SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

THE PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.,

Plaintiff,

-against-

THE CITY OF NEW YORK and THE COUNCIL OF THE CITY OF NEW YORK,

Defendants.

Index No. 653550/2013

(J. Singh)

BRIEF *AMICI CURIAE* OF MICHAEL B. MUKASEY AND RUDOLPH W. GIULIANI IN SUPPORT OF PATROLMEN'S BENEVOLENT ASSOCIATION'S MOTION FOR A PRELIMINARY INJUNCTION

Daniel S. Connolly, Esq.
Rachel B. Goldman, Esq.
BRACEWELL & GIULIANI LLP
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 508-6100
Facsimile: (212) 508-6101
Email: daniel.connolly@bgllp.com
Email: rachel.goldman@bgllp.com

Counsel for Amici Curiae Michael B. Mukasey and Rudolph W. Giuliani

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

Other Authorities

Pursuant to this Court's Order dated December 18, 2013 and the New York Civil Practice Law and Rules, Michael B. Mukasey and Rudolph W. Giuliani ("Amici") respectfully submit this memorandum of law, as *amici curiae*, in support of the motions for a preliminary injunction filed by the Patrolmen's Benevolent Association of the City of New York ("PBA") and the Sergeants Benevolent Association ("SBA"),[1] and respectfully request that the Court grant the motions.[2]

STATEMENT OF INTEREST

The Amici have served in several of the highest public offices concerned with law enforcement and governance of the City of New York and the United States; they have served as United States Attorney General, Chief Judge of the United States District Court for the Southern District of New York, Mayor of the City of New York, and United States Attorney for the Southern District of New York, among other offices. In light of their substantial experience across several decades, including significant involvement with the New York City Police Department (the "NYPD"), the Amici are uniquely suited to provide insight into the impact that Local Law 71 of 2013 of the City of New York ("Local Law 71"), recently passed by the Council of the City of New York, will have on the NYPD in particular and local law enforcement in general. In the experience of the Amici, without a preliminary injunction enjoining the enforcement of Local Law 71, the PBA and SBA will suffer irreparable harm and police officers will be severely constrained in carrying out their mission to provide for the safety

[1] The PBA has moved for a preliminary injunction in the matter of *The Patrolmen's Benevolent Association of the City of New York, Inc. v. The City of New York, et al.*, No. 653550/2013, and the SBA has moved for a preliminary injunction in the related matter of *The Mayor of the City of New York v. The Council of the City of New York*, No. 451543/2013.

[2] With the permission of the United States Court of Appeals for the Second Circuit, Amici filed a brief in that capacity in *Floyd, et al. v. City of New York, et al.*, Dkt. No. 13-3088, an appeal that raised issues similar to those involved here, and, at the request of that Court, were heard at oral argument on the issue of whether the district court order in that case should be stayed.

and welfare of the residents of the City of New York. As described below, the Amici are currently employed in the private sector and have no interest in the outcome of this case aside from the continued effective and constitutional operation of the NYPD and the safety of the residents of the City.

Individually, the Amici are as follows:

Michael B. Mukasey served for more than eighteen years as United States District Judge of the United States District Court for the Southern District of New York, six of those years as Chief Judge. He also served as Attorney General of the United States, the nation's chief law enforcement officer. As Attorney General from November 2007 to January 2009, Mukasey oversaw the United States Department of Justice and advised on critical issues regarding all areas of the law. He is the recipient of several awards for his work, most notably the *Learned Hand Medal* of the Federal Bar Council. Mukasey is currently a partner at the law firm Debevoise & Plimpton LLP.

Rudolph W. Giuliani served two terms as Mayor of the City of New York, from 1994 to 2001. Prior to serving as mayor, Giuliani was the Associate Attorney General of the United States and, for six years, United States Attorney for the Southern District of New York. Giuliani is widely credited with improving the quality of life in the City, in large part due to the significant drop in crime under his administration. Over Giuliani's eight years in office, New York's crime rate fell by 57 percent and the Federal Bureau of Investigation rated New York City as America's safest large city. Many of the City's law enforcement strategies implemented during Giuliani's administration, including the CompStat program that won the 1996 Innovations in American Government Award from the Kennedy School of Government at Harvard

University, have become models for other cities around the world. Giuliani is currently a partner at the law firm of Bracewell & Giuliani LLP.

