

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT**

GEORGE BORRELLO, New York State Senator, CHRIS TAGUE, New York State Assemblyman, MICHAEL LAWLER, New York State Assemblyman, and UNITING NYS, LLC, Individually, and on behalf of all those similarly situated,

Petitioners-Respondents,

v.

KATHLEEN C. HOCHUL, New York State Governor, MARY T. BASSETT, New York State Commissioner of Health, NEW YORK STATE HEALTH DEPARTMENT, and PUBLIC HEALTH AND HEALTH PLANNING COUNCIL,

Respondents-Appellants.

**NOTICE OF MOTION FOR
LEAVE TO FILE A BRIEF
AS AMICUS CURIAE**

No: CA22-01133

PLEASE TAKE NOTICE that, upon the annexed affirmation of Gregory Dolin, M.D., dated May 23, 2023, prospective *amicus curiae*, the New Civil Liberties Alliance (“NCLA”), will move this Court at the M. Dolores Denman Courthouse, 50 East Ave #200, Rochester, New York 14604, on May 30 at 10:00 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to Section 1250.4(f) of the Practice Rules of the Appellate Division, granting NCLA leave to file the accompanying brief as *amicus curiae*, and for such other and further relief as the Court deems just and proper. A copy of the proposed brief accompanies this motion.

May 23, 2023

Respectfully submitted,

/s/Gregory Dolin

Gregory Dolin, M.D.

Counsel of Record

John J. Vecchione

NEW CIVIL LIBERTIES ALLIANCE

1225 19th St. NW, Suite 450

Washington, DC 20036

(202) 869-5210

greg.dolin@ncla.legal

Counsel for Amicus Curiae

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**AFFIRMATION IN
SUPPORT OF MOTION FOR
LEAVE TO FILE A BRIEF
AS AMICUS CURIAE**

No: CA22-01133

1. Gregory Dolin, M.D., an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following pursuant to New York Civil Practice Law and Rules 2106 and subject to the penalties of perjury:
2. I am a Senior Litigation Counsel with the New Civil Liberties Alliance (“NCLA”) the prospective *amicus curiae*.
3. I submit this affirmation in support of NCLA’s motion for leave to file a brief *amicus curiae*, urging affirmance of the Order of Supreme Court, Cattaraugus County (Ploetz, A.J.S.C.), dated July 8, 2022, barred Respondents-Appellants from implementing and enforcing 10 NYCRR § 2.13, *Isolation and Quarantine Procedures* (hereinafter “Rule 2.13”) and declaring that Rule 2.13 is null and void, from which Order Respondents-Appellants have taken the appeal herein.

INTERESTS OF *AMICUS CURIAE*

4. NCLA is a nonpartisan, nonprofit civil-rights organization devoted to defending constitutional freedoms from the administrative state's depredations.
5. Today, as in years past, the threat to civil liberties emanates from aggregation of power in a single entity and the degradation of the separation of powers—the best system designed to protect liberty.
6. NCLA is deeply concerned about this trend, one of the most insidious manifestations of which has arisen in the context of Covid-19.
7. During the pandemic, state and federal actors, including Governor Hochul and other Respondents-Appellants have exercised power explicitly denied to them by the Constitution and the laws of the land.
8. NCLA has filed briefs in state and federal courts seeking to defend individual liberty against unlawful encroachment by government actors.

AMICUS'S BRIEF RAISES NEW MATTERS THAT ARE RELEVANT TO THE DISPOSITION OF THE CASE

9. NCLA respectfully submits that the brief attached as Exhibit A will be helpful to the Court in its review of Supreme Court's Order.
10. Through its proposed brief and drawing on its experience, NCLA will explain to the Court why Rule 2.13 threatens individual liberty.

NCLA'S APPLICATION SHOULD BE GRANTED

11. NCLA has an important perspective to add in this appeal and can identify infirmities with reversal that have otherwise escaped the parties' attention.
12. NCLA's participation would not prejudice any party to this appeal.
13. If the motion is granted, NCLA will serve and file the requisite number

of copies of the brief within the time established by this Court.
14. For these reasons, NCLA's motion for leave to file the accompanying
brief as *amicus curiae* should be granted.

May 23, 2023

Respectfully submitted,

/s/Gregory Dolin

Gregory Dolin M.D.

Counsel of Record

John J. Vecchione

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