APL-2024-00087
Albany County Clerk's Index No. 905532-22

Court of Appeals

of the

State of New York

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NEW YORK STATE
COURT OF APPEALS

In the Matter of
RECLAIM THE RECORDS,

Petitioner-Appellant,

– against –

NEW YORK STATE DEPARTMENT OF HEALTH,

Respondent-Respondent.

MOTION FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF

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COURT OF APPEALS
STATE OF NEW YORK

Docket No. APL-2024-00087

In the matter of
RECLAIM THE RECORDS,

Petitioner-Appellant,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH,

Respondent-Respondent.

Third Department Docket
Case No.: CV-23-0669

Albany County Clerk's
Index No: 905532-2022

NOTICE OF MOTION OF GENEALOGISTS DEBRA BRAVERMAN AND ROGER D. JOSLYN FOR LEAVE TO APPEAR AS *AMICUS CURIAE*

PLEASE TAKE NOTICE that, upon the annexed affirmation of David B. Rankin, dated March 24, 2025, and the accompanying proposed brief, David B. Rankin will move this Court on the 7th day of April, 2025, at 10:00 a.m. or as soon thereafter as counsel may be heard, at the New York Court of Appeals Hall, 20 Eagle Street, Albany, New York, 12207, for an order pursuant to Rule 500.23 or the Rules of Practice of the Court of Appeals of the State of New York granting Genealogists Debra Braverman and Roger D. Joslyn leave to file the accompanying brief as amicus curiae in the above-entitled action and for such other and further relief as the Court may deem just and proper.

Dated: March 24, 2025
New York, New York

Respectfully submitted,

By:_____

David B. Rankin
Beldock Levine & Hoffman, LLP
99 Park Avenue, PH/26th Fl.
New York, New York 10016
t: 212-277-5825
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Attorney for Proposed Amicus Curiae Genealogists Debra Braverman and Roger D. Joslyn

COURT OF APPEALS
STATE OF NEW YORK

	Docket No. APL-2024-00087
In the matter of RECLAIM THE RECORDS, *Petitioner-Appellant*, -against- NEW YORK STATE DEPARTMENT OF HEALTH, *Respondent-Respondent*.	Third Department Docket Case No.: CV-23-0669 Albany County Clerk's Index No: 905532-2022 **AFFIRMATION OF DAVID B. RANKIN IN SUPPORT OF MOTION OF GENEALOGISTS DEBRA BRAVERMAN AND ROGER D. JOSLYN FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

DAVID B. RANKIN, an attorney admitted to practice before the Courts of the State of New York, being duly sworn, affirms the following under penalty of perjury:

1. I am a partner at the law firm of Beldock Levine & Hoffman LLP, which serves as counsel for proposed *amicus curiae* Genealogists Debra Braverman and Roger D. Joslyn ("Genealogists"). I respectfully submit this affirmation in support of proposed *Amici* Genealogists' motion for leave to appear as an amicus curiae in the above-captioned proceeding.

2. Submitted herewith as Exhibit A is the Affidavit of Debra Braverman.

3. Submitted herewith as Exhibit B is the Affidavit of Roger D. Joslyn.

4. Submitted herewith as Exhibit C is a copy of the proposed *amicus* brief.

5. Proposed *Amici* Genealogists are professional genealogists with decades of experience assisting clients in New York State Surrogate's Courts in proceedings related to the probating and administration of estates. In that work, they provide written and oral testimony establishing the decedent's family tree and the potential distributees to the estate. When potential distributees are also deceased, *Amici* locate the historical records, including death certificates, required to demonstrate the facts of these deaths. The steps *Amici* take to locate these records have direct relevance to the death index records sought in the present case, and make *Amici* potentially useful to the Court's understanding of the issues in this case.