ARGUMENT

In determining whether to grant a preliminary injunction, a court must consider: (1) the likelihood of success on the merits; (2) the danger of irreparable injury in the absence of an injunction; and (3) whether the balance of the equities favors the moving party. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990); *Jones v. Park Front Apartments, LLC*, 73 A.D.3d 612 (N.Y. App. Div. 1st Dep't 2010) (citations omitted). The primary purpose of a preliminary injunction is to maintain the status quo. *Masjid Usman, Inc. v. Beech 140, LLC*, 68 A.D.3d 942, 942-43 (N.Y. App. Div. 2d Dep't 2009). In this brief, the Amici address the second and third preliminary injunction factors and rely upon the PBA and SBA's arguments in support of the first factor.

The Amici respectfully submit that the members of the PBA and SBA, as well as the communities they serve, will suffer irreparable harm if a preliminary injunction is not granted. Local Law 71 was passed by the City Council over Mayor Bloomberg's veto on August 22, 2013 and became effective 90 days later, on November 20, 2013. The experience of the Amici in overseeing law enforcement agencies teaches that when the mandate for a fundamental shift in law enforcement approach has been put in place, both day-to-day performance and long-term planning and training are immediately affected. As discussed in more detail below, the law defines as "bias-based profiling" any act of a member of the police force who relies on race, national origin, color, creed or one of many other characteristics as the "determinative factor" in initiating "law enforcement action" against an individual, without defining these terms. Although Local Law 71's language is unclear, the statute was enacted to reduce substantially the scope of permissible law enforcement activities compared to existing law and requires immediate

modification to already-complex NYPD procedures and training protocols in order to ensure compliance. Absent a preliminary injunction suspending operation of the law, should the Court ultimately grant the PBA and SBA's request to strike down Local Law 71 as preempted and/or vague under the New York State Constitution, the NYPD's intervening efforts to comply with the law would result in significant disruption and uncertainty and an enormous waste of time and resources in retraining the entire police force and rewriting procedures twice.

Local Law 71 also impermissibly infringes on police officers' legitimate and lawful consideration of race and other identifying characteristics in conducting police activities, thereby hindering the NYPD's ability to fight crime. Further, the PBA and SBA will be irreparably harmed should Local Law 71 not be enjoined because the law's undefined and amorphous terms will cause widespread uncertainty, endangering the safety and lives of both police officers and the public they are entrusted to protect.

Finally, the balance of the equities points decidedly in favor of issuing a preliminary injunction, not only for the reasons set forth above, but also because it will best preserve the success of the NYPD in reducing crime and providing for the public safety, which is of paramount concern in this case, while merely briefly delaying implementation of Local Law 71 until the Court has ruled on the merits.

I. The PBA And SBA Will Suffer Irreparable Injury Without A Preliminary Injunction

A. Local Law 71 Will Have An Immediate And Deleterious Effect

Local Law 71 dramatically impinges upon the means by which police officers carry out their responsibilities to deter and detect crime and protect the residents of the nation's largest city. As set forth in the PBA and SBA briefs, Local Law 71 fails to define several of the significant terms used in the law, leaving police officers, the PBA, SBA and the NYPD to guess

as to the law's meaning and how to comply with it. Further, the widespread changes called for by the law's numerous provisions became binding upon the PBA and SBA's members as of November 20, 2013. Thus, the law's dramatic modifications to existing law and procedures, coupled with its lack of clarity, cause immediate harm to the members of the PBA and SBA, and the public.

Local Law 71 amends the New York City Administrative Code § 14-151 to prohibit "bias-based profiling," purportedly out of a concern over the number of stops conducted by the NYPD between 2002 and 2010, approximately 80% of which were stops of blacks and Latinos. Local Law 71, Section 1 (Declaration of Legislative Intent and Findings).[3] "Bias-based profiling" is defined to mean reliance by an officer on race, national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability or housing status as the "determinative factor" in initiating "law enforcement action" against a person, rather than a person's behavior or other information or circumstances that links the person to suspected unlawful activity. Local Law 71, Section 2 (amending Admin. Code § 14-151(a)(1)). The law does not define the terms "determinative factor" or "law enforcement action." Local Law 71 also creates a private right of action allowing individuals to sue for declaratory or injunctive relief against individual police officers in court or before the Commission on Human Rights, and it permits the recovery of attorneys' fees and costs. Local Law 71, § 2. These remedies are particularly problematic given the widespread knowledge among police officers that the City can

