

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PEACE OFFICER STANDARDS AND TRAINING BOARD

In the Matter of the Proposed Amendments to the Rules
Governing Education and Licensing of the Law
Enforcement Officers

OAH DOCKET NO. 8-9007-38401

VOLUME I

The above-entitled matter came on for hearing
before Administrative Law Judges Eric Lipman and
Suzanne Todnem, taken on the 15th day of November,
2022, commencing at approximately 9:00 a.m., via
Webex.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

MINNESOTA POST BOARD AGENCY PANEL:

REBECCA GASPARD, Rules and Legislative
Coordinator

KELLY McCARTHY, POST Board Chairperson

JUSTIN TERRELL, POST Board's Rules Committee
Chairperson

ERIK MISSELT, POST Board Executive Director

ANGIE ROHOW, Standards Coordinator

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

AGENCY COMMENTS:	PAGE
REBECCA GASPARD	22
CHAIRPERSON KELLY MCCARTHY	25
JUSTIN TERRELL	27
ERIC MILLELT	29
PUBLIC COMMENTS:	PAGE
JEFF POTTS	32
TERRY STIER	37
RICHARD HODSDON	41
RENEE CARLSON	48
SHERIFF JASON KAMERUD	58
MARK SCHNEIDER	62
BRIAN WEIERKE	70
MARK SCHNEIDER	73
JAMAEL LUNDY	78
RICHARD HODSDON	80
SHERIFF JASON KAMERUD	86
JIM MORTENSON	93
BRIAN PETERS	101
DAVID TITUS	105
ELLIOTT BUTAY	117

1 JUDGE LIPMAN: Good morning and
2 welcome to a set of public hearings in the Matter of
3 the Proposed Amendments to the Rules Governing
4 Education and Licensing of the Law Enforcement
5 Officers. It's otherwise known as OAH Docket Number
6 8-9007-38401. Those numbers will be important, so I
7 will be coming back to them a little bit later in the
8 presentation this morning.

9 My name is Judge Eric Lipman, I am
10 an Administrative Law Judge with the Minnesota Office
11 of Administrative Hearings. Also with me as part of
12 the presiding over the rulemaking hearing is Judge
13 Suzanne Todnem. Because of the scope and complexity
14 of the proposed rules, we will both be sharing hearing
15 duties and also going through the rulemaking record in
16 advance of preparing a report and legal review, but
17 more about all of that in a little bit. The next
18 slide.

19 Your participation matters. Public
20 participation in the rulemaking process is essential to
21 the development of fair and thoughtful rulemaking
22 policy, and so we are very grateful that you took time
23 out this morning to join us for this public hearing
24 and to provide comments and feedback on the proposed
25 rules.

1 Minnesota in its rulemaking process
2 relies upon the wisdom of the group. A key
3 fundamental underlying principle of our Administrative
4 Procedures Act and how we develop administrative rules
5 here in Minnesota, which is not the way that
6 necessarily the Federal Government does it or other
7 sister states do it, but I think in ways that provide
8 credit to Minnesota is that we don't necessarily
9 assume that folks in St. Paul or the people who work
10 in the agency necessarily have a monopoly on wisdom,
11 and so the rulemaking process, as a delegation of
12 rulemaking authority from the Legislature, is
13 conditioned on the fact that we go out to the
14 citizenry and the public at large to try and draw upon
15 their wisdom, their lived experience, their knowledge,
16 and to leverage it in the expectation that better
17 substantive results in every day conduct of State
18 Government will follow if we do this rulemaking
19 process in this way. I know that sounds a little
20 jilted, but the improvements in the every day conduct
21 of State Government is drawn right out of the statute.
22 That is our statutory mission.

23 And the key issues that we will be
24 focusing on in this process are three big questions.
25 Judge Todnem and I are mindful that sometimes

1 commentators come with a variety of different
2 perspectives or have different purposes or different
3 audiences in mind for their comments, but if you're
4 focusing on what Judge Todnem and I will be doing, we
5 have three key issues that will undercurrent the
6 report that we'll be making on the rules.

7 A, does the POST Board have the
8 statutory authority to adopt the rules that it has
9 proposed? Is it empowered and does it have the
10 authority to do this?

11 B, has the POST Board followed all
12 of the legal requirements? And there are several in
13 Chapter 14 and Part 1400, a series of legal
14 requirements in order to issue new rules. That is
15 another key focus of ours.

16 And if they have the statutory
17 authority and they have followed the procedure that
18 they are required to do, are the rules that they
19 picked, amongst their various choices that they might
20 have had, are the ones that they're proposing needed
21 and reasonable?

22 So again, the big questions for
23 us -- actually, if you go back a second -- does the
24 Board have the statutory authority to adopt the
25 proposed rules, has the POST Board followed the legal

1 requirements in order to do that, and are the rules
2 that they have selected, the ones that they're
3 proposing, needed and reasonable? Next slide.

4 So let me just give you a little bit
5 of the roadmap for today. I am going to describe the
6 overall process that we will be undertaking during the
7 hearing and in the post-hearing process. We will
8 introduce the Panel from the Agency. It's their
9 obligation to present an affirmative presentation of
10 facts, an affirmative presentation of facts, and they
11 will do that not only by introducing a series of
12 exhibits, all of which have been posted to the POST
13 Board website, and we will talk a little bit more
14 about that, but also they will be giving some brief
15 remarks from key figures on the Board.

16 So they will present the agency
17 exhibits, we will have some discussion from the Panel,
18 and then the big event, the reason why we're all here,
19 for the remainder of today and also during a public
20 hearing tomorrow evening, the Panel will receive
21 questions from members of the public and interested
22 stakeholders and also receive their comments. Next
23 slide.

24 Our Agency Panel is Chief Kelly
25 McCarthy, she's Chair of the POST Board; and Justin

1 Terrell, he's Chair of the Board's Rules Committee.
2 Also members who will be providing support is Mr. Erik
3 Misselt, the Executive Director of the POST Board;
4 Angie Rohow, the Standards Coordinator; and Rebecca
5 Gaspard, the Rules and Legislative Coordinator. The
6 last three will be providing support to Chief Kelly
7 and Mr. Terrell, who will take most of the laboring,
8 but mindful that we have these key knowledgable and
9 experienced agency personnel to talk about the
10 development of the rules, their objectives, and why
11 certain regulatory choices were made in the proposals
12 and not others. Next slide.

13 As I suggested, the agency exhibits
14 have been posted to the POST Board's website. There
15 is the URL, the link, and also we have a customized
16 URL because in case the longer government internet
17 address might be difficult to remember or type or
18 easier to make mistakes, we have made a customized URL
19 that is easy to remember. It's TINYURL.gov/POST-6700.
20 That is 6700 being the chapter part of Minnesota rules
21 that is being amended by these particular proposals.
22 So POST, all caps, dash 6700, easy to type, easy to
23 remember, and you can at your leisure, both during the
24 hearing for afterwards, 24 by 17 familiarize yourself
25 with those materials.

1 The ways to comment, an important
2 piece here, you can certainly provide oral comments at
3 this hearing.

4 We will be having a written comment
5 period for 20 calendar days following the close of
6 tomorrow night's hearing, and we will talk more about
7 the deadlines there. You can do that electronically,
8 by mail or by fax, or electronically at the public
9 comment website at our office, and the URL is there,
10 MinnesotaOAH.granicusideas.com/discussions. Amongst
11 other agency rulemaking matters, you will find POST
12 Board discussion. You can join online and provide
13 feedback and also attachments to your heart's content.

14 Or by U.S. mail at the following PO
15 Box, which is our office's mailing address. It's
16 helpful if you include the docket number there just so
17 that it gets routed to right file. Again as I noted
18 at this beginning, the docket number for this
19 8-9003-37102. Actually, no, I am sorry, there is a
20 typo there. The docket number is 8-9007-38401. Sorry
21 about the typo in the slide there. Or by fax, and our
22 number is (651 539-0310).

23 Important point to make when you are
24 thinking about commenting is you don't have to be
25 present to play, so you don't necessarily have to give

1 oral remarks or testimony or ask a question at one of
2 the public hearings, either today or tomorrow night,
3 in order to be a stakeholder with interesting and
4 useful ideas. Anyone who is part of your association,
5 part of your Christmas card list, who is in front of
6 you in line at the Cub, and anyone who would like to
7 be a part of our rulemaking and rule development
8 process can write in, again, 20 calendar days after
9 tomorrow night's hearing for those kind of comments.
10 We are eager to hear from as many people as will share
11 with us their best thinking.

12 Another key piece, just something
13 that I am to emphasize for stakeholders today,
14 stakeholders who might participate tomorrow, and also
15 those who might well be writing in, obviously
16 eComments, you know, going to the granicus website is
17 a preferred method for submitting written comments
18 because that is easiest as far as collection. The
19 other piece that I would note is if you have specific
20 changes to language that you would like the POST Board
21 and its staff to consider, I would encourage you to
22 put those to writing as soon as you can in the
23 process. While you're certainly entitled to make
24 suggestions all the way through that 20-calendar-day
25 period that will follow tomorrow night's hearing,

1 again, we will give specific deadlines in a moment
2 about that, to the extent that you might have word
3 changes or drafting changes or language changes, to
4 give the Board staff the most amount of time to
5 consider your really good ideas, best to put those
6 early on in the process as is practicable because,
7 again, if they need to consider and reply to
8 suggestions on text that you might offer, best to give
9 them most of that 20-calendar-day period to confer
10 with you, to confer with others, to confer with the
11 Revisor's office. So, again, if you're more than just
12 policy ideas, if you have specific language that
13 you're promoting, it's best to get that in early in
14 the comment process if it is, in fact, practicable.
15 Next slide.

16 To present oral comments today in
17 Webex, at the bottom right-hand side of your computer
18 screen you just click on the chat icon, type in your
19 first and last name in the chat to request to speak.
20 That chat will go directly to the host of today's
21 Webex, the agency staffers who are manning the
22 stations. We're eager to hear from you, and when it's
23 your turn, we will take them in the order in which
24 people sign up in the chat, you will be prompted to
25 unmute your microphone and share with us your best

1 thinking.

2 We will also try to identify the
3 person who is next in line after the commentator who
4 is being recognized so that person can ready
5 themselves and be prepared to give their remarks.

6 But you don't necessarily need an
7 internet web connection in order to participate fully
8 in our process. You can also participate by way of
9 telephone. You just need to press the star and
10 number 3 on your telephone keypad to indicate your
11 interest in making a comment by phone. The host will
12 then put you in the queue in the order that your
13 signification of interest was received, and you'll be
14 directed to unmute your line when it's your turn to
15 talk. You will be identified by the first six
16 numbers, your area code and your exchange of your
17 telephone number. Again, we are not going to give all
18 of your telephone number away on the Webex. But just
19 so we know that we are talking about you, we will give
20 the, you know, this is a caller from the 218 area code
21 and they're from the 356 exchange, that way you will
22 know that we're talking about you. Then when you're
23 recognized, if, likewise, you can give us your first
24 and last name and spell that for the court reporter,
25 really very helpful. Next slide.

1 So for those who are presenting oral
2 comments on the Webex, really very important for you
3 to turn your video on so that we can see you and talk
4 with you, and then it's more of a neighbor-to-neighbor
5 conversation. Likewise, the Board staff that will be
6 participating when it's their time to either make a
7 presentation or to respond to their questions, they
8 will be toggling on their cameras to let folks know.
9 It's just sort of an internet netiquette to have
10 people know who is talking by turning their camera on.
11 Again because -- oops, if we can go back just a
12 second.

13 As I said it at the beginning, we
14 rely upon the wisdom of the group, and so to the
15 extent that folks can try to limit their initial
16 comments to four or five minutes or so, mindful that
17 there is a 20-day comment period where you can submit
18 detailed written comment, really with no page limit,
19 as much as you would like, but just to highlight the
20 key ideas that you would like the Board to consider in
21 your presentation as if you were talking to the local
22 library board or zoning commission or city council or
23 really neighbor to neighbor because as Minnesotans
24 that is what we are, we're working on problems of the
25 shared concern and public concern neighbor to

1 neighbor.

2 But to hear all of those neighbors,
3 to the extent that it's possible, we are going to ask
4 folks to, at least in the first round, to speak only
5 for about five minutes, mindful that if there is time
6 we will do subsequent rounds and allow people to talk
7 for longer periods of time. Again, we are trying to
8 get to as many possible views as possible, again, the
9 wisdom of the group. And importantly, there is a
10 brilliant, needed, insightful, fabulous comment on
11 your side of the question, the only problem it's in
12 line behind you, and if we let any one stakeholder run
13 down the clocks, then we are missing out on the wisdom
14 of the group. Okay. Next slide.

15 You can also, as I suggested many
16 times, submit comments by eComments, mail or fax. If
17 there is something that you don't get to say today, no
18 problems, write in and tell us and you get full
19 credit. We carefully and scrupulously read all of the
20 comments that are submitted. As I noted before, both
21 Judge Todnem and I have been assigned to this case
22 because we are expecting, and looking forward to,
23 frankly, a wide variety of very detailed comments, and
24 so our agency has staffed this appropriately. So you
25 should feel free and encouraged to write in and also

1 to encourage folks who you think care about this
2 question to let us know their views as well. They are
3 all considered the same.

4 For those who are making
5 presentations, it is very full helpful at the
6 beginning of your remarks to state and spell your
7 first and last name. The proceedings are being
8 transcribed by a team of very, very talented court
9 reporters, and we are trying to make an accurate
10 record of what has been said and proposed and offered
11 and questions, and so to the extent that we can know
12 where those comments are coming, really very helpful.

13 If you are commenting on behalf of
14 an organization, really very helpful if you identify
15 that you're speaking in a representative capacity on
16 that.

17 I have already broken this rule,
18 which is speak slowly and clearly. I probably burned
19 out the hands of the court reporter already. So it's
20 an important reminder, not only for me, but for
21 everybody for the clarity of the record to speak
22 slowly and clearly.

23 If you're reading prepared remarks,
24 my other admonition would be people tend to read a lot
25 faster than they talk in ordinary conversation. So if

1 you're going to read prepared remarks for your five
2 minutes or whatever, that is perfectly fine, we are
3 delighted to have it. What I would urge folks to do
4 is to read at what you think is an unbearably and
5 uncomfortable slow speed, but that will sound perfect
6 to the people who are listening to what you're saying,
7 trying to process what you're saying, and also the
8 court reporters who are dutifully transcribing every
9 word that you say.

10 Also for the benefit of everyone, if
11 you can spell names or technical terms which might not
12 be familiar to everybody. No doubt that there will be
13 some law enforcement or correction related jargon or
14 acronyms. If you can let us know what they are in
15 realtime, that also contributes to the clarity of the
16 transcript. So again, if you're using an acronym,
17 really helpful if you state the full phrase. Next
18 slide.

19 How to submit an eComment. This is
20 a graphic of the MinnesotaOAHgranicusideas website.
21 You can see there will be comments on proposed rules.
22 Next slide.

23 Very simply, just enter your email
24 address. If you don't already have an account with
25 us, you can sign up for an account and have it

1 password protected so we know it's just you. Once you
2 get a validated email, you will be a commentator. A
3 really low bar entry, we just want to know that it is
4 a real person and not Russian bots who are putting
5 into our rulemaking record. We don't share this
6 detail with anybody. We are not going to market you,
7 we are not going to spam you.

8 I will say, however, though that the
9 email address and your name and also public comment,
10 these are public records, you know, we want other
11 folks to be able to look at them. They won't have
12 access to your email address, but they are subject to
13 the Data Practices Act. So I just let people know if
14 folks later ask for copies of the record, there isn't
15 a separate protection for your email. But in our
16 view, we think this is a pretty low bar entry, and
17 it's better to have comments from real folks and some
18 verification, even if it is a low bar. Next slide.

19 So once you're into the discussion
20 areas, you can scroll past the comments to the bottom
21 of the page, enter your comments and any attachment
22 and click post. It couldn't be easier. You have
23 purchased things from Amazon in ways that are much
24 more difficult than this, and that is exactly the
25 point, which is we want to hear from you and to make

1 it as easy and as seamless as possible. Next slide.

