
New York Supreme Court

Appellate Division—Fourth Department

Matter of the Application of
JAMES ALLARD, Steuben County Sheriff,

Docket No.:
CA 25-00473

Petitioner/Plaintiff-Respondent,

– against –

COUNTY OF STEUBEN, THE STEUBEN COUNTY LEGISLATURE, SCOTT
J. VANETTEN, in his capacity as the Chair of the Steuben County Legislature,
and JACK K. WHEELER, in his Capacity as the County Manager
for the County of Steuben,

Respondents/Defendants-Appellants.

BRIEF FOR RESPONDENTS/DEFENDANTS-APPELLANTS

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QUESTIONS PRESENTED

Question 1: Did Supreme Court properly invalidate Steuben County Local Law No. 11 of 2023, which repealed an earlier local law that provided Petitioner with a form of indemnification that the County has no legal obligation to provide, on the sole basis that the Local Law was purportedly enacted in “bad faith”?

Answer: No. As Petitioner’s legal counsel admitted in open court, and as was expressly acknowledged by Supreme Court in the Decision and Order on appeal, Local Law No. 11 of 2023 is facially valid and constitutional, thus making it a legal impossibility to invalidate the enactment based upon the underlying motivations for the same, whatever they may or may not have been.

Question 2: Did Supreme Court properly deny the Respondents’ Motion for Sanctions, Costs and Attorney’s Fees?

Answer: No. Longstanding United States Supreme Court precedent establishes that the underlying motivations for a legislative enactment that is otherwise constitutional on its face are not subject to judicial scrutiny. Yet, invalidation of Local Law No. 11 of 2023 on that exact basis was the only relief that Petitioner continued to pursue until the end of the proceedings before Supreme Court. Accordingly, Respondents’ motion should have been granted on the ground that Petitioner’s “bad faith” enactment argument is frivolous, as that term is defined by State law.

NATURE OF THE CASE

The Record on Appeal in this matter tells a frustrating and disappointing story of a protracted effort on the part of the Petitioner and his legal counsel to obfuscate and distort beyond recognition the true nature of this case, which is exceedingly straightforward. Though Petitioner will almost certainly argue otherwise on appeal, the *only* legitimate legal issue that was before Supreme Court at the time of the Decision and Order is whether the Steuben County Legislature’s (hereinafter the “County Legislature”) enactment of Local Law 11 of 2023 (hereinafter “Local Law 11-2023”) via Resolution 183-23, which repealed an earlier local law (Local Law No. 4 of 2017) that provided entirely optional indemnification to Petitioner (*see* Public Officers Law § 18 [1] [b]), is valid, constitutional and is rationally related to a legitimate governmental objective. It is beyond dispute that it is.

Indeed, Petitioner’s counsel admitted in open court that Local Law 11-2023 is constitutional on its face, and that the sole basis for Petitioner’s claim has nothing to do with the County Legislature’s power to enact the law in order to repeal the prior, entirely optional, indemnification local law [R: 698-699]. Rather, Petitioner’s singular argument that Local Law 11-2023 should be invalidated is because it was purportedly enacted in “bad faith”. Specifically, according to Petitioner’s theory of the case, certain appointed County officials – none of whom have the ability to approve or reject proposed legislation, including the Local Law at issue here – acted

with “the illegitimate motive of punishing and ultimately undermining [him]” for his lack of cooperation with various requests and directives from other County administrative and legal personnel. In other words, Petitioner believes that the law was enacted solely because certain County officials do not like him.

In the first instance, as the Record on Appeal establishes in significant detail, this allegation is objectively false. However, even more troubling is the fact that, based upon longstanding United States Supreme Court (hereinafter “SCOTUS”) precedent, it is impossible for a litigant to challenge a facially constitutional legislative enactment, as Petitioner admits that Local Law 11-2023 is, based on the alleged underlying motivation for adopting the law. In turn, it is also impossible for a court to grant relief to a litigant on that basis without invading the providence of the legislative body and violating the separation of powers doctrine. Yet, inexplicably, both of those things happened here, causing the County to incur significant costs and legal fees to both defend a cause of action before Supreme Court that should have been dismissed out of hand and, now, to perfect and argue this appeal.

Accordingly, it is respectfully submitted that Supreme Court’s Decision and Order must be reversed to the extent that it invalidated Local Law 11-2023 on the basis of “bad faith”. Moreover, it should also be reversed to the extent that it denied the County Respondents’ motion for sanctions and attorney’s fees, as the “bad faith”

cause of action is nothing short of frivolous, that is, “completely without merit in law and [unable to] be supported by a reasonable argument for an extension, modification or reversal of existing law” (22 NYCRR 130-1.1 [c]).

