

No. 1469 CD 2021

COMMONWEALTH COURT OF PENNSYLVANIA

BRITTANY HAILER and PITTSBURGH CURRENT,
Respondents-Appellants,

v.

ALLEGHENY COUNTY,
Petitioner-Appellee.

On Appeal from a Final Order of the
Court of Common Pleas of Allegheny County
Case No. SA-21-000108, Entered Dec. 1, 2021

**BRIEF OF THE ABOLITIONIST LAW CENTER AND THE
PENNSYLVANIA INSTITUTIONAL LAW PROJECT
AS AMICI CURIAE SUPPORTING APPELLANT AND REVERSAL**

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INTERESTS OF THE AMICI CURIAE

The Abolitionist Law Center (ALC) is a non-profit public interest organization dedicated to defending and expanding rights of incarcerated people and challenging state violence through advocacy, public education, and litigation. The ALC has litigated numerous cases against the Allegheny County Jail for violating the constitutional and statutory rights of those held in custody at the facility, including cases challenging excessive force, unconstitutional solitary confinement, denial of medical and mental health care, inadequate precautions in response to the COVID-19 pandemic, and infringement on the rights provided to people with disabilities under the Americans with Disabilities Act.

The Pennsylvania Institutional Law Project (PILP) is a civil legal aid organization that aims to advance the constitutional and civil rights of people incarcerated, detained, and institutionalized in prisons, jails, and immigration detention centers located in Pennsylvania. PILP strives to ensure that the thousands of clients it serves every year are treated with dignity. PILP pursues humane conditions of confinement, safety from violence, and access to medical and mental health care, to the courts, and to religious and disability accommodations. The transparency available through Pennsylvania's right to know law is vital to PILP's investigations and advocacy on behalf of people throughout the Commonwealth. PILP has advocated for compassionate and constitutional treatment of individuals detained at Allegheny County Jail, and litigated multiple cases involving the availability of healthcare, use of force and other conditions of confinement at Allegheny County Jail.

SUMMARY OF ARGUMENT

Fifteen people have died while in the custody of the Allegheny County Jail (“ACJ”) in the last two years—a rate twice the national average for a jail of its size.¹ This staggering loss of life at a single facility raises profound questions about the suitability of Allegheny County and its officials to wield state-sanctioned deadly force or deprive members of the public of their liberty at ACJ. This Court need not even resolve those profound questions, however—it must merely affirm that the public itself should have the basic information necessary to consider and discuss those questions out in the open. Having “[a]ccess to information regarding public police activity is particularly important because it leads to citizen discourse on public issues, the highest rung of the hierarchy of First Amendment values.” *Fields v. City of Phila.*, 862 F.3d 353, 359 (3d Cir. 2017) (internal quotes omitted). Disclosure of the records requested here would serve not only the public discourse about the Allegheny County Jail and the tragic deaths of people in its custody, but also the wider ongoing conversation about arrest practices, pretrial detention, and accountability in the criminal legal system.

This Court should also consider the harmful long-term effects of shielding even the most basic details about drastic failures at the Allegheny County Jail. First,

¹ Warden Harper argues that the rate is lower, but his “misstatements about death rates” are based on incorrect methodology, and media has explained that Warden Harper was either “lying or simply didn’t know better” for constructing a “false mortality rate.” The Editorial Board, *Editorial: The Allegheny County Jail needs new leadership*, Pittsburgh Post-Gazette (July 21, 2022), available at: <https://www.post-gazette.com/opinion/editorials/2022/07/21/county-jail-needs-new-leadership/stories/202207210019>.

information about deaths in custody and the corresponding failures at the Allegheny County Jail matters because it goes to the heart of the integrity of the criminal legal system. Substantial evidence demonstrates that public trust in law enforcement has deteriorated over time, and that lack of trust inhibits law enforcement's ability to function and promote justice. Declining to require disclosure here—possibly preventing the public from ever learning even basic details about deaths in custody—would further erode that trust. When calls go out to members of the public to report criminal offenses, serve as witnesses, or otherwise work with law enforcement, evidence shows that the public will think twice—understandably wondering whether the system seeking their collaboration has their best interests at heart.

