

20-1691-CV

IN THE

United States Court of Appeals

FOR THE FIRST CIRCUIT

BRUCE SMITH; PAUL JOSEPH; MARTIN JOSEPH; KIM GADDY; BRIAN
KEITH LATSON; LEIGHTON FACEY; MARWAN MOSS; KENNETH
SOUSA; WILLIAM WOODLEY; LATEISHA ADAMS,

Plaintiffs-Appellees,

JOHN M. JOHNSON; ROBERT TINKER,

Plaintiffs,

---v.---

CITY OF BOSTON, MASSACHUSETTS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF AMICI CURIAE MASSACHUSETTS ASSOCIATION OF
MINORITY LAW ENFORCEMENT OFFICERS AND MARK S. BRODIN,
ESQ. IN SUPPORT OF AN AFFIRMANCE OF THE DISTRICT COURT'S
JUDGMENT FOR PLAINTIFFS-APPELLEES**

DANA E. LOSSIA, ESQ.
REBEKAH COOK MACK, ESQ.
LEVY RATNER, P.C.
80 EIGHTH AVENUE, FLOOR 8
NEW YORK, NY 10011
(212) 627-8100
dlossia@levyratner.com
rcookmack@levyratner.com

Attorneys for Amici Curiae

TABLE OF CONTENTS

STATEMENT OF INTEREST.....1

STATEMENT OF AMICI CURIAE PURSUANT TO RULE 29(B)(5).....3

CORPORATE DISCLOSURE STATEMENT3

INTRODUCTION3

ARGUMENT5

I. Boston’s Test for Lieutenants Fails to Measure Any of the Critical Skills Needed to Succeed in the Job, Undermining Supervision Within the Department5

 A. Lieutenants perform a critical supervisory role within the police department5

 B. The multiple-choice knowledge test challenged here does not measure the critical skills and abilities essential to the Lieutenant’s job7

 C. Boston’s Lieutenant Exam is fundamentally out of step with national norms10

II. Boston’s Current Exam Not Only Lacks Validity, It Also Hampers Diversity and Harms Residents13

 A. Diversity benefits both police departments and residents.....13

 B. Boston’s testing procedures, especially its reliance on rank ordering based upon a narrow assessment of candidate knowledge, can be expected to disadvantage qualified minority law enforcement officers.....19

III. Plaintiffs Have Proven Adverse Impact, the City of Boston Has Failed to Demonstrate That Its Test is Job-Related and Consistent With Business Necessity, and This Court Should Affirm the District Court’s Decision.....25

CONCLUSION.....27

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Adams v. City of Chicago</i> , 469 F.3d 609 (7th Cir. 2006).....	11
<i>Allen v. City of Chicago</i> , 351 F.3d 306 (7th Cir. 2003).....	11
<i>Altizer v. City of Roanoke</i> , No. 7:02-CV-00484, 2003 WL 1456514 (W.D. Va. Mar. 21, 2003).....	12
<i>Boston Chapter, N.A.A.C.P., Inc. v. Beecher</i> , 504 F.2d 1017 (1st Cir. 1974)	4, 20
<i>Boston Police Superior Officers Fed’n v. City of Boston</i> , 147 F.3d 13 (1st Cir. 1998)	20
<i>Bridgeport Guardians, Inc. v. City of Bridgeport</i> , 933 F.2d 1140 (2d Cir. 1991)	22, 23
<i>Castro v. Beecher</i> , 334 F. Supp. 930 (D. Mass. 1971).....	19, 21
<i>Cotter v. City of Boston</i> , 323 F.3d 160 (1st Cir. 2003)	20, 22
<i>Hearn v. City of Jackson</i> , 340 F. Supp. 2d 728 (S.D. Miss. 2003).....	11
<i>Johnson v. Metro. Gov’t of Nashville & Davidson</i> , No. 3:07-0979, 2010 WL 3342211 (M.D. Tenn. April 24, 2010)	12

Jones v. City of Boston,
845 F.3d 28 (1st Cir. 2016) 26, 27

Knight v. City of Hartford,
No. 3:04CV969 (PCD), 2006 WL 1438649 (D. Conn. May 22, 2006)11

Lopez v. City of Lawrence,
No. 14-1952, 2015 WL 1754366 (1st Cir. Mar. 9, 2015) 2, 11

Lopez v. City of Lawrence,
823 F.3d 102 (1st Cir. 2016)27

Mass. Ass’n of Afro-Am. Police, Inc. v. Bos. Police Dep’t,
780 F.2d 5 (1st Cir. 1985) 3, 4, 20, 22

Mass. Ass’n of Afro-American Police, Inc. v. Bos. Police Dep’t,
973 F.2d 18 (1st Cir. 2000)20

Mass. Ass’n of Minority Law Enforcement Officers v. Abban,
434 Mass. 256 (2001) 3, 4, 22

Nash v. City of Jacksonville,
837 F.2d 1534 (11th Cir. 1988) *op. reinstated*, 905 F.2d 355
(11th Cir. 1990) 20, 21, 22

Ricci v. DeStefano,
530 F.3d 87 (2d Cir. 2008)23

San Antonio Hisp. Police Officers' Org. v. City of San Antonio,
188 F.R.D. 433 (W.D. Tex. 1999).....12

Sanchez v. City of Santa Ana,
928 F. Supp. 1494 (C.D. Cal. 1995).....12

Smith v. City of Bos.,
 144 F. Supp. 3d 177 (D. Mass. 2015), *aff'd on recons.*,
 267 F. Supp. 3d 325 (D. Mass. 2017)..... 7, 8, 10, 23, 25

Stuart v. Roache,
 951 F.2d 446 (1st Cir. 1991)20

Sullivan v. City of Springfield,
 555 F. Supp. 2d 246 (D. Mass. 2008).....20

United States v. City of Montgomery,
 948 F. Supp. 1553 (M.D. Ala. 1996).....12

Vulcan Pioneers v. N.J. Dep't of Civil Servs.,
 625 F. Supp. 527 (D.N.J. 1985).....20

Rules

Federal Rule of Appellate Procedure 26.13

Regulations

EEOC’s Uniform Guidelines,
 29 C.F.R. § 1607.1 *et seq*22

EEOC Uniform Guidelines on Employee Selection Procedures,
 29 C.F.R. § 1607.14(C)(9) (1978).....24

Other Authorities

Bocar A. Ba et al., *The Role of Officer Race and Gender in Police-Civilian
 Interaction in Chicago*,
 371 Sci. 696, 696 (2021) 16