2 Here's the time for comments. Make
3 sure that you write this date down. Tuesday,
4 December 6, 2022, that is 20 calendar days from
5 tomorrow and the close of tomorrow's public hearing.
6 The important point is that any time in that period
7 you can submit comments and they will be timely
8 received, but they must be received by OAH by 4:30
9 p.m. on that Tuesday. If it's 4:31 or 4:35, with
10 regret they are late and they won't be part of our
11 rulemaking record. It's a real tragedy and a shame if
12 you took the time to give us your best thinking and
13 share with us your wonderful ideas and important
14 expertise and it be excluded from our record because
15 you waited until the end of day on Tuesday or
16 misjudged the time. Okay.

17 So to keep a fair process with a
18 uniform rule for everyone, it's 4:30 p.m. as measured
19 by our clocks here at OAH on Tuesday, December 6,
20 2022. That is the initial comment period, and they
21 must be received by 4:30 p.m. that day.

22 After that we will collect the
23 comments altogether into a batch. Next slide. And
24 following that, those materials will be posted. There
25 will be rebuttal for anything that was received up

1 until the 6th of December, and there will be five
2 business days, so seven calendar days, five business
3 days to rebut anything else that has been said earlier
4 in the record. That is not a time to introduce new
5 arguments, oh, I forgot, I should have added X, but
6 only to respond to the comment or to put in context
7 the comments of other stakeholders. If you have a
8 rejoinder or reply that you want to make to something
9 else that has been said in our process, you can rebut
10 by Tuesday, December 13, 2022 at 4:30 p.m. Again, the
11 key part of that is the 4:30 p.m. No sense to wait,
12 if you have got a good idea and you can complete it,
13 send it in early so that we know that you have it on
14 time and that we have received it. Next slide,
15 please.

16 After that, Judge Todnem and I will
17 issue a report. The expectation is within 30 days of
18 the close of the record, unless an extension is
19 granted. That might be a conceivable possibility in
20 this particular case. The Chief Administrative Law
21 Judge is allowed to extend the time if there is
22 unexpectedly high volume of cases or other things or
23 comments or other things happening in our caseload,
24 sometimes the Chief will adjust outwardly the due date
25 for that report. There will be a separate finding and

1 order by the Chief Judge in that circumstance, and
2 that will likewise be posted to our website and to the
3 POST Board rulemaking website.

4 But assuming that all things go
5 according to plan, within 30 days of that
6 December 13th close of the record, you can view the
7 report on our website, and there are our opinion
8 archives, and we have also made a customized URL to
9 get to that quickly. The rulemaking report will be
10 posted on the very day that it's issued so that you
11 can have it. Next slide.

12 A reminder for lobbyists, if you, in
13 fact, are someone who is registered with the Campaign
14 Finance and Public Disclosure Board and you're making
15 a presentation on behalf of a client here to influence
16 the development of rulemaking, it is A-okay, but you
17 also need to make sure that you're current with your
18 registration with the Campaign Finance and Disclosure
19 Board. So we don't want to have an inadvertent
20 violation of the public disclosure laws if you're in
21 that special category. We're delighted to have
22 everyone participate, but we want those folks who have
23 registration requirements to follow those laws as
24 well. Next slide.

25 So during the public questions and

1 comments section, once we get to that piece, remember
2 that you just signify in the chat box or press the
3 star key and number 3 on your telephone keypad and you
4 will be added to the comment queue. Then when you're
5 done, likewise press the star and the number 3 key to
6 remove yourself from the queue. Also if you need
7 assistance from the operator, star and the zero key
8 and we will get you some help from one of our team
9 members. Next slide.

10 Again, the key deadlines that are
11 involved in this particular case: 4:30 p.m. on
12 Tuesday, December 6, 2022 for your written comments.
13 Again, if you have suggestions to the text, my
14 encouragement is to get those in early so that there
15 is the most amount of time to thoughtfully consider
16 and work on language changes.

17 If there are rebuttals, those must
18 be received by 4:30 p.m. a week later, five business
19 days later on Tuesday, December 13, 2022.

20 Again, the docket number, and this
21 one is right, is 8-9007-38401. If you can use that on
22 your correspondence, we can make sure that it gets
23 into the right file, particularly if you are writing
24 in or sending things by fax. Obviously if you are
25 using the eComment site, we know that it's part of the

1 POST Board rules group and you'll be part of the
2 comments that you want to be a part of.

3 With that, next slide, I want to
4 give my thanks, and we will turn it over to the Agency
5 Panel.

6 MS. GASPARD: Thank you. One
7 second. My name is Rebecca Gaspard, G-A-S-P-A-R-D,
8 and I am the Rules and Legislative Coordinator for the
9 Minnesota Boards of Standards and Training, usually
10 called the POST Board.

11 Before we hear from Chief McCarthy,
12 who is our Board Chair, and Justin Terrell, who is the
13 Chair of the Board's Rules Committee, and Erik
14 Misselt, who is our Executive Director, I would like
15 to offer into the hearing record the exhibits that
16 were filed previously with the Office of
17 Administrative Hearings. These exhibits, as was
18 mentioned earlier, are also posted on the Board's
19 website.

20 The purpose of the exhibits is two
21 fold. It's to demonstrate that the Board has the
22 legal authority to adopt the rules, and, secondly, to
23 demonstrate that the Board has fulfilled the legal and
24 procedural requirements in promulgating the rules.

25 So as required under Minnesota Rule

1 1400.2200, the exhibits are: Exhibit A, which is the
2 Request for Comments that was published back on
3 August 3rd of 2020 in the State Register; the
4 Exhibit B applies only to rules that are proposed in
5 response to a rule petition, so that doesn't apply in
6 this case. Exhibit C are the proposed rules that were
7 approved by the Revisor, and that is the original
8 rules proposed and not the modifications that we're
9 considering.

10 Exhibit D is the Statement of Need
11 and Reasonableness, also called the SONAR; Exhibit E
12 is the letter that mails the SONAR to the Legislative
13 Reference Library; Exhibit F is the Notice of Intent
14 to Adopt Rules With or Without a Hearing that was
15 published in the June 20, 2022 State Register.

16 Exhibit G are certificates. So G-1
17 is Certificate of Mailing the Notice of Intent to
18 Adopt Rules With or Without a Hearing to the
19 rulemaking list, and G-2 is a Certificate of Accuracy
20 of the Mailing List for that notice.

21 Exhibit H is the Certificate of
22 Giving Additional Notice under the additional notice
23 plan that has been approved by OAH and the judges.
24 Exhibit I has to do with the public comments that were
25 received, and those are -- that is Exhibit I.

1 Exhibit J is another exhibit that
2 doesn't apply to the Board because we did not request
3 approval to omit the rule text from the published
4 notices.

5 Exhibit K are documents or evidence
6 that show the Board's compliance with other rules and
7 statutes that we are required to follow in adopting
8 this rule, so there are eight K exhibits. K-1 is the
9 letter to the Minnesota Management and Budget Office
10 to comply with Minnesota Statute Section 14.131;
11 Exhibit K-2 is the certificate of sending the Notice
12 and Statement of Need and Reasonableness, the SONAR,
13 to the legislators and to the Legislative Coordinating
14 Commission in compliance with the Minnesota Statutes
15 Section 14.116; K-3 are the letters sending the Notice
16 and the SONAR to the legislators and to the
17 Legislative Coordinating Commission.

18 K-4 is the Notice of Hearing for
19 those folks who requested a hearing; K-5 is the
20 Certificate of Mailing that Notice of Hearing to
21 persons who requested a hearing; K-6 is the Notice of
22 Public Hearing Date Change as was published in the
23 October 3, 2020 State Register; K-7 is a certificate
24 of mailing that notice; and K-8 is the certificate of
25 the accuracy of the mailing list used for the mailing

1 of the Notice of Public Hearing Date Change.

2 And at this point I am going to turn
3 it over to Chair McCarthy.

4 CHAIR McCARTHY: Good morning, and
5 thank you so much, everybody, for being here. My name
6 is Kelly McCarthy, K-E-L-L-Y, M-C-C-A-R-T-H-Y, and I
7 am current Chair of the POST Board.

8 High level overview of the Board is
9 we have 17 members. Those members come from elected
10 officials, higher education, community members and
11 include nine members who are also licensed peace
12 officers, everywhere from the Superintendent of the
13 BCA to local police like myself. We are members of
14 the Chiefs' Association, MPPOA, State Patrol Troopers'
15 Association, Chiefs and Sheriffs' Associations. There
16 is over 200 years of law enforcement experience on the
17 Board alone.

18 POST staff consists of 15 members, 7
19 of whom are former law enforcement, with over 175
20 years experience between them.

21 So early in my appointment when I
22 was learning what we need to do as a POST Board, the
23 Executive Director and I kept hearing from the
24 Legislature that they wanted POST to drive the ship.
25 They didn't want us to be constantly relying on

1 legislation for rules and policies and updates, and
2 that they preferred that the process really include
3 those subject matter experts.

4 So we took their instruction and we
5 created this Rules Committee and this process to
6 change our rules, which is really a collaborative
7 process. We will talk a little bit about the Advisory
8 Committee in a moment, but they had 24 meetings, and
9 their findings and recommendations were then brought
10 to the Rules Committee, which had ten meetings on the
11 issue, and then to the full Board for our comments,
12 concerns. It just kept going around and around and
13 back and forth between those committees until you have
14 our first product.

15 We went out for public comments. We
16 got great feedback from stakeholders and we changed
17 the product accordingly.

18 That Advisory Committee on Rules
19 there was an application process, so people had to
20 want to be there, and it is one of the most diverse
21 groups that I have seen in government. We have people
22 from the faith community, higher education, the legal
23 community, current and former law enforcement with
24 over 300 years of experience. We have citizen
25 representatives and really well-respected community

1 organizations. This is the product that they worked
2 so hard to provide us.

3 We talk about the years of
4 experience that the law enforcement on the Board and
5 the staff have behind us, and those are important to
6 frame that we do have the experience to do this. What
7 is more important than the years behind us, are the
8 years ahead of us. I'm a license holder, I have
9 hopefully a long and safe career ahead of me, and I
10 will be subject to these rules. So this is not an
11 academic exercise for me. These are rules in which I
12 will be subject to, and I believe in the quality of
13 our product.

14 With that, I believe we move to
15 Chair Terrell.

16 MR. TERRELL: Good morning. My name
17 is Justin Terrell, you spell it J-U-S-T-I-N,
18 T-E-R-R-E-L-L, and I am the Chair of the Rules
19 Committee for the Minnesota POST Board. And I am
20 thankful for the opportunity to be here today for this
21 process. Justice Lipman and Justice Todnem, thank you
22 so much for this opportunity to come before you today.

23 I also want to say thank you to the
24 members of the Rules Committee and thank you to staff,
25 Rebecca and Erik thank you such for the support you

1 have given through this process.

2 I will keep my comments brief and
3 just say that we have followed our authority in the
4 statute which gives us authority as an agency to
5 address the concerns and within the rules. We have
6 followed a process that is -- and left the door wide
7 open for comment, public comment for people with quite
8 a bit of disagreement to work together and reach
9 across differences to produce a product that people
10 can trust and rely on.

11 And then finally, I will just say
12 that there is a need. There is clearly a need for
13 this. As Minnesota is a state that sparked a global
14 uprising, we want to make sure that licensees and
15 officers understand the standards that are in place to
16 help them do their jobs the best they can, help them
17 love their jobs and serve their communities that they
18 care about, and we want the public to understand that
19 there is a body here that is helping to build trust
20 between community while making sure officers and
21 community members have standards that everyone can
22 trust in.

23 So it's been my honor to go line by
24 line through this process with my colleagues and make
25 sure that we are listening, that we are learning, that

1 we are doing our best to serve our licensees and the
2 community members.

3 As a member appointed by the
4 Governor who represents the community, you know, the
5 last person in my seat was Philando Castile's uncle,
6 and I just I really take it serious the opportunity to
7 make sure that we are having this discussion in a
8 meaningful, fruitful way and try to ensure that our
9 state can go from being a state that is seen as having
10 some significant issues around this topic to one that
11 has figured out solutions, built bridges to move
12 forward.

13 So I thank you for this conversation
14 today. I will conclude my comments there and just
15 remind folks that we have followed the statute, we
16 have followed the process, and the need can't be
17 overstated. Thank you.

18 MR. MILLELT: Thank you and good
19 morning, everyone. My name is Erik Misselt, E-R-I-K,
20 M-I-S-S-E-L-T, and I am the Executive Director for the
21 Minnesota Board of Peace Officer Standards and
22 Training.

23 My comments regarding the rules are
24 to indicate that the proposed rules primarily focus on
25 the minimum selection standards for persons seeking

1 licensure as a law enforcement officer in Minnesota
2 and on the standards of conduct required of those
3 persons as they become licensed. In the interest of
4 time, I won't be covering the ground already addressed
5 in the Statement of Need and Reasonableness regarding
6 the reasons for the Board that the Board has
7 undertaken the review in updating the rules chapter
8 governing the work for the Board. I thank both Chair
9 Terrell and Chair McCarthy, who stated that pretty
10 well.

11 As Chair McCarthy mentioned,
12 specifically the Board received in excess of 1600
13 comments on the rules draft as published in June of
14 this year. After thorough review of those comments
15 and after much discussion, the Board expects to make
16 modifications to the proposed rules based on the
17 comments and suggestions received. These are
18 identified in the proposed modifications to the draft
19 rules, which are posted on our website.

20 Because the Board wanted to ensure
21 that there was adequate time to notice these possible
22 modifications, the Board took two very specific steps.
23 First, we delayed and rescheduled the hearing to allow
24 everyone time to consider the possible modifications
25 and to review the Board's response to the comments

1 received.

2 Secondly, we explained this and
3 provided access to the modifications as part of the
4 notification about the hearing date change that was
5 published in the State Register and sent out to our
6 licensees, the rule making notification list and
7 persons and organizations involved in the additional
8 notice plan that was approved earlier this year by
9 Judge Lipman and Judge Todnem. We also provided
10 access to the Board's preliminary response to
11 comments. The rule modifications and preliminary
12 responses are also posted on the website.

13 We are very grateful for the input
14 that we have already received on the possible rule
15 changes, and we are hopeful that you have all seen and
16 considered the draft rules and proposed modifications.
17 We look forward to hearing your comments and
18 suggestions.

19 Our panel, and I will remind
20 everyone who makes up the panel, it's Chief McCarthy,
21 Chair Justin Terrell from the Rules Committee, Rebecca
22 Gaspard is the Rules and Legislative Coordinator,
23 Angie Rohow, who is one of our Standards Coordinators,
24 and then myself. We stand ready to answer any
25 clarifying questions you may have. If a question

1 requires further consideration, we may answer the
2 question in our responses that will be filed during
3 the 20-day comment period after the hearings.

4 With that, I thank everyone for
5 attendance and your comments, and look forward to
6 working through this process. Thank you.

7 MS. GASPARD: That concludes the
8 Panel's presentation, Judges.

9 JUDGE LIPMAN: Forgive me, I was
10 muted. Can you hear me now?

11 MS. GASPARD: Judge Lipman, for one
12 moment I'm not hearing you.

13 JUDGE LIPMAN: Okay. Can you hear
14 me now?

15 MS. GASPARD: Yes, Your Honor.

16 JUDGE LIPMAN: Okay, great.
17 Wonderful, delighted about that. So as I understand
18 it, we are done with the agency presentation, so time
19 to turn to public comments. Have I got that correct?

20 MS. GASPARD: Yes, Your Honor.

21 JUDGE LIPMAN: So is Mr. Potts our
22 first commentator?

23 JEFF POTTS: Good morning, Your
24 Honor. My name is Jeff Potts and I am here rep -- is
25 the video coming on, Your Honor?

1 JUDGE LIPMAN: Yes, you're doing
2 just great. If you could spell your name for our
3 record, Mr. Potts, that would be grateful. And
4 following you would be Terry Stier. Mr. Potts.