STATEMENT OF FACTS RELEVANT TO THIS APPEAL

Though Petitioner will undoubtedly include in his responsive brief a lengthy recitation of perceived slights and poor relations with various County officials which, in his view, led to the “bad faith” repeal of his indemnification via Local Law 11-2023, the reality is that virtually none of those details are relevant to the outcome of this case, and amount to nothing more than a red herring designed to distract the Court from the relevant narrative here. That narrative is the story of the enactment of Local Law 11-2023, which Petitioner agrees affected a facially valid repeal of Petitioner’s optional indemnification formerly provided by Local Law No. 4 of 2017.

Contrary to what Petitioner would have this Court believe, however, the Local Law was *not* enacted because of interpersonal animosity, hurt feelings or an attempt to punish Petitioner. Rather, the County Legislature chose to repeal Petitioner’s indemnification due to the legitimate governmental concern that various acts and omissions by the Sheriff were creating the potential for significantly increased legal liability, which would be borne by the County’s taxpayers should a legal challenge to Petitioner’s conduct arise.

The Development of Local Law 11-2023

Though Petitioner had been involved in a number of questionable endeavors and transactions in his official capacity that have given County officials cause for concern since at least 2019 [R: *see in camera* submission 202-207], internal conversations regarding the possible need to repeal Petitioner's indemnification began in earnest shortly after June 22, 2023, when a Court Security employee filed with the County a complaint under the County's Policy Against Sex Discrimination & Sexual Harassment against a co-worker [R: *see in camera* submission at 178, 280].

The County's Policy, which applies to all County employees and personnel, provides that "[i]nvestigations will be conducted by the County's Compliance Officers, the County's legal counsel, and/or other impartial persons designated by the County" [R: 169]. Despite this, the Sheriff's Office maintains its own, independent sexual harassment policy [R: 172-174] under which it conducts separate investigations of complaints made to Sheriff's Office, in violation of the broader County Policy. Despite the fact that the Sheriff was informed in writing that he was not to conduct a parallel investigation into the June 22, 2023 complaint, he did so anyway, without the County's knowledge [R: 178, 190-195]. This lack of cooperation from the Sheriff was, and is, problematic for a variety of reasons,

including the fact that the Sheriff's Office policy does not comply with the most current state laws and regulations [R: 179, 207].

Thereafter, concerned about the potential liability associated with Petitioner's apparent refusal to comply with the requirements of the County Policy and his insistence on continuing to use the Sheriff's Office's own, outdated policy, Respondent County Manager Jack K. Wheeler began discussions with the County Legislature on repealing Petitioner's optional indemnification provided by Local Law No. 4 of 2017, first presenting this recommendation to the County Legislature's Public Safety & Corrections Committee on July 3, 2023. Subsequently, County Manager Wheeler's recommendation was formally drafted into a proposed local law, which eventually became Local Law 11-2023 [R: 161-163]. After a duly noticed public hearing held on August 28, 2023 [R: 99, 105-106], and a robust debate between County Legislators on the merits of repealing Petitioner's indemnification that occurred the following month, on September 25, 2023 [R: 143-145], the County Legislature narrowly enacted Local Law 11-2023 repealing the Sheriff's indemnification by a vote of 10-7.

Significantly, Petitioner does not dispute the County Legislature's authority to enact Local Law 11-2023, nor does he dispute that the law is facially valid and constitutional [R: 698-699]. Indeed, it would be legally impossible for him to do so, as counties have no duty to provide indemnification to county sheriffs. As the Public

Officers Law expressly provides, local governments are required to defend and indemnify all of their “employees”, which, under the statute, includes all officers and elected officials, “*but shall not include the sheriff of any county or an independent contractor*” (Public Officers Law § 18 [1] [b] [emphasis added]).

Petitioner’s Challenge to the Validity of Local Law 11-2023

Just three days later after the enactment of Local Law 11-2023, on September 28, 2023, Petitioner commenced the underlying proceeding by Order to Show Cause and Verified Petition pursuant to CPLR article 78, in which Petitioner alleged, among other things,¹ that the Local Law 11-2023 should be invalidated, not because of any procedural error or legal/constitutional defect, but because the Sheriff believes that the Local Law was enacted in “bad faith” as a means to punish him for his conduct in his capacity as Sheriff [R: 11-28, 67-69]. The New York State Sheriffs’ Association also applied for *amicus curiae* status in order to submit a memorandum of law in support of the Verified Petition, which the County did not oppose [R: 72-78].