[3] Notably, the Council's citation of city-wide statistics – *e.g.*, noting that 50% of the City's population is black or Latino – fails to appreciate that the NYPD focuses its efforts and stop-question-and-frisk activities on areas of high crime. *See* Sean Gardiner, *Judge Rules NYPD Stop-and-Frisk Practice Violates Rights*, WALL ST. J., Aug. 12, 2013. Of course, where a stop occurs contributes to its legitimacy: "the fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis." *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). And to construe a stop that does not lead to an arrest as evidence of wrongdoing or ineffectiveness fails to appreciate black letter constitutional law, as "*Terry* accepts the risk that officers may stop innocent people." *Id.* at 126.

refuse to indemnify an officer who is sued if the City claims that the officer acted outside the scope of his or her employment, violated a Department rule or regulation, or acted with intentional wrongdoing or recklessness. General Municipal Law § 50-k(3). Plaintiffs may also bring bias-based claims against a governmental body. Local Law 71, § 2.

As noted above, the experience of the Amici teaches that months and sometimes even years of planning and training are necessary before procedures are changed or new mandates put in place. Thus, the CompStat program referred to above, integral to the dramatic reductions in crime achieved by the NYPD, or the FBI Guidelines, which have transformed the FBI from strictly a crime-fighting agency to an intelligence gathering agency as well, took careful preparation before they could be implemented.

The "stop-question-and-frisk" procedure, often referred to simply as "stop-and-frisk," is not a stand-alone procedure but rather is only one element of a proactive approach to policing that stresses situational awareness and affirmative steps to prevent crime. Moreover, officers often engage in stop-question-and-frisk on the basis of a description containing a suspect's perceived race, age, gender or other characteristics now within Local Law 71's reach. This entire approach has been cast in doubt by Local Law 71, which will cause officers to hesitate to engage in such activity, as discussed in more detail below. Police officers have been told, in essence, that reliance on a suspect description including race, gender, age or other descriptive features in initiating stop-question-and-frisk is potentially unlawful and may give rise to personal liability. The same is also true for *all other* "law enforcement action" undertaken by officers, which presumably includes less intrusive street encounters,[4] arrest-related procedures and everything in between. That the law's terms, which govern the conduct of police officers in

[4] Such encounters benefit the community in a number of ways, including helping an intoxicated person home or mediating a dispute. *See Terry v. Ohio*, 392 U.S. 1, 13 n.9 (1968).

highly complex and stressful street encounters, are unclear and susceptible to speculation creates a dangerous environment for members of the PBA and SBA, particularly when coupled with the clear prospect of personal liability should a "law enforcement action," reconsidered at leisure, be found erroneous. Equally troubling, the City's residents that the officers serve to protect are most likely to suffer the consequences of officer uncertainty and fear of violating Local Law 71. It is difficult to exaggerate the immediate impact that Local Law 71 will have on planning and training within the NYPD, and on individual day-to-day policing decisions, if the law is not preliminarily enjoined.

B. Local Law 71 Constrains The PBA And SBA's Constitutional Use Of Suspects' Descriptive Characteristics In Effective Policing And Will Adversely Affect Crime Prevention

The PBA and SBA members will suffer irreparable harm in the absence of a preliminary injunction because Local Law 71 encroaches upon police officers' ability to effectively and constitutionally police the City of New York. To permit the continued operation of the law would sanction the City Council's attempt to radically alter existing state and federal constitutional law, which in fact provides that police may consider a person's race and other descriptive characteristics identified by Local Law 71 when investigating and preventing crime without regard to whether any factor is "determinative." Further, as Local Law 71 provides insufficient guidance to police officers, the City's residents will be irreparably harmed because of the adverse effect the law will have on crime prevention. Thus, a preliminary injunction enjoining Local Law 71's operation is appropriate.

