No. 25-

IN THE

Supreme Court of the United States

THE COUNTY OF ROCKLAND AND
EDWIN J. DAY, IN HIS INDIVIDUAL AND
OFFICIAL CAPACITY AS ROCKLAND
COUNTY EXECUTIVE,

Petitioners,

v.

THE STATE OF NEW YORK, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

THOMAS E. HUMBACH
County Attorney
LARRAINE S. FEIDEN
Principal Assistant
County Attorney
Counsel of Record
11 New Hempstead Road
New City, NY 10956
(845) 638-5099
feidenl@co.rockland.ny.us

Counsel for Petitioners

388814

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

This petition presents federal constitutional questions concerning Equal Protection and voting-rights limits on a state's authority to selectively restructure local election systems for some counties while exempting others.

1. Whether the New York Court of Appeals' decision upholding New York's Even Year Election Law presents a justiciable federal question under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

2. Whether New York's Even Year Election Law violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

3. Whether the Equal Protection Clause prohibits a state from administering local election laws in a non-uniform manner that imposes disparate burdens on similarly situated counties and county officers.

4. Whether a state election law that consolidates local elections into even-year ballots for some counties—but not others—imposes constitutionally cognizable burdens on voting, political speech, and association that must be meaningfully weighed under the Anderson–Burdick framework.

PARTIES TO THE PROCEEDING

The Petitioners are THE COUNTY OF ROCKLAND and EDWIN J. DAY, in his individual and official capacity as Rockland County Executive.

The Petitioners are hereinafter referred to collectively as "the Petitioners".

The Respondents are as follows:

THE STATE OF NEW YORK,

KATHLEEN HOCHUL, in her capacity as Governor of the State of New York,

DUSTIN M. CZARNY, in his capacity as Commissioner of the Onondaga County Board of Elections,

KEVIN P. RYAN, in his capacity as Commissioner of the Onondaga County Board of Elections,

MICHELLE LAFAVE, in her capacity as Commissioner of the Jefferson County Board of Elections,

JUDE SEYMOUR, in his capacity as Commissioner of Jefferson County Board of Elections,

MARGARET MEIER, in her capacity as Commissioner of the Jefferson County Board of Elections,

THE JEFFERSON COUNTY BOARD OF ELECTIONS,

JOHN ALBERTS, in his capacity as Commissioner of the Suffolk County Board of Elections,

BETTY MANZELLA, in her capacity as Commissioner of the Suffolk County Board of Elections,

THE SUFFOLK COUNTY BOARD OF ELECTIONS,

JOSEPH KEARNEY, in his capacity as Commissioner of the Nassau County Board of Elections,

JAMES SCHEUERMAN, in his capacity as Commissioner of the Nassau County Board of Elections,

THE NASSAU COUNTY BOARD OF ELECTIONS,

LOUISE VENDEMARK, in her capacity as Commissioner of the Orange County Board of Elections,

COURTNEY CANFIELD GREENE, in her capacity as Commissioner of the Orange County Board of Elections,

THE ORANGE COUNTY BOARD OF ELECTIONS,

ORANGE COUNTY REPUBLICAN COMMITTEE,

ORANGE COUNTY DEMOCRATIC COMMITTEE,

CONSERVATIVE PARTY OF NEW YORK STATE, and

NEW YORK WORKING PARTY.

The Respondents are hereinafter referred to collectively as "the Respondents".

RELATED PROCEEDINGS

Supreme Court of the State of New York

Consolidated action challenging Chapter 741 of the Laws of 2023 of the State of New York (the "Even Year Election Law"):

County of Onondaga, et al. v. *The State of New York, et al.*
Index No.: 003095/2024 *(Action No. 1)*

The County of Nassau, et al. v. The State of New York, et al.
Index No.: 605931/2024 *(Action No. 2)*

The County of Oneida, et al. v. The State of New York, et al.
Index No.: EFCA2024-000920 *(Action No. 3)*

County of Rensselaer, et al. v. The State of New York, et al.
Index No.: EFCA2024-276591 *(Action No. 4)*

Jason Ashlaw, et al. v. The State of New York, et al.
Index No.: EF2024-00001746 *(Action No. 5)*

County of Rockland, et al. v. The State of New York
Index No.: 032196/2024 *(Action No. 6)*

Steven M. Neuhaus, individually, and as a voter in his capacity as Orange County Executive, et al. v. Kathleen Hochul, in her capacity as Governor of the State of New York, et al.
Index No.: 004023/2024 *(Action No. 7)*

The County of Dutchess, et al. v. The State of New York, et al.
Index No.: 2024-51659 *(Action No. 8)*

Judgment entered October 8, 2024.

Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department:

The County of Onondaga et al., Respondents, v. *The State of New York et al., Appellants, et al., Defendant. (Action No. 1)*

The County of Nassau et al., Respondents, v. *The State of New York et al., Appellants. (Action No. 2)*

The County of Oneida et al., Respondents, v. *The State of New York et al., Appellants. (Action No. 3)*

The County of Rensselaer et al., Respondents, v. *The State of New York et al., Appellants. (Action No. 4)*

Jason Ashlaw et al., Respondents, v. *The State of New York et al., Appellants, et al., Defendants. (Action No. 5)*

The County of Rockland et al., Respondents, v. *The State of New York, Appellant. (Action No. 6)*

Steven M. Neuhaus, individually and as a voter and in his capacity as Orange County Executive, et al., Respondents, v. *The State of New York et al., Appellants, et al., Defendants. (Action No. 7)*

The County of Dutchess et al., Respondents, v. *The State of New York et al., Appellants. (Action No. 8)*

Docket No.: 415 CAE 25-00494
Judgment entered May 7, 2025.

Court of Appeals of the State of New York

The County of Onondaga et al., Plaintiffs-Appellants, v. *The State of New York et al., Defendants-Respondents, and Kevin P. Ryan, in his capacity as Commissioner of the Onondaga County Board of Elections, Defendant-Appellant (Action No. 1)*

The County of Nassau et al., Plaintiffs-Appellants, v. *The State of New York et al., Defendants-Respondents. (Action No. 2)*

The County of Oneida et al., Plaintiffs-Appellants, v. *The State of New York et al., Defendants-Respondents. (Action No. 3)*

County of Rensselaer et al., Plaintiffs-Appellants, v. *The State of New York et al., Defendants-Respondents. (Action No. 4)*

Jason Ashlaw et al., Plaintiffs-Appellant, and Robert Matarazzo, et al., Plaintiffs v. *State of New York et al., Defendants-Respondents, et al. and Michelle Lefave, in her capacity as Commissioner of the Jefferson County Board of Elections, Defendants. (Action No. 5)*

County of Rockland et al., Plaintiffs-Appellants, v. *The State of New York, Defendant-Respondent. (Action No. 6)*

Steven M. Neuhaus, individually and as a Voter and in his Capacity as Orange County Executive, et al., Plaintiffs-Appellants, v. *Kathleen Hochul, in her capacity as Governor of the State of New York, et al., Defendants-Respondents. (Action No. 7)*

County of Dutchess et al., Plaintiffs-Appellants, v. *The State of New York et al., Defendants-Respondents. (Action No. 8)*

No.: 66
Judgment entered October 16, 2025.

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF APPENDICES

Table of Appendices

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Constitutional Provisions

Statutes and Rules

PETITION FOR WRIT OF CERTIORARI

Petitioners County of Rockland and Edwin J. Day, in his individual and official capacity as Rockland County Executive, respectfully petition this Court for a writ of certiorari to review the final judgment of the New York Court of Appeals.

OPINIONS/DECISIONS BELOW

The Supreme Court of the State of New York, County of Onondaga, declared the Even Year Election Law unconstitutional and enjoined its enforcement. The order and judgment reported at *County of Onondaga v. State of New York, No. 003095/2024, 2024 NY Slip Op 24272* was entered on October 8, 2024. (86 Misc 3d 214 [Sup Ct, Onondaga County 2024]); 35a-69a. On appeal, the Appellate Division, Fourth Department, by Order entered on May 7, 2025, reversed the judgment of the Supreme Court and held that the statute does not violate the New York State Constitution. The decision is reported at *County of Onondaga v. State of New York*, 2025 NY Slip Op 02818. (238 A.D.3d 1535 [4th Dept 2025]; 15a-34a. The Court of Appeals, at *County of Onondaga v State of New York*, NY3d, 2025 NY Slip Op 05737 [2025], (*County of Onondaga v State of NY*, ___NY3d___, 2025 NY Slip Op 05737 [2025]) ; 1a-14a affirmed the Appellate Division's decision, upholding the Even Year Election Law and rejecting the constitutional challenge, thus reversing the Supreme Court decision declaring the measure constitutional.

JURISDICTION

The New York Court of Appeals entered its final judgment on October 16, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a). This petition is timely under Supreme Court Rule 13.

CONSTITUTIONAL PROVISION AT ISSUE

The Fourteenth Amendment, Section 1 of the Constitution states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS AT ISSUE

42 U.S.C.S. §1983. Civil action for deprivation of rights states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by

> the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

STATEMENT OF THE CASE

I. Factual Background

In 2023, the New York Legislature enacted the Even Year Election Law (EYEL) to consolidate certain elections for county and town offices with even year elections for state and federal offices. Petitioners, along with several other counties with charter provisions setting local elections for odd-numbered years, challenged the constitutionality of the EYEL on the ground that the statute violates the New York State and United States Constitutions and common law.[1]

---

1. Not all the plaintiffs' alleged federal constitutional violations.

II. Proceedings Below

Following enactment of the statute, the County of Onondaga, the Onondaga County Legislature, and the County Executive commenced an action in the Supreme Court of the State of New York, Onondaga County, challenging the constitutionality of the of the law. The plaintiffs alleged that the statue violated provisions of the New York Constitution governing home rule and the structure of local government and sought declaratory and injunctive relief preventing its enforcement. Seven other counties (and some towns) including Rockland County followed suit. Rockland County's complaint also alleged federal constitutional violations.

Each complaint sought a declaration that the EYEL is unconstitutional and that the provisions of the county charters that conflict with the EYEL are valid, as well as an injunction against enforcement of the EYEL. The complaints were consolidated in Supreme Court, Onondaga County, and defendants (primarily the State of New York and the Governor of the State of New York) moved to dismiss.

On October 8, 2024, Supreme Court denied the motions, declared the EYEL unconstitutional, and enjoined the defendants from enforcing the statute (86 Misc 3d 214 [Sup Ct, Onondaga County 2024]). That court held that under Article IX of the State Constitution, "[c]ounties have the constitutional right to set their own terms of office", that the EYEL is not a general law by which the State may "invade matters of local concern," that the EYEL is not a valid special law because the procedural prerequisites were not followed nor is a substantial state

concern involved, and as a result "the States' attempt to alter counties' timing of elections and terms of office for county offices is unconstitutional" (*id.* at 226).

Finding the EYEL violative of the state constitution, Supreme Court did not reach petitioners' federal constitutional claims, but opined in *dicta* that '[a]n added limitation to the scope of the [EYEL] is that the eight and a half million residents of New York City (nearly half of the state's population) will maintain their odd year elections, *certainly raising federal equal protection questions* . . ." The court then asked: "Are the urbane voters of New York City less likely to be confused by odd year elections than the rubes living in Upstate and Long Island?" (*id*. at 230) (emphasis supplied).

In an Order dated May 7, 2025, the Appellate Division, Fourth Department, reversed, holding that the EYEL does not violate the New York State Constitution or the United States Constitution (238 A.D.3d 1535 [4th Dept 2025]). With respect to the alleged federal equal protection and due process claims, the Appellate Division held that "the EYEL, which changes only the timing of certain local elections and applies equally to all participants in the political process, affects these rights 'only in an incidental and remote ways (citation omitted) and "[t]he EYEL's 'reasonable, nondiscriminatory restrictions' are justified by the State's 'important regulatory interests' (Burdick, 504 US at 434) . . ."

The Court of Appeals affirmed in an Order dated October 16, 2025, without reaching the federal constitutional questions (*County of Onondaga v State of NY*, ___NY3d___, 2025 NY Slip Op 05737 [2025]).

REASONS FOR GRANTING THE PETITION

(i)

This case presents an important federal question under the Equal Protection Clause concerning the administration of local elections. It is well established that statutes governing the elective franchise must be construed liberally to protect the right of voters to cast their ballots. The EYEL departs from that principle by treating similarly situated political subdivisions differently without sufficient justification, thereby denying Petitioner Rockland County and other counties with charter provisions establishing odd-numbered-year elections, the equal protection of the laws.

The EYEL draws distinctions between cities and counties, and among counties themselves, despite their shared status as local governmental entities exercising electoral authority. Counties subject to the statute are adversely affected, while cities and other counties remain unaffected, notwithstanding comparable governmental functions and electoral interests. The statute therefore imposes disparate treatment on similarly situated entities in violation of equal protection principles.

The vote on this matter in the State Legislature establishes that non-city representatives whose constituents are affected by the legislation voted overwhelmingly against the EYEL, and those whose constituents reside mainly in New York City and other cities unaffected by the law voted heavily in favor of the measure. The resulting legislation alters election rules for certain counties without meaningful political

recourse by those most impacted. This highlights electoral manipulation without representation inflicted by the city portions of the State against the portions of the State outside of cities.

This case warrants this Court's review because it concerns the constitutional limits on a state's authority to structure election laws in a manner that disadvantages particular political subdivisions and their voters. Absent review, the EYEL will stand as precedent permitting unequal treatment in the administration of local elections, contrary to established principles protecting the right to vote and equal participation in the electoral process.

To evaluate whether state election laws comport with these constitutional guarantees, courts apply the Anderson–Burdick framework, the Supreme Court's settled test for assessing burdens on voting and related First and Fourteenth Amendment rights. See *Anderson v. Celebrezze*, 460 US 780, 789 (1983); *Burdick v Takushi*, 504 U.S. 428, 428 (1992).

(ii)

Petitioner Rockland County has been deprived of its right to equal protection of the law by operation of the EYEL, which treats differently the similarly situated classes of entities, cities and counties, and between different counties. Petitioner County Executive Day, as the present County Executive, has also been deprived of the right to equal protection of the law by operation of the EYEL, which treats differently the similarly situated classes of chief executive officers of cities and counties, and between the chief executive officers of different counties.

The Petitioners' right to local government is a fundamental right granted by the State Constitution, deeply rooted in New York and American histories and traditions, and made an express right of a municipal corporation by the State Constitution.

The EYEL treats Petitioners differently from other similarly situated municipalities of the State by prohibiting Petitioners from holding odd-year elections, by being inapplicable to counties without an elected executive position, by exempting counties with three-year elected offices, and additionally, by discriminating against counties with alternative forms of government as authorized by Article IX of the State Constitution.

ARGUMENT

I. The EYEL Violates the Equal Protection Clause by Arbitrarily Treating Similarly Situated Local Governments, Officials, and Voters Differently

The Fourteenth Amendment requires that when a state regulates elections, it must do so under standards that ensure equal treatment of similarly situated entities and persons and prohibit arbitrary distinctions. *Bush v. Gore*, 531 U.S. 98, 104–05 (2000); *Avery v. Midland County*, 390 U.S. 474, 480–81 (1968). The EYEL violates those principles by selectively restructuring local election timing for certain counties and county officials, while exempting other counties, cities, and entire categories of local government without a neutral or sufficient justification.

A. The EYEL Creates Arbitrary Classifications Among Counties and County Officials

The EYEL does not apply uniformly across New York's political subdivisions. Instead, it:

- Prohibits odd-year elections for counties with elected county executives;
- Does not apply to counties without an elected executive;
- Exempts counties whose officials serve three-year terms;
- Leaves cities entirely unaffected; and
- Discriminates against counties that have adopted alternative forms of government authorized by Article IX of the New York Constitution.

As a result, counties that are otherwise identically situated under state law are treated differently solely because of their form of government or internal structure—choices the state itself has constitutionally authorized. County executives and legislators performing the same governmental functions, exercising the same powers, and serving under the same constitutional framework are subjected to materially different election rules.

This Court has made clear that election laws must serve "the interests of the entire community" and may

not exist merely to favor one segment of the electorate or to disadvantage another. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 472 (2006). The EYEL violates that principle by valuing the electoral interests of cities and exempt counties over those of counties subject to the statute.

B. Substantive due Process

Petitioners have been deprived of substantive due process. The State has not shown that the EYEL was enacted in furtherance of a legitimate governmental purpose, and there is no reasonable relation between the end sought to be achieved by the EYEL and the means used to achieve that end.

The appellate division held that the EYEL's "reasonable nondiscriminatory restrictions are justified by the State's important regulatory interest" citing *Burdick*, 504 US at 434; *see generally SAM Party of New York v Kosinski*, 987 F3d 267, 274 [2d Cir 2021]; *Matter of Brown v Erie County Bd. of Elections*, 197 AD3d 1503, 1505 [4th Dept 2021].

However, certain elected officials affected by the law are benefited by being allowed odd year elections, while all others are burdened with the requirement of running in the polarizing floodlights of national and statewide elections.

While the state claims it has an important regulatory interest, it is evident that, especially in light of the arguments below concerning the lack of state concern, it does not have a regulatory interest. The regulatory interest in the timing of elections has for decades, if not a century, been delegated to the local governments.

