

VIRTUA HEALTH, INC. and
CAPITAL HEALTH SYSTEM, INC.,

Plaintiffs,

v.

STATE OF NEW JERSEY and
CHRISTOPHER J. CHRISTIE, in
his official capacity as
Governor of the State of New
Jersey,

Defendants.

SUPREME COURT OF NEW JERSEY

No. S-38 September Term 2015
(077046)

Civil Action

Sat Below:

Hon. Joseph L. Yannotti, P.J.A.D.
Hon. Jerome M. St. John, J.A.D.
Hon. Douglas H. Hurd, P.J. Cv.

STATE'S BRIEF IN OPPOSITION TO PLAINTIFFS' EMERGENT
MOTION TO VACATE OR MODIFY THE APPELLANT DIVISION'S STAY PENDING
APPEAL

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PRELIMINARY STATEMENT

The relief sought by Plaintiffs Virtua Health, Inc. ("Virtua") and Capital Health would upset the status quo of the emergency medical service ("EMS") delivery system in the City of Camden and leave its residents vulnerable in the interim. Lifting the Appellate Division's stay would strip Cooper University Hospital ("Cooper") of its legal authority to provide basic life support ("BLS") and advanced life support ("ALS") in Camden, disrupting and diminishing the provision of ALS services and forcing the City to engage in emergency contracting procedures to secure a temporary BLS provider.

On December 22, 2015, the trial court committed reversible error by invalidating P.L. 2015, c. 70 ("Chapter 70"), legislation that provides for locally-controlled and integrated EMS to the citizens of the City of Camden. Chapter 70, which became effective on January 2, 2016, authorizes Cooper, a Level I trauma center located in the City of Camden, to provide integrated BLS and ALS within the city. By taking on the role of a "super legislature," the trial court erroneously found that the law is unconstitutional special legislation.

On December 29, 2015, upon application of the State defendants, the Appellate Division recognized the irreparable harm that would result if the status quo was disturbed and stayed the trial court's order. As a result, Chapter 70 was

successfully implemented on January 2, 2016, and Cooper has since been effectively providing ALS and BLS services to the citizens of the City of Camden.

Aside from the irreparable harm that will result if the stay is lifted, Plaintiffs' application should be denied because the State is highly likely to succeed on the merits of this appeal. The trial court misapplied the standard for determining whether a legislative act constitutes special legislation. Instead, it erroneously engaged in fact-finding and questioned the Legislature's judgment in determining the appropriate facilities to offer EMS. Such grievous errors warrant reversal.

In light of the State's high probability of success in this appeal and the irreparable harm that will result if the stay is lifted, this Court should deny Plaintiffs' application to vacate or modify the Appellate Division's stay.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Chapter 70, codified at N.J.S.A. 26:2K-12.1, grants the State's three Level I trauma centers the exclusive authority to provide ALS² services in the municipalities in which they are

¹ Because they are closely related, the facts and procedural history have been combined to avoid repetition and for the convenience of the court.

² ALS is part of EMS, and "means an advanced level of pre-hospital, inter-facility or emergency medical care that includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of anti-arrhythmic agents, intravenous (IV) therapy,

located. (Da427-Da428).³ Chapter 70 also provides a mechanism by which Level I trauma centers can provide basic life support ("BLS")⁴ in those cities, by granting those facilities the right of first refusal to provide BLS at no charge to the municipalities in which they are located. (Da73). Thus, Chapter 70 establishes locally-administered and integrated EMS systems controlled by the facilities best equipped to treat traumatic injuries: local Level I trauma centers.

Of the three current Level I trauma centers, Robert Wood Johnson University Hospital (RWJUH) in New Brunswick and University Hospital (UH) in Newark have been providing both ALS and BLS in their respective cities decades. Cooper was the only

administration of specific medications, drugs and solutions, utilization of adjunctive ventilation devices, trauma care and other techniques and procedures authorized in writing by the Commissioner." N.J.A.C. 8:41-1.3. ALS is provided through a mobile intensive care unit, or MICU. Ibid.

³ "Da" refers to the State Defendant's appendix submitted to the Appellate Division that was submitted in support of the motion for a stay. "Pb" refers to Plaintiffs' brief submitted to this Court in support of its emergent motion. "1T" refers to the transcript of the December 16, 2015 oral argument before the trial court, and "2T" refers to the transcript of the trial court's December 22, 2015 oral decision.