Second, shielding information about deaths in custody and, potentially, correctional officer misconduct, also undercuts budget and reform conversations, which can only be had from an informed posture if stakeholders have full knowledge of what—and whom—dollars spent on corrections ultimately fund. These records particularly implicate resources expended on the Allegheny County Jail, as well as County costs to investigate, defend against, and settle claims of misconduct or inadequate care. They may also bear on the ongoing conversation about the Commonwealth's opioid epidemic, how Allegheny County addresses opioid use by people on the street and in custody. Regardless of what happened here, these records also inform ongoing debates about the nature of pretrial detention in the County, and what responsibilities the County owes to people in its custody and care. All of this is true regardless of one's position on police and corrections funding, or government response to opioid use.

Finally, *Amici* observe that transparency particularly matters here because of persistent allegations of mismanagement and civil rights violations—including numerous deaths of people in custody—at the Allegheny County Jail. The Allegheny County Jail faces numerous problems, which include shortcomings in treating mental health crises and mitigating suicidal ideation, inadequate staffing, and even problems providing minimally adequate food. ACJ’s persistent refusal to turn records over to anyone—including journalists, families of people who die in custody, state officials, the local oversight board—inhibit accountability and contribute to the durability of those grave problems. Alternatives to records requests like the one at issue in this case do not adequately serve the same purpose here. This matters all the more because law enforcement officers, including corrections officers, have unique professional standing relative to our civil rights and liberties as the only public officials who have authority to use force that can threaten or end someone’s life.

Amici Curiae urge this Court to reverse the order of the Court of Common Pleas, and to order the disclosure of records requested by Appellants and previously ordered disclosed by the Office of Open Records.

ARGUMENT

I. Disclosing the details about deaths in custody at the Allegheny County Jail promotes accountability in the criminal legal system and can mitigate distrust between law enforcement and communities.

Distrust between communities and law enforcement has substantially increased in recent years. *See* Aimee Ortiz, *Confidence in Police is at a Record Low, Gallup Finds*, THE N.Y. TIMES (Aug. 12, 2020) (finding in the first time in 27 years, the majority of American adults do not trust the police).² This distrust owes to numerous factors, including but not limited to increased availability of cell phone and body camera footage, high profile incidents of law enforcement officers killing unarmed civilians, and the increasing propensity of officers to live outside of the communities in which they serve. *See, e.g.*, President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, Office of Community Oriented Policing Services (May 2015);³ *see also* Cynthia Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public*, 22 CUNY L. REV. 148, 159 (2019) (“Many people avoid calling the police, even when in danger, wanting to avoid future encounters, especially after high-profile police violence.”). But regardless of its origin, this distrust causes several problems for stakeholders across the criminal legal system. Among other effects, distrust generally undermines the

² Available at: <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>

³ Available at:

<https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/115/attachments/original/1570474092/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Final-Report-min.pdf?1570474092>.

ability of law enforcement to serve its ostensible function. *See* President’s Task Force at 1 (“Decades of research and practice support the premise that people are more likely to obey the law when they believe that those who are enforcing it have authority that is perceived as legitimate by those subject to the authority.”).

Disclosure of details about deaths in custody would contribute to efforts to rebuild trust between law enforcement and communities. *See* President’s Task Force at 1 (“Law enforcement agencies should also establish a culture of transparency and accountability to build public trust and legitimacy.”). To be sure, disclosure in this one case will not completely remedy a multi-faceted problem. *See* Section III, *supra*. But communities in and around Allegheny County will have more reason to trust the criminal legal system if conditions at the jail—and what happens to community members there—do not remain shrouded from view. Community members might have more confidence in law enforcement if they need not wonder whether a key part of the law enforcement framework facilitates unchecked violations of Constitutional rights, and if they can trust that grave misconduct will come to light and result in accountability. *See* Sunita Patel, *Toward Democratic Police Reform: A Vision for “Community Engagement” Provisions in DOJ Consent Decrees*, 51 WAKE FOREST L. REV. 793, 802 (2016) (“when police processes are perceived as procedurally just, communities are more likely to cooperate with the police, and policing, in turn, is more effective”); *see Harms of Hiding*, 22 CUNY L. REV. at 158 (“The deflections, delays, and denials of responsibility for police violence cause more unrest and distrust.”). Transparency here could also address one of the most pernicious double-standards that engenders suspicion and mistrust in law enforcement: law