In *Sam Party of N.Y. v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021), the Second Circuit Court of Appeals held that the rule to be applied in election law cases is one of lesser scrutiny, not [a] "pure rational basis review." Rather, "the court must actually 'weigh' the burdens imposed on the plaintiff against 'the precise interests put forward by the State,' and the court must take 'into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.'" Review under this balancing test is "quite deferential," and no "elaborate empirical verification" is required."

Petitioners do not rely on elaborate reasoning, but only broad facts and reliance on the state's own admissions. Indeed, if the interest is higher turnout in "local elections" as described in the "justification" for the EYEL, leaving out 60% of the population subject to "local elections" is an unconstitutional burden on the 40% who are affected. Similarly, if this is to affect all counties alike, then it must apply to all members of the county boards, even those with city supervisors.

The degree of scrutiny used to analyze the constitutionality of a state election regulation depends on the severity of the regulation's burden on the constitutional rights of candidates and their supporters. The totality of a state's overall plan of election regulation should be considered in determining the severity of the restrictions. *Matter of Brown v. Erie County Bd. of Elections*, 2021 NY Slip Op 05014, ¶ 2 (4th Dept. 2021)

We submit that treating the two classes of candidates—the people's government representatives—differently is a violation of the equal protection of the law.

"When a State adopts rules governing its election machinery or defining electoral boundaries, those rules must serve the interests of the entire community. If they serve no purpose other than to favor one segment – whether racial, ethnic, religious, economic, or political – that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community, they violate the constitutional guarantee of equal protection." *League of United Latin Am. Citizens v. Perry,* 548 U.S. 399, 472 (2006).

There are those who would submit that this law serves a political end. It does not apply in areas of the state that are urban, and reflect urban issues,[2] and there has been no law adopted by the state to apply it to urban areas, to the detriment of suburban and rural residents of the state. This political divide is further exacerbated by this law. Urban voters – who comprise more than 60% of the states electorate – exercise unimpeded access to local elections in odd-numbered years, while suburban and rural interests will be swamped by federal and state candidate's campaigns that also cater to urban politics.

C. The Statute Also Denies Equal Protection to County Executives as a Class

Petitioner County Executive Day, and other county executives similarly situated, are deprived of equal protection because the EYEL treats similarly situated chief executive officers differently. Some county executives

2. As described in the Complaint by Rockland County, two thirds of the state legislators who voted in favor of Chapter 741 were based in urban districts.

may seek office in low-salience, odd-year elections focused on local issues; others are compelled to run in even-year elections dominated by federal and statewide contests.

This disparate treatment imposes unequal burdens on candidates' ability to communicate with voters, raise funds, recruit volunteers, and meaningfully compete—burdens this Court has repeatedly recognized as implicating core First and Fourteenth Amendment rights. See *Anderson v. Celebrezze*, 460 U.S. 780, 788–89 (1983).

D. The Selective Nature of the EYEL Undermines Any Claimed Neutral Justification

The State has asserted an "important regulatory interest" in restructuring election timing. But the EYEL's selective operation fatally undermines that claim. If the State's interest were increased turnout or electoral efficiency, the law would apply evenhandedly to all counties, all local offices, and all voters. Instead, the statute leaves more than sixty percent of New York's electorate—those in cities and exempt counties—entirely unaffected.

This Court has repeatedly condemned election schemes that operate nonuniformly without sufficient justification. *Bush*, 531 U.S. at 105. The EYEL's carve-outs and exemptions confirm that the classifications it draws are arbitrary and not necessary to advance any legitimate regulatory objective.

II. The EYEL Conflicts with This Court's Anderson–Burdick Framework by Imposing Unequal and Unjustified Burdens on Core Political Rights

A. Anderson–Burdick Requires Meaningful Balancing, Not Abstract Deference

Under *Anderson* and *Burdick*, courts must weigh "the character and magnitude of the asserted injury" to voting and associational rights against "the precise interests put forward by the State" and assess "the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 789).

Even where burdens are characterized as "less severe," the State must still demonstrate "important regulatory interests" that actually justify the burden imposed. *Id.* And even "slight" burdens must be supported by interests "sufficiently weighty to justify the limitation." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191 (2008) (controlling opinion).

Indeed, the New York Constitution independently and emphatically provides robust protection for voting and political rights. It provides that "[n]o member of this state shall be disfranchised," N.Y. Const. art. I,§ 1, and that "[e]very citizen shall be entitled to vote at every election for all officers elected by the people," id. art. II, § 1. It further guarantees the rights to free speech, assembly, and petition, id. art. I, §§ 8–9, and ensures equal protection of the laws, id. § 11.

Consistent with these provisions, the New York Court of Appeals has recognized that the right to vote "is of the

most fundamental significance under our constitutional structure." *Hoehmann v. Town of Clarkstown,* 40 N.Y.3d 1, 6 (2023) (citations omitted). New York courts therefore apply the Anderson–Burdick framework to constitutional challenges alleging burdens on voting, speech, and association. See, e.g., *Brown v. Erie County Bd. of Elections,* 197 A.D.3d 1503 (4th Dept. 2021) [citing *Anderson v. Celebrezze,* 460 US 780, 789 (1983); *Burdick v Takushi,* 504 U.S. 428, 428 (1992); *SAM Party of N.Y. v. Kosinski,* 987 F.3d 267, 274 (2d Cir. 2020)].

In that regard, the Anderson–Burdick inquiry is a fact-intensive balancing test that the EYEL fails. Under Anderson–Burdick, courts must weigh the real-world burdens imposed on constitutional rights against the state's asserted justifications, considering whether those interests actually necessitate the burdens imposed. *Burdick, 504 U.S. at 434 (quoting Anderson, 460 U.S. at 789).* If the burden is severe, strict scrutiny applies. *Brown,* 197 A.D.3d at 1505 (quoting *Burdick,* 504 U.S. at 434). If the burden is less severe, the State must still show that its law is justified by "compelling importance." *Id*. (quoting *Burdick,* 504 U.S. at 434). Even "slight" burdens must be supported by interests "sufficiently weighty to justify the limitation." C*rawford v. Marion County Election Board*, 553 U.S. 181, 191 (2008) (citation omitted). (Stevens, J., controlling opinion). Critically, this Court has rejected any "litmus test" that would insulate election laws from constitutional scrutiny. *Anderson*, 460 U.S. at 789.

Because this balancing depends on real-world effects, courts consistently recognize that Anderson–Burdick claims should not be resolved at the pleadings stage. *See,*

e.g., *Common Cause New York v. Brehm* 432 F. Supp. 3d 285, 287 (S.D.N.Y. 2020) (constitutional claims decided after bench trial)*; Conservative Party ex rel. Long v. Walsh, 818 F. Supp. 2d 670, 677–78 (S.D.N.Y. 2011)* (denying motion to dismiss)*; Gelb v. Bd. Of Elections of City of New York, No.97CIV.9404, 1998 WL 386440, at *1, *7 (S.D.N.Y. July 10, 1998) (same).*

B. The EYEL Imposes Recognized, Real-World Burdens on Voting and Political Association

Petitioners alleged multiple, well-recognized burdens resulting from the forced consolidation of local elections into even-year ballots:

- Local candidates must compete for attention, funding, and volunteers against federal and statewide races, impairing political speech and association;

- Lengthened ballots increase voter fatigue, ballot roll-off, and confusion, diluting participation in local contests;

- Longer lines and wait times disproportionately burden working voters who cannot afford extended delays.

It is obvious that consolidating local elections into even-year ballots will make it significantly harder for local candidates and parties to fundraise, recruit volunteers, and attract voter attention as they compete with federal and statewide races. These activities lie at the heart of protected political expression and association. *See, e.g.,*

Lerman v. Board of Elections in New York City, 232 F.3d 135, 146 (2d Cir. 2000).

Also, lengthened ballots will produce longer lines and wait times, disproportionately burdening voters who cannot afford to miss work—an allegation courts have repeatedly recognized as a cognizable burden under Anderson–Burdick. *See Texas Alliance for Retired Americans v. Hughs*, 489 F. Supp. 3d 667, 689 (S.D. Tex. 2020) ("[L]ong wait times will prevent many Texans from casting a ballot."), *rev'd in part, vacated in part sub nom. Texas All. for Retired Americans v. Scott*, 28 F.4th 669 (5th Cir. 2022); *Fla. State Conf. of NAACP v. Lee*, 566 F. Supp. 3d 1262, 1280 (N.D. Fla. 2021) ("[Long] lines have the measured effect of depressing voter turnout.").

Equally obvious is that longer ballots cause voter fatigue, and ballot roll-off, and confusion, especially where the statute arbitrarily exempts certain offices and entire localities—thereby depressing participation in down-ballot local races. Courts have recognized that voter confusion and fatigue can infringe protected political rights by diluting the effective weight of votes. *See Graves v. McElderry*. 946 F. Supp. 1569, 1579 (W.D. Okla. 1996).

Taken together, these allegations describe precisely the kind of real-world burdens that trigger Anderson–Burdick scrutiny. Thus, Petitioners have plausibly alleged that the state's asserted interests are illusory or insufficient and do not outweigh these burdens.

Courts have repeatedly recognized these effects as cognizable burdens under *Anderson–Burdick*. See, e.g., *Texas Alliance for Retired Americans v. Hughs*, 489 F.

Supp. 3d 667, 689 (S.D. Tex. 2020); *Graves v. McElderry*, 946 F. Supp. 1569, 1579 (W.D. Okla. 1996).

C. The State's Asserted Interests Are Illusory and Insufficient

The State claims an interest in increased turnout in "local elections." But the EYEL excludes a majority of the State's population from its operation. Leaving cities and exempt counties untouched while imposing burdens on others cannot rationally advance a statewide interest in voter participation.

Nor has the State shown that the burdens imposed are necessary to achieve its stated ends. As *Anderson* instructs, courts may not insulate election laws from scrutiny by accepting abstract assertions untethered from the statute's actual effects. 460 U.S. at 789. The New York appellate courts' acceptance of the EYEL as a "reasonable, nondiscriminatory restriction" conflicts with this Court's precedents requiring genuine balancing of real-world burdens against actual state interests.

III. This Case Presents an Important and Unresolved Federal Question Concerning the Equal Protection Limits on Selective State Control of Local Elections

This Court should resolve whether a State may selectively restructure local election timing for some counties and local officials, while exempting others, without violating the Equal Protection Clause and the *Anderson–Burdick* framework.

By upholding the EYEL, the decision below permits a State to impose unequal and burdensome election rules on politically disfavored local governments while insulating others from any effect—inviting manipulation of local election structures by unaffected political majorities. That expansion of state authority conflicts with this Court's insistence that election laws, at every level, remain subject to federal constitutional constraints. *Avery*, 390 U.S. at 480–81.

Review is warranted to clarify the constitutional constraints on a state's power to restructure local elections and to ensure that election laws are administered under standards that protect equal participation in the political process. Clarification from this Court is needed to ensure that states do not evade constitutional scrutiny by selectively restructuring elections in ways that burden some communities, candidates, and voters while privileging others.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

THOMAS E. HUMBACH
County Attorney
LARRAINE S. FEIDEN
Principal Assistant
County Attorney
Counsel of Record
11 New Hempstead Road
New City, NY 10956
(845) 638-5099
feidenl@co.rockland.ny.us

Counsel for Petitioners

APPENDIX

TABLE OF APPENDICES

Table of Appendices

APPENDIX A — OPINION OF THE STATE OF NEW YORK COURT OF APPEALS, FILED OCTOBER 16, 2025

STATE OF NEW YORK
COURT OF APPEALS

No. 66

COUNTY OF ONONDAGA, *et al.*,

Appellants,

v.

STATE OF NEW YORK, *et al.*,

Respondents,

et al.,

Defendant.

(AND OTHER ACTIONS.)

Filed October 16, 2025

OPINION

GARCIA, J.:

In 2023, the Legislature enacted the Even Year Election Law (L 2023, ch 741) to consolidate certain elections for county and town offices with even year elections for state and federal offices. Plaintiffs, including several counties with charter provisions setting local elections for odd-numbered years, challenge the

constitutionality of the Even Year Election Law, claiming the statute violates the home rule provisions of article IX of the State Constitution. We hold that there is no express or implied constitutional limitation on the legislature's authority to enact the Even Year Election Law and therefore affirm.

I.

To achieve its goal of consolidating local elections with state and national races, the Even Year Election Law (EYEL), effects changes to the County Law, Town Law, and Village Law to move certain local elections to even years. The EYEL also amends Municipal Home Rule Law § 34(3), adding to the list of subjects as to which "a county charter or charter law shall not supersede any general or special law enacted by the legislature" any provision "[i]nsofar as it relates to requirements for counties . . . to hold elections in even-numbered years for any position of a county elected official" other than exempted positions.[1] The legislation also provides that, while the 2025 elections are still scheduled to occur as planned, officials subject to reelection in an odd-numbered year "shall have their term expire as if such official were elected at the previous general election held in an even-numbered year" (L 2023, ch 741, § 5). So, for example, someone elected in 2025 to

1. The EYEL exempts offices whose terms are specified in the Constitution, offices for which elections must occur in odd numbered years pursuant to the Constitution, offices with a three-year term before January 1, 2025, offices in towns coterminous with villages, and offices in counties located in New York City (L 2023, ch 741, §§ 1-4; *see also* NY Const, art XIII, §§ 8, 10, 12, 13, 17).

what would have previously been a four-year term will see that term expire at the end of three years. The sponsor's memorandum explained that it was designed to "make the [voting] process less confusing for voters and . . . lead to greater citizen participation in local elections" in light of studies showing that "voter turnout is the highest on the November election day in even-numbered years when elections for state and/or federal offices are held" (Assembly Mem in Support, Bill Jacket, L 2023, ch 741 at 11).

Several counties and towns within those counties, all holding local elections during odd numbered years, filed the instant action against the State of New York, the governor, and the Commissioner of the Onondaga County Board of Elections (defendants), alleging that the EYEL violates article IX of the State Constitution. Some counties and towns within those counties raised additional constitutional claims, and a group of individual voters raised other state constitutional challenges. Each complaint sought a declaration that the EYEL is unconstitutional and that the provisions of the county charters that conflict with the EYEL are valid, as well as an injunction against enforcement of the EYEL. The complaints were consolidated in Supreme Court and defendants moved to dismiss.

Supreme Court denied the motions, declared the EYEL unconstitutional, and enjoined the defendants from enforcing the statute (86 Misc.3d 214, 222 N.Y.S.3d 342 [Sup. Ct., Onondaga County 2024]). That court held that under article IX of the State Constitution, "[c]ounties

have the constitutional right to set their own terms of office," that the EYEL is not a general law by which the State may "invade matters of local concern," that the EYEL is not a valid special law because the procedural prerequisites were not followed nor is a substantial state concern involved, and as a result "the State's attempt to alter counties' timing of elections and terms of office for county offices is unconstitutional" (*id.* at 226, 222 N.Y.S.3d 342).

The Appellate Division reversed and granted the motions, declaring that the EYEL "does not violate the New York Constitution or the United States Constitution" (238 A.D.3d 1535, 1536, 235 N.Y.S.3d 780 [4th Dept. 2025]; *see also* 43 N.Y.3d 935, 229 N.Y.S.3d 391, 254 N.E.3d 1265 [2025] [transferring these direct appeals to the Appellate Division]). Considering the high burden placed on a party challenging the constitutionality of a duly enacted statute and acknowledging that the EYEL "purports to encourage an increased voter turnout in local elections now scheduled in odd-numbered years . . . consistent with the State's public policy of encouraging participation in the elective franchise by all eligible voters to the maximum extent," that Court held that "the EYEL does not violate article IX of the New York Constitution" (*id.* at 1537-1538, 235 N.Y.S.3d 780). The remaining constitutional claims, including those brought by the individual voters, were also rejected. Plaintiffs appeal as of right (*see* CPLR 5601[b][1]). We agree with the Appellate Division's well-reasoned decision and we now affirm.

II.

While the State Constitution establishes the state government as "the preeminent sovereign of New York" (*Matter of Baldwin Union Free Sch. Dist. v. County of Nassau*, 22 N.Y.3d 606, 619, 986 N.Y.S.2d 1, 9 N.E.3d 351 [2014]), it also reflects a "deeply felt belief that local problems should, so long as they do not impinge on affairs of the people of the State as a whole, be solved locally" (*Matter of Resnick v. County of Ulster*, 44 N.Y.2d 279, 288, 405 N.Y.S.2d 625, 376 N.E.2d 1271 [1978]). The "home rule" provisions in the State Constitution balance these two principles in allocating power between the State Legislature and local governments, "encourag[ing] local responsibility to deal with matters properly characterized as 'local,'" while at the same time "reserv[ing] to the state the power to deal with matters of broader concern" (New York State Temporary State Commission on the Constitutional Convention, *Local Government* 66 [1967]).

