

STATE OF NEW YORK : COURT OF APPEALS

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

Plaintiffs-Appellants,

v.

NOTICE OF
CHALLENGE TO
CONSTITUTIONALITY
OF A STATUTE

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

Erie County Index No.:
I-2006/11568

Defendants-Respondents.

PLEASE TAKE NOTICE that, pursuant to CPLR 5601(b)(1), Plaintiffs-Appellants ("Appellants") have taken their appeal as of right to the Court of Appeals of the State of New York, from an Opinion and Order of the Appellate Division, Fourth Department, of the Supreme Court of the State of New York, entered in the office of the Clerk of the Appellate Division, Fourth Department, on July 18, 2007, and served on the Appellants on July 18, 2007, which Opinion and Order:

- (i) modified the Order and Judgment of the Supreme Court, County of Erie, granted by the Honorable Joseph D. Mintz on February 20, 2007, and entered in the Office of the Clerk of Erie County on February 21, 2007, by vacating the provision dismissing those causes of action seeking a declaratory judgment; and
- (ii) affirmed the Order and Judgment as modified, and declared that section 31 of Part E of Chapter 63 of the Laws of 2005 (the "Enabling Legislation") is constitutional.

Justice Eugene Fahey of the Appellate Division, Fourth Department, dissented from the Opinion and Order on questions of law in favor of the Appellants, and would vote:

- (i) to reverse the Order and Judgment on the law;
- (ii) to deny the cross-motion of the Defendants-Respondents ("Respondents") for summary judgment;

- (iii) to reinstate the Appellants' amended complaint;
- (iv) to grant Appellants' motion for summary judgment;
- (v) to grant Appellants a judgment declaring that the Enabling Legislation is unconstitutional; and
- (vi) to grant Appellants an order permanently enjoining the Respondents from taking any action to enforce the provisions of the Enabling Legislation.

Having filed their notice of appeal in the Office of the Erie County Clerk on July 23, 2007, and served it upon the Respondents on July 23, 2007, the Appellants take their appeal from each and every part of the foregoing Opinion and Order of the Appellate Division, Fourth Department. By their appeal, the Appellants seek the above relief for which Justice Fahey voted, including a declaration of the Enabling Legislation's unconstitutionality, as a violation of:

- (i) 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;
- (ii) 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;
- (iii) the Presentment Clause of Article IV, section 7, of the New York Constitution, and the Separation of Powers doctrine inherent therein;
- (iv) the Appellants' right to free exercise of their religion, as guaranteed by Article I, section 3, of the New York Constitution; and/or
- (v) the Contracts Clause of Article I, section 10, of the United States Constitution.

Dated: Buffalo, New York
August 1, 2007

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