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Crowell & Moring and ACLU Achieve Victory in Free Speech Case Challenging Gag Orders Imposed on Survivors of Police Abuse in Baltimore

Washington – July 12, 2019: The United States Court of Appeals for the Fourth Circuit ruled this week that Baltimore’s practice of prohibiting plaintiffs who settle police misconduct cases from speaking about the events precipitating their cases, on pain of losing half their settlement proceeds, violates the First Amendment. The decision in *Overbey v. Mayor of Baltimore* holds that these non-disparagement clauses—essentially gag orders—are tantamount to the payment of “hush money” to keep victims quiet, and are unconstitutional and unenforceable.

Overbey v. Mayor of Baltimore was brought by Ashley Overbey Underwood, a woman who was denied half of her settlement award after responding to negative online comments about her settlement, as had been reported in a local newspaper. After the City learned she had defended herself by describing her experience of being brutalized by Baltimore police, it withheld half her promised proceeds. Overbey was joined as a co-plaintiff in the case by the Baltimore Brew, a news organization that claimed it was denied its First Amendment right to obtain newsworthy public information from victims of police abuses.

Crowell & Moring’s Dan Wolff, lead *pro bono* counsel: “In the current era where social media has helped shine a light on, and heightened the public’s awareness of, police brutality, especially in black communities, this decision underscores the importance of the constitutionally protected right of citizens to speak freely and critically about the government, and the strong public interest in allowing survivors of police brutality to continue to tell their stories.”

From the U.S. Court of Appeals decision: “We hold that the non-disparagement clause in [Ms.] Overbey’s settlement agreement amounts to a waiver of her First Amendment rights and that strong public interests rooted in the First Amendment make it unenforceable and void.”

“We are elated that the Appellate Court understood the vital interest survivors of police misconduct have in speaking out about their experiences, and that the Court understood the power dynamic in play here, which made it impossible for plaintiffs to say no to the City’s unconstitutional demands,” said Deborah Jeon, Legal Director for the ACLU of Maryland. “This ruling is a home run for the First Amendment, which is especially important in this cutting-edge case at the intersection between free speech and racial justice.”

The case, filed in June 2017, was dismissed with insufficient consideration by now retired U.S. District Court Judge J. Frederick Motz. Saying that decision was flawed, Chief Judge James K. Bredar then reopened the case and assigned it to Judge Marvin Garbis. In November, Judge Garbis ruled that *Baltimore Brew* lacked standing and that Ashley Overbey had waived her First Amendment rights when she signed a 2014 non-disclosure agreement with the city. Both of those rulings have now been overturned on appeal. The ACLU and *pro bono* counsel Crowell & Moring, LLP, appealed that ruling and today’s decision from the U.S. Court of Appeals overturns it.

Ashley Overbey and the Baltimore Brew are represented by Crowell & Moring’s [Daniel Wolff](#), [Nkechi Kanu](#), and [Tyler O’Connor](#), as well as ACLU of Maryland Legal Director Deborah Jeon, and Legal & Public Policy Counsel Nick Steiner.

About Crowell & Moring LLP

Crowell & Moring LLP is an international law firm with approximately 550 lawyers representing clients in litigation and arbitration, regulatory, and transactional matters. The firm is internationally recognized for its representation of Fortune 500

companies in high-stakes litigation, as well as its ongoing commitment to *pro bono* service and diversity. The firm has offices in Washington, D.C., New York, Los Angeles, San Francisco, Orange County, London, and Brussels.

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