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Clerk of Court
United States District Court
Everett McKinley Dirksen Federal Building
219 South Dearborn Street, 20th Floor
Chicago, IL 60604

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

Re: *State of Illinois v. City of Chicago*, Case No. 17-cv-6260

To the Honorable Robert M. Dow Jr.:

Lambda Legal submits the following written comments in support of the proposed Chicago Police Consent Decree (CPCD) in the *Communities United, et al. v. City of Chicago* and *Campbell v. City of Chicago* lawsuits. Founded in 1973, Lambda Legal is the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (LGBT) people and people living with HIV through impact litigation, education, and public policy work. In 1993 Lambda Legal opened its Midwest Regional Office in Chicago, which leads cases in Illinois and the rest of the Midwest concerning issues of LGBT and HIV discrimination in all areas of law including criminal justice, employment discrimination, family law, and marriage equality. Lambda Legal's criminal justice work includes *Lawrence v. Texas*,¹ the landmark Supreme Court decision that struck down all remaining sodomy laws in the United States; challenges to police "sting" operations unlawfully targeting gay and bisexual men;² advocacy to end criminalization of HIV status;³ advocacy to end the use of condoms as evidence of prostitution-related crimes;⁴ litigation to address transgender prisoners' access to medical treatment⁵ and their safety while in custody;⁶ raising awareness and advancing reform on behalf of LGBTQ youth in child welfare, juvenile justice, and homeless systems of care;⁷ reforming discriminatory policing practices;⁸ and a national survey of thousands of lesbian, gay, bisexual, transgender, and gender-nonconforming people and people living with HIV, which focused on the communities' experience with the criminal justice system and policing.⁹ Lambda Legal collaborates widely on criminal justice issues with local and national civil rights organizations and law enforcement agencies.

Dangerous and unfair policing impacts LGBT people and HIV-positive people, particularly people of color at a disproportionate rate. In addition to experiencing many of the same forms of racial profiling and race and poverty-based discriminatory policing as other members of communities of color, LGBTQ people of color experience gender and sexuality-specific forms of racial profiling and police brutality,¹⁰ and LGBT people, particularly LGBT youth and people of color, also experience pervasive profiling and discriminatory treatment by local, state, and federal law enforcement agents based on actual or perceived sexual orientation, gender, gender identity or expression, and HIV status.¹¹ Lambda Legal continues to receive reports about transgender and gender-nonconforming (TGNC) people being degraded, physically assaulted, or sexually abused while interacting with police. Further evidence of this was

documented in Lambda Legal's national survey on police misconduct, *Protected and Served?*, which reported that 32% of TGNC respondents reported that police officers' attitudes toward them had been hostile.¹²

Over the past decade, the National Coalition of Anti-Violence Programs has found law enforcement agents consistently among the top three categories of perpetrators of LGBT-targeted violence reported to anti-violence organizations.¹³ The National Transgender Discrimination Survey conducted by the LGBTQ Task Force and National Center for Transgender Equality found transgender respondents who interacted with police likely to report harassment, as well as physical (including sexual) assault by police officers.¹⁴ Across the country, LGBT and gender-nonconforming youth are more likely to be stopped by the police and experience greater criminal justice sanctions that do not correlate with any greater violations of law.¹⁵ Investigations of local police departments in New Orleans and Puerto Rico by the U.S. Department of Justice have documented patterns and practices of discriminatory policing of LGBT people.¹⁶

These findings are consistent with documentation from local organizations, as well as Lambda Legal's litigation docket and our own national study exploring the issue of misconduct by the police, courts, prisons, and school security against LGBT people and people living with HIV.¹⁷ Many respondents reported that police officers' attitudes toward them had been hostile.¹⁸ More than one in eight respondents reported verbal and physical harassment from police, with the incidence rising for people of color and low-income people.¹⁹ Of respondents who said they had lodged complaints about police misconduct in the last five years, almost three-quarters said their complaints were not fully addressed.²⁰ Many Lambda Legal respondents also reported that police neglected their reports of assault, and nearly half of transgender respondents, and more than half of HIV-positive respondents, reported that police failed to address their reports of intimate partner violence.²¹

The proposed CPCD ably addresses the pattern of excessive force that Chicago police officers have been engaging in with respect to the Chicago community. The measures in the CPCD concerning discrimination against the LGBT community will serve to better protect LGBT people in interactions with the police and in police custody. However, because discriminatory practices have permeated the Chicago Police Department, continued oversight from this court is necessary to ensure compliance with the CPCD. Lambda Legal is committed to working with all stakeholders to continue to protect the rights of LGBT people and people living with HIV and to ensure Chicago Police Department's compliance with the Constitution.

