

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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THE NEW YORK STATE HEALTH FACILITIES  
ASSOCIATES, INC.; ELDERWOOD AT AMHERST;  
ELDERWOOD AT CHEEKTOWAGA; ELDERWOOD AT  
GRAND ISLAND; ELDERWOOD AT HAMBURG;  
ELDERWOOD AT LANCASTER; ELDERWOOD AT  
WILLIAMSVILLE; SCHOFIELD RESIDENCE; and  
WILLIAMSVILLE SUBURBAN CENTER FOR  
REHABILITATION AND NURSING,

*Plaintiffs,*

v.

Index No. 802623/2020

HON. MARK POLONCARZ, as County Executive of the  
County of Erie, DAVID SHENK, as Commissioner of the  
Department of Senior Services of Erie County, MICHAEL  
SIRAGUSA, as County Attorney for the County of Erie;  
And THE COUNTY LEGISLATURE OF ERIE COUNTY,

*Defendants.*

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**SIWEK, J.,**

**MEMORANDUM DECISION**

This Memorandum Decision addresses Plaintiffs' motion for an order pursuant to CPLR §3212 granting summary judgment on their Complaint declaring Erie County Local Law 2-2017 unlawful, unconstitutional and unenforceable and enjoining Defendants from enforcing said law.

On June 8, 2017, the Erie County Legislature adopted Erie County Local Law 2-2017 also known as "Ruthie's Law". The law was approved by County Executive Mark Poloncarz and filed with the New York State Secretary of State on July 11, 2017.

Prior to enacting Ruthie's Law, Defendants were advised by Plaintiff, New York State Health Facilities Association, Inc. ("NYSHFA"), a not-for-profit that represents the legislative, regulatory and legal interests of its members (including the other named Plaintiffs) throughout New York State, that Ruthie's Law, as proposed, was unlawful and unconstitutional for a myriad of reasons including that: it was at odds with New York law and would duplicate and conflict with current state and federal requirements; it violated Public Health Law §2812 which prohibits local governments from enacting laws regulating nursing homes; federal regulations applicable to nursing homes participating in the Medicare and Medicaid programs already require nursing homes to provide the type of notification to family members that is required by Ruthie's Law but with a different standard for reporting; the disclosure of the ratings mandated by Ruthie's Law are already publicly available on a federal agency website; other reporting programs are already mandated under the Elder Justice Act; and Ruthie's Law imposes additional burdens on nursing homes and contains punitive provisions, contrary to state and federal regulations. Despite this admonition, the law was passed.

Following the enactment, NYSHFA sent letters to Erie County Attorney Michael Siragusa and Erie County Commissioner of the Department of Senior Services, David Shenk (“Commissioner”) advising that Ruthie’s Law is unenforceable and requested that Commissioner refrain from pursuing any further enforcement action under the law. Plaintiffs state that in the absence of an adequate response, they commenced this declaratory judgment action on February 21, 2020. An Amended Supplemental Summons was filed on February 8, 2021 to add the Erie County Legislature as a defendant. Defendants filed their answer on March 22, 2021, and Plaintiffs’ filed this motion on June 10, 2021, and the motion was fully submitted for the Court’s consideration on September 8, 2021.

Article 28 of the New York Public Health Law provides in pertinent part that:

In order to provide for the protection and promotion of the health of the inhabitants of the state.....the [New York State] department of health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital and related services... (PHL §2800)

New York Public Health Law §2812 prohibits local governments from enacting or enforcing regulations and standards for nursing homes, stating that:

[N]otwithstanding the provisions of any general, special or local law, or in any city charter or administrative code to the contrary, no county, town, village or city shall enact and enforce regulations and standards for hospitals... (PHL §2812)

Public Health Law §2801 (1) and (2) define the term” hospital” to include nursing homes. Public Health Law §2812 establishes that it is New York State’s legislative intention to preempt the field of nursing home regulation and it is clear that local governments such as the County of Erie are prohibited from enacting or enforcing regulations or standards for nursing homes.