6. Pursuant to Rule 500.23(a)(4) of the Rules of Practice of this Court, this Court should grant Genealogists Debra Braverman and Roger D. Joslyn permission to appear as *amicus curiae* because their brief identifies arguments that might otherwise escape the Court's consideration and would assist the Court with understanding the broader significance of this matter. The proposed *Amici* Genealogists have a demonstrated interest in this matter and can be of special assistance to the Court.

7. Specifically, the proposed *Amici* Genealogists have a particular interest in improving accessibility to the records at issue in this case, a statewide index of death records from the last 50 years, which would benefit *Amici*'s clients, along with countless other members of the public who find themselves in Surrogate's Court

estate proceedings every year, by providing information about a decedent's death, hastening the closure and distribution of estates. If representatives of an estate lack complete information about the date or location of a distributee's death and need to request a search of the New York State Department of Health records to obtain death certificates, the backlog of requests can cause a delay of three or more years before the records are located. However, if *Amici* had access to the index of New York State deaths in the last 50 years listing the location and date of death, the backlog delay could be avoided and the records could be obtained from the municipality where the death occurred. This can save years in the time it takes to settle estates in Surrogate's Court.

8. The proposed *amicus* brief will assist the Court by explaining in some detail the nature of the public benefit involved, which would not otherwise come to light at this stage of the litigation and would provide the Court with substantive information missing from the Appellate Division decision below. In that decision, the court employed a test balancing the privacy interests against the public interests at issue in the disclosure of public records. *Amici* seek, through their brief, to provide the Court with a greater measure of the public interest that considers the experience of the clients *Amici* work with and more generally of the segment of the public who interact with the courts in probating and administering the estates of their loved ones.

9. No party or its counsel contributed content to this brief or otherwise participated in the brief's preparation.

10. No party or its counsel contributed money intended to fund preparation or submission of this brief.

11. No person or entity other than movant or its counsel contributed money intended to fund preparation or submission of this brief.

12. WHEREFORE, on behalf of proposed *amicus curiae*, it is respectfully requested that an Order be entered granting leave to appear as *amicus curiae* and to file the attached proposed brief.

Dated: March 24, 2025
New York, New York

Respectfully submitted,

By:_____

David B. Rankin
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t: 212-277-5825
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Attorney for Proposed Amicus Curiae Genealogists Debra Braverman and Roger D. Joslyn

Exhibit A

COURT OF APPEALS
STATE OF NEW YORK

In the matter of RECLAIM THE RECORDS, Petitioner-Appellant, -against- NEW YORK STATE DEPARTMENT OF HEALTH, Respondent-Respondent.	APL-2024-00087 Albany County Clerk's Index No: 905532-2022 **AFFIDAVIT OF** **DEBRA BRAVERMAN**

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

Debra Braverman, being duly sworn, deposes and says:

1. I am a professional forensic genealogist, focusing on due diligence and kinship proceedings in Surrogate's Courts in New York State.

2. I submit this Affidavit in support of Petitioner-Appellant Reclaim the Records' Motion for Amicus Curiae Relief. Unless otherwise stated, the statements made herein are based on my personal knowledge and experience.

3. I have been working as a forensic genealogist for over 20 years. I have qualified as an expert witness in genealogy in Surrogate's Courts in New York, Bronx, Kings, Queens, Nassau, Suffolk, and Westchester Counties.

4. Additionally, I am a member of several genealogy societies, including the Association of Professional Genealogists and its Forensic Genealogy Special Interest Group, the National Genealogical Society, the New York Genealogical and Biographical Society, and the Jewish Genealogical Society, Inc. (NY). I also lecture on genealogical topics.

5. I write to provide the Court with my experience and perspective on how access to

key fields of vital records data held by the New York State Department of Health ("DOH") would greatly benefit New Yorkers and other members of the public with whom I work on a daily basis. These are, uniformly, individuals or families who have lost a family member and have retained me to gather the materials and documents necessary to prove family connections. Specific to the present context, my work requires me to demonstrate adequate proof that deceased individuals who would have been eligible under the law to inherit from an estate are, in fact, dead.

