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Supreme Court of New Jersey
DOCKET NO. 089571

IN RE THE MATTER CONCERNING THE STATE GRAND JURY	:	CRIMINAL ACTION UNDER SEAL On Petition for Certification of the Final Judgment of the Superior Court of New Jersey, Appellate Division. Docket No. A-003795-22

Entered: June 4, 2024
Sat Below:
Hon. Greta Gooden Brown, P.J.A.D.
Hon. Arnold L. Natali, Jr., J.A.D.
Hon. Michael J. Haas, J.A.D.

SUPPLEMENTAL BRIEF OF PETITIONER STATE OF NEW JERSEY

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PRELIMINARY STATEMENT

This Court has long recognized the grand jury's authority "to voice the conscience of the community" by issuing presentments on "matters affecting the public interest and general welfare." In doing so, presentments allow the people to study and speak out about significant public harms in the hopes of preventing their recurrence. The trial court decision, however, dramatically and incorrectly circumscribes the use of the grand jury's presentment power. It does so even though no presentment was before the trial court, based on speculative fears and unfounded assumptions about the contents of a future presentment. And it does so based on a misunderstanding of the law—limiting New Jersey grand juries to issuing presentments only on wrongdoing by government entities, rather than on any other consequential public harms. Each error requires reversal.

This dispute concerns one of the most wrenching public harms in recent memory: decades of sexual abuse of children by members of the clergy, and the conduct that allowed it to go undetected and unaddressed for so long. Six years ago, following a report showing a larger pattern of abuse and concealment in Pennsylvania than had been known, involving clergy who had also been detailed to New Jersey, then-Attorney General Gurbir Grewal established a task force to investigate the matter and to seek a presentment. [redacted]

[redacted] responded with a broadscale attack: it challenged the grand jury's authority to consider any presentment on this topic. The trial court agreed that any future presentment on statewide clergy abuse and the response thereto would necessarily be unlawful, and the Appellate Division affirmed.

This Court should reverse for either or both of two independent reasons. First, the courts below erred in reviewing a presentment that did not even exist. The governing Rule, precedent, and historical practice all confirm that a court should review a presentment only after a grand jury returns it, though before it is made public—not when one is merely anticipated. For good reason: review of a hypothetical presentment is hopelessly speculative, and it requires courts to engage in unjustified assumptions regarding the contents of the report, including whether the report would name particular wrongdoers or offer recommendations for reform. By contrast, if a court considers an actual presentment, it can assess concretely whether the grand jury stayed within its proper limits. And the court reviewing an actual presentment has substantially more tailored tools to address legitimate concerns, such as striking or redacting portions of the report, rather than shutting down the grand jury's investigation wholesale. Indeed, neither the State nor the Diocese—and no court below—identified a single case in which a court adjudicated a hypothetical presentment before one existed.

Second, the courts below erred in limiting grand jury presentments only to wrongdoing by governments. Consistent with our Constitution, this Court's precedents, and historical practice, the governing Rule instead clarifies that presentments may "refer to public affairs or conditions," no matter whether the entities responsible for the public conditions are governmental or private actors. Indeed, in New Jersey, presentments have long covered public harms bearing on "the general welfare," "public interest," or "matters of public concern," from domestic violence to the sale of obscene literature to tax evasion to a private gas pipeline explosion. That approach makes sense: for centuries, the grand jury's presentment power has been a tool to voice the public conscience, to learn from previous harms, and to propose reforms. And the public can be equally harmed regardless of whether the underlying source of the harm is a government actor. This case is a perfect example: statewide sexual abuse by clergy, and the State's failure to prevent it, have had a tremendous impact on the public—and the full facts of how this widespread abuse went undetected and unaddressed have never been comprehensively resolved. A grand jury is empowered to investigate these harms, report on them, and offer recommendations to prevent their recurrence.

There was no basis to foreclose an important, lawful presentment process that had not yet even begun. This Court should reverse.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

A. The Task Force.

In 2018, then-Attorney General Gurbir S. Grewal announced the creation of the Clergy Abuse Task Force. (Pa3). His announcement followed publication of a Pennsylvania grand jury report regarding sexual abuse committed by clergy, which showed that such abuse—and the efforts to conceal it—"were far more widespread in Pennsylvania" than had been previously understood, and included allegations of abuse by priests who were also assigned to parishes in New Jersey. (Pa4); see also Off. of the Pa. Att'y Gen., Pa. Diocese Victims Report, available at https://www.attorneygeneral.gov/report/.

The Attorney General therefore charged the Task Force with investigating allegations of sexual abuse by clergy and efforts to conceal such abuse in New Jersey, "to find out whether the same thing happened here" and, if so, to "take action against those responsible." (Pa4). The Attorney General authorized the Task Force—led by "[a]n experienced sex crimes prosecutor," and including at least one attorney and one investigator from every County Prosecutor office, and members of the Division of Criminal Justice—"to present evidence to a State Grand Jury[,] including through the use of subpoenas to compel testimony and the production of documents[,] in addition to other investigative tools." (Pa4-

[1] These related sections are combined for the convenience of the Court.

5) The Task Force was also charged with reviewing existing agreements with the State's five Catholic Dioceses regarding both reporting and cooperation with law enforcement to assess the Dioceses' compliance with those agreements and to consider "whether any additional action is necessary." (Pa5).

In support of the Task Force's work, the Attorney General established a hotline, where trained professionals would be available to field calls 24 hours a day, seven days a week. (Pa4). By summer of 2021, when the parties submitted briefing to the trial court, over 550 calls had come in, alleging sexual, physical, and mental abuse by members of the clergy. (Pa5). The calls detailed efforts to conceal that abuse, such as decisions to shuffle accused priests among parishes and to promote clergy alleged to have molested children. (Pa5-6).

The Task Force also undertook its own investigations. The Task Force's work yielded four arrests, (Pa6), and the State pursued criminal charges where timely. In one example, a priest pleaded guilty in April 2019 to sexually assaulting a teenage girl in the 1990s. (Da17-18). In another, the State initiated charges against a priest who, as of 2020, was a private school chaplain. See (Da40). Further charges remain under investigation. E.g., (Pa6). But the State recognized that some criminal conduct is no longer within the limitations period and could only be addressed by a future presentment. (Da21).

B. [redacted].

[redacted] Rather than present all this information to the five state grand juries that were already sitting and were handling existing criminal business, the State sought to empanel a sixth State Grand Jury that would be able to focus exclusively on the Task Force's investigation. (Pa10, 19).

[redacted]

[redacted]. Instead, the Diocese challenged a future State Grand Jury's power to issue a presentment concerning sexual abuse by clergy entirely: it argued that New Jersey law does not permit such a presentment, and that such a presentment would violate the Establishment Clause. (Ibid.). [redacted]

[redacted]

[redacted] The State and the [redacted] swiftly briefed their legal disputes, and briefing concluded in August 2021.

