasion of personal

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[3] Within three days of these amendments, compatible statutory revisions were made to the *CRL at §§79-n(2) and 79-p; Executive Law §70-b; and the Police Statistics and Accountability Act (STAT),* the latter of which itself amends provisions of the *Criminal Procedure Law,* the *Judiciary Law* and the *Executive Law.*

privacy," that occupies the greatest significance to the instant matter.

Here, albeit the petitioners insistence that no public interest is served by the disclosure of the Counseling Notice, the Notice of Potential Charges, the Notice of Discipline and/or the Settlement Agreement, this Court is hard-pressed to find that any of these particular documents fall within the types of records to which *POL §89(2)(b)(I-viii)* ascribes a right of "personal privacy." Nor does it particularly strengthen petitioners position to emphasize that *POL §89(2)(b)(I-viii),* by its express language, does not provide an exhaustive list of personally private materials.

While there is no argument that the Settlement Agreement contains disciplinary information based on a founded charge(s), this Court acknowledges, and concurs with, the petitioners assertion that the Counseling Notice was not discipline but, merely, the noting of a job deficiency. Likewise, the Notice of Potential Charges does not contain any specifications, nor was it even served upon Patrolman Pommer. The assertion by petitioners that unsubstantiated charges, if disclosed, have the potential to cause embarrassment and/or give rise to officer safety issues is, indeed, made even more concerning by the possibility that veracity may be completely lacking. These points advanced by the petitioners are well-taken and credited by the Court. However, there is simply no ambiguity, in this Court's view, as to the legislature's instructions when responding to *FOIL* requests. In terms of public access, it is of little consequence that records contain unsubstantiated charges or mere allegations of misconduct. Where counseling pertains to job performance, or allegations relate to public duty, such records

are publicly accessible, via *FOIL* request, regardless of reputational injury or validity. It is not the veracity of the allegations but, instead, whether they relate to the discharge of public duties which guides the analysis. *(See Matter of New York Times Co. v. City of N.Y. Fire Dept., 4 NY3d 477 [Ct. of Appeals, 2005]).*

"Privacy" is, of course, a subjective issue for individuals but it is not as to public employee records. Public employees have less entitlement to privacy than do non-public employees, at least where job performance is concerned. This is due to the high priority placed on accountability. Stated otherwise, where records relate to performance of public duties, no privacy right exists. It may well be true that a public employee (including a police officer) and/or his collective bargaining unit or labor union, views a particular record as private or embarrassing or its disclosure as a personal safety risk but, it is nonetheless now within the ambit of disclosure. The current statutory scheme, while recognizing a privacy invasion, clearly does not deem it to be "unwarranted."

Indeed, pursuant to *POL §89(2-c),* the public's right of access may even extend to "technical infractions" (minor rule violations related solely to administrative departmental rules and not of public concern), as included within the meaning of "law enforcement disciplinary records," albeit with the agency having some discretion for redactions. Similarly, the documents sought by the pending *FOIL* requests do not fall within the exception to disclosure for materials that are "inter-agency or intra-agency," under *POL §87(2)(g)(iii),*

In the balance between the public's right of access and the impact of disclosure

upon the officer, the legislature has now made clear that the latter (the impact upon the officer) must bow to the former (the public's right of access). It is unavailing as a basis to deny disclosure that an officer may not have had a full and fair opportunity to contest any misconduct charge.

Therefore, while the petitioners posit that the items sought herein are, at least in part, not disclosable due to the lack of a hearing, the new statutory scheme does not deem an officer's lack of opportunity to contest allegations, at a fair hearing, to serve as a basis to deny public disclosure. In other words, such lack of opportunity to the officer does not, standing alone, establish an unwarranted invasion of privacy. Thus, although this Court concurs with the petitioners that a fair determination as to the veracity of a misconduct complaint would seem to be appropriate, such course is not compatible with the legislature's clear directives.

