

NEW YORK STATE
COURT OF APPEALS

Preliminary Appeal Statement

(Pursuant to section 500.9 of the Rules of the Court of Appeals)

1. CAPTION OF CASE (as the parties should be denominated by the Court of Appeals):

STATE OF NEW YORK COURT OF APPEALS

ST. JOSEPH HOSPITAL OF CHEEKTOWAGA, NEW YORK
and CATHOLIC HEALTH SYSTEM, INC.

Plaintiffs-Appellants,

v.

ANTONIA C. NOVELLO, as New York State
Health Commissioner, THE NEW YORK STATE
COMMISSION ON HEALTHCARE FACILITIES
IN THE 21ST CENTURY, GEORGE E. PATAKI,
as Governor of the State of New York and THE STATE
OF NEW YORK

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Defendants-Respondents.

2. Name of court or tribunal where case originated, including county, if applicable:

State of New York, Supreme Court, Erie County

3. Civil index number, criminal indictment number or other number assigned to the matter in the court or tribunal of original instance:

Erie County Index No. I-2006/11568

4. Docket number assigned to matter at the Appellate Division or other intermediate appellate court:

Appellate Division, Fourth Judicial Department, Docket No. CA 07-00587

5. Jurisdictional basis for this appeal:

- Leave to appeal granted by the Court of Appeals or a Judge of the Court of Appeals
 Leave to appeal granted by the Appellate Division or a Justice of the Appellate Division
 CPLR 5601(a): dissents on the law at the Appellate Division
 CPLR 5601(b)(1): constitutional ground (Appellate Division order)
 CPLR 5601(b)(2): constitutional ground (judgment of court of original instance)
 CPLR 5601(c): Appellate Division order granting a new trial or hearing, upon stipulation for judgment absolute
 CPLR 5601(d): from a final judgment, order, determination or award, seeking review of a prior nonfinal Appellate Division order
 Other (specify) _____

6. How this appeal was taken to the Court of Appeals (choose one) (see CPLR 5515[1]):

NOTICE OF APPEAL Date filed: July 23, 2007
Clerk's office where filed: Erie County Clerk's Office

ORDER GRANTING LEAVE TO APPEAL (civil case):

Court that issued order: _____
Date of order: _____

CERTIFICATE GRANTING LEAVE TO APPEAL (criminal case):

Justice or Judge who issued order: _____
Court: _____
Date of order: _____

7. Demonstration of timeliness of appeal in civil case (CPLR 5513, 5514):

Was appellant served by its adversary with a copy of the order, judgment or determination appealed from and notice of its entry? yes no

If yes, date on which appellant was served (if known, or discernible from the papers served): July 18, 2007

If yes, method by which appellant was served: personal delivery
 regular mail
 overnight courier
 other (describe _____)

Did the Appellate Division deny a motion for leave to appeal to this Court in this case? yes no

If yes, fill in the following information:

a. date appellant served the motion for leave to appeal made at the Appellate Division: _____

b. date on which appellant was served with the Appellate Division order denying such motion with notice of the order's entry: _____, and

- c. method by which appellant was served with the Appellate Division order denying such motion: _____ personal service
 _____ regular mail
 _____ overnight courier
 _____ other (describe _____)

8. Party Information:

Instructions: Fill in the name of each party to the action or proceeding, one name per line. Indicate the status of the party in the court of original instance and the party's status in this Court, if any. Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, third-party plaintiff, third-party defendant, intervenor. Examples of a party's Court of Appeals status include: appellant, respondent, appellant-respondent, respondent-appellant, intervenor-appellant.

No.	Party Name	Original Status	Court of Appeals Status
1	St. Joseph Hospital of Cheektowaga New York	Plaintiff	Appellant
2	Catholic Health System, Inc.	Plaintiff	Appellant
3	Antonia C. Novello, as New York State Health Commissioner	Defendant	Respondent
4	The New York State Commission on Healthcare Facilities in the 21st Century	Defendant	Respondent
5	George E. Pataki, as Governor of the State of New York	Defendant	Respondent
6	The State of New York	Defendant	Respondent

9. Attorney information:

Instructions: For each party listed above, fill in the name of the law firm and responsible attorney, if the party is represented. Where a litigant is self-represented, fill in that party's data in section 10 below.

