



NEW YORK STATE SENATOR

George M. Borrello

## Statement by Congressman Mike Lawler, Senator George Borrello, Assemblyman Chris Tague, and Attorney Bobbie Anne Cox on Appellate Division Ruling Overturning Lower Court Ruling In Case Against Governor Hochul

GEORGE M. BORRELLO November 20, 2023

| ISSUE: **GOVERNMENT OVERREACH, ISOLATION AND QUARANTINE, DEPARTMENT OF HEALTH**



**Albany, NY, 11/20/2023...** Congressman Mike Lawler, State Senator George Borrello, Assemblyman Chris Tague, and Attorney Bobbie Anne Cox announced that the Appellate Division of the Fourth Judicial Department has issued a decision reversing a July 11, 2022 lower court ruling in favor of the legal challenge the petitioners lodged against the state in

the case *Borrello, Lawler, Tague, Uniting NYS v. Hochul*.

Originally filed in April 2022 in State Supreme Court of Cattaraugus County, the petitioners of the lawsuit are Senator George Borrello, Assemblyman Chris Tague, Assemblyman (now, Congressman) Michael Lawler and the citizens' organization, Uniting NYS. The petitioners sued Governor Hochul and the New York State Department of Health over the adoption of highly unconstitutional Rule 2.13, "Isolation and Quarantine Procedures," charging that the process violated separation-of-powers, the very bedrock of our liberty and prosperity.

On July 11, 2022, Judge Ronald Ploetz ruled in favor of the petitioners, citing a longstanding law, Public Health Law 2120, that covers the issue. In his decision he noted that "Rule 2.13 actually contravenes the procedures set forth in PHL 2120 and ignores the balancing act between an individual's rights and the need for public safety." The Judge also noted that the Rule lacked any due process protections, concluding that "Rule 2.13 merely gives 'lip service' to constitutional due process."

The plaintiffs in the suit, issued the following joint statement in response to the appellate court's dismissal of the case:

*"We are deeply disappointed in the Appellate Division's ruling in favor of the Hochul administration in the case of Borrello, Lawler, Tague, Uniting NYS v. Hochul. The court did not address the merits of the case which were outlined by Judge Ploetz in his original decision. Instead, they shamefully reversed and dismissed the case on a technicality, claiming that we, the petitioners, somehow lacked standing to bring the case in the first place.*

*We strongly disagree with their ruling and are concerned about the widespread implications of this erroneous decision. They have not only paved the way for Hochul and her Department of Health to re-issue this heinous Rule, but they have set a precedent to preclude citizens from rightfully challenging government overreach in court, and they've effectively unconstitutionally empowered the Executive Branch to overreach into policymaking, which is a decision that could open the door to further abuses of power.*

*In light of Governor Hochul's other overreaches into the daily lives of New Yorkers, including her effort to ban gas stoves, her 'housing' plan that would eliminate local zoning, and her excessive mask mandates on children, to name a few, our concerns are well-warranted.*

*This has been a 'David v. Goliath' fight from the beginning on many levels, so it is not surprising that the state, with its limitless resources, has effectuated a win this round. We will never stop fighting for New Yorkers against government overreach. And so, we will be appealing this calamitous decision to the Court of Appeals, our state's highest court, which is a court of constitutional integrity, and we are confident justice for New Yorkers*