Authority granted to local governments derives from the State's otherwise plenary power, and "[g]iven that the authority of political subdivisions flows from the state government and is, in a sense, an exception to the state government's otherwise plenary power, the lawmaking power of a county or other political subdivision can be exercised only to the extent it has been delegated by the State" (*Baldwin*, 22 N.Y.3d at 619, 986 N.Y.S.2d 1, 9 N.E.3d 351 [internal quotation marks and citations omitted]). Indeed, "municipalities are entirely under the control of the state legislature except insofar as it may be restricted by state constitutional limitations" (J.D.

Hyman, *Home Rule in New York 1941-1965:Retrospect and Prospect*, 15 Buffalo L Rev 335, 336 [1965]). Accordingly, the State Constitution provides for home rule by granting local governments certain powers and by restricting the legislature's ability to interfere with that local authority (*see* Richard Briffault, *Local Government and the New York State Constitution*, 1 Hofstra L. & Pol'y Symp. 79, 85-86 [1996]). In sum, although "[t]he power granted to counties over the nature and functions of its local offices is a significant one" (*Matter of Kelley v. McGee*, 57 N.Y.2d 522, 536, 457 N.Y.S.2d 434, 443 N.E.2d 908 [1982]), the legislature remains the "preeminent sovereign" (*Baldwin*, 22 N.Y.3d at 619, 986 N.Y.S.2d 1, 9 N.E.3d 351) with "untrammeled primacy . . . to act . . . with respect to matters of State concern" (*Wambat Realty Corp. v. State of New York*, 41 N.Y.2d 490, 497, 393 N.Y.S.2d 949, 362 N.E.2d 581 [1977]).

Achieving balance between State interests and local authority has proved challenging, and "the path of home rule . . . has been unsettled and tortuous" (*see Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 428, 548 N.Y.S.2d 144, 547 N.E.2d 346 [1989]). The idea of some local autonomy is found in our first Constitution, enacted in 1777, which provided for local election of certain local officers (1777 N.Y. Const, art XXIX). The 1846 constitution provided for election by voters in the relevant locality of all county, "city, town, and village officers" whose election or appointment was not prescribed elsewhere (1846 N.Y. Const, art X, § 2). But it was the 1894 constitution that marked "the first time a measure of home rule was explicitly granted constitutional status" (Peter Galie, Ordered Liberty 176

[1996]), with a provision that "prohibited the legislature from transferring out of local hands the local functions performed by locally elected officials" (Briffault, 1 Hofstra L. & Pol'y Symp. at 84). An amendment in 1923 "provided the first constitutional grant of local law-making authority" (*id.* at 86), while a 1935 amendment "required the legislature to provide alternative forms of government for counties, and prescribed the method for the adoption of their charters" (Hyman, 15 Buffalo L Rev at 347). A 1938 amendment incorporated the home rule provisions of these amendments into article IX and added the authority "to adopt and amend local laws not inconsistent with the constitution and laws of the state relating to its property, affairs or government" (N.Y. Const, art IX, § 12, amended November 8, 1938). This version of the home rule provision "contained both an affirmative grant of power 'to adopt and amend local law not inconsistent with the constitution and laws of the state relating to the property, affairs or government,' and restrictions on state legislative interference in matters where municipalities had affirmative power" (Galie at 286). A 1958 amendment to article IX granted to all counties the right to adopt alternative forms of government (N.Y. Const, art IX, § 12, amended November 4, 1958).

The current version of article IX, adopted in 1963, "maintained continuity with the home rule tradition of New York" and was "the cumulation of lengthy constitutional debate and experimentation" over time (Galie at 288). Its "manifest intent was to encourage local governments to make a living document of the bill of rights for local government" (*Resnick*, 44 N.Y.2d at 286, 405 N.Y.S.2d 625,

376 N.E.2d 1271). While article IX is "the most significant delegation of state legislative authority" (*Baldwin*, 22 N.Y.3d at 620, 986 N.Y.S.2d 1, 9 N.E.3d 351) and "the 1963 home rule amendment was intended to expand and secure the powers enjoyed by local governments," it is the product of "a fine-tuned sensitivity to the difficult problem of furthering strong local government but leaving the State just as strong to meet the problems that transcend local boundaries, interests, and motivations" (*Wambat*, 41 N.Y.2d at 498, 393 N.Y.S.2d 949, 362 N.E.2d 581).

Article IX begins with a "bill of rights for local governments" announcing that "[e]ffective local self-government and intergovernmental cooperation are purposes of the people of the state" and referring to the provision of "rights, power, privileges and immunities" that local governments "shall have" (N.Y. Const, art IX, § 1). Those rights include the right to have a "legislative body elective by the people thereof " with the "power to adopt local laws as provided by this article" and a mandate that "[a]ll officers of every local government whose election or appointment is not provided for by this constitution shall be elected by the people of the local government" or appointed (*id.* §§ 1[a], [b]). The right of counties to "adopt, amend or repeal alternative forms" of government, "empowered by" statute, found in the 1958 amendment, is carried forward in section 1(h)(1).

Section 2 gives the legislature power, "[s]ubject to the bill of rights of local governments and other applicable provisions of this constitution," to "act in relation to the property, affairs or government of any local government only by general law, or by special law" meeting certain

procedural requirements (N.Y. Const, art IX, § 2[b][2]). That is, subject to the rights provided in section 1, the State can use the "ordinary legislative process" to limit local action (Galie at 290). Section 3 reserves certain topics entirely to the state, outlines a savings clause providing that nothing in article IX "affect[s] any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution," and provides for a liberal construction of the "[r]ights, powers, privileges and immunities granted to local governments" (N.Y. Const, art IX, § 3). Article IX balances power granted to local governments over local matters with State power to displace those local decisions in certain circumstances (*see* Briffault, 1 Hofstra L. & Pol'y Symp. at 89).

The Municipal Home Rule Law was enacted contingent on the passage of the current form of article IX to "provide for carrying into effect provisions of article nine of the constitution . . . and to enable local governments to adopt and amend local laws for the purpose of fully and completely exercising the powers granted to them under the terms and spirit of such article" (*see* Municipal Home Rule Law §§ 50, 59). As relevant here, Municipal Home Rule Law § 33(3)(b) requires that county charters must "provide for . . . the manner of election or appointment" and "terms of office" for "agencies or officers responsible for the performance of the functions, powers and duties of the county," while Municipal Home Rule Law § 34(3) contains a list of topics that a county charter cannot address in a manner inconsistent with enacted state legislation.

III.

The issue for this Court is whether article IX limits the power of the legislature in such a way as to make the EYEL an unconstitutional exercise of legislative authority. We conclude that it does not.

Plaintiffs first challenge the constitutionality of the statute under section 1, arguing that, because of the rights detailed in section 1 as implemented by the Municipal Home Rule Law, counties have a constitutional right to set the timing of county elections and terms of office. In other words, because counties are authorized to adopt alternative forms of government (N.Y. Const, art IX, § 1[h][1], and because those counties that do so are instructed by the Municipal Home Rule Law to provide for "the manner of election" and "terms of office" of its officials in those charters (Municipal Home Rule Law § 33[3][b]), that statutory instruction from the Municipal Home Rule Law is transformed into a constitutional right barring the legislature from interfering with the manner of election or terms of office for local officials. Nothing in the text of these provisions, or in our jurisprudence, supports that view. Indeed, only the right to form an alternative form of government is guaranteed by section 1(h)(1), that right does not implicitly include a right to set terms of office or timing of elections, and the authority delegated to local governments in the Municipal Home Rule Law is statutory. Nothing in the EYEL infringes the rights provided by article IX's "bill of rights."

Next, plaintiffs argue that the EYEL is unconstitutional under article IX, section 2(b)(2) because the legislature is only empowered to act in this manner pursuant to general law or a duly enacted special law and, in their view, the EYEL is neither. This is incorrect. As defined by article IX, § 3(d)(1), a general law is one "which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages." This Court has long held that a statute remains a general law where it is "cast in general terms" but affects a smaller category of counties, and is "no less general because it classifies the [counties] affected on the basis of population or some other condition and extends its benefits only to" certain counties, so long as "the classification be defined by conditions common to the class and related to the subject of the statute" (*Uniformed Firefighters Assn. v. City of New York*, 50 N.Y.2d 85, 90, 428 N.Y.S.2d 197, 405 N.E.2d 679 [1980]; *see also Rozler v. Franger*, 61 A.D.2d 46, 51, 401 N.Y.S.2d 623 [4th Dept. 1978], *affd* 46 N.Y.2d 760, 413 N.Y.S.2d 654, 386 N.E.2d 262 [1978] [that Village Law exempts chartered villages does not "make it any less a general law," because the "exception . . . is based on a reasonable classification and the law applies uniformly to all other villages throughout the state"]). The EYEL, as the Appellate Division held, is a general law because it applies to all counties, with reasonable exceptions, and has an equal impact on a "rationally defined class similarly situated" (238 A.D.3d at 1540-1541, 235 N.Y.S.3d 780 [internal quotation marks and citation omitted]; *see also Hotel Dorset Co. v. Trust for Cultural Resources of City of N.Y.*, 46 N.Y.2d 358, 373, 413 N.Y.S.2d 357, 385 N.E.2d 1284 [1978] [where a law "has an

equal impact on all members of a rationally defined class similarly situated, the law is thus a general" law]). While the EYEL contains exemptions, its terms are general, and the category of counties and offices it affects is defined by common conditions and related to the statute's purpose.

Finally, plaintiffs challenge the EYEL on the basis that it runs afoul of the clause in article IX, § 3(b), which provides that the provisions of article IX "shall not affect any existing valid provisions of acts of the legislature or of local legislation." This language simply made clear, as the Appellate Division held, that existing local laws remained in force following the adoption of article IX, and expressly accounts for change through legislative action by stating that existing local provisions continue "in force until repealed, amended, modified or superseded" (*see* 238 A.D.3d at 1541, 235 N.Y.S.3d 780 [article IX, § 3 "clarifies that the adoption of Article IX did not itself invalidate then-existing legislation . . . and does not preclude the Legislature from adopting a law such as the EYEL"]).

Nothing in article IX limits, expressly or by implication, the otherwise plenary authority of the legislature to mandate the timing of certain elections, as the EYEL does (*see Matter of Burr v. Voorhis*, 229 N.Y. 382, 388, 128 N.E. 220 [1920] ["(T)he legislature is free to adopt concerning (voting) any reasonable, uniform and just regulations which are in harmony with constitutional provisions"]). Consequently, without any such constitutional limitation, the EYEL is a proper exercise of that authority.

IV.

The individual voter plaintiffs' claims[2] were also properly dismissed. Even assuming without deciding that the test under *Anderson v. Celebrezze*, 460 U.S. 780, 783, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 433-434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) applies to these claims brought under the State Constitution, and accepting plaintiffs' allegations in their complaint as true, the EYEL passes that test. Consideration of "the character and magnitude of the asserted injury" to the protected rights as compared to "the precise interests put forward by the State as justifications for the burden imposed by its rule," in light of "the extent to which those interests make it necessary to burden plaintiff 's rights," requires dismissal of plaintiffs' complaint (*Matter of Walsh v. Katz*, 17 N.Y.3d 336, 344, 929 N.Y.S.2d 515, 953 N.E.2d 753 [2011] [internal quotation marks and citations omitted] [applying *Anderson/Burdick* test to federal constitutional challenge to a statutory residency requirement]). Any alleged injury is minor as compared to the State's legitimate and substantial interest in increasing voter turnout and reducing confusion. The

2. Individual voter plaintiffs' complaint alleges that the EYEL's consolidation of local elections with even-year elections "increases the burdens associated with casting a vote, fundraising, and generating support for candidates, among other essential campaigning activities, while contributing to voter fatigue due to higher numbers of issues and/or candidates on the ballot" and that "[w]ith more candidates on the ballot and higher turnout numbers, voters will face longer ballots, longer voting lines, voter fatigue, and 'ballot drop-off ' or 'roll-off.'" These are not traditional voter suppression claims.

EYEL is a neutral law which changes the timing of elections in a manner common to all voters, and imposes no form of restriction, burden, or limitation on voting. As a result, dismissal of these claims on the pleadings was appropriate.

Plaintiffs' remaining claims are meritless and we agree with the Appellate Division that there is no reason to delay application of the statute to the next election cycle (*see* 238 A.D.3d at 1542-1543, 235 N.Y.S.3d 780).

Accordingly, the order of the Appellate Division should be affirmed, without costs.

Order affirmed, without costs. Order affirmed, without costs. Opinion by Judge Garcia. Chief Judge Wilson and Judges Rivera, Singas, Cannataro, Troutman and Halligan concur.

Decided October 16, 2025

APPENDIX B — MEMORANDUM AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FILED MAY 7, 2025

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

415
CAE 25-00494

(ACTION NO. 1.)

COUNTY OF ONONDAGA, ONONDAGA COUNTY LEGISLATURE AND J. RYAN MCMAHON, II, INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS ONONDAGA COUNTY EXECUTIVE,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK, KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF STATE OF NEW YORK, DUSTIN M. CZARNY, IN HIS CAPACITY AS COMMISSIONER OF ONONDAGA COUNTY BOARD OF ELECTIONS,

Defendants-Appellants,

ET AL.,

Defendant.

Appendix B

(ACTION NO. 2.)

COUNTY OF NASSAU, NASSAU COUNTY LEGISLATURE AND BRUCE A. BLAKEMAN, INDIVIDUALLY AND AS A VOTER AND IN HIS OFFICIAL CAPACITY AS NASSAU COUNTY EXECUTIVE,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK AND KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF STATE OF NEW YORK,

Defendants-Appellants.

COUNTY OF ONEIDA, ONEIDA COUNTY BOARD OF LEGISLATORS, ANTHONY J. PICENTE, JR., INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS ONEIDA COUNTY EXECUTIVE AND ENESSA CARBONE, INDIVIDUALLY AND AS A VOTER AND IN HER CAPACITY AS ONEIDA COUNTY COMPTROLLER,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK AND KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF STATE OF NEW YORK,

Defendants-Appellants.

Appendix B

(ACTION NO. 3.)

COUNTY OF RENSSELAER, STEVEN F. MCLAUGHLIN, INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS RENSSELAER COUNTY EXECUTIVE AND RENSSELAER COUNTY LEGISLATURE,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK AND KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF STATE OF NEW YORK,

Defendants-Appellants.

(ACTION NO. 4.)

JASON ASHLAW, *et al.*,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK, KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF STATE OF NEW YORK,

Defendants-Appellants,

ET AL.,

Defendants.

Appendix B

(ACTION NO. 5.)

COUNTY OF ROCKLAND AND EDWIN J. DAY,
IN HIS INDIVIDUAL AND OFFICIAL CAPACITY
AS ROCKLAND COUNTY EXECUTIVE,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK,

Defendant-Appellant.

(ACTION NO. 6.)

STEVEN M. NEUHAUS, INDIVIDUALLY AND
AS A VOTER AND IN HIS CAPACITY AS
ORANGE COUNTY EXECUTIVE, *et al.*,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK, KATHLEEN HOCHUL,
IN HER CAPACITY AS GOVERNOR OF
STATE OF NEW YORK,

Defendants-Appellants,

ET AL.,

Defendants.

Appendix B

(ACTION NO. 7.)

COUNTY OF DUTCHESS, DUTCHESS COUNTY LEGISLATURE AND SUSAN J. SERINO, INDIVIDUALLY AND AS A VOTER AND IN HER CAPACITY AS DUTCHESS COUNTY EXECUTIVE,

Plaintiffs-Respondents,

v.

STATE OF NEW YORK AND KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF STATE OF NEW YORK,

Defendants-Appellants.

(ACTION NO. 8.)

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (SARAH L. ROSENBLUTH OF COUNSEL), FOR DEFENDANTS-APPELLANTS STATE OF NEW YORK AND KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF STATE OF NEW YORK.

MACKENZIE HUGHES LLP, SYRACUSE (W. BRADLEY HUNT OF COUNSEL), FOR DEFENDANT-APPELLANT DUSTIN M. CZARNY, IN HIS CAPACITY AS COMMISSIONER OF ONONDAGA COUNTY BOARD OF ELECTIONS.

HANCOCK ESTABROOK, LLP, SYRACUSE (EDWARD D. CARNI OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS COUNTY OF ONONDAGA, ONONDAGA COUNTY LEGISLATURE, AND J. RYAN MCMAHON, II, INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS ONONDAGA COUNTY EXECUTIVE.

ROBERT F. JULIAN, P.C., UTICA, FOR PLAINTIFFS-RESPONDENTS COUNTY OF ONEIDA, ONEIDA COUNTY BOARD OF LEGISLATORS, ANTHONY J. PICENTE, JR., INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS ONEIDA COUNTY EXECUTIVE, AND ENESSA CARBONE, INDIVIDUALLY AND AS A VOTER AND IN HER CAPACITY AS ONEIDA COUNTY COMPTROLLER.

CAROLINE E. BLACKBURN, COUNTY ATTORNEY, POUGHKEEPSIE, FOR PLAINTIFFS-RESPONDENTS COUNTY OF DUTCHESS, DUTCHESS COUNTY LEGISLATURE AND SUSAN J. SERINO, INDIVIDUALLY AND AS A VOTER AND IN HER CAPACITY AS DUTCHESS COUNTY EXECUTIVE.