enforcement regularly attempts to portray victims of law enforcement violence as imperfect or flawed—all the more so where, as here, they have already lost their liberty—but often does not release any comparable information that exists about officers or the system itself. *See Harms of Hiding*, 22 CUNY L. REV. at 154-56.⁴

Disclosure of details about a death in custody also fits into precedents that recognize the rights of nongovernmental actors, including concerned community members and investigative journalists, to help hold the criminal legal system accountable. Federal courts have long recognized the right of community members to record law enforcement officers. *See Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995). That public right is vital, but bare recordings alone hardly vindicate the public’s interest—as the Third Circuit has recognized, the right to record matters in part because it “complements the role of the news media” in reporting on the criminal legal system. *Fields*, 862 F.3d at 359. Investigative journalism serves an especially important function because it can identify persistent problems that undermine efficacy and trust in the system, and spur work by all stakeholders to address them. *See Harms of Hiding*, 22 CUNY L. REV. at 159 (“many people do not engage with the governmental oversight systems because they cannot learn what penalty, if any, an officer receives”); *see also id.* at 166 (discussing officers’ inability to compare their own discipline to other officers’ discipline to assess discrimination or proportion).

⁴ “Following any violent encounter, the power of releasing a person’s history of violence is indisputable. The police know this; they often unlawfully and recklessly release the sealed arrest history of people police have killed. . . . As the police push their narrative of events, they almost never reveal an officer’s history of violence.”

Preventing community members and the news media from even learning basic details about a death in custody stymies those important functions and stops members of the public from identifying systemic issues with possible misconduct, failure to follow policies, mistreatment of detainees, understaffing, lack of resources, or other problems at ACJ. See *Citizens Police Data Project*, Invisible Inst., <https://perma.cc/HC4Z-JW3V>.

Indeed, the Government itself benefits from transparency about tragic deaths of detained people and associated details for exactly that reason. As it stands, people have little idea about how this death happened, including whether it was caused by officer misconduct or civil rights violations, insufficient resources devoted to the Jail operations, entrenched social problems, or some combination of each. The Government does not have any interest in protecting or facilitating civil rights violations. And it often takes transparency about officers who have or are likely to engage in such violations for everyone involved to recognize patterns of misconduct and “spur[] action at all levels of government to address police misconduct and to protect civil rights.” *Fields*, 862 F.3d at 360 (internal quotations omitted). Transparency and public discourse, see section III, *infra*, related to law enforcement actually “help them carry out their work.” *Id.* Transparency in this context may also help prevent future violations across the Commonwealth, because it might bring to light particular officers who engaged in misconduct or help shed light on a common problem in jails. And if the tragic death owes to factors other than misconduct, the Government similarly benefits from transparency, because it could change procedures, policies, training, funding levels, or other resources to address pervasive

problems inside or outside the Jail. In that context, transparency-induced changes would similarly improve efficacy of the County's work and prevent future deaths in custody.

II. Communities and elected officials can only make informed policy and budget decisions with knowledge of how corrections operate and the nature of potential problems at Allegheny County Jail.

Beyond promoting trust and accountability that can improve the efficacy and the integrity of the criminal legal system, transparency about deaths in custody at ACJ also has a vital role to play in our civic life and in our government. Robust civic deliberation about budgets and spending priorities relies on all stakeholders having informed perspectives on what public money funds. Elected officials and the people who vote for them need information about structural misconduct, policy violations, and officers' potential willingness to violate constitutional norms and rights because those abuses impact the public fisc. Transparency helps the public understand what its money funds, including whether that money has been spent well under the circumstances. Taxpayers often have to fund defense costs, settlement awards, and paid leave when correctional officers engage in misconduct. Separately, taxpayers also must make decisions about how to fund both pretrial detention and services for people caught up in the criminal legal system, including about medical and other care. Transparency in this context could help Allegheny County community members and its officials make more informed decisions about public money, protecting taxpayers and ensuring that the County uses public funds responsibly.