Lambda Legal thanks the Court for allowing interested third parties to submit comments and for considering the proposed CPCD; the members of the Chicago Police Department who have worked to develop the decree; the plaintiffs in the *Communities United, et al. v. City of Chicago* and *Campbell v. City of Chicago* lawsuits; and the Attorney General for bringing this lawsuit on behalf of city residents.

Respectfully,



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¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

² *Calhoun v. Pennington*, No. 1:09-CV-3286, 2010 WL 11508380 (N.D. Ga. Dec. 8, 2010) (Order approving settlement filed) and *Giles v. City of Johnson*, No. COA 09-5627 (6th Cir. Jan. 22, 2010) (Joint Motion to Dismiss Appeal filed).

³ Scott Schoettes, *World AIDS Day 2014, 15 Ways HIV Criminalization Hurts Us All*, Lambda Legal (Nov. 14, 2014), http://www.lambdalegal.org/blog/20141114_world-aids-day-2014; Lambda Legal, *Lambda Legal Calls for Halt to HIV-Based Criminal Prosecutions in Wake of Department of Justice Guidance*, Lambda Legal (July 17, 2014), https://www.lambdalegal.org/blog/20140717_lambda-legal-calls-for-halt-to-hiv-based-criminal-prosecutions; *Rhoades v. State of Iowa*, 848 N.W.2d 22 (Iowa 2014).

⁴ Lambda Legal, *Memorandum of Support from Lambda Legal Defense and Education Fund for Bill S.323/A.1008* (April 5, 2012), https://www.lambdalegal.org/in-court/legal-docs/ltr_ny_20120405_condoms-as-evidence.

⁵ *Hicklin v. Precynthe*, No. 16-cv-01357 (E.D. Mo. May, 22, 2018) (Memorandum and Order and Permanent Injunction); *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011); *Rosati v. Igbinoso*, 791 F.3d 1037, 2015 WL 3916977 (9th Cir.).

⁶ *Zollicoffer a/k/a Star v. Livingston*, No. 14-cv-03037 (S.D. Tex. March 14, 2016) (Order).

⁷ Christina Wilson Remlin, et al., *Safe Haven: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care, Children's Rights* (April 2017), https://www.lambdalegal.org/sites/default/files/publications/downloads/tgnc-policy-report_2017_final-web_05-02-17.pdf.

⁸ Lambda Legal, *Written Testimony of Lambda Legal to the President's Task Force on 21st Century Policing* (Jan. 28, 2015), https://www.hivlawandpolicy.org/sites/default/files/20150128_testimony-before-presidents-task-force-on-21st-century-policing.pdf.

⁹ Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security* (last visited Oct. 12, 2018), <https://www.lambdalegal.org/protected-and-served>.

¹⁰ National Association for the Advancement of Colored People, *Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America* (Sept. 2014), https://www.naacp.org/wp-content/uploads/2018/07/Born_Suspect_Report_final_web.pdf.

¹¹ Joey L. Mogul et al., *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (Beacon Press, 2011); Kathryn E. W. Himmelstein and Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* 49-57 (2011) (LGB youth more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior); Brett G. Stoudt, et al., *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 *N.Y.L. Sch. L. Rev.* 1331 (2011) (LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in preceding six months); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States* (2005), <https://www.amnesty.org/download/Documents/84000/amr511222005en.pdf>.

¹² Lambda Legal, *Protected and Served?*, *supra* note 9.

¹³ National Coalition of Anti-Violence Programs, *Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010* (2011), https://avp.org/wp-content/uploads/2017/04/2011_NCAVP_HV_Reports.pdf.

¹⁴ Jaime M. Grant, et al. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), https://endtransdiscrimination.org/PDFs/NTDS_Report.pdf.

¹⁵ Himmelstein, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth*, *supra* note 11.

¹⁶ U.S. Department of Justice, Civil Rights Division, Investigation of the New Orleans Police Department (Mar. 16, 2011); U.S. Department of Justice, Civil Rights Division, Investigation of the Puerto Rico Police Department (Sept. 5, 2011); Catherine Hanssens, et al. *A Roadmap for Change: Federal Policy Recommendations to Address Criminalization of LGBT People and People Living With HIV* (May 2014), https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf.

¹⁷ Lambda Legal, *Protected and Served?*, *supra* note 9.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 6, 9.

²⁰ *Id.* at 6.

²¹ *Id.* at 11, 14.