



January 5, 2019

**Via Hand Delivery and Electronic Mail**

Executive Appointments Committee Members  
Baltimore City Council  
100 N. Holliday Street, Suite 400  
Baltimore, Maryland 21202

RE: Confirmation hearing of Police Commissioner-Designate Joel Fitzgerald

Dear Baltimore City Council Executive Appointments Committee Members:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we thank you for the opportunity to share feedback on Mayor Catherine Pugh's nomination of Dr. Joel Fitzgerald, chief of the Fort Worth, TX Police Department (FWPD), as Baltimore's next police commissioner. For the reasons detailed below, we encourage you to join us in urging the Mayor to withdraw her nomination of Dr. Fitzgerald and consider other finalists. If the process moves forward, then we submit questions for Baltimore City Council members to present to Dr. Fitzgerald during your confirmation hearing.

If confirmed, Dr. Fitzgerald will be the city's fourth police commissioner in the past year, and the fifth in the past four years. There has been much turnover at the helm of the Baltimore Police Department (BPD), which is now under a federal consent decree with the U.S. Department of Justice (DOJ) to address documented violations of federal laws by police officers, including unconstitutional stops, searches, and arrests, excessive use of force, and enforcement strategies that resulted in unjustified racial disparities.<sup>1</sup> Baltimore's next police commissioner must have a track record for advancing effective public safety strategies in a manner that is fair and nondiscriminatory; the new commissioner must lead with integrity, vision, and a commitment to officer accountability. With this in mind, we offer the following comments on the police commissioner selection process and critical questions Dr. Fitzgerald must address prior to any confirmation by the City Council.

**A. The Selection Process Used to Identify Police Commissioner-Designate Fitzgerald was not Transparent and Inconsistent with Best Practices Used in Other Jurisdictions**

In August 2018, LDF and over 30 organizations that are members of the Campaign for Justice, Safety and Jobs sent a letter to Mayor Pugh asking her to invite Baltimore residents to serve as members of her selection committee for the police commissioner. Elected officials in cities across the country have utilized a selection process that allowed residents to meet and

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<sup>1</sup> See generally, Consent Decree, *United States v. Police Department of Baltimore City, et al.*, Case No. 1:17-cv-00099-JKB, Doc. 2-2 (D. MD Jan. 1, 2017), <https://www.justice.gov/opa/file/925056/download>.

interview several finalists for police executive positions.<sup>2</sup> While we acknowledge that the selection of the police commissioner is the sole responsibility of Mayor Pugh, Baltimore residents will be the recipients of services overseen by the new commissioner. City residents can and should offer valuable insight on what they are looking for in a commissioner. Unfortunately, Mayor Pugh did not present a list of finalists to the public. Instead, we have one candidate to consider.

Since Mayor Pugh's nomination of Dr. Fitzgerald, numerous questions about his experience in Ft. Worth have arisen and will require careful examination and an opportunity for explanations by the candidate. These questions are serious and substantive. It is impossible to responsibly confirm a nominee without ensuring that the City Council and members of the public have ample opportunity to fully vet these questions. In addition, it has always been understood by the Mayor and by Dr. Fitzgerald that it is important to reserve opportunities for any police commissioner nominee to attend community meetings in neighborhoods throughout the city.

Also, we understand that Dr. Fitzgerald is confronting a family emergency that requires his immediate and fully engaged attention. While we sympathize with Dr. Fitzgerald's family crisis, the need to move forward with the vetting and confirmation of a new police commissioner for Baltimore City is critical. The multiple and serious questions raised about Dr. Fitzgerald's record – many of which go to the veracity of representations he has made about his record<sup>3</sup> – must be addressed promptly and thoroughly. For these reasons, we respectfully request that members of the City Council urge Mayor Pugh to withdraw her nomination and consider other finalists. We believe that this is the best and necessary course in the best interests of the residents of Baltimore City.

Should the City Council decline to take this action, then we respectfully request that, as part of your vetting process, you submit the questions below to Dr. Fitzgerald and request his thorough response, including a response to the facts set forth in support of each question.

## **B. Questions for Police Commissioner-Designate Fitzgerald**

### **1. What is the candidate's experience and commitment to reducing crime, particularly violent crime, in a nondiscriminatory manner?**

According to the *Fort Worth Police Department Annual Report 2017*, property crimes have decreased in that city during Dr. Fitzgerald's tenure, but crimes against persons have increased 8.1% between 2016 and 2017, murders increased 9.2%.<sup>4</sup> The number of murders rose from 61 in

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<sup>2</sup> See, e.g., Steve Miletich, *Three finalists named for Seattle police chief job*, The Seattle Times, May 25, 2018, <https://www.seattletimes.com/seattle-news/crime/three-finalists-named-for-seattle-police-chief-job/>; Mayci McLeod, *Meet the candidates for Charleston Police Chief*, News 2, Feb. 6, 2018, [https://www.counton2.com/news/meet-the-candidates-for-charleston-police-chief\\_20180312080955508/103158235](https://www.counton2.com/news/meet-the-candidates-for-charleston-police-chief_20180312080955508/103158235); and Rachel Lippmann, *Here are the 6 finalists for St. Louis' police chief*, St. Louis Public Radio, <http://news.stlpublicradio.org/post/here-are-6-finalists-st-louis-police-chief#stream/0>

<sup>3</sup> See, Ian Duncan, *Baltimore police commissioner nominee's resume overstates accomplishments on violent crime drop, body cameras*, The Baltimore Sun, Jan. 3, 2019, <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-fitzgerald-resume-factcheck-20190102-story.html>.