⁴ BLS is part of EMS, and means a "basic level of pre-hospital care patient stabilization, airway clearance and maintenance, cardiopulmonary resuscitation (CPR) . . . hemorrhage control, initial wound care, fracture stabilization, victim extrication and other techniques and procedures . . ." N.J.A.C. 8:41-1.3. BLS is provided to municipalities according to contracts with licensed providers.

Level I trauma center in the State that did not operate its city's ALS and BLS systems.⁵ Ibid.

In an effort to bring Cooper in line with the other two Level I trauma centers and to provide the benefits of a locally-controlled, integrated EMS to the residents of Camden, New Brunswick and Newark, the Legislature enacted Chapter 70 on July 6, 2015, with an effective date of January 2, 2016. (Da73, Da203-204, Da224). As set forth in the Sponsor's Belief and Statements accompanying the final bill versions, the purpose of Chapter 70 is to centralize medical oversight, facilitate high-quality pre-hospital care, and support a more cost-efficient system. (Da79-Da80, Da85-Da87).

On July 27, 2015, Virtua, a non-trauma center, and Capital Health, a Level II trauma center, filed a Verified Complaint seeking a declaratory judgment that Chapter 70 is unconstitutional special legislation. (Da1-Da21). The State defendants filed a motion to dismiss in lieu of an answer, and the Plaintiffs filed a motion for summary judgment. (Da21-Da68; Da451-Da548). The Honorable Douglas H. Hurd, P.J. Cv., heard oral argument on December 16, 2015, and on December 22, 2015 issued orders denying the State defendants' motion to dismiss

⁵ Virtua Health, a non-trauma center with its headquarters outside of Camden, provided ALS services, and Newark-based University Hospital provided BLS services to the City of Camden prior to Chapter 70. (Da8-Da10, Da107).

and granting the Plaintiffs' motion for summary judgment, thereby declaring Chapter 70 unconstitutional. (Da645-Da650). On December 22, 2015, the trial court denied the State defendants' motion for a stay. (Da649-Da650).

The State Defendants appealed the trial court's decision to the Appellate Division and moved for a stay on December 23, 2015.⁶ The Appellate Division granted the State Defendant's application on December 29, 2015, and stayed the trial court's order pending appeal. On December 30, 2015, the Appellate Division rejected Plaintiffs' emergent motion for reconsideration and/or modification of the stay. On the same day, Plaintiffs applied to this Court for emergent review of the Appellate Division's stay.

As a result of the stay, the status quo was preserved and Chapter 70 took effect on January 2, 2016 and Cooper became the exclusive ALS and BLS provider for the City of Camden as of that date. Cooper's ALS service maintains two active Mobile Intensive Care Units ("MICUs") that are able to transport patients within Camden at all times, whereas Virtua's ALS service maintained just one MICU which was not able to transport patients. (Certif. of Kathy Devine, ¶¶ 3-6, attached hereto as Ex. A). Cooper has also increased the number of available BLS

⁶ Copies of all Appellate Division filings referenced in this paragraph have been submitted to the Court.

vehicles. Id. at 7-8. Thus, the citizens of Camden are currently experiencing the benefits of Cooper's integrated ALS and BLS system.

ARGUMENT

THE APPELLATE DIVISION'S STAY SHOULD BE AFFIRMED BECAUSE THE STATE IS LIKELY TO SUCCEED ON THE MERITS, IRREPARABLE HARM WILL RESULT ABSENT A STAY, AND THE BALANCE OF EQUITIES FAVORS MAINTAINING THE STATUS QUO PENDING APPEAL.

The trial court's order invalidating Chapter 70 should continue to be stayed in its entirety. Applications for a stay are governed by the familiar standard set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). Courts consider "the soundness of the trial court's ruling and the effect of a stay on the parties and the public." Id. at 320. A party seeking a stay must show, by clear and convincing evidence, that:

- (1) relief is needed to prevent irreparable harm;
- (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and
- (3) balancing the relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.

[Ibid. (citation omitted).]

Here, all the Crowe factors favor continuing the stay entered by the Appellate Division.