¹ The Verified Petition also made a number of allegations with respect to supposed defects in the language and operation of a separate resolution of the County Legislature, Resolution No. 186-23 [R: 21-25], which, in lieu of the County continuing to provide Petitioner with gratuitous indemnification, required Petitioner to post an undertaking in the form of a \$1M/\$3M liability insurance policy [R: 146-147]. Ultimately, however, the County Legislature rescinded that resolution by the adoption of Resolution No. 224-23 [R: 84-85, 165], thus mooting any issues associated with the undertaking. The validity of Resolution No. 224-23 is not at issue on appeal.

Subsequently, the County joined issue, asserting several affirmative defenses, including that Public Officers Law § 18 expressly places the authority to indemnify Petitioner, or not, in the sole discretion of the County Legislature, and that the County had several legitimate reasons for enacting Local Law 11-2023, including that “[Petitioner’s] own conduct has, in the County’s judgment, created an unacceptable level of potential liability for the County to bear in full” [R: 82-86].

Several months of motion practice then ensued. Motions made in this case included a motion by Petitioner to conduct limited discovery in the form of deposing County Legislator Hilda Lando. Supreme Court granted this over the County’s objection that it was unnecessary to permit the deposition, as anything that would come of it would be irrelevant to the question of whether Local Law 11-2023 was valid, and would unduly delay the resolution of the Verified Petition on its merits [R: 447-473; *see also* R: Vol. 3, submitted under seal]. And although the deposition was conducted [R: *see generally* Vol. 3], as expected, it contained nothing of any real value to Petitioner’s case [R: 418-421]

Motion practice in this case also included a motion by the County for sanctions, costs and attorney’s fees against Petitioner and his legal counsel [R: 435-676]. In the motion, the County argued, among other things, that because of the fact that it is undisputed that Local Law 11-2023 is valid and constitutional, Petitioner’s “bad faith” argument was utterly meritless from the outset of these proceedings. This

is the case because of the rule articulated in SCOTUS's holding in *United States v O'Brien*, which specifically states that “[c]ourt[s] will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.” (391 US 367, 383 [1968]).

**The August 22, 2024 “Evidentiary Hearing” and
Supreme Court’s Decision and Order**

On August 22, 2024, a full evidentiary hearing pursuant to CPLR 7804 (h) was held on the merits of the Verified Petition and, to a lesser extent, on the County’s motion for sanctions [R: 694-765]. Like many aspects of the proceedings before Supreme Court in this matter, the hearing, which was apparently for the purpose of fleshing out Petitioner’s “bad faith” argument, was unusual and arguably improper, as was noted in correspondence from the County’s litigation counsel to the court prior to the return date, to which the court offered no reply [R: 433-434], as well as in multiple objections made by the County’s counsel during the hearing itself [R: 711-712, 715-716, 763-764].

Indeed, at the time of the hearing, there were no material issues of fact to be tried, inasmuch as Petitioner never disputed the validity of Loca Law 11-2023, which had the effect of rendering completely irrelevant his “bad faith” enactment theory of the case. Additionally, Supreme Court never provided any formal documentation notifying the parties in writing, either via letter or Order, that an evidentiary hearing would be held on the Verified Petition’s return date, which is especially odd,

considering that neither party requested that such a hearing be held. In any event, the hearing, which went forward over the County's repeated objections, essentially provided the Petitioner an opportunity to testify at length, again, over the County's objections, about myriad matters that held absolutely no bearing on the validity of Local Law 11-2023.² After the hearing, the parties submitted closing briefs [R: 766-786], which were followed by Supreme Court's inherently contradictory and erroneous Decision and Order [R: 5-10].

In the Decision and Order, Supreme Court appears to have ignored hundreds of pages of affidavits and record evidence submitted by the County to substantiate both the constitutionality and rationality of Local Law 11-2023, instead choosing to adopt wholesale Petitioner's "bad faith" theory as to why the Local Law is supposedly invalid. Initially, Supreme Court agreed that Local Law 11-2023 "repealing the County's indemnification of the Sheriff is not prohibited, but rather expressly allowed by the governing state statute" [R: 8]. However, immediately after this acknowledgement, the court engaged in a confounding analysis in which it (a) drew unsupported, negative inferences against the County regarding supposed