1. Local Law 71 Upends Longstanding Case Law Permitting Reliance On Suspect Description Data Such As Race

Local Law 71's language largely prohibits, and its undefined terms and resulting uncertainty will deter, the legitimate use of race, national origin, gender, age and other

descriptive characteristics that law enforcement officers regularly use during highly variable and fast-paced police activity based on suspect description data. *See*, *e.g.*, *United States v. Brockington*, 378 Fed. App'x 90, 92 (2d Cir. 2010) (affirming district court's finding of reasonable suspicion for stop based in part on description of suspect as "a black man wearing a red shirt"); *United States v. Salazar*, 945 F.2d 47, 48 (2d Cir. 1991) (affirming conviction of defendant stopped in part because he matched description of "short, dark Hispanic male" seen entering and leaving an apartment believed to be used to sell crack cocaine). While one characteristic such as race may not form the *sole* basis for stopping an individual, one feature among others may ultimately be the distinctive or determinative component matching an individual with a suspect description.[5] The City Council, however, has disregarded established case law and common sense and imposed its own irrational and perilous view on how the NYPD should be policing the City.

In defining "bias-based profiling" as an act that relies on race, national origin, color, creed or certain other characteristics as the determinative factor in initiating law enforcement action, the City Council ignored established law providing that police may consider a person's race while conducting police work without offending either the United States or New York State constitutions. For example, where police stop and question an individual based on "a description that include[s] race as one of several elements [] defendants d[o] not engage in a suspect racial classification that would draw strict scrutiny" under the Equal Protection Clause. *Brown v. City of Oneonta, New York*, 221 F.3d 329, 337-38 (2d Cir. 1999); *see United States v. Waldon*, 206

[5] For example, if a suspect were described as a black male, 25 to 35 years old and wearing a brown jacket with jeans, and an officer in the area spotted three white men otherwise matching the description but only one black male matching it, stopping the latter would appear to violate Local Law 71 because the matching suspect's race presumably would be the "determinative factor" in the stop despite the lack of demonstrated bias or discrimination. Clearly, this belies common sense and offends bedrock constitutional principles recognized in federal and state case law described herein.

F.3d 597, 604 (6th Cir. 2000) ("[W]hen determining whom to approach as a suspect of criminal wrongdoing, a police officer may legitimately consider race as a factor if descriptions of the perpetrator known to the officer includ race."); *People v. Johnson*, 102 A.D.2d 616, 621 (N.Y. App. Div. 4th Dep't 1984) ("Race is often a factor which enters into the determination of reasonable suspicion, since witnesses and victims frequently describe perpetrators by the color of their skin. Where a suspect has been described by his race, it is a characteristic which may properly be used as one element of identification.") (citations and internal quotation marks omitted).

In more recent analogous proceedings to the federal proceedings in *Brown v. City of Oneonta*, the Appellate Division, Third Department, agreed with the Second Circuit, recognizing the difference between the use of race as part of a suspect's description and an express racial classification subject to strict scrutiny. Thus, "although black males in Oneonta were widely sought for questioning, the proof d[id] not establish an express racial classification as to the members of the class," and "in pursuing this investigation, State Police did not engage in racial stereotyping or profiling of violent criminals to hypothesize or presume that the assailant was black, young and male." *Brown v. State of New York*, 841 N.Y.S.2d 698, 703 (N.Y. App. Div. 3d Dep't 2007). The court further agreed with the Second Circuit that the individuals "were not questioned solely on the basis of their race. They were questioned on the altogether legitimate basis of a *physical description given by the victim* of a crime [which] contained not only race, but also gender and age, as well as the possibility of a cut on the hand." *Id.* (brackets and emphasis in original, internal quotation marks and citation omitted). Thus, an officer who relies in part on a suspect's race in making a stop and/or frisk does not offend pre-existing law where the individual's race matches part of a suspect's description.

Crucially, the Appellate Division in *Brown* explicitly dismissed the claimants' argument that the police's reliance on race "as the sole or *a predominant* identifying feature" constituted an express racial classification subject to strict scrutiny. *Id.* at 703 (emphasis added). This is precisely what Local Law 71 seeks to impose with respect to claims of bias-based profiling against a governmental body. *See* Local Law 71, Section 2 (amending Admin. Code § 14-151(c)(1)) (providing that a claim of biased-based profiling is established against a governmental body where it has engaged in intentional profiling and the governmental body fails to prove that it is necessary to achieve a compelling interest and was narrowly tailored to achieve that interest). The court held that the use by police of a racial descriptor did not constitute governmental action based on race because to so hold would require police "to ignore or minimize the race component of a description in order to avoid equal protection violations." *Brown*, 841 N.Y.S.2d at 703. This is precisely the danger facing the PBA and SBA members – that officers will ignore or minimize the racial component or any other characteristic within Local Law 71's grasp in order to avoid a lawsuit.