C. The Rulings Below.

The trial court resolved this dispute nearly two years later, on May 25, 2023, in an oral opinion. (Pa1-Pa37). The court held (1) that it could entertain the Diocese's challenge to a hypothetical presentment, even though no grand jury had yet considered or returned one, (Pa19), and (2) that any future grand jury would categorically lack the authority to issue any presentment concerning the subject of sexual abuse by clergy, (Pa23).[3]

Before turning to the parties' dispute, the court began by reviewing the applicable Rule. The trial court acknowledged that a presentment "may refer to public affairs or conditions." (Pa10 (quoting R. 3:6-9(a)). It recognized that a presentment must be "returned in open court to the assignment judge," (ibid. (quoting R. 3:6-9(b)), at which point "the [a]ssignment [j]udge shall examine the presentment," and may "strike the presentment either in full or in part," if "it appears that the presentment is false or is based on partisan motives or

[redacted]

[3] The trial court expressly declined to reach the Diocese's Establishment Clause argument, (Pa35).

indulges in personality without basis or if other good cause appears," (Pa10-11 (quoting R. 3:6-9(c)). And if a presentment "censures a public official and the assignment judge determines not to strike," the public official can challenge the presentment in camera, including by introducing contrary evidence. (Pa11 (quoting R. 3:6-9(c)). Finally, the trial court explained, the Rule permits "any aggrieved person" to seek review of any "action taken by the assignment judge" pursuant to the Rule. (Pa11-12 (quoting R. 3:6-9(e)).

Notwithstanding the process laid out in the Rule, the trial court held that it could adjudicate the validity of a hypothetical presentment. The trial court acknowledged the State's argument that it would not be "possible to have a coherent discussion as to the propriety of a report which has not been written." (Pa19). But the court held that the likely contours of any future presentment were sufficiently clear from Attorney General Grewal's prior statements. See (Pa19) (trial court suggesting presentment would be like Pennsylvania Grand Jury report on same subject) and (Pa22) (court describing it as "crystal clear" what future presentment would entail). The trial court also sourced its power to preemptively review a hypothetical presentment in its "supervisory authority over the grand jury": although it recognized such authority could be used only "sparingly," it held that the need to avoid the expenditure of considerable grand jury resources on this presentment was sufficient basis here. (Pa21-22).

As to the merits, the court concluded that the presentment it envisioned was not legally authorized. (Pa23). Primarily, the trial court concluded that a presentment concerning sexual abuse by clergy would not "relate[] to public affairs or conditions" because it read those terms to categorically exclude any conduct by private parties. (Pa23-24). In other words, the trial court stated, just because "something is of great public importance or interest does not make it something which relates to public affairs or conditions" under the Rule. (Pa23); see (Pa24) ("To say that a presentment is appropriate because this is a matter of public concern is not enough."). Because "priests are not public officials and the Catholic Church is not a public entity," (Pa23), and because the trial court believed that "[t]his is not a situation where there is any official wrongdoing to be deterred," (Pa28), it found this limit dispositive.

The trial court raised two other main objections to this presentment. For one, the trial court concluded that a grand jury's presentment "must be limited to matters which are imminent and pertinent." (Pa28) (citing In re Monmouth Cty. Grand Jury, 24 N.J. 318 (1957)). The trial court stated that there was "no imminence to the history that the Attorney General seeks to [write] here." (Ibid.). And it suggested that a New Jersey grand jury could not identify any relevant forward-looking suggestions for reform, reasoning that the particular

recommendations the Pennsylvania grand jury made regarding that State's law were already largely reflected in New Jersey law. (Pa28-31).

The trial court also expressed concerns as to future impacts on individual clergy. The court admitted that it did not know whether a future presentment would "nam[e] names." (Pa28). But the court held it would be "systemically, fundamentally unfair in a way that can't be remedied or addressed" if a grand jury did so, because the individuals would have "no opportunity to attack the evidence," or might instead be "dead or of such advanced age that speaking up for oneself would be nearly impossible," (Pa26-27); see also (Pa34) (stating that "the purposes for which the State seeks to use this Grand Jury would be fundamentally unfair to so many living and dead"). The court held that this was a third basis to refuse to "empanel a Grand Jury to prepare a presentment" in the first place. (Pa26). The trial court thus held that "the anticipated State Grand Jury presentment" was "not authorized by law," and therefore the court declined to "take any action" that would "enable[] the process of preparing such a presentment to move forward." (Pa35); see (Aa3) (same).

The State appealed. The State filed a motion to unseal the proceedings on appeal, which the Appellate Division denied. (Pa39). The Appellate Division held oral argument in a sealed courtroom. (Pa45). On June 4, 2024, the panel

affirmed the trial court's May 25, 2023 order "substantially for the reasons set forth by the trial court." (Pa48). This Court granted the State's petition.

ARGUMENT

This Court should reverse for two independently sufficient reasons. First, as the governing Rule, precedent, and first principles all reflect, an assignment judge should review a presentment if and when one is returned—not when it is merely anticipated. Second, in any event, decades of sexual abuse by faith leaders—and whatever government or private actions enabled it to persist for so long—unquestionably relate to "public affairs or conditions" under Rule 3:6-9(a), as case law, unbroken history, and common sense confirm.

POINT I

THE COURTS BELOW ERRED IN ACCEPTING THIS HYPOTHETICAL CHALLENGE.

As a threshold matter, the panel and trial court erred in entertaining the Diocese's challenge to a presentment that no grand jury had yet returned or even considered. Rule 3:6-9, established precedent and practice, and first principles all dictate that the validity of a presentment should be adjudicated after a grand jury returns one (but before publication), not when such a presentment is merely anticipated and the challenge necessarily relies on speculation.

Begin with the text and structure of Rule 3:6-9, which prescribes a detailed process for review of any presentment before it is made public. First, twelve or

more grand jurors must agree to issue the presentment. R. 3:6-9(a). Then, the assignment judge must "promptly" review that presentment, "before the grand jury is discharged." R. 3:6-9(c). The assignment judge is free not only to assess the report, but to "examine the minutes and records of the grand jury" as part of its review. Ibid. At that time, the assignment judge may reject the presentment for a range of reasons: if it is "false" or lacks "substantial foundation," if it rests on "partisan motives," if it "indulg[es] in personalities without basis," or for any other "good cause." Ibid. And at that time, the assignment judge has a range of tools in response: it can strike the presentment "in full," or it can strike it only "in part" and allow publication of whatever "portions" are not struck, or it can return the matter to the grand jury. R. 3:6-9(c). The Rule includes no provision allowing for review of a hypothetical presentment that has yet to issue.