A. The State Is Likely to Succeed on the Merits of this Appeal, and the State's Legal Rights are Well-Settled.

The trial court's decision invalidating Chapter 70 as "special legislation" is rife with errors and the State is highly likely to succeed on the merits of its appeal. It is well-settled that a statute "will not be declared void unless it is clearly repugnant to the Constitution." Trautmann ex rel. Trautmann v. Christie, 211 N.J. 300, 307 (2012) (citation omitted). If the question of a legislative action's constitutionality is "fairly debatable, courts will uphold" the Legislature's choice. Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 227 (1998).

Plaintiffs' sole challenge to Chapter 70 is that the statute is special legislation under the Constitution. N.J. Const. art. IV, § 7, ¶ 9(8). "A statute must 'clearly and irremediably violate[]' the ban on special legislation to be invalidated." City of Jersey City v. Farmer, 329 N.J. Super. 27, 38 (App. Div.) (quotation omitted), certif. denied, 165 N.J. 135 (2000).

Notably absent from Plaintiffs' brief in support of their motion for emergent relief to this Court is any mention of the "rational basis" standard of review, which governs special

legislation cases. A statute that provides an exclusive benefit to a particular organization is constitutional under the special legislation clause so long as the statute's exclusions are not arbitrary. See Brown v. State, 356 N.J. Super. 71, 84 (App. Div. 2002) (citation omitted). The test of whether a law constitutes special legislation is "whether the classification is reasonable, not arbitrary, and can be said to rest upon some rational basis justifying the distinction." Paul Kimball Hosp., Inc. v. Brick Twp. Hosp., Inc., 86 N.J. 429, 446 (1981). "[A] legislative choice is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data." Fed. Commc'ns Comm'n v. Beach Commc'ns, Inc., 508 U.S. 307, 315 (1993). The judicial task is to determine "whether there is any conceivable state of facts bearing a reasonable relation to the object of the act which affords a basis for the classification." Jordan v. Horsemen's Benevolent and Protective Ass'n, 90 N.J. 422, 433 (1982). (emphasis added). It is the plaintiffs' burden to negate "every conceivable basis which might support" the statute. New Jersey Ass'n of Health Plans v. Farmer, 342 N.J. Super. 536, 564 (Ch. Div. 2000) (quoting Madden v. Kentucky, 309 U.S. 83, 88 (1940)).

In order to determine whether a law violates the proscription against special legislation, courts must examine: "(1) the purpose and subject matter of the statute; (2) whether

any persons are excluded who should be included; and (3) whether the classification is reasonable, given the purpose of the statute." Jordan, supra, 90 N.J. at 433 (citing Vreeland v. Byrne, 72 N.J. 292, 298-301 (1977)).

Here, Chapter 70's purpose and subject matter is clear. The Legislature intended to require Level I trauma centers to provide ALS in the cities in which they are located, and to grant Level I trauma centers the opportunity to also provide BLS in the cities in which they are located. Chapter 70's sponsors concluded that, "linking advanced life support and basic life support services under the State's designated regional trauma centers will centralize medical oversight, facilitate high-quality prehospital care, and support a more cost-efficient system." (Da79-Da80, Da85-Da87).

Chapter 70 contains several classifications that are all-- at the very least--supported by a rational basis and therefore satisfy the remaining parts of the Jordan/Vreeland test. Chapter 70's first classification is that it requires local, as opposed to out-of-municipality, control over EMS. Chapter 70's focus on local control of ALS and BLS in urban areas is clearly rational as the law is intended to improve "community health" by using EMS to address unmet healthcare needs in the community, thereby furthering the "community paramedicine" model of healthcare delivery. (Da104-Da105). Indeed, the Legislature

carefully considered this policy and held committee hearings where sponsors of the bill testified that the law would improve care by enabling ALS paramedics to follow up with patients and avoid Emergency Department revisits. (Da203). It was also noted that, "hospitals today are being called on to manage population health," and "[h]ow to do that efficiently is part of, really, an ongoing experiment." (Da224). Even a representative from plaintiff Capital Health testified that he is a "big fan" of community paramedicine. (Da128).