For Parties Nos. 1 and 2 above:

Law Firm Name: Phillips Lytle LLP
 Responsible Attorney: Kenneth A. Manning
 Street Address: Suite 3400, One HSBC Center
 City: Buffalo State: NY Zip: 14203-2887
 Telephone No: 716-847-8400 Ext. 7041 Fax: 716-852-6100
 If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of Court of Appeals? yes no not applicable

For Parties Nos. 3, 4, 5, and 6 above:

Law Firm Name: Andrew M. Cuomo, as Attorney General of the State of New York
 Responsible Attorney: Victor Paladino
 Street Address: The Capitol
 City: Albany State: NY Zip: 12224
 Telephone No: 518-473-4321 Ext. _____ Fax: 518-473-1635
 If appearing Pro Hac Vice, has attorney satisfied requirements of section 500.4 of the Rules of Court of Appeals? yes no not applicable

10. Self-Represented Litigant Information: Not Applicable

11. Related motions and applications:

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals? ___ yes X no

If yes, specify:

- a. the party who filed the motion or application: _____
- b. the return date of the motion: _____
- c. the relief sought: _____

Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken? ___ yes X no

If yes, specify:

- a. the party who filed the motion or application: _____
- b. the return date of the motion: _____
- c. the relief sought: _____

Are there any other pending motions or ongoing proceedings in this case? If yes, please describe briefly that nature and the status of such motions or proceedings: No.

12. Set forth, in point-heading form, issues proposed to be raised on appeal (this is a nonbinding designation, for preliminary issue identification purposes only):

Whether section 31 of Part E of Chapter 63 of the Laws of 2005, by whose operation the New York State Commission on Healthcare Facilities in the 21st Century recommended the closure of a profitable hospital without affording it a hearing preceded by adequate notice, is unconstitutional as a violation of:

1. procedural due process, as guaranteed by the Fourteenth Amendment to the United States Constitution, and by Article I, section 6, of the New York Constitution;
2. substantive due process, as guaranteed by the Fourteenth Amendment to the United States Constitution, and by Article I, section 6, of the New York Constitution;
3. the Presentment Clause of Article IV, section 7, of the New York Constitution, and the Separation of Powers doctrine inherent therein;
4. the Plaintiffs'-Appellants' right to free exercise of their religion, as guaranteed by Article I, section 3, of the New York Constitution; and/or

5. the Contracts Clause of Article I, section 10, of the United States Constitution.

13. Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?
 yes no

If yes, set forth a concise statement why appellant believes that consideration pursuant to section 500.11 is appropriate (see section 500.11[b]): _____

14. Notice to the Attorney General.

Is any party to the appeal asserting that a statute is unconstitutional? yes no

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? yes no

15. **ITEMS REQUIRED TO BE ATTACHED TO THIS STATEMENT:**

A. A copy of the filed notice of appeal, a copy of the order granting leave to appeal (civil case), or a copy of the certificate granting leave to appeal (noncapital criminal case), whichever is applicable;

B. The order, judgment or determination appealed from to this Court;

C. Any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review;

D. All decisions or opinions relating to the orders set forth in subsections B and C above; and

E. If required, a copy of the notice sent to the Attorney General pursuant to section 500.9(b) of the Rules of the Court of Appeals.

Date: August 1, 2007

Submitted by: Phillips Lytle LLP

(Name of law firm)



(Signature of responsible attorney)

Kenneth A. Manning

(Typed name of responsible attorney)

Attorneys for appellants St. Joseph Hospital of Cheektowaga,
New York; and Catholic Health System, Inc.

(Names of parties)

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