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NCLA Amicus Brief Criticizes NY’s Isolation and Quarantine Rule for Invading Legislature’s Domain

George Borrello, et al. v. Kathleen Hochul, in her official capacity as New York State Governor, et al.

Washington, DC (May 23, 2023) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [amicus curiae brief](#) in the Supreme Court of the State of New York in *George Borrello, et al. v. Kathleen Hochul, et al.* New York State Senator George Borrello and New York State Assemblymen Christopher Tague and Michael Lawler have sued state actors, including Governor Kathleen Hochul, for their role in promulgating [10 NYCRR § 2.13](#)—a Rule which establishes isolation and quarantine procedures for those who are suspected of having a communicable disease. The Rule directly contravenes a duly-enacted, detailed statute and cannot stand. NCLA argues the Executive Branch arrogated to itself not just the power to order citizens into quarantine, but the power to suspend and amend statutes.

The Legislature has clearly spoken on the issue of quarantine, yet the Rule directly contradicts the scheme enacted by that lawmaking body. In this case, the Legislature enacted a clear policy specifying how quarantine orders are to be entered directing *individualized* assessment of threats to public health, based on each person’s *affliction* with a contagious disease. The Legislature chose not to permit broad population-wide quarantine orders that may cover people who merely *might* become afflicted with a disease. The existing law represents a detailed compromise between the need for public health measures and the robust liberty interests of individuals.

Rule 2.13 turns the legislative compromise on its head. Promulgating administrative rules that stand in direct contradiction to policies that were considered by the Legislature and enacted into law through a constitutional process violates the Governor’s constitutional duties. It also treads on the prerogatives of the Legislature.

The Supreme Court of the State of New York should affirm the judgment appealed.

NCLA released the following statements:

“In the last three years, we learned that pandemics are dangerous not just to people’s health, but to people’s liberties. While protection of public health is important, courts should not let government officials unilaterally erode both individual liberties and the very constitutional structures that protect those liberties.”

— **Greg Dolin, M.D., Senior Litigation Counsel, NCLA**

“The police power to regulate citizens’ conduct with severe measures like isolation and quarantine belongs to state legislatures—not to governors. Such extreme measures were never the Executive’s prerogative to impose. With the pandemic over, courts have no excuse to avoid curbing gubernatorial pretensions to unilateral rule.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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