² While the County acknowledges that hearings pursuant to CPLR 7804 (h) are generally a matter of judicial discretion, it is respectfully submitted that the August 22, 2024 evidentiary hearing was completely improper and served no purpose relevant to Supreme Court's analysis of the facial validity of Local Law 11-2023, which Petitioner *never disputed*. All issues of fact, to the extent that there were any, were already presented and fully argued in great detail both in the parties' pleadings and in the extensive administrative record before the court. Simply put, there was no need for the hearing. It never should have occurred and, as a result, all of Petitioner's testimony should be either stricken from the record or, at the very least, given little regard by this Court.

occurrences during executive sessions of the County Legislature, despite the fact that the administrative record before the court clearly establishes that the County Legislature’s enactment of Local Law 11-2023 was procedurally proper [R: 99, 105-106, 142-144, 158-163]; (b) grossly misinterpreted prior precedent of this Court as supportive of the idea that facially constitutional legislation can be nullified based on “bad faith”; and (c) completely ignored controlling United States Supreme Court precedent, which unequivocally holds that the underlying motivations for the enactment of a facially constitutional statute are irrelevant to a court’s analysis of the same.

Supreme Court’s flawed and contradictory reasoning ultimately resulted in its adoption of Petitioner’s patently incorrect position that the Local Law was a “bad faith” enactment that should be invalidated [R: 7-10]. It is submitted that this was clear error requiring reversal by this Court. Accordingly, the County and Respondent Van Etten now appeal [R: 1].

ARGUMENT

POINT I

SUPREME COURT’S INVALIDATION OF LOCAL LAW 11-2023 BASED ON “BAD FAITH” WAS CLEAR ERROR, AS THE LOCAL LAW IS FACIALLY CONSITUTIONAL AND SERVES A LEGITIMATE GOVERNMENTAL INTEREST

A. Because Local Law 11-2023 Is Facially Constitutional, Respondents’ Underlying Motivations for Enacting It are Irrelevant

Within the first few sentences of her opening remarks at the August 22, 2024 “evidentiary hearing” before Supreme Court, Petitioner’s counsel effectively confirmed that Petitioner’s “bad faith” justification for invalidating Local Law 11-2023 is wholly without merit. Specifically, Petitioner’s counsel stated that

Respondents . . . want us all to believe, actually, that this case is about whether the legislature had the power to repeal Local Law Number 4 of 2017. *It's not about that. The point is not the power. It is the basis for which the power is asserted.*

* * *

So right out of the gate petitioner here, the Sheriff, *we’ve conceded that of course the legislature, they can rescind indemnification* in the abstract. But the legislature cannot do that as an expression of bad faith, as an expression or as an action to punish the Sheriff.

[R: 699 (emphasis added)]. As the foregoing makes clear, Petitioner’s counsel’s expressly conceded in open court that the County Legislature’s does, in fact, possesses the authority to enact Local Law 11-2023 repealing Petitioner’s indemnification, and that Petitioner’s case is *only* about the *underlying motivation* of the enactment (*i.e.* supposed “bad faith”). It is submitted that these statements are tantamount to an admission that Local Law No. 11-2023 is facially valid and constitutional on its face (which is objectively true, *see infra*), which, in light of long-established United States Supreme Court precedent, is, in effect, an admission that the case must be resolved in the County’s favor.

Indeed, for over a century, SCOTUS has held that

“[i]t is a familiar principle of constitutional law that *this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive*. As the Court long ago stated: ‘The decisions of this court from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted’”

(*United States v O’Brien*, 391 US 367, 383 [1968] [emphasis added], quoting *McCray v United States*, 195 U.S. 27, 56 [1904]; see *Festa v New York City Dept. of Consumer Affairs*, 12 Misc3d 466, 477 [Sup Ct NY County 2006] [citing to *O’Brien* and holding that “a law will not be struck down on the basis of an alleged illicit legislative motive, if it is otherwise constitutional.”]; *Barr v City of Syracuse*, 97 Misc2d 453, 460 [Sup Ct Onondaga County 1978] [“Neither the motive of the members of the municipal legislative body nor the influence under which they act can be shown to nullify an ordinance duly passed in legal form within the scope of their power”]).

