07-3677-cv(L),
07-3900-cv(XAP)

United States Court of Appeals
for the
Second Circuit

JAMES L. ALEXANDER, ALEXANDER & CATALANO LLC
and PUBLIC CITIZEN, INC.,

Plaintiffs-Appellees-Cross-Appellants,

– v –

THOMAS J. CAHILL, in his official capacity as Chief Counsel for the Departmental Disciplinary Committee for the Appellate Division of the New York Court of Appeals, First Department, DIANA MAXFIELD KEARSE, in her official capacity as Chief Counsel for the Grievance Committee for the Second and Eleventh Judicial Districts,

(For Continuation of Caption See Reverse Side of Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF FOR *AMICUS CURIAE* NEW YORK STATE BAR ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLANTS-CROSS-APPELLEES

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Defendants-Appellants-Cross-Appellees.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The New York State Bar Association has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

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QUESTION PRESENTED

1. IS THE 15/30 DAY MORATORIUM ON SOLICITING ACCIDENT VICTIMS AND THEIR FAMILIES, AS CODIFIED UNDER §§ 1200.8(g) & 1200.41-A OF THE CODE OF PROFESSIONAL RESPONSIBILITY, CONSTITUTIONAL?

The district court properly concluded it is under *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980).

INTERESTS OF THE AMICUS CURIAE

Amicus curiae is the New York State Bar Association ("State Bar") that historically has recognized and developed rules and ethical considerations governing professional conduct in the State of New York. Pursuant to Federal Rule of Appellate Procedure 29(a), all parties to the appeal have consented to the State Bar's participation in this appeal as *amicus curiae*.

The State Bar, founded in 1876, is the oldest and largest voluntary state bar organization in the nation, with a membership of more than 70,000 lawyers representing every town, city, and county in the state.

Since its inception, the State Bar has played a key role in cultivating the science of jurisprudence, promoting reform in the law, facilitating the administration of justice, and elevating the standards of integrity, honor, professional skill, and courtesy in the legal profession. For more than 35 years, the State Bar has represented, through its House of Delegates, the voice of lawyers and the profession on all matters and

policies governing the professional conduct of lawyers. In addition, the State Bar's Committee on Professional Ethics, which was created in 1960, is responsible for issuing ethics opinions and advisory opinions to lawyers concerning the Code of Professional Responsibility. Citations to the opinions of the Committee on Professional Ethics appear in the notes of decisions section of McKinney's codification of the Code of Professional Responsibility. *See* 29 N.Y. JUD. LAW, Appendix – Code of Professional Responsibility. Courts give substantial weight to the ethics opinions issued by the Committee on Professional Ethics in interpreting the Code. *See, e.g.*, *Landsman v. Moss*, 180 A.D.2d 718, 720 (2d Dep't 1992). The State Bar has also been solely responsible for adopting the Ethical Considerations that have long accompanied the Code of Professional Responsibility. The State Bar thus has had a direct and long-standing interest in and impact upon the profession in New York, specifically in formulating professional rules that guide lawyers, including those that are the subject of this litigation.

In June 2005, in furtherance of the State Bar's mission and as a result of increasing concern over lawyer advertising and its effect on the public, NYSBA President A. Vincent Buzard formed the Task Force on Attorney Advertising (the "Task Force"). The Task Force consisted of a broad cross-section of

lawyers from around the state of New York from large and small law firms, departmental disciplinary counsel, those who represent clients before the disciplinary committees, those who advertise, and ethics professors. *See* Task Force Report, at 12-16 (A 66-70).

The Task Force was charged with recommending necessary changes to the rules regulating attorney advertising, recommending changes in the enforcement of the rules, and developing programs for peer review of advertising. Task Force Report, at 1 (A 55).

The Task Force endeavored to provide:

> guidance in this subject area because advertising not only directly affects the manner in which attorneys practice law but also the public, which benefits from the "free flow of commercial information" and needs truthful, non-misleading information in order to choose a lawyer. The [Task Force] had thus, a dual concern here: to balance the legitimate interests of lawyers in informing potential clients of the nature, benefits and costs of legal services and the qualifications of lawyers to provide them with the protection of the public, by prohibiting advertising and solicitation practices that disseminate false or misleading information, that approach prospective clients in circumstances where the client's capacity for rational decision in the selection and engagement of counsel is compromised, or that diminish the Bar's professionalism. . . The Task Force was cognizant that further content-based restrictions have the potential to run afoul of constitutional rights . . . .