This Court also declines to adopt the petitioners reliance upon the *Taylor Law*. It is axiomatic that the public right of access to records under *FOIL* cannot be bargained away in collective bargaining between management and labor.

Next, the Petitioners allege a denial of due process (*New York Constitution, Article 1, §6*) since the *Second Class Cities Law (SCCL) §137* and the Schenectady Police Department Manual, Policy 1038, were not followed. However, the disclosure of police personnel records, albeit possessing the potential for reputational damage, does not amount to a cognizable protected interest under the federal or state constitutions, without more, such as, for example, the loss of employment. *(See, Patterson v. City of Utica,*

370 F.3d 322 [2d Circuit 2004]; and DiBlasio, M.D. v. Novello, 344 F.3d 292 [2d Circuit 2003]).[4] Here, the petitioners cannot develop a valid claim upon constitutional arguments because Pommer has not suffered a tangible loss. Moreover, it is beyond cavil that legislative acts enjoy a strong presumption of constitutionality.

This Court finds that the petitioners have not advanced a persuasive argument as to the governing statutes being in conflict with due process, equal protection or any other provision of the federal or state constitutions. As with their arguments sounding in the unwarranted invasion of privacy, the petitioners claims that the respondents intended compliance with the *FOIL* requests would be arbitrary and capricious, or an error of law, also fail.

"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature" *(Majewski v. Broadalbin-Perth Cent. School Dist, 91 NY2d 577, 583 (Ct. of Appeals, 1998) quoting Tompkins v. Hunter, 149 NY117 (Ct. of Appeals, 1896).* The repeal of *CRL §50-a* reflects the legislature's intention to alter the processing of *FOIL* requests seeking law enforcement disciplinary records from disclosure of the least possible material to the greatest permissible disclosure.

As for retroactivity, it is generally true that new statutes are presumed to apply prospectively. *General Construction Law (GCL) §§93 and 94; see also Matter of Regina Metro.*

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Such claims are often referred to as "stigma-plus claims," because they involve an injury to reputation (the "stigma") coupled with loss of a property interest (the "plus"). Stigma-plus claims require a showing of both a derogatory statement, false in nature, which injures reputation and the taking or alteration of a property interest, status or right. *(See Paul v. Davis, 424 U.S. 693 [Supreme Court of the United States, 1976]).*

Co., LLC v. New York State Div. of Hous. & Community Renewal, 35 NY3d 332 (Ct. of Appeals, 2020) quoting Majewski v. Broadalbin-Perth Cent. School Dist, 91 NY2d 577, 584 (Ct. of Appeals, 1998), thereby affording individuals an opportunity to know what the law is and to conform accordingly. *[Landgraf v. USI Film Products, et al, 511 U.S. 244, 265 (United States Supreme Court, 1994]).* Nevertheless, it is also true that statutory retroactivity to matters preceding enactment is often sanctioned, particularly where, as here, strong public policy considerations serve as the foundation for the new statutory scheme.

In this Court's view, even despite a risk of "over-transparency," our state legislature has spoken loudly toward its stated goal of improving racial discourse, particularly with regard to policing and especially as to policing of minorities and those suffering with mental health disorders. Here, there is strong evidence that retroactive effect was intended by the legislature.

Therefore, regardless whether unsubstantiated or unfounded or exonerated or dismissed, or regardless of whether not yet fully determined, or regardless of whether founded but without discipline imposed, the respondents herein cannot determine to deny the sought disclosure. A finding that Patrolman Pommer's personnel record, or any portion thereof, be withheld or redacted on the basis that its release would constitute an unwarranted invasion of personal privacy, cannot be realized by petitioners, as to do so would render the legislature's repeal of *CRL §50-a* utterly meaningless simply by the respondents theorizing that the record (or any portion thereof) is, in their opinion, "private." Given that an easy ability to render the new statutory scheme meaningless

could not possibly have been the intended by the legislature, this Court is constrained to deny the petition and complaint in their entirety.

