

Minority Police Officers File Brief in Supreme Judicial Court Arguing Unreliability of Boston Police's "Hair Drug Test"

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In the latest legal challenge to the increasingly discredited drug testing program of the Boston Police Department (BPD), the Massachusetts Association of Minority Law Enforcement Officers (MAMLEO) today filed an amicus (friend-of-the-court) brief in Massachusetts' highest court, in support of an applicant who was denied a position with BPD solely because of its flawed drug testing program.

BPD tests applicants and employees for drug use by taking hair samples, a method that has been shown to be unreliable and has been rejected for use by the federal government for testing federal employees. A related case brought by MAMLEO and individual officers in federal court asserts that hair testing is also discriminatory, since false positives occur more frequently for Black officers. MAMLEO is represented in that case, and in today's amicus filing, by Lawyers for Civil Rights (LCR) and by the law firm WilmerHale on a pro bono basis.

"Hair testing is unreliable and discriminatory," stated Larry Ellison of MAMLEO. "BPD has unjustly fired many Black officers due to false positives on the test." He noted that the Civil Service Commission has consistently found the test to be flawed, but that BPD continues to use it nonetheless.

"The City claims to value diversity in its public safety agencies, yet it clings to a discredited drug testing program that falsely brands many Black officers as drug users and results in their termination," stated Oren Sellstrom, Litigation Director at LCR. Sellstrom added that the City has spent millions of dollars to defend the hair test in state and federal courts yet fared poorly, calling that expenditure "a complete waste of taxpayer funds."

Today's amicus brief was filed in a case before Massachusetts' Supreme Judicial Court involving an applicant for a BPD officer position, who tested positive on the hair test, despite having tested negative for years as a police cadet. He immediately sought a confirmatory hair test, which came back negative. BPD nonetheless refused to hire him, based solely on the positive hair test. The Civil

Service Commission reversed BPD's decision, holding that the hair test is too unreliable to support bypassing a qualified applicant. A Superior Court judge in turn reversed the Commission. The applicant appealed, and the SJC agreed to hear the case. Oral argument is scheduled for March 5, 2019.

The state court case is *Boston Police Department v. Gannon et al.* (SJC No. 12653). The federal court case is *Jones et al. v. City of Boston, et al.*, No. 1:05-cv-11832-DPW (D. Mass.).