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Chair Aaron Michlewitz
Chair Clair Cronin
House Judiciary Committee
Via e-mail

Testimony in Support of S. 2820 and Request that it be Strengthened to Provide for
Greater Protection to the Populace

July 17, 2020

Dear Chairs

I enthusiastically support S. 2820 and ask that it not be weakened in the House.
Instead, this Bill should be strengthened in several important ways:

1. The right and power of the people to sue police who violate the law should be increased by allowing for the award of punitive damages. We need accountability and that is the opposite of immunity. Immunity condones wrongdoing and prevents its condemnation.
2. Because some police contracts contain provisions that allow arbitrators to overrule discipline, it should be immediately unlawful for there to be any contract provision which might allow disciplinary actions of the independent commission to be circumvented.
3. The temporary ban on facial recognition and biometric identification equipment should be made permanent. If, at some point in the future, these can be made reliable, then there should be a new statute allowing the use of this technology but only after a warrant is sought and obtained. This ban should be expanded to cover all electronic surveillance devices like automated license plate readers, cell phone trackers, key stroke monitors and computer search spy gear. We are growing far too close to Orwell's 1984 and a Big Brother mosaic of the universal spy. None of these devices or their like should be permitted without a narrowly drawn search warrant of the sort suggested by Chief Justice Gants in his

concurring opinion in *Commonwealth v. Almonor*, 482 Mass. 35 (2019). See also Hennessey, *The Extraordinary Massachusetts Constitution of 1780*, 873, 875-876 (1980).

4. Restrictions on police use of potentially lethal force should be broadened to make it unlawful for police to use clubs or truncheons to strike the heads of people they encounter.

Based on my 47 years of law practice and extensive experience in dealing with police, S. 2820 is a wonderful and necessary breath of fresh air. For far too long, the scales of justice have been out of balance allowing police to act improperly against African American, Hispanic and other minority communities and, frankly, to be disrespectful to motorists and others whom they encounter, especially teens and young adults. Far too often, police act like an occupying army to the detriment of the people they were supposed to protect and serve. That approach is not fair to the people and is counter-productive to preventing crime and apprehending criminals. Because many in the communities fear and distrust police, they will not now cooperate with the police. To many, the police are like the Black & Tan of the British Boot during Ireland's troubles. Far too many police put loyalty to the Blue Wall and their own financial interests over their sworn duties. If enacted and strengthened, this Bill should change the police culture.

I'm offended by the way in which many police have acted in opposing these reforms. Some of their demonstrations and other communications seem calculated to bully and intimidate those seeking change.

Police must be taught that the use of force, especially deadly force, is often not the appropriate solution to problems. Although to a hammer every problem is a nail, police must be taught to de-escalate confrontations and resort to the threat of force or the use of force only when no other approach is available.

The approach now in effect for police discipline has failed to eliminate or control police who use violence, intimidation or commit other wrongful acts from the forces. Instead of cooperating with disciplinary investigations and proceedings, police resort to the Blue Wall of Silence, putting loyalty to their peers over their oaths. I applaud the creation of an independent police officer standards and accrediting committee composed of people from a broad variety of constituencies. The independent committee should function much like the Board of Bar Overseers, the Board of Registration in Medicine and the Cosmetology Board. I can see now reason why police accused of misconduct should be given greater deference than lawyers, doctors or cosmetologists.

All of these Boards afford subjects of investigations and disciplinary actions full and fair administrative hearings and the right to judicial review of an adverse determination.

One of the best and most important reforms in S.2820 is the elimination of immunity for police in civil litigation. Police should be liable to those whom they've harmed so that their victims can be fully compensated for their losses.

This provision does not go far enough. Police who intentionally violate civil rights should also be liable for punitive and exemplary damages. Punitive damages are a powerful tool to compensate the wronged and to deter future similar wrongdoing. A jury's award of punitive damages will inform all just how reprehensible the people believe police misconduct to be.

Aleo v SMB Toys, Inc. decided by the Supreme Judicial Court in 2013 makes the point. Several years ago, a seller of recreational goods bought a pool slide in China and sold it to a consumer in Massachusetts. The seller did none of the required safety inspections. When a young mother used the slide at a family gathering, she broke her neck, became a quadriplegic and died the next morning. The jury awarded \$18,000,000 in punitive damages and \$2.6 million in compensatory damages. That decision sent a loud message that irresponsible conduct would subject the wrongdoer to a harsh reality. If S.2820 is amended to allow for punitive damages, then if a murder like the Floyd case in Minnesota were to occur here, a Massachusetts jury could and should send the same message. Intentional misconduct will be harshly punished.

Please strengthen S. 2820 and pass it along to the Governor to be signed into law.

Sincerely,

s/Henry P. Sorett