In conclusion, the last thing intended by this Court's decision herein is that it be viewed as a vilification of law enforcement officers, who, bravely dedicated to public service, are also all too often losing their lives in the line of duty. This Court appreciates petitioners position that the reputational harm which can result from the disclosure of unsubstantiated allegations, can be irreparable. It is, however, the Court's role to apply the current statutory scheme to the facts before it and, on these specific facts, to credit petitioners' interpretation would be to sub-vert *CRL §50-a's* repeal. In our current times, our state lawmakers have seen fit to require disclosure of police personnel records, upon FOIL request, even when such records reflect no more than allegations. They, presumably, did so in the name of opening the door to transparency, and having done so, it would be palpably improper for this Court to close it. It strikes the Court that the legislature intended not just a change in law but, rather, a change in culture. It is the Court's function to enforce the current laws in a manner that reflects that intention.

Finally, notwithstanding any greater societal significance which any actual or interested party, or the media, may seek to ascribe to the instant ruling, it is, in actuality, narrowly confined to the particular *FOIL* requests outstanding as to Patrolman Pommer and the members of the Schenectady Police Department. Any broader applicability as to other locales or other FOIL requests will necessarily have to be determined on their own specific merits.

THE COURT'S RULING

NOW, therefore, based upon the foregoing, it is hereby

ORDERED that the petition/complaint is **DENIED** and **DISMISSED** with prejudice; and it is further

ORDERED that, effective with the entry of this Decision by the Intervenor-Party (the NYCLU), with the Schenectady County Clerk, and service of an entered copy upon counsel for the named Petitioners and Respondents, the Temporary Restraining Order shall be automatically vacated and be of no further force or effect, whereupon Respondents shall proceed swiftly in complying with the pending FOIL requests to include Patrolman Pommer's counseling notice, (draft) notice of potential charges, Notice of Discipline and Settlement Agreement, all of which shall be without redaction except insofar as Patrolman Pommer's, and any other officer(s), home address, personal contact information (cell phone and email) and Social Security Numbers; and it is further

ORDERED that, as the Court is aware that disciplinary charge(s) pertaining to Patrolman Pommer's arrest of Yugeshwar Gaindarpersaud, which prompted the existing FOIL requests, have been resolved during the pendency of this special proceeding, the Court's decision herein shall be deemed to include the records as to such discipline, without the need for an amended or supplemental FOIL request to those already pending; it is further

ORDERED that, there being no further relief sought, this matter is closed with this Decision constituting the final Order of this Court.

HON. MARK L. POWERS
SUPREME COURT JUSTICE

Signed: December 29, 2020
at Schenectady, New York

PAPERS CONSIDERED

Petitioners-Plaintiffs' Verified Petition and Complaint, dated September 3, 2020, with annexed Exhibits A - E;

Petitioners-Plaintiffs' Memorandum of Law, dated September 9, 2020;

Intervenor-Party Order to Show Cause, dated October 13, 2020, Attorney Affirmation of Michael Sisitzky, Esq., dated October 7, 2020, in Support of NYCLU's Motion to Intervene, with annexed exhibits 1 - 8; and Attorney Affirmation of Brett Waters, Esq., dated October 7, 2020, in Support of NYCLU's Motion to Intervene, with annexed exhibits A - C;

Petitioners-Plaintiffs' Reply, dated October 27, 2020, to Respondents-Defendants' Supplemental Brief in Support of Verified Answer, with annexed Exhibit A;

Intervenor-Party Memorandum of Law, dated November 10, 2020, in Opposition to Petitioners-Plaintiffs' Verified Petition and Complaint, with annexed Exhibits A and B;

Attorney Affirmation of Brett Waters, Esq., dated November 10, 2020, in Support of Intervenor-Party's Memorandum of Law in Opposition to Petitioner-Plaintiffs' Verified Petition and Complaint, with annexed Exhibits A and B;

Petitioners-Plaintiffs' Reply, dated November 18, 2020, to Intervenor's Memorandum of Law in Opposition to Petitioners-Plaintiffs' Verified Petition and Complaint.