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NEW YORK SUPREME COURT

APPELLATE DIVISION – SECOND DEPARTMENT

In the Matter of Letitia James, etc., Appellant,
v. Daniel Donovan, Etc., Respondent-respondent
(Index No. 080304/14)

In the Matter of Legal Aid Society, Appellant,
v. Daniel Donovan, etc., Respondent-respondent.
(Index No. 080296/14)

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In the Matter of New York Civil Liberties Union,
Appellant, v. Daniel Donovan, etc., Respondent-
respondent.
(Index No. 080307/14)

In the Matter of NYP Holdings, Inc., etc., Petitioner,
v. Daniel Donovan, etc., Respondent
(Index No. 080308/14)

In the Matter of Staten Island Branch of National
Association for Advancement of Colored People, etc.,
et al., Appellants, v. Daniel Donovan, etc., Respondent-
respondent.
(Index No. 080009/15)

BRIEF FOR AMICI CURIAE THE BLACK, PUERTO RICAN, HISPANIC AND ASIAN LEGISLATIVE CAUCUS OF THE NEW YORK STATE LEGISLATURE

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INTRODUCTION

As legislators representing the people of New York in the State Senate and Assembly (“state legislators”), and members of the New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus which consists of fifty three senators and assemblymembers, Amici Curiae are charged with enacting laws to protect the welfare, health, and safety of the public, including provisions of the criminal procedure law governing the operation of grand juries. Amici offer this brief in support of Petitioner-Appellants’ appeal of the Supreme Court’s denial of their petitions to unseal the grand jury proceedings in the investigation into the death of Eric Garner (“the grand jury records”).

STATEMENT OF INTEREST

The elected officials submitting this brief are members of a body representing almost 20 million New Yorkers. Access to the grand jury records, and to fully informed institutional voices, is critical to their ongoing work, as they explore reforms to the current grand jury process and craft solutions to restore the public’s trust in our justice system. Together, as members of the New York State Legislature, amici urge this Court to reverse the decision below.

ARGUMENT

Without a reversal of Justice Garnett's decision to maintain the secrecy of the grand jury proceeding, both city and state officials will lack access to materials and informed voices that are critical to making fully reasoned judgments about important matters of public policy. In the wake of the District Attorney's failure to secure an indictment in the Eric Garner grand jury, New York lawmakers have focused efforts on reforming the grand jury system and increasing oversight and transparency in cases involving civilian deaths at the hands of police officers. In considering such reforms, amici will significantly weigh input from local elected officials and from institutional defenders. As a citywide elected official and lawmaker with oversight responsibilities over the affairs of the City, the Public Advocate is well positioned to demand the grand jury materials and advise the legislature on needed reforms. As the largest public defender in New York City, the Legal Aid Society has a unique ability to evaluate the consistency of the application of the laws concerning grand jury presentations, and is thus well positioned, like the Public Advocate, to demand release of the Garner grand jury materials, and provide valuable input on their findings to amici. With input from the Public Advocate and the Legal Aid Society, the New York State Legislature will be able to draft

effective reforms that reestablish public trust in New York's guarantee of equal access to criminal justice for all segments of the population.

The Public Advocate has presented a compelling and particularized need for the grand jury information to capitalize on this specific historical moment and influence actual, existing legislative proposals to make the criminal justice system responsive to the entire populace.

I. THE NEW YORK STATE LEGISLATIVE PROCESS IS DRIVEN BY SPECIFIC EVENTS AND INFORMED BY LOCAL CONCERNS AND DIVERSE VOICES, INCLUDING CITY-WIDE ELECTED OFFICIALS SUCH AS THE NEW YORK CITY PUBLIC ADVOCATE

In the wake of a series of highly public incidents where young African-Americans were killed by law enforcement officers, there has been a national movement toward criminal justice reform that is without recent precedent. After the Eric Garner grand jury decision, that movement began to defy preexisting partisan, racial and geographic lines and extend from the grassroots to the highest halls of power. Federal officials and state legislatures across the country are debating reforms aimed at improving police-community relations through measures that will improve transparency and accountability.