5 JEFF POTTS: Yes, Your Honor, my
6 name is Jeff Potts. The last name is P-O-T-T-S. The
7 first name Jeff, J-E-F-F. I am the Executive Director
8 of Minnesota Chiefs of Police Association and recently
9 retired chief of police from the Bloomington Police
10 Department. I am here testifying on behalf of more
11 than 300 current police chiefs and another 150 command
12 staff officers who are members of the Minnesota Chiefs
13 of Police Association, which is a professional
14 membership association whose mission is to bring the
15 highest quality of police services to the people of
16 Minnesota.

17 JUDGE LIPMAN: Just a little slower,
18 Chief Potts, for our court reporter, if you wouldn't
19 mind.

20 JEFF POTTS: Okay. Sorry, Your
21 Honor.

22 JUDGE LIPMAN: No, no, it's great.

23 JEFF POTTS: My testimony today will
24 be focused on the use of the words or phrase
25 Brady-Giglio in the proposed rule changes. The MCPA

1 believes the language in this -- the language on this
2 issue has been improved from the previous version.
3 For example, in the background investigation
4 Section 6700.0670, Sub 1, Letter D, in the original
5 version it stated that peace officers must disclose
6 any conduct that resulted or may result in an
7 impeachment disclosure or Brady-Giglio impairment.
8 The new language is improved in the sense that it
9 literally states nine bullet points in lieu of the
10 word Brady-Giglio. This is on page 3 starting in 3.2.
11 And I won't read all, in the interest of time here, I
12 won't read all nine bullet points, but they do list
13 several issues or disciplinary cases, types of conduct
14 that we feel are appropriate.

15 However, the provision on page 3
16 includes a nine bullet point which reads: Other
17 conduct which a Brady-Giglio disclosure by a
18 prosecuting authority of which the applicant has
19 personal knowledge. Now, I want to draw attention to
20 that ninth bullet. This specific provision is
21 problematic because there is a high likelihood that
22 there is not a court finding of a required
23 Brady-Giglio disclosure and there may not be a
24 disciplinary matter related to the disclosure.

25 Brady-Giglio disclosures are solely

1 a prosecutorial determination. I want to repeat that:
2 Brady-Giglio disclosure determinations are solely made
3 by the prosecutors. Therefore, under the language of
4 the currently drafted rule, if an officer had known
5 about a Brady-Giglio disclosure issue, we do not think
6 the officer would be legally required to disclose
7 under this section unless it was related to discipline
8 or a court finding.

9 Our concern in this area is largely
10 due to the lack of a clear standard or application of
11 Brady-Giglio disclosure determinations. From one
12 county to the next, these determinations vary greatly,
13 and even within some offices from prosecutor to
14 prosecutor those determinations vary.

15 Your Honor, overall we do believe
16 the language in this section has improved from the
17 previous version, but specific reference to
18 Brady-Giglio disclosure on page 3 has the potential
19 for discriminative and inequitable disqualification of
20 police officer candidates or applicants. Therefore,
21 we recommend that this be modified or removed.

22 Lastly, I want to be clear: The
23 MCPA feels strongly that the POST Board does have the
24 authority to set the standards for peace officer
25 education, training and licensing criteria in

1 Minnesota. Accordingly, the goals of any rule change
2 process should be to ensure that any changes are
3 necessary, reasonable, objective and easily
4 interpreted by all parties. At this point in the rule
5 change process, we feel there is more work that can be
6 done to achieve these goals. As always, our
7 association would like to be part of those discussions
8 as this process moves forward.

9 Your Honor, thank you for allowing
10 me to testify here today.

11 JUDGE LIPMAN: Grateful for your
12 time and contributions to our record, Chief. I just
13 have one question before you go: Is it your view or
14 the association's view that in addition to the
15 variants amongst prosecutors who are making
16 Brady-Giglio type disclosures, that there is an
17 oversharing by some prosecutors? I would think that
18 would harm their particular cases if they're making
19 disclosures when they wouldn't otherwise be legally
20 required. Maybe you can help me understand that
21 piece.

22 JEFF POTTS: Your Honor, I
23 guess I'm -- I'm not going to be able to say I think
24 or I definitively believe that there is oversharing.

25 I think the main point with us is

1 that it's not consistent from one county to the other
2 or from one prosecutor to the other. And because of
3 that lack of consistency or standard, what would be
4 required in this version may differ from one county or
5 city to another. I think that is where our concern
6 lies.

7 We agree with bullets 1 through 8,
8 but where there is such a variance in application of
9 Brady-Giglio in point 9, we feel that can be
10 problematic and lead to different outcomes depending
11 on where you are at and what county or what city.

12 JUDGE LIPMAN: Okay, thank you.
13 Very, very grateful for your time and contributions,
14 and would encourage not only the association itself,
15 but its membership to write in during the comment
16 period. We benefit from your best thinking.

17 JEFF POTTS: Absolutely, Your Honor.
18 Thank you.

19 JUDGE LIPMAN: Thank you. Terry
20 Stier, and then followed by him is Richard Hodsdon.

21 TERRY STIER: Good morning, Your
22 Honor. My name is Terry Stier.

23 JUDGE LIPMAN: Stier.

24 TERRY STIER: Yes, T-E-R-R-Y,
25 S-T-I-E-R, and I am the current police chief of the

1 City of Belle Plaine and a member of the Minnesota
2 Chiefs of Police Association. I am here testifying on
3 behalf of more than 300 current police chiefs who are
4 members of the Minnesota Chiefs of Police Association,
5 a professional membership organization whose mission
6 is to bring the highest quality of police services to
7 the people of Minnesota. My testimony today will be
8 focused on language changes that prohibits police
9 chiefs from conducting background investigations.

10 Section 6700.0670, Subpart 2A of the
11 proposed rule changes articulates this rule on page 3,
12 line 3.6, which states the background investigation
13 may not be conducted by the chief law enforcement
14 officer or by anyone involved in the selection of
15 applicants for police officer positions. This
16 language creates an unnecessary hardship when you
17 consider all of the elements of a police officer
18 background check that may include citizenship status
19 or U.S. work eligibility, criminal history, driving
20 records, drugs and alcohol use, discriminatory
21 conduct, education verification, employment history,
22 military history, personal or professional references,
23 personal interview, residential history, records
24 checks such as financial info and social media,
25 inquiry into prior law enforcement agencies and

1 prosecution authorities where the peace officer
2 previously worked.

3 While a third party background check
4 organization can complete a criminal history check,
5 work eligibility, a credit history, many of these
6 elements of the required background check go beyond
7 what a third party organization can provide.

8 Nearly 50 percent of all police
9 agencies in Minnesota have fewer than 15 sworn
10 officers, some of which the police chief is a
11 part-time chief. These departments do not have
12 investigative staff or other staff responsible for
13 background investigations, especially the dozens of
14 department with one to five sworn staff.

15 In small departments, background
16 investigations call for CLEO involvement. For
17 example, the personal interview and reference checks
18 to prior employees, a background investigation for
19 officers is long, specific and a time-consuming
20 process. It's unreasonable to expect small
21 departments to be capable of conducting thorough
22 checks without CLEO involvement. We urge you to
23 acknowledge the current reality to allow CLEOs to
24 participate in background checks. It is our
25 understanding that this has been a practice for

1 decades and urge you to amend the rule proposed to
2 allow the following practice to continue.

3 Thank you for the opportunity today.
4 I can take any questions you have.

5 JUDGE LIPMAN: No, thank you so
6 much, Chief Stier. Very grateful for your time and
7 contributions, and likewise hope that you will
8 encourage your membership to participate vigorously in
9 the post-hearing comment period. But thank you so
10 much, Mr. Chief.

11 TERRY STIER: Thank you, Judge.

12 JUDGE LIPMAN: Okay. Richard
13 Hodsdon, and following him will be Renee Carlson.

14 As our two commentators so far have
15 proved, it's easy to make comments. Just put your
16 name into the Webex chat to join our queue or press
17 the star and 3 key on your telephone keypad.

18 With that, Counselor, if you
19 wouldn't mind stating and spelling your name for our
20 record. Mr. Hodsdon.

21 RICHARD HODSDON: There we go. I
22 was able to unmute, but I was having difficulty with
23 my image showing up, so I apologize to the Court.

24 JUDGE LIPMAN: It's all good. If
25 you could state and spell your name for our record.

1 RICHARD HODSDON: Now, I am back,
2 made it work. My name is Richard, common spelling,
3 last name is H-O-D-S-D-O-N. I am appearing today on
4 behalf as general counsel to the Minnesota Sheriffs'
5 Association. I also should note for the record I'm
6 appearing as the old guy. I was the person who the
7 POST Board rules that are still largely in effect
8 since 1978, 1979, I was a Special Assistant Attorney
9 General at the time who helped draft these rules. I
10 was around and I understand a lot of the history that
11 a lot of people involved in this proceeding probably
12 weren't even born yet.

13 But with that background I want to
14 address the issues. We have addressed some issues in
15 our written submissions on two occasions. I know
16 everybody can read and I won't replot that ground.

17 I do have a few comments. One in
18 terms of the reasonableness and authority, which is
19 one of the big three topics, of course, Your Honor,
20 you talked about. When I went through and I was
21 making notes of the exhibits that have been submitted
22 as part of this record, I note the exhibits include
23 the originally proposed rule, but the exhibits do not
24 include the proposed revisions adopted in response to
25 those rules. I think that is fairly telling because

1 it tells -- it should tell you that at least the
2 original rules need to be not enacted because the POST
3 Board itself through its representatives have
4 determined they are not reasonable and necessary. So
5 I think that immediately takes those rules off the
6 board or off the table from a reasonableness
7 discussion.

8 I want to address also the authority
9 of the POST Board to enact the rules. And I don't
10 have any dispute whatsoever that the Legislature, the
11 authority has been granted by the Legislature to the
12 POST Board to adopt many rules. My concern, and as I
13 submitted in my written document of October 23, 2022,
14 is the provision of the POST Board rules, specifically
15 proposed 6700.1615, which would, as I read it, purport
16 to give potential authority for the POST Board to take
17 disciplinary action against a chief law enforcement
18 officer because of what they perceive to be violations
19 not of statutorily authorized mandatory rules, for
20 example, mandatory policies and procedures, but those
21 that have been remanded or required by the POST Board
22 without express statutory authority.

23 I, on behalf of this organization,
24 my organization, do not believe the POST Board simply
25 has that legal authority, and so I think in that

1 regard they have the idea that they would be able to
2 discipline a chief law enforcement officer based on an
3 alleged rule violation is simply inappropriate.

4 I want to address some of the other
5 comments. Again, I have done this in writing. I have
6 concerns about the definition of discriminatory
7 conduct on First Amendment grounds. The definition of
8 discriminatory conduct has gotten somewhat better
9 compared to the initial draft, but I think it is still
10 fraught with peril for First Amendment purposes. It
11 would seek to disqualify somebody from entering the
12 law enforcement profession or justify the taking of
13 disciplinary action against someone in the law
14 enforcement profession who tends to -- if a person
15 doubts, and this is the language of the proposed rule,
16 they can be free of discriminatory conduct.

17 Likewise, to have a psychologist
18 issue an opinion that would deny somebody access to
19 this profession or potentially remove someone from
20 accessing this profession because of concerns about,
21 from a psychological standpoint, of discriminatory
22 conduct or discriminatory behavior, attitudes is
23 simply problematic under the First Amendment.

24 The idea of associational activity,
25 while the POST Board proposes to recognize First

1 Amendment religious freedoms in their updated
2 suggestion, they have utterly and completely
3 overlooked, as I cite in my materials, the First
4 Amendment also protects association, freedom of
5 association. This rule as proposed, the first time
6 it's implemented I think somewhat opens the door -- it
7 opens the door of an absolute claim of a First
8 Amendment violation based on freedom of association
9 that is not clearly related to the profession.

10 Like Chief Potts, I also have an
11 extreme concern, and perhaps a perspective that can
12 answer some of your unusual questions, Judge Lipman,
13 the concept of Brady-Giglio as a grounds to deny
14 somebody entry into the profession or to take
15 disciplinary action against an existing peace officer.
16 Brady-Giglio is nothing but a shorthand version of
17 disclosure of potential impeachment material.

18 I teach classes on the issue of
19 Brady-Giglio. I teach classes for the Minnesota
20 Sheriffs' Association. I am on the faculty of the
21 Northwestern University School of Police Staff and
22 Command. My career since 2008 I have taught these
23 issues to, by last count, to law enforcement
24 commanders and officials from 49 states and U.S.
25 territories. There is absolutely not a single

1 consensus anywhere in the law enforcement, and as
2 Chief Potts indicated, even within the prosecution
3 community as to what a Brady-Giglio so-called
4 disqualification is.

5 Brady-Giglio is nothing more than,
6 and certainly judges understanding this, it's an
7 evidentiary ruling that may or may not allow for
8 impeachment. There are, and I will represent as an
9 officer of the court, thousands of police officers in
10 this country who are on a so-called Brady-Giglio list
11 and still testify in court every day, who do their
12 jobs effectively and very competently.

13 Prosecutors in an abundance of
14 caution, to your point, Judge Lipman, overdisclose
15 Giglio in the modern era. The model, the mantra of we
16 prosecutors -- you have to understand, I have been
17 prosecuting since 1976 when I cut classes out of law
18 school to go down and under student practice prosecute
19 cases, so I'm kind of the old guy in that regard too.
20 Our motto is to disclose anything in doubt and then
21 fight like crazy to exclude it, and it almost always
22 happens, the judges do not allow the information in.
23 Why do prosecutors do that? Because the Minnesota
24 Supreme Court has actually disbarred a former
25 Minnesota County Attorney because they decided that he

1 had not properly disclosed Brady-Giglio information.

2 So in an abundance of overcaution,
3 many prosecutors overdisclose, to the point where even
4 within the prosecution community there is absolute
5 complete disagreement as to what is Brady-Giglio
6 disclosable material.

7 And so the idea that this could
8 impact someone's employment is simply unreasonable.
9 We already have a major shortage of officers, as other
10 witnesses I suspect will discuss. We are losing
11 officers, and now to remove competent officers because
12 of so-called Brady-Giglio issues is utterly
13 unreasonable. I think it exceeds the POST Board's
14 authority because it essentially imposes a standard of
15 conduct that cannot be measured for which there is no
16 consensus.

17 And I am trying to be mindful of my
18 time. I certainly have some related comments on the
19 discriminatory aspects of the proposed rules, but I
20 will hold off on those consistent with the direction,
21 Judge Lipman, that you gave us and open myself for any
22 questions that you or your colleague might have.

23 JUDGE LIPMAN: Not a question,
24 Mr. Hodsdon, but I am just hoping that the Sheriffs'
25 Association will not only make post-hearing comments,

1 but specifically address the statutory authority
2 argument that you have raised because that is an
3 important question.

4 RICHARD HODSDON: We have already
5 done that, Your Honor --

6 JUDGE LIPMAN: Okay.

7 RICHARD HODSDON: -- in our written
8 submissions. Given the volume of them, I suspect
9 neither the two of you have had a chance to digest
10 them. I will be monitoring and participating in this
11 proceeding, and should other folks raise issues that
12 need a rebuttal or response, you can be assured that
13 we will supplement our earlier submissions.

14 JUDGE LIPMAN: Okay. Is there a
15 particular date, do you recall when you wrote in and
16 we can look at that?

17 RICHARD HODSDON: Yes, the most
18 recent response to the proposed rule changes was on
19 October 23, 2020 (sic), and double-checked and
20 confirmed those have been posted to your site.

21 JUDGE LIPMAN: 2022, right?

22 RICHARD HODSDON: 2022, correct.
23 The earlier responses, the lengthy responses we did
24 were in response to the first submission of the rules
25 that were submitted. We were part of that approximate

1 group of 1600.

2 JUDGE LIPMAN: Okay. Many thanks,
3 Counselor. I appreciate your time and contributions
4 to the record. Also, mindful of the general time.
5 Again, I hope that members of the Sheriffs'
6 Association will take time to write in. We benefit
7 from your contributions to the record.

8 RICHARD HODSDON: Thank you, Your
9 Honor.

10 JUDGE LIPMAN: With that, Renee
11 Carlson. Following her will be Jason Kamerud.
12 Ms. Carlson, if you wouldn't mind stating and spelling
13 your name for our record.