Not only are procedures for such pre-presentment review absent from the Rule itself, but such hypothetical review is inconsistent with the system the Rule establishes. An assignment judge cannot "examine" a grand jury's presentment before one exists, and it cannot do so "before the grand jury is discharged" if a grand jury has not even been empaneled. The assignment judge cannot review the materials on which a grand jury had relied if there are no records or minutes generated. The judge cannot consider whether to strike a presentment in full or in part, or return the matter to the grand jury, if neither a presentment nor a grand

jury yet exists. And finally—but critically—pre-presentment review thwarts the Rule's provision governing judicial review. Rule 3:6-9(e) provides that "action taken by the Assignment Judge pursuant to this rule … is subject to review for abuse of discretion by the State or by any aggrieved person, including any member of the grand jury making the presentment." This unusual provision contemplates that a grand jury, as the conscience of the community, may be able to express its position as the Judiciary reviews its work. See In re Monmouth Cty. Grand Jury, 24 N.J. at 320 (reviewing order striking two presentments, on appeal from grand jury members themselves); In re Presentment of Bergen Cty. Grand Jury, 193 N.J. Super. 2, 5 (App. Div. 1984) (describing grand jurors voting to appeal decision to strike presentment). But a decision that invalidates a hypothetical presentment, based upon legal concerns about what a grand jury would ultimately say, prevents such participation. The Rule is thus not merely silent on pre-presentment review; the Rule is inconsistent with it.

Importantly, neither party has identified any case before this one in which a court reviewed a hypothetical presentment—instead, every precedent involved an actual presentment returned by the grand jury. See, e.g., In re Presentment by Camden Cty. Grand Jury, 10 N.J. 23, 32 (1952) (Camden I) (reviewing order by an "assignment judge dismiss[ing] [a] motion to expunge the presentment"); Monmouth Cty., 24 N.J. 318 (reviewing order striking presentments); In re

Presentment by Camden Cty. Grand Jury, 34 N.J. 378, 382 (1961) (Camden II); (reviewing "the legal propriety of the action of the Superior Court Assignment Judge of Camden County, in refusing to expunge certain parts of a Grand Jury presentment"); In re Presentment of Essex Cty. Grand Jury, 110 N.J. Super. 24, 26 (App. Div. 1970) (appeal from order "denying application to expunge … a presentment" and "application to examine all the minutes"); In re Presentment of Bergen Cty. Grand Jury, 193 N.J. Super. at 5 (appeal of "decision to strike … presentment in its entirety"); In re Presentment to Superior Ct., Hudson Cty., 14 N.J. Super. 542, 545, 548 (Law Div. 1951) (expunging presentment in part). No case deviates from this well-worn approach.[4]

There is a good reason for the Rule's language and courts' longstanding approach: any pre-presentment review is hopelessly speculative. Cf. In re N.J. Firemen's Ass'n Obligation, 230 N.J. 258, 275 (2017) (explaining "the Judiciary is forbidden from declaring the rights or status of parties upon a state of facts which are future, contingent and uncertain" (cleaned up)). After all, a challenge

[4] The Diocese likewise cites some of these cases—in particular Camden II and Bergen County—for the position that the propriety of a presentment's "subject matter" is "a threshold question." (Ob8). But the language the Diocese quotes states precisely when that threshold review must occur: "the first obligation of an assignment judge on receiving the report is to determine whether the matters contained therein are the proper subjects of a presentment." Camden II, 34 N.J. at 392 (emphasis added). That is the State's exact submission here.

to an anticipated presentment requires a judge not only to first hypothesize that the grand jury will return a presentment at all, but then also to speculate about the contents of such a presentment. Compare Camden II, 34 N.J. at 392 (noting that "the first obligation of an assignment judge on receiving the report is to determine whether the matters contained therein are the proper subjects of a presentment"). It is one thing for a court to hold that an actual presentment does not involve "public affairs or conditions" based on its ultimate substance; it is quite another to assume a grand jury's final product will not do so.

Indeed, this case illustrates the inherently speculative nature of assessing whether a hypothetical presentment is lawful. As explained above, the court's principal legal concern was that any future grand jury presentment would focus entirely on private citizens or entities, (Pa23-27), which the trial court believed would not satisfy the Rule's requirement that grand jury presentments address "public affairs or conditions." See supra at 10. The State, of course, disagrees with the trial court's interpretation of "public affairs or conditions." See infra at Point II. But for these purposes, there is an even more significant problem: the trial court assumed that a presentment would only address actions by private individuals—and not also investigate or address how the State failed to detect such widespread abuse and/or what further legal changes could be necessary to prevent its recurrence. Compare (Ob11 n.4) (Diocese distinguishing previous

presentment involving private gas pipeline operator because that presentment included the grand jury's recommendations for statutory reform). The trial court seemed to believe that a future New Jersey grand jury could not likewise offer salutary legislative changes because the precise reforms that had been proposed by the Pennsylvania grand jury already largely exist within New Jersey statutes. See (Pa28-31). But it is pure speculation to assume that no New Jersey grand jury could generate other suggestions relevant to our State's law.

Nor is that the only way in which the trial court foreclosed a presentment based on speculation alone. The trial court's oral opinion repeatedly expresses concern that a presentment would identify past abusers, and that doing so would be fundamentally unfair, at least in some instances. (Pa28); see also (Pa26-29, Pa34-35). The trial court, however, specifically conceded that "it does not know ultimately how the Attorney General intends to proceed" and that "it might be argued that the history could be written fully without naming names." (Pa28).[5] Moreover, because the court sought to address this speculative concern before a

[5] Indeed, different States have taken different approaches in the context of clergy abuse. Pennsylvania, for its part, did identify the names of clergy who had been credibly accused of abuse. See supra at 4. Maryland, by contrast, produced a report that redacted some subset of names based on pre-publication litigation. See Md. Off. of the Att'y Gen., Attorney General's Report On Child Sexual Abuse In The Archdiocese Of Baltimore, Revised Interim Public Release (Md. Report) (Sept. 2023) at vi n.2, 20, available at https://tinyurl.com/34umn68e. That further underscores the speculative nature of the court's concerns.

presentment was considered or produced, there was only one available remedy: shut down the entire process. By contrast, had the trial court followed the proper approach, more tailored remedies would have been available, including striking or redacting portions of a presentment, see R. 3:6-9(c); (Pa11). So even were the trial court's legal concerns justified in this matter, but see infra at Point II, the nature of pre-presentment review led to a patently overbroad remedy.