The calls for change have particular force in New York City and New York State because of the prosecution's failure to secure an indictment in the

Garner case. A debate on specific proposals is already in progress across city and state government. Unique among the elected officials critical to this debate is the Public Advocate, a New York City-wide official whose charter role is directly tied to ensuring that city services are fair and just. In order to fulfill both her charter role and her part in advancing the debate on specific reform proposals, the Public Advocate is well poised to demand disclosure of the Eric Garner grand jury minutes, and advise the legislature of her city-wide perspective of legislative lessons to be drawn from them. The Legal Aid Society, the largest institutional defender in New York State, occupies a different, but similarly unique position in its ability to evaluate the consistency of application of the law to grand jury proceedings.

A. Disclosure Will Inform the Discussion Around Several Existing Legislative and Policy Proposals

Because grand jury reform is currently being debated statewide (indeed, nationally), with specific policy initiatives being advanced by every branch of the New York State government, this matter is easily distinguished from this Court's holding in Matter of Hynes v. Patrolmen's Benevolent Association, 179 A.D.2d 760, 579 N.Y.S.2d 117 (2d Dept. 1992). There, this Court held that "curb(ing) community unrest" and "restor(ing) confidence in the Grand Jury system", under the circumstances of that case, did not constitute "compelling and particularized need". Hynes at 760. But

the goals of this litigation are far greater than placating the populace. Instead, the information is needed to inform actual legislation that effects changes to existing law, making the system more accountable to the public it is meant to serve.

Amici submit this brief in part to demonstrate that this need is not speculative; rather, it is an actually present necessity. The national momentum towards reform, and deep local resonance of the Eric Garner decision in this state has created more political will to fix the systemic failures of our criminal justice system than any time since the reform of the Rockefeller Drug Laws in 2009. But the legislative debate over grand jury reform, unlike any other aspect of the criminal justice system, is crippled by the limited access to critical information that grand jury secrecy breeds.

Amici require more than raw data and information to inform their debate. Rather, the legislature benefits from the input of policy makers and participants closest to the issues they are considering. The Public Advocate, as a city-wide elected official of New York's largest city, tasked with making policy recommendations, and the Legal Aid Society, as the sole institutional public defender in Staten Island and historically the primary public defender in New York City, are vital voices in the conversation. By denying appellants' petitions the court below limited the state legislature's

access to precisely the sort of well-informed input it needs to carry out its mission and weigh proposed changes to the law. Policy makers are thus left actively debating the merits of reforms based on incomplete information.

Specific initiatives have been advanced by everyone from Governor Cuomo to Chief Judge Lippman to conference leaders and committee chairs in both houses of the legislature. The Senate and Assembly have held multiple public hearings on criminal justice and public protection.¹ In his 2015 State of the State Address, Governor Cuomo proposed that independent monitors review decisions in cases where a police officer who has killed a civilian is not charged or, if charged, is not indicted in a grand jury.²

The plan was picked up by the New York State Senate, which vigorously debated its merits when Alphonso David, Counsel to the Governor, testified at a March 11, 2015 Senate public hearing on police

¹ New York State Senate (Mar. 11, 2015), <http://www.nysenate.gov/event/2015/mar/11/examining-police-safety-and-public-protection-new-york-state-0>; Press Release, N.Y. State Senate, Senate Holds First Hearing on Police Safety and Public Protection in New York City (Feb. 4, 2015), available at <http://www.nysenate.gov/press-release/senate-holds-first-hearing-police-safety-and-public-protection-new-york-city>; Press Release, N.Y. State Assembly, Notice of Public Hearing – Criminal Justice Reform (Feb. 27, 2015), available at <http://assembly.state.ny.us/comm/Codes/20150227/>

² Aaron Short & Carl Campanile, Cuomo to Name “Independent Monitor” to Review Cop-Related Grand Jury Decisions, N.Y. Post (Jan. 22, 2015), <http://nypost.com/2015/01/22/cuomo-to-name-independent-monitor-to-review-cop-related-grand-jury-decisions/>.

