



Mary McKinney et al., Appellants, v Commissioner of the New York State  
Department of Health et al., Respondents.

1377, Index 6034/07

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST  
DEPARTMENT

41 A.D.3d 252; 840 N.Y.S.2d 6; 2007 N.Y. App. Div. LEXIS 7562; 2007 NY Slip Op  
5360

June 19, 2007, Decided

June 19, 2007, Entered

**SUBSEQUENT HISTORY:** Appeal dismissed by McKinney v. Comm'r of the N.Y. State Dep't of Health, 9 NY3d 891, 874 NE2d 735, 2007 N.Y. LEXIS 2608, 842 NYS2d 770 (2007)

Appeal denied by McKinney v. Commr. of N.Y. State Dept. of Health, 9 NY3d 815, 878 NE2d 610, 2007 N.Y. LEXIS 3687, 848 NYS2d 26 (N.Y., Nov. 27, 2007)

Motion granted by McKinney v. Comm'r of N.Y. State Dept. of Health, 9 NY3d 986, 878 NE2d 604, 848 NYS2d 20, 2007 N.Y. LEXIS 3680 (N.Y., Nov. 27, 2007)

**PRIOR HISTORY:** McKinney v. Commissioner of N.Y. State Dep't of Health, 15 Misc 3d 743, 836 NYS2d 794, 2007 N.Y. Misc. LEXIS 820 (2007)

#### HEADNOTES

Parties--Standing

Constitutional Law--Delegation of Legislative Power.--Statute establishing Commission on Health Care Facilities (L 2005, ch 63, part E, §31) did not unconstitutionally delegate Legislature's lawmaking power to executive branch; having made basic policy choice that some hospitals and nursing homes needed to be closed, resized, consolidated, converted, or restructured, statute permissibly authorized Commission to make subsidiary policy choices consistent with

enabling legislation.

**COUNSEL:** [\*\*\*1] Chadbourne & Parke LLP, New York (Thomas E. Bezanson of counsel), for appellants.

Andrew M. Cuomo, Attorney General, New York (Sasha Samberg-Champion of counsel), for respondents.

**JUDGES:** Concur--Friedman, J.P., Nardelli, Buckley, Sweeny and Malone, JJ.

#### OPINION

[\*\*6] [\*252] Order, Supreme Court, Bronx County (Mary Ann Brigantti-Hughes, J.), entered on or about March 9, 2007, which, in an ac tion [\*253] challenging the constitutionality of the legislation establishing the Commission on Health Care Facilities in the 21st Century (L 2005, ch 63, part E, § 31), granted defendants' motion pursuant to CPLR 3211 (a) to dismiss the complaint, unanimously affirmed, without costs.

We reject defendants' arguments that the individual plaintiff does not have taxpayer standing under State Finance Law § 123-b (1) (see *Saratoga County Chamber of Commerce v. Pataki*, 100 NY2d 801, 813-814, 798 NE2d 1047, 766 NYS2d 654 [2003], *cert denied* 540 US 1017, 124 S Ct 570, 157 L Ed 2d 430 [2003] [claim that

41 A.D.3d 252, \*253; 840 N.Y.S.2d 6, \*\*6;  
2007 N.Y. App. Div. LEXIS 7562, \*\*\*1; 2007 NY Slip Op 5360

it is illegal to spend money at all for questioned activity likely provides taxpayer [\*\*7] standing)), and that Westchester Square Medical Center (WSMC), on which the individual plaintiff allegedly depends for medical care but which chose not to participate in the action after being notified thereof, would be inequitably affected [\*\*\*2] by a judgment or is otherwise a necessary party (CPLR 1001 [a]; cf. *Matter of Castaways Motel v Schuyler*, 24 NY2d 120, 125, 247 NE2d 124, 299 NYS2d 148 [1969], *adhered to on rearg* 25 NY2d 692, 254 NE2d 919, 306 NYS2d 692 [1969]; *Kronish Lieb Weiner & Hellman LLP v Tahari, Ltd.*, 35 AD3d 317, 829 NYS2d 7 [2006]). In view of the foregoing, we need not address the issue of plaintiffs' standing under the common law. However, we also reject plaintiffs' argument that the subject legislation unconstitutionally delegated the Legislature's lawmaking power to the executive branch, and accordingly affirm dismissal of the action. Enabling statutes even broader than this one have been found

constitutional (see e.g. *Matter of Medical Soc'y of State of N.Y. v Serio*, 100 NY2d 854, 864-865, 800 NE2d 728, 768 NYS2d 423 [2003]; *Boreali v Axelrod*, 71 NY2d 1, 9, 517 NE2d 1350, 523 NYS2d 464 [1987]). Having made the basic policy choice that some hospitals and nursing homes needed to be closed and others needed to be resized, consolidated, converted, or restructured, the legislation permissibly authorized the Commission "to fill in details and interstices and to make subsidiary policy choices consistent with the enabling legislation" (*Dorst v Pataki*, 90 NY2d 696, 699, 687 NE2d 1348, 665 NYS2d 65 [1997], quoting *Matter of Citizens For An Orderly Energy Policy v Cuomo*, 78 NY2d 398, 410, 582 NE2d 568, 576 NYS2d 185 [1991]; [\*\*\*3] see also *Medical Soc'y*, 100 NY2d at 865). Concur--Friedman, J.P., Nardelli, Buckley, Sweeny and Malone, JJ. [*See* 15 Misc 3d 743, 836 NYS2d 794 (2007).]