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SENATOR BORRELLO AND FELLOW PLAINTIFFS WIN LAWSUIT AGAINST NYS

New York State Supreme Court Judge Rules the Department of Health exceeded its Authority by using Rulemaking Process for Isolation and Quarantine Procedures

CATTARAUGUS COUNTY, NY – Senator George Borrello and his fellow plaintiffs, Assemblymembers Michael Lawler and Chris Tague and the organization Uniting NYS, have won their lawsuit challenging the constitutionality of a New York State Department of Health regulation on the grounds it violates the separation of powers.

The regulation at issue is [10 NYCRR 2.13](#), which establishes isolation and quarantine procedures for those who are suspected of having a communicable disease. The proposed regulation was adopted as an emergency regulation on February 22, 2022 and has been renewed at 90-day intervals through July 20, 2022. It has also been published in the New York State Register for permanent adoption through the rulemaking process.

The proposed rule would allow the Health Department to coordinate with a local health authority to mandate isolation and quarantine for individuals exposed to communicable diseases, even in locations beyond their own homes. The provisions closely resemble the provisions in the controversial Assembly Bill 416, which was proposed prior to the pandemic and never received the legislative support required to move forward.

Senator Borrello said, “the expansive emergency powers that were given to the Executive Branch during the pandemic set a dangerous precedent that was ripe for abuse. That is what occurred here. Reluctant to relinquish the unrivaled authority that accompanied New York’s ‘state of emergency’, the governor sought to improperly use the agency rulemaking process as another conduit for unilateral control. If we allowed that to occur unchallenged, it would be inviting further violations of the constitutional separation of powers.”

The ruling by Judge Ronald Ploetz of the State Supreme Court of Cattaraugus County cited the fact that there is already established Public Health Law 2120 governing isolation and quarantine which balances individual rights and the need for public safety. He notes that in Rule 2.13 there is “no such due process protections... The Commissioner has unfettered discretion to issue a quarantine or isolation for anyone, even if there is no evidence that person is infected or a carrier of the disease... Involuntary detention is a severe deprivation of individual liberty, far more egregious than other health safety measures... Rule 2.13 merely gives “lip service” to Constitutional due process.”

Assemblyman Michael Lawler said: “Today’s ruling is a major win for the rule of law, our individual liberties, and the separation of power. The attempt by Governor Hochul and her Department of Health to create a procedure by which they could physically remove New York State residents from their homes and quarantine or isolate them from their families, in the name of public health, was an affront to the legislative process and a violation of our state constitution. As a Member of the State Assembly, I believed it was imperative that we stood up against Governor Hochul’s outrageous government overreach and abuse of power to protect New Yorkers’ freedoms and constitutional right to make their own health decisions. I am gratified by today’s decision and strongly encourage Governor Hochul to drop any planned appeal immediately.”

“This regulation was unconstitutional, inhumane, and had no place existing as law within a free society, so I am incredibly relieved that this case was decided in our favor, and in favor of common sense,” **said Assemblyman Chris Tague**. “We’re talking about a proposal that would’ve empowered the state to take you, your child, your grandparent, or other members of your family from your home and into quarantine centers with little due process, for as long as the government felt necessary. One would think such a frightening policy would come from a book or a movie, but it was proposed by our state Health Department, and cannot be allowed to stand. Thank you to Bobbie Anne Flower-Cox, Uniting NYS, my co-complainants Sen. George Borrello and Assemblyman Michael Lawler, and to Assemblymen Joe Giglio, Andrew Goodell, and Assembly Minority Leader William Barclay, who filed amicus briefs in this case, for all of their efforts to strike down this horrific proposal. This is another win for New Yorkers and the constitution of the United States of America!”

"This is a tremendous win for, not just New Yorkers, but for Americans across the country! Our rights and due process protections, as enshrined in our Constitution, have been properly upheld by this Court. This decision will send a message to all agencies, here in New York and in other states as well, that the Executive Branch and its agencies cannot violate separation of powers by making regulations that conflict with our laws and our Constitution,” **said Bobbie Anne Flower Cox, Esq. of Cox Lawyers, PLLC, the attorney representing the petitioners**. “The Governor and her Department of Health should honor this ruling. They should not continue to waste valuable taxpayer dollars fighting an appeal to try to overturn this just decision.”

“This ruling is a victory for the citizens of New York State because it affirms that their power, through their legislative representation, cannot be usurped. Judge Ploetz clearly highlighted that the process the governor and the health department followed is illegal, unconstitutional and a violation of the separation of powers,” said Senator Borrello.

"I call on the governor and the attorney general to support the will of the people and their constitutional freedoms by abiding by this decision. There is no ambiguity in this ruling and pushing it further through the courts will be an unnecessary waste of taxpayer resources,” he concluded.

The complete decision by Judge Ploetz can be viewed here:

<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=t7H9MItLf4J8I/BiLeCKTw==&system=prod>

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Photo caption: On April 5, Senator Borrello was joined by fellow lawsuit plaintiffs Assemblyman Lawler and Assemblyman Tague, as well as several other Republican colleagues at a press conference on the lawsuit.