safety and public protection.³ In the course of that very debate, several senators, including Senator Michael F. Nozzolio, Chair of the Codes Committee, Senator Andrew Lanza, a former Assistant District Attorney who represents Staten Island, and Senator John Bonacic, also a former Assistant District Attorney, acknowledged the need to make the process more open.⁴

The third branch of New York State government, the judiciary, has also advanced proposals for grand jury reform. The Chief Judge of the State of New York, Jonathan Lippman, proposed legislation⁵ since introduced by the Assembly Codes Committee Chairman Joseph R. Lentol,⁶ that would require a judge to be physically present and preside over the grand jury investigation in cases involving a law enforcement officer killing or feloniously assaulting a civilian. Even more critically, the bill proposes a “crystal clear presumption” in favor of disclosing grand jury minutes in cases where there is widespread public knowledge of a grand jury

³ See Matthew D’Onofrio, Senators Put Grand Jury Reforms Under the Microscope, The Legislative Gazette (Mar. 16, 2015), <http://www.legislativegazette.com/Articles-Main-Stories-c-2015-03-16-91089.113122-Senators-put-grand-jury-reforms-under-the-microscope.html>.

⁴ *Id.*

⁵ See Jonathan Lippman, Chief Judge of the State of N.Y., The State of the Judiciary 2015 Address: Access to Justice: Making the Ideal a Reality (Feb. 17, 2015), available at <http://www.nycourts.gov/ctapps/news/SOJ-2015.pdf>

⁶ 2015 NY Assembly Bill A7194 available at <http://open.nysenate.gov/legislation/api/1.0/pdf/bill/A7194-2015> [hereinafter Assembly Bill A7194]

investigation and the identity of its subject, no indictment is returned, and a significant public interest would be advanced through disclosure.⁷ As the sponsor's memo notes, in such cases "[grand jury] secrecy rules may become an obstacle to meaningful understanding of the criminal justice process and, on balance, counter-productive to assuring public faith in the institutions of government."⁸

State Senator Diane Savino and Assemblyman Matthew Titone, who represent districts in Eric Garner's home borough of Staten Island, introduced legislation that would allow district attorneys, in the interest of justice and with proper redaction, to disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding based on a valid written request.⁹

Assemblyman Keith Wright has sponsored a bill that would create an "Office of Special Investigation" within the Office of the Attorney General to investigate and, where necessary, prosecute, police officers who kill civilians in the line of duty, supplanting local district attorneys entirely in

⁷ Jonathan Lippman, *supra*

⁸ Assembly Bill A7194, *supra*

⁹ 2015 NY Senate-Assembly Bill S1828, A3462 available at <http://open.nysenate.gov/legislation/bill/S1828-2015>

such cases.¹⁰ There are at least five other alternative special prosecutor bills under consideration by the legislature.¹¹

There are also clear signs of an appetite for greater transparency even among those who oppose more sweeping changes. On February 4, 2015, Staten Island District Attorney Daniel Donovan testified at another State Senate public hearing in favor of a proposal that grand juries create a report summarizing their conclusion in cases where they chose not to return a true bill against a defendant, and supported the appointment of a monitor in those cases.¹² Republican State Senator Martin Golden, a retired New York City Police Officer who has taken a strong stand against special prosecutors and independent monitors, has signaled his openness to broader disclosure of much of the information that is presented to a grand jury, saying he thought the public should be better informed.¹³

¹⁰ 2015 NY Senate-Assembly Bill S1828, A3462 available at <http://open.nysenate.gov/legislation/bill/S1828-2015>

¹¹ See, e.g., 2015 NY Assembly Bill A4321 available at <http://open.nysenate.gov/legislation/bill/A4321-2015>; 2015 NY Assembly Bill A5524A available at <http://open.nysenate.gov/legislation/bill/A5524A-2015>; 2015 NY Assembly Bill A6342 available at <http://open.nysenate.gov/legislation/bill/A6342-2015>; 2015 NY Assembly Bill A6572 available at <http://open.nysenate.gov/legislation/bill/A6572-2015>; 2015 NY Senate Bill S2526 available at <http://open.nysenate.gov/legislation/bill/S2526-2015>