Bos. Plan. Dev. Agency Rsch. Div., *Boston at a Glance – 2020*,
 BOS. PLANS,
[http://www.bostonplans.org/getattachment/d3deed32-9044-4abb-9bfa-
 d23803489b65](http://www.bostonplans.org/getattachment/d3deed32-9044-4abb-9bfa-d23803489b65) (last visited Apr. 13, 2021) 18, 19

Bureau of Justice Statistics, *Study Finds Some Racial Differences in Perceptions of Police Behavior During Contact with the Public*,
 BUREAU JUST. STATS. (Sept. 24, 2013) 15

CHRISTOPHER JENCKS & MEREDITH PHILLIPS,
 THE BLACK-WHITE TEST SCORE GAP (Brookings Institution Press 1998) 20

Dale W. Willits & Jeffrey S. Nowacki, *Police Organisation and Deadly Force: An Examination of Variation Across Large and Small Cities*,
 24 POLICING & SOC'Y 63, 70 (2014)..... 17

Eric H. Holder, Jr., *From Eric Holder: A Message to the People of Ferguson*,
 ST. LOUIS POST-DISPATCH (Aug. 20, 2014),
https://www.stltoday.com/news/local/from-eric-holder-a-message-to-the-people-of-ferguson/article_ea8b7358-67a3-5187-af8c-169567f27a0d.html..... 14, 15

George C. Thornton III & David M. Morris, *The Application of Assessment Center Technology to the Evaluation of Personnel Records*,
 30 PUBLIC PERS. MGMT. 55, 56 (2001)..... 20

James B. Comey, Director, Federal Bureau of Investigation,
Address at Georgetown University (Feb. 12, 2015),
<http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>..... 15

Joscha Legewie & Jeffrey Fagan, *Group Threat, Police Officer Diversity and the Deadly Use of Police Force*,
 COLUM. PUB. LAW RSCH. PAPER NO. (2016),
https://scholarship.law.columbia.edu/faculty_scholarship/1980 16, 17

Joseph Gustafson, *Diversity in Municipal Police Agencies: A National Examination of Minority Hiring and Promotion*,
 36 POLICING 719 (2013)..... 18

Joshua C. Cochran & Patricia Y. Warren, *Racial, Ethnic, and Gender Differences in Perceptions of the Police: The Salience of Officer Race Within the Context of Racial Profiling*,
 28 J. OF CONTEMP. CRIM. JUST. 207 (2012)..... 17

Kate Antonovics & Brian G Knight, *A New Look at Racial Profiling: Evidence from the Boston Police Department*,
 91 REV. ECON. & STAT 163 (2004).....17

Lorie Fridell, Robert Lunney, Drew Diamond, & Bruce Kubu, *Racially Biased Policing: A Principled Response*,
 1 POLICE EXEC. RSCH. F. 1 (2001)14

Mark S. Brodin, *Discriminatory Job Knowledge Tests, Police Promotions, and What Title VII Can Learn from Tort Law*,
 59 B.C. L. REV. 2319 (2018)..... 2, 3, 9, 18, 24

Mark S. Brodin, *The Role of Fault and Motive in Defining Discrimination: The Seniority Question Under Title VII*,
 62 N. CARO. L. REV. 943, 978-85 (1984).....23

N. Schmidt et al., *Adverse Impact and Predictive Efficiency of Various Predictor Combinations*,
 82 J. OF APPLIED PSYCHOL. 719 (1997)20

Pub. Safety Promotional Testing,
 PSI SERVS. LLC,
<https://www.psonline.com/talent-measurement/public-safety/promotional-testing/#tktest>: [<https://perma.cc/2UWR-A2EL>]
 (last visited Apr. 13, 2021)9

Robert J. Friedrich, *Police Use of Force: Individuals, Situations, and Organizations*,
 452 ANNALS AM. ACAD. POL. & SOC. SCI. 82 (1980)16

Shamena Anwar & Hanming Fang, *An Alternative Test of Racial Prejudice in Motor Vehicle Searches: Theory and Evidence*,
 96 AM. ECON. REV. 127 (2006)18

U.S. Dep’t of Just. Civ. Rights Div., *Investigation of the Ferguson Police Department*,
 U.S. DEP’T JUST. at 79, 88-89, 95-96 (Mar. 4, 2015),
<http://www.justice.gov/sites/default/files/opa/press->

releases/attachments/2015/03/04/ferguson_police_department_report.pdf.15

Vernal Coleman, *Boston police once resembled the community. But force has grown whiter as city becomes more diverse*,
BOS. GLOBE,
<https://www.bostonglobe.com/2020/06/30/metro/boston-police-once-resembled-community-force-has-grown-whiter-city-becomes-more-diverse/>
(June 30, 2020, 8:46 PM)19

Winfred Arthur Jr., Bryan D. Edwards, & Gerald V. Barrett, *Multiple-Choice and Constructed Response Tests of Ability: Race-Based Subgroup Performance Differences On Alternative Paper-and-Pencil Test Formats*,
55 PERS. PSYCHOL. 985, 991–92 (2002)20

STATEMENT OF INTEREST

Massachusetts Association of Minority Law Enforcement Officers

Massachusetts Association of Minority Law Enforcement Officers (“MAMLEO”) is a not-for-profit civic law enforcement association comprised of a diverse group of sworn and retired officers and civilians who are African American, Caribbean, Hispanic, Asian, and Cape Verdean. Its membership is drawn from communities across Massachusetts, including the City of Boston.

MAMLEO has a direct interest in this case because its mission is to work with the Boston Police Department and other law enforcement agencies to improve the recruitment, hiring, and career advancement of minority candidates and officers interested in or already working in the field of law enforcement. Its organizational goals include securing legal rights and affirmative action for minorities. Another key goal is developing effective relations with Massachusetts communities to establish trust between police officers and civilians in both minority and non-minority communities. MAMLEO is committed to improving policing in and around Boston. It participated in the Boston Police Reform Taskforce and will serve on the currently-forming statewide police reform commission, known as the Massachusetts Police Officers Standards and Training Commission, which is charged with enhancing accountability and building trust between law enforcement agencies and the communities they serve.

MAMLEO offers its perspective not only on the value of diversity, but also on the knowledge, skills and abilities that are critical in a successful Lieutenant, and the failure of the Boston Police Department testing process to select Lieutenants who are most likely to serve the City and its people successfully.

