

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

POLICE BENEVOLENT ASSOCIATION OF THE)
NEW YORK STATE TROOPERS, INC. and THOMAS)
H. MUNGEER, as President of the Police Benevolent)
Association of the New York State Troopers, Inc.,)

Plaintiffs,)

-against-)

LETITIA A. JAMES, in her official capacity as Attorney)
General of the State of New York,)

Defendant.)

Index No. 909849-21

SUMMONS

Plaintiffs Designate Albany
County As Place of Trial
Defendant's Place of Business
Business Address:
The Capitol, Albany, NY

TO THE ABOVE NAMED DEFENDANT:

YOUR ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or if the complaint is not served with the summons, to serve a Notice of Appearance on the Plaintiff's attorney within 20-days after service of the summons exclusive of the date of service (or within 30-days after the service of the summons if the summons is not personally delivered to you within the State of New York, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 23, 2021
Albany, NY

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Defendant's Address:
Office of the New York State
Attorney General
Litigation Bureau
The Capitol
Albany, NY 12224-0341

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**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Police Benevolent Association of the New York State Troopers, Inc.
(hereinafter PBA) and Thomas H. Mungeer, as President of the Police benevolent Association of
the New York State Troopers, Inc., sues the Defendant Letitia A. James, in her official capacity
as Attorney General of the State of New York, and alleges as follows:

PRELIMINARY STATEMENT

1. This action involve a challenge to Executive Law Section 70-b and its application
by the Office of the Attorney General to members of the PBA. Executive Law §70-b mandated
the establishment of an Office of Special Investigation (OSI) within the Office of the New York
State Attorney General (OAG) effective April 1, 2021.

2. The legislation requires OSI to “investigate and, if warranted, prosecute any
alleged criminal offense or offenses committed by a person, whether or not formally on duty,
who is a police officer. . .or a peace officer...concerning any incident in which the death of a
person, whether in custody or not, is caused by an act or omission of such police officer or peace
officer or in which the attorney general determines there was a question as to whether the death

was in fact caused by an act or omission of such police officer or peace officer.” As currently applied by the OAG, the OSI investigates every incident involving a death in which a state trooper is *merely present* at the scene of the death irrespective of whether the state trooper is on-duty or off-duty and regardless of whether there was official action taken..

3. A review of the legislative history and the bill jacket attendant with Section 70-b demonstrates that the OAG has greatly expanded its investigative actions without appropriate authority under the statute to include matters having no reasonable relationship to or which are unrelated to law enforcement official actions. The expanded investigation have no connection a police officer’s or peace officer’s official duties/conduct, whether on-duty or off-duty, are are initiated solely by virtue of the fact that the individual is employed as a state trooper.

4. Indeed, the stated purpose of S. 2575-B (Section 70-b) as reflected in its legislative history by its primary author and sponsor Senator Jaamal Bailey would only:

. . . require a law enforcement officer or peace officer who discharges his or her weapon under circumstances where a person could be struck by a bullet to immediately report the incident.

5. Of equal importance is the express justification set forth by its sponsor Senator Bailey in his Memorandum of Support that the bill would remove a potential conflict of interest where a “. . .New Yorker has died following an encounter with a law enforcement officer.” Thus, the OAG and the OSI have applied a vague and overbroad interpretation which virtually gives themselves unfettered investigative authority into matters which have no reasonable relationship to law enforcement conduct or whether there has been a discharge of a firearm or not.

This proceeding seeks to clarify the investigative authority of the OAG OSI, limit the OSI's investigative authority to matters having a reasonable relationship to or which are related to law enforcement official actions; a police officer's or peace officer's official duties/conduct, whether on-duty or off-duty off-duty; and to challenge provisions of the law which are vague and overbroad and a denial of due process.

JURISDICTION AND VENUE

6. Jurisdiction is vested in the Supreme Court pursuant to §140(b) NY Judiciary Law.

7. Venue is proper pursuant to CLR §506(b) because the Defendant's principal office is located in the Third Judicial District.

PARTIES

8. Plaintiff PBA is the duly certified collective bargaining representative for more than four-thousand uniformed members of the Division of State Police covering the ranks of Trooper, Sergeant, Lieutenant, Captain and Major, with its principal offices located at 120 State Street, Albany, New York 12207.

9. Plaintiff Thomas H. Mungeer is the duly elected President of the PBA, and is adversely affected by the policy and practices of the OAG OSI.