¹² See Colby Hamilton, „Donovan Backs Limited Grand Jury Reforms, Capital (Feb. 4, 2015), <http://www.capitalnewyork.com/article/albany/2015/02/8561655/donovan-backs-limited-grand-jury->

¹³ Fredric U. Dicker, GOP-controlled Senate to veto Cuomo’s cop proposals, N.Y. Post (Dec. 8, 2014), <http://nypost.com/2014/12/08/gop-controlled-senate-to-veto-cuomos-cop-proposals/>

This parade of legislative proposals demonstrates a particularized and compelling need, at this time in history, for the Eric Garner grand jury information. Unsealing would intelligently inform the debate, and arm the Public Advocate with the information she needs to assist and advise amici in drafting these vitally important legislative fixes. The death of Eric Garner and the failure to secure an indictment of the officer involved in his death has set in motion a chain of events that will lead to systemic changes. The question is whether those changes will be based on a full airing of what transpires in the grand jury in cases like this, or on guesswork.

B. The Failure to Secure an Indictment in the Eric Garner Matter Catalyzed an Unprecedented Symbiotic New York City, State and National Movement Towards Grand Jury Reform, Which is Cresting Now

The sweeping demands for change across the nation have brought us to a historical turning point. There is a compelling and particularized need to disclose the grand jury information to parlay this movement, at this particular place and time, into informed legislative change.

As discussed above, this Court ruled in Matter of Hynes that curbing unrest and restoring confidence, in and of themselves, were not compelling and particularized needs. 179 A.D.2d 760 (2d Dept. 1992). But there was no showing in that case of a peaking state and national movement. Nor

could there have been such a showing in that matter, as the outcry was a localized controversy over the perception of disparate governmental treatment between two different minority groups- orthodox Jews and African Americans.

This matter is distinct, however not only because there are existing legislative proposals to be affected by the requested disclosures, but because a broad national movement has ripened into a unique opportunity for reform that must be capitalized on.

There is a public perception that prosecutors treat grand jury presentations involving police officers differently than grand jury presentations with the average suspect or criminal defendant. Most grand jury presentations involve one or two witnesses²¹ and last less than one day; only a very small percentage last longer than three days.²² The Garner grand jury heard from fifty witnesses and sat for nine weeks.²³ When the jury

²¹ Jeffrey Fagan & Bernard E. Harcourt, Professors Fagan and Harcourt Provide Facts on Grand Jury Practice In Light of Ferguson Decision, Columbia Law School (revised Dec. 5, 2014), http://www.law.columbia.edu/media_inquiries/news_events/2014/november2014/Facts-on-Ferguson-Grand-Jury.

²² N.Y. Courts, Grand Jury Report: Report to Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman, Vol. 1, Findings and Recommendations (1999), available at https://www.nycourts.gov/press/old_keep/gjrr.shtml.

²³ See, e.g. Jon Campbell, No One Knows Why the Eric Garner Grand Jury Is Taking So Long, The Village Voice (Nov. 21, 2014) http://blogs.villagevoice.com/runninscared/2014/11/as_we_wait_for_ferguson_grand_jury_whats_going_on_with_the_eric_garner_case.php; Al Sharpton, Misuse of a Grand

returned “no true bill,” nationwide protests erupted in hundreds of American cities over the perceived miscarriage of justice, spreading across the globe to such far-flung place as Melbourne, Australia and Tokyo, Japan.²⁴ Sixty percent of Americans thought that the Garner grand jury reached the wrong result.²⁵

This is not a partisan issue: former President George W. Bush, called the failure to indict “hard to understand;”²⁶ Fox News commentator Charles Krauthammer said the result was “totally incomprehensible;”²⁷ a writer for the conservative blog Red State said the decision was “truly baffling” and “infuriating;”²⁸ Sean Davis at The Federalist went so far as to muse that “it’s

Jury, The Huffington Post, http://www.huffingtonpost.com/rev-al-sharpton/misuse-of-a-grand-jury_b_6172862.html (last updated Jan 17, 2015).

