SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 20763, 20764, and 20765

Kristin Mills, Administrator (Estate of Cheryl Mills)
v.
Hartford Healthcare Corporation, et al.

&

S.C. 20767 and 20768

Kimberly Manginelli, Conservator (Estate of Darlene Matejek), et al.
v.
Regency House of Wallingford, Inc., et al.

Brief of *Amicus Curiae*
The Chamber of Commerce of the United States of America

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STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation's business economy. The scope of immunity provided under Governor Ned Lamont's Executive Order 7V affects Chamber members serving in the Connecticut healthcare system, which has mobilized during a global pandemic to treat patients and prevent the further spread of COVID-19.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

In early 2020, the COVID-19 pandemic hit nearly every industry. The healthcare industry hit back. When most employees were required to stay home, medical facilities required their employees to come in. And as those facilities reached capacity, doctors, nurses, and support staff worked longer hours and picked up extra shifts to keep up with the simultaneous influx of newly sick patients and tragic losses of others. For their courage and resiliency in the face of an unknown and evolving

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[1] The Chamber submits this brief in response to the Court's order solicitating amicus curiae briefing, dated February 24, 2023. Pursuant to Connecticut Practice Book § 67-7(e), no counsel for a party authored this brief in whole or in part, and no person other than the amicus curiae, its members, or counsel contributed money that was intended to fund the preparation or submission of this brief.

danger, the medical professionals who worked throughout the pandemic to protect their communities are lauded as heroes.

Healthcare workers needed protection too—not only from the virus, but also from the risks inherent in making medical decisions about an unfamiliar disease amid constantly changing governmental guidance. Accordingly, Connecticut and many other states joined the federal government in granting healthcare professionals immunity from suits arising from their service related to the pandemic: Less than one month after declaring the COVID-19 pandemic a public health and civil preparedness emergency, Governor Ned Lamont (the "Governor") granted immunity from suit to Connecticut's healthcare facilities and healthcare professionals via an executive order, as he is authorized to do by Connecticut General Statutes Section 28-9. Through Executive Order 7V, the Governor found a "compelling state interest in rapidly expanding the capacity of health care professionals and facilities to provide care during the COVID-19 pandemic," and declared that "providing relief from liability for such health care professionals for good faith efforts to provide care during the COVID-19 pandemic will greatly increase the state's ability to achieve such an expansion." Exec. Order No. 7V (Apr. 7, 2020). Accordingly, the Governor ordered that "any health care professional or health care facility shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the individual's or health care facility's acts or omissions undertaken in good faith while providing health care services in support of the State's COVID-19 response." *Id.* ¶ 6.

Executive Order 7V was crucial to the State's efforts to contain the virus and protect its citizens, as it ensured that healthcare facilities and professionals could operate in good faith without crippling legal liability from after-the-fact second-guessing of their medical and treatment decisions. Healthcare providers relied upon this Order in

acting decisively to meet the State's needs throughout this years-long public emergency. This Court should not now retroactively expose them to liability for good-faith actions taken during the most trying period in the modern history of the medical profession.

This Court's treatment of the Governor's prior pandemic-related executive orders confirms the validity of this Order. In *Casey v. Lamont*, 258 A.3d 647 (Conn. 2021), this Court considered and resolved many of the questions implicated here: First, was the COVID-19 pandemic the kind of "serious disaster" about which the Governor could issue an executive order? In *Casey*, this Court said "yes." Second, did the Connecticut legislature validly delegate to the Governor both the authority to declare a civil preparedness emergency and the authority to issue orders pertaining to that emergency? Again, this Court said "yes." Thus, there should be no question in this action as to whether the Governor acted within his emergency powers in issuing Executive Order 7V.