Indeed, the very fears enunciated by Second Circuit Chief Judge Walker in *Brown v. City of Oneonta* in response to the argument that *any time* police use a racial descriptor they are using a suspect racial classification subject to strict scrutiny – which echoes Local Law 71 – will prove prophetic in the absence of a preliminary injunction:

> The theories suggested . . . would require a police officer, before acting on a physical description that contains a racial element, to balance myriad competing considerations, one of which would be the risk of being subject to strict scrutiny in an equal protection lawsuit. Moreover, the officer frequently would have to engage in such balancing while under the pressure of a time-sensitive pursuit of a potentially dangerous criminal. Police work, as we know it, would be impaired and the safety of all citizens compromised.

Brown v. City of Oneonta, New York, 235 F.3d 769, 771 (2d Cir. 2000) (Walker, J., concurring in denial of rehearing in banc).

Further, as Judge Walker explained:

> I have little doubt that the rules of constitutional law proposed . . . would weaken police protection within all communities. . . . In my view, it is a grave mistake to seize upon an idea that would alter police work and law enforcement procedures fundamentally without considering its effect on those most vulnerable to crime.

Id. Critically, the maximum impact will be felt by the "most vulnerable and isolated . . . and, if police effectiveness is hobbled by special racial rules, residents of inner cities would be harmed most of all," *id.*, which harm is unquestionably irreparable.

2. Local Law 71's "Determinative Factor" Standard Is Contrary To Settled Law And Is Unworkable

Focusing the examination of a police officer's conduct on whether his or her consideration of race, gender or another characteristic is the "determinative factor" in initiating "law enforcement action" also offends long-standing and considered case law rejecting such an approach to evaluating police behavior in complex and variable situations. With respect to *Terry* stops, "[t]he concept of reasonable suspicion, like probable cause, is not readily, or even usefully, reduced to a neat set of legal rules," *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citation and internal quotation marks omitted), such as analyzing whether some particular factor was "determinative" and whether the stop therefore violated the law. This is because "[i]n reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000); *see United States v. Arvizu*, 534 U.S. 266, 274 (2002) ("Our cases have recognized that the concept of reasonable suspicion is somewhat abstract. But we have deliberately avoided reducing it to a neat set of legal rules.") (internal quotation marks and citations omitted); *United States v.*

Sharpe, 470 U.S. 675, 685 (1985) ("Much as a 'bright line' rule would be desirable, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria.") (rejecting implementation of time limit to govern outer reaches of acceptable *Terry* stops); *United States v. Gori*, 230 F.3d 44, 63 (2d Cir. 2000) (Sotomayor, J., dissenting) (noting that the Supreme Court has "recognized that street encounters between the police and citizens are distinct because they involve an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officers on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure") (citation and internal quotation marks omitted); *cf. Panetta v. Crowley*, 460 F.3d 388, 395 (2d Cir. 2006) ("[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.") (internal quotation marks and citation omitted). Local Law 71 provides no convincing reason to dispose of this sage approach to evaluating police conduct, which, because of the multitude of factors bearing upon an encounter on the street, necessarily must consider the totality of the circumstances rather than attempt to divine whether any one of those factors was "determinative."

3. The Uncertainty Caused By Local Law 71's Drastic Changes To Existing Law Will Harm Police Officers And The Public

Without a preliminary injunction, the uncertainty resulting from Local Law 71's unclear terms will chill policing efforts due to the fear of violating the law and being named as a defendant in a lawsuit. Officers wary of defending against a claim will be hesitant to stop people seen to be engaging in suspicious behavior who happen to be of a racial minority group or appear to be of a certain national origin, homeless status or some other protected characteristic. Likewise officers will hesitate to stop a suspect matching a description that includes race or

another "bias-based" feature, out of a fear of violating Local Law 71 and being subject to personal liability. The same result is even more likely where an officer is faced with a decision whether to perform a protective frisk, as the greater level of intrusion and potential discovery of incriminating evidence is more likely to be met with a claim of bias-based profiling.[6] Hesitation or reluctance in conducting stops, protective frisks and other enforcement activity puts both the officers' and public safety directly at risk. In short, Chief Judge Walker's fears expressed in *Brown*, *supra*, will be realized should Local Law 71 not be enjoined.