Task Force Report, at 1-2 (A 55-56).

The Task Force produced a several hundred-page report, consisting of two volumes that survey the current law on

attorney advertising in New York and across the nation; provided a fifty-state survey of current advertising regulations; and reviewed some 250 different advertisements appearing in New York and compliance issues respecting those advertisements (the "Task Force Report") (A 51-179).[1] Indeed, this was the first time that the State Bar had studied and proposed, following debate and approval by the House of Delegates, lawyer advertising amendments to encompass both old and newer forms of advertising such as Internet communications.

The Appellate Divisions subsequently adopted a majority of the amendments based upon the Task Force Report.

One of the newly-adopted rules that the State Bar advocated is a moratorium on victim solicitation by attorneys for fifteen or thirty (depending on the circumstances) days after a specific disaster. 22 N.Y.C.R.R. §§ 1200.8(g) & 1200.41-a (collectively, the "Moratorium Rule"). The district court held that the Moratorium Rule is constitutional, relying heavily upon the Task

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[1] The district court noted below:

> The Task Force Report is a comprehensive document, which reviews the state of the law on attorney advertising in both local and constitutional dimensions. In addition, it summarizes the Task Force's empirical research, which consists of reviewing a sample of actual New York attorney advertisements as well as position papers, cases and articles . . . [and] a fifty-state survey of attorney-advertising regimes.

Alexander, 2007 WL 2120024, at *6 n.7 (A 239). Significantly, the parties stipulated to the Task Force Report as part of the record. *See* Joint Stipulations and Statement of Material Facts, ¶16 (A 48).

Force Report, which it viewed with approval. *See Alexander v. Cahill*, 2007 WL 2120024, at *10-11 (N.D.N.Y. July 23, 2007) (A 248-52).

The *amicus,* therefore, in its policy and advocacy work, favors the Moratorium Rule. The moratorium on victim solicitation meets the constitutional standard for commercial speech restrictions. Not only is the Moratorium Rule narrowly drawn to meet a substantial state interest (the real and substantial concern of preventing the unwanted intrusion into the privacy of victims following a personal injury or wrongful death of a loved one), but also a similar rule was approved some ten years earlier by the United States Supreme Court in *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 635 (1995), and since then, by eight additional states in the nation. *Amicus,* therefore, urges the rule both as a matter of law and policy, to ensure against the untoward and unnecessary solicitation of accident victims and their families at a limited and specific time when such solicitations are most unwanted (*e.g.*, the October 2003 Staten Island Ferry accident). For all these reasons, *amicus* believes that the district court acted within its discretion in upholding the Moratorium Rule and this Court should, respectfully, affirm that ruling.

SUMMARY OF ARGUMENT

The Moratorium Rule is constitutional because it meets the

Central Hudson test for commercial speech restrictions. The Moratorium Rule: (1) furthers a substantial state interest in ensuring the privacy of accident victims and their families; (2) materially advances the state interest; and (3) is narrowly drawn. In addition, the legislative history of the rule shows that:

1. the length of time set forth in §§ 1200.8(g) & 1200.41-a for the moratorium is a matter of policy, not law. The properly established that policy in the rule based firmly upon legal precedent and the actions of other states which have also adopted such a rule as policy.

2. the Moratorium Rule does not prohibit victims from unilaterally seeking legal advice from a lawyer of their own choice, nor does the Moratorium Rule prohibit a lawyer from responding to a victim-initiated request for such advice. Respondents' argument is without legal merit and the court below properly dismissed it.

3. the temporal aspect of the Moratorium Rule – a 15/30-day prohibition against victim solicitation – is constitutional under the *Went For It* decision where a similar prohibition was upheld as constitutional. In providing for both time constraints under differing circumstances, the court below recognized the propriety of setting the policy in New York as it is elsewhere.