The heart of the question the Court has posed to amici is thus whether the Governor's grant of immunity to healthcare facilities and healthcare professionals was a *reasonably necessary* step, in light of the emergency, to protect the health, safety, and welfare of the citizens of Connecticut. *Casey* does not explicitly answer this question, but the opinion's broad characterization of Section 28-9's delegation of authority to the Governor is impossible to reconcile with the narrow characterization the Plaintiffs propose here. If, as *Casey* held, the Governor's emergency powers are vast enough to permit him to order that shops, restaurants, and thousands of other large and small Connecticut businesses remain *closed*, then they must also extend to permit him to ensure that healthcare facilities stayed *open* and that medical professionals continued to work while "hospitals and other health-care operations [were] overrun by gravely ill and dying patients."

See 258 A.3d at 650. Just as this Court held that the Governor's lockdown orders were reasonably necessary to protect the healthcare system from reaching capacity, it must now hold that the accompanying grant of immunity was reasonably necessary to permit the healthcare system to take the bold, decisive risks it took in steering this State through its darkest hours.

These immunity protections make sense. For, when a serious medical disaster sweeps the nation, medical professionals must act. And they must do so based on their knowledge and experience, following the latest instructions given by their superiors and government leadership, and making good-faith medical decisions under high-stress and relatively low-clarity circumstances. In a litigious society, these decisions, which cannot wait for 20/20 hindsight, warrant immunity from suit.

By immunizing the good-faith exercise of their professional judgment and care, the Governor joined Congress and most other states in providing much-needed protection to healthcare professionals and/or facilities. To maintain consistency with its reasoning from *Casey*, the Court should uphold that valid use of executive power.

ARGUMENT AND AUTHORITY

I. Mobilization of the healthcare industry was crucial to Connecticut's fight against COVID-19.

The COVID-19 pandemic tested the resiliency of every American industry. At the outset of the pandemic, business owners faced a novel, fast-moving threat that no one—not even the nation's top public-health experts—anticipated or fully understood.[2] Employers and employees alike were forced to adapt to rapidly changing circumstances, while businesses attempted to implement changing (and sometimes contradictory) guidance from public health officials on issues like the usage of masks,[3] the mode of viral transmission,[4] and the restrictions on and requirements regarding their short- and long-term operations.[5] Even today, the information about COVID-19 and best safety practices disseminated from academics and policymakers to the business community continues to change.[6]

As a result of the pandemic and the lockdowns, many businesses closed their doors. Some transitioned to remote work.[7] Others

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[2] *See, e.g.*, Liz Szabo, *Many U.S. Health Experts Underestimated the Coronavirus… Until It Was Too Late*, KAISER HEALTH NEWS (Dec. 21, 2020), https://khn.org/news/article/many-us-health-experts-underestimated-the-coronavirus-until-it-was-too-late/; *see also* Advisory Opinion No. 20-04 on the PREP Act 3 (HHS OIG Oct. 23, 2020) ("[P]ublic-health guidance and directives tend to change to reflect the new knowledge. Those changes do not always occur uniformly or simultaneously among scientists and across America[]—leading to uncertainty.").

[3] *See, e.g.*, Nina Bai, *Still Confused About Masks? Here's the Science Behind How Face Masks Prevent Coronavirus*, UNIVERSITY OF

CALIFORNIA SAN FRANCISCO (June 26, 2020), https://www.ucsf.edu/news/2020/06/417906/still-confused-about-masks-heres-science-behind-how-face-masks-prevent ("Both the Centers for Disease Control and Prevention (CDC) and the World Health Organization now recommend cloth masks for the general public, but earlier in the pandemic, both organizations recommended just the opposite. These shifting guidelines may have sowed confusion among the public about the utility of masks."); *CT Freedom All., LLC v. Dep't of Educ.*, 287 A.3d 557, 560 (Conn. 2023) ("Both the effectiveness of masking and the justification for and legality of mandating masking have been the topics of widespread and often vehement public debate, dividing citizens, families, and elected officials.").