6. In the probate context where a Will is present, notices and waivers are sent to all potential distributees who would have standing to challenge the Will. When potential distributees are no longer living, my job involves submitting an Affidavit of Due Diligence, providing the dates and locations of death of those distributees. When that information cannot be adequately proven, I describe in detail what investigative steps were taken in my efforts to locate that distributee's death information. Every piece of documentation tending to identify a deceased person adds value to the affidavit, such as local voter registration rolls, newspaper obituary listings or online memorial pages hosted by funeral parlors, even if these sources provide only a part of the acceptable proof necessary for the Court's purposes.

7. In the kinship hearing context, where a person has died intestate, the standard of proof is higher than when probating a Will. My role there includes giving sworn testimony as a non-interested witness as to the composition of the family tree, the status of each person on it, and the due diligence taken in my efforts to obtain information about any deceased individuals. The Court requires a certified copy of the death certificates of all deceased distributees, and without this, an Order of Distribution will be considerably delayed, and that portion of the distribution may escheat back to the State rather than be distributed to a surviving family member.

8. A public database indexing basic death information for those certificates held by

the DOH would help immensely in this process, and would save the estate incalculable money and time by eliminating much of the investigative work required when there is uncertainty as to a potential distributee's circumstances. It is not uncommon for the families I have worked with to have lost track of the details of some family member's death, such as where a person was living at the time of their death or what year that death occurred. When such a person died in one of the numerous states with open records laws, such as Massachusetts, Connecticut, or Florida (where many of my clients have deceased relatives), the process of locating records establishing the necessary proof is much easier, faster, and cheaper for the estate, resulting in better outcomes for the families involved. In New York, if the person died more than 50 years ago, I can sometimes find data regarding their death in the indexes available on the DOH website, including residence information that can help pinpoint where a copy of the death certificate might be found. However, for people who died within the last 50 years, this is not an available option.

9. It is my opinion, based on my years of professional experience in the matters described, providing open public access to an index containing up-to-date data on the names, ages, dates of death and locations of death contained on the death certificates held by the New York State Department of Health would be a significant benefit to the thousands of New Yorkers who each year enter into estate proceedings in the Surrogate's Courts. By establishing the location of death, such an index would permit the estate representatives to obtain copies of death certificates directly from the local records clerks much more quickly than by going through the DOH, saving years of administrative time for the individual estate while also helping to reduce the DOH backlog of records requests. This benefits the public and, respectfully, should be considered in any calculation regarding the public interest in the release of these kinds of records, and of the specific records at issue in this matter.

Debra Braverman

Sworn before me this 18 day of March, 2025

NOTARY PUBLIC

EMMA ROSENSAFT
NOTARY PUBLIC-STATE OF NEW YORK
No. 01RO6386037
Qualified in New York County
My Commission Expires 01-22-2027

Exhibit B

COURT OF APPEALS
STATE OF NEW YORK

In the matter of RECLAIM THE RECORDS, Petitioner-Appellant, -against- NEW YORK STATE DEPARTMENT OF HEALTH, Respondent-Respondent.	APL-2024-00087 Albany County Clerk's Index No: 905532-2022 **AFFIDAVIT OF** **ROGER D. JOSLYN**

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

Roger D. Joslyn, being duly sworn, deposes and says:

1. I am a professional genealogist, focusing mostly on due diligence and kinship proceedings in Surrogate's Courts in New York State.

2. I submit this Affidavit in support of Petitioner-Appellant Reclaim the Records' Motion for Amicus Curiae Relief. Unless otherwise indicated, the statements made herein are based on my personal knowledge and experience.

3. I have been working as a full-time professional genealogist since 1978. In 1981, I was certified as a Certified Genealogist by the Board for Certification of Genealogists, and I renew my certification as required every five years. I am a past President of the Association of Professional Genealogists and a member of several genealogical and historical associations. I have contributed—as an author, editor, and indexer—to numerous scholarly journals, books, and other publications relating to the genealogical field, and I have lectured and taught at national, regional, and local conferences and seminars. In 1982, I was elected a Fellow of the American Society of Genealogists (ASG), the highest honor in the field and limited to fifty lifetime members based on

their published scholarly work, and I am a past President of the ASG. I have also been honored as a Fellow of The New York Genealogical and Biographical Society and the Utah Genealogical Association.

