SUPREME COURT OF NEW JERSEY

MIRZA M. BULUR, in his official capacity as the ACTING PUBLIC SAFETY DIRECTOR for the CITY OF PATERSON and APPROPRIATE AUTHORITY, CITY OF PATERSON POLICE DEPARTMENT, and ENGELBERT RIBEIRO in his official capacity as the POLICE CHIEF of the CITY OF PATERSON POLICE DEPARTMENT,

Plaintiffs,

V.

THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, MATTHEW J. PLATKIN in his official capacity as ATTORNEY GENERAL, JOHN DOES 1-10, MARY DOES 1-10, and XYZ CORPORATIONS 1-10,

Defendants.

ANDRE SAYEGH, MAYOR OF THE CITY OF PATERSON and ENGELBERT RIBEIRO,

Plaintiffs,

V.

ISA M. ABBASSI, in his official capacity as the Officer-In-Charge of the Paterson Police Department, THE NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, and MATTHEW J. PLATKIN, in his Official Capacity as the Attorney General of the State of New Jersey, OFFICE OF THE ATTORNEY GENERAL,

Defendants.

CIVIL ACTION
Supreme Ct. Docket No: 090126

On Petition for Certification From Final Judgment of the Superior Court of New Jersey, Appellate Division

Docket No.: A-000629-23T2
(Consolidated)

Sat Below:
Hon. Rudolph A. Filko, A.J.S.C.

Superior Court of New Jersey
Appellate Division
Docket No.: A-001209-23T2
(Consolidated)

BRIEF *AMICUS CURIAE* ON BEHALF OF THE NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION

Raymond Baldino, Esq.
Attorney ID #073952013
Robert A. Fagella, Esq.
Attorney ID #018771977
570 Broad Street, Suite 1402
Newark, N.J. 07102
Tel. (973)623-1822
Fax. (973)623-2209
rbaldino@zazzali-law.com
rfagella@zazzali-law.com
Attorneys for the New Jersey State PBA

Raymond M. Baldino, Esq.
Of Counsel & On the Brief

Robert A. Fagella, Esq.
Of Counsel & On the Brief

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PRELIMINARY STATEMENT

In an unprecedented exercise of unenumerated authority, the Attorney General asks this Court to sanction the commandeering of the police department of the City of Paterson, the third-largest city in this State, even though his actions were neither invited nor consented to by Paterson officials. While admitting there is no direct Constitutional or statutory basis to support such an extraordinary exercise of authority, the Attorney General suggests that such power can be implied from the general supervisory authority of his office over law enforcement in this State. The Attorney General also invokes his authority to supersede a County Prosecutor – a power enumerated by statute – as a basis for the newly invented right to supersede a municipal police department, which is not set forth by statute. Worse still, and as *amici* New Jersey State Association of Chiefs of Police ("NJSACOP") points out, the Attorney General cannot define how this newly invented power should be exercised or its limitations, or even explain the purpose and endgame of his intervention. Whatever noble purposes the Attorney General may have invoked in superseding the Paterson police department, these actions cannot stand.

The membership of proposed *amicus curiae,* the New Jersey State PBA, includes some 33,000 active and retired law enforcement officers in this State, including Paterson. The Paterson PBA Local 1 (the affiliate local of proposed

amicus) and its members are significantly affected by the State's takeover of the Department. The interim harm inflicted on both Paterson law enforcement officers and the State PBA's general statewide membership is significant. The takeover of the Paterson Police Department suspended civil service rules and contractual provisions regarding a wide variety of terms and conditions of employment. As discussed herein the State PBA believe the Attorney General is not likely to prevail on the merits because the Appellate Division's decision was sound and correct.

The Attorney General has seized upon the existence of a statutory supersession authority that permits him to supersede a County Prosecutor under specific circumstances described by statute, to argue that it can take wholesale control of a local police department, even without specific statutory authority. The inferential leap required to accept this argument is a bridge too far. There are historical reasons why the Attorney General and County Prosecutor's authority is intertwined, creating a relationship that is today embodied in the Attorney General's statutory supersession authority.