Elected officials and voters must make difficult decisions about budgeting public money all the time. Communities and elected leaders deliberate carefully over those decisions and often have more things they would like to fund than money to pay for them. *See, e.g.,* Sam Levin, *These US cities defunded police: ‘We’re transferring money to the community’*, THE GUARDIAN (Mar. 11, 2021) (describing Seattle “maintain[ing] high rates of police spending in a budget that made cuts to affordable housing, parks, libraries, and transportation). Cost pressures force deliberators to assess the efficacy of existing or proposed programs in reference to statistics and data, and to make decisions accordingly. Many publicly-funded programs have enormous quantities of government-disclosed data to help inform those deliberations—K-12 education, for example, has many statistics that advocates use to discuss education budgeting. *See, e.g.,* The School District of Philadelphia, Philadelphia Public Schools Data for District, Charter, Alternative, and Other/Cyber Students and Schools, *available at:* <https://schoolprofiles.philasd.org/>. Policing and corrections, which takes up increasingly large shares of public budgets—including across the Commonwealth—must not shield vital information from citizens and elected officials about what taxpayer money funds.

What data does exist suggests that violations of individual rights by government officers end up costing jurisdictions like Allegheny County huge sums of money in civil rights lawsuits. *Amici* know a bit about this, because they regularly litigate such suits on behalf of incarcerated people, including against Allegheny County. But that information can be hard to come by, difficult to aggregate, and necessarily undercounts all law enforcement misconduct—often it only even becomes public because of

the dogged efforts of investigative journalists to collect and contextualize it. *See The Force Report*, NJ.COM: PROJECTS & INVESTIGATIONS, *available at*: <https://perma.cc/U99S-A2MC> (describing difficulty of assembling information on officer use of force, and contextualizing settlements or verdicts based on widely varying factors separate from the misconduct itself.). Stories like *The Force Report* exist in no small part because of open public records laws, and reporters' pursuit of records through them.

The amount of money that places like Allegheny County spend on lawsuits following misconduct that violates a person's civil rights undoubtedly bears on public discourse. Transparency about deaths at the Allegheny County Jail, including whether they involve officer misconduct, ongoing public health crises, both, or neither, might highlight both the cause and effect of misconduct on public budgets, and the shortcomings of relying on civil settlements or verdicts to track and deter misconduct in the first place. Robust investigative journalism, for example, can reveal further information about the County protecting officers who engaged in conduct contrary to constitutional norms and individual rights. *See* Jan Ransom, *In N.Y.C. Jail System, Guards Often Lie About Excessive Force*, THE N.Y. TIMES (Apr. 24, 2021) (quoting a city councilman saying that discipline data "highlights how broken this process is and a need to make real efforts to reform it.");⁵ *see also Harms of Hiding*,

⁵ *Available at*: <https://www.nytimes.com/2021/04/24/nyregion/rikers-guards-lie-nyc-jails.html>.

22 CUNY L. REV. at 154 (discussing lack of transparency as depriving victims of law enforcement violence of key information in seeking redress).

Information about this particular death in custody is very important, but itself insufficient to foster informed debates about law enforcement funding, public health, and public money. Ideally, it would fit into a wider conversation about those issues. And to be clear, transparency here contributes to a more robust discourse about corrections funding regardless of one's normative position. *See Fields*, 862 F.3d at 358 (observing that the “increase in the observation, recording, and sharing of police activity has contributed greatly to our national discussion of proper policing”). For people who might argue for defunding law enforcement or reallocating that money to other uses, information about deaths in custody could bolster an argument that the County pays for a dangerous corrections system that fosters rampant civil rights violations, and should redirect those funds to address root causes in the community through social services and programming. For others, the same information could provide important context to argue for new or more funds for training programs, protocol reviews, more corrections officers, or other interventions.⁶ Transparency enhances the conversation and increases the likelihood that jurisdictions like Allegheny County ultimately make decisions from an informed posture.

