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For Immediate Release

NEW YORK COURT OF APPEALS UNANIMOUSLY UPHOLDS KENDRA'S LAW

**JUDGES REJECTS CONSTITUTIONAL CHALLENGE TO LAW PERMITTING
COURT-ORDERED OUTPATIENT TREATMENT; ISSUE HAD LONG BEEN A PRIORITY OF NEW YORK CITY**

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New York, Feb. 17, 2004 – The Court of Appeals, in a opinion written by Chief Judge Judith Kaye, today unanimously affirmed the lower court order of the Appellate Division and upheld Kendra's Law in case captioned *Matter of K.L.* (In this case, the patient "K.L." was a respondent in a proceeding under the statute.)

Kendra's Law, also called Mental Hygiene Law 9.60, provides for court-ordered medical treatment for individuals with a history of being noncompliant with their medication and who thereby may become dangerous to themselves or others when not medicated. New York City had long supported the passage of outpatient treatment programs and, accordingly, urged the passage of Kendra's Law. The New York State Legislature passed the statute in 1999 in response to the death of Kendra Webdale, a New York City resident who was pushed to her death in front of an approaching subway train by a man diagnosed with paranoid schizophrenia who had failed to take his prescribed medication. The law provides for court-ordered services, including medication, but only after a hearing and findings on clear and convincing evidence that the individual meets certain criteria, including a history of noncompliance. The patient attacked the constitutionality of the statute on a number of grounds, all of which the Court rejected in a 6-0 vote.

"The Court found that the State had a strong interest in protecting both the safety of patients as well as the safety of others," said Stephen McGrath, Deputy Chief of the Law Department's Appeals Division. McGrath, the chief lawyer on the appeals case. He continued: "The Court correctly ruled that society's interest in making sure people receive appropriate treatment and that the public is protected outweighs a patient's right to refuse treatment." The Court further rejected due process, equal protection and search and seizure arguments raised by the patient.

The patient based his central argument on the Court's prior holding in *Rivers v. Katz*, in which the Court held that a judicial finding of incapacity to make a reasoned treatment decision must be made before an involuntarily committed patient can be forcibly medicated with psychotropic drugs against his or her will. However, in this case, the Court rejected the comparison to *Rivers*, as the statute did not authorize the forcible medication of the patient. Indeed, the only sanction for a violation of such an order was "heightened scrutiny on the part of the physician, who must then determine whether the patient may be in need of involuntary hospitalization," according to the decision.

Dr. Thomas R. Frieden, Commissioner of the New York City Department of Health and Mental Hygiene, noted: "This is a significant decision by the highest court in the State. It recognizes that Kendra's Law helps many mentally ill individuals live in the community without the need for institutionalization."

In addition to the work of McGrath, Appeals Chief Leonard Koerner of the New York City Law Department assisted on the case. George Gutwirth, now retired from the Law Department, wrote the brief in the successful lower court decision. Amy Holman of the New York City Department of Health and Mental Hygiene and Nancy Miller of the New York City Health and Hospitals Corporation assisted the Law Department in the defense of this case.

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