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March 25, 2021

Honorable Thomas P. DiNapoli
New York State Comptroller
110 State Street
Albany, NY 12236

Re: COVID-19 Nursing Home Crisis Investigation Referral to New York State Attorney General

Dear Comptroller DiNapoli:

As public servants, we have a duty to ensure that policies in place protect the health and safety of all of our residents, but especially our most vulnerable. As you know, a number of questions have been raised relating to the state's overall handling of the COVID crisis in New York's nursing homes and residential healthcare facilities throughout the pandemic. Despite a need to learn from past mistakes and improve state policy accordingly, neither the Governor, nor the Legislature, has engaged in an independent, in-depth review of policies during this time. Worse, widespread news reports indicate there may even have been acts of official misconduct on the part of the Governor's Administration. To date, the only state government action that has elicited substantial information from the Administration, including a previously unknown number of fatalities, has been as a result of the New York State Attorney General's independent investigation into and report on the state's nursing home and adult care facility fatalities. For this reason, we respectfully urge you to make a formal request to the New York State Attorney General to enable her to commence a more in-depth investigation into this matter, as well as for your Office to conduct a formal audit in conjunction with such an investigation.

As you know, under subdivision 3 of Section 63 of the Executive Law, the New York State Comptroller has the authority to request the Attorney General to "investigate the alleged commission of any indictable offense or offenses in violation of the law" when such offense is related to the execution of your duties. As the state's leading fiduciary of public dollars, any use of public monies used to actively, and potentially criminally, cover up the devastating impact COVID-19 had on our nursing homes and residential care facilities would fall under your Office's purview, and would potentially be in violation of Section 195.00 of the Penal Law regarding official misconduct—a Class A misdemeanor.

In a closed-door meeting between some state lawmakers and top aides from the Executive Chamber and the State Department of Health (DOH), the Secretary to the Governor admitted to withholding data on the number

of nursing home deaths out of fear of an investigation from the United States Department of Justice. Since then, there have also been reports that top advisers to the Governor actively altered a July report that largely served as an attempt to absolve the administration of any wrongdoing by similarly withholding key data on nursing home and residential healthcare facility fatalities. Meanwhile, this was all going on as the Governor was making national television appearances citing New York's 'impressive' performance against the virus, even specifically praising the state's performance with respect to nursing home fatalities, all while citing the incomplete numbers.

It is not the duty of state government, nor any public official or employee, to lie to the public and to independent entities with oversight responsibilities for the sake of saving face or absolving the state of any missteps, no matter how grave. As our state battled an unprecedented public health crisis and asked so much of New Yorkers, public officials owed it to the residents of our state to be transparent and accountable to the public—not for the sake of assigning blame, but to allow stakeholders to provide critical input on improving the state's response to this crisis. Over the past year, we have seen an Executive that has forsaken transparency and accountability on this issue to bolster his own image and promote a book on the topic—all while utilizing public employees and resources. New Yorkers deserve to know if and what state resources were used to cover up the number of nursing home deaths, and whether members of the Administration, acting in their official capacity, tampered with official documents or data.

During a briefing earlier this year, the Governor callously asked "who cares [if they] died in a hospital, died in a nursing home?" More than 15,000 residents of nursing homes and adult care facilities died from COVID-19 in New York State. Knowing precisely what went wrong can not only provide answers to grieving families, but can also empower stakeholders to make significant changes to better protect residents and staff in these facilities.

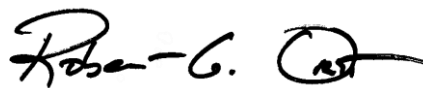
While the U.S. Department of Justice is undergoing its own investigation, which is an important step, family members and New Yorkers are rightfully looking for an investigation that is wider in scope. An independent investigation by the Attorney General, especially in conjunction with an audit by your office, into this matter would offer an opportunity to garner a clear accounting of what took place in our nursing homes and adult care facilities and would enable us to make the improvements necessary to ensure this never happens again.

We appreciate your time and attention to this urgent matter, and stand ready to work with you to better protect New Yorkers.

Sincerely,



Senator Sue Serino
41st District



Senator Robert G. Ort
62nd District



Senator Fred Akshar
52nd District



Senator Phil Boyle
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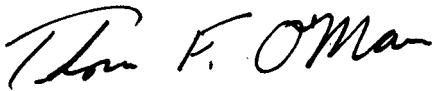
Senator Joseph A. Griffo
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Senator Daphne Jordan
43rd District



Senator Mike Martucci
42nd District



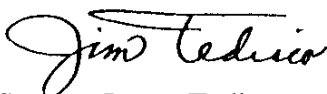
Senator Thomas F. O'Mara
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Senator Anthony H. Palumbo
1st District



Senator Patty Ritchie
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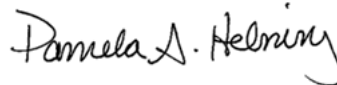
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