<sup>4</sup> Joel Fitzgerald, *Fort Worth Police Department Annual Report 2017*, 9 and 11, <https://online.flippingbook.com/view/948975/10/> (hereinafter FWPD Annual Report). See also, Ian Duncan,

2016 to 71 in 2017 (the most recent year for which data is available).<sup>5</sup> If Dr. Fitzgerald is unable to address over 70 murders, then how will he address over 300 murders in Baltimore? *The City Council should ask the candidate why he believes murders have increased in Fort Worth, how is he addressing violent crime in his city, and how would he address it in Baltimore?*

Additionally, during Baltimore City Council member interviews with Ft. Worth residents, Roy Hudson, former president of the Fort Worth Black Law Enforcement Association, shared that Dr. Fitzgerald reinstated a Special Approach Unit of plain clothes officers who bought drugs from street dealers, the officers are known as the “jump out boys.” Another unit of officers, the “take down unit,” would make arrests immediately after the transaction.<sup>6</sup> It appears that these arrests have not been a deterrent as drug/narcotic violations have increased 7.2% in Fort Worth according to the police department’s 2017 crime statistics.<sup>7</sup> Also, this special unit strategy would be problematic in Baltimore, a city where the DOJ found racial disparities in the BPD’s arrests for drug possession.<sup>8</sup> *City Council members should ask Dr. Fitzgerald whether he collected and analyzed arrest data from these special units, whether any racial disparities exist, and if so, how has he or would he address them?*

## **2. What is the candidate’s experience in and commitment to holding officers accountable for the excessive use of force?**

During Dr. Fitzgerald’s tenure at the FWPD, he has collected and published data on police use of force incidents. In 2017, 53% of the 396 officers who used force at least once that year had been members of the FWPD between 0 to five years.<sup>9</sup> This suggests that new officers need additional training. Of the 77 administrative use of force cases FWPD investigated in 2017, 57 (74%) resulted in a written reprimand or coaching sessions.<sup>10</sup>

In Baltimore, last summer, a police officer, who had recently graduated from the academy with awards, was caught on video brutally punching a Black, unarmed man. The attack was so severe that the victim was hospitalized. Last year, news reports indicated that the police academy graduated cadets who repeatedly failed tests on constitutional policing.<sup>11</sup> *The City Council should*

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*Baltimore police commissioner nominee's resume overstates accomplishments on violent crime drop, body cameras*, The Baltimore Sun, Jan. 3, 2019, <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-fitzgerald-resume-factcheck-20190102-story.html>.

<sup>5</sup> FWPD Annual Report, *supra* note 4 at 11.

<sup>6</sup> Bernard C. “Jack” Young, et al, *Background Interviews on Dr. Joel Fitzgerald: Nominee to lead Baltimore City Police Department*, 31-32, Jan. 1, 2019, <http://baltimorecitycouncil.com/sites/default/files/files/Background%20Interviews%20on%20Dr.%20Joel%20Fitzgerald.pdf>

<sup>7</sup> FWPD Annual report, *supra* note 4 at 12.

<sup>8</sup> United States Dep’t of Justice, Civil Rights Div., *Investigation of the Baltimore City Police Department*, 8, Aug. 10, 2016, <https://www.justice.gov/crt/file/883296/download>.

<sup>9</sup> Joel Fitzgerald, *Internal Affairs Section Annual Report 2017*, 5, <https://police.fortworthtexas.gov/Public/use-of-force-report>. The police department employed 1705 sworn officers that year.

<sup>10</sup> *Id.* at 19.

<sup>11</sup> Kevin Rector and Justin Fenton, *Baltimore police recruits set to hit the streets with poor understanding of law, academy’s legal instructor says*, The Baltimore Sun, Feb. 2, 2018, <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-recruits-law-understanding-20180202-story.html>

*ask Dr. Fitzgerald what he has done to reduce use of force incidents in Fort Worth, whether he believes his efforts have been effective and what he would do in Baltimore?*

**3. How will the candidate identify and address corruption in the Baltimore Police Department?**

The BPD is a troubled agency. Last year, city residents witnessed the federal convictions of a half dozen Baltimore police officers on racketeering charges.<sup>12</sup> During the trial, additional officers were implicated. *The City Council should ask Dr. Fitzgerald how he will root out corrupt police officers?*

**4. What is the candidate's commitment to full and effective compliance with the federal consent decree in *U.S. v. Police Department of Baltimore City, et al*?**

The DOJ found that the BPD engaged in a pattern or practice of unconstitutional policing for years. To address these violations, the consent decree requires BPD to improve 11 areas including police use of force, civilian oversight of police, and misconduct investigation and discipline. *We urge City Council members to ask Dr. Fitzgerald what aspects of the consent decree will he prioritize and why?*

Thank you for considering this request. If you have any questions, please do not hesitate to contact us at 202-682-1300.

Sincerely yours,



Sherrilyn A. Ifill  
President & Director Counsel

Monique Dixon  
Deputy Policy Director & Senior  
Counsel

cc: Baltimore City Council members  
Mayor Catherine Pugh

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<sup>12</sup> Justin Fenton, *Baltimore Police officers found guilty of racketeering, robbery in Gun Trace Task Force corruption case*, The Baltimore Sun, Feb. 12, 2018, <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-gttf-verdict-20180208-story.html>.