[4] *See, e.g.*, Apoorva Mandavelli, *The Coronavirus Can Be Airborne Indoors, W.H.O. Says*, N.Y. TIMES (July 9, 2020), https://www.nytimes.com/2020/07/09/health/virus-aerosols-who.html ("Some experts have criticized the W.H.O. for being slow to acknowledge the possibility of airborne spread while emphasizing hand washing as the primary preventive strategy. Even in the new brief, it's clear that members of the committee interpreted the evidence differently . . . .").

[5] *See, e.g.*, *Coronavirus Guidelines for Business*, INTERNATIONAL CHAMBER OF COMMERCE (Mar. 13, 2020), https://iccwbo.org/content/uploads/sites/3/2020/03/coronavirus-guidelines-for-business-final.pdf ("All businesses have a key role to play in minimising the likelihood of transmission. Early, bold and effective action will reduce short-term risks to employees and long-term costs to businesses and the economy.").

[6] *See, e.g.*, Tom Jefferson, et al., *Physical Interventions to Interrupt or Reduce the Spread of Respiratory Viruses*, COCHRANE DATABASE OF SYSTEMATIC REVIEWS (Jan. 30, 2023),

temporarily shut down.[8] And within the first six months, nearly 100,000 were forced to close permanently.[9] Connecticut's small-business community took an especially hard hit: With approximately 37 percent of its small businesses closing by December 2020, the State experienced

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https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD006207.pub6/full#CD006207-sec-0197 (reporting that studies showed "[w]earing masks in the community probably makes little or no difference to the outcome of influenza-like illness (ILI)/COVID-19 like illness compared to not wearing masks," but calling for "large, well-designed RCTs addressing the effectiveness of many of these interventions in multiple settings and populations, as well as the impact of adherence on effectiveness").

[7] *See, e.g.*, Kathryn Vasel, *The Pandemic Forced a Massive Remote-Work Experiment. Now Comes the Hard Part*, CNN BUSINESS (Mar. 11, 2021), https://www.cnn.com/2021/03/09/success/remote-work-covid-pandemic-one-year-later/index.html ("In March 2020, companies across the US abruptly shuttered their offices and instructed employees to work from home indefinitely as a result of the pandemic.").

[8] *See, e.g.*, *Special Report on Coronavirus and Small Business – April*, U.S. CHAMBER OF COMMERCE (Apr. 3, 2020), https://www.uschamber.com/small-business/special-report-coronavirus-and-small-business ("With high levels of concern about COVID-19 reported in every sector and region of the country, one in four small businesses (24%) report having already temporarily shut down.").

[9] *See, e.g.*, Anne Sraders & Lance Lambert, *Nearly 100,000 Establishments that Temporarily Shut Down Due to the Pandemic Are Now Out of Business*, FORTUNE (Sept. 28, 2020), https://fortune.com/2020/09/28/covid-buisnesses-shut-down-closed/.

the sixth-highest closure rate in the country during the first year of the pandemic.[10]

One can only imagine how different things would be if healthcare facilities, like most everyone else, had shut down and directed their employees to stay home. But they didn't. They kept their doors open, and droves of sick patients flooded in.

Providing healthcare services during the pandemic was hard work. Due to the long rollout of COVID-19 testing kits, followed by months of testing shortages and delayed results, it was often impossible to quickly determine whether a patient had contracted COVID-19, or whether their symptoms stemmed from an unrelated ailment.[11] When a

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[10] *See, e.g.*, *Report: Over One-Third of State's Small Businesses Closed in 2020*, CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION (Dec. 23, 2020), https://www.cbia.com/news/small-business/ct-loses-one-third-small-businesses/; *see also* Alexander Soule, *CT Lost 850 Businesses, Nonprofits During First Year of Pandemic, Data Shows*, CT INSIDER (May 3, 2022), https://www.ctinsider.com/business/article/CT-lost-850-businesses-nonprofits-during-first-17143883.php#:~:text=based%20Pitney%20Bowes-,CT%20lost%20850%20businesses%2C%20nonprofits%20during,year%20of%20pandemic%2C%20data%20shows&text=Lily%27s%20Weston%20Market%20replaced%20Peter%27s,by%20the%20U.S.%20Census%20Bureau ("In the first year of the pandemic, Connecticut's employer count dwindled by roughly 850 businesses and nonprofits, according to new U.S. Census Bureau estimates.").