Simply stated, the rule articulated by the *O’Brien* Court and subsequent New York State case law is that if a newly enacted law is constitutional and valid on its face, a court lacks the authority to trammel on a governing body’s legislative prerogative and invalidate the law based solely upon allegations that it was enacted

because of an “alleged illicit legislative motive” (*i.e.* “bad faith”).³ Here, then, even if evidence *did* exist to show that the County Legislature enacted the repeal of Petitioner’s indemnification because of some personal animus toward him – it does not – Supreme Court still should have summarily dismissed the Verified Petition, inasmuch as the “bad faith” argument on which Petitioner’s entire case is built is nothing more than a red herring designed to draw attention away from the *actual* legal issue at hand, namely, the facial validity and constitutionality of Local Law 11-2023, which is undisputed. It is submitted that, on this basis alone, Supreme Court’s ruling should be reversed, and the Verified Petition should be dismissed.

While a substantive constitutional analysis of Local Law 11-2023 is unnecessary in light of the acknowledgements by Petitioner and Supreme Court that the County Legislature possesses the authority to enact a repeal of Petitioner’s indemnification, it is worth noting that the ability of any county legislature to choose whether or not to indemnify its county sheriff in the first place, and/or to repeal a

³ Instead of articulating and applying this rule, Supreme Court chose to cite appellate division case law for the proposition that local laws may be overturned upon a clear showing of bad faith. However, it is submitted that the court’s citations are inapposite to the instant case, as none of the cited cases apply that concept to invalidate the enactment of an otherwise constitutional local law [R: 8, 10] (*see Matter of Faith Temple Church v Town of Brighton*, 17 AD3d 1072 [4th Dept 2005] [discussing bad faith in context of taking by eminent domain]; *Matter of Penale v County of Niagara*, 170 AD2d 965 [4th Dept. 1991] [discussing same in context of decision to abolish employment position]; *Staller v County of Suffolk*, 139 AD2d 726 [2nd Dept 1988] [discussing rationality of administrative decision to disallow redemption of real property after tax foreclosure]). Indeed, our research was unable to uncover any judicial decision binding on this Court that would allow a properly enacted local law to be overturned due to underlying bad faith motives and, even if such a case did exist, it would be superseded by the SCOTUS holding in *O’Brien*.

prior local law that provides for such indemnification, is robustly supported by both statute and case law.

It is well established that “local governments have the authority to adopt, amend, change or supersede laws so long as the ‘new’ legislation is not inconsistent with the provisions of the [New York State] Constitution or any general law” (*Matter of Boynton Suites L.L.C. v Bd. of Assessment Review of City of Plattsburgh*, 274 AD2d 926, 927 [3d Dept 2000], quoting *Matter of Wright v Town Bd. of Town of Ticonderoga*, 169 AD2d 190, 193 [3d Dept 1991]; see Municipal Home Rule Law § 10 [1] [ii] [a]), a “general law” being a “[s]tate statute which in terms and effect applies alike to all counties” (*Matter of Wright v Town Bd. of Town of Ticonderoga*, 169 AD2d at 193 n 2). Local Law 11-2023 unquestionably satisfies these requirements.

First, Local Law 11-2023 is not inconsistent with the State Constitution, inasmuch as there is no provision contained therein that is inconsistent with a county’s ability to enact a local law offering indemnification to its sheriff,⁴ nor is there any constitutional provision that prohibits the repeal of such a local law, once

⁴ Interestingly, “[p]rior to January 1, 1990, article XIII (§ 13[a]) of the New York State Constitution expressly stated that a ‘county shall never be made responsible for the acts of the sheriff’. However, effective January 1, 1990, the State Constitution was amended by deleting this language”, thus affording counties the discretion to pass local laws to offer such indemnification (*see Santiamagro v County of Orange*, 226 AD2d 359 [2d Dept 1996]). The County did exactly this when it enacted Local Law No. 4 of 2017 [R: 91-94], which was subsequently repealed by LL 11-2023 [R: 161-163].

enacted. Furthermore, the Local Law is not only not inconsistent with any generally applicable state law, it is, in fact, fully *consistent* with the New York State Public Officers Law, which requires local governments to defend and indemnify all of their “employees”, which, under the statute, includes all officers and elected officials, “*but shall not include the sheriff of any county or an independent contractor*” (Public Officers Law § 18 [1] [b]). Thus, the County Legislature’s enactment of Local Law 11-2023 repealing Local Law No. 4 of 2017, which previously exercised the County’s local option to indemnify the Sheriff, is undoubtedly permissible and valid.

B. The Enactment of Local Law 11-2023 Is Rationally Related to a Legitimate Governmental Objective

While Petitioner initially brought his challenge to Local Law 11-2023 as a CPLR article 78 proceeding, one of the only aspects of Supreme Court’s analysis with which the County agrees is the court’s decision to convert the matter from an article 78 proceeding to a declaratory judgment action, which is the appropriate vehicle to review the validity of a legislative act (*see Matter of Lakeland Water Dist. v Onondaga County Water Auth.*, 24 NY2d 400, 406 [1969]; *Lamar Cent. Outdoor, LLC v State of New York*, 64 AD3d 944, 949 [3d Dept 2009] *see also* CPLR 103).