4. Since 1982, my work has been concentrated in the New York City metropolitan and surrounding area throughout much of New York State, New Jersey, Pennsylvania, and elsewhere in the Northeast, including New England, where I lived for ten years. Over the course of my nearly forty-seven years of genealogical work, I have developed professional and personal relationships with New York's archivists, innumerable historians and researchers, and others connected with the genealogical field.

5. I write to provide the Court with information describing how the absence of a publicly accessible index of death records adversely affects New Yorkers, including myself in my professional capacity. As a forensic genealogist, I research individuals and families for kinship and other intestacy proceedings (administration proceedings), as well as "due diligence" cases in New York involving testators who die with a Will (probate proceedings). These cases all involve locating and documenting missing and unknown heirs, as well as connecting the links that tie families and relatives together. I have testified in Surrogate's courts in New York State numerous times, and in these appearances, I typically provide testimony in court and/or by affidavit about the research I have conducted to establish familial relationships and to explain the paper-trail and the evidentiary documentation to support the conclusions I have drawn. My work requires identifying, obtaining, and analyzing the court-required and expected documents that are key to my profession.

6. Among the documents needed to support my conclusions are records establishing the date and location of a given family member's death. The time it takes to locate these records

can vary widely depending on the complexity of a family's structure. Family structures can become complicated for many reasons, such as remarriage with children after the termination of an earlier marriage or the existence of children outside of a marriage. Every added complication increases the challenge of finding and obtaining the documents needed to account for each person recognized by law in the probate or administration process.

7. These death records are potentially available through the New York State Department of Health ("NYS DOH") for most people who died within the state outside New York City, but copies – derivative copies, or in more recent times, direct copies – are also held in the local registrars' offices of the locale where the person died (i.e., the town, village or city). If I know when and where the person died, the documents can be obtained directly from the relevant locale much more quickly than through the NYS DOH. A publicly available index of death records from 1973 to the present would facilitate the search for the documents needed to prove the fact of death.

8. An index of the death data held by the NYS DOH containing the decedent's name, age, date of death, and location of death, if made available to the public, would allow the estate representative to request a copy of the death certificate directly from the local registrars' offices, saving significant time due to the years-long backlog of records requests at the NYS DOH. This would be enormously helpful in my work, and would help families seeking to close the estate of a deceased family member move towards a resolution of the process.

9. In my experience, most cases take a minimum of two years to make their way through Surrogate's Court proceedings, and longer if there are obstacles to locating or obtaining necessary death records. During this time, family members are understandably anxious about the outcome of the proceeding, and can become impatient with the probate or administrative process.

Anything that can shorten the time is beneficial to the families at issue.

10. In my experience working in open-records states that facilitate easier access to vital records, the availability of death indexes open to public access reduces the time required to close estates, benefitting the families involved and making the probating or administration of estates more efficient. At the same time, I have neither seen nor heard any accounts of death records data obtained from open-records state systems being used to commit fraud or identity theft. Nor do the types of data that would be useful in confirming the fact of a person's death – the person's name, age, date of death, and location of death – appear to have any utility value in perpetrating such criminal activities.

11. It is my view, based on my professional experience over more than four decades of work as a Certified Genealogist in courts throughout New York State and elsewhere, that there is a strong public benefit in facilitating faster resolutions of estate proceedings by providing open public access to the limited index information needed to obtain legal confirmation of a person's death. This public benefit, accruing to every family dealing with the probate or administration of a loved one's estate, should be weighed carefully when balancing against assertions that this same information could be misused for illicit purposes.

