

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

February 5, 2016 through February 11, 2016

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

CONCERNED HOME CARE PROVIDERS, INC. v NEW YORK STATE DEPARTMENT OF HEALTH, et al.:

2ND Dept. App. Div. order of 12/30/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CONSTITUTIONAL LAW - SEPARATION OF POWERS - WHETHER EXECUTIVE ORDER NO. 38 AND TWO SETS OF REGULATIONS PROMULGATED BY THE NEW YORK STATE DEPARTMENT OF HEALTH (DOH), AS SET FORTH IN 10 NYCRR PART 1002 AND IN CERTAIN AMENDMENTS TO 10 NYCRR SUBPART 69-4, VIOLATE THE SEPARATION OF POWERS DOCTRINE IN THE NEW YORK STATE CONSTITUTION; EARLY INTERVENTION PROGRAMS FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES, PROVIDED BY PRIVATE AGENCIES THROUGH CONTRACT WITH THE DOH;

Supreme Court, Suffolk County, denied plaintiff's cross motion for summary judgment on the complaint and granted defendants' motion for summary judgment dismissing the cause of action for injunctive relief and, in effect, declaring that Executive Order (Cuomo) No. 38 (9 NYCRR 8.38) and 10 NYCRR part 1002 are not unconstitutional, void ab initio, or violative of the separation of powers doctrine, and dismissed the complaint; App. Div. affirmed and remitted the matter to Supreme Court for entry of a declaratory judgment.