Because the nature of this proceeding has been so converted, the appropriate judicial standard of review on appeal is no longer the “arbitrary and capricious” standard used in CPLR article 78 proceedings (*see* CPLR 7803 [3]). Rather, because it is undisputed that Local Law 11-2023 “does not involve a suspect class or interfere

with the exercise of a fundamental right, the scope of judicial review is limited to whether the [enactment] is rationally related to a legitimate government objective” (*Tilles Inv. Co. v Gulotta*, 288 AD2d 303, 304 [2d Dept 2001]). And while this standard of review is similar to article 78’s “arbitrary and capricious” standard, it sets an even lower bar for the County to prevail, as “it is ‘the most relaxed and tolerant form of judicial scrutiny’” (*Myers v Schneiderman*, 30 NY3d 1, 15 [2017], quoting *Dallas v Stanglin*, 490 U.S. 19, 26 [1989]). Indeed, “[r]ational basis involves a strong presumption that the challenged legislation is valid, and a party contending otherwise bears the heavy burden of showing that a statute is so unrelated to the achievement of any combination of legitimate purposes as to be irrational” (*Id.* [internal quotation marks and citation omitted]). As is particularly relevant here, the rational basis test “is not a license for the courts to judge ‘the wisdom, fairness, or logic of legislative choices’” (*Tilles Inv. Co. v Gulotta*, 288 AD2d at 304-305, quoting *Federal Communications Commn. v Beach Communications, Inc.*, 508 US 307, 313–314 [1993]). In fact, the standard is so deferential to the governing body that “courts may even hypothesize the Legislature’s motivation or possible legitimate purpose” for the enactment (*Affronti v Crosson*, 95 NY2d 713, 719 [2001]).

Here, it is submitted that, instead of applying this deferential standard and finding that there are multiple, legitimate governmental objectives served by the enactment of Local Law 11-2023 (*see* Points I.B.1 and 2, *infra*), it would appear that

Supreme Court inappropriately inverted the analysis, choosing instead to piece together a line of reasoning capable of producing the conclusion that the Local Law lacked a rational basis.

Here, the crux of the Sheriff's claim that the enactment of Local Law 11-2023 was irrational is that Respondent Van Etten, the then-Chairman of the County Legislature, and certain other non-legislative County officials disliked him.⁵ Aside from the fact that his allegations are grossly overstated and, in some cases, blatantly misstated, even if it were the case that some level of animosity exists between the parties captioned in this proceeding, that has little-to-no relevance to the analysis of whether Local Law 11-2023 is rationally related to a legitimate governmental objective. The only way that would be the case is if the enactment completely lacked *any* legitimate governmental objective, whether stated or unstated, and was motivated *solely* by animus toward the Sheriff (*cf. Matter of Lamb v Town of Esopus*, 35 AD3d 1004, 1005 [3d Dept 2006] ["Petitioner bore the burden of establishing that the elimination of her position was motivated by bad faith or was a subterfuge,

⁵ Significantly, Respondent Van Etten was the only individual with the power to cast a vote on Resolutions and Local Laws who is mentioned in the Verified Petition/Complaint as being allegedly motivated to enact Local Law 11-2023 because of animus toward the Sheriff. There are *seventeen* (17) members of the Steuben County Legislature (<https://www.steubencountyny.gov/429/County-Legislature> [last accessed 7/31/2025]), *seven* (7) of whom voted *against* the repeal of the Sheriff's indemnification [R: 144]. Thus, it is submitted that the Sheriff's accusations of bad faith should also be dismissed due to the fact that it is illogical to impute allegations of animus lodged against one individual onto the entire County Legislature, which robustly debated Local Law 11-2023 before narrowly approving it [R: 143-144].

which can be accomplished by eliminating respondent's bona fide reasons"). And as the Record on Appeal makes abundantly clear, this notion is absurd.

As multiple of the County's affiants have stated, the repeal of the Local Law that previously obligated the County to indemnify the Sheriff (*i.e.* Local Law No. 4 of 2017) by Local Law 11-2023 was motivated by a genuine desire to protect County taxpayers from the potential of having to shoulder the burden of significant legal liability due to various missteps the Sheriff has made over the years [R: 141-143, 207, 281]. The Certified Record and the County's supporting papers in opposition to the Verified Petition/Complaint set forth numerous examples of such conduct on the part of the Sheriff [R: 204, 237-240]. In the interest of brevity, two of the most glaring examples are highlighted below.