²⁴ Paula Mejia, Ferguson, Eric Garner Protests Spread Worldwide, Newsweek (Dec. 6, 2014), available at <http://www.newsweek.com/ferguson-eric-garner-protests-sprawl-worldwide-289867>.

²⁵ Aaron Blake, Why Eric Garner Is the Turning Point Ferguson Never Was, Wash. Post The Fix Blog (Dec. 8 2014) <http://www.washingtonpost.com/blogs/the-fix/wp/2014/12/08/why-eric-garner-is-the-turning-point-ferguson-never-was/>.

²⁶ Lindsey Boerma, George W. Bush: Verdict in Eric Garner Case "Hard to Understand," CBS News (Dec. 5, 2014) <http://www.cbsnews.com/news/george-w-bush-verdict-in-eric-garner-case-hard-to-understand/>.

²⁷ Fox News Insider, “Totally Incomprehensible”: Krauthammer Says Grand Jury Made Wrong Judgment, Fox News (Dec. 3, 2014) <http://insider.foxnews.com/2014/12/03/totally-incomprehensible-charles-krauthammer-says-grand-jury-made-wrong-judgment-nypd>.

²⁸ Husna Haq, Why Conservatives and Liberals are United on Eric Garner Case, Christian Science Monitor (Dec. 4, 2014) <http://www.csmonitor.com/USA/Society/2014/1204/Why-conservatives-and-liberals-are-united-on-Eric-Garner-case-video>.

almost as if the grand jury system is just a convenient means for prosecutors to get the outcome they want wrapped in a veneer of due process.”²⁹

Two weeks after the Garner decision, President Obama announced a Task Force on 21st Century Policing charged with “making recommendations ... on how policing practices can promote effective crime reduction while building public trust.”³³ A bi-partisan group of federal lawmakers are working in concert on a variety of reforms to our justice system.”³⁴ Nearly every declared and expected Republican Presidential Candidate has expressed support for sentencing and prison reform.³⁵

As one scholar has written, “absent concerted national action, the states are the ‘default setting’ of the American federal system.”⁴² As laboratories of democracy, states are “often innovative policy makers, in

²⁹ Sean Davis, Hands Up, Don’t Choke: Eric Garner Was Killed By Police For No Reason, The Federalist (Dec. 3, 2014) <http://thefederalist.com/2014/12/03/hands-up-dont-choke-eric-garner-was-murdered-by-police-for-no-reason/>.

³³ Exec. Order No. 13684, 79 Fed. Reg. 76,865 (Dec. 18, 2014) available at <https://www.federalregister.gov/articles/2014/12/23/2014-30195/establishment-of-the-presidents-task-force-on-21st-century-policing>.

³⁴ Tierney Sneed, Lawmakers Outline Path Forward on Criminal Justice Reform, U.S. News (Mar. 26, 2015) <http://www.usnews.com/news/articles/2015/03/26/lawmakers-outline-path-forward-on-criminal-justice-reform>.

³⁵ Betsy Woodruff, 2016 Contenders Are Lining Up Behind Sentencing Reform --- Except This One Tea Partier, The Wash. Examiner (Aug. 1, 2014) <http://www.washingtonexaminer.com/2016-contenders-are-lining-up-behind-sentencing-reform-except-this-one-tea-partier/article/2551545>.

⁴² Gary Moncreif & Peverill Squire, Why States Matter: An Introduction to State Politics 74 (2013) (quoting Martha Derthick, Keeping the Compound Republic: Essay on American Federalism 28 (2001)).

some cases well in advance of the national government.”⁴³ It is also important to note that such innovation “often comes in ‘waves’—periods in which many states are adopting new policies.”⁴⁴ We are clearly atop such a wave when it comes to criminal justice reform, much of it the direct result of the death of Eric Garner and perceived illegitimacy of the grand jury investigation into his death.