Professor Mark S. Brodin, Boston College Law School

Mark S. Brodin is Professor and Lee Distinguished Scholar at Boston College Law School, where he teaches and publishes in the areas of evidence, procedure, and employment discrimination law. As an attorney with the Lawyers Committee for Civil Rights Under Law of the Boston Bar Association in the 1970s, he served as co-counsel in numerous cases challenging promotional practices in police departments across the Commonwealth, including Boston, Cambridge, Salem, and Barnstable. Professor Brodin has published extensively on hiring and promotional testing in the police and fire services, including in the *Boston College Law Review* and the *Southern California Review of Law & Social Justice*. He submitted an *amicus curiae* brief to this Court in connection with testing in the police service in *Lopez v. City of Lawrence*, No. 14-1952, 2015 WL 1754366 (1st Cir. Mar. 9, 2015). Professor Brodin's substantial expertise in employment discrimination law bears directly upon the issues in this litigation, and he has a demonstrated an interest in Title VII being interpreted in accordance with its intended purpose and meaning. Portions of this brief draw upon Professor

Brodin's article *Discriminatory Job Knowledge Tests, Police Promotions, and What Title VII Can Learn from Tort Law*, 59 B.C. L. REV. 2319, 2335 (2018).

STATEMENT OF AMICI CURIAE PURSUANT TO RULE 29(b)(5)

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, their members or their counsel contributed money that was intended to fund the preparation or submission of this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* state that they are not publicly-held corporations, do not have parent corporations that are publicly-held, and no publicly-held corporation owns 10% or more of *amici curiae* stock.

INTRODUCTION

The City of Boston's Police Officer selection processes have long been racially discriminatory. For decades, MAMLEO has worked with and litigated against the Boston Police Department in efforts to ensure basic fairness for minority law enforcement officers, including while hiring in the Boston Police Department was subject to a consent decree for more than a decade. *See, e.g., Mass. Ass'n of Afro-Am. Police, Inc. v. Bos. Police Dep't*, 780 F.2d 5, 6 (1st Cir.

1985); *Mass. Ass'n of Minority Law Enf't Officers v. Abban*, 434 Mass. 256, 258 n.5 (2001). Despite these efforts, Boston has failed to adopt Police Officer promotional practices designed to select the most qualified candidates for Lieutenant positions. Instead, it relies upon multiple-choice tests that disadvantage minority officers and do not screen for essential skills required of Police Lieutenants. Such tests have been understood to result in disparate impact on minority candidates for decades. Indeed, the effects of using multiple-choice tests has been recognized by this Court since *Boston Chapter, N.A.A.C.P., Inc. v. Beecher*, 504 F.2d 1017, 1021 (1st Cir. 1974).

The cost to Boston's residents, its Police Department, and the individual minority officers whose careers have been hindered by the refusal adopt a non-discriminatory hiring process is enormous. Rather than cling to a testing process that neither promotes those most qualified to serve as supervisors nor ensures that officers reflect the Department's diversity, the City should commit to identifying and adopting a less discriminatory alternative process. Such alternatives are readily available, and the benefits promise to be long lasting and significant.

ARGUMENT

I. BOSTON’S TEST FOR LIEUTENANTS FAILS TO MEASURE ANY OF THE CRITICAL SKILLS NEEDED TO SUCCEED IN THE JOB, UNDERMINING SUPERVISION WITHIN THE DEPARTMENT

A. LIEUTENANTS PERFORM A CRITICAL SUPERVISORY ROLE WITHIN THE POLICE DEPARTMENT

Police Lieutenants within the Boston Police Department have many essential responsibilities. They ensure that their subordinates comply with the law, participate in strategic planning and resource allocation for their districts, ensure that their officers are properly trained and that the reports they prepare are accurate, assist with major internal investigations, watch for corruption or misconduct and take appropriate corrective action, and assume command in the absence of an officer of higher rank. R. at 405 (Boston Police Department Rules & Procedures, Trial Exhibit (“Tr. Ex.”) 23).

In 2008, Police Commissioner William Evans served as a subject matter expert to assist in the development of the Lieutenant’s exam. In that role, he rated the importance of the various roles and responsibilities of Lieutenants, and he rated “leads and inspires” as a task of the utmost importance. R. at 362 (January 7, 2015 testimony of Commissioner Evans); R. at 685-98 (Tr. Ex. 55). In addition to leading and inspiring, the tasks that Commissioner Evans rated as among the most important for a Lieutenant to perform included “communicates with citizens in spite of cultural/education differences” (R. at 449 (Tr. Ex. 39, Task No. 59));

“provides direct supervision to the police sergeants” (R. at 453 (Tr. Ex. 39, Task No. 135)); “enforces discipline” (R. at 455 (Tr. Ex. 39, Task No. 164)); and “strives to maintain a high degree of motivation among subordinates” (R. at 456, Tr. Ex. 39, Task No. 177). *See generally* R. at 446-63 (Tr. Ex. 39); R. at 685-98 (Tr. Ex. 55). MAMLEO agrees that these are essential functions of a Lieutenant’s role.

Although Lieutenants serve unique supervisory functions, assigning staff based on an assessment of skills and abilities, determining who should receive specialized training, team building, and delegating tasks to subordinates, the BPD Lieutenant exam covers the same ground as the Sergeant exam and fails to measure supervisory ability including assessing and developing the leadership skills of subordinates. *See, e.g.*, R. at 1992 (Boston Police Department Test Exam Booklet for Sergeant, Lieutenant & Police Captain, Tr. Ex. 45; R. at 943-49 (1991 Validation Report Appendices, Tr. Ex. 71, showing the skills not tested by the written test and at 894 concluding that “[t]he lieutenant’s examination must include a valid supervisory component in order to meet the statutory test of fairness.”). It fails to measure the critical skills of engaging with the community and responding to community needs. A more valid test – one that measures the skills and abilities critical to the job – would likely lead to more effective superior officers.

The ability to perform as an effective supervisor is at the core of a successful Lieutenant's work. Boston's failure to test for and promote those who demonstrate the critical skills and abilities needed for such leadership harms minority officers, the Department, and the City of Boston.

B. THE MULTIPLE-CHOICE KNOWLEDGE TEST CHALLENGED HERE DOES NOT MEASURE THE CRITICAL SKILLS AND ABILITIES ESSENTIAL TO THE LIEUTENANT'S JOB

In 2000, the Boston Police Department worked with the Massachusetts Department of Personnel Administration, now known as the Human Resources Division (HRD), to determine the knowledge, skills and abilities necessary to successfully perform as a Police Lieutenant within BPD and to develop a test to select the most qualified applicants for the job. The District Court found that "the 2008 test outline indicated that HRD decided to test none of the critical skills, and to test only two abilities categories: the ability to read, understand, interpret, and explain material in written form, and the ability to read and interpret documents such as maps and charts, and make basic arithmetical calculations. Ex. 54; Ex. 60." *Smith v. City of Bos.*, 144 F. Supp. 3d 177, 207 (D. Mass. 2015), *aff'd on recons.*, 267 F. Supp. 3d 325 (D. Mass. 2017).

