IN THE SUPREME COURT OF OHIO

CLEVELAND POLICE PATROLMEN'S ASSOCIATION, *Plaintiff-Appellant,* v. **CITY OF CLEVELAND,** *Defendant-Appellee.*	Case No. 2021-0509 Appeal from Eighth District Court of Appeals, No. CA-20-109351

BRIEF OF AMICUS CURIAE SAMARIA RICE, MOTHER OF TAMIR RICE, IN OPPOSITION TO CLEVELAND POLICE PATROLMEN'S ASSOCIATION'S MEMORANDUM IN SUPPORT OF JURISDICTION

Subodh Chandra (Ohio Bar No. 0069233)
Patrick Haney (Ohio Bar No. 0092333)
THE CHANDRA LAW FIRM LLC
The Chandra Law Building
1265 West Sixth Street, Suite 400
Cleveland, Ohio 44113
(216) 578-1700 (p) / (216) 578-1800 (f)
Subodh.Chandra@ChandraLaw.com
Patrick.Haney@ChandraLaw.com

Attorneys for Amicus Curiae

Henry J. Hilow
HILOW & SPELLACY LLC
323 W. Lakeside Ave., Suite 200
Cleveland, Ohio 44113
(216) 344-9220 (p) / (216) 664-6999 (f)

Marisa L. Serrat
55 Public Square, Suite 2100
Cleveland, Ohio 44113
Phone: (216) 696-2150

Attorneys for Plaintiff-Appellant

George S. Crisci
950 Main Ave., 4th Floor
Cleveland, OH 44113
Phone: (216) 696-4441

Scott H. Dehart
17 S. High St., Suite 900
Columbus, OH 43215
Phone: (614) 224-4411

William Menzalora
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114
Phone: (216) 664-4285

Attorneys for Defendant-Appellee

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STATEMENT OF INTEREST OF AMICUS CURIAE SAMARIA RICE, MOTHER OF THE LATE TAMIR RICE, THE CHILD TIMOTHY LOEHMANN KILLED

Samaria Rice is the grieving mother of Tamir Rice, the 12-year-old child who former Cleveland police officer Timothy Loehmann unjustifiably shot and killed on November 22, 2014, in an incident drawing international condemnation. She has a great personal interest in ensuring that someone like him is never again entrusted with a badge and a gun.

Despite Ms. Rice's crime-victim status and her repeated pleas to be updated with information, the City of Cleveland completely locked her and her family out of every proceeding related to discipline of the officers responsible for killing her son. The Chief of Police never afforded her the courtesy of information about the status of Loehmann's discipline. She had to learn about every development from news media.

This proceeding represents the first opportunity for her to be heard and to be a voice for her son.

INTRODUCTION

Amicus curiae Samaria Rice has a great personal interest in the Cleveland Police Patrolmen's Association's effort to dispute the termination of the police officer who killed her 12-year-old son Tamir Rice.

Through this appeal, the Cleveland Police Patrolmen's Association (CPPA) contests the discharge of former Cleveland police officer Timothy Loehmann, the man who shot and killed Tamir Rice, Samaria Rice's 12-year-old son.

Tamir's supposed crime? Playing with a toy gun in a park near his house.

Tamir Rice was a child. On November 22, 2014, he was doing something many boys enjoy: playing with a toy pellet gun. (And he was doing it in an open-carry state.) When Cleveland police officers drove into the park at high speed, Tamir wasn't brandishing his pellet gun. The toy wasn't even visible. No one else was around, so no one was in any possible danger. But as the squad car approached and was still rolling, Officer Timothy Loehmann jumped out of the car and immediately shot Tamir.

As Loehmann's fatal bullet struck him in the stomach, Tamir collapsed to the ground. About one minute later, his sister, Tajai, who had been playing with him at the nearby community center ran towards him crying "my baby brother, they killed my baby brother." Officer Garmback, Loehmann's partner who had been driving, tackled her to the ground. When she tried to crawl away, Officer Loehmann dragged her back down. The officers then put Tajai—who they knew was a child and the sister of the boy they had just shot—in handcuffs in their police car, right next to where her brother lay injured and dying on the ground.

Shockingly, neither officer ever gave Tamir any medical treatment or care: not even basic first aid or CPR.