Roger D. Joslyn, CG, FASG

Sworn before me this 19th day of March, 2025

NOTARY PUBLIC

NANCY ZHONG
NOTARY PUBLIC, State of New York
No. 01ZH6427164
Qualified in Queens County
Commission Expires Dec. 20, 2025

Exhibit C

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STATEMENT OF RELATED LITIGATION

Pursuant to Rule 500.13(a) of the Rules of Practice of the Court of Appeals of the State of New York, Amici Curiae state that, as of the date of the completion of this brief, there is no related litigation pending before any court.

Movant's counsel in this matter also represents Petitioner-Appellant Reclaim the Records in unrelated litigation matters, specifically:

- *Reclaim the Records and Alec Ferretti v. The City of New York and The Office of the City Clerk*, Appellate Division, First Dep't (Case No. 2024-03512)
- *Reclaim the Records and Alex Calzareth v. The City of New York and New York City Office of Technology and Innovation*, Supreme Court, New York County (Index No. 160467-2024)
- *Reclaim the Records, Alec Ferretti, Alex Calzareth and Rich Venezia v. United States Citizenship and Immigration Services*, U.S. Dist. Court, Southern District of New York (23-Civ-01997-PAE).

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....1

INTEREST OF AMICI CURIAE.....3

ARGUMENT.....5

I. The evaluation of the public interests at issue were not considered by the majority opinion.....5

II. The potential privacy impact of the data beneficial to *Amici* does not rise to that of *N.Y. Times v. City of N.Y. Fire Dep't*.....9

CONCLUSION.....11

TABLE OF AUTHORITIES

CASES

Harbatkin v. N.Y. City Dep't of Recs. & Info. Servs., 19 N.Y.3d 373, 380 (2012).....5

New York Times v. City of New York Fire Department, 4 N.Y.3d 477 (2005) 5, 10

STATUTES

Pub. Off. Law § 89(2)(b).....5

OTHER AUTHORITIES

Greg Floyd, "New York State genealogy requests face massive backlog".....1, 7

PRELIMINARY STATEMENT

Every day, people across New York State initiate proceedings in Surrogate's Court to determine the distribution of the assets of a deceased individual. As part of this process, the decedent's family structure is examined to identify whether persons entitled to inherit under the law are still living. For those potential distributees who are no longer living, sufficient proof of their death needs to be established. If the estate representative needs to obtain documentary proof of such a death from the state, they generally can either request a records search from the New York State Department of Health ("NYS DOH") or from the municipality where the person's death occurred. The NYS DOH Vital Records Section maintains death certificates for all deaths which occurred in New York State (outside the five boroughs of New York City), but the time it requires to undertake the search is quite prolonged: while its website states that it "may take eight (8) months or longer"[1], in practice the delay for genealogical searches can extend well beyond three years.[2] Tellingly, the NYS DOH website itself advises that "[i]f the municipality where the event took place is known, submitting your request directly to the local registrar or municipal clerk may save considerable time." *Id.* Many estate representatives seeking to complete their

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[1] New York State Department of Health, Genealogy Records & Resources, https://www.health.ny.gov/vital_records/genealogy.htm (last accessed March 21, 2025)

[2] *See* Greg Floyd, "New York State genealogy requests face massive backlog", updated December 10, 2024, *available at* https://cbs6albany.com/news/local/new-york-state-genealogy-requests-face-massive-backlog (describing a backlog of 10,831 pending requests as of November 18, 2024, and reporting a sample request more than three and a half years overdue).

list of potential distributees thus face the problem of finding a person's location of death when the circumstances of that person at the time of their death are unknown.

The value of a publicly available death index is clear: by establishing the location of a person's death in New York State, a death index can provide the missing information to the estate representative, who then can obtain the proof of death much more quickly from the locality, avoiding the three-plus year delay for a NYS DOH vital records search and facilitating a more efficient closure of the Surrogate's Court process.