The Court reached this decision after hearing evidence that while one hundred and forty-six (146) knowledges, skills and abilities (KSAs) were identified as being required to successfully perform the job, very few were actually tested. R.

at 101 (December 16, 2014 testimony of Dr. Joel Wiesen (“Dr. Weisen Test.”), Plaintiff’s Expert); *Smith*, 144 F. Supp. 3d at 207. Ninety-one (91) of these KSAs were deemed “critical skills and abilities” by the City’s own expert, yet only two of these “Critical Skills and Abilities” were actually tested. R. at 601 (Dr. Wiesen’s Rebuttal to Champion Rep. (“Dr. Wiesen Rebuttal”). According to the City’s own test outline the exam only measured two skills and abilities: (1) the ability to interpret written information, and (2) the ability to read and interpret documents. No other categories of abilities were tested. R. at 101 (Dr. Wiesen Test.); R. at 713 (BPD SLC Oct. 2008 Outline Final, Tr. Ex. 60).

“The skills and abilities **not** tested by HRD include, for example, interpersonal skills, presentation skills, reasoning and judgment skills, oral communication skills, analytical skills, ability to give constructive criticism, ability to speak in front of a group (*e.g.*, citizens section or peer group), ability to counsel subordinates, ability to counsel and comfort families of victims, etc., and ability to make sound decisions quickly based on the facts presented.” R. at 608 (emphasis added) (Dr. Wiesen Rebuttal).¹

¹ Critical KSAs that were **not** tested include understanding/interpreting relationships, interviewing/interrogating people, soliciting information and suggestions from subordinates, interpersonal skills, reasoning and judgment skills, oral communication skills, analytical skills, identifying potential problems before they happen, ability to remain fair and objective, ability to counsel and comfort families of victims, ability to promote and maintain effective public and

Not a single one of the “Critical Skills” (which were identified as “critical” by the BPD’s own experts) was measured by the BPD to select Lieutenants. *Id.* The Lieutenant’s exam tested no critical skills whatsoever even though it is universally recognized that “[b]eing an effective [Police] supervisor or manager requires more than ‘book smarts’; candidates must be able to effectively manage real world situations requiring interactions with others.” Mark S. Brodin, *Discriminatory Job Knowledge Tests, Police Promotions, and What Title VII Can Learn from Tort Law*, 59 B.C. L. REV. 2319, 2335 (2018) (citing Pub. Safety Promotional Testing, PSI SERVS. LLC, <https://www.psionline.com/talent-measurement/public-safety/promotional-testing/#tktest>: [https://perma.cc/2UWR-A2EL] (last visited Apr. 13, 2021)). The BPD Lieutenant’s exam fails to test for many of the KSAs former Police Commissioner Evans ranked as most important for job. Commissioner Evans identified leading and inspiring, communicating with citizens, providing direct supervision to subordinates, and maintaining motivation among subordinates as among the most important tasks that Lieutenants perform, yet none of these essential skills is tested by the exams challenged in this litigation. R. at 413-506 (Tr. Ex. 39); R. at 685-98 (Tr. Ex. 55). The BPD relies upon memorization alone to screen candidates.

community relations, ability to adapt to varying work situations. R. at 609-12 (Dr. Wiesen Rebuttal, Tr. Ex. 49).

Dr. Wiesen concluded that “[a]s a result of HRD’s decision not to test many critical skills, a high exam score is not a good indication that a candidate is able to be an effective Lieutenant or even a good indication that a candidate is minimally capable to do the job of Lieutenant.” R. at 608 (Dr. Wiesen Rebuttal). The District Court’s holding that the BPD Lieutenant’s exam was not job related and consistent with business necessity was based on a robust record, is well supported, and should be upheld.

Because job knowledge is only a limited part of the job analyses for the role of lieutenant, the Court agrees with Dr. Wiesen that the 2008 exam skipped over critical skills and abilities, including interpersonal skills, presentation skills, reasoning and judgment skills, oral communication skills, analytical skills, ability to give constructive criticism, ability to speak in front of groups, ability to counsel subordinates, ability to counsel and comfort families of victims, and ability to make sound decisions quickly. Wiesen Rebuttal 28. The Court therefore also agrees with Dr. Wiesen’s opinion that, as a result of HRD’s decision not to test many critical skills, a high score on the 2008 exam simply was not a good indicator that a candidate would be a good lieutenant.

Smith, 144 F. Supp. 3d at 207–08.

C. BOSTON’S LIEUTENANT EXAM IS FUNDAMENTALLY OUT OF STEP WITH NATIONAL NORMS

The BPD’s sole reliance on a knowledge-based exam is out of sync with national norms and practices. The City’s own expert, Dr. Silva, testified that during his many years working for the testing company EB Jacobs, he had never recommended that a jurisdiction place eighty percent or more weight on the

multiple-choice job knowledge test for Police promotions. R. at 192 (December 18, 2014 testimony of Dr. Silva). This is not surprising as police departments across the country have recognized the importance of selecting supervisors who are able to diffuse situations, display situational awareness, and demonstrate strong communication skills, and these departments have adopted multipart selection processes to ensure they are selecting those most likely to lead and serve successfully as supervisory-level officers. *See, e.g.*, Br. of Mass. Assoc. of Minority Law Enf't Officers, *et al.* as Amici Curiae Supporting Appellants, *Lopez*, 2015 WL 1754366, at *22-24, (citing (1) Bridgeport, CT (written job knowledge test, role play exercise, in-basket exercise, and report review exercise) (R. at 1876-77 (September 14, 2010 testimony of Dr. James Outtz (“Dr. Outtz Test.”))); (2) Chicago, IL (written qualifying exam, assessment exercise, merit selection component) (*see Adams v. City of Chicago*, 469 F.3d 609, 611 (7th Cir. 2006); *Allen v. City of Chicago*, 351 F.3d 306, 309-10 (7th Cir. 2003)); (3) Detroit, MI (video-based situational judgment exercise, structured oral interview, seniority) (R. at 1877-78 (Dr. Outtz Test.)); (4) Hartford, CT (written exam and oral exam) (*see Knight v. City of Hartford*, No. 3:04CV969 (PCD), 2006 WL 1438649, at *25-26 (D. Conn. May 22, 2006)); (5) Jackson, MS (written exam, assessment center, panel interview) (*see Hearn v. City of Jackson*, 340 F. Supp. 2d 728, 735 (S.D. Miss. 2003)); (6) Macon, GA (written exam, supervision exercise, oral