By creating a locally-controlled integrated EMS system, Chapter 70 creates the conditions by which community paramedicine can be pursued by the Level I trauma centers. It stands to reason that such community outreach is best accomplished by an entity that is based within the community, such as Cooper University Hospital, rather than one that is based in a suburb, such as Virtua. No courtroom fact-finding is needed to support that rationale, nor is courtroom fact-finding permissible under rational basis review. Therefore, Chapter 70's focus on local, intra-municipality control over EMS, and its exclusion of all non-local EMS providers from its scope, is supported by a rational basis.⁷

⁷ Plaintiffs remarkably claim that the State has "all but abandoned" community paramedicine as a basis for Chapter 70's exclusions. (Pb22). Community paramedicine was discussed at the Legislative committee hearings and was set forth in every

The next classification is that Chapter 70 only applies to those municipalities in which Level I trauma centers are located, not every municipality within the State. As an initial matter, the law's exclusion of towns without any trauma centers is justified by the well-reasoned and well-supported public policy favoring integration of EMS within the trauma system. Plaintiffs admit that 12% of emergency calls in the City of Camden involve patients who require treatment at a trauma center.⁸ (Da12). It is not irrational or arbitrary for the Legislature to focus on improving care for a particular subset of injuries--particularly when that subset is often life-threatening and requires the most costly treatment. Thus, Chapter 70's focus on integrating EMS within trauma centers is rational.

By making Cooper the exclusive ALS provider in Camden, Chapter 70 centralizes oversight by one entity, as opposed to a shared operation between Virtua and Cooper, and creates efficiencies within the City of Camden by removing the "middle-man." Thus, integrating EMS under the umbrella of a trauma

State brief submitted to the trial court and to the Appellate Division. Local control over EMS clearly furthers the community paramedicine model by creating the conditions by which it can be pursued by a facility based within the community.

⁸ Plaintiffs' cite the State-wide 7% figure in their brief submitted to this Court whilst ignoring their own 12% figure for the City of Camden, which is the only city affected by the stay. (Pb21).

system is a rational way to directly further Chapter 70's goals of increasing medical oversight and reducing inefficiencies.

In 2008 the Department of Health commissioned the American College of Surgeons (ACS) to evaluate the trauma system in New Jersey. The results of this evaluation were published as the ACS's 2008 Trauma Center Consultation report. (Da321-Da425).⁹ ACS specifically recommended that EMS be integrated within the trauma system. (Da365-Da370). Indeed, the report notes that an "optimal" State-wide trauma plan would include a "well integrated" "trauma system, EMS system, and public health agency." (Da365). Plaintiffs' attempts to distinguish this report are fruitless. Plaintiffs insist that the report does not differentiate between Level I and Level II trauma centers, but the State has only ever cited this report as a rational basis for merging EMS with trauma generally. Plaintiffs simply ignore the report's plain language favoring integration between the trauma system and EMS system. Plaintiffs' argument that the Legislature never considered this report during the committee hearings reveals Plaintiffs' misunderstanding of the rational basis standard of review. Plaintiffs (or the trial court) may disagree with the method by which the Legislature chose to

⁹ Not only is this report part of the public record, but the Legislature has previously cited to it. See N.J.S.A. 26:2KK-1(b).

integrate EMS and trauma through Chapter 70, but that does not render the law irrational.

Chapter 70's final level of classification is that only Level I trauma centers must provide ALS services in the cities in which they are located. Trauma centers in New Jersey are designated by the Department of Health as either Level I or Level II trauma centers, and those designations carry several important distinctions. First, the State's three Level I trauma centers are regional resource facilities based in major urban areas: Newark, New Brunswick, and Camden. (Da427-428). Level II trauma centers, on the other hand, are located in municipalities of varying types and sizes, from Jersey City to Neptune Township. Ibid. Second, Level I trauma centers maintain a higher volume of trauma patients per year, are university-affiliated, and are required to maintain staff sufficient to provide "total care for all aspects of trauma," from prevention through rehabilitation. Ibid. Third, the regulations contain heightened clinical standards for Level I trauma centers, which are capable of treating a wider range of traumatic injuries due to retaining different specialists on staff at all times than are required to be staffed at Level II trauma centers. See N.J.A.C. 8:43G-12.17(e); N.J.A.C. 8:43G-12.17(d); N.J.A.C. 8:43G-12.18(a)(3); N.J.A.C. 8:43G-12.17(a); N.J.A.C. 8:43G-12.17(b).