The NYS DOH publishes a downloadable death index for records beginning in 1957 on its website,[3] containing the decedent's name, age at death, date of death, and a numerical code corresponding to the village, town or city of death (listed in a separate publication[4]), but only for records more than 50 years old. Petitioner-Appellant Reclaim the Records ("Appellant") seeks to obtain the more-recent death index data and to make it available to the public online, enabling estate representatives to locate the death records for family members who have died since 1972 and to hasten the closure of estates. *Amici* seek to provide the Court with information drawn from their experience to better illustrate how the public

[3] New York State Department of Health Genealogical Research Death Index: Beginning 1957, https://health.data.ny.gov/Health/Genealogical-Research-Death-Index-Beginning-1957/vafa-pf2s/about_data (last accessed March 21, 2025)
[4] New York State Gazetteer, *available at* https://health.data.ny.gov/api/assets/991FD0D8-73AF-4573-96F1-437E33D24BCA (last accessed March 21, 2025)

availability of this data would benefit the thousands of New Yorkers whose Surrogate's Court proceedings are delayed each year due to the multi-year backlog of NYS DOH vital records requests.

INTEREST OF AMICI CURIAE

Amici Debra Braverman and Roger D. Joslyn, CG, FESG, are professional genealogists with decades of experience assisting clients in New York State Surrogate's Courts in proceedings related to the probating and administration of estates. In their role as forensic genealogists, *Amici* research the family structures of the decedent to generate and present the court with a family tree indicating all potential distributees of an estate and the status – living or dead – of each of those people. When potential distributees are no longer living, *Amici* locate the historical records required to demonstrate this fact with adequate proof. The death indexes at issue in this case, if made accessible to the public, would permit *Amici* to direct estate representatives to the local registrars' offices across New York State where copies of those death records can be obtained on a much more rapid time-frame than if they requested the same records from the three-plus year backlogged New York State Department of Health Vital Records Section. This efficiency can reduce the time required to settle estates by a factor of years. The interests of *Amici* in the outcome of this case, then, are in making probate and administration processes in Surrogate's

Courts more efficient for their clients, and by extension, for the people of New York who each year enter into estate proceedings.

Ms. Braverman has been working as a forensic genealogist for over 20 years, and has qualified as an expert witness in genealogy in Surrogate's Courts in New York, Bronx, Kings, Queens, Nassau, Suffolk, and Westchester Counties. She is a member of several genealogy societies, including the Association of Professional Genealogists and its Forensic Genealogy Special Interest Group, the National Genealogical Society, the New York Genealogical and Biographical Society, and the Jewish Genealogical Society, Inc. (NY). Affidavit of Debra Braverman ("Braverman Aff."), ¶¶3, 4.

Mr. Joslyn was certified in 1981 as a Certified Genealogist (CG) by the Board for Certification of Genealogists, is a past President of the Association of Professional Genealogists and a member of several genealogical and historical associations, and has contributed to numerous scholarly journals, books, and other publications relating to the genealogical field. In 1982, he was elected a Fellow of the American Society of Genealogists (ASG), the highest honor in the field and limited to fifty lifetime members based on their published scholarly work, and is a past President of the ASG. He has testified numerous times as a forensic genealogist in Surrogate's courts in New York State. Affidavit of Roger D. Joslyn ("Joslyn Aff."), ¶¶3, 5.

ARGUMENT

The Appellate Division in the case below misapplied the balancing test established by *New York Times v. City of New York Fire Department*, 4 N.Y.3d 477 (2005) ("*N.Y. Times*") by weighing the petitioner's interest alone without regard for the broader public value that would flow from disclosure of the records sought. This public value includes the benefit to thousands of New York families opening cases in Surrogate's Court each year who rely on genealogical information in the processing of estates, for whom having access to the data sought here would substantially reduce the time required to close estates. When this public interest is included in the privacy analysis and weighed against the minimal privacy risks in the data sought by *Amici*, the scale tips in favor of disclosure.