presentation exercise, emergency incident exercise) (R. at 1577 (July 20, 2010 testimony of Dr. Cassi Lynn Fields (“Dr. Fields Test.”))); (7) Miami, FL (written situational judgment exercise, oral incident command exercise, oral group meeting exercise, oral subordinate conference exercise) (R. at 1938 (Dr. Fields Test.)); (8) Montgomery, AL (written exam, structured oral interview) (*see United States v. City of Montgomery*, 948 F. Supp. 1553, 1561 (M.D. Ala. 1996)); (9) Nashville, TN (written exam, assessment center) (*see Johnson v. Metro. Gov't of Nashville & Davidson*, No. 3:07-0979, 2010 WL 3342211, at *1, *3 (M.D. Tenn. Apr. 24, 2010)); (10) Roanoke, VA (written exam, assessment center, performance review) (*see Altizer v. City of Roanoke*, No. 7:02-CV-00484, 2003 WL 1456514, at *1 (W.D. Va. Mar. 21, 2003)); (11) San Antonio, TX (written exam and scenario-based exercise) (*see San Antonio Hisp. Police Officers' Org. v. City of San Antonio*, 188 F.R.D. 433 (W.D. Tex. 1999)); (12) Santa Ana, CA (written exam, oral exam, seniority) (*see Sanchez v. City of Santa Ana*, 928 F. Supp. 1494, 1508-10 (C.D. Cal. 1995)); (13) St. Louis, MO (written exam, assessment center, review board) (R. at 1155); (14) Pennsylvania State Police (technical knowledge test, incident command component, subordinate conference) (R. at 1961 (September 16, 2010 testimony of Dr. Jacinto Manuel Silva, Ph.D.)); (15) Fairfax County, Virginia (R. at 1558-59 (Dr. Fields Test.)); (16) Loudoun County, VA (R. at 1558-59 (Dr. Fields Test.)); (17) Montgomery County, MD (*Id.*); (18) Howard County, MD

(*Id.*); (19) Prince George’s County, MD (*Id.*); (20) Falls Church, VA (*Id.*); (21) Frederick City, Maryland (*Id.*); (22) Memphis, TN (*Id.*); (23) Charlotte, NC (*Id.*); (24) St. Louis, MO (*Id.*); (25) Alexandria, VA (*Id.*); (26) Vienna, VA (*Id.*); (27) the Metropolitan Washington Transit Police (*Id.*); (28) the Amtrak Police (*Id.*); and (29) and numerous federal agencies, including the Drug Enforcement Administration, the Secret Service, the Library of Congress Police, the Bureau of Engraving Police, the U.S. Capital Police, and the U.S. Park Police. (*Id.*)).

The Boston Police Department can follow the examples of dozens of departments across the nation to develop and employ a Lieutenant exam that measures the critical skills and abilities of the job, selects for supervisory ability, and results in a Lieutenant corps that is well suited to succeed.

II. BOSTON’S CURRENT EXAM NOT ONLY LACKS VALIDITY, IT ALSO HAMPERS DIVERSITY AND HARMS RESIDENTS

A. DIVERSITY BENEFITS BOTH POLICE DEPARTMENTS AND RESIDENTS

This case comes to the Court amid an ongoing crisis in American policing. The tragic deaths of George Floyd, Breonna Taylor, Michael Brown, Eric Garner, Tamir Rice, and so many others have raised serious questions in the minds of many Americans about whether police forces are representative of the communities they serve. Writing in the ST. LOUIS POST less than two weeks after the Michael Brown shooting in Ferguson, then Attorney General Eric Holder suggested that police

forces must better reflect the racial demographics of the communities they serve in order to alleviate perceptions of bias. He wrote:

[G]ood law enforcement requires forging bonds of trust between the police and the public. This trust is all-important, but it is also fragile. It requires that force be used in appropriate ways. Enforcement priorities and arrest patterns must not lead to disparate treatment under the law, even if such treatment is unintended. And police forces should reflect the diversity of the communities they serve.

Eric H. Holder, Jr., *From Eric Holder: A Message to the People of Ferguson*, ST. LOUIS POST-DISPATCH at A19 (Aug. 20, 2014), https://www.stltoday.com/news/local/from-eric-holder-a-message-to-the-people-of-ferguson/article_ea8b7358-67a3-5187-af8c-169567f27a0d.html

Then FBI Director James B. Comey, in a speech made at Georgetown University, echoed and extended the Attorney General's concern:

Unfortunately, in places like Ferguson and New York City, and in some communities across this nation, there is a disconnect between police agencies and many citizens – predominantly in communities of color.

James B. Comey, Director, Federal Bureau of Investigation, *Address at Georgetown University* (Feb. 12, 2015), <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

As cities and towns move to community policing, the need for a diverse force that is representative of the community is particularly acute. *See, e.g.*, Lorie Fridell, Robert Lunney, Drew Diamond & Bruce Kubu, *Racially Biased Policing: A Principled Response*, 1 POLICE EXEC. RSCH. F. 1, 7-8 (2001). If police forces are going to reestablish trust in the eyes of the communities they serve, it is essential

that they reflect community demographics. The Bureau of Justice Statistics, based on analysis of data on police-public contact collected in the 2011 National Crime Victimization Survey, reported that, “When the street or traffic stops involved residents and officers of the same race or Hispanic origin, the individuals were more likely to believe the reason for the stop was legitimate and that police behaved properly than when the stops involved residents and officers of a different race or Hispanic origin.” Bureau of Justice Statistics, *Study Finds Some Racial Differences in Perceptions of Police Behavior During Contact with the Public*, BUREAU JUST. STATS. (Sept. 24, 2013), <https://www.bjs.gov/content/pub/press/pbtss11rpa11pr.cfm>. See also Holder, *supra* at n.4. The Justice Department’s study of misconduct by the Ferguson Police department thoroughly identifies the lack of diversity and explains at length why force diversity is a critical factor required to restore community trust. See, e.g., U.S. Dep’t of Just. Civ. Rights Div., *Investigation of the Ferguson Police Department*, U.S. DEP’T JUST. at 79, 88-89, 95-96 (Mar. 4, 2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

Improved hiring practices are among its key recommendations. *Id.* at 95-96. This case is critical because absent continued effort to create a diverse police force, with a diverse hierarchy, every fatal police shooting or significant confrontation

between citizens and the police, in every minority community across Massachusetts, will, rightly or wrongly, be attributed to racism.