GENOVA BURNS LLP, NEW YORK CITY (ANGELO J. GENOVA OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS COUNTY OF NASSAU, NASSAU COUNTY LEGISLATURE AND BRUCE A. BLAKEMAN, INDIVIDUALLY AND AS A VOTER AND IN HIS OFFICIAL CAPACITY AS NASSAU COUNTY EXECUTIVE.

Appendix B

CARL J. KEMPF, III, COUNTY ATTORNEY, EAST GREENBUSH, FOR PLAINTIFFS-RESPONDENTS COUNTY OF RENSSELAER, STEVEN F. MCLAUGHLIN, INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS RENSSELAER COUNTY EXECUTIVE AND RENSSELAER COUNTY LEGISLATURE.

TROUTMAN PEPPER LOCKE LLP, NEW YORK CITY (MISHA TSEYTLIN, OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS JASON ASHLAW, ET AL.

THOMAS E. HUMBACH, COUNTY ATTORNEY, NEW CITY (LARRAINE S. FEIDEN OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS COUNTY OF ROCKLAND AND EDWIN J. DAY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS ROCKLAND COUNTY EXECUTIVE.

RICHARD B. GOLDEN, COUNTY ATTORNEY, GOSHEN (WILLIAM S. BADURA OF COUNSEL), FOR PLAINTIFFS-RESPONDENTS STEVEN M. NEUHAUS, INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS ORANGE COUNTY EXECUTIVE, et al.

COSTELLO, COONEY & FEARON, PLLC, SYRACUSE (KELLY J. PARE OF COUNSEL), FOR DEFENDANT KEVIN P. RYAN, IN HIS CAPACITY AS COMMISSIONER OF THE ONONDAGA COUNTY BOARD OF ELECTIONS.

Appendix B

MEMORANDUM AND ORDER

PRESENT: LINDLEY, J.P., BANNISTER, SMITH, DELCONTE, AND HANNAH, JJ.

Appeals from an order and judgment (one paper) of the Supreme Court, Onondaga County (Gerard J. Neri, J.), entered October 8, 2024. The order and judgment, inter alia, denied the motions of defendants State of New York, Kathleen Hochul, in her capacity as Governor of State of New York, and Dustin M. Czarny, in his capacity as Commissioner of Onondaga County Board of Elections, for summary judgment and declared that the Even Year Election Law is void as violative of the New York State Constitution.

It is hereby ORDERED that the order and judgment so appealed from is unanimously reversed on the law without costs, the motions are granted, the decretal paragraphs are vacated, and judgment is granted in favor of defendants State of New York, Kathleen Hochul, in her capacity of Governor of State of New York, and Dustin M. Czarny, in his capacity as Commissioner of Onondaga County Board of Elections as follows:

> It is ADJUDGED and DECLARED that chapter 741 of the Laws of 2023 does not violate the New York Constitution or the United States Constitution.

Memorandum: In these eight consolidated actions, the respective plaintiffs seek declarations that chapter

741 of the Laws of 2023, known as the Even Year Election Law (EYEL), is unconstitutional because, among other reasons, it violates article IX of the New York Constitution, which grants home rule powers to local governments. Defendant in action No. 1 Dustin M. Czarny, in his capacity as Commissioner of Onondaga County Board of Elections, moved to dismiss the complaint in action No. 1, and defendant in action Nos. 1 through 8, State of New York (State) and defendant in action Nos. 1 through 5 and action Nos. 7 and 8, Kathleen Hochul, in her capacity as Governor of the State of New York (collectively, State defendants), moved to dismiss the complaints in action Nos. 1 through 3 and 5 through 8, and to dismiss the amended complaint in action No. 4.

After the entry of an order on stipulation of the parties to treat the CPLR 3211 motions to dismiss as CPLR 3212 motions for summary judgment dismissing the complaints and amended complaint, Supreme Court denied the motions, declared the EYEL unconstitutional, and enjoined defendants from enforcing or implementing the EYEL. The State defendants and Czarny appealed to the Court of Appeals, which sua sponte transferred the matter to this Court upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (*County of Onondaga v State of New York*, 43 NY3d 935, 935 [2025], citing NY Const, art VI, §§ 3[b][2]; 5[b]; CPLR 5601[b][2]). We reverse the order and judgment, vacate the decretal paragraphs, and grant the motions of Czarny and the State defendants.

Initially, we reject the assertion of plaintiffs in action Nos. 4 and 6 that the appeals should be dismissed on the ground that the State defendants and Czarny failed to assemble a proper appellate record. We conclude that the failure to include in the record certain documents that were attached to certain plaintiffs' pleadings "does not 'render[] meaningful appellate review impossible'" (*Eldridge v Shaw*, 99 AD3d 1224, 1226 [4th Dept 2012]; *see Ruth v Elderwood at Amherst*, 209 AD3d 1281, 1284 [4th Dept 2022]; *see generally Walker v County of Monroe*, 216 AD3d 1429, 1429 [4th Dept 2023]) or substantially prejudice any party (*see Bullaro v Ledo, Inc.*, 219 AD3d 1243, 1243 [1st Dept 2023]; *Ruth*, 209 AD3d at 1284; *see generally* CPLR 2001).

The EYEL amended provisions of County Law § 400, Town Law § 80, Village Law § 17-1703-a(4), and Municipal Home Rule Law § 34(3) such that elections for most county, town, and village officials would be held on even-numbered years, and would no longer be held on odd-numbered years, effective January 1, 2025 (L 2023, ch 741). Exceptions were made for the offices of town justice, sheriff, county clerk, district attorney, family court judge, county court judge, and surrogate court judge—each of which has a term of office provided in the New York Constitution (*see* NY Const, art VI, §§ 10[b]; 12[c]; 13[a]; 17[d]; NY Const, art XIII, § 13[a])—as well as town and county offices with preexisting three-year terms, all offices in towns coterminous with villages, and all offices in counties located in New York City (L 2023, ch 741). Additionally, a new subsection (h) was added to Municipal

Home Rule Law § 34(3) to preclude county charters from superseding the newly enacted County Law § 400(8).

The EYEL purports to encourage an increased voter turnout in local elections now scheduled in odd-numbered years, which are years without federal or state-wide elections on the ballot, consistent with the State's public policy of "[e]ncourag[ing] participation in the elective franchise by all eligible voters to the maximum extent" (Election Law § 17-200[1]), and the mandate of the New York Board of Elections to "take all appropriate steps to encourage the broadest possible voter participation in elections" (§ 3-102[14]).

Legislative enactments "enjoy a strong presumption of constitutionality . . . [and] parties challenging a duly enacted statute face the initial burden of demonstrating the statute's invalidity beyond a reasonable doubt" (*Overstock. com, Inc. v New York State Dept. of Taxation & Fin.*, 20 NY3d 586, 593 [2013], *cert denied* 571 US 1071 [2013] [internal quotation marks omitted]). Only "'as a last resort'" will a court declare a statute unconstitutional (*Fossella v Adams*, – NY3d –, –, 2025 NY Slip Op 01668, *1 [2025]; *see Matter of Ahern v South Buffalo Ry. Co.*, 303 NY 545, 555 [1952], *affd* 344 US 367 [1953]; *see also Stefanik v Hochul*, 43 NY3d 49, 57-58 [2024]). "The question in determining the constitutionality of a legislative action is therefore not whether the State Constitution permits the act, but whether it prohibits it. 'Obedience must be rendered to statutes which do not offend against such restrictions, even though they may seem to us impolitic'" (*Stefanik*, 43 NY3d at 58).

Appendix B

Article IX, § 1 of the New York Constitution, titled "Bill of rights for local governments," grants every local government the right to "a legislative body elective by the people thereof" (NY Const, art IX, § 1[a]), and further grants counties, other than those wholly included within a city, the power to "adopt, amend or repeal alternative forms of county government provided by the legislature" (NY Const, art IX, § 1[h][1]). As implemented by article 4 of the Municipal Home Rule Law, that alternative form of government is a county charter (*see* Municipal Home Rule Law § 32[4]). A county charter "shall provide for . . . [t]he agencies or officers responsible for the performance of the functions, powers and duties of the county . . . and the manner of election or appointment, terms of office, if any, and removal of such officers" (§ 33[3][b]). In 1963, the State Constitution was amended to include the home rule provisions of article IX and, in the same year, the Legislature adopted article 4 of the Municipal Home Rule Law (*see Matter of Baldwin Union Free Sch. Dist. v County of Nassau*, 22 NY3d 606, 614-616 [2014]).

Although the home rule amendments to the State Constitution were generally "intended to expand and secure the powers enjoyed by local governments" (*Wambat Realty Corp. v State of New York*, 41 NY2d 490, 496 [1977]) and "grant[] increasingly greater autonomy to local governments" (*Matter of Kelley v McGee*, 57 NY2d 522, 535 [1982]), the Legislature also included in Municipal Home Rule Law § 34 a list of "[l]imitations and restrictions" on the powers of counties to prepare, adopt and amend their charters, and the EYEL amends that list of limitations and restrictions.

Here, we agree with the State defendants and Czarny that the EYEL does not violate article IX of the New York Constitution. In making that determination, we reject plaintiffs' arguments that article IX, § 1 of the New York Constitution grants local governments the constitutional right to set the terms of office for their officers. Indeed, article IX, § 1 says nothing about terms of office for public officials. Instead, it provides, inter alia, that a local government has a right to "a legislative body elective by the people" of each jurisdiction (NY Const, art IX, § 1[a]) and that a county has a right to "adopt . . . alternative forms of county government" (NY Const, art IX, § 1[h][1]), but neither of those provisions gives a county exclusive local control over the manner in which local elections will be held or the specific details of each office.

It is the Municipal Home Rule Law, not article IX, § 1, that requires counties that use charters to specify their officers' terms of office therein (Municipal Home Rule Law § 33[3][b]). Of course, the Municipal Home Rule Law is a compilation of statutes, not a constitutional provision.

Plaintiffs' contention that article IX, § 1 *impliedly* gives charter counties the exclusive right to set terms of offices for their public officials is belied by the fact that article IX, § 2(c)(1) explicitly authorizes the state legislature to adopt general laws, or special laws under certain circumstances, relating to the "terms of office" of local government officials. We cannot conclude that the EYEL, by limiting the power of counties to schedule

certain elections in odd-numbered years and aligning the date of federal, state, and most local elections, renders illusory any of the rights and guarantees set forth in article IX, § 1.

According to certain plaintiffs, the State cannot infringe upon their rights to set terms of office for county officials because such rights are set forth in their county charters, which are authorized by article IX, § 1(h)(1). Plaintiffs cite no authority for the proposition that rights set forth in a county charter are somehow afforded constitutional status and therefore immune from state legislation, and we could find no such authority. If we were to accept that argument, counties could insert into their charters all sorts of rights not included in the constitution and thereby give constitutional status to those rights. We decline to adopt such a novel legal theory.

In the alternative, plaintiffs argue that the EYEL is not a general law and therefore runs afoul of article IX, § 2 of the New York Constitution because the requirements for a special law are not met. We reject that argument as well. Article IX, § 2 provides that local governments have the power to "adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs and government" (NY Const, art IX, § 2[c][i]), as well as the power to "adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to . . . [t]he . . . terms of office . . . of its officers and employees" (NY Const, art IX, § 2[c][ii][1]). The Legislature has "the power to act in relation to the property, affairs or government of

any local government" either by "general law" or, under certain circumstances, by "special law" (NY Const, art IX, § 2[b][2]).

Article IX defines a general law as "[a] law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages" (NY Const, art IX, § 3[d][1]). A law affecting only some members of a specified class "is no less general," however, provided "that the classification be defined by conditions common to the class and related to the subject of the statute" (*Uniformed Firefighters Assn. v City of New York*, 50 NY2d 85, 90 [1980]; *see Matter of Harvey v Finnick*, 88 AD2d 40, 46-48 [4th Dept 1982], *affd* 57 NY2d 522 [1982]). A special law is "[a] law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages" (NY Const, art IX, § 3[d][4]), and thus "specifies conditions that serve only to designate and identify the place to be affected and which creates a purported class in name only" (*Matter of Radich v Council of City of Lackawanna*, 93 AD2d 559, 564-565 [4th Dept 1983], *affd* 61 NY2d 652 [1983]).

Although the circumstances that article IX prescribes in order to legislate by special law (NY Const, art IX, § 2[b][2][a], [b]) are not present here, those circumstances are not required "where the State possesses a 'substantial interest' in the subject matter and 'the enactment . . . bear[s] a reasonable relationship to the legitimate, accompanying substantial State concern'" (*Greater N. Y. Taxi Assn. v State of New York*, 21 NY3d 289, 301 [2013];

see Adler v Deegan, 251 NY 467, 484-491 [1929, Cardozo, J., concurring], *rearg denied* 252 NY 574 [1929], *amended* 252 NY 615 [1930]). "A great deal of legislation relates *both* to 'the property, affairs or government of a local government' and to '[m]atters other than the property, affairs or government of a local government'—i.e., to matters of substantial state concern. Where that is true . . . [the State Constitution] does not prevent the State from acting by special law" (*Empire State Ch. of Associated Bldrs. & Contrs., Inc. v Smith*, 21 NY3d 309, 317 [2013]; *see Radich*, 93 AD2d at 565-566).

Here, as the State defendants and Czarny contend, the EYEL is a general law because it applies to all counties outside New York City. Although some counties have appointed rather than elected executives, and one county has legislators who serve three-year terms, every county has at least some elected officials at the county, town or village level. That is to say, there are no counties that have no elections for county, town or village offices. Thus, while the EYEL does not apply to all county officials, some of whom are appointed, it applies to all counties, making it a general law. Moreover, although the EYEL affects only some of the members of the specified class of counties, towns, and villages—i.e., only those counties with elected officers, only those towns and villages that are not coterminous, and only those local offices with terms that are not constitutionally prescribed—we conclude that the classification is reasonable, and that the EYEL "has an equal impact on all members of a rationally defined class similarly situated" (*Harvey*, 88 AD2d at 48; *see Uniformed Firefighters Assn.*, 50 NY2d at 90-91; *Radich*, 93 AD2d at 565).

Appendix B

In determining that the EYEL is not a general law, the court in this case relied on *Nydick v Suffolk County Legislature* (81 Misc 2d 786, 790-791 [Sup Ct, Suffolk County 1975], *affd* 47 AD2d 241 [2d Dept 1975], *affd* 36 NY2d 951 [1975]), where the Supreme Court (Stark, J.) determined at Special Term that County Law § 400(7), which allows the Governor to fill vacancies in certain county elective offices, is not a general law. Although Special Term's ruling was affirmed by the Second Department and the Court of Appeals, Special Term based its determination on several different grounds, and it is unclear whether the appellate courts agreed that County Law § 400(7) does not constitute a general law. Regardless, the issue here is whether the EYEL is a general law, not whether another provision of County Law § 400 considered by the court in *Nydick* is a general law. Because neither Supreme Court (Neri, J.) nor plaintiffs identify a single county outside of New York City to which the EYEL does not apply, we conclude that it is a general law. In light of our determination, it is academic whether the EYEL meets the conditions of a valid special law under article IX, § 2.

We also agree with the State defendants and Czarny that the so-called "savings clause" found in article IX, § 3 of the New York Constitution does not render the EYEL unconstitutional. That clause, which states that the provisions of Article IX "shall not affect any existing valid provisions of acts of . . . local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution" (NY Const, art IX, § 3[b]), clarifies

that the adoption of Article IX did not itself invalidate then-existing legislation (*see generally Baldwin Union Free Sch. Dist.*, 22 NY3d at 615-616), and does not preclude the Legislature from adopting a law such as the EYEL, which supersedes local legislation "in accordance with the provisions" of article IX (NY Const, art IX, § 3[b]). Plaintiffs' interpretation of the savings clause—which is that all local laws in effect when article IX was adopted are insulated from any subsequent state legislation—would render superfluous the phrase "shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution" set forth in the savings clause (*id.*).

We further agree with the State defendants and Czarny that none of plaintiffs' remaining constitutional challenges to the EYEL have merit. The assertion that the EYEL violates the Takings Clauses of the Federal and State Constitutions is without merit because an officeholder has "no . . . property right in the office" (*Lanza v Wagner*, 11 NY2d 317, 324 [1962], *cert denied* 371 US 901 [1962]; *see Tyk v Brooklyn Community Bd. 12*, 166 AD3d 708, 709 [2d Dept 2018]). The doctrine of legislative equivalency—which provides that repeal or modification of a statute "requires a legislative act of equal dignity and import" (*Matter of Moran v La Guardia*, 270 NY 450, 452 [1936])—has no application here because any right being abridged by the EYEL is statutory in nature, not constitutional.