[11] *See, e.g.*, Jon Cohen, *The United States Badly Bungled Coronavirus Testing—But Things May Soon Improve*, SCIENCE (Feb. 28, 2020), https://www.science.org/content/article/united-states-badly-bungled-coronavirus-testing-things-may-soon-improve; Robert Kuznia,

patient was confirmed to have the virus, treatment remained—and still remains—a challenge. Shortages in hospital beds and respirators meant there were not always enough to go around.[12] And deficiencies in personal protective equipment made it difficult to prevent other patients from contracting COVID-19.[13] Doctors and nurses nevertheless proceeded to treat patients suffering from COVID-19 and other maladies based on the best of their knowledge, their experience, and government guidance.

Healthcare providers bore heavy physical, mental, and emotional burdens. And given the scale of the tragedy, they faced the certainty of future legal burdens. Without protection from liability, well-trained and well-meaning doctors and nurses would doubtlessly have faced after-the-fact litigation, even over decisions taken in good-faith reliance upon then-prevailing advice. The operational and financial tolls associated with the risk of litigation threatened to hit healthcare facilities and professionals at the time when they could least afford the distractions

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et al., *Severe Shortages of Swabs and Other Supplies Hamper Coronavirus Testing*, CNN (Mar. 18, 2020), https://www.cnn.com/2020/03/18/us/coronovirus-testing-supply-shortages-invs/index.html.

[12] *See, e.g.*, Joseph P. Williams, *Beg, Borrow or Commandeer: The Race to Prepare Hospitals for Coronavirus*, U.S. NEWS (Mar. 27, 2020), https://www.usnews.com/news/national-news/articles/2020-03-27/officials-race-to-fix-an-overburdened-health-care-system-amid-coronavirus.

[13] Matthew McMullan, *The Great American PPE Shortage of 2020*, ALLIANCE FOR AMERICAN MANUFACTURING (Dec. 11, 2020), https://www.americanmanufacturing.org/blog/the-great-american-ppe-shortage-of-2020/.

and costs.[14] Further, the risk of liability would have discouraged doctors and hospitals from taking the types of bold, decisive actions necessary to manage a crisis from the front lines.

The federal and state governments promptly took action to protect the healthcare industry from these legal risks. The Secretary of Health and Human Services issued declarations of emergency that triggered the immunity protections Congress provided through the Public Readiness and Emergency Preparedness ("PREP") Act, 42 U.S.C. § 247d-6d. State legislatures and executives, too, implemented protections for healthcare facilities and professionals within their jurisdictions.[15] Connecticut was one such state.

II. Connecticut Executive Order 7V bars plaintiffs' claims.

In its order soliciting amicus briefs, this Court identified a key issue in this case: whether Executive Order 7V immunizes the healthcare facilities and healthcare professionals sued in these consolidated cases. Based on the text of Executive Order 7V, it is evident

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[14] *See Jarmie v. Troncale*, 50 A.3d 802, 823 (Conn. 2012) (explaining that, in the event of increased litigation, "health care providers would be forced to spend valuable time away from their patients so that they could respond to interrogatories, attend depositions and testify at trial," and that "[t]his would have the effect of driving up health care costs because the additional expenses incurred in defending against lawsuits very likely would be passed on to patients").

[15] *See, e.g.*, Christopher P. Ferragamo & Sarabeth Rangiah, *National Survey of COVID-19 Medical Malpractice Immunity Legislation*, J&C BLOG (May 24, 2021), https://www.jackscamp.com/national-survey-of-covid-19-medical-malpractice-immunity-legislation-as-of-may-24-2021/.

that the Governor intended to immunize such healthcare facilities and healthcare professionals. And following *Casey*, it is settled law that the Governor's executive action was a valid exercise of his legislatively delegated power under Section 28-9. The State's compelling need to keep the healthcare industry functioning during the pandemic underscores the importance of the Governor's authority to provide this protection.