14 RENEE CARLSON: Renee Carlson,
15 R-E-N-E-E, C-A-R-L-S-O-N.

16 JUDGE LIPMAN: Thank you so much.
17 Ms. Carlson, what should we know?

18 RENEE CARLSON: Good morning, Judge
19 Lipman and Judge Todnem, Members of the POST Board. I
20 am here today testifying on behalf of True North
21 Legal, the National Legal Foundation, Pacific
22 Institute and the Northstar Law and Policy Center, all
23 nonprofit organizations engaged in law and policy, all
24 of which are vitally interested in proper policing
25 within the confines of the United States and Minnesota

1 constitutions.

2 We have concerns about the POST
3 Board's revisions and amended revisions to the rules
4 governing education and training of peace officers in
5 the State of Minnesota. These rules infringe on
6 constitutionally protected rights of peace officers,
7 as previously discussed by the previous testifier, and
8 I will go into that a bit more in my testimony.

9 JUDGE LIPMAN: Ms. Carlson, just a
10 little slower for the benefit of Ms. Sauro, our court
11 reporter.

12 RENEE CARLSON: Certainly. These
13 rules infringe on constitutionally protected rights,
14 as I just mentioned, and fail to meet the SONAR's
15 stated objectives of transparency, clarity and
16 efficiency.

17 The proposed revisions to the rules
18 run afoul of U.S. Supreme Court precedent that a
19 government employee retain significant private rights
20 of speech and religion even when on the clock of
21 government employment.

22 Similarly, rules attempting to
23 regulate attorney licensure based on ADA Model Rule
24 8.34, by prohibiting them from discriminating on many
25 of the same categories identified in the POST

1 revisions was deemed unconstitutional by a Federal
2 Court in Pennsylvania on speech and due process
3 grounds. The proposed POST revisions suffer from the
4 same infirmities by seeking to regulate conduct taking
5 place off duty, punishing preemployment conduct and
6 beliefs, engaging in a legal view point
7 discrimination, and other numerous violations with
8 respect to vagueness and ambiguity.

9 There are several provisions in the
10 proposed rule revisions and amendments that are
11 troubling to us, but for the sack of time, I will just
12 briefly address those discriminatory conduct
13 provisions and then further address our concerns about
14 the constitutional infirmities.

15 First of all turning to the
16 discriminatory conduct in Section 6700.0100, Subpart
17 26. Though the Board did make some amendments, the
18 Board failed to cure the defects in its revision, as
19 the rules are still ambiguous, namely providing no
20 definition of the word egregious and no definition of
21 what constitutes a sufficient doubt to justify
22 discipline.

23 The circular definition of hate and
24 extremist groups in 6700.0700, Subpart 1I still lacks
25 clarity, which contradicts the Board's stated

1 reasoning for revising the rules in the first place as
2 discussed in the general statement of need in the
3 SONAR.

4 Equally confusing in 6700.1600,
5 Subpart 1H, an officer may violate the Standards of
6 Conduct if she disrupts the cohesive operation of law
7 enforcement by "supporting, advocating or
8 participating" in an indeterminable "hate or extremist
9 group".

10 Even worse, the rules provide that
11 such a violation is demonstrated by nearly any method
12 of communication, as well as financial and other
13 contributions and any "other conduct that could
14 reasonably be considered support, advocacy or
15 participation".

16 While the POST Board has stated its
17 authority and some of that authority has accurately
18 been stated, changing the rules does not give them
19 unfettered access to disregard constitutional rights.
20 Despite the Board's amendments to the revisions, the
21 constitutional infirmities remain, and I will address
22 three of them briefly.

23 First, these rules infringe on
24 freedom of speech. Peace officers in most
25 circumstances have the same First Amendment rights as

1 any citizen. When an officer is speaking as a private
2 citizen, the officer's speech is still protected. The
3 POST rule clearly reaches peace officer speech not
4 connected to their police work, yet there is no
5 question that peace officer speech outside their scope
6 of employment enjoys full constitutional protection.
7 The rules that are also clearly drafted with a
8 preference for one set of perspectives over another,
9 which is viewpoint discrimination, a clear violation
10 of the First Amendment.

11 Second, the proposed revisions
12 violate officer's due process, as there are no
13 standards to constrain or guide POST Board's
14 "evaluations" of "discriminatory conduct". Again,
15 another undefined term.

16 Peace officers are left hanging in
17 the balance, facing discipline up to termination
18 because of rules are not clear. The revisions do not
19 provide "fair warning" of what speech and conduct is
20 prohibited, while establishing arbitrary and
21 discriminatory enforcement by the POST Board. Again,
22 this is a clear violation of fundamental
23 constitutional protections as stated by the United
24 States Supreme Court and held by the United States
25 Supreme Court that the doing of an act in terms so

1 vague that people of common intelligence must
2 necessarily guess at its meaning and differ as to its
3 application violates the first essential of due
4 process of law.

5 Finally, these rules prohibit the
6 freedom of religion, even though the Minnesota
7 Constitution explicitly protects free exercise of
8 religion stating, "The right of every man to worship
9 God according to the dictates of his own conscience
10 shall never be infringed." In fact, Minnesotans are
11 afforded even greater protections and religious
12 liberties under the State Constitution than the First
13 Amendment of the Federal Constitution.

14 However, the text of the proposed
15 revisions is susceptible of being used to attack those
16 who sincerely hold and express religiously-based
17 opinions critical of the prevailing culture practices
18 as reflected in the provisions such as traditional
19 marriage and human sexuality.

20 While the amendment attempts to
21 create an exception based on membership in a religious
22 organization, and we appreciate that effort, the POST
23 Board fails to recognize that for many devout
24 religious observes, faith is not confined to
25 membership in organized religion. Rather, it is lived

1 out daily and transcends beyond membership within the
2 walls of a temple, church, mosque or synagogue. The
3 narrow exception does not offer peace officers whose
4 religious beliefs implore them to support, advocate or
5 participate in other organizations, religious or
6 secular, that may espouse the same position.

7 So I will turn to the practical
8 implications of the rule and in particular concerns
9 associated with freedom of speech, due process and
10 freedom of religion, as I just mentioned. We will
11 highlight the following issues and look forward to the
12 Board's response to those questions. As we reread the
13 rule, these questions come to mind and are
14 indeterminable to us.

15 Could a statement be made by a peace
16 officer in their private capacity at any age, at any
17 point in their lives and be the basis for denial of
18 employment or termination? Will a social media post
19 supporting female athletes desiring to play on female
20 only sports teams be grounds for termination or denial
21 of employment? What about a licensed peace officer
22 that makes a contribution to a religious group that
23 advocates for traditional marriage or expresses
24 concern about harmful gender transition efforts
25 towards minors, is this grounds for termination or

1 discipline?

2 Will a Muslim officer and parent who
3 joins an association of other Muslim school parents
4 expressing concern about males' access to private
5 female spaces be subject to denial of employment? I
6 met with somebody like that recently who was concerned
7 about this. Is a peace officer who joins an
8 independent Bible study program that teaches a
9 traditional view of marriage prohibited from
10 employment? Again, as we interpret the rules, these
11 questions are left to interpretation, which is
12 unconstitutional.

13 Every day peace officers in
14 Minnesota risk their lives for our safety and we are
15 thankful. Their rights, their freedoms and their
16 livelihoods deserve to be protected by the POST Board,
17 not taken away.

18 In the most current draft, the rules
19 do not adequately address the constitutional defects,
20 as previously discussed, and the comments we submitted
21 and are further discussed in the comments that we will
22 be submitting to the revised proposals.

23 If passed, these rules are sure to
24 invite a plethora of costly legal challenges to the
25 State where the rules will be subject to the most

1 stringent constitutional review. It is our belief
2 that such blatant disregard for the most basic
3 constitutional protections are unlikely to prevail in
4 any court of law.

5 For the reasons stated today, as
6 well as those addressed in our written comments, we
7 respectfully request that the proposed permanent rule
8 draft and proposed amendments to the rules governing
9 education and licensing of law enforcement officers
10 and related proposed rules regarding peace officer
11 training be disapproved. Thank you.

12 JUDGE LIPMAN: Ms. Carlson, one
13 question before you go.

14 RENEE CARLSON: Sure.

15 JUDGE LIPMAN: In your view, if the
16 Board's regulatory objective was to avoid licensure of
17 those either applicants or licensed peace officers who
18 off duty promoted use of threats, force, violence or
19 criminal activities to deprive other people of rights
20 or violent overthrow of the government, is that a
21 legitimate regulatory objective of the Board?

22 RENEE CARLSON: Well, I think the
23 Board absolutely has the objective to ensure that all
24 their peace officers are upholding the law in
25 accordance with the State and Federal law and

1 everything that is stated in those. However, that is
2 not what these rules do. These rules overreach, these
3 rules overstep and they violate multiple
4 constitutional freedoms afforded to these peace
5 officers. They need to be reevaluated and reworked so
6 that they don't just that and they don't overstep
7 their bounds.

8 As I stated earlier, although the
9 POST Board has authority for these regulations, I am
10 sure has the best intentions, but they have crossed
11 over the line into the private lives of peace
12 officers, and they have just stepped a bit too far and
13 they need to rework these rules so that they can,
14 again, support these constitutional protections that
15 are afforded to peace officers.

16 JUDGE LIPMAN: Thank you so much,
17 Ms. Carlson. If the Center has proposed language
18 changes, again, I would encourage you, among others,
19 to submit early, and we're eager for your best
20 thinking and suggestions for reform.

21 With that, I want to thank you and
22 move to Mr. Kamerud, and following Mr. Kamerud will be
23 Mr. Schneider.

24 Just generally as to timing, at
25 10:30, at the bottom of the hour, we will have gone

1 through our first 90-minute segment, and we will be
2 taking, after that, a short 15-minute break. But I
3 did want to try and see if we could get in at least
4 Mr. Kamerud and Mr. Schneider before the break.

5 Mr. Kamerud, if you would introduce
6 yourself for our record.

7 SHERIFF KAMERUD: Good morning. I
8 am Carver County Sheriff Jason Kamerud, and I am a
9 member of the Minnesota Sheriffs' Association and
10 speaking in part on their behalf today. I want to
11 thank you for giving me an opportunity to offer some
12 perspective on these proposed rule changes, and I will
13 do my best to be mindful of the clock and to keep you
14 on schedule.

15 First I want to commend POST for
16 tackling these tough issues and being forward-looking.
17 I would like to echo Justin Terrell's earlier comments
18 that changes are absolutely necessary for the
19 betterment of the profession and the people we serve.
20 Where there is disagreement with the proposal it
21 mostly centers on the language, not necessarily on the
22 idea.

23 In July I submitted a letter
24 requesting this hearing outlining several concerns
25 with the proposed changes. Some of those concerns

1 have since been addressed through recent revisions
2 issued in late September.

3 I also submitted a written response
4 to those revisions, and it's my intention to let the
5 content of that written response stand as written and
6 minimize the redundancy today.

7 Today's comments will focus on
8 proposed changes to the rules and the likely impact of
9 those changes on our recruitment and retention efforts
10 to bring in licensed peace officers. Law enforcement
11 across the nation has struggled to recruit, hire and
12 retain peace officers over the past couple of years.
13 It's in the wake of protests, pandemic and the
14 political rhetoric calling for defunding police and
15 dismantling some agencies. Sadly, Minnesota is the
16 epicenter of this anti-police narrative, and it's
17 creating challenges that, frankly, we've never seen
18 before.

19 We need POST's assistance in
20 building onramps to licensure, not creation of rules
21 that thwart our recruitment efforts.

22 In the early 1990s I was one of 400
23 applicants for a job with the Carver County Sheriff's
24 Office. Applicant pools of several hundred candidates
25 were really commonplace for large and mid-sized

1 agencies. POST had a surplus of licensed eligible
2 candidates. Today my agency sees about 30, give or
3 take, applications in a good recruitment window, with
4 many repeat candidates. My peers and colleagues, you
5 know, they're seeing different numbers, but they're
6 having similar experiences with a lack of suitable
7 qualified candidates. I am told that POST currently
8 has declines and lower numbers of eligibilities and
9 colleges are seeing decreased enrollments in criminal
10 justice programs.

11 The recent rate of outflow of peace
12 officers is substantially higher than the numbers of
13 people entering the career, that is per the Police
14 Executive Research Forum. Their data shows fewer
15 officers being hired and increased resignations and
16 retirements in the 2021 evaluation period.

17 Resignations were up 18 percent in 2021 compared to
18 '19 and '20. Retirements have increased 45 percent.
19 Basically those who are eligible to retire, did. The
20 hiring rate decreased 5 percent due to shortages.

21 In my own agency, we saw a 10
22 percent attrition rate in 2019, increasing to
23 39 percent in 2021. We have managed to hire at
24 reasonable rates, but that must be the good work of my
25 staff, but our hiring rates simply can't keep up with

1 attrition out there.

2 Many, including me, are calling this
3 a staffing crisis. In looking at those numbers, I
4 don't think I'm being hyperbolic.

5 Now, with that information as the
6 backdrop and context, I want to move on to the
7 particulars of the proposed rules and how that might
8 impact recruitment. The proposed rules, certainly
9 well-intentioned, but they're going to adversely
10 impact our recruitment efforts. The minimum selection
11 standards are mostly objective. Candidates can run
12 through their personal checklist and answer yes or no
13 to any questions, right. Citizen, yes. Driver's
14 license, yes.

15 But when we get to provisions
16 related to discriminatory conduct or participation in
17 extremist group, that kind of ambiguity is --

18 (Speaker had technical difficulties.)

19 JUDGE LIPMAN: Sheriff, can you hear
20 us? Sheriff? Sheriff? I am just standing by here
21 for a second in hopes that Sheriff Kamerud's audio
22 will return.

23 Ms. Gaspard or others, are we able
24 to move to Mr. Schneider and perhaps hear some final
25 thoughts from Sheriff Kamerud if his connection is

1 restored? Does that sound like a plan?

2 MS. GASPARD: Yes, that is certainly
3 possible.

4 JUDGE LIPMAN: Mr. Schneider, are
5 you able to introduce yourself for our record?

6 MARK SCHNEIDER: Certainly, Your
7 Honor. My name is Mark Schneider, M-A-R-K,
8 S-C-H-N-E-I-D-E-R. Sitting on my left is Gary Luloff,
9 G-A-R-Y, L-U-L-O-F-F. I represent Law Enforcement
10 Labor Services, and I am its general counsel. I am
11 also here representing the Minnesota Police and Peace
12 Officers' Association, along with Mr. Luloff
13 representing MPPOA as well.

14 Judges Todnem and Lipman, thank you
15 for this opportunity. Consistent with your
16 instructions, I would like to just provide a general
17 overview or make initial comments. I too will be
18 available for throughout the hearing for any rebuttal
19 or further specific comments, but I want to respect
20 the Court's time and initial comment limitations.

21 MPPOA is an association representing
22 over 10,000 police officers throughout the State of
23 Minnesota. Law Enforcement Labor Services is a public
24 safety labor union that represents over 6,000 law
25 enforcement, licensed peace officers, along with

1 firefighters, dispatchers, correction officers and
2 others.

3 We represent and want to bring to
4 the Court's attention the interests of not only
5 agencies that have over 500 licensed peace officers,
6 but those throughout the State of Minnesota that maybe
7 only have one officer. I know of departments that
8 have one officer being both the chief and the patrol
9 officer. There is agencies throughout the State
10 anywhere from one, like I said, up to hundreds of
11 licensed peace officers.

12 Points where we can agree, I guess
13 initially upfront, are, number 1, common goals for not
14 only our associations and groups, but for the POST
15 Board and others, are professionalism in the
16 profession of law enforced, licensed peace officers,
17 and law enforcement, along with ensuring public safety
18 throughout the State of Minnesota.

19 The mission of the POST Board, and
20 we did submit written comments, Your Honors, both on
21 July 20th and October 21st of this year, so I will not
22 reiterate everything that is in the written comments,
23 and certainly we will be filing post-hearing comments
24 as well.