A recent study in the journal *Science* found that “relative to white officers, Black and Hispanic officers make far fewer stops and arrests, and they use force less often, especially against Black civilians. These effects are largest in majority-Black areas of Chicago and stem from reduced focus on enforcing low-level offenses, with greatest impact on Black civilians.” Bocar A. Ba et al., *The Role of Officer Race and Gender in Police-Civilian Interaction in Chicago*, 371 *SCI.* 696, 696 (2021). This finding is in line with prior academic studies exploring the value added by diversifying police departments.

Multiple academic studies have concluded that diverse law enforcement teams and minority police officers are less likely to use excessive force. *See, e.g.*, Robert J. Friedrich, *Police Use of Force: Individuals, Situations, and Organizations*, 452 *ANNALS AM. ACAD. POL. & SOC. SCI.* 82, 90 (1980) (finding that multi-racial police teams are less likely to use force and that Black Police Officers are less likely to use unreasonable force than white Police Officers); Joscha Legewie & Jeffrey Fagan, *Group Threat, Police Officer Diversity and the Deadly Use of Police Force*, *COLUM. PUB. LAW RSCH. PAPER NO.* 14-512 at 2 (2016), https://scholarship.law.columbia.edu/faculty_scholarship/1980 (concluding

that “a diverse police force mitigates group threat and thereby reduces the number of officer-involved killings”).

Additional studies demonstrate that public trust in and perception of police improves when there are minority officers in the police force. *See, e.g.,* Dale W. Willits & Jeffrey S. Nowacki, *Police Organisation and Deadly Force: An Examination of Variation Across Large and Small Cities*, 24 *POLICING & SOC'Y* 63, 70 (2014) (finding that that people are more likely to have a positive perception of law enforcement “when the police composition of the department mirrors the racial structure of the city in which they serve”); Joshua C. Cochran & Patricia Y. Warren, *Racial, Ethnic, and Gender Differences in Perceptions of the Police: The Salience of Officer Race Within the Context of Racial Profiling*, 28 *J. CONTEMP. CRIM. JUST.* 207, 219 (2012), <http://ccj.sagepub.com/content/28/2/206.full.pdf> (finding that minority citizens, especially Black citizens, are more likely to view officer behavior skeptically when the Police Officer was white).

Studies have also found that Black officers are generally less biased against Black citizens. *See, e.g.,* Kate Antonovics & Brian G Knight, *A New Look at Racial Profiling: Evidence from the Boston Police Department*, 91 *REV. ECON. & STAT.* 163, 177 (2004), <https://www.nber.org/papers/w10634> (finding that police officers are more likely to conduct a vehicle search for drugs on drivers of a different race from their own due largely to preference-based discrimination);

Shamena Anwar & Hanming Fang, *An Alternative Test of Racial Prejudice in Motor Vehicle Searches: Theory and Evidence*, 96 AM. ECON. REV. 127, 144 (2006) (finding that officers of different races engage in different vehicle search patterns and that the average success rate for searches was higher for Black and Hispanic officers than that of white officers).

Moreover, police departments benefit from promoting a diverse body of officers to supervisory positions. Academic studies have uncovered both internal operational and external public-facing benefits of employing minority officers in higher ranks. *See, e.g.*, Joseph Gustafson, *Diversity in Municipal Police Agencies: A National Examination of Minority Hiring and Promotion*, 36 POLICING 719, 731-32 (2013) (concluding that minority law enforcement managers are better positioned to allocate resources and establish institutional policies that both adequately recruit underrepresented groups into the police force and foster strengthened public perceptions of the police department's legitimacy); Brodin, *supra* at 2335-36 (emphasizing that police departments and their communities benefit when they employ minority police supervisors with the requisite knowledge, skills, and character).

The Boston Police Department's hiring practices have resulted in a force that does not reflect the community it serves. The residents of the City of Boston are only 44.5 percent white. *See* Bos. Plan. Dev. Agency Rsch. Div., *Boston at a*

Glance – 2020, BOS. PLANS, <http://www.bostonplans.org/getattachment/d3deed32-9044-4abb-9bfa-d23803489b65> (last visited Apr. 13, 2021). Yet Black and Hispanic officers now comprise only “about 40 percent of the department.” See Vernal Coleman, *Boston police once resembled the community. But force has grown whiter as city becomes more diverse*, BOS. GLOBE, <https://www.bostonglobe.com/2020/06/30/metro/boston-police-once-resembled-community-force-has-grown-whiter-city-becomes-more-diverse/> (June 30, 2020, 8:46 PM). In Boston, minorities are vastly underrepresented at the rank of Lieutenant. As of 2013, less than 10% of BPD’s Lieutenants are minorities. R. at 120-121 (January 5, 2015 testimony of Commissioner Evans). Boston’s hiring practices have resulted in a disproportionately white police force supervised by disproportionately white officers to the detriment of the Department and the public it serves.

B. BOSTON’S TESTING PROCEDURES, ESPECIALLY ITS RELIANCE ON RANK ORDERING BASED UPON A NARROW ASSESSMENT OF CANDIDATE KNOWLEDGE, CAN BE EXPECTED TO DISADVANTAGE QUALIFIED MINORITY LAW ENFORCEMENT OFFICERS

Litigation challenging BPD’s hiring and promotion exams, and in particular multiple-choice exams, began with *Castro v. Beecher*, 334 F. Supp. 930 (D. Mass. 1971), *aff’d in part, rev’d in part*, 459 F.2d 725 (1st Cir. 1972) and continues with

this case.² The through line connecting these actions is the discriminatory impact, and lack of job-relatedness, of the multiple-choice exams administered over decades by City and State officials. Their nearly universally-recognized shortcomings and predictable discriminatory impact is well documented in both professional literature³ and decisional law.⁴

² The history is recounted in *Sullivan v. City of Springfield*, 555 F. Supp. 2d 246, 248–50 (D. Mass. 2008). See also *Cotter v. City of Boston*, 323 F.3d 160 (1st Cir. 2003); *Mass. Ass’n of Afro-American Police, Inc. v. Bos. Police Dep’t*, 973 F.2d 18 (1st Cir. 2000); *Bos. Police Superior Officers Fed’n v. City of Boston*, 147 F.3d 13 (1st Cir. 1998); *Stuart v. Roache*, 951 F.2d 446 (1st Cir. 1991); *Mass. Ass’n of Afro-American Police, Inc. v. Bos. Police Dep’t*, 780 F.2d 5 (1st Cir. 1985); *Bos. Chapter, NAACP, Inc. v. Beecher*, 504 F.2d 1017 (1st Cir. 1974) (finding similar multiple-choice exams for selection of firefighters discriminatory and non-job-related).