10. Defendant Letitia A. James, in her official capacity, is the Attorney General of the State of New York, with both managerial and oversight authority of the Office of the Attorney General and the Office of Special Investigations.

PBA ASSOCIATIONAL STANDING TO MAINTAIN ACTION

11. The Police Benevolent Association of the New York State Troopers, Inc., (PBA)

is the exclusive bargaining representative for two bargaining units of New York State Troopers and is dedicated to improving the terms and conditions of employment of its members.

12. The PBA's membership consists exclusively of uniformed members of the New York State Police from the rank of Trooper through the rank of Major.

13. The PBA advocates for the rights of its members and is the official voice of the membership, who are now subject to the unlawful practices of the OAG OSI.

14. Members of the PBA would otherwise have standing to sue in their own right over the unlawful practices of the OAG OSI

15. The interest that the PBA seeks to protect is germane to the organization's purpose.

16. Neither the claims asserted nor the relief requested requires the participation of individual members in the lawsuit.

FACTS

17. On April 1, 2021, Executive law §70-b became effective authorizing the Attorney General to investigate and prosecute an offense or offenses committed by a police officer, whether on-duty or off-duty, which results in the death of an individual, whether armed or unarmed.

18. On or about July 19, 2021, an off-duty New York State Trooper was operating his private vehicle accompanied by a female companion in the Town of Lysander, New York.

19. The off-duty trooper was driving eastbound on SR 31 at about 5:00 p.m. when a vehicle operated by Charles A. Fadale, 66-years of age of Illinois, who was driving in the opposite direction as the off-duty trooper, crossed over the center line of the highway striking the

off-duty trooper's private vehicle head-on resulting in serious personal injury to the off-duty state trooper and his companion and further resulting in the death of Fadale.

20. All three parties were transported to Upstate Medical Center Hospital where Fadale was pronounced dead.

21. The off-duty trooper and his companion were admitted to the hospital with serious physical injuries requiring surgical intervention.

22. While in the hospital, an investigator from the OAG OSI appeared at the hospital and sought to question the off-duty trooper about the accident.

23. Moreover, the OAG OSI investigator requested that the trooper consent to the provide a blood sample to ascertain whether the off-duty trooper was intoxicated. Upon information and belief, OSI Investigator David Buskey was the individual who appeared and made this request at the direction of an unknown OSI supervisor.

24. The motor vehicle accident involving the off-duty trooper and Fadale had no reasonable relationship to and/or was unrelated to any law enforcement official action. Furthermore, the accident was unrelated to the state trooper's official duties or conduct.

25. The motor vehicle accident involving the off-duty trooper and Fadale could not reasonably be attributed to law enforcement activity or an act or omission by the off-duty state trooper.

26. OAG OIS investigators commenced an investigation into this motor vehicle accident solely by virtue of the fact that member is employed as a state trooper.

AND AS FOR A FIRST CAUSE OF ACTION

27. The plaintiffs repeat and reallege the allegations set forth in Paragraphs 1-26, as

though fully set forth herein.

28. This is an action to challenge the actions of the OAG OSI as acting in excess of its statutory authority pursuant to Executive Law §70-b.

29. Executive Law §70-b prescribes the duties of the Attorney General and the Office of Special Investigations.

30. The Attorney General is not authorized under Section 70-b to conduct investigations of off-duty state troopers that have no reasonable relationship to the law enforcement activities of a state trooper, which have no reasonable relationship to or are unrelated to any law enforcement official action, or which do not involve an officer's official duties or conduct.

31. Defendant James and the OSI acted in an *ultra vires* manner and contrary to law in conducting an investigation of an off-duty state trooper involved in an off-duty fatal traffic accident, while in the trooper's privately owned vehicle, which was unrelated to the trooper's official duties, official law enforcement activities or was unrelated to an act or omission of the state trooper in the performance of his official duties.

32. An actual case or controversy exists between the Plaintiffs and the Defendant regarding the claims set forth herein. Absent resolution by the Court, the dispute between the Plaintiffs and the Defendant is capable of and likely to reoccur.

WHEREFORE, Plaintiffs request that this Honorable Court grant the plaintiffs' request for declaratory relief and enjoin the Defendant from conducting investigations of state troopers which have no reasonable relationship to the law enforcement activities of a state trooper and which have no reasonable relationship to, and which are unrelated to any law enforcement

official action or a state trooper's official duties or conduct.