Plaintiffs' other constitutional challenges arising under the Federal and State Constitutions—asserting

that the EYEL violates the rights of free speech and association, the right to equal protection of the laws, the right to substantive due process, and the right to vote—must be judged based on "the extent to which [the EYEL] directly infringes upon First and Fourteenth Amendment rights" and the associated rights under the New York Constitution (*Matter of Walsh v Katz*, 17 NY3d 336, 344 [2011]; *see Burdick v Takushi*, 504 US 428, 433-434 [1992]; *Anderson v Celebrezze*, 460 US 780, 788 [1983]). On this record, we conclude that the EYEL, which changes only the timing of certain local elections and applies equally to all participants in the political process, affects these rights "only in an incidental and remote way" (*Walsh*, 17 NY3d at 346). The EYEL's "'reasonable, nondiscriminatory restrictions'" are justified by the State's "'important regulatory interests'" (*Burdick*, 504 US at 434; *see generally SAM Party of New York v Kosinski*, 987 F3d 267, 274 [2d Cir 2021]; *Matter of Brown v Erie County Bd. of Elections*, 197 AD3d 1503, 1505 [4th Dept 2021]).

Finally, we agree with the State defendants and Czarny that there is no need to delay the application of the EYEL until the 2027 election cycle. Although the EYEL truncates the terms of certain local offices on the 2025 ballot by one year, that change has no obvious bearing on a voter's decision to sign a designating petition and does not prejudice any candidate as against an opponent. Thus, this case is entirely dissimilar from *Matter of Sherrill v O'Brien*, in which the Court of Appeals declined to address the constitutionality of the apportionment of election districts one month before a general election due to the possibility of "inextricable confusion and chaos"

(186 NY 1, 3 [1906]).

Entered: May 7, 2025

Ann Dillon Flynn
Clerk of the Court

APPENDIX C — DECISION, ORDER AND JUDGMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK, FILED OCTOBER 8, 2024

At a Term of the Supreme Court of the State of New York, held in and for the County of Onondaga, at 401 Montgomery Street, Syracuse, New York, on September 17, 2024.

Present: Hon. Gerard J. Neri, J.S.C.

Motion #7
Motion #8

STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

Index No: 003095/2024

THE COUNTY OF ONONDAGA; THE ONONDAGA COUNTY LEGISLATURE; AND J. RYAN MCMAHON II, INDIVIDUALLY AND AS A VOTER AND IN HIS CAPACITY AS ONONDAGA COUNTY EXECUTIVE,

Plaintiffs,

-against-

THE STATE OF NEW YORK; KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF THE STATE OF NEW YORK; DUSTIN M. CZARNY, IN HIS CAPACITY AS COMMISSIONER OF THE ONONDAGA COUNTY BOARD OF ELECTIONS; AND MICHELE L. SARDO, IN HER CAPACITY AS COMMISSIONER OF THE ONONDAGA COUNTY BOARD OF ELECTIONS.

Defendants.

Appendix C

STATE OF NEW YORK
SUPREME COURT NASSAU COUNTY

Action No. 2:
Index No.: 605931/2024

THE COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE, AND BRUCE A. BLAKEMAN, INDIVIDUALLY AND AS A VOTER AND IN HIS OFFICIAL CAPACITY AS ACTION NO. 2: NASSAU COUNTY EXECUTIVE,

Plaintiffs,

-against-

THE STATE OF NEW YORK AND KATHY HOCHUL, IN HER CAPACITY AS THE GOVERNOR OF THE STATE OF NEW YORK,

Defendants.

STATE OF NEW YORK
SUPREME COURT ONEIDA COUNTY

Action No. 3:
Index No: EFCA2024-000920

THE COUNTY OF ONEIDA; THE ONEIDA COUNTY BOARD OF LEGISLATORS, ANTHONY J. PICENTE, JR., INDIVIDUALLY AS A VOTER AND IN HIS CAPACITY AS ONEIDA COUNTY EXECUTIVE; AND ENESSA CARBONE, INDIVIDUALLY AND AS A VOTER AND IN HER CAPACITY AS ONEIDA COUNTY COMPTROLLER,

Plaintiffs,

-against-

Appendix C

THE STATE OF NEW YORK AND KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF THE STATE OF NEW YORK,

Defendants.

STATE OF NEW YORK
SUPREME COURT RENSSELAER COUNTY

Action No. 4:
Index No: EF2024-276591

COUNTY OF RENSSELAER; STEVEN F. MCLAUGHLIN, INDIVIDUALLY AS A VOTER, AND IN HIS CAPACITY AS RENSSELAER COUNTY EXECUTIVE; AND THE RENSSELAER COUNTY LEGISLATURE,

Plaintiffs,

-against-

THE STATE OF NEW YORK AND KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF THE STATE OF NEW YORK,

Defendants.

STATE OF NEW YORK
SUPREME COURT JEFFERSON COUNTY

Action No. 5:
Index No: EF2024-00001746

JASON ASHLAW, JOANN MYERS, TANNER RICHARDS, STEVEN GELLAR, EUGENE CELLA, ROBERT MATARAZZO, ROBERT FISCHER, JAMES JOST, KEVIN JUDGE, THE COUNTY

Appendix C

OF SUFFOLK, THE TOWN OF HEMPSTEAD, THE TOWN OF BROOKHAVEN, THE TOWN OF HUNTINGTON, THE TOWN OF ISLIP, THE TOWN OF SMITHTOWN, THE TOWN OF CHAMPION, THE TOWN OF NORTH HEMPSTEAD, AND THE TOWN OF NEWBURGH,

Plaintiffs,

-against-

THE STATE OF NEW YORK, KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF THE STATE OF NEW YORK, MICHELLE LAFAVE, IN HER CAPACITY AS COMMISSIONER OF THE JEFFERSON COUNTY BOARD OF ELECTIONS, JUDE SEYMOUR, IN HIS CAPACITY AS COMMISSIONER OF THE JEFFERSON COUNTY BOARD OF ELECTIONS, MARGARET MEIER, IN HER CAPACITY AS COMMISSIONER OF THE JEFFERSON COUNTY BOARD OF ELECTIONS, THE JEFFERSON COUNTY BOARD OF ELECTIONS, JOHN ALBERTS, IN HIS CAPACITY AS COMMISSIONER OF THE SUFFOLK COUNTY BOARD OF ELECTIONS, BETTY MANZELLA, IN HER CAPACITY AS COMMISSIONER OF THE SUFFOLK COUNTY BOARD OF ELECTIONS, THE SUFFOLK COUNTY BOARD OF ELECTIONS, JOSEPH KEARNEY, IN HIS CAPACITY AS COMMISSIONER OF THE NASSAU COUNTY BOARD OF ELECTIONS, JAMES SCHEUERMAN, IN HIS CAPACITY AS COMMISSIONER OF THE NASSAU COUNTY BOARD OF ELECTIONS, THE NASSAU COUNTY BOARD OF ELECTIONS, LOUISE VANDEMARK, IN HER CAPACITY AS COMMISSIONER OF THE

Appendix C

ORANGE COUNTY BOARD OF ELECTIONS, COURTNEY CANFIELD GREENE, IN HER CAPACITY AS COMMISSIONER OF THE ORANGE COUNTY BOARD OF ELECTIONS, THE ORANGE COUNTY BOARD OF ELECTIONS,

Defendants.

STATE OF NEW YORK
SUPREME COURT ROCKLAND COUNTY

Action No. 6:
Index No: 032196/2024

COUNTY OF ROCKLAND AND EDWIN J. DAY, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY AS ROCKLAND COUNTY EXECUTIVE,

Plaintiffs,

-against-

THE STATE OF NEW YORK,

Defendant.

STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

Action No. 7:
Index No: 004023/2024

STEVEN M. NEUHAUS, INDIVIDUALLY, AND AS A VOTER IN HIS CAPACITY AS ORANGE COUNTY EXECUTIVE, THE COUNTY OF ORANGE, THE ORANGE COUNTY LEGISLATURE, ORANGE COUNTY LEGISLATORS, KATHERINE E. BONELLI, THOMAS J. FAGGIONE, JANET SUTHERLAND,

Appendix C

PAUL RUSZKIEWICZ, PETER V. TUOHY, BARRY J. CHENEY, RONALD M. FELLER, GLENN R. EHLERS, KATHY STEGENGA, KEVIN W. HINES, JOSEPH J. MINUTA, LEIGH J. BENTON, ROBERT C. SASSI, AND JAMES D. O'DONNELL, INDIVIDUALLY AND AS VOTERS,

Plaintiffs,

-against-

KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF THE STATE OF NEW YORK, THE STATE OF NEW YORK, ORANGE COUNTY REPUBLICAN COMMITTEE, ORANGE COUNTY DEMOCRATIC COMMITTEE, CONSERVATIVE PARTY OF NEW YORK STATE, AND NEW YORK WORKING FAMILY PARTY,

Defendants.

STATE OF NEW YORK
SUPREME COURT DUTCHESS COUNTY

Action No. 8:
Index No: 2024-51659

THE COUNTY OF DUTCHESS, THE DUTCHESS COUNTY LEGISLATURE, AND SUSAN J. SERINO, INDIVIDUALLY AND AS A VOTER AND IN HER CAPACITY AS DUTCHESS COUNTY EXECUTIVE,

Plaintiffs,

-against-

THE STATE OF NEW YORK, KATHLEEN HOCHUL, IN HER CAPACITY AS GOVERNOR OF THE STATE OF NEW YORK,

Defendants.

Appendix C

The instant proceeding includes multiple consolidated cases concerning Chapter 741 of the Laws of 2023 and commonly referred to as the "Even Year Election Law" Defendant Dustin M. Czarny, Democratic Elections Commissioner for Onondaga County, moves to dismiss the action; however the notice of motion fails to state the "grounds therefor" as required by CPLR §2214[a] (NY St Cts Elec Filing [NYSCEF] Doc No. 126). Defendants State of New York (the State) and Kathleen Hochul, in her capacity as Governor of the State of New York (Hochul or the Governor; collectively as the State Defendants), move to dismiss pursuant to CPLR §3211[a][3], [a][7]; and [c], alleging the complaints fail to state a cause of action, certain individual plaintiffs lack standing, and certain municipal plaintiffs lack capacity to assert certain causes of action (NYSCEF Doc No. 129). Plaintiffs Jason Ashlaw, Joann Myers, Tanner Richards, Steven Gellar, Eugene Cella, Robert Matarazzo, Robert Fischer, James Jost, Kevin Judge, the County of Suffolk, the Town of Hempstead, the Town of Brookhaven, the Town of Huntington, the Town of Islip, the Town of Smithtown, the Town of Champion, the Town of North Hempstead, and the Town of Newburgh (collectively as the Jefferson County plaintiffs) filed papers opposing the motion to dismiss and seeking judgment in plaintiffs' favor (NYSCEF Doc Nos. 150-153, 196-208). The County of Dutchess, the Dutchess County Legislature, and Susan J. Serino, individually and in her capacity as Dutchess County Executive (collectively as the Dutchess County plaintiffs), oppose the motion to dismiss (NYSCEF Doc No. 161 *et seq.*). Plaintiffs County of Oneida, Oneida County Board of Legislators, Anthony J. Picente, Jr., and Enessa Carbone (collectively as the Oneida plaintiffs) oppose the motion to dismiss

and pursuant to CPLR §3211[a][7] seek judgment on the pleadings as there are no factual issues precluding the grant of relief (NYSCEF Doc Nos. 163-164). Plaintiffs County of Onondaga, the Onondaga County Legislature, and J. Ryan McMahon II (collectively as the Onondaga Plaintiffs) similarly oppose the motions to dismiss and seek judgment on the pleadings as there are no factual issues precluding the grant of relief (NYSCEF Doc Nos. 165-167, 172-174). Plaintiffs Steven M. Neuhaus, individually as a voter and in his capacity as Orange County Executive, the County of Orange, the Orange County Legislature and Orange County Legislators, Katherine E. Bonelli, Thomas J. Faggione, Janet Sutherland, Paul Ruszkiewicz, Peter V. Tuohy, Barry J. Cheney, Ronald M. Feller, Glenn R. Ehlers, Kathy Stegenga, Kevin W. Hines, Joseph J. Minuta, Leigh J. Benton, Robert C. Sassi and James D. O'Donnell (collectively as the Orange plaintiffs) oppose the motion to dismiss (NYSCEF Doc No. 168 *et seq.*). Plaintiffs County of Rensselaer, Steven F. McLaughlin, individually and in his capacity as Rensselaer County Executive, and the Rensselaer County Legislature (collectively as the Rensselaer plaintiffs) oppose the motion to dismiss and further adopt and incorporate the opposition papers of the Onondaga Plaintiffs in opposition to the motion to dismiss and in support of judgment in favor of plaintiffs (NYSCEF Doc No. 182 *et seq.*). Plaintiffs County of Nassau, the Nassau County Legislature, and Bruce A. Blakeman, individually and as the Nassau County Executive (collectively as the Nassau plaintiffs), oppose the motion to dismiss and seek judgment in favor of the plaintiffs (NYSCEF Doc No. 184 *et seq.*). Plaintiffs Rockland County and Edwin J. Day, individually and as Rockland County

Executive (collectively as the Rockland plaintiffs), oppose the motion to dismiss and seek judgment in favor of the plaintiffs (NYSCEF Doc No. 194 *et seq.*). Oral argument was requested and held on September 17, 2024.

State Defendants move to dismiss the underlying actions. State Defendants first argue that the Even Year Election Law is presumed constitutional and does not violate Aritcle IX of the New York State Constitution (*see* Memorandum of Law, Doc. No. 148, p. 17 of 48). "Duly enacted statutes enjoy a strong presumption of constitutionality. To rebut that presumption, the party attempting to strike down a statute as facially unconstitutional bears the heavy burden of proving beyond a reasonable doubt that the statute is in conflict with the Constitution" (*Stefanik v. Hochul*, 229 A.D.3d 79, 83 [Third Dept. 2024], *aff'd*, No. 86, 2024 WL 3868644 [2024], *internal quotations and citations omitted*). State Defendants note that the State Constitution provides in part:

> "Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:
> "(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of

> necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature" (NY Const. Art. IX, §2[b][2]).

"These two provisions might be read to mean that, in the absence of a home rule message or certificate of necessity, a local government's 'property, affairs or government' is an area in which local governments are free to act, but from which the state legislature is excluded unless it legislates by general law. It was long ago recognized, however, that such a reading of the Constitution would not make sense—that there must be an area of overlap, indeed a very sizeable one, in which the state legislature acting by special law and local governments have concurrent powers" (*Empire State Chapter of Associated Builders & Contractors, Inc. v. Smith*, 21 N.Y.3d 309, 316 [2013]).

State Defendants next assert that the Even Year Election Law is a general law and is constitutional as general laws may be used to override local governments' laws and charters. A general law is a "law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages" (*Harvey v. Finnick*, 88 A.D.2d 40, 47 [Fourth Dept. 1982], *citing* N.Y. Const. Art. IX, §3[d][4]). "The legislature has all the power of legislation there is, except as limited by the Constitution, either expressly or by necessary implication" (*People ex rel. Central Trust Co.*

v. Prendergast, 202 N.Y. 188, 197 [1911]). "The general legislative power is absolute and unlimited except as restrained by the Constitution" (*People ex rel. Simon v. Bradley*, 07 N.Y. 592, 610 [1913], *citations omitted*). State Defendants assert that the Even Year Election Law "applies to a large, geographically diverse class of political subdivisions of this State" (*see* Memorandum of Law, Doc. No. 148, pp. 6-7). As a general law, the Even Year Election Law is permissible as its purpose is to increase voter participation.

State Defendants argue in the alternative that if the court finds that the Even Year Election Law is a special law, it is still valid as the law relates to an area of state concern. There are three categories of legislative areas: (1) areas of exclusive state concern, (2) areas of purely local concern, and (3) areas where the state and local concern overlap. (*Adler v. Deegan*, 251 NY 467, 476 [1929]. To determine which category a law falls under, its purpose and effects are a necessary consideration. (See, Elm Street in City of New York, 246 NY 72, 76 [1927]. State Defendants argue that "the Even Year Election Law does not materially alter the powers, duties, or term limits of elected officials and merely provides for a consistent framework for elections, calculated to increase the likelihood that the greatest number of New Yorkers are able to exercise their fundamental right to vote" (*see* Memorandum of Law, Doc. No. 148, p. 8).

> "It is well established that the home rule provisions of article IX do not operate to restrict the Legislature in acting upon matters

> of State concern. In questioning whether a challenged statute involves a matter other than the property, affairs or government of a municipality, this court has consistently analyzed the issue from the standpoint of whether the subject matter of the statute is of sufficient importance to the State generally to render it a proper subject of State legislation" (*Kelley v. McGee*, 57 N.Y.2d 522, 538 [1982]).

"It is respectfully submitted that the justification for the challenged statute was to prevent voter confusion and to support increasing voter turnout, thereby advancing the free exercise of the right of New Yorkers to vote in every election and for every office" (*see* Memorandum of Law, Doc. No. 148, p. 10). State Defendants assert that plaintiffs cannot meet their burden and the Even Year Election Law must be held constitutional. State Defendants further argue that Article IX, section 3 does not prevent preemption by the State. State Defendants also argue that the remaining arguments proffered by individual plaintiffs are unavailing. State Defendants pray that the court grant the motion to dismiss.

Defendant Czarny makes similar arguments in support of his motion to dismiss (*see* NYSCEF Doc No. 128, mem of law).