ARGUMENT

THE MORATORIUM RULE IS CONSTITUTIONAL

A. THE SCOPE OF THE RESTRICTION IS REASONABLE AND FURTHERS THE STATE'S INTEREST

The district court correctly held that the moratorium on victim solicitation is constitutional because it meets the *Central Hudson* test for commercial speech restrictions. *Alexander*, 2007 WL 2120024, at *11 (A 252). To pass constitutional muster, the party in support of a commercial speech restriction must: (1) assert that there is a substantial state interest to be achieved by the restriction; (2) demonstrate that the restriction materially advances the state interest; and (3) establish that the restriction is narrowly drawn. *See Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 564-66 (1980).

22 N.Y.C.R.R. § 1200.8(g) provides:

> No solicitation relating to a specific incident involving potential claims for personal injury or wrongful death shall be disseminated before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after the date of the incident.

22 N.Y.C.R.R. § 1200.41-a similarly provides:

> In the event of an incident involving potential claims for personal injury or wrongful death, no unsolicited communication shall be made to an individual injured in the incident or to a family member or legal representative of such an individual, by a lawyer or law firm, or by any associate, agent, employee or other representative of a lawyer or law firm, seeking to represent the injured individual or legal

> representative thereof in potential litigation or in a proceeding arising out of the incident before the 30th day after the date of the incident, unless a filing must be made within 30 days of the incident as a legal prerequisite to the particular claim, in which case no unsolicited communication shall be made before the 15th day after the date of the incident.

22 N.Y.C.R.R. § 1200.8(b) defines "solicitation" as:

> . . . any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain. It does not include a proposal or other writing prepared and delivered in response to a specific request of a prospective client.

The first two prongs of the *Central Hudson* test are not at issue in the appeal of the Moratorium Rule. Plaintiffs below are not contending before this Court that there is no substantial state interest to be achieved by the restriction, or that that the restriction fails to materially advance the state interest. *Went For It* plainly decided that issue in favor of Respondents when it held that a similar provision, Florida's 30-day moratorium on direct mail solicitation, was constitutional on those very grounds. 515 U.S. at 624-32. The district court similarly held that the Moratorium Rule met the first two prongs of the *Central Hudson* test based upon the Task Force Report. *Alexander*, 2007 WL 2120024, at *10-11 (A 248-52).

Rather, on appeal here, Plaintiffs below argue that the 30-day restriction is not narrowly drawn, contesting the third

prong of the *Central Hudson* test. The district court concluded that both the temporal and scope restrictions were narrowly drawn and reasonable in proportion to the State's interest. *Alexander*, 2007 WL 2120024, at *11 (A 250-52).

With respect to the scope of the Moratorium Rule, the district court specifically noted:

> By its terms, [§ 1200.8(g)] applies to any advertisement that is targeted at a specific recipient or group of recipients regardless of medium. For instance, an advertisement in a newspaper during the moratorium period following an airplane crash would be prohibited if it targeted a specific group of recipients: i.e., "Attention Flight # 999 Survivors, call Smith Law Firm to protect your rights." The moratorium provision in § 1200.41-a is similarly broad, encompassing any "unsolicited communication ... made to an individual injured in the incident or to a family member or legal representative of such an individual, by a lawyer or law firm ... seeking to represent the injured individual ... in potential litigation ...." The term "communication" is not limited to any medium. Therefore, the unlimited term "communication" also encompasses media other than direct-mail.

Alexander, 2007 WL 2120024, at *10 n.15 (internal citations omitted) (A 249).

The intent of the drafters, gleaned from the legislative history of the Moratorium Rule, is particularly instructive here. If the meaning of a particular provision is plain, this Court inquires no further than the text itself. *Daniel v. American Bd. of Emergency Medicine*, 428 F.3d 408, 423 (2d Cir. 2005) (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341

(1997) ("Our inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent."); *Freier v. Westinghouse Elec. Corp.*, 303 F.3d 176, 197 (2d Cir. 2002)). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341. However, if the court discerns an ambiguity, the court looks first to canons of statutory construction and, if the meaning still remains ambiguous, to legislative history. *Daniel*, 428 F.3d at 423.