No such comparable relationship exists for the Attorney General at the municipal level, and unsurprisingly, no statutory authority exists to permit supersession of a municipal police department. Municipal police departments are subject to supervision by State authorities, but remain creatures of local government, and subject to control by their democratically elected polities. Our

State's tradition of local control over policing is well-known. Indeed, most conversations of police reform start with the concept of further empowering local communities. That concept is at stark odds with the State's actions here - taking control over a local police department against the wishes of its own democratically elected officials.

The Attorney General's actions, if sustained, would violate the fundamental independence of the respective law enforcement entities involved – State, County and Municipal – and ultimately serve as a basis for the arbitrary exercise of unchecked power. Equally important, unbridled intervention into local affairs without any statutory authority – or even guidelines for such actions – poses a significant threat to legislatively delegated powers. Accordingly, the State PBA respectfully requests that this Court deny the State's Petition to reverse the decision below.

STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

The State PBA relies on the Facts and Procedural History of Record in this Matter. Pursuant to Rule 1:13-9(a) that governs this motion to be admitted *amicus curiae*, the identity of the applicant, the issue intended to be addressed, the nature of the public interest and the nature of the applicant's special interest are set forth herein.

The New Jersey State PBA is a state-wide organization representing over 33,000 active and retired law enforcement officers in the State of New Jersey. Its membership includes law enforcement officers in the State, County and Municipal levels of government, including Paterson. As the parent organization of over 350 affiliated local PBAs, it protects and furthers the legal, economic, and professional interests of all law enforcement personnel represented by those locals.

The State PBA provides legal assistance to local PBAs and to law enforcement officers in many instances and has in the past filed briefs as a friend of the court in various matters and on a variety of issues having an impact on law enforcement and/or law enforcement officers. See, e.g., Paterson PBA Local 1 v. Paterson, 87 N.J. 78 (1981); Entwistle v. Draves, 102 N.J. 559 (1986); Boylan v. State, 116 N.J. 236 (1989); Gable v. Board of Trustees, PFRS, 115 N.J. 212

[1]Because the Procedural History and Statement of Facts are closely interwoven, they are combined to avoid repetition and for the convenience of the Court.

(1993); Tice v. Cramer, 133 N.J. 347 (1993); Hillsdale PBA 207 v. Hillsdale, 137 N.J. 71 (1994); Wolfersberger v. Pt. Pleasant Beach, 152 N.J. 40 (1997); Brady v. Dept. of Personnel, 149 N.J. 244 (1997); Jersey City v. Jersey City POBA, 155 N.J. 455 (1998); Oches v. Middletown Twp. Police Dept., 155 N.J. 1 (1998); In re Carroll, 170 N.J. 85 (2001); Patterson v. Board of Trustees, SPRS, 194 N.J. 29 (2008); In the Matter of Borough of Tenafly and PBA Local 376, Docket No.: A-5044-12T1, 2015 N.J. Super. Unpub. LEXIS 37 (App. Div. Jan. 6, 2015); Paff v. Burlington County, et al, Dkt. No. BUR-L-36-15 (Law Div. 2016); Timmins v. Boyle, 2021 N.J. Super. Unpub. LEXIS 1056 (App. Div. June 2021) certif. den., 249 N.J. 464 (2022); In the Matter of Death Investigations of Terruso, Ahr, and Dolcemore, Dkt. Nos. SGJ-RTL-4, 5 & 6- 22 (Law Div. 6/13/22).

As the parent organization for all local PBAs, and as the largest law enforcement personnel organization in this State, the State PBA has an obligation to make known to the Judiciary its position on matters of concern to law enforcement officers that impact their health, safety, professionalism, legal representation, and economic well-being.