When Tamir's mother, Samaria Rice, heard about the shooting and rushed to the park, the officers refused to release Tajai to her. Instead, they told her she had to choose between going to the hospital with her fatally wounded 12-year-old son and staying with her handcuffed 14-year-old daughter, who was in the back of the car with the very

same officers who had shot her son. When Ms. Rice chose to go with Tamir, Cleveland police officers interrogated Tajai without any adult present, trying unsuccessfully to build a cover up for their unjustified shooting.

When Loehmann gave his account of the shooting, he testified that he gave Tamir multiple commands to raise his hands. That was a lie. Security video footage of the shooting shows that was impossible: as the police car was still pulling up, Loehmann got out of the car and immediately opened fire. There was no time for multiple commands, much less time for Tamir to comply with such commands had they been given. And giving commands as the car drove up to Tamir would have defied sense, because, according to Garmback, the car window was rolled-up that winter's day.

While the CPPA decries Officer Loehmann's termination as somehow resulting from an "unfortunately politically influenced process," it was Officer Loehmann who was unfairly advantaged from inexplicable breaches of grand-jury protocol when local prosecutors presented his case for criminal indictment. Officer Loehmann was allowed to read a prepared, self-serving statement to the grand jury after taking the oath, and then purportedly invoke the Fifth Amendment and refuse to answer a single question.[1]

[1] *See* Cory Shaffer, *Officers in Tamir Rice Case Were Sworn in Before Grand Jury, Answered No Questions, Union Says*, Cleveland.com (Dec. 3, 2015), *available at* http://www.cleveland.com/metro/index.ssf/2015/12/officers_in_tamir_rice_case_we.html.

This violated longstanding Supreme Court precedent holding that, by testifying under oath, the officers waived their Fifth Amendment right to be silent because a witness can "*not take the stand to testify in [his] own behalf and also claim the right to be free from cross-examination on matters raised by [his] own testimony on direct examination*." *Brown v. United States*, 356 U.S. 148, 155–56 (1958) (emphasis added). Local prosecutors also hired and paid three dubious expert witnesses to testify to the grand jury that the shooting of Tamir was *justified*.[2] They leaked the reports to media. With local prosecutors effectively operating as Officer Loehmann's defense attorneys, the grand jury declined to indict him.

In May 2017, the City of Cleveland terminated Timothy Loehmann's employment as a Cleveland police officer. But Loehmann was not terminated for slaying a 12-year-old child. Rather, the city fired Loehmann for lying on his employment application to be a member of law enforcement, and violating administrative policies. (In other words, by lying to become a police officer, Loehmann

[2] All three "experts" were discredited. The first, Kimberly Crawford, had a documented pro law-enforcement bias so extreme that DOJ rejected her analysis of the Ruby Ridge shooting because it was legally inaccurate and excessively pro-police. The second, Lamar Sims, had spoken at an event hosted by Prosecutor McGinty's office the year before and had previously made clear on television, before reviewing any of the evidence, that he believed the police officers were justified in killing Tamir. The third, Ken Katsaris, had been precluded from testifying multiple times by courts across the country. All three of these so-called "experts" made improper, outlandish, and speculative assumptions without any legitimate evidentiary basis in their attempts to exonerate the officers.

should never have become a police officer to begin with.) The grievance that CPPA filed to challenge Loehmann's firing is how this appeal originated. While Officer Loehmann's loss of his ill-gotten job pales in comparison to the immeasurable loss Tamir Rice and his family suffered, Loehmann's termination represents a meager shred of vindication to them—even though he was not terminated for the shooting. And it ensures that someone like Loehmann—a person who thinks that it's okay to lie to become a member of law enforcement, and rush upon and shoot a child—is never again entrusted with a badge and gun.

Ms. Rice strongly opposes any decision that could potentially lead to her son's killer to be reinstated to his former job as a police officer. Officer Loehmann shot 12-year-old Tamir without waiting even a second to process the situation or consider the devastating consequences of his actions. Loehmann's callous conduct in the aftermath of the shooting only exacerbated the pain he caused. His sense of entitlement after not just killing a child but lying to become a police officer should not be rewarded. He was, and remains, unfit to serve as a police officer, in Cleveland—or anywhere else.