The Task Force proposed a moratorium on victim solicitation to encompass direct mail solicitation. Task Force Report, Tab 1 – Text of Rules Proposed by the Task Force, with Commentary and Explanation, Rule 7.1(b)(7), at 4 (A 141) ("[N]o lawyer or law firm or any person or entity working with or on their behalf, shall send by direct-mail, any written communication which concerns an action for personal injury or wrongful death, to a victim, or his or her family, for a period of fifteen (15) days after the occurrence of the event . . ."). The Task Force recommended the direct mail proscription based on its finding that nine other states similarly extend to direct mail only, including Florida, Colorado, Louisiana, Georgia, Maryland, Tennessee, Arizona, Missouri, and Connecticut. *See* Task Force

Report, at 61-63 (A 115-17). The Task Force cited existing Supreme Court precedent, including the *Went For It* decision, in which the Supreme Court upheld a moratorium that extended to direct mail only. *Id*. (citing *Went For It*, 515 U.S. 618 (1995)) (A 115-117).

The Task Force Report specifically noted that the *Went For It* decision is a:

> continuation of prior Supreme Court doctrine. It applies the same *Central Hudson* test the Court had previously applied in the attorney advertising context, and did not overrule prior precedents. Rather, in light of both the particular regulation and the extensive evidence supporting it, the Court for the first time in recent years upheld a restriction on lawyer advertising.

Id. at 20 (A 74). The fact that the Task Force used the word "direct mail" and the Moratorium Rule applies to "any advertisement that is targeted at a specific recipient or group of recipients regardless of medium" is a distinction without a difference: the aim of the drafters was the same, namely, to prevent unwarranted intrusion of citizens by direct mail, direct email, and direct advertising in the locality where the disaster has occurred.

In advocating for a moratorium in New York, the Task Force Report considered the Aviation Disaster Family Assistance Act, codified at 49 U.S.C. § 1136(g)(2).[2] Task Force Report, at 61-63 (A 115-117). Notably, the federal airline disaster moratorium is not limited in scope with respect to the medium used for the solicitation. *Alexander*, 2007 WL 2120024, at *11 (A 251). The federal statute has particular significance in New York where two major airport hubs exist and where there have unfortunately been repeated airline disasters recently, duly noted by the Task Force. The October 2003 Staten Island Ferry accident is another recent mass transit disaster that involved unnecessarily intrusive direct solicitation of accident victims through local newspaper advertisements. The Moratorium Rule was specifically designed to overcome these kinds of invasive solicitations. Task Force Report, at 61-63 (A 115-117).

This Court should, respectfully, adopt a construction of the rule that comports with the First Amendment and the intent

[2] 49 U.S.C. § 1136(g)(2) provides:

> Unsolicited communications.--In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

of the drafters. *See Field Day, LLC v. County of Suffolk,* 463 F.3d 167, 177 (2d Cir. 2006) (holding that portions of New York's Mass Gathering Law did not violate the First Amendment). The Second Circuit views statutory construction as a "holistic endeavor." *Id*. Further, "[i]n interpreting statutes, [the Second Circuit] reads statutory language in light of the surrounding language and framework of the statute. Where an otherwise acceptable construction of a statute would raise serious constitutional problems, we may construe the statute to avoid such problems unless such construction is plainly contrary to the intent of [the Legislature]." *Id*. (internal citations and quotations omitted).

The types of communications covered by the Moratorium Rule are also consistent with the law that provides alternate channels for the public to receive information as long as there is no reference to the specific tragic accident. *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), which the Task Force cited in its report, Task Force Report, at 17 (A 71), is to the same effect. There the Supreme Court held that the State of Ohio could not ban truthful newspaper attorney advertisements concerning the Dalkon Shield device generally. *See Zauderer*, 471 U.S. at 647. Specifically, the *Zauderer* Court held: "[a]n attorney may not be disciplined for soliciting legal business through printed advertising

containing truthful and nondeceptive information and advice regarding the legal rights of potential clients." *Id*. *Went For It* and its progeny, including *Hayes v. Zakia,* 2002 WL 31207463, at *6 n.16 (W.D.N.Y. Sept. 17, 2002), are consistent and likewise expressly recognize that alternative channels for the dissemination of information on legal services for accident victims exist for lawyers. The existing Moratorium Rule is consonant with the above principles. As long as the advertisement is not targeted to a specific accident victim or victims for the purpose of being retained as the lawyer, it is not prohibited, is constitutional and does not offend First Amendment principles.