The issue before this Court concerns whether the State Attorney General may lawfully "supersede" a municipal police department, admittedly without statutory authority, without the invitation or consent of the local municipality or its police force, and solely based on the claimed need to reform that police force in the

claimed interests of the local community. A few questions could more intimately and directly affect the rights of the State PBAs members whose terms and conditions of employment are significantly affected when an outside agency takes local control.

The issues involved in this case are of significant public interest and of particular interest to all active and retired law enforcement officers. This Court's decision will have substantial ramifications upon the rights of law enforcement officers. Officers have a strong interest in resolving the question of whether their employer can be subject to direct control by the State; and suspension or modification of civil service requirements, all without the consent or cooperation of their local communities. Consequently, this case is of great significance and interest to the State PBA and its members.

The State PBA has always been active in expressing its views to the Judiciary and to the Legislature on issues of concern to its members. The State PBA believes its perspective is well-suited to assist this Court in resolving the issues involved in this case.

LEGAL ARGUMENT

A. THIS COURT SHOULD GRANT THE NEW JERSEY STATE PBA's MOTION TO APPEAR *AMICUS CURIAE* AND PERMIT THE NEW JERSEY STATE PBA TO PARTICIPATE IN ORAL ARGUMENT IN THIS MATTER

The role of *amicus curiae* is to advise the Court concerning matters of fact and law, and of circumstances relating to the matter pending for its determination. Keenan v. Board of Chosen Freeholders, 106 N.J. Super. 312 (App. Div. 1969). As discussed above, the question of whether the State Attorney General can supersede a local law enforcement agency is one directly affecting the PBA and its members. The State PBA should be granted leave to appear as *amicus curiae* in this matter, and to appear at oral argument.

We note in particular that as the parent organization representing PBA affiliates and law enforcement officers at all levels of government across the State, including those in Paterson, the State PBA has an interest in participating in oral argument. R.1:13-9, the rule governing this application, provides, in relevant part, as follows:

> An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court

> shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule.

In reviewing this application, the Court should consider whether the motion is timely; whether the State PBA's participation will assist in the resolution of an issue of public importance; and whether any party to the litigation will be unduly prejudiced by the State PBA's participation in this matter. In applying these criteria to the matter at hand, the Court should grant the State PBA's application.

As the largest law enforcement organization in New Jersey, the State PBA is uniquely qualified to assist in the consideration of the important issues of this case, as it has in other cases, and the likely ramifications of its decision for law enforcement officers. The State PBA is very familiar with the law in this area, and the thousands of active and retired law enforcement officers who are members of the State PBA will be directly affected by the outcome of this case. The State PBA should be given the opportunity to present to the Court what impact the decision will have on law enforcement officers throughout the State of New Jersey.

Further, no party to this litigation will be prejudiced by this application. The State PBA submits this brief within the deadline provided by the Court's order.

Therefore, the State PBA's participation will not prejudice any party or unduly delay this case.

The State PBA's brief *amicus curiae* containing its merits arguments on this motion is attached to this motion as sections (B) and (C) of the within brief.

B. The Appellate Division Correctly Held that the Attorney General Lacks Statutory Authority to Directly Control a Municipal Police Department

This matter presents to the Court on Petition for Certification. Accordingly, the State PBA directs its comments to the reasons why the Appellate Division correctly decided this case, and why the State's request for relief should be denied. It is the position of the State PBA that the Attorney General does not possess the authority to supersede the traditional operations of a municipal police department, and that there is little likelihood it will succeed on the merits.

The Appellate Division correctly held that the Attorney General lacks any statutory basis to supersede a law enforcement agency, whether express or implied, and for that reason, the Attorney General's supersession of the Paterson Police Department was *ultra vires* and void. The State PBA also concurs with *amicus curiae* NJSACOP that, even assuming arguendo that the Attorney General did have authority to supersede a municipal police department, basic due process would require that power be subject to a legal standard that defined the limits of that power. As NJSACOPS insightfully notes, the undefined and unexplained nature of

the Attorney General's power cannot stand. But this only points to the bigger problem: such power does not exist in the first place. The State PBA submits that the absence of authority to supersede a municipal police department cannot be cured now by inventing a legal standard to limit a power that is not contained in any statute.