25 But the Board's mission statement

1 states POST's philosophy is to serve as a resource and
2 partner with stakeholders, to ensure compliance with
3 State policies and training mandates. To ensure that
4 this mission and the common goals are met, an agency
5 such as the POST Board should review its rule on a
6 period or regular basis, but any changes or amendments
7 or modifications to those rules must pass
8 constitutional and legal muster.

9 As Chair Kelly McCarthy stated at
10 the POST Board's meeting on October 27, 2022, the
11 Board can't be the watchdog for every agency. And as
12 a practical matter, Your Honors, the goal and end
13 result of these rules is that the Board is taking on
14 the role of being the watchdog for every agency in the
15 State of Minnesota, contrary to the Board's goal and
16 mission.

17 The issues, the big three issues I
18 want to address those right now. Does the Board have
19 authority to adopt rules? The Board obviously has
20 authority to adopt rules, but those rules must be
21 consistent with the enabling statutes and the goal and
22 the basis and purpose for the agency. The enabling
23 statute is contained in Minnesota Statute 626.843,
24 Subdivision 1.

25 The topics and subject matter that

1 the Board is stepping into at this time are properly
2 for the Legislature and exceed the authority granted
3 to the POST Board pursuant to the enabling statute,
4 and I will talk later about and reference
5 specifically, Your Honors, to background
6 investigations, and more specifically in addition to
7 the public assembly addition to the rules that was not
8 authorized by the Legislature.

9 As the Court knows, statutes trump
10 rules as a general matter. As I indicated, I am
11 general counsel for LELS, and our members are part of
12 generally collective bargaining agreements, unions
13 throughout the State of Minnesota involving county,
14 municipal and state employers.

15 PELRA, the Public Employment Labor
16 Relations Act at Minnesota Statute 179A, at sequence,
17 talks about the rights of licensed peace officers,
18 well, generally public employees in general, but it
19 also talks about essential employees and licensed
20 peace officers.

21 Under the collective bargaining
22 agreements or the rules of the Bureau of Mediation
23 Services enacted pursuant to that statute, the
24 employers, the agencies and the involved employees,
25 the licensed peace officers, there must be progressive

1 discipline. There is a procedure in place to grieve
2 any disciplinary issues and to review the decisions by
3 CLEOs and others in terms of what is appropriate
4 discipline up to and including termination. The
5 Legislature has deemed it appropriate that licensed
6 peace officers are involved in arbitration, it's
7 mandatory arbitration. They do not have the right to
8 strike. That is interest arbitration, but also
9 grievance and disciplinary arbitration is in there as
10 well, to get an independent neutral fact finder to
11 make a determination as to the reasonableness of
12 discipline.

13 In fact, in August of 2020 the
14 Minnesota Legislature passed a statute regarding and
15 carving out specifically disagreements, arbitrations
16 in peace officer discipline cases and set aside and
17 created a separate procedure with a roster of six
18 arbitrators to ensure that and to look at and take
19 into consideration the public's concerns about
20 selecting arbitrators under the old process. The
21 Legislature spoke in that interest, in that instance,
22 and the Legislature did not speak to the POST Board to
23 enact and promulgate such overreaching rules.

24 JUDGE LIPMAN: Mr. Schneider,
25 mindful of the hour and we are almost up to our break,

1 do you have some concluding thoughts? Mindful that
2 you can get in line for a future round, if you would
3 like.

4 MARK SCHNEIDER: And I appreciate,
5 Your Honor, just very briefly to address some other
6 issues. Are the rules needed, and I will explain this
7 in more detail before? No, they are not needed. Are
8 they reasonable? No, there is too much uncertainty,
9 subjectivity, overbreadth and ambiguity. The rules
10 must provide direction to not only applicants and
11 current licensees, and they must be reasonably
12 specific to guide those applicants and licensees as to
13 what is allowed and not allowed.

14 The sheriff talked about recruitment
15 and retention, that is an important issue and an issue
16 that we cannot ignore. Later I will address Brady and
17 due process issues and certainly will answer any
18 questions of the Court, and subsequently I would have
19 questions for Chair McCarthy and Chair Terrell in
20 reference to the comments and testimony they provided
21 earlier. But I thank you for this opportunity.

22 JUDGE LIPMAN: No, no, very grateful
23 for your time and contributions to our record,
24 Mr. Schneider. What I guess I would encourage you to
25 do is to hang with us, and I would like to try and get

1 through the roster at least once, but for you to get
2 back in line for a longer segment, and you can visit
3 with members of the agency panel and also further
4 develop these ideas. Fair enough?

5 MARK SCHNEIDER: Very fair, Your
6 Honor. I appreciate it. Thank you.

7 JUDGE LIPMAN: Okay. So with that,
8 we are about to take our 90-minute court reporter
9 refreshment break. We will be back at precisely
10 10:45, so 15 minutes from now. Folks can stay tuned
11 to the webinar, we would encourage that, but we are
12 just going to mute microphones. And you will want to
13 come back because we're going to hear from Brian
14 Weierke when we get back and you will certainly want
15 to stay tuned for his comments.

16 With that, you have my very grateful
17 thanks and we are in recess to precisely 10:45.

18 (Angela Sauro was the court reporter
19 from page 1 through page 68.)

20
21 * * * *
22
23
24
25

1 (At this time a brief recess was taken
2 from 10:30 a.m. until 10:45 a.m.)

3 JUDGE TODNEM: It is 10:45, so I'd
4 like to resume the hearing. I believe we left off with
5 Mr. Schneider. So, Mr. Brian Weierke, if you are ready,
6 please proceed. I can't hear you. Looks like you're
7 unmuted, Mr. Weierke. I'm sorry, I can't hear you.
8 Ms. Gaspard, are you able to hear Mr. Weierke?

9 REBECCA GASPARD: No, I can't. I'm
10 trying to see on our end, it looks like he's not muted
11 in our participant list, but I see a mute on his screen.
12 Mr. Weierke, can you speak? That didn't work.

13 JUDGE TODNEM: I don't see a mute
14 symbol by his name, so I wonder if it's the hardware
15 setting. Perhaps while we're waiting for Mr. Weierke to
16 resolve the technical issue I'll just put a call out for
17 any other public commenters who have not had an
18 opportunity to speak yet, please be sure to notify that
19 indication in the chat or press Star 3 if you're
20 attending by phone.

21 BRIAN WEIERKE: Can you hear me now?

22 REBECCA GASPARD: Yes, I can hear
23 you.

24 BRIAN WEIERKE: All right. Sorry
25 about that.

1 JUDGE TODNEM: No problem.

2 BRIAN WEIERKE: Good morning, Your
3 Honor. My name is Brian Weierke, B-r-i-a-n, last name,
4 W-e-i-e-r-k-e. And I am the police chief in the city of
5 Fridley and the current president of the Minnesota
6 Chiefs of Police Association.

7 I'm here testifying on behalf of more
8 than 300 current police chiefs and another 150 command
9 staff officers who are members of the Minnesota Chiefs
10 of Police Association, which is a professional
11 membership organization whose mission is to bring the
12 highest quality of police services to the people of
13 Minnesota.

14 My testimony today will be focused on
15 the definition of discriminatory conduct as it is
16 currently presented in the proposed rule changes. We
17 believe the definition of discriminatory conduct is more
18 concerning in the latest version of the proposed rule
19 changes.

20 Specifically Page 1, Line 1.7 now
21 reads, "and would lead an objectively reasonable person
22 to doubt the actor's ability to perform the duties of a
23 peace officer in a fair and impartial manner."

24 The previous draft read, "to conclude
25 that the individual may not perform the duties of a

1 peace officer in a fair and impartial manner." We feel
2 the word "conclude" is more concrete. Conversely, the
3 word "doubt" is vague. So, doubt is much more concrete.

4 We do agree the definition of a
5 discriminatory conduct was improved from the previous
6 version in this section that now excludes religious
7 membership.

8 However, our concerns return in the
9 Minimum Selection Standards Section 6700.0700, which
10 articulates the minimum selection standards for officer
11 eligibility. For example, in 6700.0700, sub 1(H)
12 states, "have no record of participation or support of
13 an extremist or hate group as described in part
14 6700.1600, sub 1(H) through (I)," Page 10, Lines 10.18
15 and 10.19.

16 While we do not support or condone
17 police officers participating with any groups that would
18 undermine the public's trust, we feel the proposed rule
19 change language that states "support, advocate for or
20 participate in a white supremacist, hate or extremist
21 group" will be problematic without clearly articulated
22 definitions of a hate or extremist group.

23 Currently the FBI and other
24 organizations who have created lists of such groups
25 would provide more objectivity to the rule change

1 proposal.

2 Similarly, under the standards of
3 Conduct provision, Section 6700.1600, sub 1(H), an
4 officer cannot "undermine or jeopardize public trust in
5 law enforcement, create an appearance of impropriety, or
6 disrupt the cohesive operation of law enforcement by
7 supporting, advocating, or participating in any form as
8 identified in part 6700.1600, subpart 1(I) in the
9 activities of a white supremacist, hate or extremist
10 group or criminal gang that, as demonstrated by its
11 official statements or principles, the statements of its
12 leaders or members, or its activities."

13 Again, the vagueness and subjectness
14 of the words "hate" or "extremist groups" are an issue.
15 In today's society we hear the word "extremist" used
16 commonly to describe some political groups and it will
17 change as the political landscape evolves.

18 Without clearly and objectively
19 defining these terms it is reasonable to expect that
20 they could be weaponized by individuals or groups for
21 purposes of which these rule changes were not intended
22 for.

23 In closing, we respectfully request
24 that you provide a recommendation that will provide more
25 clarity on this section of the rule changes. Thank you

1 for allowing me to testify here today, Your Honor.

2 JUDGE TODNEM: Thank you very much
3 for your comments, Mr. Weierke. I'm sorry, I'm not
4 remembering your title.

5 BRIAN WEIERKE: Fridley Police
6 Chief.

7 JUDGE TODNEM: Yes. Ms. Gaspard, do
8 you know if we have any other comments or people wishing
9 to comment that haven't spoken yet before?

10 REBECCA GASPARD: No, we don't have
11 anyone who is on our list.

12 JUDGE TODNEM: All right. I believe
13 Mr. Schneider had additional comments he wanted to make.
14 So, I will open the floor to Mr. Schneider again at this
15 time. Is Mr. Schneider still present?

16 MARK SCHNEIDER: Yes, I am. Thank
17 you, Your Honor. When is it appropriate to ask
18 questions of previous presenters?

19 JUDGE TODNEM: I'm not sure who you
20 mean by previous presenters. We typically don't have
21 public commenters asking questions of other commenters.
22 Typically questions would go to the Panel. Or if you
23 wanted to, I guess, present a question where members of
24 the public could respond if they wish to, that would be
25 fine.

1 MARK SCHNEIDER: I should have been
2 more clear, I meant the Panel from the POST Board
3 representatives. Before we signed off for the morning
4 break I indicated I had a question or two for Chair
5 McCarthy and Chair Terrell.

6 JUDGE TODNEM: Okay. Now would be a
7 good opportunity. Should we make sure that they are
8 ready and available? Great. Thank you. Go ahead,
9 Mr. Schneider.

10 MARK SCHNEIDER: Thank you, Your
11 Honor. Good morning, Chair McCarthy. During your
12 comments and testimony you had indicated that you had
13 heard from the legislature that POST was to drive the
14 ship.

15 I'm wondering, how did you hear from
16 the legislature, what the process was and who did you
17 talk to?

18 KELLY MCCARTHY: Thank you so much
19 for that comment. So, when I was onboarded in 2019 I
20 met with several members of the legislature,
21 specifically members of the Public Safety Committee, and
22 asked how things changed and how rules were made and how
23 we were going to evolve.

24 I can certainly look back to my notes
25 and I'd be happy to get you dates, times and names. And

1 we'll make sure to include that in our written response.
2 Thank you.

3 MARK SCHNEIDER: Thank you, Chair
4 McCarthy. Would you agree, though, that historically
5 the POST Board took direction from the legislature?

6 KELLY MCCARTHY: We follow statute
7 that the legislature creates. Is that what you mean?

8 MARK SCHNEIDER: Yes, historically
9 that's how the POST Board operated before now.

10 KELLY MCCARTHY: We currently follow
11 statute created by legislature.

12 MARK SCHNEIDER: I know you don't
13 have all the information in front of you, but just so I
14 understand your comment and testimony, that when you
15 came on board as the Chair, you had discussions with
16 members of the legislature that the POST Board should
17 now drive the ship, whereas it was previously driven by
18 the legislature.

19 KELLY MCCARTHY: So, the comment was
20 they wanted more subject matter experts input. And
21 there will always be legislation, but what was told to
22 me specifically by Chair Mariani was that licensing
23 agencies should set those or bring those recommendations
24 forward for legislature to consider or for us to change
25 our rules.

1 MARK SCHNEIDER: And was this
2 discussion with Chair Mariani before or after the
3 legislature failed to enact legislation that dealt with
4 the subject matter of the proposed rules?

5 KELLY MCCARTHY: I can go back and
6 look and, like I said, get you those times and dates and
7 provide that for you in our written response.

8 MARK SCHNEIDER: I would appreciate
9 that. Thank you, Chair. And then, I just have one or
10 two questions for Chair Terrell.

11 JUDGE TODNEM: All right.
12 Mr. Terrell, we can't hear you. There we go.

13 MARK SCHNEIDER: Mr. Terrell, can you
14 hear me? This is Mark Schneider.

15 JUSTIN TERRELL: I can hear you. Is
16 my audio working?

17 MARK SCHNEIDER: It is, sir, thank
18 you. In your testimony or comments you had indicated
19 that the POST Board followed the authority of statute.
20 Do you recall that?

21 JUSTIN TERRELL: I believe so, yes.

22 MARK SCHNEIDER: And do you know what
23 statute was followed by the POST Board and/or your
24 committee?

25 JUSTIN TERRELL: I believe I was

1 speaking to the authority of the POST Board granted in
2 statute, which is 626.843, which I believe, off the top
3 of my head, is about rulemaking.

4 MARK SCHNEIDER: And that's the
5 enabling statute or what we've been referring to as the
6 enabling statute?

7 JUSTIN TERRELL: I'm not an expert on
8 statute as a community member, I'm just citing what's in
9 the SONAR.

10 MARK SCHNEIDER: I appreciate that,
11 Chair Terrell, thank you for answering that question.
12 That's all I have for Chair Terrell.

13 JUDGE TODNEM: Okay. Thank you,
14 Mr. Terrell. And do you have any other questions at
15 this time, Mr. Schneider?

16 MARK SCHNEIDER: I do not have any
17 questions at this time. Thank you.

18 JUDGE TODNEM: Okay. Thank you. I
19 do have some additional commenters. So, first up we
20 have Jamael Lundy and following Mr. Lundy we have
21 Richard Hodsdon.

22 JAMAEL LUNDY: Hello, can I be heard?

23 JUDGE TODNEM: Yes, we can hear you.
24 Thank you, Mr. Lundy.

25 JAMAEL LUNDY: My name is Jamael

1 Lundy, I'm a former staff at the legislature,
2 specifically the Public Safety and Criminal Justice
3 Reform Committee. I am a --

4 JUDGE TODNEM: Mr. Lundy, can I quick
5 ask you to please spell your first and last name?

6 JAMAEL LUNDY: Yes, J-a-m-a-e-l is my
7 first name. My last name is Lundy, L-u-n-d-y. And as I
8 was stating earlier, I've served as a community
9 administrator for the Public Safety and Criminal Justice
10 Reform Committee for four years.

11 Currently I am a policy advisor for a
12 non-profit criminal justice reform organization. I also
13 work with NAACP and a number of other community
14 organizations. And I'm here to testify in support of
15 this full slate of rule changes that are moving through
16 the POST Board currently.

17 Specifically I just want to commend
18 the POST Board for after 50 years of lack of action on
19 police accountability that they have finally taken a
20 major step forward to modernize their police
21 accountability system.

22 I want to commend the law enforcement
23 officers who voted in support of that measure. And I
24 also want to speak in support of specifically the white
25 supremacy piece as a person who lives in Hennepin County

1 and who's been organizing around a lot of the
2 allegations that recently surfaced around the sheriff,
3 Sheriff Hutch.