According to the National Conference of State Legislatures, numerous states are considering measures that “would increase public access to information concerning officer-involved deaths,” including “active bills [which] would improve transparency into investigations of police-involved deaths, restrict the use of chokeholds and require that statistics be reported for each incident resulting in death.”⁴⁵

As of February of this year at least nine states were considering the appointment of special prosecutors or independent investigators in all officer-involved deaths; bills to codify community-policing practices were before six state legislatures, and thirty or more states were considering body-worn cameras for officers.⁴⁶ In California, a state known for policy

⁴³Moncrief & Squire, *supra*, at 77.

⁴⁴*Id.* at 159.

⁴⁵National Conference of State Legislatures, Law Enforcement Overview (Feb. 13, 2105), <http://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx>.

⁴⁶*Id.*

innovation,⁴⁷ one state legislator has already introduced a bill to ban grand juries entirely in cases of officer-involved civilian deaths.⁴⁸ In Maryland, there were calls for a special session of the state legislature even before the death of Freddie Gray was ruled a homicide.⁴⁹

Plainly, the controversy underlying this litigation is a broad national drive whose time is now. It is a compelling movement, at a particular moment, with a singular need.

II. The Public Advocate has Authority to Seek the Unsealing of the Eric Garner Grand Jury Minutes and Her Efforts Will Aid the Policy Debate on the State Level.

The Public Advocate has the authority to seek the unsealing of the grand jury minutes in order to fulfill her Charter role as ombudsman for her eight-and-a-half million constituents and watchdog over the government entities and agencies that exist to serve them. The court below viewed this broad mandate with tunnel vision, rationalizing that because the Public Advocate “has no direct role in the criminal justice system”, and because the criminal justice system is a “state, not city, system”, her need for the

⁴⁷ Moncrief & Squire, *supra*, at 159.

⁴⁸ Patrick McGreevy, Lawmaker Would Bar Grand Juries in Cases of Police Shootings, L.A. Times (Feb. 16, 2015) <http://www.latimes.com/local/political/la-me-pc-lawmaker-would-bar-grand-juries-in-police-shootings-cases-20150216-story.html>.

⁴⁹ Erin Cox & Jessica Anderson, Civil Rights Groups Call on Hogan to Convene Special Session, Balt. Sun (Apr. 24, 2015) <http://www.baltimoresun.com/news/maryland/bs-md-freddie-gray-hogan-bills-20150424-story.html>.

information was not compelling and particularized. In re: Investigation into the Death of Eric Garner, Joint Appendix 13-14. But the court's constrained view of the Public Advocate's role misconstrues the reality of state lawmaking, the interconnectedness of New York City public officials and state lawmakers, and the degree to which the public interest at issue in this case is local, citywide, statewide and national all at once.

First, the absence of a "direct" role within the courts does not undermine the broad authority the Public Advocate has with respect to myriad agencies affecting criminal justice in New York City. The position was created as "an independent public official to monitor the operations of City agencies with the view to publicizing any inadequacies, inefficiencies, mismanagement and misfeasance found, with the end goal of pointing the way to right the wrongs of government." Green v. Safir, 174 Misc. 2d 400, 403 (N.Y. Sup. Ct. 1997) *affd*, Green v. Safir, 255 A.D.2d 107, 679 N.Y.S.2d 383 (1st Dept. 1998) (remanded on unrelated grounds). In granting then Public Advocate Mark Green access to police personnel records which, like Grand Jury minutes, are presumed confidential under state law, the court noted that "[m]isconduct by those invested with police power is now, and always has been, an area of concern to government." Id. at 403. It remains

so today; as does the Public Advocate's need for the information necessary to fulfill her Charter duties.

Notably, New York City Charter § 1109 explicitly grants the Public Advocate the authority for a summary inquiry "into any alleged violation or neglect of duty in relation to the property, government, or affairs of the city." The plain language of § 1109 broadly speaks of "any alleged violation or neglect of duty" that affects the City's property, government, or affairs. The prosecution of offenses in New York City undeniably affects the "property, government or affairs" of the city.