The differences between Level I and Level II trauma centers are substantial and, alone, constitute a rational basis for the Legislature to limit Chapter 70's applicability to those cities that contain a Level I trauma center. It is rational for the Legislature to limit Chapter 70's scope to those facilities that can provide the fullest extent of treatment to trauma patients. It is also rational for the Legislature to focus on providing Chapter 70's benefits to those municipalities that contain Level I trauma centers as those centers are larger, have greater resources, and treat more patients, as research shows "a correlation between patient outcome and the number of procedures which a surgeon performs annually." (Da427-428). The rational basis inquiry ends here; it is not for a court to judge whether Chapter 70's focus on Level I trauma centers is the best policy for the State or even whether Chapter 70 would be cost efficient, as the trial court improperly did here. (2T16:1-9).¹⁰ It is enough to show that the classification is not arbitrary--even if that showing is "fairly debatable," Chapter 70 must be upheld. Newark Superior Officers Ass'n, supra, 98 N.J. at 227.

The trial court erred in demanding additional rationale and evidence supporting this classification, as that demand flips

¹⁰ The trial court found that \$2.5 million appropriated to Cooper by the Legislature outweighs any other cost savings enabled by Chapter 70. (2T16:1-9). This is a policy judgment and a clear intrusion into the legislative sphere.

the rational basis standard on its head and requires courtroom fact-finding. Nonetheless, several conceivable rationales support Chapter 70's limited application to cities that contain Level I trauma centers such as the City of Camden. First, Chapter 70 promotes uniformity by bringing Cooper in line with the State's two other Level I trauma centers. (Da224). Second, by limiting Chapter 70 to cities with Level I trauma centers, the Legislature rationally focused on exclusively serving cities with high populations. See Newark Superior Officers Ass'n, supra, 98 N.J. at 225 (noting that "[s]tatutes relating to city government classified by population are generally upheld"). A city such as Camden uniquely benefits from community paramedicine because 1% of its residents make up 1/3 of the city's medical costs. (Da105). Similarly, Chapter 70 is intended to reduce stress on emergency departments, and large cities such as Camden have high rates of emergency care and hospitalizations. (Da203-Da204, Da224). And large cities such as Camden suffer from a higher rate of traumatic injuries.¹¹ (Da12). Nothing in the record suggests that smaller towns such as Neptune, which has a Level II trauma center, face similar issues. Third, the Legislature may have limited Chapter 70 to cities with Level I trauma centers because in those cities, any

¹¹ Plaintiff's Verified Complaint asserts that while trauma cases comprise 7% of ALS cases on a statewide basis, the percentage jumps to 12% for the City of Camden. (Da12, ¶ 41).

type of injury, no matter how serious, can be treated at the local trauma center. Any efficiency gains would be reduced if Chapter 70 applied to towns with Level II trauma centers, as those trauma centers would still need to transfer patients to Level I trauma centers for treatment of certain injuries. And fourth, it is rational for the Legislature to conclude that towns with Level II trauma centers should continue to participate in the regional trauma and EMS systems, given that some patients will need to be transported out-of-town for treatment at Level I trauma centers. That concern is not present in cities with Level I trauma centers because those trauma centers have the capability to treat all injuries. The potential justifications for Chapter 70's classifications are abundant. Plaintiffs may disagree with the policy expressed by Chapter 70, but that does not render its classifications arbitrary.

The trial court also erred by engaging in fact-finding rather than applying the appropriate rational basis standard. By considering and relying on facts presented by Plaintiffs regarding the distinction between Level I and Level II trauma centers in New Jersey, the court mistakenly acted as a super-Legislature. For example, in considering the Legislature's determination to exclude Level II trauma centers from Chapter 70, the trial court inappropriately drew its own conclusions

about the significance of the distinction between Level I and Level II classifications. (2T13:13 - 2T14:4). In relying on its erroneous conclusions, the court questioned the Legislature's judgment and determined that the exclusion of Level II centers was not rationally related to the intent of the statute. Ibid. As no entities were arbitrarily excluded from Chapter 70's scope and the trial court committed several reversible errors, the State is highly likely to succeed on the merits. The Appellate Division's stay should thus be affirmed on the basis of this Crowe factor to preserve the status quo.