B. THE RULE DOES NOT PROHIBIT VICTIMS FROM SEEKING LEGAL ADVICE, AND DOES NOT PROHIBIT A LAWYER FROM RESPONDING TO A VICTIM'S REQUEST FOR ADVICE

Contrary to the position of Petitioners below, the moratorium on victim solicitation does not prohibit attorneys from responding to specific victim requests for legal advice. Instead, the rules expressly contemplate that accident victims will reach out and retain a lawyer of their own choice – as they have in the past – and that such lawyer will respond to a request for legal advice.

By its own terms, the moratorium extends only to those communications defined as a "solicitation." 22 N.Y.C.R.R. § 1200.8(g). The rules define a "solicitation" as any

advertisement "initiated by or on behalf of a lawyer or law firm." 22 N.Y.C.R.R. § 1200.8(b) (emphasis added). Any communication initiated by or on behalf of a victim is therefore excluded from the definition of "solicitation," rendering the moratorium inapplicable to victim-initiated contact. Notably, the moratorium is inapplicable to victim-initiated contact regardless of whether a victim initiates contact with a lawyer through information gleaned from the Yellow Pages or from a lawyer's Internet website.

As noted *supra*, the definition of "solicitation" specifically exempts a "proposal or other writing prepared and delivered in response to a specific request of a prospective client." 22 N.Y.C.R.R. § 1200.8(b). This provision makes it clear that responses to specific victim requests are not to be construed as prohibited solicitations under the Moratorium Rule.

Finally, the Task Force never proposed an interpretation of the Moratorium Rule that would somehow limit an attorney's ability to respond to victim requests for legal advice. Indeed, there is no evidence in the record that the moratorium was ever intended to extend to attorney responses to specific victim requests. Such an interpretation would therefore be contrary to the intent of the drafters, the legislative history, and the plain meaning of the Moratorium Rule as drafted. *See Robinson*, 519 U.S. at 341; *Daniel*, 428 F.3d at 423; *Freier*, 303 F.3d at

197.

The argument of Plaintiffs' below has no merit and for this reason, the ruling below should be affirmed.

C. THE RULE'S TEMPORAL LIMITATION IS CONSTITUTIONAL AND A MATTER OF POLICY

The temporal aspect of the Moratorium Rule – a 15/30-day prohibition against victim solicitation – is constitutional and essentially a policy matter for the Presiding Justices.

The Moratorium Rule provides that an attorney shall not solicit victims for potential personal injury or wrongful death claims within 30 days of the date of the specific incident giving rise to the claim. 22 N.Y.C.R.R. §§ 1200.8(g) & 1200.41-a. In cases where the legal filing is required within 30 days, the moratorium is limited to 15 days. *Id*.

First, the Moratorium Rule specifically follows the recommendations of the Task Force and contemplates the shorter 15-day period will apply under circumstances unique to New York. The Task Force recommended a 15-day moratorium primarily because New York law precludes recovery in a "No-Fault" auto accident claim if a claim is not filed within 30 days of the accident. *See* Task Force Report, at 61-63 (A 115-17); Task Force Report, Tab 1 – Text of Rules Proposed by the Task Force, with Commentary and Explanation, Rule 7.1(b)(7), at 4 (citing 11 N.Y.C.R.R. § 65-1.1(b)) (A 141). The Task Force understood that

many auto accident victims may not know about the 30-day limitation period, and that a 15-day rule would protect these accident victims by allowing lawyers to apprise potential clients of the 30-day limitations period so that they could preserve their claims. *Id*. (A 141). The Report expressly so notes and was carefully drawn with these considerations in mind.