I. The evaluation of the public interests at issue were not considered by the majority opinion

The party briefs in this case adequately lay out the foundational statutory and case law regarding how potential invasions of personal privacy are analyzed in New York Freedom of Information Law ("FOIL"): when the requested material falls outside the eight non-exhaustive factors listed at Pub. Off. Law § 89(2)(b), courts determine whether disclosure of the records is appropriate "by balancing the privacy interests at stake against the public interest in disclosure of the information." *Harbatkin v. N.Y. City Dep't of Recs. & Info. Servs.*, 19 N.Y.3d 373, 380 (2012), *quoting New York Times Co. v. City of N.Y. Fire Dep't*, 4 N.Y.3d 477, 485 (2005).

See Brief for Petitioner-Appellant ("App. Br.") at 23 and Brief for Respondent ("Resp. Br.") at 27-28.

In the decision below, the majority failed to consider the public interest in the disclosure of the information sought, limiting its analysis to the observation that "petitioner's interest in seeking information to assist in genealogical research promotes a legitimate public interest". Record on Appeal ("R.") 237. The majority overlooked the other public interests discussed in Appellant's brief below, including the prevention of fraudulent activity, the preservation of public records, the reduction of the NYS DOH's sizeable record-request backlog, and assistance in public health research. *See* App. Br. at 30-32; Reply Brief for Petitioner-Appellant ("Reply Br.") at 17-18. The dissent below credited one such benefit, noting that disclosure "would provide public access to a more updated death index making it more easily ascertainable whether a deceased individual's information has been improperly utilized." R.241.

Amici expand on the dissent's observation to show that public access to an updated death index would make it more easily ascertainable whether a deceased individual was, in fact, deceased – a requirement in New York Surrogate's Court proceedings that can already prove inordinately challenging. Braverman Aff., ¶¶6, 7. *Amici* describe how it is not uncommon for clients "to have lost track of the details of some family member's death, such as where a person was living at the time of

their death or what year that death occurred." Braverman Aff., ¶8. This is particularly true when family structures are complicated for reasons "such as remarriage with children after the termination of an earlier marriage or the existence of children outside of a marriage." Joslyn Aff., ¶6. On their own, these challenges can be formidable, and when delays result in the unavailability of a certified copy of a death certificate, this can even result in inheritances escheating to the state, preventing would-be distributees from ever receiving their distributive portion. Braverman Aff., ¶¶5, 7; Joslyn Aff., ¶6.

The extensive, three-plus year backlog for genealogical records searches at the NYS DOH Vital Records Section (*see* Floyd, p. 1, n. 2, *supra*) amplify these challenges, creating considerable administrative difficulties in establishing the fact of death. In these situations, *Amici* state that a death index "would help immensely in this process, and would save the estate incalculable money and time by eliminating much of the investigative work required when there is uncertainty as to a potential distributee's circumstances." Braverman Aff., ¶8. By pinpointing the location of a decedent's death, "such an index would permit the estate representatives to obtain copies of death certificates directly from the local records clerks much more quickly than by going through the DOH, saving years of administrative time for the individual estate." *Id*., ¶9; *see* Joslyn Aff., ¶8.

Amici report that given the lengthy delays in obtaining death records, "family members are understandably anxious about the outcome of the [Surrogate's] proceeding, and can become impatient with the probate or administrative process." Joslyn Aff., ¶9. A reasonable person of ordinary sensibilities would expect their government agencies to be of assistance in making information available to facilitate the closure of estates, and would equally be struck by the administrative nonchalance of an agency taking years to provide this information. Indeed, a New York State Assemblymember, commenting on the NYS DOH backlog reporting cited *supra,* called the backlog a "travesty" and a "shame", stating "All people want from government is the delivery of services to be reliable and affordable. That's it, period. And we just can't seem to get out of our own way." Floyd, p. 1, n. 2, *supra*.