As the Attorney General appears to concede, there is no explicit statutory authority for the Attorney General to supersede a municipal police department. Instead, the Attorney General argues that, because it can supersede a County Prosecutor's office, and because a County Prosecutor can supersede a municipal police department (as the Attorney General contends, without any clear authority on the subject), it follows that the Attorney General can supersede a municipal police department. However, as discussed infra, this line of argumentation is the result of multiple analytical errors, and ultimately, asks this Court to take an enormous and unwarranted inferential leap to vest the Attorney General with an extraordinary implied power that cannot be squared with the statutory framework. Put simply, the Attorney General's argument is wrong.

To begin with, in seeking the recognition of an implied power to supersede a municipal police department, the Attorney General ignores that an agency's "inherent or implied power is not boundless." DOL v. Pepsi-Cola Co., 170 N.J. 59, 61 (2001). In the DOL v. Pepsi matter, this Court agreed that the New Jersey

Department of Labor ("DOL") had the power to impose pre-judgement interest in an enforcement action under the wage and hour laws, and noted that an agency's "powers are limited to those expressly granted by statute or those fairly implied as necessary to carry out their assigned function." Ibid. In contrast, the Attorney General's unprecedented supersession of a municipal police department does not logically constitute an implied power that flows from the Attorney General's general supervisory authority over the State's law enforcement agencies and ability to set policy in the enforcement of criminal law. The magnitude of the action taken by the Attorney General is simply not comparable to the implied power of the DOL to seek pre-judgement interest in a wage and hour enforcement action that naturally flows from its statutory authority to collect unpaid wages from an employer. See Id. at 62.

Substantial case law defines the role of the New Jersey Attorney General, and it has been noted that the Attorney General's powers are primarily carved out by statute: "although at common law the attorney-general did in fact possess broad powers over criminal matters, his powers and duties were, and are now, seemingly subject to definition by the Legislature." Morss v. Forbes, 24 N.J. 341, 370 (1957). Thus, it is true that the Attorney General's role is "to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient

enforcement of the criminal law and the administration of criminal justice throughout the State." N.J.S.A. 52:17B-98. But the Attorney General's admittedly broad discretion as a law enforcement agency does not translate into limitless authority to supersede and direct the operations of hundreds of subsidiary law enforcement agencies of the State, which retain an independent character. This is particularly true where, if supersession authority exists at all, it would most logically be vested in the County Prosecutors who are more attuned to the operations of police departments in their jurisdiction.

For example, the Attorney General's supersession authority over County Prosecutors, which has been so emphasized in this matter, is subject to specific statutory requirements. In the case of a full supersession, Attorney General may only exercise its power to wholly supersede a County Prosecutor in "all of the criminal business of the State in [that] County" upon request by the Governor, a grand jury, or an Assignment Judge or Board of Chosen Freeholders from that county. N.J.S.A. 52:17B-106. Before the 1970 enactment of this provision of the Criminal Justice Act, the supersession of the Attorney General over County Prosecutors offices was governed similarly: "under ordinary circumstances, the attorney-general is not warranted in venturing into the county except upon request, or when there is no county prosecutor, or as otherwise provided by the statute." Morss, supra, 24 N.J., at 369.

This Court detailed in Morss, as it has in other decisions, the evolution the Attorney General and County Prosecutor's offices from the same nucleus initially, into two separate, but independent offices. In the early days of our nation, the Attorney General was responsible for prosecution of all criminal business in the State. Id. at 366. By 1844, the structure had evolved to allow for the appointment of County Prosecutors who could conduct prosecutions "in the absence of the attorney general." Ibid. Gradually, the law evolved to limit the ability of the Attorney General to intercede into the business of the County Prosecutor. Id. at 366-67. Ultimately, the result today is that "the [County] prosecutors are largely independent of control by the attorney-general, who may intervene in the criminal matters of the county primarily by way of supersession upon request." Id. at 369. Thus, the Attorney General's supersession power over County Prosecutors is itself a limited power subject to specific statutory limitations – limitations which we note the Attorney General has not met in this case, particularly where there has not been statutory supersession of the Passaic County Prosecutors office.