With respect to Justice Garnett's city-state distinction, Amici submit this brief in large part to refute the suggestion that state lawmaking is entirely severable from city lawmaking, and to assure the Court that the perspective of the Public Advocate, as a citywide elected official, is weighed significantly by state lawmakers in crafting criminal justice policy that affects New York City. In addition to her formal Charter role, the Public Advocate is part of the fluid and symbiotic policymaking dynamic that exists between New York City and State. Clearly the state plays a large role in the law and policies of New York City, through home rule provisions, mandates and preempted areas of law. The dynamic also goes in the other direction. As described by one commentator:

Given the state's far-reaching influence in city politics and government, the city and its officials have responded with a continuous effort to shape state policy. Over time, this effort has taken on both a formal institutional approach as well as a more ad hoc informal approach. The institutional approach involves the presence of representatives of the city government in Albany on a full-time basis as well as elected state officials who represent the city and its citizens. The informal ad hoc approach involves the frequent, but not necessarily routine, attempts by city officials to lobby for city interests at the state level. This is done either through communicating directly with state officials or by getting the city's position articulated through the media.⁷⁵

In the same way states sometimes serve as forerunners to federal action in non-preempted areas of law, local governments can serve as forerunners ahead of states. The Public Advocate is an important part of this city-state exchange of ideas. She regularly weighs in on issues of overlapping policy concern and generates proposals that would need to be implemented through state law. She also has the power to introduce legislation in the city council, which may serve as a model for statewide expansion, or directly call on the state to pass new law through a formal Council resolution.

⁷⁵ Bruce F. Berg, New York City Politics: Governing Gotham 81-82 (2007).

The Public Advocate has appeared in litigation regarding the propriety of the closure of a hospital, because although hospital closures are regulated by the State, they affect the people of New York City.

Although the Public Advocate does not have authority to bring an Article 78 proceeding against a state government agency [citing see *Matter of Madison Sq. Garden*], ... the instant matter does not challenge the actions of a state agency acting as such, but relates to the exercise by LICH's Board of Regents of its fiduciary duty to preserve the mission of LICH to serve the public need for medical care and the adequacy of consideration provided by SUNY for LICH's assets.”

Matter of Long Is. Coll. Hosp., 41 Misc. 3d 1210(A), 1210A (N.Y. Sup. Ct. 2013).

Few would argue that the New York City Mayor does not have a significant voice and role to play with respect to New York State politics. The Public Advocate, created as a “counterweight” to the Mayor, has no less a voice. *Green v. Safir*, 174 Misc.2d 400, 403. She is a citywide elected official who represents a vast portion of the population of this state, and she is an important colleague in government who regularly collaborates with the Legislature on a multitude of public policy issues ranging from access to quality health care, robust high speed internet infrastructure, women’s equality, and criminal justice reform.

Finally, the court below wrote that the Public Advocate has a “myriad of sources for reviewing police actions.” *In re: Investigation into the Death*

of Eric Garner, Joint Appendix 14. By this, however, the court signaled a fundamental misunderstanding of the Public Advocate's purpose in moving for disclosure of the grand jury proceeding. Amici do not support disclosure for the sake of reviewing police actions either specifically in this case, or generally in police shootings. Properly designed, the grand jury should fulfill precisely that role. Rather, Amici support the Public Advocate's request for disclosure to illuminate how to best draft legislation to address systemic obstacles to the grand jury's ability to play its proper role. This is not about police actions- it is about legislating increased transparency and public oversight of our system of justice.

CONCLUSION

The New York City Public Advocate has demonstrated a compelling need for the Eric Garner grand jury records to fulfill her role as a city wide public watchdog by advancing actual, pending litigation on behalf of the City of New York, in particular to capitalize on a historical opportunity to ensure equal justice for the entire populace. Amici respectfully urge the Court to reverse the decision below, to assist us in capitalizing on this moment in time.

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Brooklyn, New York

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