

David v. Goliath in New York

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by [Brownstone Institute](#)

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There is a battle going on for our freedoms this week. And very few Americans are even aware of what is at stake.

New York attorney Bobbie Anne Cox single-handedly goes up against the State of New York this week, after the state appealed a [New York State Supreme Court ruling](#) that a so-called “quarantine camp” regulation (“*Isolation and Quarantine Procedures*”) issued by Governor Kathy Hochul was unconstitutional.

The order concerns quarantine of citizens by the state government. Like other states, New York already has in place laws regarding quarantine of the citizenry – laws duly passed by the elected state representatives. Those laws were crafted by legislators (whose job it is to do this work) and passed by a majority vote of both Assembly and Senate and signed by the governor. That law not only provides for protecting the public

by use of quarantine, but also includes protections for individual rights.

There are problems with the governor's action.

- The executive branch **does not have the power to make laws** under the constitution. That is reserved to the legislature.
- With one state executive branch taking power not given to them constitutionally, it **creates a precedent** that could be used similarly for other issues to violate the rights of citizens on a host of other issues – not only in New York, but in all the other states as well.

So, what is in this regulation, you ask? It has to do with quarantine of the citizenry. There is a history of government-mandated quarantine during times of epidemics in our country. Whether or not the existing laws have been misused against individuals is another debate (see the case of [Typhoid Mary](#), for example, who was imprisoned for more than 23 years under the quarantine law of the time).

This governor's regulation puts the power at the highest levels of the state government – centrally controlled. The governor's regulation not only circumvents the legislature's power and responsibility to enact appropriate laws for the citizenry, but it also takes that power beyond the local level, where it can most appropriately be considered, and completely fails to protect the rights of the individuals against misuse or mis-application by the state officials.

In this regulation, there is no requirement for the state government to **prove** that the targeted individual is infected, has been exposed to an infectious disease, or poses any actual risk to his/her fellow citizens. The application of the regulation is broad – not just limited to Covid cases. There is no limit regarding the age or medical condition of the individual (it could be imposed on a child or a very elderly

person), and there is nothing specified as to the duration of the quarantine, or how that duration would be determined. Most concerning: **there is no mechanism provided for the individual to be released.**

During the initial court case, it was clearly stated that the only possible mechanism for release was for that individual to sue the state, unless the state officials decided to lift it of their own accord.

Under the provisions of the governor's regulation, the state government can use law enforcement to forcibly remove citizens from their homes or businesses against their will to place them in unspecified quarantine locations for an indeterminate period with no mechanism for release!

This terrible infringement on citizens' rights, however, doesn't stop here. It sets a precedent for more executive branch overreach. If it is not overturned in the appellate court, it will embolden other governors to make more forays into the realm of executive usurpation of the legislative branch of government (see the recent [NM Governor's action](#) to remove 2nd Amendment rights by executive order).

There is no doubt that those who take this type of executive action (Lujan Grisham in New Mexico and Hochul in New York) know that this is outside their scope of power within our governmental system. They also know that, until someone files a lawsuit and prevails against them, they have a period of time when these executive regulations and orders will be in place.

It is essential that the appeals court upholds the ruling in the case of this regulation by Governor Hochul – for the good of all the people of New York, but also for all of us in other states.

This passionate, articulate, brilliant lawyer is fighting for

all of us.

And Bobbie Anne Cox has suffered for it. She has set aside her normal legal practice to pursue this effort and has been focusing solely on this case for an extended period. She has sacrificed valuable time with her family, spending countless hours in the maze of motions, filings, dockets, scheduling, and research that are part and parcel of the legal system with all its complexities. The work has been arduous, solitary, and, to some extent, thankless. If she wins the appeal, there is **no financial benefit** to her or any of the plaintiffs that will be realized.

She has no large staff of paralegals and junior attorneys assisting her to put this case together. She has not had assistance from her other colleagues in New York in fighting this battle.

And, because it has to do with complexities of the legal system, it gets little coverage in the media. Perhaps it is so difficult to imagine just why a state government even wants this type of power over the citizenry, that people find it very hard to grasp that it is really just what Bobbie Anne describes in terms of the potential abuse of individual rights.

No public outcry has occurred. No groundswell of support for her work has happened. And while many are supportive of the great work she has done and were so relieved when she won the case initially, the vast majority of people who stand to benefit from her work will never know they owe her a debt of gratitude.

On Wednesday, September 13, 2023 at 10:00 am EST (at the courthouse in Rochester, NY, located at 50 East Avenue), Bobbie Anne Cox goes forth as a sort of David to meet Goliath, depending on her knowledge of the law rather than a slingshot and stones. She is relying on the New York panel of

judges to truly prove that there still exists blind justice in New York.

The [merits of her case](#) are clear – even to people not that familiar with the law. Basic Civics shows us the correctness of her contention. This is not a partisan issue. While she is representing Republican plaintiffs, she is not one herself.

If you are able to support her by physically attending the hearing, do so. Perhaps by your presence you can be a silent reminder to the court that New Yorkers are interested in this and are supportive of her efforts.

If you cannot be there in person, consider watching the oral arguments live on the court's website at: <https://ad4.nycourts.gov/go/live/>. Please also keep her and the court judges in your thoughts and prayers and share this information with your circle of friends and colleagues.

May she prevail.

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