None of the reasons given in support of the trial court's pre-presentment review withstand scrutiny. First, the trial court's belief that it could sufficiently guess at the contents of a hypothetical future presentment do not justify making a first-of-its-kind exception to the Rule. The trial court based that surmise on statements by then-Attorney General Grewal in the wake of the Pennsylvania Grand Jury's report in 2018. See (Pa19, 22); (Ob8, 10) (Diocese also relying on such statements). But such passing, years-old statements cannot shed significant light on what a presentment would look like in 2025, after 550 hotline calls and years of investigation. And even assuming the premise that such statements ever crystallize the issues enough to permit such pre-presentment review, they cannot do so here, where it remains speculative to what extent any future presentment would address the government's own role in failing to detect clergy sex abuse; identify "imminent" harms, (Pa28); or propose reforms that promote justice and prevent the recurrence of similar events in the future, (Pa29-31), and where any

concerns the trial court could easily have been addressed by the Rule's tailored remedies, see R. 3:6-9(c). Simply, the State has never denied that it intends to seek a presentment regarding sexual abuse by clergy and the response thereto,[6] but that alone does not answer the myriad questions that remain, and it does not justify engaging in this review when the only tool available in shutting down the presentment process in toto. In short, even if there ever were a case that justified adjudicating a hypothetical future presentment, it is not this one.

Second, that a special grand jury on clergy abuse and the response would require time and resources, see (Pa21-22); (Ob9-10), is also no justification for engaging in this speculative enterprise. Our courts do not generally superintend the matters on which the State asks the grand jury to spend its time or for how long it does so. See State v. Bell, 241 N.J. 552, 560 (2020) (emphasizing "the

[6] The Diocese has emphasized that a prior Attorney General said sexual abuse by clergy "will be" the subject of a presentment. (Ob5, 8, 10). While poorly phrased, it is clear from context that the then-Attorney General was explaining that where the evidence reviewed by the Task Force could not support a criminal conviction, it could still contribute to a presentment, and the State would present such evidence to a grand jury. See (Db18) ("where a prosecution is no longer viable, we will … determine if the Church was aware of the abuse but failed to take action … which will be the subject of a state grand jury presentment and report. We are determined to expose past wrongs and seek justice for survivors in whatever form is possible."); (Da21); (Da26). Nothing in this statement at all removes the hopeless speculation at this stage over whether a grand jury would ultimately return a presentment, and what its final contents would be.

grand jury's investigative independence"); State v. Perry, 124 N.J. 128, 167-68 (1991) (citing prosecutor's "broad discretion" to decide cases to present); In re Essex Cty. Grand Jury Investigation, 368 N.J. Super. 269, 280-81 (Law Div. 2003) (noting "the Court's supervision of the grand jury is limited" to protect the "separation of powers"); cf. Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) (confirming "the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor's] discretion"). Further, even assuming such resource-balancing could be justified where the court's resources are at stake, the Division of Criminal Justice (DCJ) funds the state grand juries, not the court. See N.J.S.A. 2B:22-8(a). And in any event, the State has consistently reiterated that it shares these resource concerns and has committed to mitigating them, including by: allocating additional DCJ space and resources to operate this special grand jury; informing all prospective jurors of the parties involved to identify conflicts at the outset; and consolidating evidentiary presentations to limit the process's length.[7] (Ab14-15).

[7] While the Diocese has suggested that the State sought to convene "five state grand juries," e.g., (Ob9), the State has clarified that this was an alternative to make the process more efficient, by breaking up a special grand jury "into five Grand Juries" so that some part of the special grand jury could sit each day of the working week. (1T16-7 to -13). Should this Court confirm that a grand jury may be constituted on this subject, the State would of course continue to engage with the trial court to evaluate other options to mitigate resource burdens.

Third, even if it were proper to weigh resource considerations at this stage, the trial court's singular focus on the "resources" required to operate this grand jury overlooks the benefits on the other side of the ledger that only a presentment is able to secure. The grand jury had the power to demand evidence that allows it to assess both whether and how so many credibly accused clergy escaped accountability for so long. See, e.g., Camden I, 10 N.J. at 66 (describing role of a grand jury in "voic[ing]" its "conscience" about public affairs). And a grand jury provides the people with a path for gathering the evidence needed to craft reforms to ensure such a widespread failure never happens again, a significant concern for those New Jersey victims who have been denied justice for years and whose victimization now lies outside any limitations period. In short, while resource concerns may well justify adoption of targeted measures like carefully managing jury selection, they cannot warrant preemptively shutting down this presentment process before it starts—particularly where the issue is as important as a decades-long pattern of sexual abuse and the failures of the response.

Finally, the State's argument is not inconsistent with courts' supervisory authority. Contra (Pa21-22, 32-33); (Ob10-11). Far from disputing the courts' authority, the State's point is that each trial court should exercise that authority consistent with the Rules, precedent, and longstanding practice, which confirm that courts review presentments once they exist, not before. Cf. Romagnola v.

Gillespie, Inc., 194 N.J. 596, 604 (2008) (courts should relax a Rule only if that Rule fails to "meet[] the problem at hand"). And while the trial court cited State v. Vega-Larregui, 246 N.J. 94 (2021), and State v. Shaw, 241 N.J. 223 (2020), (see Pa22; Pa32), neither is to the contrary, because neither decision considered the court's authority to review a presentment, let alone a hypothetical future one. If anything, Vega-Larregui underscores that courts should be adopting modified procedures for the grand jury to address practical constraints rather than shutting down the grand jury proceedings entirely. See 246 N.J. at 118, 125-33 (allowing virtual grand juries during COVID-19 pandemic, rejecting calls for "moratorium on grand jury proceedings"). In short, courts enjoy some supervisory authority over each grand jury—but the Rule and precedent govern how that authority is exercised. This Court should reverse this first-of-its-kind decision to review a hypothetical presentment before the grand jury can even propose one.

POINT II

A GRAND JURY MAY ISSUE A PRESENTMENT ADDRESSING WIDESPREAD SEXUAL ABUSE BY CLERGY AND THE RESPONSE THERETO.

If this Court reaches the merits, it should reverse. While the Rule requires that a grand jury presentment refer to the "public affairs or conditions," R. 3:6-9(a), statewide sexual abuse by clergy in New Jersey that went unaddressed for decades fits the bill. There is also no other basis to preclude such a presentment:

the Rule includes no "imminence" requirement that forecloses this presentment, and this presentment would not offend fundamental fairness—especially in light of the various procedural protections the State has already proposed.

A. This Presentment Would Refer To "Public Affairs Or Conditions."

The courts below principally rested their decision on the view that a future presentment addressing widespread sexual abuse by clergy necessarily could not refer to "public affairs or conditions." That belief was inconsistent with the text and structure of the Rule, unbroken historical practice, longstanding precedent, and the purpose of the grand jury presentment power itself.

1. Begin, again, with the plain text of Rule 3:6-9(a). While the trial court concluded that "private conduct" is not "eligible for [a] presentment," (Pa24), and that only the acts of "a public entity" are the permissible subject of a grand jury presentment, (Pa23), that misreads the Rule's actual language. Instead, the Rule broadly states that a grand jury presentment "may refer to public affairs or conditions." R. 3:6-9(a) (emphasis added). But the concept of public conditions has long been understood to more generally cover circumstances that impact the people writ large, not merely the actions of their government. See, e.g., Gomez v. SEPTA, No. 22-3230, 2023 WL 5950549, *2 n.† (3d Cir. Sept. 13, 2023) (Psa47) (noting "the common-law tort of public nuisance has been invoked to abate dangerous public conditions"); Gardens v. City of Passaic, 130 N.J. Super.