B. The City of Camden and Its Residents Will Suffer Irreparable Harm if Any Aspect of the Stay is Lifted.

Irreparable harm will result if the stay is lifted with respect to either Chapter 70's ALS or BLS provisions. Due to the stay, Chapter 70 has been fully implemented and Cooper has been providing ALS and BLS to the City of Camden since January 2, 2016. Affirming the Appellate Division's stay would thus maintain the status quo. See Garden State Equality v. Dow, supra, 216 N.J. at 320 (citation omitted) ("In acting only to preserve the status quo, the court may 'place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy.'"). Indeed, Plaintiffs conceded in their emergent application to the Appellate Division seeking reconsideration of the stay that, "[u]ndertaking this transition

[to a new ALS system in the City of Camden] only to have to undo it if this Court reverses would irreparably harm both plaintiffs and the public who rely on EMS services." (See Plaintiffs' Appellate Division Application for Permission to File Emergent Motion, p. 2, ¶ 5 (Dec. 29, 2015); see also 2T21:1-6). Thus, the parties agree that altering the status quo pending the appeal would irreparably harm the citizens of Camden if the ALS service provider must revert after the appeal is concluded. As Cooper is the current ALS provider due to the Appellate Division's stay, the status quo favors maintaining the stay.

If the stay is lifted, Cooper will be stripped of its authority to continue to operate ALS in the City of Camden. As such, the provision of ALS services will be hugely disrupted during the transition of authority back to Virtua.¹² This outcome would be disastrous for both the City of Camden and Cooper. Additionally, the record shows that Virtua's ALS service in Camden provided only one MICU vehicle located within the city limits. (Da9, ¶ 24). Cooper's ALS service has doubled Virtua's capacity by maintaining two active MICUs within the city at all times. (Ex. A, ¶¶ 3-5). Moreover, Cooper's MICUs are dual-licensed ALS and BLS vehicles, meaning each one can

¹² Plaintiffs claim that the State's only argument for a stay is limited to Chapter 70's provisions relating to BLS. (Pb13). That statement is a mischaracterization of the State's consistent position, also set forth herein, that the trial court's entire order should be stayed pending appeal. (2T22:16-23).

transport patients. (Id. at ¶ 5). Virtua's lone MICU was an ALS unit only that could not transport patients. (Id. at ¶ 4). Thus, lifting the stay would effectively reduce the number of available MICUs in the City of Camden and remove the ability for the MICUs to transport patients, potentially decreasing response times and placing patients in need of emergency assistance at risk while this appeal is pending.

Additionally, Cooper has hired and trained twenty-one paramedics and thirty-two emergency medical technicians to staff its ALS and BLS system in the City of Camden. (See Certif. of Kathy Devine at ¶¶ 6-9, attached to the State's Appellate Division Brief as Ex. A). If the stay is lifted, Cooper must immediately cease its ALS service and these twenty-one paramedics will be left without employment. (Ex. A, ¶ 10). This will result in clear irreparable harm to those individuals and their families.

Irreparable harm will also result if the stay is lifted with respect to BLS. Because Cooper would be without legal authority to provide BLS services, the City of Camden will be forced to engage in the necessary steps to secure a temporary BLS provider through emergency contracting procedures, leaving the citizens of Camden vulnerable in the interim. (See Certif. of Kathy Devine at ¶ 16, attached to the State's Appellate Division Brief as Ex. A). Despite Plaintiffs' assertion that

the City of Camden may easily procure an emergency BLS contract, a shroud of uncertainty obscures Camden's ability to quickly enter into such a contract because Camden's mayor has certified that Camden has had difficulty obtaining emergency medical services in the past. (See Certif. of Mayor Dana Redd at ¶ 6, attached to the State's Appellate Division Brief as Ex. C). Moreover, any emergency contract would necessarily be active only for a limited time to allow the City of Camden time to obtain a BLS contract through normal public bidding methods. The City will likely incur costs that can never be recovered if it enters into such a contract before this appeal is resolved. Id. at ¶ 9.