In any event, there certainly is no similar common co-evolution of the State's numerous municipal police departments with the apparatus of the Attorney General and the County Prosecutors. Indeed, as discussed within, while subject to ultimate supervision by those agencies, municipal police departments evolved separately as independent units of local government, not of State government. It

should come as no surprise then, that there does not exist any statutory mechanism that specifically provides for an Attorney General to supersede a municipal police department, and no such authority has been cited in this litigation.

Indeed, it is important to note that there is no specific statutory or precedential authority for County Prosecutors to supersede municipal police departments. And while the State PBA acknowledges that such authority may exist in some form, it must be subject to limits that have yet to be fully explored. When referring to the authority of County Prosecutors to supersede municipal police departments, the Attorney General cites only to generalized authority regarding the general supervisory power of the County Prosecutors over municipal police departments. See Rb27-28. The Attorney General has not cited to a single case that reviewed and approved of a County Prosecutor superseding all of the business of a municipal police department – the closest authority is a case that cryptically discusses, in a footnote, the concept of such a supersession, but without reviewing its legality. See Williams v Borough of Clayton, 442 N.J. Super. 583, 587 fn2 (App. Div. 2015).

While it appears from anecdotal information that there has been an historic practice of County Prosecutors wholly superseding municipal police departments, as the Attorney General admits in a footnote, such practice has not yet been reviewed by a Court: "[W]hile … county prosecutors have superseded municipal

police departments in the past, parties have almost never sued to challenge supersessions." See Rb29, fn6. Not surprisingly, the State cannot point to any example of a State supersession of a municipal police department – the claimed example, Camden, involved a scenario where the County Prosecutor took control of the local police department. See Ra3 ("the Camden County Prosecutor's Office was ordered…to take over – or supersede -the Police Department"). Equally important, in all of the numerous other anecdotal examples of a County Prosecutor taking over a local police department, certain specific defining features existed that are absent in this case. A careful review of these supposed County Prosecutor supersessions shows that the Acting Police Chief or commanding officers was incapacitated in the municipality, usually due to facing criminal charges or a corruption scandal resulting in a suspension. See Ra3 – Ra63. The other distinguishing feature is that the supposed supersession usually involved the cooperation or invitation of the local municipal government for the County Prosecutor to run the department until new leadership could be appointed.

Therefore, while the statutory basis, and the lawfulness, of supposed supersession of a local police department by a County Prosecutor remains unclear because it has yet to be directly reviewed by a Court, the Attorney General admittedly cannot point to examples where this has occurred without the consent of the municipality and without it being required due to the duly appointed

leadership being incapacitated. This is not surprising – the same cases cited by the Attorney General in support of the supposed supersession authority of County Prosecutors indicates that their supervisory power is subject to such limitations. For example, the Passaic County matter reviewed the question of whether a County Prosecutor could require officers of a local police force to submit to drug testing, absent a request from the local force. Passaic County PBA Local 197 v. Office of the Passaic County Prosecutor, 385 N.J. Super. 11, 19 (App. Div. 2006). The Appellate Division held that such action was permissible where "the chief law enforcement officer in the affected jurisdiction consents to the County Prosecutor initiating the order" or certain "unusual conditions" existed, that included "the employing agency does not act, or where the prosecutor deems it necessary to act expeditiously for fear of either tipping off the suspects." Ibid. The Appellate Division did caution though, that "while the County Prosecutor has such power…we see no basis for its routine exercise." Id. at 19-20.