AND AS FOR A SECOND CAUSE OF ACTION

33. The plaintiffs repeat and reallege the allegations set forth in Paragraphs 1-32, as though fully set forth herein.

34. This is an action challenging Executive Law §70-b as void for vagueness and overbreadth.

35. Section 70-b does not provide fair notice of the conduct it regulates.

36. Section 70-b targets state troopers for criminal investigation by the Defendant for conduct which is constitutionally protected and for conduct which has no reasonable relationship to the law enforcement activities of a state trooper and for conduct which has no reasonable relationship to and is unrelated to any law enforcement official action or a state trooper's official duties or conduct.

37. Section 70-b gives the Defendant unstructured and unlimited discretion in determining whether the statute applies to any conduct of a state trooper which has no reasonable relationship to the law enforcement activities of a state trooper and conduct which has no reasonable relationship to and is unrelated to any law enforcement official action or a state trooper's official duties or conduct.

38. Moreover, Section 70-b leaves ambiguous and vague whether the Defendant and OSI may involve itself in any investigation where the state trooper's act or omission had no relationship to the death of an individual.

WHEREFORE, Plaintiffs request that this Honorable Court find that Section 70-b is void for vagueness and overbreadth, grant the plaintiffs' request for declaratory relief and enjoin

the Defendant from conducting investigations of state troopers which have no reasonable relationship to the law enforcement activities of a state trooper and which have no reasonable relationship to and are unrelated to any law enforcement official action or a state trooper's official duties or conduct.

AND AS FOR A THIRD CAUSE OF ACTION

39. The plaintiffs repeat and reallege the allegations set forth in Paragraphs 1-38, as though fully set forth herein.

40. This is an action challenging Executive Law §70-b as denying the Plaintiffs Equal Protection Under the Law.

41. Section 70-b is in conflict with CPL §160.50, which provides for the sealing of information when a criminal case is disposed in the defendant's favor.

42. Section 70-b purports to release information allegations identifying state troopers permanently and prominently displayed on the Defendant's public website when civilian defendants are afforded the right to suppress such information through the sealing of records under the CPL.

43. By authorizing the Defendant to issue a report readily available to the public and posted on the Defendant's public website which can readily identify a state trooper denies the state trooper equal protection under the law based solely on his/her employment status as a state trooper.

WHEREFORE, Plaintiffs request that this Honorable Court find that Section 70-b violates a state trooper's right to equal protection under the law, and such further relief as the Court deems necessary, appropriate and just.

Respectfully submitted,

/s/ Richard E. Mulvaney, Esq.

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VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF ALBANY)

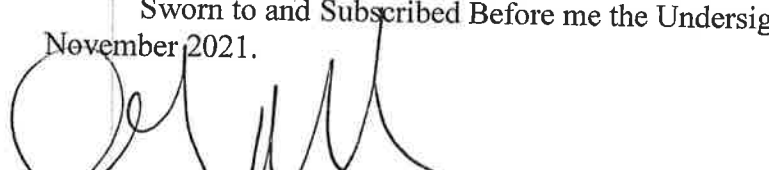
I, Thomas H. Mungeer, being duly sworn deposes and states:

1. I am the Plaintiff in this case and the President of the Police Benevolent Association of the New York State Troopers, Inc.

2. The foregoing Verified Complaint for Declaratory and Injunctive Relief is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, except as to those matters therein stated to be alleged on information and belief I believe to be true.


Thomas H. Mungeer

Sworn to and Subscribed Before me the Undersigned Authority on the 23rd day of November 2021.


NOTARY PUBLIC - STATE OF NEW YORK

My Commission Expires:

STEPHEN G. DENIGRIS
Notary Public, State of New York
No. 02DE5042416
Qualified in Albany County
Commission Expires May 30, 2023

SIGNING REQUIREMENT CERTIFICATION
PURSUANT TO 22 NYCRR §130-1.1A

I hereby certify that pursuant to 22 NYCRR §130-1.1a that to the best of my knowledge information and belief formed after inquiry reasonable under the circumstances, the presentation of the papers listed below or the contentions therein are not frivolous as defined in 22 NYCRR §130-1.1(c). Further, the matter was not obtained through illegal conduct, or that if it was, the attorney or other person responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom, and (ii) the matter was not obtained in violation of 22 NYCRR 1200.41-a[DR 7-111]

Dated: November 23, 2021
Albany, NY

/s/ Stephen G. DeNigris, Esq.
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