Other states have found ways to increase access to the kinds of information sought here, without putting their citizens at risk of fraud activities. *See* Braverman Aff.,¶8 (in states with open records laws, "the process of locating records establishing the necessary proof is much easier, faster, and cheaper for the estate, resulting in better outcomes for the families involved"); Joslyn Aff., ¶10 ("I have neither seen nor heard any accounts of death records data obtained from open-records state systems being used to commit fraud or identity theft.") Nobody is asking to "weaken the robust privacy protections [New York] has enacted for the

benefit of its own citizens" (Resp. Br., p. 37), but these protections should not enact harms on New Yorkers by overzealously defending against non-existent threats.

The Appellate Division majority's failure to review the public interest in the disclosure of the information sought here short-changed the interests of that segment of the public who rely on the records sought for administrative legal purposes. Although *Amici* here focus on the Surrogate's Court context, proving the fact of a death can be a legal requirement in other venues, such a proving where an ancestor died in making a dual-citizenship application,[5] or establishing clear and clean title in a real property or land-rights transfer. Releasing the death index here could positively impact thousands of New Yorkers each year, without causing unwarranted harm to any privacy interests at stake.

II. The potential privacy impact of the data beneficial to *Amici* does not rise to that of *N.Y. Times v. City of N.Y. Fire Dep't.*

The categories of death index data of greatest utility to *Amici* are the decedent's names, ages at death, date of death, and location of death. Braverman Aff., ¶9; Joslyn Aff., ¶¶7, 10. These are the death index categories that would permit *Amici*, and all New Yorkers seeking to prove the fact of a death, to easily locate the documents required by the courts to establish that proof. There is nothing here for

[5] *See* NYS DOH website re "Dual Citizenship and Vital Records", https://www.health.ny.gov/vital_records/dualcitizenship.htm (last accessed March 21, 2025)

which disclosure would even remotely raise the privacy concerns expressed in *N.Y. Times v. City of N.Y. Fire Dep't*, 4 N.Y.3d 477 (2005).

The location of a person's death is not the kind of datum that would ordinarily be considered a private matter, nor is the age of a person at their death, even if the death was premature. These are commonplace indicia of death published by families of the deceased every day in newspaper obituary notices and online memorials, and are inherently public, as any walk through a cemetery will confirm. As the dissent in the instant appellate decision pointed out, the death index data "is not the type of information that relates to the 'intimate moments in the life of one's deceased relative,' which if disclosed and publicly available may cause surviving relatives anguish" (R.241, referencing *N.Y. Times*). These are objective facts unconnected to any privacy-invading emotional charge, and as records kept by the Department of Health, they should be made available to the public.

Nor can it be argued that the limited categories of data sought by *Amici* would permit the kinds of fraud described in Respondent's Brief at pp. 29-35. There is no category, for example, of mother's maiden names in the data *Amici* seek, nor even the date or location of birth or similar categories of data Respondent fears could be used to construct a "synthetic identity" or to defraud. To the contrary, it is *Amicus* Roger D. Joslyn's experience that "the types of data that would be useful in confirming the fact of a person's death – the person's name, age, date of death, and

location of death – [do not] appear to have any utility value in perpetrating such criminal activities." Joslyn Aff't, ¶10.

When the perspectives of the *Amici* are taken into consideration, the privacy issues at stake in the instant matter bear no comparison to those this Court grappled with in *N.Y. Times*. On the other end of the scale, the possibility of a broadly felt, material benefit to the New York public presently saddled with multi-year delays in settling the affairs of their loved ones should be given the appropriate weight in determining the outcome of this Court's review.

CONCLUSION

For the reasons discussed herein, *Amici* respectfully urge this Court to reverse the decision of the Appellate Division, Third Department and reinstate the decision of the Supreme Court, Albany County.

[signature block on following page]

Dated: March 24, 2025
New York, New York

Respectfully submitted,

By:_____

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NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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STATE OF NEW YORK)		**AFFIDAVIT OF SERVICE**
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I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above

On March 24, 2025

deponent served the within: **Motion For Leave to File An *Amici Curiae* Brief**

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Sworn to before me on March 24, 2025

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