The Onondaga Plaintiffs submitted a memorandum of law in opposition to the motions to dismiss as well as in support of a judgment in their favor (Doc. No. 167). "In declaratory judgment actions, however, CPLR §3211[a][7]

empowers a court to grant judgment on the pleadings notwithstanding the absence of a motion for summary judgment" (*Matter of Kerri W.S. v. Zucker*, 202 A.D.3d 143, 153 [Fourth Dept. 2021], *citations omitted*). The Onondaga Plaintiffs note that the Onondaga County Charter predates the current iteration of Article IX of the State Constitution (*see* Memorandum of Law, Doc. No. 167, pp. 1-4). Onondaga Plaintiffs assert that Article IX of the State Constitution grants counties the right to set terms of office and the Even Year Election Law does not validly supersede that right. The bill of rights for local governments provides that counties may "adopt, amend or repeal alternative forms of county government" (N.Y. Const. Art. IX, §1[h][1]). Alternative forms of government must be passed via referendum by a majority in the areas outside of any cities within a county as well as a majority within any city in a county (*ibid.*). The right to adopt an alternative form of government inherently contains the right to set terms of office for its elected officials (*see Resnick v. County of Ulster*, 44 N.Y.2d 279, 286 [1978]). This right is further evidenced in Municipal Home Rule Law ("MHL") §33, which provides for the power to adopt, amend and repeal county charters and includes:

> "Such a county charter *shall* provide for: (b) The agencies or officers responsible for the performance of the functions, powers and duties of the county and of any agencies or officers thereof and the manner of election or appointment, terms of office, if any, and removal of such officers (MHL §33[3][b], ***emphasis added***).

"The question in determining the constitutionality of a legislative action is therefore not whether the State Constitution permits the act, but whether it prohibits it" (*Stefanik v. Hochul*, No. 86, 2024 WL 3868644, at *3 [2024]). Onondaga Plaintiffs assert the State Defendants failed to address the County's right to a charter government as established in Article IX of the State Constitution. Further, the right to a charter government could only be removed by a constitutional amendment.

Onondaga Plaintiff argue that County Law §400[8], as modified by the Even Year Election Law, is not a general law. Onondaga Plaintiffs note that not all counties have an elected executive, and therefore the law does not apply to all counties. The Attorney General's Office has previously opined that County Law §400 is not a general law in discussing the office of county coroner and contrasting counties which established the office of medical examiner (*see* 1985 N.Y. Op. Att'y Gen. (Inf.) 113 [1985]). Further, the Court of Appeals affirmed a lower court decision finding that County Law §400 was not a general law concerning the appointment of a certain county official because of Suffolk County Charter provisions contrary to County Law §400 (*see Nydick v. Suffolk County Legislature*, 36 N.Y.2d 951, 953 [1975]). Onondaga Plaintiffs argue that the Even Year Election Law is neither an appropriate general or specific law as allowed by Article IX of the Constitution and must be held unconstitutional.

Even if the Even Year Election Law were a general law, it would still be unconstitutional, argue Onondaga County plaintiffs. Onondaga Plaintiffs note that under Article IX, Section 2, the Legislature's ability to override

the counties' constitutional rights is specifically subject to the bill of rights of local governments (*see* N.Y. Const. Art. IX, §2[b][2]). The bill of rights of local governments specifically empowers counties to adopt alternative forms of government, which inherently includes the right to set the terms of office for their officers. They further argue that the State Defendants fail to note that Article IX, Section 2[c] is limited to non-charter local legislation (*see Heimbach v. Mills*, 67 A.D.2d 731, 731 [Second Dept. 1979]). "Neither the constitution nor the county charter law require[s] that charter laws be consistent with general state laws. This contrasts with local laws, which must be consistent with general state laws" (Cole, James D., *Constitutional Home Rule in New York: "The Ghost of Home Rule"*, 59 St. John's L. Rev. 713, 727 [1985]). Specifically, Article IX, Section 2[c] refers to the power to adopt and amend local laws, separate and apart from a county's charter. The Court of Appeals has noted the differences in local law versus charter law due to the requirements of a "double referendum" for a charter law (*see Smithtown v. Howell*, 31 N.Y.2d 365, 376 [1972]). As the Even Year Election Law violates Article IX of the Constitution, Onondaga County plaintiffs pray the court grant judgment in their favor.

Onondaga County plaintiffs further argue there is no substantial state concern that would permit interference with the County's constitutional right to determine terms of office and manage local elections.

> "It is well established that the home rule provisions of article IX do not operate to restrict the Legislature in acting upon matters

> of State concern. In questioning whether a challenged statute involves a matter other than the property, affairs or government of a municipality, this court has consistently analyzed the issue from the standpoint of whether the subject matter of the statute is of sufficient importance to the State generally to render it a proper subject of State legislation" (*Kelley v. McGee*, 57 N.Y.2d 522, 538 [1982]).

"The task of the judiciary has been, and is, to determine whether a specific act comes within the scope of the phrase 'property, affairs or government' of a municipality. This phrase has been narrowly construed, but if the phrase is to have any meaning at all there must be an area in which the municipalities may fully and freely exercise the rights bestowed on them by the People of this State in the Constitution" *Baldwin v. City of Buffalo*, 6 N.Y.2d 168, 173 [1959], *internal citations omitted*). Onondaga Plaintiffs assert that the purported state interest— decreased voter confusion and higher voter turnout in local elections—does not implicate a substantial state concern (*see* Memorandum of Law, Doc. No. 167, pp. 15-16). "The mere statement by the Legislature that subject matter of the statute is of State concern does not in and of itself create a State concern nor does it afford the statute such a presumption" (*Monroe v. Carey*, 96 Misc. 2d 238, 241 [Sup. Ct. Orange Cty. 1977]). Onondaga Plaintiffs further note that even if one were to give credence to such an expansive view of the State's interest, they note that numerous offices are omitted from the Even Year Election Law which would continue to be voted on in odd years, thus defeating the

stated purpose of moving other offices to the even year elections. Similarly, voter turnout in local elections, according to Onondaga Plaintiffs, is a local concern. To the contrary, Onondaga Plaintiffs argue moving local offices to even year elections will have the exact opposite effect.

> "These local concerns include the right to decide when and how local officials are elected; ballot confusion; diminishing the importance of local issues and elections in a crowded political campaign season; and the increased expense of running local campaigns in the same year as presidential, gubernatorial, or other federal or statewide office elections. The crowded ballots and increased expenses associated with running for county offices in even-numbered years could deter qualified candidates from running for office in the first place" (*see* Memorandum of Law, Doc. No. 167, p. 18).

Further defeating the State's interest is the fact that New York City is entirely exempt. Without a substantial state concern, Onondaga Plaintiffs assert they are entitled to a judgment declaring the Even Year Election Law unconstitutional.

Onondaga Plaintiffs distinguish the instant matter of "when" an election is held versus the "how" an election is conducted. Onondaga Plaintiffs concede that in *Stefanik v Hochul*, the Court of Appeals found that the State has plenary power to regulate the conduct of elections (*see Stefanik v. Hochul*, 229 A.D.3d 79 [Third Dept. 2024],

aff'd 2024 WL 3868644 [2024]). The Even Year Election Law simply removes certain local offices from the odd year ballots and places them on the even year ballot, impacting the size of the ballots and the terms of offices for the positions. The Even Year Election Law does not address any issues of "integrity" or ballot security. Onondaga Plaintiffs assert the Even Year Election Law violates Article IX of the State Constitution.

Alternatively, article IX contains a savings clause which would permit Onondaga County to continue its odd year elections consistent with the Onondaga County Charter. Article IX, Section 3 of the State Constitution provides, in part:

> "The provisions of this article shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution" (N.Y. Const. Art. IX, §3[b]).

Section 301 of the Onondaga County Charter sets elections for Onondaga County officials in the odd year, commencing in 1967 (*see* Onondaga County Charter, §301). As Section 301 has not been modified, it remains valid (*see Boening v. Nassau Cnty. Dep't of Assessment*, 157 A.D.3d 757, 762-764 [Second Dept. 2018]).

Finally, Onondaga Plaintiffs assert that Governor Hochul is not entitled to legislative immunity. "The

Onondaga County Plaintiffs seek a declaration that the Even Year Election Law is unconstitutional, which would prevent Governor Hochul from enforcing the Law but have no impact on her in any legislative capacity" (*see* Memorandum of Law, Doc. No. 167, p. 23). Onondaga Plaintiffs pray the court deny the motions to dismiss and grant judgment in favor of the Onondaga Plaintiffs.

As noted above, the other County plaintiffs adopted and incorporated the arguments of the Onondaga Plaintiffs, or alternatively made substantially similar arguments. The Rensselaer plaintiffs made an additional argument that the legislative equivalency doctrine applies to the instant matter (*see* Memorandum of Law, Doc. No. 182, pp. 21, *et seq.*). The doctrine of legislative equivalency provides that legislation may only be amended or repealed through use of the same procedures that were used to enact it originally (*see generally Torre v. County of Nassau*, 86 N.Y.2d 421, 426 [1995]; *see also Gallagher v. Regan*, 42 N.Y.2d 230, 234 [1977]; *see also Matter of Moran v. La Guardia*, 270 N.Y. 450, 452 [1936]). As the basis of the counties' rights comes from Article IX of the State Constitution, Rensselaer plaintiffs assert that only a constitutional amendment is sufficient to alter those rights. Further, as the Rensselaer Charter established the terms of office, and the Rensselaer Charter was approved by the voters of Rensselaer, only by legislation of equal dignity, i.e., a referendum by the people, could the Rensselaer Charter be altered. Nassau plaintiffs make a similar legislative equivalency argument (*see* Memorandum of Law, Doc. No. 193, pp. 21, *et seq.*).

Similar to the Onondaga Plaintiffs, Jefferson Plaintiffs seek judgment on their amended complaint on counts IV, V, and VI (*see* Memorandum of Law, Doc. No. 196, pp. 5, *et seq.*). Jefferson Plaintiffs also oppose Defendants' motions to dismiss (*see* Memorandum of Law, Doc. No. 150). "[O]n a motion to dismiss the court 'merely examines the adequacy of the pleadings'" (*Davis v. Boeheim*, 24 N.Y.3d 262, 268 [Fourth Dept. 2014], *citations omitted*). Plaintiffs have "standing to challenge the statute insofar as they allege a threatened injury to a protected interest by reason of the operation of the unconstitutional feature of the statute" (*Kowal v. Mohr*, 216 A.D.3d 1472, 1473 [Fourth Dept. 2023], *internal quotations and citations omitted*). The federal constitution protects "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters . . . to cast their votes effectively" (*Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983); *see also Burdick v. Takushi*, 504 U.S. 428, 434 [1992]). Jefferson Plaintiffs argue they have alleged sufficient facts to withstand a motion to dismiss and pray the Court deny the motions to dismiss.

State Defendants replied and reiterated their arguments concerning the Town and Individual Plaintiffs (*see* Memorandum of Law in Reply, Doc. No. 154). Defendant Czarny filed a memorandum of law in reply and reiterated his arguments (Doc. No. 220). State Defendants replied and reiterated their arguments concerning the Article IX arguments (Doc. No. 223). At the request of the Parties, the Court held oral arguments.

Appendix C

Discussion:

State Defendants move to dismiss the complaints pursuant to CPLR §3211[a][7] and note that upon such a motion in an action for declaratory judgment the Court may reach the merits when there is no question of fact (*see Ciaccio v. Wright-Ciaccio*, 211 A.D.3d 900, 902 [Second Dept. 2022]). "Duly enacted statutes enjoy a strong presumption of constitutionality. To rebut that presumption, the party attempting to strike down a statute as facially unconstitutional bears the heavy burden of proving beyond a reasonable doubt that the statute is in conflict with the Constitution. Courts will strike down legislative enactments only as a last unavoidable result, after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible" (*Stefanik v. Hochul*, 229 A.D.3d 79, 83 [Third Dept. 2024], *aff'd*, No. 86, 2024 WL 3868644 [2024], *internal quotations and citations omitted*).

Plaintiffs cite a litany of cases in the years following the ratification of the most recent version of article IX which support the then contemporary view of strong local government. "Undoubtedly the 1963 home rule amendment was intended to expand and secure the powers enjoyed by local governments" (*Wambat Realty Corp. v. State*, 41 N.Y.2d 490, 496 [1977]).

> "All the changes made by the 1964 home rule amendment and its contemporaneously adopted

> implementing statute were expansive. With some exceptions, identical grants of authority were made to all local governmental units—counties and towns, as well as cities and villages. The manifest intent was to encourage local governments to make a living document of the bill of rights for local governments" (*Resnick v. County of Ulster*, 44 N.Y.2d 279, 286 [1979]).

The Court of Appeals continued: "Our statutes, as they have evolved, now allow counties considerable latitude to choose that structure of local government which is best tailored to serve particular community needs" (*ibid.* at 287). The Court of Appeals held that local laws concerning appointments to vacancies in elective office which diverged from state law were valid exercises of Article IX rights (*ibid* at 289). The Court of Appeals in *Resnick* built on the rights previously affirmed for charter counties in *Nydick v. Suffolk County Legislature* (36 N.Y.2d 951 [1975]). "Moreover, if such consistency were generally required, every charter provision would have to conform to every applicable general law and there could never be such a thing as an alternative form of government ***or effective home rule in the localities***" (*Heimbach v. Mills*, 67 A.D.2d 731, 732 [Second Dept. 1979], ***emphasis added***). Section 2 of Article IX is concerned with ***all*** units of local government (*ibid* at 731). Specific to the counties, the enabling legislation for Article IX provides that county charters "***shall*** provide for: [b] the agencies or officers responsible for the performance of the functions, power and duties of the county and of any agencies or officers

thereof and the manner of election or appointment, ***terms of office***, if any, and removal of such officers" MHL §33[3][b], ***emphasis added***). Counties have the constitutional right to set their own terms of office.

Article IX permits the State to invade matters of local concern only by general law or special law (*see* N.Y. Const. Art. IX, §2[c]). A general law is defined as a "law which in terms and in effect applies alike to all counties, other than those wholly included within a city, all cities, all towns or all villages" (N.Y. Const. Art. IX, §3[d][1]). The issue of whether County Law §400 is a general law (one of the laws purportedly modified by the Even Year Election Law) has already been resolved.

> "Accordingly the court finds that section 400 of the County Law is not a general law within the meaning of the Constitution and statutes of the State" (*Nydick v. Suffolk Cnty. Legislature*, 81 Misc. 2d 786, 790–91 [Sup. Ct. Suffolk Cty. 1975], *aff'd*, 47 A.D.2d 241 [Second Dept. 1975], *aff'd*, 36 N.Y.2d 951 [1975]).

As County Law §400 is not a general law, the State's attempt to alter counties' timing of elections and terms of office for county offices is unconstitutional.

Even were it a special law, the court does not find that there is a substantial state interest or concern. Case law developed prior to the ratification of article IX requires that there must be a matter of state concern for the State to invade the province of local control (*see Adler v. Deegan*,

251 N.Y. 467, 477 [1929]). Defendants have argued that despite the lack of a home rule message, the Even Year Election Law remains a valid exercise of the Legislature's power.

> "[N]ot every special law in and of itself requires a home rule message, as the effect may be at most incidental, not a direct impact on the property, affairs or government of that entity. 'The intent of these provisions of the Constitution was to provide some measure of protection to a city from possible danger of ill-considered interference by the Legislature in its local affairs.'" (*City of New York v State*, 76 NY2d 479, 485 [1990] *quoting City of New York v. Vil. of Lawrence*, 250 N.Y. 429, 439 [1929]).

Nonetheless, defendants argue that a substantial area of state interest permits the Legislature to act (*see Adler* at 491). The proffered state interest in this matter is as follows:

> "New York's current system of holding certain town and other local elections on election day, but in odd-numbered years leads to voter confusion and contributes to low voter turnout in local elections. Studies have consistently shown that voter turnout is the highest on the November election day in even-numbered years when elections for state and/or federal offices are held. Holding local elections at the same time will make the process less confusing

> for voters and will lead to greater citizen participation in local elections.
> This bill will also address confusion on ballots themselves by establishing a consistent and logical structure for how the Board of Elections would list the offices for election. Executive positions like the President of the United States and Governor go first, followed by other federal and state offices. All candidates who do not have an affiliation to a political office or are judicial candidates who are viewed as non-partisan, would be listed on the latter half of the ballot" (*see* Introducer's Memorandum in Support, Doc. No. 132).

The issues raised are inherently matters of local concern as they do not impact state government. Ordinarily policy considerations are beyond the purview of the court (*see Stefanik v Hochul*, No. 86, 2024 WL 3868644, at *15, 21 [2024]). But as noted above, such a review is mandated in considering the instant statute's constitutionality. To evaluate the State's claims, during oral arguments the State invited the court to review election results as noted in defendant Czarny's papers, including the online election results.

Defendant Democratic Elections Commissioner for Onondaga County Dustin Czarny asserts the following concerning turnout:

> "In Onondaga County since 2016 our official turnout percentages for the November general

> election are as follows: 2016-74.5%; 2017-37.2%; 2018-62.6%; 2019-36.7%; 2020-77.0%; 2021-31.1%; 2022-56.2%; 2023-29.60%" (*see* Czarny Affidavit, Doc. No. 218, ¶9).