³ See, e.g., N. Schmidt et al., *Adverse Impact and Predictive Efficiency of Various Predictor Combinations*, 82 J. OF APPLIED PSYCHOL. 719 (1997); CHRISTOPHER JENCKS & MEREDITH PHILLIPS, *THE BLACK-WHITE TEST SCORE GAP* 57-58 (Brookings Institution Press 1998); Winfred Arthur Jr., Bryan D. Edwards, & Gerald V. Barrett, *Multiple-Choice and Constructed Response Tests of Ability: Race-Based Subgroup Performance Differences On Alternative Paper-and-Pencil Test Formats*, 55 PERS. PSYCHOL. 985, 991–92 (2002); George C. Thornton III & David M. Morris, *The Application of Assessment Center Technology to the Evaluation of Personnel Records*, 30 PUBLIC PERS. MGMT. 55, 56 (2001) (“The written examination certainly provides the best way to evaluate whether a candidate knows the rules of the organization and conceptual principles of policing. That information is a basic, necessary starting point for good supervision, but it is not sufficient for success in police administration and leadership.”).

⁴ See, e.g., *Vulcan Pioneers v. N.J. Dep’t of Civil Servs.*, 625 F. Supp. 527, 539–40 (D.N.J. 1985), *aff’d*, 832 F.2d 811 (3d Cir. 1987) (multiple-choice tests are “more probative of the test-taker’s ability to recall what a particular text stated on a given topic than of his firefighting or supervisory knowledge or abilities.”); *Nash v. City*

The exams serve to exclude minorities from consideration while at the same time having little if any predictive value, in part because they merely test the applicant's ability to memorize texts on a designated reading list. As U.S. District Judge Charles Wyzanski observed over forty years ago, “[i]nasmuch as the [police] civil service examinations were not job related and were discriminatory against the plaintiffs, any state or city official, *who innocently or otherwise*, used the results of those examinations to deprive a plaintiff of a job opportunity deprived him of the equal protection of the laws....” *Castro*, 334 F. Supp. at 943 (emphasis added).

The City of Boston itself has acknowledged as much in a 2002 brief to this Court:

The Boston Police Department has a long history of discrimination in its hiring and promotional practices, a history well documented in a number of decisions of this Court and of the District Court. There was undisputed evidence before the District Court that despite the best efforts of the Department's current leadership, the effects of the Department's past discrimination continued to be felt through the period at issue, including a continuing gross statistical disparity between the selection percentage of black officers and the selection percentage of white officers Moreover, there was undisputed evidence that the 1996 examination on which the promotions were

of Jacksonville, 837 F.2d 1534, 1538–39 (11th Cir. 1988), *op. reinstated*, 905 F.2d 355 (11th Cir. 1990) (“The best that can be said of the City's [multiple choice] test based on the evidence at trial was that it may have been valid with respect to reading materials provided to the applicants. This is immaterial, however, to whether the content of the questions related to the performance of the job [of fire lieutenant].”)

based was not validated and had an adverse impact on African-American officers taking the test. . . .

It is also undisputed that the Commissioner had real and legitimate concerns that MAMLEO, individual minority officers affected by the promotional process, or others would bring suit against the City and the Department if promotions were made in strict rank order. Given the undisputed evidence of adverse impact, such litigation would have been meritorious.

Br. for Appellee, *Cotter v. City of Boston*, Nos. 02-1404, 02-1458, 02-1459, 2002 WL 34217275 (citations omitted) (internal quotation marks omitted). The problems acknowledged by the City of Boston in 2002 remain unresolved, despite a Consent Decree entered in 1980 (and extended for over a decade) requiring that promotional examinations be validated according to the EEOC's Uniform Guidelines (29 C.F.R. § 1607.1 *et seq.*). See *Mass. Ass'n of Afro-American Police, Inc.*, 780 F.2d at 6; *Mass. Ass'n of Minority Law Enf't Officers v. Abban*, 434 Mass. 256, 258 n.5 (2001). Today Boston stands among the last holdouts continuing to use a testing device best described as a "quasi-academic hurdle" having little relation to job success. *Nash*, 837 F.2d at 1538 n.7. At some point, with the past as prologue, Defendants' insistence on the continued use of such devices is akin to intentionally discriminatory conduct.⁵

⁵ As the Second Circuit concluded in a similar situation, the City's refusal to use banding and its determination to adhere to rank-order selection "belie a claim... that [its] incumbent practices are being employed for non-discriminatory reasons." *Bridgeport Guardians, Inc. v. City of Bridgeport*, 933 F.2d 1140, 1148 (2d Cir.

As the District Court recognized, multiple-choice tests often have an adverse impact on minority candidates. The Court observed that “[e]xperts for both sides testified to the phenomenon of written multiple-choice tests producing high levels of adverse impact on minority candidates. . . . Judge O’Toole in *Lopez* also recognized this phenomenon. . . . Experts in the seminal case of *Ricci v. DeStefano* similarly testified.” *Smith*, 144 F. Supp. 3d at 197 (citations omitted).

In this case, the Court concluded: “Plaintiffs have met their burden of establishing disparate impact stemming from the 2008 exam. The fact that the p-value for the 2008 promotion rates was .052 using a two-tailed test, a breath above the .05 threshold, is not enough to persuade the Court that the Plaintiffs failed to meet their burden of establishing a prima facie case of disparate impact.” *Id.* at 199. The Court reached this conclusion based in part on defendant’s own expert’s finding that “the City’s expert on test validity acknowledged that when significance is between .05 and .10, the results are ‘marginally significant.’ He further acknowledged that a marginally significant analysis, combined with other analyses that are statistically significant, can lead to a finding that an adverse impact has been demonstrated. As explained above, the Plaintiffs have presented

1991). See also Mark S. Brodin, *The Role of Fault and Motive in Defining Discrimination: The Seniority Question Under Title VII*, 62 N. CARO. L. REV. 943, 978-85 (1984).

evidence of statistically significant disparate impact on pass-fail rates, averages scores, and delay in promotions.” *Id.* (citations omitted).

