

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

(Consolidated Appeals)

No. 2009-E-0148

GEORGIA TUTTLE, MD, LRGHEALTHCARE & DERRY MEDICAL CENTER,
ON BEHALF OF THEMSELVES AND THOSE SIMILARLY SITUATED

v.

NEW HAMPSHIRE MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION
BY AND THROUGH ITS BOARD OF DIRECTORS,
MERWYN BAGAN, MD, LES MACLEOD, ROBERT M. SOLITRO, BARRY STERN, MD,
DAVID JONES, PETER MCARDLE, MARY BIDGOOD-WILSON &
JAMES M. VACCARINO, THE INSURANCE DEPARTMENT FOR THE STATE OF NEW
HAMPSHIRE, ITS COMMISSIONER, ROGER A. SEVIGNY AND THE NEW HAMPSHIRE
STATE TREASURER, CATHERINE A. PROVENCHER

AND

No. 2009-E-0151

GEORGIA TUTTLE, MD, LRGHEALTHCARE & DERRY MEDICAL CENTER,
ON BEHALF OF THEMSELVES AND THOSE SIMILARLY SITUATED

v.

THE STATE OF NEW HAMPSHIRE

MOTION TO EXPEDITE APPEAL

NOW come the State of New Hampshire, the New Hampshire Insurance Department, its Commissioner, Roger Sevigny, and the New Hampshire State Treasurer, Catherine Provencher (collectively the "State Parties"), by and through their attorneys, the Office of the Attorney General and Rackemann, Sawyer & Brewster P.C., and move that the Court expedite this appeal for hearing and prescribe an abbreviated briefing schedule. In support of this Motion, the State Parties say as follows:

1. Supreme Court Rule 18.6 provides that the Court may, “for good cause shown on motion of either party, advance any case for hearing and prescribe an abbreviated briefing schedule.” Good cause exists to expedite this appeal.

2. In the underlying action, Petitioners, Georgia Tuttle, M.D., LRGHealthcare and Derry Medical Center, who are all policyholders of the New Hampshire Medical Malpractice Joint Underwriting Association (“JUA”), challenged the constitutionality of 2009 New Hampshire Laws Chapter 144:1 (the “Act”).

3. The Act directed the JUA to transfer \$110 million (\$65 million in 2009, \$22.5 million in 2010, and \$22.5 million in 2011) to the general fund to be used to support programs promoting access to health care. In particular, the Act directed that the JUA transfer “no later than July 31, 2009 for the fiscal year ending June 30, 2009 the sum of \$65,000,000.”

4. In the July 29, 2009 Order that is the subject of this appeal, the Belknap Superior Court (McGuire, J.) declared that the Act was “unconstitutional and shall not be enforced.” Order at 27 (Attached to the State Parties’ Rule 7 Notice of Mandatory Appeal).

5. The lower court’s ruling impacts \$110 million dollars in funding in the state budget to support programs promoting access to health care during three fiscal years. In particular, during this economic recession, the Legislature needs as much time as possible during this biennium to consider alternative budget reductions and funding options if the excess JUA funds, as budgeted in the Act, are unavailable to promote access to health care programs.

6. During the pendency of this appeal, the lower court’s ruling creates uncertainty for the State’s completion of its Comprehensive Annual Financial Report for the fiscal year ending June 30, 2009, and for bond rating agencies that regularly evaluate the State’s finances.

7. Under these circumstances, the State Parties request that the Court expedite this appeal by setting an abbreviated briefing schedule and advancing the case for argument. The State Parties propose that their brief be due 15 days after the Court's order setting the briefing schedule, that Petitioners' brief be due 15 days later, and the State Parties' reply brief be due 5 days after that, with argument following at a time convenient to the Court.

8. The State Parties have already requested and paid for expedited transcripts of the two applicable hearings in this matter.


WHEREFORE, the State Parties request that the Court:

- (a) Grant this motion;
- (b) Issue a scheduling order that provides an abbreviated briefing schedule as outlined in paragraph 7 and an early argument date; and
- (c) Grant such relief as may be just and equitable.

Respectfully submitted,

STATE OF NEW HAMPSHIRE,
ROGER SEVIGNY,
COMMISSIONER OF INSURANCE,
CATHERINE PROVENCHER,
TREASURER

By their Attorney,
Orville B. Fitch, II
DEPUTY ATTORNEY GENERAL
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Dated August 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Expedite Appeal has been delivered by mail and electronically on August 4, 2009, to Petitioners' counsel and counsel for the JUA.

A handwritten signature in cursive script that reads "Anne M. Edwards". The signature is written in black ink and is positioned above a horizontal line.

Anne M. Edwards