The Presiding Justices therefore adopted the recommendation of the Task Force by establishing a 15-day temporal limitation where, in order to preserve a claim, a legal filing must be made within 30 days. *See* 22 N.Y.C.R.R. §§ 1200.8(g) & 1200.41-a. The enacted Moratorium Rule therefore accomplishes the same goals and guards against the same harms that originally concerned the Task Force, eliminating legal prejudice and effectively preserving claims and evidence by permitting attorneys to solicit victims after 15 days if a filing must be made within the 30 day period.

Second, the constitutionality of the longer, 30-day temporal prohibition against victim solicitation was upheld by the United States Supreme Court in *Went For It*. 515 U.S. at 635. Task Force Report, at 18-21, 61 (A 72-75, 115). Since the Moratorium Rule is a hybrid rule that accounts for the 15-day element recommended by the Task Force and the 30-day restriction as was the case in Florida, the New York Moratorium Rule is more narrowly drawn than the 30-day rule in *Went For It*.

Third, eight states (other than New York and Florida) have enacted similar 30-day rules in the wake of *Went For It*: Colorado, Louisiana, Georgia, Maryland, Tennessee, Arizona, Missouri, and Connecticut.[3] Task Force Report, at 21, 62 (A 75, 116); *see also* Fla. Rules of Prof'l Conduct R. 4-7.4(b)(1)(a); Colo. Rules of Prof'l Conduct R. 7.3(c); La. Rules of Prof'l Conduct R. 7.2(b)(iii)(C); Ga. Code of Prof'l Responsibility DR 2-101(C)(4)(d); Md. Code Ann., Bus. Occ. & Prof. §10- 605.1(b); Tenn. Code of Prof'l Responsibility DR 2-104; Az. Rules of Prof'l Conduct R. 7.3(b)(3); Mo. Rules of Prof'l Conduct R. 4-7.3(c)(1); Conn. Rules of Prof'l Conduct R. 7.3(b)(5)).

Fourth, the Aviation Disaster Family Assistance Act enacted by Congress (49 U.S.C. § 1136, as modified) prohibits lawyers from soliciting airline disaster victims or their families for a period of 45 days following the incident. Task Force Report, at 61-62 (A 115-116).

Significantly, as long as concerns regarding claim-preservation are met, a decision to adopt a 15, 30, or even 45-day moratorium is a matter of policy, not constitutionality. Here, the Presiding Justices, who after all rule on the accident victims' claims in the ordinary course, made a determination in their discretion, to provide for the shorter 15-day period to

[3] Notably, the ban in Connecticut is 40 days. Conn. Rules of Prof'l Conduct R. 7.3(b)(5)).

apply in order to preserve a claim and the longer 30-day period to apply in the ordinary course. That decision, however, rests firmly in policy – not the law – as the varying schemes cited above that the states and the federal government have adopted demonstrate. That courts affirm the period that should reasonably apply is not of a constitutional dimension. *See Went For It*, 515 U.S. at 632-34.

CONCLUSION

Under this Court's decisions, the court below properly upheld the constitutionality of the Moratorium Rule. The decision below is consistent with this Court's and the Supreme Court's settled doctrine of First Amendment law, consistent with the policies underlying the need to forebear approaching accident victims and their families at time of severe emotion and stress and are thereby consistent with the Presiding Justices' discretion in fashioning a rule that is reasonable in time and scope.

The district court decision upholding the constitutionality of 22 N.Y.C.R.R. §§ 1200.8(g) and 1241-a should, respectfully, be affirmed.

Dated: December 7, 2007

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This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,343 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Dated: December 7, 2007

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Filed

☐ **Email**

Loree Chow, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age, and resides at the address shown above, or 205 Lexington Avenue, New York, New York 10016.

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Brief for *Amicus Curiae* New York State Bar Association in Support of Defendants-Appellants-Cross-Appellees

upon the attorneys who represent the indicated parties in this action, and at the email addresses below stated, which are those that have been designated by said attorneys for that purpose.

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Sworn to before me this
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/s/Loree Chow

ORIGINAL

13835

ANTI-VIRUS CERTIFICATION FORM

See Second Circuit Local Rule 32(a)(1)(E)

CASE NAME: James L. Alexander, et al. v. Thomas J. Cahill, et al.

DOCKET NUMBER: 07-3677-cv(L); 07-3900-cv(XAP)

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