The adverse impact recognized by the Court reflects both the test itself and the method of use employed by the City of Boston. Rank ordered tests, like the one at issue here, compound the impacts against minority candidates commonly found in multiple-choice tests. *See, e.g.,* Brodin, *Discriminatory Job Knowledge Tests, supra* at 2348 (“The harm to minority candidates is all the greater when scores are used (as they routinely are) for rank ordering, thus excluding even passers unless they are high enough on the eligible list to be reached.”). Rank ordering can be expected to exacerbate impact, it is not surprising that it is only appropriate to use when a “user can show, by a job analysis or otherwise, that a higher score on a content valid selection procedure is likely to result in better job performance.” EEOC Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607.14(C)(9) (1978). Defendants here made no such showing and indeed their own expert found that test results should be banded because those within a band are equally qualified. He recommended banding and then utilizing additional job related criteria and said:

By relying on only a test score much of the contributions a candidate has made to a department and many of the abilities/competencies they have developed relating to the next level job may not be considered in the promotional process. With banding candidates who are equally

qualified based on exam performance can then be further considered based on other important job relevant characteristics.

R. at 2017-18 (Letter to Paul Dietl from Rick Jacobs, Ph.D.).

The harms caused by the use of rank-ordered hiring from a flawed selection devise include the failure to promote and delay in promoting qualified minority candidates. Further, delayed promotions have a ripple effect throughout a career – delaying the point at which Lieutenants are eligible to become Captains and when Captains are eligible to become Deputy Superintendents.

III. PLAINTIFFS HAVE PROVEN ADVERSE IMPACT, THE CITY OF BOSTON HAS FAILED TO DEMONSTRATE THAT ITS TEST IS JOB-RELATED AND CONSISTENT WITH BUSINESS NECESSITY, AND THIS COURT SHOULD AFFIRM THE DISTRICT COURT’S DECISION

The District Court correctly held, based on the statistical evidence presented below, that “Plaintiffs have met their burden of raising an inference of causation and demonstrating a prima facie case of disparate impact. The burden thus shift[ed] to the City to defend its promotional process as a valid selection tool.” *Smith*, 144 F. Supp. at 200. In analyzing whether the challenged test is job related and consistent with business necessity, the Court considered whether the exam results were predictive of or correlated with important work behavior and found that they were not. *Id.* at 203. (“the Court ultimately agrees with Dr. Wiesen [Plaintiff’s expert] that the evidence does not support the necessary inference that those who perform better on the exam will be better performers on the job, primarily because

the exam did not test a sufficient range of KSAs, and there was no evidence that the exam was reliable enough to justify its use for rank ordering.”).

The City of Boston failed to demonstrate that its Lieutenant test – which assesses only two of the many critical skills and abilities needed to be a successful Lieutenant – is job related or consistent with business necessity. *Id.* at 211. (“This Court holds that even were the 2008 exam valid enough to be used as a screening tool, the City has failed to meet its burden of showing that the 2008 exam was sufficiently valid to be used as a basis for ranking candidates. The City has therefore failed to meet its burden on the second prong of the legal framework: it has not convinced the Court that the 2008 exam was job related for the position in question and consistent with business necessity.”) (citations omitted).

Had the City met its burden, which it did not, the Court would have been required to reach a determination as to whether the City should have employed a less-discriminatory alternative. However, such a determination was not necessary because defendants failed to demonstrate that the exam is job-related and consistent with business necessity. *See, e.g., Jones v. City of Boston*, 845 F.3d 28, 34 (1st Cir. 2016) (positing that an employer’s success in showing business necessity at the second prong “brings [the court]” to evaluate the plaintiff’s showing of a less discriminatory alternative practice at the third prong, not that a plaintiff is required to prove an alternative employment practice in the absence of

business necessity); *Lopez v. City of Lawrence*, 823 F.3d 102, 111 (1st Cir. 2016) (“To prevail, plaintiffs require . . . *either* a ‘no’ to the second question [whether there was business justification for the employment practice] *or* a ‘yes’ to the third question [whether the employer refused to adopt an less discriminatory alternative practice].”) (emphasis added). Here, the District Court reached a ‘no’ with respect to the second question. Accordingly, this Court should disregard the City’s argument that Plaintiffs failed to demonstrate the existence of a less discriminatory alternative; such a demonstration was not required.

CONCLUSION

For the reasons set forth above, *amici curiae* respectfully submit that the district court’s decisions and entry of judgment should be affirmed.

Dated: April 14, 2021
New York, New York

LEVY RATNER, P.C.



By: Dana E. Lossia, C.A.B. 1198382
Rebekah Cook-Mack
80 Eighth Avenue Floor 8
New York, New York 10011
(212) 627-8100
(212) 627-8182 (fax)
dlossia@levyratner.com
rcookmack@levyratner.com

*Attorneys for Amici Curiae Massachusetts
Association of Minority Law Enforcement
Officers and Professor Mark S. Brodin*

Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f)

this document contains 6,311 words, **or**

this brief uses a monospaced typeface and contains _____ lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this document has been prepared in a proportionally spaced typeface using Microsoft Word in Time New Roman 14 point, **or**

this document has been prepared in a monospaced typeface using _____ with _____.

(s) Dana E. Lossia (1198382)

Attorney for Amici Curiae

Dated: April 14, 2021

CERTIFICATE OF SERVICE

I, Dana E. Lossia, certify that this brief was filed through the United States Court of Appeals for the First Circuit ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), including the following counsel for Plaintiffs-Appellees and Defendant-Appellant.

Harold Lichten, C.A.B. 22114
Benjamin Weber, C.A.B. 1159650
Zachary Rubin, C.A.B. 1195210
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02114
(617) 994-5800
hlichten@llrlaw.com
bweber@llrlaw.com
zrubin@llrlaw.com


Kay H. Hodge, C.A.B. 11284
John M. Simon, C.A.B. 861855
Stoneman, Chandler & Miller LLP
99 High Street
Boston, MA 02110
(617) 542-6789
khodge@scmlp.com
jsimon@scmlp.com

Attorneys for Defendant-Appellant

Stephen Churchill, C.A.B. 30464
Fair Work, P.C.
192 South Street, Suite 450
Boston, MA 02111
(617) 607-3262
steve@fairworklaw.com

Attorneys for Plaintiffs-Appellees

Dated: April 14, 2021



By: Dana E. Lossia, C.A.B. 1198382