

Jan. 22, 2024

**Chicago City Council**  
121 N. LaSalle St.  
Chicago, IL 60602



cc: the Honorable Mayor Brandon Johnson

**Re: Vote "NO" to Private Arbitration in Cases of Serious Police Misconduct**

Dear Honorable Members of Chicago's City Council:

We write to you on behalf of Color Of Change and the Coalition for Police Accountability and Transparency (CPAT).<sup>1</sup> Color Of Change is one of the nation's foremost racial justice organizations, with millions of members nationwide, including more than 45,000 members in Cook County. CPAT is a cohort of more than a dozen community-based, civil rights and justice reform organizations focused on protecting and expanding mechanisms for police accountability and transparency in the city of Chicago. **Ahead of City Council's scheduled Jan. 24 legislative meeting, we strongly urge you to oppose arbitrator Edwin Benn's recent reaffirmation of his ruling that would allow Chicago Police Department (CPD) officers accused of serious misconduct to bypass the Police Board and, instead, have their cases reviewed in closed-door, private arbitration.**

We unequivocally condemn Mr. Benn's recently released reaffirmation of his initial ruling and reiterate that supporting the option of private arbitration for serious police misconduct will obstruct transparency and police accountability.

It is important to acknowledge that CPD officers already have the option for private arbitration in cases of misconduct that carry less than a year of suspension. Mr. Benn's ruling and this effort led by the Chicago Fraternal Order of Police attempt to grant the option of private arbitration for more serious cases of misconduct that carry more than a year of suspension or termination, such as unjustified killings, sexual misconduct, illegal searches and more. It is unconscionable to consider further restricting the historically limited infrastructure of accountability and transparency currently in place to address serious police misconduct, considering the systematic and ongoing nature of police misconduct in the city of Chicago.

Additionally, it is reprehensible to ignore or minimize how this will disproportionately impact the pursuit of accountability for Black, Latine, low-income and disabled Chicagoans who face increased risk and rates of police violence and misconduct. Police officers should be held to the highest standards of accountability and transparency, particularly because of their qualified

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<sup>1</sup> Coalition for Police Accountability and Transparency. "Chicago Coalition for Police Accountability and Transparency (CPAT) Applauds City Council's Rejection of Arbitrator's Decision that Would Set Back Oversight of Police Misconduct" *Press Release*. Note: A full list of CPAT's organizations is included in this release. 13 December 2023.

[https://colorofchange.org/press\\_release/chicago-coalition-for-police-accountability-and-transparency-cpat-applauds-city-councils-rejection-of-arbitrators-decision-that-would-set-back-oversight-of-police-misconduct/](https://colorofchange.org/press_release/chicago-coalition-for-police-accountability-and-transparency-cpat-applauds-city-councils-rejection-of-arbitrators-decision-that-would-set-back-oversight-of-police-misconduct/)

immunity protections and the decades of documented abuses that Black, Latine, low-income and disabled Chicagoans have faced because of officers' abilities to violate the Fourth Amendment and other constitutional rights with impunity.

There are a number of assertions in Mr. Benn's reaffirmation memo we want to address:

1. First and foremost, we continue to thank and applaud both Mayor Brandon Johnson and the Alderpersons who rejected private arbitration in serious police misconduct cases when this was up for a vote in mid-December. **City Council's rejection was a commitment to take into account CPD's deep historical and current issues related to police misconduct, in addition to understanding the ways that reviewing and deciding on cases of serious misconduct in secrecy would further break down community trust in CPD.** Mr. Benn grossly ignored or minimized the significance of considering the "interests and welfare of the public" throughout his memo and in his decision.
2. Secondly, Mr. Benn's reaffirmation memo harshly criticizes advocates, community members and Alderpersons for stating that private arbitration would mean that serious police disciplinary case proceedings would be brought "behind closed doors." He insinuates that this framing is part of a public relations campaign and simply "a slogan" meant to unduly paint private arbitration disparagingly in order to spread misinformation and ultimately defeat the arbitration process. This assertion could not be further from the truth. The option for serious police misconduct cases to be reviewed in private arbitration would be a shift away from a 60-year precedent where proceedings and decisions in these kinds of cases have been public through the Police Board and subject to the Open Meetings Act. **If chosen by an individual officer accused of serious misconduct, private arbitration would mean that their full disciplinary proceedings would be brought behind closed doors and away from the public. The fact remains that private arbitration is just that – private.** Moreover, Mr. Benn compared advocates, community members, and Alderpersons' use of the phrase "behind closed doors" to the spread of misinformation, referencing similarities to the "big lie" that former President Trump actually won the 2020 election and that the election was "rigged." This comparison is both incorrect and offensive.
3. The Office of the Inspector General (OIG), the most politically independent public office in the City, did a review of CPD's disciplinary grievance procedure in 2021. In reviewing all disciplinary grievances resolved over a three-year period, OIG made four significant findings:<sup>2</sup>
  - a. More than half of all eligible cases were grieved, and of those, 78% resulted in discipline either being reduced or eliminated;
  - b. The disciplinary grievance procedure lacks transparency;
  - c. The settlement process, which regularly results in significant reductions in discipline and the removal of rule violations from sworn members' records, lacks transparency and fails to produce consistent settlement agreements that

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<sup>2</sup> City of Chicago Office of Inspector General. "Review of the Disciplinary Grievance Procedure for Chicago Police Department Members." Section IV. May 2021.