A. Through Executive Order 7V, the Governor expressly granted healthcare facilities and professionals immunity from suit.

On April 10, 2020, the Governor granted immunity to Connecticut's healthcare facilities and healthcare professionals through Executive Order 7V, entitled "Safe Workplaces, Emergency Expansion of the Healthcare Workforce." Based on the "compelling state interest in rapidly expanding the capacity of health care professionals and facilities to provide care during the COVID-19 pandemic," the Governor included a section granting "Protection from Civil Liability for Actions or Omissions in Support of the State's COVID-19 Response." Exec. Order No. 7V (Apr. 7, 2020). Within that section, the Governor ordered that, notwithstanding any contrary state law, "any health care professional or health care facility shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the individual's or health care facility's acts or omissions undertaken in good faith while providing health care services in support of the State's COVID-19 response" for the duration of the pandemic. *Id.* ¶ 6. That immunity extended to, but was not limited to, suits challenging "acts or omissions undertaken because of a lack of resources, attributable to the COVID-19 pandemic, that renders the health care professional or health care facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic." *Id.* Immunity did not, however, extend to suits regarding "acts or

omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act" under certain other statutory provisions. *Id.*

It is undisputed—and, in any event, eminently clear from the text of Executive Order 7V—that the Governor intended to grant immunity for at least some actions for which health care professionals might otherwise be liable. The only question is whether the Governor was authorized to grant that immunity. He was.

Through Section 28-9 of the Connecticut General Statutes, the State legislature authorized the Governor to "proclaim that a state of civil preparedness emergency exists" "[i]n the event of serious disaster, enemy attack, sabotage or other hostile action or in the event of the imminence thereof." Conn. Gen. Stat. § 28-9(a). The statute grants the Governor broad authority to "personally take direct operational control of any or all parts of the civil preparedness forces and functions of the state." *Id.* In addition to enumerating steps the Governor might take in this endeavor, the legislature provided the Governor authority to "take such other steps as are reasonably necessary in light of the emergency to protect the health, safety and welfare of the people of the state, to prevent or minimize loss or destruction of property and to minimize the effects of hostile action." *Id.* § 28-9(b)(7).

The Governor's grant of immunity is comfortably within the scope of Section 28-9(b)(7). Many times throughout Executive Order 7V, the Governor stated that his Order was geared toward addressing the "public health and civil preparedness emergency" he previously declared. And because "providing relief from liability for such health care professionals for good faith efforts to provide care during the COVID-19 pandemic will greatly increase the state's ability to achieve . . . an expansion" of the healthcare industry's capacity to serve effectively, Exec. Order No. 7V (Apr. 7, 2020), it is clear that the

Governor's grant of immunity was tailored to "protect the health, safety and welfare" of Connecticut citizens, Conn. Gen. Stat. § 28-9(b)(7). Based on the text of Section 28-9 and the language in Executive Order 7V alone, this Court should conclude that the Governor was authorized to immunize healthcare facilities and healthcare officials from suits like these.

B. This Court in *Casey* recognized the Governor's broad power to respond to the pandemic through executive orders.

This Court need not start from scratch in determining how broad the Governor's executive power is under Section 28-9. The Court has already addressed several related questions in *Casey v. Lamont*, 258 A.3d 647 (Conn. 2021). There, the Court determined that the COVID-19 pandemic is the sort of "serious disaster" that could prompt the Governor to declare a "civil preparedness emergency," *id.* at 654–59, and that the State legislature's delegation of authority under Section 28-9(b)(7) was constitutionally sound, *id.* at 662–73. The Court's task here is to determine whether the statute likewise authorizes Executive Order 7V's immunity for healthcare facilities and professionals.