ARGUMENT

This case involves neither a substantial constitutional question nor an issue of public or great general interest.

Although the result of this case is of particular personal interest to Ms. Rice as she continues to pursue justice for her son, the legal issue in this appeal fails to

implicate a substantial constitutional question or raise a matter of public or great general interest.

Here, the CPPA failed to meet a "mandatory and jurisdictional" deadline to file and serve its motion to vacate an arbitration award. *Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 197 Ohio App.3d 1, 2011-Ohio-5834, 965 N.E.2d 1040, ¶ 28 (8th Dist.), citing *Galion v. Am. Fedn. of State, Cty. & Mun. Emp., Ohio Counsel 8, AFL-CIO, Local 2243*, 71 Ohio St.3d 620, 622, 1995-Ohio-197, 646 N.E.2d 813. Rather than provide service to the city's outside counsel as Civ.R. 5(B)(1)—applicable via R.C. 2711.05—requires, the CPPA served the city's law department instead. *See Cox v. Dayton Pub. Schools Bd. of Edn.*, 147 Ohio St.3d 298, 2016-Ohio-5505, 65 N.E. 3d 977, ¶ 16 (holding that when a party has counsel, a motion to vacate an arbitration award must be served on the attorney unless the court orders otherwise).

The procedural blunder at the center of this appeal—the CPPA's failure to serve its motion to vacate to opposing counsel as required to meet jurisdictional requirements—is unlikely to recur with any frequency. When a city is represented by outside counsel throughout an arbitration proceeding, most attorneys—either understanding Civ.R. 5(B)(1) or in an exercise of basic prudence—would logically serve an ensuing motion to vacate the arbitration award to that same outside counsel. In its jurisdiction memorandum, the CPPA offers no sound explanation for why it chose ***not*** to serve the city's outside counsel. Instead, the CPPA focuses on the separate service it

provided to the city's law department. This appeal hinges merely on the CPPA's effort to shoehorn its service to the law department as counting as proper service to the counsel representing the city in the arbitration proceedings.

CPPA is unlikely to repeat its error again. It points to no one else who has committed the same error, and no split in authority among the appeals courts on how to address such blunders. The case the CPPA relies upon most to inferentially support its proposition, *Champion Chrysler Plymouth v. Dimension Service Corp.*, was decided by a federal district court and it did not involve a government entity. No. 2:17-cv-130, 2018 WL 1443685 (S.D. Ohio 2018). It has been cited by zero cases since—Ohio or otherwise.

Even if the Eighth District Court of Appeals was somehow wrong—and given the legal authority discussed above, there is no reason to believe that it was—because the picayune procedural issue that CPPA seeks to raise is of no public or great general interest, this Court should decline this appeal and the Eighth District's decision should stand.

Regardless, there is no injustice to correct here. A police officer lied on his employment application to become a member of law enforcement, and then unjustifiably killed a child. Samaria Rice, Tamir's grieving mother, respectfully and humbly asks this Court to bring to an end Loehmann's quest to be again entrusted with a badge and gun—and to thus end this recurring aspect of her ongoing torment.

Respectfully submitted,

/s/ Subodh Chandra
Subodh Chandra (Ohio Bar No. 0069233)
Patrick C. Haney (Ohio Bar No. 0092333)
THE CHANDRA LAW FIRM LLC
The Chandra Law Building
1265 West Sixth Street, Suite 400
Cleveland, Ohio 44113
(216) 578-1700 (p) / (216) 578-1800 (f)
Subodh.Chandra@ChandraLaw.com
Patrick.Haney@ChandraLaw.com

Attorneys for Amicus Curiae Samaria Rice

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I certify that on May 24, 2021, my office served the above document via email under Civ.R. 5(B)(2)(f) and S.Ct.Prac.R. 3.11(B)(1) on:

Counsel for Plaintiff-Appellant

Henry J. Hilow – hhilow@mghslaw.com
Marisa L. Serrat – MSerratlaw@gmai.com

Counsel for Defendant-Appellee

George S. Crisci – gsc@zrlaw.com
Scott H. Dehart – shd@zrlaw.com
William Menzalora – wmenzalora@city.cleveland.ohio.us

/s/ Subodh Chandra
Counsel for Amicus Curiae