369, 377 (Law Div. 1974) (describing State's "critical housing shortage" as a "public condition[]").

Centuries of unbroken history and practice confirm that the grand jury can issue a presentment to address "conditions" that affect the public writ large—even if the source of the harm was not a public entity or a public official. In this Court's seminal opinion on the presentment power, Camden I, 10 N.J. 23, Chief Justice Vanderbilt explained that the 1947 Constitution's decision to authorize grand juries to issue both indictments and presentments "could only have meant that the Convention approved presentments of public affairs as they had been known in New Jersey from earliest colonial times." Id. at 65 (discussing N.J. Const. Art. I, ¶ 8); see also id. at 64 (explaining Constitution maintained grand jury's "fundamental inherent right to return a presentment" as it had "been in force in this State from colonial times" (quoting Proceedings of the New Jersey Constitutional Convention of 1947, 188-190)).

Camden I thus exhaustively canvasses pre-1947 presentments, and it cites multiple instances—dating back to colonial times, and continuing into the 20th century—in which a grand jury had presented on significant public harms caused by private entities or individuals. See id. at 41 (citing colonial-era grand jury presentment concerning man who improperly marked livestock); id. at 45 (1892 presentment about alarming "number of cases of assault and battery committed

by a husband on a wife"); id. at 49 (1904 presentment on a "nuisance created by a slaughter house in Vailsburg"); id. at 54 (1909 presentment about "prevalence of criminal assaults upon employees of manufacturers in Orange"); id. at 58 (1920 presentment concerning "high motor vehicle accident rate in the county").

Although presentments "are fairly rare" today, (Pa33), grand jury practice post-dating the 1947 Constitution confirms Article I, paragraph 8 and Rule 3:6-9 allow presentments concerning public harms traceable to private misconduct. In In re Monmouth Cnty. Grand Jury, 24 N.J. 318 (1957), this Court reversed a trial judge who struck a presentment that "concerned the sale and publication of obscene and indecent literature," id. at 320—without offering any concern about the fact this presentment addressed private sales. See id. at 321 (acknowledging that "[m]agazines … purchased at newsstands and retail stores within the county were submitted to the grand jury by the prosecutor, and representatives of three distributing companies … and a number of dealers testified before the panel"). And in 1996, following the explosion of a gas pipeline in Edison Township, the grand jury "determined to issue [a] presentment to call attention" to the failures of the Texas Eastern Transmission Corporation, a private pipeline operator, in maintaining its safety. (Psa3-5); see also (Pa32 (trial court acknowledging this "pipeline case"); (Ab21-22).

Overwhelming precedent confirms what the Rule and history make clear: the grand jury may present, in appropriate cases, on harms that affect the public but were based on misconduct by private entities. In Chief Justice Vanderbilt's seminal Camden I opinion, he acknowledges that grand jury presentments have long "serve[d] a need that is not met by any other procedure" by empowering a "group of representative citizens … to voice the conscience of the community" concerning matters "that fall short of criminal misconduct and yet are not in the public interest." 10 N.J. at 66 (emphasis added). In Monmouth, this Court held that this power "springs from the commonlaw right when it relates to matters affecting the public interest and general welfare," 24 N.J. at 324 (emphasis added)—a reading that fits with the common-sense view of "public conditions." And in Camden II, issued merely nine years after Camden I, this Court provided its clearest assessment of the scope of the presentment power. Camden II, which appears to be this Court's first use of the phrase "public affairs and conditions" in an opinion, recognized that presentments reflected a longstanding practice of grand juries making "an occasional 'report' containing comments or criticisms on the state of public affairs or conditions in a particular area or on matters of general interest." 34 N.J. at 388 (adding that presentments "call[] attention to matters of public concern but charg[e] no crime"); see also id. at 389 (essentially restating the standard that is now codified at R. 3:6-9(a)).

But Camden II did not stop there. Instead, this Court specifically reasoned that presentments are proper when they relate "to public affairs and matters of general public interest"—that is, if the subjects that they address "affect[] the morals, health, sanitation or general welfare of the county." Id. at 390-91. "The plain implication," the Court therefore explained, "is that the subject must be a matter of general public interest, or relate to some aspect of public affairs, or to some public evil or condition to which, in the discretion of the jury, the attention of the community should be directed." Id. at 391. At no time did Camden II in any way suggest that those public ills, or the harms to the public morals and/or health, had to be based exclusively on the action of government bodies. Against this precedent, the trial court's atextual holding that just because "something is of great public importance or interest does not make it something which relates to public affairs or conditions," (Pa23), ultimately collapses.

Until the decision below, all subsequent Appellate Division and trial court opinions understood the law in this same way. In 1970, the Appellate Division observed that this "Court has never doubted the power of a grand jury to make a presentment of matters of public concern unaccompanied by indictments." In re Presentment of Essex Cty. Grand Jury, 110 N.J. Super. at 27. Fourteen years later, the Appellate Division framed this power broadly again: "A grand jury may investigate conditions affecting the morals, health, sanitation or general

welfare of the county, as well as county institutions, and a presentment thereon is proper." In re Presentment of Bergen Cty. Grand Jury, 193 N.J. Super. at 9. And in 2002, that court again reiterated that Rule 3:6-9(a) "incorporates [the] common law purpose" of the grand jury presentment power "by focusing on matters of public concern." Daily Journal v. Police Dep't of City of Vineland, 351 N.J. Super. 110, 126 (App. Div.) (emphasis added), certif. denied, 174 N.J. 364 (2002). None of these statements can be reconciled with the view expressed by the trial court below that "a matter of public concern is not enough" to justify a lawful presentment. (Pa24).

Not only is the trial court's approach inconsistent with the Rule, centuries of unbroken practice, and a wealth of precedent, but it is irreconcilable with the basic purposes of the presentment power itself. As this Court has reasoned, the presentment power exists so that the grand jury can voice the "conscience of the community," Camden I, 10 N.J. at 66, on any "conditions or offenses affecting the morals, health, sanitation or general welfare," Camden II, 34 N.J. at 390-91. Said another way, the presentment power is aimed at allowing a grand jury to exercise its "discretion" to identify "some public evil or condition to which … the attention of the community should be directed." Id. at 391. But the trial court and Diocese's approach is mismatched to those goals, asking only whether the harm involves conduct by or impacts public entities or officials. It would

mean that, under the decisions below, the grand jury could issue a presentment on a gas pipeline explosion that destroyed a county building, but not on one that caused a toxic spill exposing thousands of children to health risks.