⁶ *Compare* Kendra Brooks, Philadelphia Police Aren't Solving Crimes. It's Time To Divert Their Funding, *The Appeal* (Apr. 15, 2021) (observing that the police budget increased by \$115M over five years while police only even arrested alleged assailants in 20% of all shootings), *with* Matt Petrillo, Philadelphia Mayor Kenney's Budget Proposal Includes \$35.5 Million Spending For Anti-Crime Measures, Police Reforms, *CBS PHILLY* (Apr. 15, 2021) (describing Mayor's proposal to add \$1.3M in funding for training and behavioral tracking of officers).

All told, transparency about in-custody deaths would provide vital information to stakeholders on all sides of civic discourse around law enforcement, including corrections. In the absence of transparency, those same conversations will still take place—but among people whose best intentions cannot make up for the information void they face.

III. Transparency particularly matters here because of persistent mismanagement and civil rights violations—including numerous deaths in custody—at the Allegheny County Jail.

Shedding light on the conditions at the Allegheny County Jail particularly matters because of widespread civil rights violations and other problems at the Jail over the last several years. Most relevant to this appeal, problems at the Jail have led to at least fifteen deaths in custody in the last two years. But problems do not stop there—they also include persistent failure to notify families and next of kin of the decedents; obstacles to people and their families and attorneys accessing medical records; lack of treatment for widespread mental health care issues among detained people; persistent under-staffing; flouting a community-enacted referendum meant to halt unconstitutional practices at the Jail; among many other issues. Moreover, the alternatives that should exist to promote transparency—like the Jail Oversight Board that exists under state law—are ineffective at serving their ostensible purpose. All of these problems take place in a facility deliberately shielded from public view, where officers have the legal authority to use deadly force against detained people—which sets them apart from virtually all other public officials. *Amici*, who have

litigated numerous cases involving the Jail, urge the Court to consider this important context when deciding this case.

Transparency into deaths in custody at ACJ matters even more because of just how many people have died there. In just the last two years, at least 15 people have died in custody at the Allegheny County Jail. Brittany Hailer, *Thirteen men died after going to the Allegheny County Jail. Here are their stories*, Pittsburgh Institute for Nonprofit Journalism (Mar. 13, 2022), *available at*: <https://pinjnews.org/thirteen-men-died-after-going-to-the-allegheny-county-jail-here-are-their-stories/>; *see also*, Ryan Deto, *Man who died at Allegheny County Jail Identified*, Trib Live (July 15, 2022), *available at*: <https://triblive.com/local/man-who-died-at-allegheny-county-jail-identified/>. Although numerous people have died in correctional settings from COVID-19 and its complications, COVID-19 cannot explain ACJ's problem with deaths in custody, as just one of those people died of COVID-19. *See Thirteen men died, supra*. These deaths, instead, involved suicide, medical negligence, suspected drug overdoses (within the jail), and other issues. *See id.* Indeed, Allegheny County Jail has had one of the highest suicide rates of any facility in the country. Brittany Hailer, *A Death in a Pennsylvania Jail Exposes COVID's Hidden Toll*, Pittsburgh Current (Dec. 20, 2020) (describing nine suicides between 2016 and June 2020). At other facilities with this level of avoidable mortality among detained people, wardens are sometimes criminally prosecuted. *See* Ryan Haidet and Dino DeNatale, *Former Cuyahoga County Jail Director Ken Mills sentenced to 9 months behind bars in dereliction of duty case*, WKYC Cleveland (Oct. 8, 2021) (situating prosecution in context of deaths of eight detained people).