1. A Kickback in Exchange for Vendor Contract Extension

On May 11, 2021, the Sheriff appeared before the County Legislature's Public Safety and Corrections Committee in a public session to request authorization to approve an amendment to another vendor contract to extend the agreement for an additional five years [R: 203-204]. During his presentation, the Sheriff shared that the vendor "will also donate additional equipment for the safety and security of the Jail valued at \$68,773" [R: 227-228].

The Committee approved the Sheriff's authorization request, but after reviewing the minutes of the meeting, County officials engaged an e-mail discussion

about the aforementioned “donation” of equipment associated with the contract extension, and concluded that that the vendor’s proposal, which was touted by the Sheriff, could be characterized as an impermissible *quid pro quo*, or “kickback” [R: 229-233]. This situation required the rescission of a contract brought forward by the Sheriff in order to avoid the potential of legal liability, which required a special meeting of the Committee to be held the following week in order to vote rescind its approval and reject the proposal [R: xxx (*see id.* at Exhibit “8”)].

2. The June 22, 2023 Sexual Harassment/Discrimination Complaint

Perhaps the most troubling incident that precipitated the introduction of Local Law 11-2023 began on June 22, 2023, when a Court Security employee filed with the County’s Compliance and Personnel Officer Nathan Alderman, a complaint under the County’s October 2018 Policy Against Sex Discrimination & Sexual Harassment (hereinafter the “County Policy”) against a co-worker [R: 178, 280].

The County Policy, which applies to *all* County employees and personnel, expressly provides that “[i]nvestigations will be conducted by the County’s Compliance Officers, the County’s legal counsel, and/or other impartial persons designated by the County” [R: 171]. Nowhere in the County Policy are individual departments permitted to have separate sexual harassment/discrimination policies, or to conduct their own investigations [R: 166-171, 280]. Despite this, the Sheriff’s Office continues to maintain its own, independent sexual harassment policy [R: 172-

174], and conducts separate investigations of complaints from Sheriff's Office personnel, in violation of the County Policy.

Unbeknownst to the County, this is precisely what occurred in connection with the June 22, 2023 complaint, even after the Sheriff was informed in writing that he was not to conduct a parallel investigation into the June 22, 2023 complaint [R: 178, 190-195]. This lack of cooperation from the Sheriff was, and is, problematic for a variety of reasons, not the least of which is the fact that multiple County officials, as well as the independent investigator – an attorney from Phillips Lytle, LLP – hired by Compliance Officer Alderman to conduct the investigation under the County Policy, have all concluded that the Sheriff's Office policy does not comply with the most current state laws and regulations governing the content of such policies [R: 179, 207; *see in camera* submission at 57].

On July 7, 2023, the Sheriff sent a report of his unauthorized, parallel investigation of this matter to County Manager Wheeler, which, included, among other things, a statement from the Sheriff's Office investigator, in which he reminded the complainant of the "chain of command" [R: 282; *see in camera* submission at 51, 105]. As County Manager Wheeler correctly observes in his Affidavit, a statement like this can easily be viewed as an intimidation tactic to dissuade the complainant from bringing complaints to the Compliance Officers, in favor of keeping complaints in-house [R: 282].

The refusal of the Sheriff to defer to the Compliance Officers who are tasked with conducting sexual harassment investigations across all County departments, and his insistence on conducting a parallel investigation under his department's own, outdated policy is certainly a cause for serious concern. However, such concern pales in comparison to the seriousness of the conclusions reached by the independent investigator hired by Compliance Officer Alderman to conduct the official County investigation into the June 22, 2023 complaint.

While the vast majority of the investigative report contains sensitive personal information that must remain confidential,⁶ in general terms, not only did the investigator find the complaint to be substantiated, but based upon the numerous interviews that were conducted, he further concluded that the overall culture of the Sheriff's Office is one of retaliation, intimidation, and a willingness to ignore or excuse harassing and discriminatory conduct [*see in camera* submission at 85-86]. The investigator further noted that the County may be able to limit its liability in the case of future violations if it were not required to indemnify the Sheriff [R: 207; *see in camera* submission at 80-81]

⁶ The County's full investigative report is incorporated into the Record on Appeal at R: 139. However, that portion of the Record has been submitted to the Court under separate seal for its *in camera* review.