This government/private dichotomy is especially unjustified given that the grand jury can propose legal reforms. Presentments have repeatedly offered not only a recounting of the public harms, but potential solutions in order to prevent their recurrence. See, e.g., Camden I, 10 N.J. at 48 (presentment on widespread tax evasion by the wealthy, "recommend[ing]" "laws be changed so as to make such conduct criminal"); id. at 58 (assessing causes of motor vehicle accidents and then "ma[king] recommendations with respect to improving the situation"); (Psa5, 35-36) (making recommendations to private "gas pipeline operators" and recommending changes to federal and state law); cf. Pa. Diocese Victims Report 7-9, supra at 4, (after canvassing abuse, providing recommendations for reform tailored to Pennsylvania law). Because the public can be as profoundly harmed by private actors as by official conduct, statutes address impacts on the public caused by private criminals no less than by governmental entities—meaning it is illogical to forbid a grand jury from studying the former. Cf. In re Reilly, 364 N.J. Super. 519, 527 (App. Div. 2003) (explaining the Legislature might change views on particular legislation "based on a change in public conditions").

This case is an excellent example of a circumstance that works tremendous harm on the "morals, health, or general welfare" of the New Jersey public—and to which a grand jury could decide to direct the public's attention and efforts at reform. The Task Force received over 550 calls detailing abuse committed by trusted religious leaders throughout New Jersey against the vulnerable children and adults in their care, and Pennsylvania's own presentment identified abuse by clergy in our State. The issue concerns more than isolated bad acts, extending to the broader, system-wide failure to report abuse and remove known abusers from service, and of state and local officials in New Jersey to identify or address the problem. A grand jury presentment would allow the voice of the people to investigate these conditions; evaluate whether the facts on the ground improved exactly as the Diocese promises, including assessing compliance with the 2002 memorandum of understanding ("2002 MOU") that both the Attorney General's office and the county prosecutors entered into with the Dioceses; and consider any further recommendations for reform. Accord (Pa24) ("the public may well be incensed with what has occurred within the Catholic Church"); (Pa34) ("The State is absolutely correct in arguing that the issue of sexual abuse by clergy members is vitally important."). That should have been enough.

To be clear, the grand jury's authority is not without limits. As the Rule, practice, and precedent make clear, a presentment is not warranted for each and

every otherwise-criminal act that falls outside the scope of a limitations period: instead, the scale of the problem must be such that it broadly impacts the public morals, health, or welfare. See, e.g., Camden II, 34 N.J. at 390-91. That is why historical presentments exist not for individual cases of tax evasion or spousal abuse, but the public harms of widespread tax cheating, growing trends in assault and battery on spouses, and a gas explosion that broadly impacted residents and property. See supra at 24-25. Sexual abuse by clergy, which directly or indirectly impacted thousands of New Jerseyans, went undetected for decades, and affected every corner of the State, obviously reflects just such a public harm. And the additional limit the trial court created—to limit presentments to harms caused by governments—is inconsistent with the Rule, practice, a wealth of state precedent, and the goals the presentment power serves.

2. The Diocese and trial court's responses are unavailing. Initially, the trial court grounded its textual conclusions on the meaning of "public servant" and "government" as they are used in N.J.S.A. 2C:27-1(b) and (g). See (Pa23). But that runs into three obvious problems. First, Rule 3:6-9(a) does not use the terms "government" or "public servant" anywhere, so their meaning sheds little light—instead, the Rule is focused on "public affairs or conditions." Second, N.J.S.A. 2C:27-1(b) and (g) define the terms in the unrelated context of bribery law, which does focus on the locus between the bribe and an official act—and

so it makes sense that the scope of this state statute would differ from the scope of the presentment power. And third, Rule 3:6-9(a) reflects an unbroken history and constitutional codification that has nothing to do with N.J.S.A. 2C:27-1(b) and (g), and that history informs the scope of "public conditions."

The trial court and Diocese's emphasis on the limits for censuring a public official fare no better—and actually support the State. Rule 3:6-9(a) establishes that presentments "may refer to public affairs or conditions, but it may censure a public official only where that public official's association with the deprecated public affairs or conditions is intimately and inescapably a part of them." There is no doubt that the drafters of the Rule were specially concerned about censures of public officials, which is also reflected in the protections they imposed after a presentment has been drafted to allow the reviewing judge to strike the report when it appears, inter alia, "that the presentment is false, or is based on partisan motives." R. 3:6-9(c). But as a matter of plain language and structure, the fact that the Rule's drafters included a special, second clause to restrict presentments that focus on public officials necessarily demonstrates that not every grand jury report referring to public affairs or conditions would do so. Indeed, there would be little reason to carve out this subset of presentments if the broader universe was already limited to public persons. If the Rule intended to limit presentments "to governmental bodies," (Ob13), it would have said so directly.

The Diocese gets no further emphasizing the many presentments and cases that did involve public entities or officials and that included recommendations for "public institutions" and "the sound administration of government," (Ob12) (quoting Camden I, 10 N.J. at 34). The State agrees that presentments often do focus on government entities, e.g., Camden I, 10 N.J. at 47 (1901 presentment criticizing school board for incompetence); id. at 54 (1909 presentment on "lack of adequate equipment of the Newark Fire Department"), given the common-sense fact that misconduct by government agencies or by officials is particularly likely to impact the "public affairs or conditions." But the fact that "derelictions of public officers" are "especially" likely to produce "untoward conditions" that merit public attention, id. at 40-41, 66 (emphasis added), by no means suggests that is exclusively true. Rather, that a major public harm went unresolved can highlight the government's failure to prevent or resolve it too, and decades of statewide clergy abuse is one prime example. So although the Diocese describes the value of presentments as a tool for government oversight, (Ob11-13); (Rb16-20), that hardly supports its government-misconduct-only test.

The Diocese's remaining responses to the unbroken history fall short too. The Diocese protested below that the historical presentments listed in Camden I cannot be considered because copies of those presentments no longer appear to be available. See (Rb26); (Ob13 n.6) (arguing that "despite the Diocese's

requests, the State has not produced the originals"); (Da37) (State explaining it does not have "a database of [historical] presentments"). But that neither party has located these documents does not undermine the probative power of this Court's own opinion: the descriptions Chief Justice Vanderbilt offered for each historical presentment speak for themselves, and Camden I confirms the scope of the presentment power as this Court understood it shortly after ratification of the 1947 Constitution, in what the Diocese agrees is the "seminal opinion" on the presentment power, (Ob13). That this Court understood there to be a wealth of prior presentments on private conduct remains instructive.