The residents of Camden will also be deprived of the improvements to EMS services offered by Chapter 70. In enacting Chapter 70, the Legislature intended to improve patient care, reduce costs, and reduce stress on emergency departments so that patients receive treatment more quickly. The health--and, potentially, the lives--of any Camden resident who requires emergency treatment during the pendency of this appeal would be irreparably harmed unless the stay is affirmed and the status quo is maintained.¹³

¹³ Plaintiffs claim that the Appellate Division's stay in fact causes them irreparable harm because Chapter 70 is unconstitutional. This is a circular argument that relies upon Chapter 70's alleged unconstitutionality, which is still subject

C. The Balance of Relative Hardships and the Public Interest Weigh in Favor of Maintaining the Stay.

Weighed against the irreparable harm that the City of Camden, its residents, and Cooper's employees will endure if the stay is lifted is Virtua's self-interest in continuing to provide and profit from ALS services in Camden--one of 77 municipalities to which they provided ALS services prior to Chapter 70. (Da14, ¶ 47; Da224). While Cooper's ALS employees will be furloughed or terminated absent a stay, there is no showing that the stay will have any effect on Virtua's ALS employees, who can simply be shifted to work in one of the seventy-six (76) other towns and municipalities throughout Camden and Burlington counties that Virtua services.

Plaintiff Capital Health will not be affected by the stay because the only part of Chapter 70 that modifies its ability to provide ALS services is the provision that permits a Level I trauma center to apply to the Department of Health for expedited review to expand its ALS to a municipality in which it has an acute care hospital. (Da15, ¶¶ 53-54). Capital Health alleges that this provision will permit Robert Wood Johnson University Hospital to obtain a CN to provide ALS in Hamilton, New Jersey,

to further judicial review. Such an argument, if accepted, could allow any plaintiff to obtain a stay in any case involving a constitutional challenge to governmental conduct. Moreover, as the State is highly likely to succeed on the merits, Plaintiffs have suffered no constitutional injury.

and that Capital currently holds the CN for ALS in Hamilton. Ibid. Therefore, Capital Health will only be affected if and when the Department of Health grants a CN to RWJUH after the expedited review process. Any risk of hardship to Capital is therefore speculative and not immediate.

The burden that will be placed on the City of Camden and the harm its residents will face if the stay is lifted greatly outweighs any potential harm to the Plaintiffs if the relief is denied. The balance of the relative hardships thus favors affirming the Appellate Division's stay and maintaining the status quo.

CONCLUSION

For the foregoing reasons, the court should deny Plaintiffs' application to vacate the Appellate Division's stay.

Respectfully submitted,

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Dated: January 6, 2016

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VIRTUA HEALTH, INC. and CAPITAL
HEALTH SYSTEM, INC.,

Plaintiffs,

v.

STATE OF NEW JERSEY and
CHRISTOPHER J. CHRISTIE, in his
official capacity as Governor
of the State of New Jersey,

Defendants.

SUPERIOR COURT OF NEW
JERSEY LAW DIVISION -
MERCER COUNTY DOCKET NO.
MER-L-1720-15

Civil Action

CERTIFICATION OF KATHY DEVINE

Kathy Devine certifies and says:

1. I am employed by Cooper University Hospital ("Cooper") as the Executive Director of Cooper University Hospital's Urgent and Emergent Services.

2. As Executive Director of Cooper University Hospital's Urgent and Emergent Services, I am familiar with

Cooper's provision of both advanced life support ("ALS") and basic life support ("BLS") services in the City of Camden since January 2, 2016.

3. Prior to January 2, 2016, Virtua had one ALS unit, also known as a MICU (Mobile Intensive Care Unit), physically located in the City of Camden.

4. Virtua's ALS unit in the City of Camden is an SUV, and, therefore, is not capable of transporting patients.

5. Cooper's ALS units are MICUs that can and do transport patients to the hospital whereas Virtua's ALS units do not provide transport.

6. Since January 2, 2016, Cooper has had two ALS units operating twenty-four hours a day, seven days a week in the City of Camden, doubling the ALS services available to the City of Camden's residents.

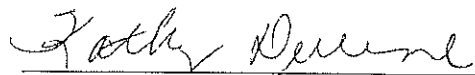
7. Prior to January 2, 2016, University Hospital had two BLS vehicles, i.e., ambulances, operating twenty-four hours a day, seven days a week in the City of Camden, with an additional two ambulances operating during peak hours.

8. Since January 2, 2016, Cooper has added an additional ambulance during peak times, increasing ambulance service from the four ambulances previously provided by University Hospital during peak times to the five now provided by Cooper.

9. If the stay is lifted and the trial court's determination that Chapter 70 is unconstitutional takes effect, Cooper will lose its ALS or MICU provider status.

10. Cooper would then have to furlough or terminate the twenty-one (21) paramedics it hired to provide ALS services as it would no longer have ALS provider status.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



KATHY DEVINE

DATED: