

State's highest court won't hear county's appeal on raid of Drinking Water Protection Program funds

By Denise
Civiletti



The state's highest court won't review an appellate court ruling that declared illegal Suffolk County government's "borrowing" of \$30 million from the county Drinking Water Protection Program without a voter referendum.

The N.Y. State Court of Appeals on Thursday, Aug. 27 denied the county's motion for leave to appeal the Appellate Division's November 2014 decision that a 2011 county charter amendment borrowing \$30 million from the Drinking Water Protection Program's dedicated fund was "illegal, null and void" because it was not submitted to the electorate for approval.

The fund consists of quarter-percent sales tax monies collected by county pursuant to a 1987 county charter law to protect water quality in the Pine Barrens and other areas.

The County Legislature in 2011 approved a budget resolution moving nearly \$30 million from the special water protection fund to the general fund. Former county executive Steve Levy signed the bill. The measure was called a "raid" by environmental activists, who sued to block it on the ground that since the fund was created by referendum, it could only be changed by referendum.

The Long Island Pine Barrens Society, the Long Island Environmental Voters Forum, Richard Amper and two other individuals sued. The trial court granted the county's motion for summary judgment, ruling that the plaintiffs lacked "standing" to bring the action.

The Appellate Division disagreed. In a Nov. 12, 2014 decision, the appellate panel ruled that the plaintiffs had standing as taxpayers of the county and that the county's attempt to move funds out of the Drinking Water Protection Program without a voter referendum was illegal.

"Under the circumstances presented here, we conclude that the plaintiffs adequately alleged that the enactment of the challenged amendment without a public referendum is illegal insofar as it violates the Suffolk County Charter, and that this enactment imperiled the public interest or was calculated to work public injury or produce some public mischief," the court wrote.

The county sought leave to appeal that decision to the state's highest court, which Thursday declined to hear the case.

"This is a huge win for taxpayers and for good government," Pine Barrens Society executive director Richard Amper said.

"Suffolk taxpayers are paying two-and-a-half times the national average in taxes, but they've repeatedly approved taxing themselves one-quarter penny more as long as it is used for water quality improvement. The Levy administration betrayed that requirement when it raided the fund and the courts have now said that's not just wrong, it's against the law," Amper said.

The Pine Barrens Society and Environmental Voters Forum will now move for the return of the funds to the Drinking Water Protection Fund, Amper said.

Last summer, the Pine Barrens Society and other environmental groups rallied support for a deal struck with the Bellone administration in which the county agreed to issue new serial bonds for another \$29.4 million — the amount transferred from the Drinking Water Protection Program to the general fund in 2011 — for environmental restoration and protection projects and land acquisitions aimed at protecting groundwater. The environmental groups also agreed to a charter law authorizing the county to borrow from the drinking water protection program's assessment stabilization reserve fund balance in 2015, 2016 and 2017 to provide tax relief and keep the county tax levy increase within the state-mandated 2 percent cap. The assessment stabilization reserve fund then had a balance of \$140 million, according to officials. The county would be required to pay back all amounts borrowed by 2029, with payments beginning in 2018.

Both initiatives were placed on the ballot last November and passed with nearly 66 percent of the vote.