Commissioner Czarny then lumps the odd years together to claim an "average" turnout rate of 33.7% (*ibid.* ¶10), then distinguishes even year gubernatorial turnout at 59.4% and even year presidential turnout at 76.5% (*ibid.* ¶12). Czarny does not define "turnout," but presumably this refers to the number of voters showing up at polls versus the number of registered active voters. This only tells part of the story. In the 2022 gubernatorial election in Onondaga County, 171,212 votes were cast.[1] Of those votes, 1,235 were "voids/blanks," meaning that of the 171,212 voters who cast a ballot, 1,235 did not vote in the governor's race.[2] The number of "void/blanks" increases as one moves down the ballot: for comptroller, 3,503;[3] attorney general, 3,297;[4] federal senator, 1,645;[5] member of the House of Representatives, 2,800;[6] 48th State Senate

1. https://hubdocs.blob.core.windows.net/docs/ongov/rec/38200/attachments/GE22%20OFFICIAL%20RESULTS.pdf, p. 12

2. *ibid*

3. *ibid,* p. 22

4. *ibid,* p. 34

5. *ibid,* p. 45

6. *ibid,* p. 78

District, 1,803[7] and 50th State Senate District, 1,613,[8] for a combined total of 3,416 "void/blanks" in State Senate races for Onondaga County; the 126th Assembly District, 1,536,[9] the 127th Assembly District, 799,[10] the 128th Assembly District, 1,202, and the 129th Assembly District, 9,155,[11] for a total of 12,692 "void/blanks" in Assembly races for Onondaga County; Onondaga County Sheriff, 4,882;[12] Onondaga County Court Judge, 23,455;[13] and Family Court Judge, 4,887.[14] This difference between the "top of the ticket" becomes even starker when looking at a completely local issue. In the Town of DeWitt, there were only 68 "void/blanks" cast in the gubernatorial race out of a total of 10,546 (0.65%),[15] compared to 781 "void/blanks" for a ballot proposition to change the term of office for DeWitt Highway Supervisor from two years to four years (7.41%).[16] Czarny's analysis is a general view from 30,000 feet and fails to account for the specific down ballot local

---

7. *ibid,* p. 85

8. *ibid,* p. 91

9. *ibid,* p. 94

10. *ibid,* p. 98

11. *ibid,* p. 106

12. *ibid,* p. 117

13. *Ibid*, p.128 * in the Onondaga County Court race, voters were permitted to vote for up to two candidates, so the 23,455 number should be divided in half, 11,727.5, for an equal comparison.

14. [14] *ibid,* p. 139

15. *ibid,* p. 12

16. *ibid,* p. 179

races that will be affected. The detailed facts demonstrate that simply because one enters the polling booth does not guarantee that the individual will participate in all races.

Plaintiffs have proffered that voters' interest in a race plays a greater factor in turnout.

> "It is respectfully submitted that voter turnout for local elections is more appropriately considered a matter of local concern and that the Even Year Election law implicates a number of other local concerns, including the right to determine when and how local officials are elected; ballot confusion; diminishing the importance of local issues and elections in a crowded political campaign season; the increased expense of running local campaigns in the same year as presidential, gubernatorial, or other federal or statewide office elections; and attracting qualified candidates to run for local office" (*see* Julian Affirmation, Doc. No. 163, ¶67).

Voter education appears to play a far greater role in turnout than timing. Further, the size of a ballot being a concern in limiting the number of lines a candidate can appear on, excepting candidates for governor or state legislature (*see* Election Law §7-104). Yet the Even Year Election Law would effectively double the size of a ballot which supports the plaintiffs' well-founded concerns about confusion and drop off.

Similarly, local races, as evidenced by the comparison in the 2022 election between the governor's race and a town ballot initiative, would be competing for the attention of voters. To use an obsolete term, there are only so many column-inches the news can and will handle. By maintaining a separation between even year federal and state elections and odd year local elections, local interests would not have to compete for attention with more widely covered state and national issues. Be it in the local paper, television, radio, online, or one's mailbox, the competition for a voter's attention is fierce. New York and the plaintiff Counties are home to some of the most competitive House of Representative races,[17] and with that competition comes massive spending on advertising. There is simply no way local races can compete and obtain media attention, paid or earned, in that maelstrom.

Further contributing to this confusion is that the Even Year Election Law does not even consolidate all elections. County Law §400[8] specifically exempts races for "sheriff, county clerk, district attorney, family court judge, county court judge, surrogate court judge, or any offices with a three-year term prior to January first, two thousand twenty-five" (County Law §400[8], *effective January 1, 2025*). An added limitation to the scope of the Even Year Election Law is that the 81/2 million residents of New York City (nearly half of the state's population) will maintain their odd year elections, certainly raising federal equal protection questions as acknowledged by the Attorney General's Office during oral argument. Are the

17. https://www.cookpolitical.com/ratings/house-race-ratings

urbane voters of New York City less likely to be confused by odd year elections than the rubes living in Upstate and Long Island While the Even Year Election Law would impact virtually every county outside of New York City, certain county offices and the entirety of New York City remain exempt. The proffered reason for this is that it would take a constitutional amendment to change elections for those offices. As we have seen with article IX, the fact is it would take a constitutional amendment to change the elections for any local offices. The purported state interest does not pass the smell test. Voters participate when they are aware, informed, and believe their vote matters. Timing, as evidenced by the above, is a secondary or tertiary concern. Further distinguishing state from local concern is the fact that none of the affected offices are state offices. There is simply no state interest in the timing and changing of terms of local offices.

Even were the above not true, the Savings Clause of article IX prevents the State from interfering with the existing county charters (*see* NY Const., Art. IX, §3[b]). The enabling legislation of article IX as found in MHL §33 reinforces the counties' right to set their own terms of office (MHL §33[3]). For the reasons articulated herein and within plaintiffs' papers, judgment is granted in favor of the County plaintiffs and insofar as the Jefferson plaintiffs sought judgment on counts IV, V, and VI of their amended complaint, that the Even Year Election Law is unconstitutional in violation of Article IX of the New York State Constitution.

Certain plaintiffs have raised the issue of the Legislative Equivalency Doctrine. Having found that the Even Year Election Law is unconstitutional, the

question is moot as it is redundant. Having found that defendants violated plaintiffs' constitutional rights, only an amendment of the New York State Constitution can change those rights.

Jefferson County plaintiffs outside of counts IV, V, and VI of their amended complaint oppose the motions to dismiss. "[O]n a motion to dismiss the court 'merely examines the adequacy of the pleadings'" (*Davis v. Boeheim*, 24 N.Y.3d 262, 268 [Fourth Dept. 2014], citations omitted). Plaintiffs have "standing to challenge the statute insofar as they allege a threatened injury to a protected interest by reason of the operation of the unconstitutional feature of the statute" (*Kowal v. Mohr*, 216 A.D.3d 1472, 1473 [Fourth Dept. 2023], internal quotations and citations omitted). The federal constitution protects "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters . . . to cast their votes effectively" (*Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983); *see also Burdick v. Takushi*, 504 U.S. 428, 434 [1992]). The court agrees that the individual and Town plaintiffs within the Jefferson plaintiffs have standing and capacity and the granting of a motion to dismiss is not appropriate at this time. Nor is it appropriate to dismiss the action as against Governor Hochul in her official capacity. As executive of the State of New York, she is responsible for more than merely approving or vetoing bills passed by the Legislature. She is also charged with enforcing the laws of the State of New York and her presence in this lawsuit is appropriate.

The arguments of the State Defendants bring to mind how the late Justice Scalia was fond of explaining how the constitution of the former USSR contained a bill of rights

which in many respects was better than our own, as it set forth many more rights. The difference, he noted, was the structure of the United States' Constitution was superior in that there were mechanisms built in to actually enforce those rights.[18] To accept the defendants' view would be to accept a mirage of constitutional rights; while they may appear on paper, when one attempts to utilize those rights they disappear. If we are to accept the defendants' view on Article IX, then the rights contained therein are not rights at all, but merely suggestions to be accepted or ignored by the State at any given moment; instead of the strong local governments envisioned by Article IX, the various counties of New York get reduced to colonial outposts of the Empire State. Article IX clearly gives the counties the right to form alternative forms of government (*see* NY Const. Art. IX, §1[h]), and those rights "shall be liberally construed" (*see* NY Const. Art. IX, §3[c]). The Court of Appeals has previously determined that County Law §400 is not a general law (*see Nydick*, *supra*).

> "Article IX, § 2 of the State Constitution grants significant autonomy to local governments to act with respect to local matters. Correspondingly, it limits the authority of the State Legislature to intrude in local affairs, by giving it 'the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only . . . on request of two-thirds of the total membership

18. *See e.g.* https://gould.usc.edu/news/scalia-on-con-law-its-all-about-standing/

> of its legislative body or on request of its chief executive officer concurred in by a majority of such membership'" (*City of New York v. Patrolmen's Benevolent Ass'n*, 89 N.Y.2d 380, 387 [1996], *citing* N.Y. Const., Art. IV, §2[b][2]).

As noted above, the only alternative to enacting a special law is when a substantial state interest is involved and "that the 'subjects of State concern must be directly and substantially involved'" (*ibid* at 391, quoting *Adler* at 490). "[T]he enactment must bear a reasonable relationship to the legitimate, accompanying substantial State concern" (*City of New York v. Patrolmen's Benevolent Ass'n*, at 391). The prerequisites of a special law were not followed and the subject matter of the Even Year Election Law is inherently a local issue as it affects no state offices. The Even Year Election Law is unconstitutional as specifically prohibited by Article IX of the New York State Constitution.

NOW, THEREFORE, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon, it is hereby

ORDERED, the motions to dismiss brought by the State Defendants and defendant Czarny are denied; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that the Even Year Election Law is void as violative of the New York State Constitution; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that Section 301 of the Onondaga County Charter falls within the Savings Clause of Article IX of the New York State Constitution and is valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that Sections 201, 301 and 401 of the Oneida County Charter fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that Sections 104 and 2302 of the Nassau County Charter fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that Sections 2.02 and 3.01 of the Rensselaer County Charter fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that sections C3-6 and C21-3 of the Suffolk County Charter fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that Section C.01 of the Rockland County Charter and Rockland County local Law §5-8 fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that section 3.01 of the Orange County Charter and Section 2-1 of the Orange County Code fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3001 it is declared that Sections 3.01 and 2.011 of the Dutchess County Charter fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; and it is further

ORDERED and ADJUDGED that defendants, State of New York, Governor Kathleen Hochul, Commissioner Dustin Czarny and Commissioner Michele Sardo, their agents, and anyone acting on their behalf are enjoined from enforcing and/or implementing the Even Year Election Law.

Dated: 10-08-2024

ENTER

/s/ Gerard J. Neri
HON. GERARD J. NERI, J.S.C.

APPENDIX D — EXCERPTS OF THE COURT OF APPEALS OF THE STATE OF NEW YORK, REPLY BRIEF, FILED JULY 23, 2025

* * *

SUBSTANTIVE DUE PROCESS VIOLATIONS

As argued below, the County and its officers have been deprived of substantive due process. Defendants have not shown that Chapter 741 was enacted in furtherance of a legitimate governmental purpose, and there is no reasonable relation between the end sought to be achieved by Chapter 741 and the means used to achieve that end.

The appellate division held that Chapter 741's "reasonable nondiscriminatory restrictions are justified by the State's important regulatory interest." citing *Burdick*, 504 US at 434; *see generally SAM Party of New York v Kosinski*, 987 F3d 267, 274 (2d Cir 2021); *Matter of Brown v Erie County Bd. of Elections*, 197 AD3d 1503, 1505 (4th Dept 2021).

The class of person being affected for this analysis are the elected officials of counties. These elected officials from some counties, those that are county supervisors (*see* County Law § 150) benefit by being allowed odd year elections, while all others are burdened with the requirement of running in the polarizing floodlights of national elections, while others are not.

While the state claims it has an important regulatory interest, it is evident that, especially in light of the

arguments in Point II concerning the lack of state concern, it does not have a regulatory interest. The regulatory interest in the timing of elections has for decades, if not a century, been delegated to the local governments.

In *Sam Party of N.Y. v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021), the Second Circuit Court of Appeals held that the rule to be applied in election law cases is one of lesser scrutiny, not [a] "pure rational basis review." Rather, "the court must actually 'weigh' the burdens imposed on the plaintiff against 'the precise interests put forward by the State,' and the court must take 'into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.'" Review under this balancing test is "quite deferential," and no "elaborate empirical verification" is required."

We do not rely on elaborate reasoning, but only broad facts and reliance on the state's own admissions.

If the interest is higher turnout in "local elections" as described in the "Justification" for Chapter 741, leaving out 60% of the population subject to "local elections" is an unconstitutional burden on the 40% who are affected. Similarly, if this is to affect all counties alike, then it must apply to all members of the county boards, even those with city supervisors.

There are those who would submit that this law may have a political end. It does not apply in areas of

the state that are urban, and reflect urban issues,[5] and there has been no law adopted by the state to apply it to urban areas, and are expected to be focused on urban issues, to the detriment of suburban and rural residents of the state. This political divide, to be enhanced by this law, will be enhanced by New York's electoral politics, heavily weighted toward satisfying city interests which will be highlighted in cities' unimpeded access to the electorate in odd years, while suburban and rural interest will be swamped by federal state candidate's state-wide campaigns that also cater to urban interests, since over 60% of New York's voters are from urban areas.

* * *

5. As described in the Complaint by Rockland County, two thirds of the state legislators who voted in favor of Chapter 741 were based in urban districts.

APPENDIX E — EXCERPTS OF THE COURT OF APPEALS OF THE STATE OF NEW YORK, BRIEF AND COMPENDIUM, FILED JUNE 11, 2025

* * *

CONSTITUTIONAL ISSUES

A. Substantive due process

As argued below, the County and its officers have been deprived of substantive due process. Defendants have not shown that Chapter 741 was enacted in furtherance of a legitimate governmental purpose, and there is no reasonable relation between the end sought to be achieved by Chapter 741 and the means used to achieve that end.

The appellate division held that Chapter 741's "reasonable nondiscriminatory restrictions are justified by the State's important regulatory interest." citing *Burdick*, 504 US at 434 (*Burdick v Takushi*, 504 US 428 [1992]); *see generally SAM Party of New York v Kosinski*, 987 F3d 267, 274 [2d Cir 2021]; *Matter of Brown v Erie County Bd. of Elections*, 197 AD3d 1503, 1505 [4th Dept 2021].

The class of person being affected for this analysis are the elected officials of counties. These elected officials from some counties, those that are county supervisors, (See County Law § 150) are benefited by being allowed odd year elections, while all others are burdened with the requirement of running in the polarizing floodlights of national elections, while others are not.

Appendix E

While the state claims it has an important regulatory interest, it is evident that, especially in light of the arguments in Point II concerning the lack of state concern, it does not have a regulatory interest. The regulatory interest in the timing of elections has for decades, if not a century, been delegated to the local governments.

In *Sam Party of N.Y. v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021), the Second Circuit Court of Appeals held that the rule to be applied in election law cases is one of lesser scrutiny, not [a] 'pure rational basis review." Rather, "the court must actually 'weigh' the burdens imposed on the plaintiff against 'the precise interests put forward by the State,' and the court must take 'into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.'" Review under this balancing test is "quite deferential," and no "elaborate empirical verification" is required."

We do not rely on elaborate reasoning, but only broad facts and reliance on the state's own admissions.

If the interest is higher turnout in "local elections" as described in the "Justification" for Chapter 741, leaving out 60% of the population subject to "local elections" is an unconstitutional burden on the 40% who are affected. Similarly, if this is to affect all counties alike, then it must apply to all members of the county boards, even those with city supervisors.

Appendix E

The degree of scrutiny used to analyze the constitutionality of a state election regulation depends on the severity of the regulation's burden on the constitutional rights of candidates and their supporters. The totality of a state's overall plan of election regulation should be considered in determining the severity of the restrictions. *Matter of Brown v. Erie Cty. Bd. of Elections*, 2021 NY Slip Op 05014, ¶ 2, 197 A.D.3d 1503, 1505, 154 N.Y.S.3d 176, 178 (App. Div. 4th Dept.)

We submit that treating the two classes of candidates, the people's government representatives, differently is a violation of the equal protection of the law.

"When a State adopts rules governing its election machinery or defining electoral boundaries, those rules must serve the interests of the entire community. If they serve no purpose other than to favor one segment – whether racial, ethnic, religious, economic, or political – that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community, they violate the constitutional guarantee of equal protection.". *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 472, 126 S. Ct. 2594, 2641 (2006).

There are those who would submit that this law may have a political end. It does not apply in areas of the state that are urban, and reflect urban issues,[5] and there has been no law adopted by the state to apply it to

5. As described in the Complaint by Rockland County, two thirds of the state legislators who voted in favor of Chapter 741 were based in urban districts.

urban areas, and are expected to be focused on urban issues, to the detriment of suburban and rural residents of the state. This political divide, to be enhanced by this law, will be enhanced by New York's electoral politics, heavily weighted toward satisfying city interests which will be highlighted in cities' unimpeded access to the electorate in odd years, while suburban and rural interest will be swamped by federal state candidate's state-wide campaigns that also cater to urban interests, since over 60% of New York's voters are from urban areas.