The Diocese's response to the 1994 pipeline presentment, see (Ob11 n.4), which is available to the parties, is inapt. The Diocese's claim that this example "does not establish that a presentment can be returned against private entities or private individuals," (Ob11 n.4), is mistaken: this presentment was returned against a private entity; discussed the acts of private employees and individuals, (Psa7-30); and no one (including the Diocese) has claimed it was wrong in doing so. The Diocese thus shifts to arguing that this presentment is distinguishable because the grand jury that described this private conduct also "recommend[ed] changes to federal and state statutes and regulations" in light of the explosion. (Ob11 n.4). But for one, that is an incomplete telling: the grand jury also made recommendations to "gas pipeline operators" without objection. (Sa5). And far

more fundamentally, it is conceivable that a future grand jury here can likewise recommend changes to New Jersey law in light of widespread clergy abuse that went unaddressed for decades, and the trial court and Diocese's assumption that no grand jury could do so underscores how inappropriately speculative this pre-presentment review is. See Point I. While the trial court noted that the specific recommendations in the Pennsylvania report are inapplicable to our State, see (Pa28-31), that grand jury understandably focused on reform relevant to its laws; a New Jersey grand jury could do the same. It lies outside the judicial role to preclude a grand jury from investigating because the judge cannot foresee what useful recommendations for reform a grand jury may develop.

On precedent, though the Diocese has previously claimed that statements by the Appellate Division in Daily Journal support its theory that private action is off-limits, (Rb27-28), that is not the case. Rather, Daily Journal involved a public-records suit by a newspaper that sought to obtain investigation reports that would identify individuals whose names had separately been redacted from a valid presentment about misconduct by the Vineland Road Department. 351 N.J. Super. at 115-17, 119-20. In that context, the court held that the "identity of the private citizens who may have benefitted from the wrongdoing was not necessarily critical to the grand jury's assigned task" of reviewing the agency's own misconduct. Id. at 128. That in no way suggests presentments may never

involve private individuals or institutions, if their own multi-decade, statewide misconduct is the conduct which impacted the public affairs and conditions.

Finally, the court's reliance on the grand jury charge for presentments was also misplaced. (Pa24-26). Initially, the trial court and Diocese overlook that the grand jury charge has language supporting the State: much like this Court's guidance from Camden I, Monmouth, and Camden II, the charge confirms the grand jury has "broad, comprehensive and independent powers" to investigate and report on "matters concerning community morals, health, safety and general welfare," and never limits that scope to governmental actions. (Pa25). Although the charge also says that the grand jury "may inspect and visit public institutions, agencies, buildings and departments" without providing separate instructions as to inspections of private facilities, (Pa25), that is of no moment. Initially, that presentments may concern public facilities does not mean that they must—just as the fact that presentments may concern public officials does not require that they always do. But more fundamentally, a blanket authorization to the grand jury to physically inspect any private facilities it wishes would raise a host of practical and constitutional concerns not present when inspecting government-operated facilities, which helps explain why only the latter would be expressly

approved. See N.J. Const. art. I, § 7.[8] It by no means supports any categorical limits on presentments referring to public harms that were caused by widespread and longstanding private misconduct, like clergy abuse.

B. No "Imminence" Requirement Would Foreclose This Presentment.

The trial court's conclusion that this hypothetical presentment would not be permissible because the subject matter was insufficiently imminent is doubly mistaken. See (Pa28) ("There's no imminence to the history that the Attorney General seeks to [write] here."); see also (Pa31); (Ob14-16). First, presentments are not subject to a freestanding imminence requirement, let alone one that could be evaluated even before a report is drafted. Second, even if such an imminence requirement existed, the hypothetical presentment here would clear that bar.

First, no source of law imposes any freestanding imminence requirement. This mandate clearly does not stem from text; neither our Constitution nor Rule 3:6-9 require presentments to address "imminent" harm. See R. 3-6:9(a) (requiring presentments to "refer to public affairs or conditions" without setting any time horizon); N.J. Const. art. I, ¶ 8 (simply referencing "presentment[s]" by the grand jury); cf. generally State v. Munafo, 222 N.J. 480, 488 (2015)

[8] While the standard instruction is entirely consistent with a presentment in this case, the standard instruction has little force regardless: "model charges are not binding statements of law." State v. O'Donnell, 255 N.J. 60, 79 (2023) (noting instructions should be revised to conform to the law, not the reverse).

(noting that "court may not rewrite a statute or add language that the Legislature omitted"). Nor is it at all clear why such a rule would make sense: the grand jury reasonably can, e.g., investigate a pipeline explosion in hopes of making recommendations to prevent future explosions without having another presently troubled pipeline in mind.

The only source that the trial court and the Diocese has ever cited for this rule falls short. Both cite a lone clause from this Court's opinion in Monmouth, which said a presentment "must be limited to matters imminent and pertinent, relating to the public welfare and of ultimate benefit to the community served by the grand jury." 24 N.J. at 324-25; see (Pa28) (quoting this language as exclusive authority for this "imminence" test). Yet even overlooking that this clause was dicta, neither the court nor the Diocese have cited a single example of a presentment being stricken for insufficient "imminence"—let alone a grand jury investigation being shut down ex ante because of a court's forecast that the investigation would not address sufficiently imminent harms. See supra at Point I. Instead, subsequent decisions, including Camden II, understood Monmouth simply to reflect the usual rule that a presentment must address circumstances that affect the public interest and general welfare. 34 N.J. at 390-91.

Second, even if a freestanding "imminence" requirement did exist, a grand jury could conclude that decades of sexual abuse by clergy and the failures that

allowed it to evade detection for so long passes the test. At the time the parties filed briefs in the trial court in 2021, the Task Force had received more than 550 calls and made four arrests, and the State has acknowledged that its investigation may lead to further indictments—all signs this issue remains of serious public importance. See supra at 5. (Indeed, just this Term, this Court is adjudicating a dispute over personal jurisdiction in a pending civil lawsuit regarding sexual abuse by clergy down the Jersey shore. See D.T. v. Archdiocese of Philadelphia, No. A-35-23 (Argued Oct. 7, 2024).) The Diocese replies that the public harms are all in the distant past because the 2002 MOU between the Dioceses and the State "eliminated abuse and the alleged movement of priests," (Ob15); see also (Ob16) (calling problem "effectively eradicated"), but that puts the cart before the horse. After all, then-Attorney General Grewal expressly charged the Task Force with assessing those agreements and considering "whether any additional action is necessary," (Pa5), and the Diocese is simply assuming the conclusion to the grand jury's inquiry.[9] And even if the 2002 MOU did solve most problems

[9] The Diocese's suggestion that the MOU contains an alternative way to assess compliance, meanwhile, is inconsistent with that agreement. See (Ob2; Ob4; Ob18); see also (Rb35-36) (suggesting that the MOU "contemplated periodic … compliance review"). The relevant section of the MOU (Article 9) states that: "The parties shall revisit this [MOU] as the need may arise, but in no event later than five years from the date of execution by the parties," (Ra127)—hardly the kind of review that takes the place of a grand jury, contra (Rb36). Moreover, the State cannot adequately assess today if it is worth seeking to revisit the terms

as the State certainly hopes, the harms to New Jerseyans from decades of abuse by trusted faith leaders—including the concealment of the abuse and the failures of the State to uncover it—affect victims and family members to this day.