It does. Like Executive Orders 7D and 7G, through which the Governor "closed bars and restaurants to all on premise service of food and beverage," *id.* at 660, Executive Order 7V was "promulgated as part of a series of community mitigation strategies" focused on "reducing the spread of COVID-19, increasing containment of the virus, and slowing transmission of the virus," *id.* (cleaned up) (quoting Exec. Order No. 7G (Mar. 19, 2020)). *See* Exec. Order No. 7V (Apr. 7, 2020) (indicating through the title that the executive order was aimed at instituting measures to create "safe workplaces," facilitate "emergency expansion of the healthcare workforce," and "protect[] . . . public health and safety during COVID-19 pandemic and response" (capitalization omitted)); *cf.*

Going v. Cromwell Fire Dist., Fire Dep't, 267 A.2d 428, 432 (Conn. 1970) ("The words . . . in the title of [a statute] may be considered to determine legislative intent in construing legislation which is doubtful or ambiguous in meaning."). And as the Governor did in Executive Orders 7MM and 7ZZ, through which he allowed for limited on-premises dining, the Governor "explained the public health rationale that required the action [in Executive Order 7V] in order to protect the health, safety, and welfare of the people of this state." *Casey*, 258 A.3d at 661; *see* Exec. Order No. 7V (Apr. 7, 2020) (declaring that "there exists a compelling state interest in rapidly expanding the capacity of health care professionals and facilities to provide care during the COVID-19 pandemic" and that "providing relief from liability for such health care professional for good faith efforts to provide care during the COVID-19 pandemic will greatly increase the state's ability to achieve such an expansion").

There is no reason why Section 28-9(b)(7) would allow the Governor to keep restaurant businesses closed but not create the type of civil immunity that helps keep healthcare businesses open. In both cases, the Governor is managing the civil preparedness emergency he declared. And in both cases, he is taking steps that he determined "are reasonably necessary in light of the emergency to protect the health, safety and welfare of the people of the state, to prevent or minimize loss or destruction of property and to minimize the effects of hostile action." Conn. Gen. Stat. § 28-9(b)(7). As this Court has already recognized, "[a]s long as Governor Lamont is acting within his admittedly broad statutory and constitutional authority," which he undoubtedly was when he created this immunity provision, "it is not the job of this court to second-guess those policy decisions." *Casey*, 258 A.3d at 673. Therefore, the Court should conclude that, under the reasoning employed in *Casey*, Executive Order 7V's immunity for healthcare facilities and

professionals was a valid use of the Governor's authority pursuant to Section 28-9.

C. Ensuring the effective functioning of the healthcare industry was of paramount importance during the pandemic.

There is even more reason to uphold the Governor's executive power in this case than in *Casey*. For the healthcare industry was critical not only to reducing the spread, increasing the containment, and slowing the transmission of the virus that causes COVID-19, but also to treating those who contracted it. By granting immunity from suit to the healthcare facilities and professionals on the front lines during the declared emergency, the Governor acted well within his authority to "personally take direct operational control of any or all parts of the civil preparedness forces and functions of the state." Conn. Gen. Stat. § 28-9(a).

The Governor's decision is entitled to deference. As a general matter, this Court has held that "[w]hen [elected] officials undertake . . . to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad." *Casey*, 258 A.3d at 673 (alterations in original) (quoting *South Bay United Pentecostal Church*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application of injunctive relief)). And the State legislature ensured that latitude by delegating to the Governor the authority to determine which steps were "reasonably necessary . . . to protect the health, safety and welfare of the people of the state, to prevent or minimize loss or destruction of property and to minimize the effects of hostile action" and to implement them via executive order. Conn. Gen. Stat. § 28-9(b)(7). The Governor's declaration that there was a "compelling state interest in rapidly expanding the capacity of health care professionals and facilities to provide care during the COVID-19 pandemic," Exec. Order No. 7V (Apr.