APPENDIX F — EXCERPTS OF THE NEW YORK SUPREME COURT FOR THE APPELLATE DIVISION, BRIEF FOR PLAINTIFFS-RESPONDENTS, FILED APRIL 30, 2025

* * *

The Supreme Court struck down the Even Year Election Law as violative of the New York State Constitution. Accordingly, there was no need to go further and address Rockland's federal constitutional claims. For the purposes of this appeal, however, Rockland respectfully submits that the Even Year Election Law also violates the Unites States Constitution and common law as follows.

CHAPTER 741 VIOLATES THE UNITED STATES CONSTITUTION

A. Chapter 741 violates the substantive due process provisions of the State and United States constitutions and common law

Chapter 741 should be scrutinized under the substantive due process protections provided by the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution. By operation of Chapter 741, Rockland County has been deprived of its right to provide for its own affairs of government, as granted by the State Constitution Art. IX, by permitting a candidate to sit in office for full four-year terms and mandating the timing of its elections for county executive and county legislature. County Executive Day,

as the present County Executive, and as the representative of future holders of the office, has been deprived of the County Executive's Office's right to receive the benefits of the existing Charter and local laws, the authority of which is guaranteed by the State Constitution, Art. IX. Election laws are an exercise of police power. Chapter 741, as an election law, is not a valid exercise of the police power. The Plaintiffs' right to local government is a fundamental right granted by the State Constitution, deeply rooted in New York and American histories and traditions, and made an express right of a municipal corporation by the State Constitution. Defendants have not shown that Chapter 741 was enacted in furtherance of a legitimate governmental purpose, and there is no reasonable relation between the end sought to be achieved by Chapter 741 and the means used to achieve that end. Nor is there a compelling state interest in breaching the right of the local municipal corporation to govern its own affairs or government, as allowed by Article IX of the State Constitution.

Substantive due process is a safeguard against arbitrary government actions that infringe upon fundamental rights, regardless of the procedures used to implement them. *People v. Malloy*, 228 AD3d 1284 (4th Dept 2024). Any statute that abridges a fundamental right must advance a compelling state interest and must do so with the least possible encroachment upon individual rights. *Tucker v. Toia*, 89 Misc 2d 116 (Sup. Ct. Monroe Co. 1977); and *Atkin v. Onondaga County Bd. of Elections*, 30 NY2d 401 (1972). If there are other reasonable ways to achieve the state's goals with a lesser burden on constitutionally protected interests, the state must choose

the less drastic means *Tucker v. Toia*, 89 Misc. 2d 116. Chapter 741 must also provide clear guidelines to ensure that citizens can reasonably determine what activity is prohibited. Without such clarity, the enforcement of the statute would violate substantive due process rights. The requirement for clear guidelines is essential to prevent arbitrary enforcement, which is a hallmark of substantive due process violations. In conclusion, Chapter 741 violates substantive due process under New York law if it fails to meet these stringent requirements. It must not only advance a compelling state interest but *also do so in the least restrictive manner possible. Additionally, it must provide clear guidelines to* avoid arbitrary enforcement. It is clearly demonstrated that Chapter 741 does not satisfy these criteria, thus, it constitutes an unconstitutional infringement on substantive due process rights.

B. Chapter 741 violates the equal protection clauses of the state and United States Constitution

The Equal Protection Clause of the New York Constitution states that no person shall be denied the equal protection of the laws of this state or any subdivision thereof NY CLS Const Art I, § 11, [Equal protection of laws; discrimination in civil rights prohibited]. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall deny to any person within its jurisdiction the equal protection of the laws *Dicapua v. City of NY*, 2023 N.Y. Misc. LEXIS 13327 (Sup. Ct. Richmond Co. Sep. 6, 2023, No. 85035/2023). The New York State Constitution's equal protection guarantee is as broad in its coverage as that of

the Fourteenth Amendment *Dicapua v. City of New York*, supra, *Quinn v. Cuomo*, 69 Misc 3d 171 (Sup. Ct. Queens Co. 2020), *Dorsey v. Stuyvesant Town Corp.*, 299 NY 512 (1949). Legislative enactments are presumed constitutional unless they imperil the exercise of a fundamental right or lack a rational basis *People v. Walters*, 30 Misc 3d 737 (City Ct 2010). Where an individual's fundamental rights are burdened, the State must advance a compelling interest and its actions must be narrowly tailored to serve that purpose. *Quinn v. Cuomo*, 69 Misc 3d 171 (Sup. Ct. Queens Co. 2020). The general rule in equal protection analysis is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Samuels v. NY State Dept. of Health*, 29 AD3d 9 (3d Dept 2006). Rational basis review gives way to strict scrutiny for classifications based on race, national origin, or those affecting fundamental rights *Samuels v. NY State Dept. of Health*, 29 AD3d 9 (3d Dept 2006), *Walton v. NY State Dept. of Corr. Servs.*, 18 Misc 3d 775 (Sup Ct, Albany County 2007). The New York Constitution and Election Law provide protections for the right to vote that substantially exceed those provided by the United States Constitution NY CLS Elec § 17-200. Legislative purpose and statement of public policy. All statutes, rules, and regulations related to the elective franchise shall be construed liberally in favor of protecting the right of voters to have their ballot cast and counted. Policies and practices that burden the right to vote must be narrowly tailored to promote a compelling policy justification supported by substantial evidence § 17-202. Interpretation of laws related to the elective franchise.

Appendix F

Plaintiff Rockland County has been deprived of its right to equal protection of the law by operation of Chapter 741, which treats differently the similarly situated classes of entities, cities and counties, and between different counties. Plaintiff County Executive Day, as the present County Executive, has been deprived of the right to equal protection of the law by operation of Chapter 741, which treats differently the similarly situated classes of chief executive officers of cities and counties, and between the chief executive officers of different counties. The Plaintiffs' right to local government is a fundamental right granted by the State Constitution, deeply rooted in New York and American histories and traditions, and made an express right of a municipal corporation by the State Constitution.

Chapter 741 treats Plaintiffs differently from other similarly situated municipalities of the State by prohibiting Plaintiffs from holding odd-year elections, by being inapplicable to counties without an elected executive position, by exempting counties with three-year elected offices, and additionally, by discriminating against counties with alternative forms of government as authorized by Article IX of the State Constitution.

* * *

APPENDIX G — EXCERPTS OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, FILED AUGUST 23, 2024

* * *

POINT II

CHAPTER 741 VIOLATES THE UNITED STATES CONSTITUTION

A. Chapter 741 violates the substantive due process provisions of the State and United States constitutions and common law

Chapter 741 should be scrutinized under the substantive due process protections provided by the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution. By operation of Chapter 741, Rockland County has been deprived of its right to provide for its own affairs of government, as granted by the State Constitution Art. IX, by permitting a candidate to sit in office for full four-year terms and mandating the timing of its elections for county executive and county legislature. County Executive Day, as the present County Executive, and as the representative of future holders of the office, has been deprived of the County Executive's Office's right to receive the benefits of the existing Charter and local laws, the authority of which is guaranteed by the State Constitution, Art. IX. Election laws are an exercise of the police power. Chapter 741, as an election law, is not

a valid exercise of the police power. The Plaintiffs' right to local government is a fundamental right granted by the State Constitution, deeply rooted in New York and American histories and traditions, and made an express right of a municipal corporation by the State Constitution. Defendants have not shown that Chapter 741 was enacted in furtherance of a legitimate governmental purpose, and there is no reasonable relation between the end sought to be achieved by Chapter 741 and the means used to achieve that end. Noris there a compelling state interest to breach the right of the local municipal corporation to govern its own affairs or government, as allowed by Article IX of the State Constitution.

Substantive due process is a safeguard against arbitrary government actions that infringe upon fundamental rights, regardless of the procedures used to implement them. *People v. Malloy*, 228 AD3d 1284 (4th Dept 2024). Any statute that abridges a fundamental right must advance a compelling state interest and must do so with the least possible encroachment upon individual rights. *Tucker v Toia*, 89 Misc 2d 116 (Sup. Ct. Monroe Co. 1977); and *Atkin v. Onondaga County Bd. of Elections*, 30 NY2d 401 (1972). If there are other reasonable ways to achieve the state's goals with a lesser burden on constitutionally protected interests, the state must choose the less drastic means *Tucker v. Toia*, 89 Misc. 2d 116. Chapter 741 must also provide clear guidelines to ensure that citizens can reasonably determine what activity is prohibited. Without such clarity, the enforcement of the statute would violate substantive due process rights. The requirement for clear guidelines is essential to prevent

arbitrary enforcement, which is a hallmark of substantive due process violations. In conclusion, Chapter 741 violates substantive due process under New York law if it fails to meet these stringent requirements. It must not only advance a compelling state interest but *also do so in the least restrictive manner possible. Additionally, it must provide clear guidelines to* avoid arbitrary enforcement. It is clearly demonstrated that Chapter 741 does not satisfy these criteria, thus, it constitutes an unconstitutional infringement on substantive due process rights.

B. Chapter 741 violates the equal protection clauses of the state and United States Constitution

The Equal Protection Clause of the New York Constitution states that no person shall be denied the equal protection of the laws of this state or any subdivision thereof NY CLS Const Art I, § 11, [Equal protection of laws; discrimination in civil rights prohibited]. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall deny to any person within its jurisdiction the equal protection of the laws *Dicapua v. City of NY*, 2023 N.Y. Misc. LEXIS 13327 (Sup. Ct. Richmond Co. Sep. 6, 2023, No. 85035/2023). The New York State Constitution's equal protection guarantee is as broad in its coverage as that of the Fourteenth Amendment *Dicapua v. City of New York*, supra, *Quinn v. Cuomo*, 69 Misc 3d 171 (Sup. Ct. Queens Co. 2020), *Dorsey v. Stuyvesant Town Corp.*, 299 NY 512 (1949). Legislative enactments are presumed constitutional unless they imperil the exercise of a fundamental right or lack a rational basis *People v. Walters*, 30 Misc 3d 737

(City Ct 2010). Where an individual's fundamental rights are burdened, the State must advance a compelling interest and its actions must be narrowly tailored to serve that purpose. *Quinn v. Cuomo*, 69 Misc 3d 171 (Sup. Ct. Queens Co. 2020). The general rule in equal protection analysis is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Samuels v. NY State Dept. of Health*, 29 AD3d 9 (3d Dept 2006). Rational basis review gives way to strict scrutiny for classifications based on race, national origin, or those affecting fundamental rights *Samuels v. NY State Dept. of Health*, 29 AD3d 9 (3d Dept 2006), *Walton v NY State Dept. of Corr. Servs.*, 18 Misc 3d 775 (Sup Ct, Albany County 2007). The New York Constitution and Election Law provide protections for the right to vote that substantially exceed those provided by the United States Constitution NY CLS Elec § 17-200. Legislative purpose and statement of public policy. All statutes, rules, and regulations related to the elective franchise shall be construed liberally in favor of protecting the right of voters to have their ballot cast and counted. Policies and practices that burden the right to vote must be narrowly tailored to promote a compelling policy justification supported by substantial evidence § 17-202. Interpretation of laws related to the elective franchise.

Plaintiff Rockland County has been deprived of its right to equal protection of the law by operation of Chapter 741, which treats differently the similarly situated classes of entities, cities and counties, and between different counties. Plaintiff County Executive

Day, as the present County Executive, has been deprived of the right to equal protection of the law by operation of Chapter 741, which treats differently the similarly situated classes of chief executive officers of cities and counties, and between the chief executive officers of different counties. The Plaintiffs' right to local government is a fundamental right granted by the State Constitution, deeply rooted in New York and American histories and traditions, and made an express right of a municipal corporation by the State Constitution.

Chapter 741 treats Plaintiffs differently from other similarly situated municipalities of the State by prohibiting Plaintiffs from holding odd-year elections, by being inapplicable to counties without an elected executive position, by exempting counties with three-year elected offices, and additionally, by discriminating against counties with alternative forms of government as authorized by Article IX of the State Constitution.

In addition, the County Executive elected in the next county executive election year, 2025, and the members of the County Legislature elected in the next county legislature election year, 2027, will—under the same, existing County local laws, and the same, existing State laws that apply—serve different, three-year terms than their predecessors and their successors, serving four-year terms, merely as a result of the Chapter 741 applying differently to different classes of similarly situated persons with no rational basis for the discrimination. Thus, Chapter 741 treats the Plaintiffs differently than other similarly situated counties and county officers with no

rational basis. Furthermore, this unlawful violation of the Plaintiffs' rights to equal protection of the laws has been enacted with no rational basis for the selective treatment.

* * *

APPENDIX H — EXCERPTS OF VERIFIED COMPLAINT, SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF ROCKLAND, FILED APRIL 22, 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

Index No. _____

COUNTY OF ROCKLAND AND EDWIN J. DAY,
IN HIS INDIVIDUAL AND OFFICIAL CAPACITY
AS ROCKLAND COUNTY EXECUTIVE,

Plaintiffs,

- against –

STATE OF NEW YORK,

Defendant.

VERIFIED COMPLAINT

* * *

THIRD CAUSE OF ACTION
(Substantive Due Process)

49. Chapter 741 violates the substantive due process provisions of the State and United States Constitutions and common law.

50. County Executive Day, as an individual, is entitled to substantive due process from the State.

51. The County, as a municipal corporation, with a right to control its own affairs and government, has a right to substantive due process.

52. A corporation is a person within the meaning of the due process of law clauses of the State and United States Constitutions.

53. Plaintiffs' rights, as a local county government, to manage its affairs are infringed by Chapter 741.

54. The County has been deprived of its right to provide for its own affairs of government, as granted by the State Constitution Art. IX, by permitting a candidate to sit in office for full four-year terms and mandating the timing of its elections for county executive and county legislature, by operation of Chapter 741.

55. County Executive Day, as the present County Executive, and as the representative of future holders of the office, has been deprived of the County Executive's Office's right to receive the benefits of the existing Charter and local laws, the authority of which is guaranteed by the State Constitution, Art. IX.

56. Election laws are an exercise of the police power.

57. Chapter 741, as an election law, is not a valid exercise of the police power.

58. The Plaintiffs' right to local government is a fundamental right granted by the State Constitution,

deeply rooted in New York and American histories and traditions, and made an express right of a municipal corporation by the State Constitution.

59. Chapter 741 was not enacted in furtherance of a legitimate governmental purpose, and there is no reasonable relation between the end sought to be achieved by Chapter 741 and the means used to achieve that end, or a compelling state interest to breach the right of the local municipal corporation to govern its own affairs or government, as allowed by Article IX of the State Constitution.

60. Therefore, the Plaintiffs respectfully request that the Court grant judgment in favor of the Plaintiffs enjoining the enforcement of Chapter 741, and awarding attorney's fees pursuant to 42 USC § 1983 and/or CPLR Art. 86.

FOURTH CAUSE OF ACTION
(Equal Protection of the Laws)

61. Chapter 741 violates the Equal Protection clauses of the State and United States Constitutions.

62. County Executive Day, in his official capacity and as an individual, is entitled to equal protection under the law.

63. The County, as a municipal corporation, with a right to control its own affairs and government, has a right to equal protection under the law.

64. A corporation is a person within the meaning of the equal protection of law clauses of the State and United States Constitutions.

65. The County has been deprived of its right to equal protection of the law by operation of Chapter 741, which treats differently the similarly situated classes of entities, cities and counties, and between different counties.

66. County Executive Day, as the present County Executive, has been deprived of the right to equal protection of the law by operation of Chapter 741, which treats differently the similarly situated classes of chief executive officers of cities and counties, and between the chief executive officers of different counties.

67. The Plaintiffs' right to local government is a fundamental right granted by the State Constitution, deeply rooted in New York and American histories and traditions, and made an express right of a municipal corporation by the State Constitution.

68. Chapter 741 treats Plaintiffs differently from other similarly situated municipalities of the State by prohibiting Plaintiffs from holding odd-year elections, being inapplicable to counties without an elected executive position, exempting counties with three-year elected offices, and additionally, discriminating against counties with alternative forms of government as authorized by Article IX of the State Constitution.

69. In addition, the County Executive elected in the next county executive election year, 2025, and the members of the County Legislature elected in the next county legislature election year, 2027, will—under the same, existing County local laws, and the same, existing State laws that apply—serve different, three-year terms than their predecessors and their successors, serving four-year terms, merely as a result of the Chapter 741 applying differently to different classes of similarly situated persons with no rational basis for the discrimination.

70. Thus, Chapter 741 treats the Plaintiffs differently than other similarly situated counties and county officers with no rational basis.

71. Furthermore, this unlawful violation of the Plaintiffs' rights to equal protection of the laws has been enacted with no rational basis for the selective treatment.

65. Therefore, the Plaintiffs respectfully request that the Court grant judgment in favor of the Plaintiffs enjoining the enforcement of Chapter 741, and awarding attorney's fees pursuant to 42 USC § 1983 and/or CPLR Art. 86

* * * *