Furthermore, the trial judge overlooked the topical contributions the grand jury could make—again, without first allowing a grand jury to determine if the harms from clergy abuse still impact the public today. In particular, the trial court suggested that recommendations for further reform were unlikely to assist the public because, in its view, the Pennsylvania report "was one that contained very few substantive recommendations," and some of the Pennsylvania grand jury's recommendations were already reflected in New Jersey law. (Pa31). But the approach taken in another State, canvassing different evidence and different laws, hardly preordains the outcome of a future New Jersey grand jury, which of course could recommend changes not currently reflected in New Jersey law. Cf., e.g., N.J.S.A. 2C:1-6(a) (eliminating any limitations period for certain types of criminal sexual contact but not others); N.J.S.A. 2C:1-6(b) (extending statute of limitations for some types of conspiracies but not others). At the very least, there is no basis to invalidate a presentment—before one has been considered or

of the MOU if it does not know how successfully the MOU has addressed the problem—a particularly glaring issue when the concern is prolonged abuse that previously evaded detection for decades.

drafted—because a court cannot foresee recommendations it would find helpful, especially in a case in which amici have not been able to participate.

C. The Trial Court And Diocese's Remaining Objections Fall Short.

The trial court believed allowing a presentment process to proceed would be inappropriate for two further reasons: the State was actively pursuing this presentment, and the presentment might name specific clergy without affording them sufficient process. Neither withstands scrutiny.

1. There is nothing inappropriate about the State deciding to ask the grand jury to issue a presentment. See (Pa24) (expressing concern that the Attorney General's desire to seek a presentment on this topic meant the grand jury would be "implement[ing] [his] will" rather than "serving as the conscience of the community"); (Pa32) ("The Grand Jury can't be given the opportunity to do a score settling which has been arranged by somebody else."). Precedent reveals that grand jury investigations which lead to presentments are often initiated by the State. See Camden I, 10 N.J. at 26 (county prosecutor and sheriff gathered evidence related to conditions in county jail and submitted evidence to grand jury for presentment); Camden II, 34 N.J. at 382 (investigation initiated by Camden Mayor into gambling activities following raids conducted at direction of Attorney General); (Psa3) (investigation initiated by Environmental Crimes Bureau of the Division of Criminal Justice). In short, just as the State requests

indictments from a grand jury in response to the fruits of investigation, so too is it normal that the State might decide to seek a presentment.

This approach makes good sense. In this case, the then-Attorney General learned from a Pennsylvania grand jury report that clergy abuse and the efforts to conceal it "were far more widespread" than previously understood, and thus sought to better understand the scope of the problem in New Jersey. See supra at 4. Indeed, it is unclear as a practical matter how this process otherwise could have been initiated: the State has to make the choice to put this evidence before a future grand jury for the grand jury to even know the facts that can warrant a presentment. But even though the State initiated this process, a grand jury will still have to decide, once the investigation ends, whether any presentment is appropriate. See R. 3:6-9(a) (requiring "12 or more jurors" concur); Standard Grand Jury Charge at 2 (Ra177) (instructing grand jurors that they are part of "an independent legal institution," "the representative of the community," and "not … part of the prosecutor's office," and adding that they do "not assist the prosecutor" but rather that "[t]he prosecutor assists the Grand Jury"). So just as it is settled that courts will give deference to independent determinations by the grand jury regarding an indictment pursued by the State, State v. Hogan, 144 N.J. 216, 228-29 (1996), a presentment ultimately represents the decision of the

grand jurors. The notion that a grand jury's work is unfair because the process is initiated by the State would thus undermine the grand jury system itself.

2. Finally, the trial court's concerns about identifying clergy who sexually abused children without giving them further process do not make a presentment "fundamentally unfair." See, e.g., (Pa26-27; Pa33-34); see also (Ob17-18). The concern goes as follows: a future presentment could name individual clergy (or allow people to "connect the dot[s]," (Pa28)), and those clergy would not have the chance to review and object to such a presentment prior to publication. But there are two threshold problems with shutting down a future presentment on this basis. First, the Diocese never argued to the trial court that a future grand jury presentment would violate due process or fundamental fairness. See United States v. Sineneng-Smith, 590 U.S. 371, 375 (2020) (emphasizing "principle of party presentation" in our adversarial system). Second, this contention relies deeply on speculation about the scope of the future presentment, and the process the assignment judge would ultimately employ before allowing the grand jury's work to be published. See supra at Point I; see R. 3:6-9(a), (c), (e) (establishing a series of procedural protections before publication of a presentment, including for the assignment judge to ensure it did not "indulge[] in personalities without basis" and that representations in the report have "sufficient basis" in the grand jury record, and allowing "any aggrieved person" to seek further review).

And even on the merits, the trial court's fundamental-fairness holding was error. Rule 3:6-9 specifically provides that where a public official is named in a presentment, they may "move for a hearing" before its publication in order to challenge the report or their inclusion. See R. 3:6-9(c) (adding that such public officials may review the grand jury minutes and introduce contrary evidence).[10] The trial court was principally concerned that private individuals named in the presentment cannot do the same, e.g., (Pa27), and that would be "fundamentally unfair in a way that can't be remedied," (Pa26). But the State has already agreed that if and when a draft report is submitted to the assignment judge, it would not object to according the named clergy the very same process laid out R. 3:6-9(c), in which those individuals move for an in camera hearing. See (Ab36) (making same representation at Appellate Division). Indeed, this is the approach that this Court endorsed for another presentment, see Camden II, 34 N.J. at 401 (holding that even if the Rule did not provide this protection, "ordinary fair play required

[10] It is not so surprising that the Rule focused on the process for public officials specifically, given the concern expressed in preexisting case law that there could be heightened risks of the grand jury censuring a disfavored public official. See Camden I, 10 N.J. at 62 (quoting from an Attorney General opinion noting that presentments "charging public officials, for instance, with laxity or misconduct or other activity incompatible with the proper performance of their duties can, of course, and has, in instances, caused considerable harm to the individual named"); Camden II, 34 N.J. at 389 ("It is in connection with censure of public officials that such presentments most frequently come under attack.").

that opportunity be accorded" to an individual named), and that the Maryland Attorney General's Office employed in its own report on sexual abuse by clergy. See Memorandum and Order at 2-3, 22-23, 30, In re Special Investigation No. CID 18-2673 (2023) (Case No. Misc. 1144), https://tinyurl.com/369x9fe6. Whether fundamental fairness actually requires such a process or not, the State has agreed to provide it, leaving no basis whatsoever to foreclose a presentment on these grounds.

* * *

The decision below has prevented the grand jury from even considering a presentment regarding decades of sexual abuse by clergy and the response to that abuse. In addition to being procedurally improper, the ruling imposed new limitations on the presentment authority that conflict with text, precedent, and purpose. It was error to shut the process down—especially before it began.

CONCLUSION

This Court should reverse the judgment below.

Respectfully submitted,

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