As the foregoing makes clear, it cannot be seriously argued that the County Legislature's decision to enact Local Law 11-2023 and repeal its obligation to indemnify the Sheriff pursuant to former Local Law No. 4 of 2017, was irrationally based on animus toward the Sheriff and nothing more. To the contrary, the decision was based upon a pattern of acts and omissions by the Sheriff that consistently raised the specter of tremendous legal liability that the County's taxpayers would ultimately have to bear, should a legal challenge to the Sheriff's conduct arise.⁷ Accordingly, it is submitted that the County's repeal of the Sheriff's indemnification is entirely rational and serves a legitimate governmental objective. Supreme Court's decision to the contrary should be reversed.

POINT II

THE LOWER COURT ABUSED ITS DISCRETION IN FAILING TO AWARD ANY OF THE SANCTIONS, COSTS AND ATTORNEY'S FEES FOR PLAINTIFFS-RESPONDENTS' FRIVOLOUS CONDUCT

State regulations dictate that "[t]he court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court ... costs in the form of reimbursement for actual expenses reasonably incurred and reasonable

⁷ Significantly, the fear of increased legal liability resulting from Petitioner's conduct in his official capacity has already been realized. Specifically, the Sheriff's Office employee who made the above-referenced June 22, 2023 sexual harassment complaint did eventually bring a legal action against Petitioner in specific and the County Sheriff's Office in general. On March 25, 2024, the County Legislature approved a settlement agreement with the complainant in that case via Resolution 085-24, in the amount of \$25,000. A copy of said Resolution shall be furnished to the Court upon request.

attorney’s fees, resulting from frivolous conduct” (22 NYCRR 130-1.1 [a]). Additionally, “or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct” (*Id.*).

As relevant here, conduct is “frivolous” if it is, among other things “completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law” (22 NYCRR 130-1.1 [c]). “In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues . . . whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party” (*Id.*; see *Divito v Fiandach*, 160 AD3d 1404, 1405 [4th Dept 2018]). On review, “[a]wards of sanctions [or the lack thereof] should not be disturbed absent an abuse of discretion” (*Navin v Mosquera*, 817 N.Y.S.2d 705, 706-07 [3rd Dept 2006]).

Here, it is respectfully submitted that Supreme Court abused its discretion by denying the County’s motion to impose sanctions on Petitioner, as it is beyond dispute that his “bad faith” theory of the case – *i.e.*, the *only* theory that Petitioner has ever advanced as a justification to invalidate Local Law 11-2023 [R: 19-20, 697-707] – was completely without merit in law from the very outset of this proceeding, a fact which the County’s litigation counsel raised during a court appearance in

January 2024, some seven months before the August 2024 hearing on the merits of this case was held [R: 469]. Indeed, the Sheriff never attempted to dispute the facial constitutionality of the law, and eventually conceded that it was a valid enactment [R: 699] because, again, State law makes clear that the County has no obligation to indemnify Petitioner (*see* Point I.A., *supra*). Furthermore, the utter meritlessness of the argument is confirmed by SCOTUS’s 1968 holding in *United States v O’Brien*, which unequivocally states that “[i]t is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive” (391 US 367, 383 [1968]).

Despite the fact that Petitioner’s sole remaining argument is, and always has been devoid of any legal merit, the parties have been litigating this case for nearly two years, causing the County to unnecessarily expend a significant amount of taxpayer dollars to fend off a lawsuit that, in retrospect, appears to have functioned more as a platform for the Sheriff to bolster his public image in the media and to unfairly demonize a number of diligent, hardworking County officials, rather than as a legitimate legal challenge. Accordingly, it is submitted that this Court should not countenance the actions of Petitioner and his counsel in maintaining this frivolous lawsuit, and should correct Supreme Court’s abuse of discretion by imposing sanctions and awarding the County its reasonable attorney’s fees and costs, in addition to dismissing the Verified Petition.

CONCLUSION

For all of the foregoing reasons, it is submitted that this Court should reverse the Decision & Order of Supreme Court and confirm the validity of Local Law 11-2023 repealing a prior local law that provided optional indemnification to Petitioner. The Local Law is undisputedly valid and constitutional on its face, and the Record on Appeal establishes that it was enacted for an eminently rational, legitimate governmental interest. It is further submitted that the Court should reverse Supreme Court's denial of the County's motion for sanctions, costs and attorney's fees and award them to the County due to the frivolous nature of Petitioner's singular argument in support of the Verified Petition.

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Binghamton, New York

Respectfully submitted,



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