4 I'm happy the POST Board did take
5 action. However, I regret that they were unable to take
6 action on some of the regrettably racist comments that
7 were found in his text messages. And partly that was
8 due to there being no rule to reign in some of this
9 white supremacist ideology.

10 There's no code of conduct available
11 when someone is clearly acting in a prejudicial manner.
12 And that's where I would hope that the POST Board would
13 enthusiastically take action and bring forth rules like
14 the ones they have brought forward to ensure that
15 there's a level of constitutional policing that all laws
16 are -- that all folks are treated equally under the law
17 as demanded from the Equal Protection Clause.

18 And finally, I would just lift up the
19 need of the POST Board to -- as a person who worked in
20 the legislature, I wouldn't presume to speak for the
21 legislature.

22 However, my understanding of the
23 recent massive statutory changes that affected the POST
24 Board was that the legislature was setting an
25 intentional new direction for the POST Board to be more

1 active. And I'm glad the POST Board responded to that
2 legislative directive and actually have taken action.

3 So, with that, I would just like to
4 say thank you again to the POST Board for doing this
5 incredible work. And thank you again for all the law
6 enforcement officers who have been partners in that
7 work.

8 JUDGE TODNEM: Thank you, Mr. Lundy,
9 we appreciate your comments. And we'll again encourage
10 anyone to also submit any written comments that they
11 would like. Those deadlines are 4:30 p.m. on December
12 6th for initial comments and rebuttal comments are due
13 at 4:30 p.m. on December 13th.

14 With that we can go to Mr. Richard
15 Hodsdon for his second round of comments. And following
16 Mr. Hodsdon we do have comments from a caller with the
17 numbers 952-361. Mr. Hodsdon?

18 RICHARD HODSDON: Thank you, Your
19 Honor. Just for clarification, I believe that caller,
20 the call-in, is Sheriff Kamerud, who as you know was cut
21 short. So, you will be able to hear the rest of his
22 presentation.

23 I want to loop back and address some
24 of the other burdens and cost issues and legal issues
25 that these rules as presented may well be proposing.

1 And again, I've talked about these in my correspondence
2 of October 23, 2022 and newer correspondence.

3 As to the cost issue, and I address
4 the Line 17.4 and 17.5 in terms of policies and
5 requirement they be made available to the public and as
6 public documents. No one that I know of has an issue
7 with that, but what we do have an issue with is the cost
8 and the term that was previously used is weaponizing.

9 The Data Practices Act has, in fact,
10 been weaponized already. And as I reflected in my
11 concerns, I have concerns that the POST Board rules and
12 requirements along with Data Practices would be
13 weaponized in the sense it would -- there's the
14 potential risk as this rule is written to use this as a
15 tool not for public education or advancement, but
16 harassment.

17 And so, what we have suggested is
18 that any reference to the status from a data management
19 standpoint of rules and policies, simply it's an easy
20 fix, just simply cross-reference to the provisions of
21 Chapter 13, the Data Practices Act. And we would
22 encourage you to recommend to the POST Board to do that.

23 I also have concerns relative to the
24 background investigation. Because as written these
25 rules don't seem to understand that peace officer

1 backgrounds are done one of two stages in Minnesota and
2 around the country.

3 Some agencies do a pre-offer. In
4 fact, that's the majority of the process of background
5 investigation before a conditional offer of employment
6 has been made. Some agencies do it afterwards.

7 For those who do a pre, these rules
8 actually set an agency up with a choice of either
9 complying with the POST Board rules or breaking federal
10 law.

11 The rules contemplate such things as
12 accessing information about psychological information,
13 alcohol and drug use. Alcohol and drug use by a person
14 who is in recovery if they've been an addict is
15 protected under the Americans with Disabilities Act.
16 It's a violation of federal law to collect that
17 information until a conditional offer of employment has
18 been made.

19 So, I think the POST Board needs to
20 consider that rule relative to requirements of federal
21 law unless it wants to join local law enforcement as a
22 defendant in an EEOC complaint. None of us obviously
23 wants that.

24 There's also multiple practical
25 aspects that I commented on in my October 23rd letter as

1 to background investigations. But I want to loop back
2 also to the behavioral issues and the Brady issue.

3 And I find it incredibly ironic, as I
4 noted on Page 4, and I'm addressing now Lines 9.1 to
5 9.3. I already talked earlier today about how nobody in
6 the prosecution world, there's a lot of disparity about
7 what is or is not a Brady disclosure obligation.

8 But if there's one universal
9 standard, it's a theft criminal conviction where it's
10 been proven beyond a reasonable doubt a person has been
11 convicted of the crime of theft. Under existing law
12 that's grounds for any licensee in Minnesota, not just
13 peace officers, to lose their license.

14 It's universal grounds, if there is
15 any, for Brady Giglio disclosure. And yet, this
16 proposal would actually weaken the standard of
17 responsibility and integrity because it's going to for
18 the first time in the history since the POST Board came
19 into existence, would allow people with theft
20 convictions to actually get a peace officer license.

21 And I think that provision is
22 completely contrary to everything else that the POST
23 Board is seeking to accomplish by raising the bar of
24 quality law enforcement. It, in fact, actually lowers
25 the bar.

1 I will join in the comments relative
2 to the -- what's been made already about the
3 constitutional concerns of the defining of an extremist
4 group, particularly when it specifies white extremist
5 group. The Southern Poverty Law Center has clearly
6 identified that there are other extremist groups of
7 other racial composition.

8 And in a speech delivered on
9 March 17, 1966, Dr. Martin Luther King actually
10 addressed that and said, for example, black extremism is
11 as dangerous to our society as white extremism. So, I
12 think that language is problematic for all the reasons
13 that have already been articulated.

14 There are other issues relative to
15 standards of Conduct, for example, Line 11.18 states
16 grounds for disciplinary action is misuse of government
17 data, but that has not been defined.

18 The BCA has historically defined
19 misuse of government data to be a person accessing their
20 own driver's license information. That's not a
21 violation of state law, you're accessing private data
22 about yourself, but they have labeled it misuse. Is the
23 intention to take away some officer's livelihood because
24 they looked themselves up without violating state law?

25 Likewise, I point to Line 12.15 where

1 it talks as grounds for disciplinary action the
2 unnecessary severity and execution of a search warrant.
3 Again, that's not defined, that's an armchair
4 quarterback decision. What is considered unnecessary
5 severity? There's absolutely no definition.

6 And this is going to create more
7 uncertainty, open the door for more issues and problems,
8 as Sheriff Kamerud has discussed. People don't want to
9 become a law enforcement professional only to lose their
10 license for something they thought they were acting in
11 good faith.

12 I recognize the POST Board would have
13 discretion in this area. It doesn't necessarily mean
14 because it's alleged that an officer made these
15 violations that they either don't get a license or lose
16 their existing license. But we all know in civil
17 litigation one of the big problems is winning a case
18 that should never have been filed in the first place.

19 These rules would have the risk of
20 imposing substantial burdens on individuals, even those
21 who are exonerated. There's no provision to reimburse
22 them, for example, for the time and money they have to
23 spend defending themselves against frivolous complaints
24 filed with the POST Board.

25 So, I think adding these vague,

1 nebulous definitions simply opens the door for those who
2 would weaponize the POST Board rules not to improve the
3 profession, but to attack individuals who are trying to
4 serve the public. With that, I'll conclude my
5 comments.

6 JUDGE TODNEM: Thank you,
7 Mr. Hodsdon, I appreciate your comments. So, I was told
8 the caller 952-361, are you there?

9 SHERIFF KAMERUD: Sheriff Kamerud.

10 JUDGE TODNEM: Yes, okay. Looks like
11 you are currently muted.

12 SHERIFF KAMERUD: Can you hear me
13 now?

14 JUDGE TODNEM: We can hear you, thank
15 you.

16 SHERIFF KAMERUD: Terrific. I would
17 like to apologize for the Internet failure at Carver
18 County. We're wiped out and it cut off somewhere in the
19 middle of my testimony. I have no idea how long I was
20 speaking, but you can rest assured that everything I was
21 saying was both riveting and persuasive.

22 JUDGE TODNEM: I have no doubt.

23 SHERIFF KAMERUD: I will -- I think I
24 heard somebody talking about legality piece and I will
25 leave that as is and pick up roughly where I think I was

1 left off. To circle back, if you remember my concerns
2 about these rules relate to the impact on recruitment
3 and retention of peace officers.

4 The rules prohibit -- the proposed
5 rules, that is, as a Minimum Selection Standard and as a
6 Standard of Conduct, it prohibits supporting, advocating
7 or participating in any activities of a white
8 supremacist, hate or extremist group or criminal gang.

9 Now, to be clear, I have no problem
10 with prohibiting association with white supremacist
11 groups, hate groups or criminal gangs. In fact, I think
12 that's a pretty good prohibition. When we get to
13 extremist groups, however, I have some concerns.

14 And specifically as we read through
15 the proposed rules the language indicates, in part, that
16 an extremist group is a group that promotes the use of
17 criminal activity to achieve goals that are political,
18 religious or ideological in nature.

19 A would-be peace officer may
20 interpret these rules as a prohibition of his or her
21 ability to participate in nonviolent protests that
22 includes criminal activity like blocking the freeway,
23 violating curfews or refusal to disperse while they are
24 supporting or advocating a political or religious or
25 ideological cause.

1 Now, certainly POST will assert they
2 would not act on a licensee for First Amendment
3 protected actions. But given the divisiveness of our
4 country and the political, religious and ideological
5 topics being discussed today, politics will lead to a
6 predictable and preventable abuse of POST authority.

7 As an example of current political
8 pressures, the Associated Press reported 3,000 names of
9 current and former members of the extremist group Oath
10 Keepers were leaked in Fall of 2022, some of whom were
11 cops.

12 The AP reported some of the people
13 whose names were leaked said they were members years ago
14 and then left the group because of the extreme views.
15 And others credibly asserted that they were never even
16 dues paying members.

17 Now, I'm not defending the Oath
18 Keepers or their views, I'm simply using this recent
19 news story of an example of people getting caught up in
20 the escalating situation after exploring a group like
21 this and the political pressures that were applied
22 afterwards. There were political pressures to "cancel"
23 these alleged members.

24 The proposed rules go on to prohibit
25 engagement in cyber or social media posts, chats, forums

1 or other forms of promotion of the groups' activities or
2 the display or use of insignia, colors, tattoos, hand
3 signs, slogans or codes associated with the group. And
4 those are some pretty ambiguous prohibitions, in my
5 estimation.

6 what actions actually constitute
7 engagement in social media posts? And how do we account
8 for the evolution of hand signs? You might remember
9 Minneapolis Mayor Betsy Hodges and the 2014 Pointergate
10 story that drew national media attention. More recent
11 stories about the OK hand gesture now being classified
12 as a symbol of hate.

13 These stories broke because of photos
14 and dubious context about the photos. It's entirely
15 possible for a licensed peace officer to get caught up
16 in news stories like these. And people, including
17 high-ranking political figures, will pressure POST to
18 act.

19 would be peace officers and current
20 peace officers reading these rules are rightfully
21 concerned about the potential for abuse and may simply
22 opt out of policing. POST needs to maintain its
23 authority to impose licensed disciplinary action for a
24 violation of Standards of Conduct, no disagreement
25 there.

1 Here again, though, the proposed
2 rules are problematic for recruitment and retention
3 efforts. POST has the authority per statute to take
4 license actions for failure to intercede when observing
5 unreasonable force. However, in the rulemaking
6 proposal, POST has granted itself broader authority than
7 outlined in statute.

8 Specifically Minnesota law requires a
9 peace officer to intercede when, one, present and
10 observing enforcing violation of the deadly force
11 statute or force that was otherwise unreasonable. And
12 two, physically or verbally able to intercede.

13 The proposed rules do not have the
14 provision related to physically and verbally able to
15 intervene. Instead, POST omitted the second prong of
16 the analysis.

17 And it may very well have been a
18 simple oversight or done in the interest of brevity, but
19 this sort of proposal and omission leads to distrust and
20 may cause candidates and current license holders to opt
21 out of policing as a career.

22 Along those same lines, POST has the
23 authority to act in instances of using deadly force when
24 not authorized by Minnesota statute. It's now seeking
25 to broaden that authority to instances involving

1 unreasonable or excessive force, unauthorized use of
2 force or the unauthorized use of deadly force.

3 wouldn't unreasonable or excessive
4 force be assault? And isn't conviction of a crime of
5 violence already actionable? My point is that this
6 appears to be POST's efforts to be able to substitute
7 its judgment for that of the police chief or the
8 sheriff.

9 Licensees working in my organization
10 know they will be held to account for their performance
11 or misconduct. And they know that the management
12 decisions that I make will be based on the totality of
13 circumstances, which includes their entire body of work
14 while with our organization.

15 POST obtaining the ability to
16 supersede my judgment when it does not agree with my
17 decision does not serve the interest of peace officer
18 retention. Further, this language has the predictable
19 potential for abuse when the prosecutorial review
20 concludes that no prosecution will occur.

21 The agency or an arbitrator concludes
22 that the action did not warrant termination of
23 employment, but everyone agrees that the action was
24 distasteful and the politics of our cancel culture now
25 demand a public pound of flesh.

1 As the elected sheriff, along with
2 the other 86 duly elected sheriffs, we rely on the
3 voters to let us know if we're doing the right things
4 right or if we're doing it wrong. And the elected city
5 councils no doubt are going to let their police chiefs
6 know if they're doing the right things right or getting
7 it wrong.

8 We simply do not need POST's
9 involvement in these management decisions. Police play
10 a vital role in society and they cannot do their jobs
11 effectively without the trust and support of the
12 community. And these proposed rule changes are
13 certainly part of a laudable effort to improve police
14 community relations.

15 But the lack of suitable candidates
16 cannot be resolved through excessive rulemaking by the
17 licensing authority. And, likewise, changing public
18 perception cannot change through rulemaking. We need
19 quantities of eligible candidates, high numbers.

20 Law enforcement administrators armed
21 with high numbers of eligible candidates and a
22 thoughtful selection process can sift through candidates
23 and hire those that will help restore the public's trust
24 where it's needed.

25 I'm asking you to direct the POST

1 Board to eliminate or correct the defective portions of
2 the proposed rules that I have identified as they are
3 either not needed or create an unreasonable adverse
4 impact on our recruitment and retention efforts.

5 I thank you for your time today. And
6 again, I apologize for the technological glitches.

7 JUDGE TODNEM: Thank you, Sheriff
8 Kamerud. Again, as I believe Judge Lipman had indicated
9 before, written comments are always welcomed, in
10 addition to these oral comments. With that, we are now
11 ready for Mr. Jim Mortenson. And it looks like you are
12 appearing by camera.

13 JIM MORTENSON: Yes, ma'am. Good
14 morning, Judge Todnem and Judge Lipman. And thank you
15 for this opportunity to testify and provide comments at
16 this very important hearing. Are you guys able to hear
17 me okay?

18 JUDGE TODNEM: Yes, we are.

19 JIM MORTENSON: Okay. My name is Jim
20 Mortenson, spelling, J-i-m, M-o-r-t-e-n-s-o-n, and I'm
21 the executive director for Law Enforcement Labor
22 Service. LELS is Minnesota's largest public safety
23 labor union and we represent over 6,700 public safety
24 professionals throughout Minnesota with the vast
25 majority of those being licensed peace officers.

1 I'm not only the executive director
2 of Law Enforcement Labor Services, but I'm also a
3 retired lieutenant of the St. Cloud Police Department
4 with 32 years in the law enforcement profession.

5 Prior to becoming the executive
6 director at LELS I was initially hired as a business
7 agent. In both of these positions at LELS my job
8 entailed dealing with disciplinary issues that involves
9 police officers that are brought forth to the union for
10 representation.

11 And my prior career being a police
12 supervisor for over 20 years, my job duties included
13 in-taking, processing and at times investigating
14 potential policy violations involving police officer
15 discipline.

16 My concerns with the proposed rule
17 changes that the POST Board is wishing to implement is
18 there are areas in these proposed rules that are vague,
19 overreaching, overly broad and open for interpretation.