<https://igchicago.org/wp-content/uploads/2021/05/OIG-Review-of-the-Disciplinary-Grievance-Procedure-for-Chicago-Police-Department-Members.pdf>

- follow a consistent format;
- d. Grievance outcomes are significantly shaped by a very limited number of decision-makers. In fact, 90% of completed grievance arbitrations were assigned to just three independent arbitrators operating with vast discretion, little public transparency and negligible substantive post-decision review.
  4. Mr. Benn’s threat that he will retaliate against the City by imposing maximal damages against the City in the event it loses its litigation challenging the arbitrator’s decision is both wholly inappropriate and inaccurate. **Any damages awarded as a result of the City’s decision to reject the arbitrator’s award are likely to pale in comparison to the numerous cases in which the City is forced to bear large damage awards because of serious misconduct by police officers.** Including such a threat in this decision also raises serious questions as to whether this particular arbitrator can now be fairly considered as an option in any future arbitration cases involving the City of Chicago.
  5. Finally, Mr. Benn’s contention that City officials have violated their oath of office by opposing his decision and reaching a different decision on this issue is arrogant, insulting and wholly unjustified. **The entire question of the scope of the Worker’s Rights Amendment to the Illinois Constitution is a matter of first impression on which no Illinois Court has yet had an opportunity to rule.** The Illinois Courts may well conclude that the amendment does not prohibit the Illinois Legislature from adopting “enhanced arbitration” procedures in cases of serious misconduct by police officers—including having such cases decided by public officials (like the Police Board members) rather than private arbitrators, allowing individuals harmed by such misconduct the right to participate in such proceedings, and opening such proceedings to greater public scrutiny. None of those measures necessarily “diminishes” any right officers might have to arbitration in any meaningful way. The arrogance in Mr. Benn’s contrary contention again raises serious questions as to this arbitrator’s ability to be a neutral decision-maker in any future cases involving the City of Chicago.”

As you know, the City of Chicago entered into a consent decree with the Illinois Office of the Attorney General following the U.S. Department of Justice’s civil rights investigation that concluded that the department had engaged in a pattern of excessive force, including the use of deadly force. The City agreed to overhaul its policing policies in a number of important areas, including accountability and transparency.<sup>3</sup> Nearly six years later, CPD is not in full compliance with any – **none** – of the accountability requirements of the consent decree.<sup>4</sup> Approving Mr. Benn’s ruling would run counter to the goals of the consent decree. Legal experts, including Craig Futterman, Clinical Professor of Law at the University of Chicago Law School, dispute Mr. Benn’s interpretation of the Illinois Public Labor Relations Act that private arbitration is required as a matter of law in serious cases of police misconduct, where Illinois law and policy favoring transparency, fairness and police accountability demand otherwise. **Mr. Benn committed a fundamental legal error when he refused to consider the profound public interest and welfare when he sought to move open disciplinary hearings with full due process protections and rights before an independent and publicly accountable body**

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<sup>3</sup> “Consent Decree.” *Official Website for the City of Chicago*. <https://www.chicago.gov/city/en/sites/police-reform/home/consent-decree.html#>

<sup>4</sup> Chicago Police Department. “Consent Decree Compliance Dashboard.” <https://home.chicagopolice.org/statistics-data/data-dashboards/consent-decree-compliance-dashboard/>

**behind closed doors to arbitrators who have a proven track record of protecting Chicago police officers from discipline.** The City's legal challenge stands on solid legal ground. Principally, it is a battle worth fighting for the sake of community safety, community trust, transparency and police accountability. Approving private arbitration in serious police misconduct cases will have a resounding impact on communities already at risk of violent encounters with CPD, and that impact will be felt for years if this ruling is enshrined in the police union contract at the Jan. 24 legislative meeting.

We strongly urge the Chicago City Council to stand with advocates, community members most impacted by police violence, Mayor Johnson, the Police Board president and the broader community by rejecting this measure again when it comes up for a vote. Chicago's City Council has the power to ensure that transparency remains one of the highest priorities when addressing serious police misconduct allegations. We firmly urge you to use that power to oppose this disastrous attempt to roll back transparency and accountability mechanisms for officers sworn to protect and serve the people of Chicago.

If you have any questions, please feel free to contact Queen Adesuyi, Policy Strategist at Color Of Change ([queen.adesuyi@colorofchange.org](mailto:queen.adesuyi@colorofchange.org)).

Sincerely,

Color Of Change  
Coalition for Police Accountability and Transparency