Allegheny County has resisted transparency into these deaths in virtually every way possible. As a second-class county, Allegheny is one of the only two counties in the Commonwealth not required to file autopsy records for deaths in custody in county court, and so they do not. Brittany Hailer, *In most of the state autopsy reports for those who die in jail are public, but not in Allegheny and Philadelphia counties*, Pittsburgh Institute for Nonprofit Journalism (Mar. 14, 2022). The County often fails to notify the Jail Oversight Board and the state DOC, even where rules require such reporting. See Joshua Vaughn, *Most deaths in Pa. jails went unreported despite rules: 'It is appalling'*, Patriot News (Feb. 9, 2022); Brittany Hailer, *Recent focus on the deaths of incarcerated individuals at the Allegheny County Jail raises questions: Are all deaths reported? And what details are released?*, Pittsburgh Institute for Nonprofit Journalism (July 28, 2021). Even for people who die in custody where the County knows family and next of kin information, officials resist sharing details with them. Brittany Hailer, *Lack of transparency and oversight leave officials, families and media with questions following Allegheny County Jail deaths*, Pittsburgh Institute for Nonprofit Journalism (Mar. 14, 2022). For individuals who die in custody with no surviving family member, there is no one else left to try to establish “liability” in court who could seek the records on that basis under the law. See R.00_a (Affidavit of Hailer). And even when releasing aggregated information about deaths, ACJ reports a “false mortality rate” based on incorrect methodology. *The Allegheny County Jail needs new leadership, infra.*

That lack of transparency extends beyond deaths in custody, and inhibits accountability and solutions to numerous problems at the Jail. As mentioned, ACJ

historically struggles with preventing suicides. Notably, ACJ was less transparent than the other largest PA counties about its mental health policies for people in custody. Juliette Rihl, *How transparent is Allegheny County Jail compared to other PA jails? We requested their mental health policies to find out*, PublicSource (Mar. 16, 2021). That lack of transparency inhibits feedback from the public and other experts, and may have contributed to ACJ failing an external inspection of its suicide prevention program, NCCHC Resources, *Suicide Prevention Program Assessment, Allegheny County Bureau of Corrections* (Oct. 2019), *available at*: <https://www.alleghenycourts.us/downloads/administration/ncchcsuicidereview.pdf>, and responding to suicide attempts in horrifying ways. Lauryn Nania, *Video shows woman tased multiple times in Allegheny County Jail following suicide attempt*, Pittsburgh City Paper (July 27, 2021). Other problems include inadequate staffing that endangers everyone at the jail,⁷ use of no-bid contracts for “militaristic training and weapons” that used “incarcerated people as targets during training,”⁸ attempts to ban purchase of books by people held at ACJ,⁹ and inadequate food,¹⁰ among other issues.

⁷ See *Allegheny County Jail Guards Request Lockdown Due To Staffing Shortages*, CBS Pittsburgh (Apr. 10, 2022).

⁸ Paula Reed Ward, *Allegheny County Jail warden defends militaristic training contracts*, Trib Live (Sept. 1, 2021).

⁹ Pennsylvania Institutional Law Project, *PILP, ALC and ACLUPA send letter to Allegheny County Jail regarding Ban on Purchase of Books by Incarcerated Persons*, (Dec. 1, 2020), *available at*: <https://pailp.org/news/acj-book-ban-demand-letter>.

¹⁰ Julia Zekevich, *Food at Allegheny County Jail falls under scrutiny at latest oversight board meeting*, WESA Pittsburgh (June 6, 2022).

The lack of transparency at the Jail presents unique danger because of the power that correctional officers wield. Officers also have the authority to use force against people detained at the jail, up to and including taking someone's life, and may invoke this authority to justify unlawful actions. See Katherine J. Bies, Note, *Let the Sunshine In: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 STAN. L. & POL. REV. 109, 142 (2017) (“police officers have the unique state-sanctioned ability to use force on other citizens”); see also *Harms of Hiding*, 22 CUNY L. REV. at 153. No other public officials have such power. Officers already have and exercise the power to restrict people's physical liberty, and can provide information for authorized warrants, or arrests on new charges for in-facility conduct. See *Harms of Hiding*, 22 CUNY L. REV. at 153. What happens while people are detained pretrial at ACJ can have enormous effects on that person's life, including employment, housing, and family unity. See Megan Stevenson and Sandra G. Mayson, *Pretrial Detention and the Value of Liberty*, Virginia Public Law and Legal Theory Research Paper No. 2021-14 (Feb. 16, 2021), at 7; see also *Curry v. Yachera*, 835 F.3d 373, 377 (3d Cir. 2016) (describing individual detained pretrial because he could not post bail missing the birth of his son and losing his job). People detained for even a few days may lose employment, their homes, and access to their children. See *id.*; see also Nick Pinto, *The Bail Trap*, THE N.Y. TIMES (Aug. 13, 2015). The stakes here could not be higher.