7, 2020), and that immunity from liability was a necessary step was well within the Governor's "considerable latitude to employ the necessary means for accomplishing that policy objective" granted by Section 28-9(b), *Casey*, 258 A.3d at 670 (citation omitted).[16]

Further, the Governor's grant of immunity was an eminently reasonable step toward ensuring public health, safety, and welfare. "Prior to March, 2020, there was no clear guidance as to how the Legislative and Executive Branches could or should respond to a pandemic of this magnitude." *CT Freedom All.*, 287 A.3d at 567. But by April 2020, it was clear that cases were steadily rising, hospitals were filling up, and the healthcare industry was facing shortages of labor and supplies. Connecticut needed to ensure that its hospitals and healthcare employees could, and would, function successfully. The Governor's

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[16] The legislature's delegation to the Governor is both reasonable and not unlimited. Because the legislature is part-time, this Court has stated that it was "reasonable for the legislature to conclude that the executive branch of government would be far better suited to respond to a serious disaster with the speed and flexibility needed to protect the public health and welfare." *Casey*, 258 A.3d at 667. At the same time, Section 28-9 subjects the Governor to legislative oversight. *See id.* at 668–70. In *CT Freedom Alliance*, when addressing an executive-order challenge that had become moot, the Court further noted that "[e]specially in light of legal challenges to actions the governor undertook during this pandemic, the General Assembly now has the knowledge and experience to determine whether to validate or nullify executive orders that might be issued in a hypothetical future emergency of the same magnitude or length." 287 A.3d at 568. Thus, the legislature maintains the ability to limit the Governor's exercise of discretion; the Court should not endeavor to do so itself.

promulgation of Executive Order 7V advanced that goal by ensuring healthcare facilities and professionals could fulfill their duty to provide care to the best of their abilities—without the constant threat of litigation for "acts or omissions undertaken in good faith." Exec. Order No. 7V (Apr. 7, 2020); *see Harris v. Bradley Mem. Hosp. & Health Ctr., Inc.*, 994 A.2d 153, 165 (Conn. 2010) (recognizing the "important public policy of ensuring that hospital decision makers are guided only by a concern for ensuring quality health care"); *Jarmie*, 50 A.3d at 818 ("Unlike most duties, the physician's duty to the patient is explicitly relational: physicians owe a duty of care to patients." (cleaned up)).

While the circumstances of a pandemic would certainly be taken into account in assessing liability even under the common law, the Governor's grant of immunity is providing, and will continue to provide, important additional protections. It will deter many suits, and it will ensure that others end at the outset, rather than after costly litigation and submission to a jury. Such immunity also helps deter decisions that assess a provider's conduct with hindsight rather than in light of the information and resources the provider had at the time. Both the federal government and Connecticut's sister states have recognized the importance of this kind of immunity in encouraging public-private partnerships to fight COVID-19. The Governor did too, and because he "act[ed] within his admittedly broad statutory and constitutional authority . . . it is not the job of this court to second-guess those policy decisions." *Casey*, 258 A.3d at 673.

CONCLUSION

The Governor validly exercised his legislatively delegated authority under Section 28-9 when he immunized healthcare facilities and healthcare professionals from suits arising from their service during the COVID-19 pandemic through Executive Order 7V.

Respectfully Submitted,

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CERTIFICATION

Pursuant to Connecticut Practice Book § 67-2, the undersigned certifies that the foregoing brief is in compliance with all the provisions of §§ 67-1, 67-2, and that on March 17, 2023, an electronic version of the brief in accordance with guidelines established by the Court and published on the judicial branch website was submitted prior to the filing of the paper brief. I hereby certify that:

(1) a copy of the submitted brief has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided;

(2) the copy of the submitted brief being filed with the appellate clerk is a true and correct copy of the brief submitted electronically;

(3) the submitted brief does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law;

(4) the submitted brief contains 4,477 words, excluding the part of the brief referenced in the Briefing Guidelines;

(5) no deviations from the Briefing Guidelines were requested or approved; and

(6) the brief complies with all provisions of this rule.

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