20 As both of you are well aware, when
21 it comes to deciphering what a particular statute or a
22 rule means, the clarification of the words in those
23 rules have meaning.

24 If rule changes are going to be
25 implemented they need to be clearly defined, laid out

1 and not open for interpretation by anyone, including the
2 involved police officer, the chief law enforcement
3 officer, the employer, and especially the POST Board.

4 The mentioning of Brady Giglio in the
5 proposed rule changes are a glaring example of a
6 proposed rule change that is open for interpretation and
7 understanding.

8 AS I mentioned before, I work for the
9 City of St. Cloud. Within our jurisdictional boundaries
10 of the city of St. Cloud there are three different
11 county attorneys, Stearns, Benton, Sherburne and a City
12 attorney that all prosecute crimes within the
13 jurisdictional boundaries of the city.

14 None of these prosecutors operated
15 under a Brady Giglio process or procedure in the same
16 way. In fact, two of these entities never discussed
17 Brady Giglio with our agency at any time.

18 We have 87 county attorneys in the
19 state of Minnesota and many City attorneys as well.
20 Brady Giglio is looked at and handled differently by
21 every one of them. If we cannot get our prosecutors to
22 agree on Brady Giglio, how do we expect the POST Board
23 to set the standard? That would be my question.

24 In addition, the POST Board was never
25 designed or designated to be an investigatory agency by

1 the legislature. We have had a process in place for
2 decades that involves police misconduct that works and
3 has necessary checks and balances in place.

4 Every employer has the ability to
5 conduct investigations or police misconduct themselves.
6 They can have a neighboring agency that's uninvolved
7 conduct the investigation or they can hire an outside
8 law firm to conduct the investigation.

9 I am not aware of any issues that the
10 POST Board is having with the quality of investigations
11 being conducted by employers who conduct them. So,
12 there is no need for changes and there's no need for the
13 POST Board to travel down the path of trying to become
14 an investigative agency.

15 Although LELS is the largest public
16 safety labor union in the state, we are one of many.
17 Law Enforcement Labor Services handles between 250 and
18 300 different incidents of employee misconduct on an
19 annual basis. Quite frankly, the POST Board is not
20 designed or equipped to handle these investigations and
21 the volume of these investigations.

22 Once the investigation has concluded
23 an employer can and does implement discipline up to and
24 including termination. Through Minnesota state statute
25 there are rules and laws in place to resolve police

1 discipline, which include mediation, arbitration,
2 District Court, Appellate Court, and the Supreme Courts.

3 These types of changes to the POST
4 Board rules could have and should have involved the
5 stakeholders that are testifying in these hearings, not
6 just the POST Board members themselves.

7 It is difficult to make and implement
8 changes without having those with the boots on the
9 ground being involved in the process, which is exactly
10 why we are having this hearing today. These changes
11 should have been discussed and agreed upon with the
12 stakeholders and the legislature prior to any changes
13 that are written in stone.

14 With that, I appreciate your time and
15 the ability to testify at this hearing and I will stand
16 for any questions. Thank you.

17 JUDGE TODNEM: Thank you,
18 Mr. Mortenson. Again, at this time I would like to put
19 a call out for anyone wishing to comment either as a
20 first-time speaker or as a second-round comment.

21 And in the mean time, I will remind
22 everyone that written comments can be submitted by
23 4:30 p.m. on December 6th with rebuttal comments
24 submitted by 4:30 p.m. on December 13th.

25 We will also be having a remote webex

1 hearing tomorrow evening starting at 5:30 p.m.

2 Ms. Gaspard, are there any other commenters that you're
3 seeing?

4 REBECCA GASPARD: Not at this time.
5 I'm watching to see if we have any more coming in.

6 JUDGE TODNEM: All right. Making
7 another call for any comments, now is your opportunity
8 to speak, either making comments and/or asking questions
9 of the panel. Any comments? Star 3 if you would like
10 to comment and you are attending by phone. Seeing none
11 we can break early for lunch.

12 REBECCA GASPARD: Excuse me, Judge
13 Todnem, we just have a -- MPPOA has entered the queue.

14 JUDGE TODNEM: Okay, great. All
15 right. We don't have a name yet. Okay. I see that
16 they are muted, if they could be unmuted and then let us
17 know who you are.

18 MARK SCHNEIDER: Your Honor, it's
19 Mark Schneider again. We are just contacting the POST
20 Board through the chat, we do have two witnesses who are
21 out of state on a trip, a business trip related to law
22 enforcement. And we had arranged that they would be
23 available for testimony at 1:30 this afternoon our time.

24 So, I just wanted to make the Court
25 aware that they would be available at that time for

1 additional comment and testimony.

2 JUDGE TODNEM: Right, yep, we have
3 that down. So, we are just going to take a lunch break
4 early and resume at 1:30 in time for them to provide
5 their comments.

6 So, if there are no additional
7 comments at this time we will break for lunch and resume
8 at 1:30 p.m. We are in recess, thank you.

9 (Marcia Menth was the Court Reporter from
10 Pages 69 through 99.)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (At this time a lunch break was
2 taken from 11:30 to 1:30 p.m.)

3 JUDGE LIPMAN: Good afternoon and
4 welcome back after a the luncheon recess. My name is
5 Eric Lipman, I'm an Administrative Law Judge with the
6 Minnesota Office of Administrative Hearings. And we are
7 here for an afternoon session In The Matter of the
8 Proposed Amendments to Rules Governing the Education and
9 Licensing of Law Enforcement Officers. It's otherwise
10 known as OAH Docket No. 8-9007-38401.

11 Under a previous time certain
12 arrangement we are going to hear from Mr. Brian Peters
13 and perhaps Mr. David Titus who are out of town today,
14 but were eager to share their views to inform our
15 record.

16 And so with that, Mr. Peters, can you
17 unmute yourself?

18 MR. PETERS: Yes. Judge, can you hear
19 me?

20 JUDGE LIPMAN: We can, thank you so
21 much.

22 Mr. Peters, if you wouldn't mind
23 spelling and stating your name for our record.

24 MR. PETERS: Thank you. Brian,
25 B-r-i-a-n, Peters, P-e-t-e-r-s.

1 JUDGE LIPMAN: Thank you so much
2 Mr. Peters, what should we know?

3 MR. PETERS: Thank you, Judge. I
4 appreciate you allowing me to comment today from
5 Washington.

6 As I stated, my name is Brian Peters,
7 I am the executive director of the Minnesota Police and
8 Peace Officers Association.

9 JUDGE LIPMAN: Mr. Peters, just a
10 little slower for the court reporter.

11 MR. PETERS: Sorry.

12 JUDGE LIPMAN: We just want to make
13 sure that we have an accurate transcript.

14 MR. PETERS: Sounds good, Judge.

15 MPPOA is the largest association
16 representing police and peace officers across the State
17 of Minnesota. Our membership includes 10,000 public
18 safety officials who hold active law enforcement
19 licenses in the state. I've served as the executive
20 director for the past three years and previously served
21 as a police officer and commander with the City of
22 Brooklyn Center.

23 MPPOA as the voice for rank and file
24 officers has consistently advocated and supported
25 measures to make policing better and communities safer.

1 We share the POST Board school of strengthening the
2 public trust and increasing professionalism in a
3 profession which Minnesota's law enforcement officers
4 have devoted their careers.

5 MPPOA also understands these proposed
6 rules are being propelled by unique concern coming from
7 political issues regarding current events. I would like
8 to quick just talk about some concerns with the proposed
9 rules.

10 When the POST Board first released
11 these proposed rules MPPOA shared them with the entire
12 membership and asked for feedback. We received,
13 frankly, quite an earful with many specific comments on
14 how these would negatively impact our members. Overall
15 74.5 percent were very concerned about the proposed
16 rules and an additional 17.5 were somewhat concerned.
17 So that's totaling 92 percent of our members surveyed
18 have concerns.

19 Most of the feedback noted the
20 proposed rules are extremely problematic and unworkable
21 as written. Main concerns were the subjective
22 definitions, confusion and a lack of the Brady-Giglio
23 standard, undermining the existing collective bargaining
24 agreements through POST investigation, including
25 standards of evidence and self-incrimination in

1 violation of officers' rights.

2 I will briefly reiterate some
3 concerns. Police officer recruitment and retention is
4 on the forefront of the news and also with those that
5 value public safety. Our state and nation are facing
6 severe issues with retaining and recruiting qualified
7 officers.

8 These rules will not only fail to
9 solve these issues, but instead aggravate them by
10 lessening trust and lessening officers' rights.

11 These rules are also overreaching.
12 The broad and comprehensive changes affect and diminish
13 the ability of all local agencies to address public
14 safety.

15 These rules are overly broad and
16 increase the role of the POST Board in establishing
17 processes and making decisions that limit the role of
18 local law enforcement.

19 And I'm just going to note various and
20 some particular concern regarding these roles. The
21 Brady-Giglio is not a workable term as there is no
22 clear-cut Brady-Giglio standard, the proposed rules
23 appear to operate from the presumption that there is,
24 which creates troubling and confusing implications for
25 law enforcement officers.

1 Secondly, the definition of membership
2 in an extremist group. MPPOA in no way intends to
3 defend discriminatory policing as need for community
4 trust is vital. However, the trust is not served by
5 placing off-duty associations and casual speech into the
6 interpretive blender. The proposed language in the
7 rules will lead to problematic consequences. Groups
8 change, political climates evolve. This attempt to move
9 from policing peace officers to street actions to
10 approaching the regulation of their thought is
11 troubling, problematic, arbitrary and unlawful.

12 With that, Judge, that concludes my
13 comments. I, again, really appreciate this group making
14 the time for Mr. Titus and I who is here with me. And
15 if you are ready for him I will turn it over to him.

16 JUDGE LIPMAN: I do want to thank you,
17 Mr. Peters, for working on this. Both you and Mr. Titus
18 are important voices in this conversation and so I
19 appreciate your time and expertise and contribution to
20 the record.

21 I certainly hope you and perhaps a
22 manageable slice of your 10,000 members will write in
23 before the close of the comment period on December 6.
24 But with that I will be glad to hear from Mr. Titus if
25 he wouldn't mind stating and spelling his name.

1 MR. PETERS: Thank you, Judge.

2 MR. TITUS: Judge, can you hear me?

3 JUDGE LIPMAN: State and spell your
4 name for our record.

5 MR. TITUS: David Titus, D-a-v-i-d,
6 T-i-t-u-s.

7 JUDGE LIPMAN: Excellent. Mr. Titus,
8 as Mr. Peters showed us, that when you read a little
9 slower it's a lot clearer. But with that, if you have a
10 written statement or any comments that you would like to
11 share.

12 MR. TITUS: Thank you, sir.

13 Judge, I am the president of the
14 MPPOA, Brian has described the association already. I
15 am also a 28 year St. Paul cop. Eighteen of those years
16 I was the president of the St. Paul Police Federation,
17 which is the union for anywhere from about, in these
18 troubling times about 575, to at the height of about 635
19 St. Paul sworn officers.

20 I represented those officers in all
21 the grievance proceedings, through all the contractually
22 agreed upon rules of engagement with the city,
23 discipline proceedings and grievance matters all the way
24 up to helping with hired counsel at a -- at
25 arbitrations, numerous arbitrations.

1 For eight years I was on the Minnesota
2 POST Board. I sat -- after being appointed by Governor
3 Mark Dayton. I sat on numerous committees, including
4 one that would be very much impacted by these rule
5 changes, the Complaint Committee. And the reason why
6 it's important to note this is because I can tell you
7 the difference of quantity, equality and due process
8 between the thoroughness of an internal investigation
9 and a discipline and grievance through a local
10 employer/employee contractually negotiated system versus
11 the limited information that is reviewed by a Complaint
12 Committee when sanctioning or potentially sanctioning an
13 officer's license.

14 It is drastic, it is much different,
15 the employer and employee union is much more thorough
16 and those who are weighing in on the matter are much
17 more informed compared to the Complaint Committee at a
18 POST Board level.

19 Additionally to this I was appointed
20 to -- or first there was created a POST Board Advisory
21 Committee that was established a little over two years
22 ago by the legislature and I sit on that committee
23 currently. I note that because many of the rule changes
24 stem from failed legislation and then currently or often
25 the failed legislation makes its way to the Advisory

1 Committee, passes there and then moves onto the POST
2 Board.

3 My current sworn position is I am
4 still a St. Paul Police Officer, but I am on loan to the
5 Ramsey County Sheriff's Office. There I am part of
6 their administration as an inspector. As an inspector
7 I -- my topics that I work on a day-to-day basis are
8 government relations, union relations and wellness.

9 As a general overview of the rule
10 changes before us, they will have an effect, a drastic
11 effect on our profession. And our profession is in
12 crisis mode for recruitment and retention of high
13 quality diverse candidates. A great example of that is
14 when I took the test back in the late -- late 1992 there
15 were over 1,000 applicants. Recently there were under
16 90 for this last general test for most likely what would
17 be or would attempt to be an academy of 25 to 50
18 officers.

19 I just spoke with a fellow MPPOA
20 member who is traveling with us now from White Bear Lake
21 who usually would see upwards of 50 to 100 applicants
22 for positions, they saw six. And you have seen in the
23 news, Minneapolis, their situation is dire. It's across
24 the state to varying degrees, the crisis that we are all
25 in. Our profession has been under attack and this has

1 had a serious effect.

2 I don't want to go too far into the
3 weeds. I've written on these rules and submitted them,
4 but I will say this: That I think everyone would agree
5 that policies that we create need to be clear. They
6 have to be understood. I do not understand the rules.
7 As a leader of the largest police officers association
8 in the state I think the rules should be very simple to
9 me.

10 (Speaker had technical difficulties.)

11 JUDGE LIPMAN: Mr. Titus, can you hear
12 us?

13 MR. TITUS: Yeah. Did we lose you?

14 JUDGE LIPMAN: A little bit and the
15 last thing that we did hear was the importance of
16 clarity and simplicity, if you can return to that point
17 and then what we might have missed we would be grateful.

18 MR. TITUS: The rules need to be clear
19 and they need not only be clear to the officers now, but
20 in 5, 10 and 20 years from now. It has been -- it's
21 very evident while watching the POST Board meetings, the
22 POST Board hash through these rules, that these rules
23 are not even clear to them completely and varying
24 degrees depending on who the POST Board member is.

25 Brady-Giglio, as everyone has

1 mentioned, there is no statewide standard, but I have
2 some firsthand accounts with working with members back
3 in the St. Paul Police Federation on Brady-Giglio
4 issues. And one of them that would put you in that
5 bucket of Brady-Giglio would be mishandling of evidence.

6 I can tell you an officer that made a
7 felony arrest, went in the watch commander, filed all
8 the paperwork, which you can imagine there is a lot.
9 Brought the suspect in, booked the individual, went out
10 back to the street to take the next call and then
11 reached back in his pocket for his gloves and realized
12 there was a small amount of marijuana still in his back
13 pocket. That officer went right back to 910's office,
14 disclosed it and entered it into evidence and that
15 become a Brady-Giglio.

16 I also can tell you that once you are
17 on the Brady list it is 99.9 percent permanent in Ramsey
18 County. We have successfully had one individual removed
19 from a Brady list because the initial discipline letter
20 went out, before due process, before the grievance, went
21 to the committee, they labeled him a Brady issue and
22 then after this went further in the grievance process it
23 was reversed. They would not remove the individual from
24 the Brady issue until we worked on this for some months
25 and the discipline letter had to be changed by the next

1 chief and submitted to the committee.

2 It is a very, very unorganized and
3 difficult topic for many to understand. So there is
4 no -- it is not surprising that the POST Board itself
5 doesn't have a complete grasp of this.

6 Cops in the MPPOA are not adverse to
7 improvement or change. We want to make our profession
8 better. We understand the scrutiny that we are under.
9 We understand that we are held to a very high level, we
10 agree with that, however, not all change is productive.
11 And I believe much of this change in these rules will
12 not benefit the public safety and will not benefit our
13 profession.