The lack of transparency has not only contributed to a lack of accountability, but it has also fostered a climate where ACJ officials actively flaunt laws meant to impose some protections for people incarcerated there. In May 2021, voters passed a

referendum that banned certain practices, including use of restraint chairs, shackles, and certain chemical agents, and sharply restricted the use of solitary confinement except for rare exceptions. *See* Kiley Koscinski, *Nearly 300 Allegheny County Jail inmates held in isolation as solitary confinement ban takes effect*, WESA Pittsburgh (Jan. 6, 2022). That referendum followed years of litigation and community advocacy by *Amici* and others. *See, e.g.*, Jordana Rosenfeld, *Lawsuit alleges "brutal treatment" of people with psychiatric disabilities at Allegheny County Jail*, Pittsburgh City Paper (June 10, 2022). Despite this, the Warden of the ACJ has interpreted the referendum to impose no responsibility on officials at the jail to act differently, and has affirmatively stated that ACJ has not changed how it uses solitary confinement in response to the referendum. *See, e.g.*, WPIX 11, *Allegheny County Jail warden addresses recent controversies* (Mar. 31, 2022).

Unfortunately, other alternatives that should serve to shed light on what goes on at ACJ do not do so in practice. As mentioned, ACJ does not always even notify the DOC or the Jail Oversight Board of deaths in custody. *See, e.g.*, *Most deaths went unreported*. Indeed, the Jail often refuses to cooperate when the JOB tries to exercise its powers. *See, e.g.*, Charlie Wolfson, *How powerful is the Jail Oversight Board?*, Public Source (Sept. 23, 2021), *available at*: <https://www.publicsource.org/allegheny-county-jail-oversight-board-power-warden/> (“After the board voted . . . to ban the training company C-SAU and its operator Joseph Garcia from working in the jail, Warden Orlando Harper blasted the decision. ‘I do not intend to follow it,’ Harper said on Tuesday . . .”). But even if it did, the JOB has not generally exercised its powers or fulfilled its duties. The County has long used the JOB to “award[] . . .

political favors” rather than foster oversight. Paula Reed Ward, *In surprise, Allegheny County Council rejects nominees for Alcosan, Jail Oversight Board seats*, Trib Live (Mar. 22, 2022). This includes attempting to appoint the Jail’s former warden to the JOB—regulatory capture of the worst kind. Paula Reed Ward, *Fitzgerald seeks to appoint former warden to Allegheny County Jail board*, Trib Live (Mar. 4, 2022). And instead of welcoming the testimony of individual correctional officers, the JOB has allowed retaliation against potential whistleblowers, including discipline for even attending JOB meetings. See ACJUnionPres, Tweet (Apr. 14, 2022, 4:51pm), available at: <https://twitter.com/acjunior/status/1514707917047582720>. Under the circumstances, journalists have little other avenues to learn information about deaths in custody.

CONCLUSION

Allegheny County Jail faces an ongoing crisis involving deaths in custody. Stonewalling the release of any records related to those deaths inhibits accountability and advocacy about solutions that might address that grave problem. Withholding records restricts public conversations among elected officials and others about possible solutions, and undermines attempts to ensure constitutionally compliant conditions at ACJ. *Amici* urge this Court to consider that context, reverse, and order release of the requested records about a death in custody.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 4,651 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: July 27, 2022

/s/ Jim Davy
Jim Davy, Esq.