Additionally Article IX, §2(c)(i) of the State Constitution empowers local governments to adopt and amend local laws so long as they are “not inconsistent with the provisions of [the New York State] constitution or any general law relating to its property, affairs or government”. Municipal Home Rule Law §10(1)(i) allows local governments to adopt and amend local laws as long as they are “not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government. ...”. Thus, this section of the Constitution prohibits local governments from enacting laws that conflict with state laws.

Ruthie's Law mandates nursing homes in Erie County to prepare specific incident reports for the Commissioner of Senior Services; it mandates that data be provided to potential patients prior to their admission and requires that nursing homes document such disclosures to the Commissioner of Senior Services; and, in the case of a patient injury, it requires nursing homes to contact a patients' designated representative within a specified time period. The law also allows the Commissioner of Senior Services to impose fines on nursing homes for non-compliance with this law and provides Commissioner with subpoena power. There is no question that Ruthie's Law enacts and enforces standards and regulations for nursing homes in Erie County. The law is therefore violative of Public Health Law §§2800 and 2012 because the State of New York has preempted the field of nursing home regulation, and the local law is in direct conflict with Public Health Law §2812; Article IX of the State Constitution and Municipal Home Rule §10. Plaintiffs have met their burden of rebutting the presumption of constitutionality by establishing that Ruthie's Law is violative of Public Health Law §2812; the New York State Constitution and Municipal Home Rule Law §10 and is therefore unlawful, unconstitutional and unenforceable as a matter of law.

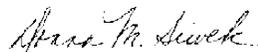
In response, Defendants have failed to raise any legitimate opposition to Plaintiff's Motion, and their affirmative defenses are without merit as follows:

- County Law §52 and General Municipal Law §50(i) are inapplicable to a declaratory judgment action seeking to set aside a local law as violative of state law and state constitution.
- Plaintiffs have standing to bring the action. NYSHFA has organizational standing [*See Matter of Dental Society of State of NY v. Carey*, 61 N.Y.2d 330 (1984)] and the remaining Plaintiffs are all licensed nursing homes operating in Erie County. Plaintiffs have sufficiently stated a cause of action upon which relief can be granted by alleging that the Ruthie's Law is in direct violation of Public Health Law §2812 and also violative of the New York State Constitution and Municipal Home Rule Law.
- Plaintiffs have rebutted the presumption of constitutionality beyond a reasonable doubt by establishing that Ruthie's law is invalid because it is in direct violation of Public Health Law §2812 and the New York State Constitution and Municipal Home Rule Law.
- The severability provision of Ruthie's Law is unavailing because Ruthie's Law is, in its entirety, prohibited by Public Health Law §2812, and there is nothing in the law can lawfully be severed.
- Plaintiffs' request for relief is not speculative, Plaintiff are merely seeking an order declaring Ruthie's Law unlawful, unconstitutional and unenforceable and enjoining Defendants from enforcing said law. All necessary parties have been named.
- The fact that some nursing homes in Erie County may have complied with Ruthie's Law or that the requirements of law are not, in the opinion of Defendants, onerous is irrelevant to whether or not the law in and of itself is unlawful and unconstitutional.
- Plaintiffs are not seeking attorneys' fees.
- Finally, the action was commenced within the appropriate six-year statute of limitations applicable to declaratory judgment actions, and the doctrines of laches, waiver and/or estoppel are not available here.

Despite whatever good intentions the Erie County Legislature and County Executive may have had regarding nursing home patient care when Ruthie's Law was enacted for the reasons set forth herein, Plaintiffs are correct in that Ruthie's Law is unlawful, unconstitutional and unenforceable.

Therefore, Plaintiffs are entitled to an order and judgment declaring Ruthie's Law unlawful, unconstitutional and unenforceable and Defendants are enjoined from enforcement.

This is the Decision of the Court. Counsel are directed to agree on the form and content of an order and judgment and upload the agreed upon order to NYSCEF.



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Hon. Donna M. Siwek  
Justice of the Supreme Court

Dated: September 14, 2021