14 I am hopeful that we can sit down with
15 all of the groups together and work through this and
16 come up with some real change that will benefit all.
17 These types of changes to the POST rules are more
18 appropriate to the legislature and the various
19 stakeholder groups to discuss and agree upon.

20 I thank you very much for your time.

21 JUDGE LIPMAN: Thank you so much,
22 Mr. Titus. Mr. President, I was wondering if you might
23 answer two questions that I have. The first, you know,
24 is based on the argument that I guess the rigor of
25 applicants and the pieces of their outside associational

1 interests or activities off duty should be something
2 that should be regulated by the, if at all, by the
3 collective bargaining process. Have I got that right?

4 MR. TITUS: I'm sorry, you are going
5 to have to rephrase that for me.

6 JUDGE LIPMAN: It was a horrible
7 question and I'm sorry about that.

8 What I understood you to be arguing is
9 that instead of regulating matters as part of POST Board
10 licensure, if there were issues about applicant fitness
11 or off-duty associations by licensed peace officers,
12 that those issues should be resolved locally through the
13 collective bargaining and grievance process and not
14 through a licensing review, if I understood that, that
15 was an argument you were making? The collective
16 bargaining grievance process was much more rigorous?

17 MR. TITUS: That last statement of
18 yours is very true. That being said, I have no issue
19 and have sat on the Complaint Committee for a number of
20 years on the POST Board and there is and are examples
21 that do need to go in front of the POST Board for
22 sanction.

23 But I can tell you, I can't give you
24 the facts, but I can tell you almost with complete
25 certainty that the local jurisdiction already addressed

1 and disciplined and engaged that individual for
2 corrective measures well before it ever got to the POST
3 Board.

4 JUDGE LIPMAN: Okay. So with that
5 said, that leads to, I guess, the second piece is: I
6 can imagine the rejoinder argument from the POST Board
7 or others, those who are proponents to the rules saying
8 the collective bargaining and grievance process is not
9 enough to assure officer fitness and we shouldn't be as
10 reliant as, you know, as we are today in order to have
11 the kind of peace officers that we want patrolling and
12 serving in the communities.

13 Mr. President, what would you say to
14 that argument as a rejoinder, because I imagine that
15 would be the reply?

16 MR. TITUS: Well, I can tell you that
17 there already are items that automatically go in front
18 of the POST Board for review and we are very open to
19 discussing those. And I do not believe that the current
20 examples are 100 percent appropriate. I do not believe
21 that allegations should go in front of the POST Board, I
22 believe that it should be the convictions that go in
23 front of the POST Board. I guess that would be my
24 answer.

25 My answer to this would be simply I

1 can guarantee you that there is far more oversight at
2 the local level by supervisors and management that know
3 their own employees, that know their own policies and
4 procedures and are on top of it. Believe me, I sat in
5 hundreds and hundreds and hundreds of discipline
6 grievances and internal affairs interviews, I know that,
7 for instance, St. Paul is on top of their game
8 monitoring the behaviors and the procedures of their
9 officers.

10 JUDGE LIPMAN: Okay. If you were on
11 the POST Board as a regulatory purpose and they wanted
12 to communicate to the public that there are members of
13 dangerous extremist groups, groups that are violent who
14 are also sworn peace officers, how would you best build
15 public confidence if not through rules like this? What
16 would you suggest that the Board do, how do they
17 eliminate that problem?

18 MR. TITUS: I don't have a problem
19 with establishing a rule that officers should not belong
20 to a hate group, I have zero issue with that.

21 JUDGE LIPMAN: Okay.

22 MR. TITUS: I do personally take issue
23 with white supremacists being listed and I will tell you
24 why. For almost 29 years I can tell you that I have
25 never worked next to anybody who has been part of a hate

1 group nor have they been part of a white supremacist. I
2 believe that just paints a picture in a person's eye
3 that we must have this drastic issue in Minnesota with
4 all these white supremacists because we are going to
5 name this one.

6 I don't disagree at all that we cannot
7 have or that we should not have a rule about you do not
8 belong to a hate group, I have no problems with it.

9 JUDGE LIPMAN: Okay. Going through
10 the Brady-Giglio issue, would you imagine that if a
11 proposed rule were to be promulgated that that would
12 have an effect on the number of Brady-Giglio disclosures
13 or issues or controversies that are grieved through the
14 collective bargaining process?

15 MR. TITUS: Can't grievance through
16 the collective bargaining process, that's the problem.

17 JUDGE LIPMAN: Okay.

18 MR. TITUS: There is no way. There is
19 no way. We can grieve it, but obviously that is between
20 the union and the employer. The employer doesn't hold
21 the list, the county attorney holds the belief that this
22 individual is Brady-Giglio and then obviously will bring
23 that information towards the judge for in camera. But
24 we have no ability to grieve with anybody, we have to go
25 to court. And to my knowledge I can't cite it for you,

1 I apologize, but I'm only aware of one court ruling that
2 ever ordered that a person should be removed off a
3 Brady-Giglio. There is no due process for it, it is a
4 very, very confusing topic.

5 JUDGE LIPMAN: And so that was the
6 example that you cited which was you had a court order,
7 you know, making that finding for which the subsequent
8 chief, you know, later, you know, was able to issue --
9 what was that hypothetical about? What was that?

10 MR. TITUS: I apologize for the
11 confusion. That actually was what we brought forward,
12 showed that he was not disciplined for the allegations,
13 he was put on the Brady list. We brought it to the
14 committee, which is a group of individuals established
15 by the county attorney's office, in this case Ramsey
16 County. One person heads it, we brought the information
17 to them, they reviewed it and then they agreed to remove
18 the officer from this list.

19 JUDGE LIPMAN: Okay, great.

20 Do you imagine that so I guess my
21 question would be if that's not a collective bargaining
22 issue but a committee process, that the number of
23 petitions to the committee would increase if this rule
24 as proposed were to be promulgated?

25 MR. TITUS: It would and they can

1 completely ignore us Judge. They are under no
2 obligation, no contract, we would have to take them to
3 court constantly.

4 That would be the only avenue a union
5 could defend their member with, and again, I'm telling
6 you, this topic is very confusing to many people
7 including the current POST Board and I don't blame them
8 for it, it is a confusing topic. There is no set
9 guidelines, there is no book to go to, there is no
10 policy, there is no procedure.

11 JUDGE LIPMAN: Mr. Titus, thank you so
12 much for your time, you know, arrangements. I wish you
13 good luck with the conference. I'm hoping you and your
14 members will write in before December 6 with any further
15 suggestions or particularly if you have language
16 suggestions that you might be able to offer based upon
17 your expertise. And we are grateful for your time and
18 contributions to our record.

19 MR. TITUS: Well, we are grateful for
20 you, Judge. Thank you.

21 JUDGE LIPMAN: So with that,
22 Mr. Peters and Mr. Titus have shown us how easy it is to
23 get into our cue. If there are other folks that would
24 like to be recognized either as a first-time speaker or
25 for a subsequent round, eager to hear from folks, you

1 know, in the chat. Or you can certainly press the star
2 and the number 3 key on your telephone.

3 So with that our next would-be
4 commentator is Elliot Butay. Mr. Butay, if you can
5 unmute yourself and state and spell your name for the
6 record.

7 MR. BUTAY: Thank you, Your Honor. My
8 name is Elliot Butay, E-l-l-i-o-t, B-u-t-a-y.

9 JUDGE LIPMAN: Mr. Butay, what should
10 we know?

11 MR. BUTAY: Well, I am the criminal
12 justice coordinator at NAMI Minnesota, the National
13 Alliance on Mental Illness. We have been on the
14 Advisory Committee to the Board for the last couple
15 years and worked on this draft. We sent comments into
16 the Board and to you supporting everything except for a
17 minimum age requirement of 18, which I would like to
18 spend the majority of my time talking about that, but I
19 did just want to raise some thoughts from a community
20 organization and about the discriminatory conduct and
21 white supremacy conversations. We supported that
22 language.

23 Just a few thoughts. The one is I am
24 hearing concerns that, you know, an example of will an
25 officer be in a Bible study in their personal time and

1 will that, then, impact their license was, I believe, a
2 situation brought up earlier. And, you know, that to me
3 makes it sounds like there is a possibility that that
4 would go from, you know, one allegation to impacting
5 their license.

6 But my understanding is that there is
7 an entire, you know, complaint, investigation and
8 hearing process in statute and that the POST Board
9 itself has specific language to the POST Board which
10 other boards aren't afforded on how to address those
11 complaints.

12 And so my understanding is that the
13 complaint, the POST Board could appoint a law
14 enforcement agency to investigate the complaint and then
15 the committee -- the Complaint Committee would also have
16 the time to look over that investigation. That
17 committee is required by statute to have a balanced
18 membership and then the Board could decide on action.

19 So there is quite a lot of due process
20 from what I understand reading the law right now, so it
21 seems like if it really were an erroneous, you know,
22 allegation, that there is quite a few steps. And that a
23 person that is, you know, in good faith practicing their
24 religion or any activity that comes into question, there
25 would be quite a lot of eyes and whys, minds, that would

1 be making a decision on whether to act on that or not.
2 That's one point.

3 And the other point, I think that that
4 situation also implies the characterization of the
5 community that there are people out there that are
6 wanting to do that to law enforcement officers. And I
7 just would say for every person that is out there that
8 really wants to, you know, like take a law enforcement
9 officer down through this licensure process, there is
10 probably also a law enforcement officer that is
11 affiliated with a white supremacist group and we have
12 seen that actually happen. And we have our largest
13 police department in the state under investigation for
14 specifically anti-black racism.

15 And so I just would like to
16 characterize as a community organization, and I think I
17 also can speak with the community organizations on the
18 Advisory Council and on the Board, we are not trying to
19 play gotcha with cops. We have put in a good faith
20 effort to work on these committees and these councils
21 because we would like to see policing improved.

22 So I think that's, you know, the
23 community doesn't want to do those things. And again,
24 there may be outliers, there always will be, but since
25 that is what the community doesn't want I also wanted to

1 speak to what the community does want. Which, you know,
2 we want, you know, responsible policing and I just think
3 that calling out things like white supremacy, you know,
4 we live in the United States and we know that history
5 and there are reasons, I think, compelling reasons from
6 the community's prospective to include those things.

7 And again, we are not here because the
8 community has just said that we would like to get rid of
9 cops, right? We are here because we all watched a black
10 man die at the hands of a white officer who had a record
11 of, you know, aggression and use of force and misconduct
12 and it was not dealt with with the channels that we have
13 now.

14 So, you know, I just think that those
15 are compelling reasons to include white supremacy,
16 right? We live in the United States and we, you know,
17 it would be something even if it were 100 years ago, but
18 it wasn't, you know, it was 50 years ago and that was
19 the last time these rules were updated. That people
20 were having police dogs, you know, let loose on them,
21 white officers doing that to black citizens, right? So
22 we aren't living in a vacuum where white supremacy is
23 just among other hate groups, right, so I just wanted to
24 put that out there.

25 And I will try to be brief with the

1 rest of my comments. The final thing is, you know, we
2 supported all of the changes, but we were very concerned
3 with the minimum age requirement of 18 for an officer.
4 We know there are programs that would allow a high
5 school student to be ready and have completed a PPOE
6 program and then be ready to be licensed at 18.

7 And we just think 18 is
8 developmentally inappropriate to be a patrol officer
9 holding a gun and with the legal authority to use legal
10 force. And in the Board's Statement of Reasonableness
11 they said that they didn't have any evidence that
12 licensing younger officers would be problematic but, you
13 know, due to our research there is not very much
14 evidence at all on how 18-year-old officers behave.

15 There is very little evidence or data
16 collected on the age of officers and that may be for
17 privacy reasons, which may be good, but it is to say
18 that we just don't know if 18 year olds or 19 year olds
19 or 20 year olds do have higher levels of, you know,
20 misconduct or use of force.

21 And I would also say regardless of if
22 they are at higher risk for use of force or for
23 misconduct, they are also just responding to very
24 complex situations like domestic violence, mental health
25 crises and the science says that the decision making

1 parts of the brain that are specifically impacted by
2 high stress situations and environments is not fully
3 developed. And they are not as well equipped with
4 impulse control and they are not as well equipped to
5 kind of see the consequences of their actions, things
6 that I think everyone, the community and law
7 enforcement, would like officers to have those skills.

8 So, of course, I am reiterating what
9 we wrote in our comments, so I can leave it at that and
10 I thank you for your time.

11 JUDGE LIPMAN: Mr. Butay, I am very
12 grateful for your contributions. I guess a question
13 before you go is: What do you believe might be the
14 numbers of membership of licensed peace officers in
15 white supremacist organizations and how would we know?

16 MR. BUTAY: I guess I couldn't say.
17 How would we know is if we have, you know, ways to
18 investigate if they are there or not. We also have a
19 Human Rights Department and federal investigations
20 looking into our department because the community has
21 complained about those things, we have these lists of no
22 organizations.

23 And again, I don't think it's
24 necessary to get into the specifics of oh, there was a
25 list leaked and it had some police officers on it. We

1 are talking about an egregious action or a pattern of
2 conduct that would have to go all the way through the
3 due process and then be substantiated. And I just think
4 if that's the standard, you know, I don't see how, you
5 know, people are going to escape that.

6 But to answer your question, Your
7 Honor, I don't know how many numbers, yeah, and I think
8 it would just take, you know, honest engagement for us
9 to find out what they are.

10 JUDGE LIPMAN: Thank you so much. I
11 am very grateful for your time and contributions. I
12 certainly hope that you will encourage on my behalf
13 members of NAMI to write in if they are moved on this
14 issue by Tuesday, December 6 at 4:30. Thank you so
15 much.

16 Other folks like to receive
17 recognition this afternoon? Very easy just to signify
18 either in the chat or to press the star and a number 3
19 key on your telephone keypad.

20 Anyone else seeking recognition this
21 afternoon? As our other commentators show, it's very
22 easy.

23 Anyone else seeking recognition this
24 afternoon?

25 Seeing not, I have a couple of ending

1 commercials before we wrap up this particular segment.
2 Most particularly as I have been saying, there will be
3 an initial written comment period that will extend from
4 tomorrow evening until Tuesday, December 6, 2022 at 4:30
5 p.m. And the 4:30 p.m. part is the most important, but
6 Tuesday, December 6.

7 And then we will collect all of the
8 materials that have been submitted so far and there will
9 be a five business day rebuttal period from Tuesday,
10 December 13, 2022, again through 4:30 p.m. on that
11 Tuesday, December 13, 2022.

12 To the extent that you can include the
13 docket number on either faxes or written letters that
14 you send in, that's really very helpful. That docket
15 number is 8-9007-38401.

16 Tomorrow evening at precisely 5:30 we
17 will be having another webinar like we had today with a
18 series of 90-minute segments, just like we've had today.
19 If there are folks in your community or in the
20 organizations that weren't able to participate with us
21 so far, please tell them how easy it is and how eager we
22 are to hear from folks and that they can feel free to
23 dial in at 5:30 p.m. tomorrow evening via Webex.

24 With that, all of the participants and
25 we were up, I think, around 60 earlier today and we have

1 close to 40 now still for which we are very grateful,
2 all of you have my very, very grateful thanks and we are
3 adjourned. In recess until tomorrow.

4 (Kimberly Evavold was court reporter
5 from page 100 to 125.)

6 (Hearing adjourned at 2:06 p.m. to
7 be continued on Wednesday,
8 November 16, 2022 at 5:30 p.m.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF MINNESOTA)
) ss.
2 COUNTY OF HENNEPIN)

3
4 REPORTER'S CERTIFICATE

5
6
7 We, Angela D. Sauro, Marcia L. Menth, Kimberly
8 K. Evavold, do hereby certify that the above and
9 foregoing transcript, consisting of the preceding 125
10 pages is a correct transcript of our stenographic notes,
11 and is a full, true and complete transcript of the
12 proceedings to the best of our ability.

13 Dated November 15, 2022.

14
15
16 /s/Angela D. Sauro
ANGELA D. SAURO, Court Reporter

17
18
19 /s/Marcia L. Menth
MARCIA MENTH, Court Reporter

20
21
22 /s/Kimberly K. Evavold
KIMBERLY K. EVAVOLD, Court Reporter