* * *

Accordingly, because Local Law 71 impinges upon police officers' effective and constitutional policing efforts and raises myriad questions due to its ambiguous terms, which will thereby cause "[p]olice work, as we know it, [to] be impaired and the safety of all citizens compromised," *Brown*, 235 F.3d at 771, this Court should issue a preliminary injunction enjoining the law's operation until the Court rules on the merits of the plaintiffs' preemption and due process challenges.

II. The Balance Of Equities Favors Granting A Preliminary Injunction

The balance of equities in this case points strongly in favor of granting a preliminary injunction enjoining the immediate enforcement of Local Law 71. The greatest public interest at stake is public safety and the continued prevention of crime in this nation's largest city. NYPD officers have successfully carried out their duty of protecting health and safety over the past three decades in large part because of the efficacy of stop-question-and-frisk among other police tools in detecting and deterring crime. Those who have benefited the most from this success have been residents living in areas with the highest rates of crime, and where rates have dropped

[6] An additional absurd result of the law is that individuals who are arrested and convicted may nevertheless assert they were stopped or frisked solely on account of one of the "bias-based" characteristics without regard to the merits of the claim.

precipitously. The balance of equities lies decidedly in favor of a preliminary injunction so that the NYPD may continue to fulfill its mission of providing for the public safety and preventing violent crime without attempting to comply with the inartfully drafted Local Law 71, which, if not enjoined, will open the floodgates to time consuming and costly litigation against individual police officers, the NYPD and the City.

Leaving Local Law 71 in effect while this Court rules on the merits of the plaintiffs' challenges to the law will endanger the safety and lives of officers and the City's residents, as the uncertainty spawned by the law's undefined terms and the desire to avoid being named in a lawsuit will cause officers to hesitate or stand down when they previously would have taken action to investigate or apprehend a suspect. Issuing a preliminary injunction is particularly warranted where human safety is at issue, because "[t]he ultimate relief may be rendered inadequate, as the loss of one life would render permanent injunctive relief, granted at a later date, ineffective." *Doe v. Dinkins*, 192 A.D.2d 270, 275 (N.Y. App. Div. 1st Dep't 1993); *cf. City of New York v. Smart Apartments LLC*, 39 Misc. 3d 221, 233 (N.Y. Sup. Ct. N.Y. Cnty. 2013) (finding irreparable injury established where individuals were placed in illegal and dangerous accommodations, as public welfare was placed in jeopardy). Further, the public has a particular interest in a preliminary injunction as any wasted resources spent on re-writing policies and re-training officers should this Court strike down Local Law 71 would be borne by the City, *i.e.*, taxpayers.

Moreover, the primary legislative purpose underlying Local Law 71 has largely dissipated over the past year, thus mooting any claimed need for immediate enforcement before this Court's decision on the merits. As stated in Local Law 71, Section 1, "Declaration of Legislative Intent and Findings," the City Council was "concern[ed] about the NYPD's growing

reliance on stop-and-frisk tactics and the impact of this practice on communities of color." *Id.* (citing the increase from 97,000 stops in 2002 to 601,000 in 2010). However, since peaking in 2011, the number of stops conducted by the NYPD has dropped, falling to under 533,000 in 2012 and cascading all the way to roughly 179,000 in the first three quarters of 2013. *See* NYPD Quarterly Reports 2003-2013, *available at* http://www.nyclu.org/content/nypd-quarterly-reports. Thus, the impetus for the dramatic changes called for by Local Law 71 has abated strikingly, providing a compelling basis to grant a preliminary injunction and maintain the status quo until this Court has an opportunity to rule on the merits of the challenges to the law. Moreover, anyone who claims to have been discriminated against can pursue a federal claim under 42 U.S.C. section 1983 in the interim.

On account of the foregoing, the balance of the equities lies definitively on the side of granting a preliminary injunction.

CONCLUSION

For all the reasons set forth above, the Amici respectfully request that the Court grant the PBA and SBA's motions for a preliminary injunction and grant such further relief as the Court deems just and proper.

Dated: January 10, 2014
New York, New York

Respectfully submitted,

/s/ Daniel S. Connolly

Daniel S. Connolly, Esq.
Rachel B. Goldman, Esq.
BRACEWELL & GIULIANI LLP
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 508-6100
Facsimile: (212) 508-6101
Email: daniel.connolly@bgllp.com
Email: rachel.goldman@bgllp.com

Counsel for Amici Curiae Michael B. Mukasey and Rudolph W. Giuliani