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September 16, 2019

Baltimore City Council  
Public Safety Committee  
Baltimore City Hall  
100 Holliday St.  
Baltimore, MD 21202

Attention: President Brandon M. Scott

VIA EMAIL

Dear President Scott and Public Safety Committee Members:

The Reporters Committee for Freedom of the Press thanks the Public Safety Committee for the opportunity to submit testimony in support of Bill 19-0409, “Transparency and Oversight Claims in Litigation.”

The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee strongly supports government transparency and the free flow of information to the public. Legislation such as Bill 19-0409 would promote these interests.

***Transparency is essential in police settlements.*** This bill will prohibit the Baltimore City Department of Law and the Board of Estimates from approving police misconduct or unlawful discrimination settlements that require the claimant to waive the right to make any statement about city officials, agencies, or employees, or about the circumstances of the case or the settlement terms.

One of the interests at the heart of the First Amendment is “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open . . .” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Claims of police misconduct, as well as the circumstances in which the city litigates and settles such claims, are “public issues” that should be freely discussed. Such issues are exceptionally newsworthy. Transparency in these matters is crucial for public accountability, particularly where, as here, these settlements are paid using taxpayer funds.

***There is a strong public interest in safeguarding the public’s access to information about settlement agreements and in preserving the press’s ability to report accurately and fairly on allegations of police misconduct.*** Reporters routinely rely on individuals who are injured or arrested by police officers as sources of information for reporting on encounters between the public and law enforcement.<sup>1</sup> News stories should “reflect all sides, not just one” and journalists have “a duty of fairness to give the subject of . . . stories the opportunity to put their side.”<sup>2</sup>

Accordingly, journalists must be able to speak to individuals who settle claims arising out of their encounters with police officers in order to inform the public about these settlements and the impact they may have on victims, law enforcement, and the public.<sup>3</sup> The gag orders that would be prohibited under Bill 19-0409 are a direct impediment to the free flow of that information to the public through the press.

In July 2019, the U.S. Court of Appeals for the Fourth Circuit overruled a 2017 federal district court decision that dismissed a constitutional challenge to such non-disclosure agreements. *Overbey v. Baltimore*, 930 F.3d 215 (4th Cir. 2019). The Reporters Committee, joined by 19 media organizations, filed a friend-of-the-court brief, arguing that the public has a right to know about information pertaining to police misconduct settlements, and that the routine practice of using non-disclosure agreements silences the claimants in these cases, restricting the press’s ability to report on police misconduct allegations.<sup>4</sup> The Fourth Circuit agreed, holding that the strong public interests rooted in the First Amendment voided the waiver of the plaintiff’s First Amendment rights in the settlement at issue. *Overbey*, 930 F.3d at 222.

The proposed bar on gag orders in the legislation before this Committee would build on the holding in *Overbey* and would helpfully extend protections to all claimants in police misconduct or unlawful discrimination cases, as a matter of city law.

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<sup>1</sup> See, e.g., Nina Golgowski, *Young Man Beaten by Cops on Video Speaks Out After Officers’ Firing*, HuffPost (Apr. 16, 2017), [https://www.huffingtonpost.com/entry/georgia-man-beaten-by-police\\_us\\_58f3b727e4b0b9e9848cb041](https://www.huffingtonpost.com/entry/georgia-man-beaten-by-police_us_58f3b727e4b0b9e9848cb041); Rob Hayes, *Man whose leg was broken in videotaped Pasadena arrest speaks out: ‘I can’t sleep’*, ABC7 (Dec. 20, 2017), <http://abc7.com/man-in-videotaped-pasadena-arrest-speaks>; Dylan Stableford, *Bikini-clad girl thrown to ground by McKinney officer speaks out*, Yahoo News (June 8, 2015), <https://www.yahoo.com/news/mckinney-police-pool-party-girl-speaks121117251.html>; *Black women speak out on experiencing police violence*, Fusion (July 1, 2015), <https://www.youtube.com/watch?v=JWK9m2Tfr8w>.

<sup>2</sup> See, e.g., Reuters, Handbook of Journalism, § 1.3, [http://handbook.reuters.com/index.php?title=Freedom\\_from\\_bias](http://handbook.reuters.com/index.php?title=Freedom_from_bias).

<sup>3</sup> See, e.g., Kevin Dietz, *Floyd Dent settles suit with city of Inkster for \$1.4 million*, WDIV-TV (May 28, 2015), <https://www.clickondetroit.com/news/defenders/floyd-dent-settles-suit-with-cityof-inkster-for-1-4-million>; Pamela Manson, *Utah nurse reaches \$500,000 settlement in dispute over her arrest for blocking cop from drawing blood from patient*, Salt Lake Trib. (Oct. 31, 2017), <https://www.sltrib.com/news/2017/10/31/utah-nurse-arrested-for-blocking-cop-from-drawing-blood-from-patient-receives-500000-settlement/>.

<sup>4</sup> Br. of *Amici Curiae* Reporters Committee for Freedom of the Press and 19 Media Organizations in Support of Plaintiffs-Appellants, *Overbey v. Baltimore*, 930 F.3d 215 (4th Cir. 2019), <https://www.rcfp.org/wp-content/uploads/2017/12/027-RCFP-Amicus-Brief.pdf>.

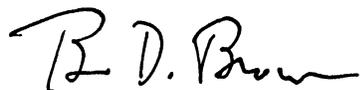
***The gag orders here impede balanced news reporting on police misconduct.*** The non-disparagement clause in the *Overbey* case, which would be prohibited under this legislation, was particularly harmful to newsgathering because it bound the claimant but not the city. Accordingly, the city and the police could speak at will about the matter—and could defend themselves in the press against public criticism—but the claimant was unable to do so. When she ultimately did do so, responding to several online comments to a Baltimore Sun story that quoted the then-city solicitor as saying she had been “hostile” to police, the city invoked the clause and preemptively withheld half of the settlement as “liquidated damages.” *Id.* at 220-21.

In addition to simple fairness considerations, these one-sided non-disparagement clauses are particularly pernicious in that they permit the city and police to “frame the narrative” and impair the ability of reporters to get the claimant’s side of the story. In the *Overbey* case, that is exactly what happened. The Baltimore Sun ran a story on the claimant’s case that quoted the city but not the claimant. The city solicitor, by stating that the claimant had been hostile, “insinuated” that the claimant was at fault, not the police. *Id.* at 220.

Thus, these gag orders present the worst of all worlds. They impair accurate and balanced reporting on government activities and they affirmatively skew the public record in favor of the city and police.

Accordingly, the Reporters Committee believes that Bill 19-0409 would significantly improve transparency and accountability on an issue, police misconduct, of paramount public interest. Please do not hesitate to contact Melissa Wasser, policy analyst at the Reporters Committee, with any questions or comments. She can be reached at [mwasser@rcfp.org](mailto:mwasser@rcfp.org).

Sincerely,



Bruce D. Brown



Melissa Wasser