

Lawsuit over \$198 million Suffolk sewer fund diversion can continue

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Richard Amper speaks at Grumman Memorial Park on Rt. 25 (Middle Country Road) in Calverton, on Monday October 24, 2022. Credit: Tom Lambui

By Vera Chinesevera.chinese@newsday.com[@VeraChinese](https://www.instagram.com/VeraChinese)

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A [lawsuit](#) seeking the return of nearly \$200 million in sewer funding that Suffolk County diverted for operating expenses can move forward after a judge denied the county's motion to dismiss it.

The decision, handed down June 29 by state Supreme Court Justice Carmen Victoria St. George, continues the lawsuit filed in 2022 on behalf of the Long Island Pine Barrens Society and the Kings Park Community Association. The groups allege the county illegally used money raised through a .25% sales tax that funds the Drinking Water Protection Program, created to acquire land, preserve open space and stabilize sewer district taxes.

The lawsuit seeks to invalidate a 2020 county law that authorized a \$44 million transfer from the fund and repealed requirements that the county replenish \$154 million it had borrowed from it. County Executive Steve Bellone, a Democrat, had argued during the COVID-19 pandemic that the money was needed to avoid service cuts and layoffs.

That law was approved by voters, and the question before the court is whether the law nullifies a previous court ruling and settlement requiring the county to pay back the money. St. George in her decision said she couldn't yet make a determination, but ruled plaintiffs had established a viable legal claim to move forward.

The plaintiffs' attorney, Paul Sabatino of Huntington Station, said a public vote cannot undo a past court action.

"Voters cannot legislate beyond the legal authority of a government," he said. "This is a bedrock principal of law. If a government can't pass a law, then the voters can't do it either."

Bellone administration representatives declined to comment.

Suffolk had argued the lawsuit should be dismissed in part because it was filed after the statute of limitations had expired. County attorneys also argued that Suffolk had the authority to enact the law, and that Sabatino and plaintiff co-counsel Anton Borovina should be disqualified.

County attorneys said Borovina was ineligible because he represented county Comptroller John Kennedy, a Republican, in another matter and was contractually barred from representing clients in lawsuits against the county. They sought to disqualify Sabatino, a former chief deputy Suffolk County Executive and past counsel to the county legislature, because he helped draft the original Drinking Water Protection Program law in 1987.

St. George agreed to disqualify Borovina, but not Sabatino.

The sewer fund has been the focus of lawsuits over the past decade challenging the county's use of it.

In 2011, the legislature and former County Executive Steve Levy withdrew \$29.4 million from the fund to balance the county budget. The Pine Barrens Society sued, and in 2019 a judge ordered the county to return the money.

In 2013, the legislature and Bellone withdrew \$171 million from the fund to offset pension costs and bond payments, according to the lawsuit. The Society sued again, and the county agreed to settle and repay \$171 million. It has only repaid \$17 million of that amount, according to the lawsuit.