The County Prosecutor is not represented in any of the case law as possessing free-ranging authority to take control over a local police department, but is instead described as the foremost County official directing law enforcement policy. As the seminal case on this subject explained, "the county prosecutor does not stand alone; others have corresponding responsibilities and he is in a position to enforce their responsibilities in aid of performance of his own. It is equally

apparent that his official responsibility is not an absolute one and that the impossible is not expected of him by the legislature." State v. Winne, 12 N.J. 152, 169 (1953). Further, as discussed infra, municipal police departments, though subject to the supervision of county prosecutors, remain independent local political units in ways that contradict the State's claimed right of supersession.

C. The Attorney General's Claimed Supersession Authority Violates New Jersey Law, and is Not Supported by any Theoretical or Practical Basis in Law Enforcement

Not only does the Attorney General lack any statutory authority to seize control of a municipal police department, doing so is inconsistent with the statutory role that municipalities play in appointing a police chief and directing the operations of a local police force under New Jersey law. See N.J.S.A. 40A:14-118. It is no accident that by statute, a municipal police department such as Paterson's is integrated into, and directly responsive to, the democratically elected government from the community it serves. As N.J.S.A. 40A:14-118 states in relevant part:

> The governing body of any municipality, by ordinance, may create and establish, as an executive and enforcement function of municipal government, a police force, whether as a department or as a division, bureau or other agency thereof, and provide for the maintenance, regulation and control thereof. Any such ordinance shall, in a manner consistent with the form of government adopted by the municipality and with the general law, provide for a line of authority relating to the police function and for the adoption and promulgation by the appropriate authority of rule and regulations for the government of the force and for the discipline of its

> members. **The ordinance may provide for the appointment of a chief of police and such members, officers and personnel as shall be deemed necessary**, the determination of their terms of office, the fixing of their compensation and the prescription of their powers, functions and duties, **all as the governing body shall deem necessary for the effective government of the force**. Any such ordinance, rules and regulations, shall provide that **the chief of police, if such position is established, shall be head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof** […] (emphasis added).

The provision then goes on to list the powers of the Chief of Police, including under 40A:14-118(e) the responsibility to "report at least monthly" to local government regarding the operation of the police force. Pursuant to this provision, a municipal police department is a creature of local government by statutory design. Such a structure is consistent with the longstanding American tradition in local control over policing. See, e.g., Dwen v. Barry, 483 F.2d 1126, 1128-29 and fn3 – 5 (2nd Cir. 1973) (explaining that the American tradition of policing stems from a decentralized and locally controlled police force). That New Jersey police departments remain subordinate to County Prosecutors with whom they work most closely, and ultimately to the Attorney General, does not change the fact that local police are still a unit of local government.

The importance of community control over local police departments has previously been discussed by this Court. In the context of upholding the

establishment of a Civilian Complaint Review Board in the City of Newark against a challenge that claimed this interfered with the authority of the Attorney General in directing Internal Affairs, this Court held that N.J.S.A. 40A:14-118 supported such local oversight. As this Court explained, the provision states that a municipal police force "must be part of the 'executive and enforcement function' of local government, [with] a specific line of authority relating to the police force." Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 95 (2020). This Court also described the civilian supervision exercised by the City of Newark over its police department in that case "a legitimate local concern" exercised pursuant to that city's broad police powers. Id. at 102. While recognizing that the Attorney General had a sphere of authority to direct Internal Affairs investigations that could not be subject to interference by a municipality, this Court affirmed the role of local government in directing a municipal police force. See Id. at 113.

This Court has held that "the Courts and Legislature have long recognized that because police officers are different from other public employees, the scope of discretion accorded to the public entities that administer police departments is necessarily broad. **The Legislature has vested municipal authorities with the discretion to determine the powers, duties, functions, and efficient operation of police departments**." In re Jersey City v. Jersey City PBA, 154 N.J. 555, 572

(1997) (citing N.J.S.A. 40A:14-118) (emphasis added). It is not possible to reconcile this well-established structural role of municipal government in policing with the New Jersey Attorney General's legally unauthorized, historically unsupported, and otherwise uninvited takeover of the Paterson Police Department.

Not only this, but the Attorney General's claimed right to assume control over a municipal police department contradicts the role of criminal prosecutors in the Internal Affairs process. As the Attorney General's IAPP guidelines state, the Internal Affairs process is subject to oversight by County Prosecutors. (Pa129, at IAPP Guidelines 10.0.1). The Guidelines note, "County Prosecutors are an important alternative venue for the filing of internal affairs complaints against an officer of any law enforcement agency in their jurisdiction." Id. at 10.0.2. The County Prosecutor can demand to directly review IA investigations if it suspects protocols are not being followed. Id. at 10.0.3. Ultimately, of course, the County Prosecutor has the discretion to treat officer misconduct as a criminal matter that warrants prosecution. Id. at Pa129-30, at 10.0.4. This leads to a contradiction if a local force is under State control.

The Attorney General has invoked its statutory power to supersede County Prosecutors in justifying its departmental takeover. See N.J.S.A. 52:17B-107(a)(1). This means that in a State-controlled police department, the Attorney General has assumed control of the IA process *and* departmental operations, and local

prosecutors would no longer serve as an independent check on the local IA process. It is difficult to see how such a role could be exercised objectively. This points to the contradiction that is created if the Attorney General attempts to interfere with the direct municipal line of authority a city enjoys with respect to its police department, as well as a city's appointment powers enumerated under N.J.S.A. 40A:14-118. While the Paterson PD's takeover was adopted in the name of oversight, the actual result is unchecked power - which tradition and history instructs, often leads to the abuse of power.

Leaving aside the clear violation of statutory authority, the Attorney General has not articulated any policy argument or theory as to why its' seizure of a local police department would constitute a "reform." While the State has argued that there was a "loss of confidence" in the Paterson Police Department, it has not explained why, if true, public confidence could not be restored through the ordinary oversight powers of State and County prosecutors to root out police misconduct as well as other forms of public malfeasance or non-feasance. A national conversation exists surrounding police reform– but few if any police reform advocates or theoreticians argue for a State to take control over a municipal police department with minimal explanation except vague promises it will improve that police department.

To the contrary, advocates for police reform have proposed **increasing** local control over police departments – for the obvious reason that the more attuned a police department is to local needs, the better it can serve them. See, e.g., Anthony O'Rourke, Rick Su & Guyora Binder, Disbanding Police Agencies, 121 Columbia L. Rev. 1327, 1400-01 (May 2021) ("local control is the best way to ensure political accountability. Local control is especially important given the disproportionate impact of policing on poor and minority neighborhoods. Control at the state or national level might better ensure uniform standards. But the minority groups most severely impacted by policing often have little influence at those levels"); K. Sabeel Rahman & Jocelyn Simonson, The Institutional Design of Community Control, 108 Calif. L. Rev. 679, 681 (June 2020) (discussing the "calls of social movements for community control…in the areas of policing and local economic development"). The Attorney General's actions in this case cannot be situated anywhere along the continuum of discussion about police reform. Instead, the Attorney General seems to have adopted the unwarranted inference that the next step from stricter Attorney General oversight is direct control of a police department. That inference confuses the proper oversight role of the Attorney General and is in flat contradiction to what advocates for reform are actually seeking.

In conclusion, the Attorney General's actions here overstep any statutory authority – express or implied. If such supersession by that office is to occur, it is up to the Legislature to provide that authority and to set its parameters.

CONCLUSION

For all of the reasons discussed herein, the New Jersey State PBA respectfully requests that this Court grant its Motion to Appear *Amicus Curiae*, and that the State's Petition for Certification be Denied.

Dated: January 10, 2025

Respectfully submitted,

/s/ ***Raymond M. Baldino***
Raymond M. Baldino, Esq.
Robert A. Fagella, Esq.