

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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

Index No. _____

Plaintiffs,

SUMMONS

- against -

STATE OF NEW YORK,


Defendant.

-----x
To The Above-Named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: April 22, 2024
New City, New York

THOMAS E. HUMBACH
County Attorney
Attorneys for Plaintiffs
11 New Hempstead Road
New City, NY 10956
845-638-5180

By: 

Thomas E. Humbach

County Attorney
humbacht@co.rockland.ny.us

TO: STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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

Index No. _____

Plaintiffs,

**VERIFIED
COMPLAINT**

- against -

STATE OF NEW YORK,

Defendant.

-----x

Plaintiffs COUNTY OF ROCKLAND and EDWIN J. DAY, in his individual and
official capacity as the Rockland County Executive, by and through their attorneys,
THOMAS E. HUMBACH, County Attorney for the County of Rockland, set forth the
following, upon information and belief, as and for their Complaint:

SUMMARY

1. Plaintiffs bring this action for declaratory relief to challenge the
constitutionality of and enjoin NY Laws of 2023, Chapter 741 sections 3, 4, and 5 (the
“Chapter 741”), codified in County Law § 400 and Municipal Home Rule Law (MHRL) §
34. Chapter 741 was passed by the New York State Legislature (“State Legislature”) and
subsequently became law on December 22, 2023, upon approval by Governor Kathy

Hochul.

2. The vote on this matter in the State Legislature was as follows:

	Yes		No	
	#	%	#	%
Assembly	89	59.7	57	38.2
Senate	39	61.9	23	36.5
Combined	128	61.5	80	38.4
		Without city representatives ¹		
Assembly	26	35.1	47	63.5
Senate	10	33	20	66
Combined	36	34.9	67	65

A 'Yes' vote being in favor of the Chapter 741 legislation, and a 'No' vote rejecting it. It is inescapable, based on these figures that non-city representatives, whose constituents are affected by the legislation voted overwhelmingly against Chapter 741, 67 No to 36 Yes, or 65% to 34.9%, and those whose constituents reside mainly in New York City and other cities unaffected by the law, voted heavily in favor of the measure. For example, New York City representatives voted 79 Yes to 9 No, of 89.7% to 10.3%. This highlights electoral manipulation without representation inflicted by the city portions of the State against the portions of the State outside of cities.

3. Chapter 741 involuntarily and forcibly seeks to eliminate local autonomy

¹ Note: City representatives are those whose districts are deemed to contain a majority of voters within the borders of the following cities New York City, Syracuse, Albany, and Buffalo.

over local government affairs—including the length of elected officials’ terms; the frequency of local elections; and the period of local elections—by the authoritarian measure of dictating that all elections shall be in even-numbered years.

4. This usurpation of local authority breaches the constitutional protections afforded to local governance under Article IX of the New York State Constitution (the “State Constitution”) and undermines the foundational principle of home rule autonomy.

PARTIES

5. Plaintiff County of Rockland (the “County”) is a municipal corporation duly formed by the laws of the State of New York, with a principal office located at 11 New Hempstead Road, New City, Rockland County, New York.

6. Plaintiff Edwin J. Day (“County Executive Day”, and collectively with the County, “Plaintiffs”) is the duly elected County Executive for the County serving a term of four years set to expire December 31, 2025. Plaintiff County Executive Day is the executive representative of the County and, pursuant to the County Charter, the elected official responsible for administering its laws and institutions.

7. County Executive Day has made public his intention to run for office in 2025 with a term starting in 2026 and occupies an elected office subject to Chapter 741.

8. County Executive Day is an elector residing within the County of Rockland.

9. Defendant State of New York (the “State”) is the state government for the State of New York, constituted by the State Constitution.

STATEMENT OF THE CASE

A. The County Charter and Local Affairs of Government

10. In County, exercising its constitutionally sanctioned home rule liberties, adopted its charter on September 6, 1983 (the “Charter” or “County Charter”).

11. The Charter was approved by referendum at the general election of November 6, 1984, and became effective January 1, 1985.

12. The Charter adopts an alternative form of government, as that term applies to counties under the State Constitution Art. IX, § 1(h) and Municipal Home Rule Law, Art. 4.

13. By adopting this alternative form of government, the electorate of the County established its intent in the [County Charter, § C1.01, Title and Purpose](#), by “securing of all possible county home rule” powers and duties.

14. As per the [County Charter § C1.03](#):

Within the limits prescribed in Article 4 of the Municipal Home Rule Law, wherever and whenever any state law, general, special or local in effect, is inconsistent with this law or an Administrative Code, such law shall be deemed to the extent of such inconsistency to be superseded by this law insofar as the County of Rockland and its government are affected.

15. The County Charter and the Laws of Rockland County (LORC) mandate

the length and timing of County Executives term, specifying that “[t]here shall be a County Executive who shall be elected from the county at large for a term of four years beginning with the first day of January next following his or her election.” [County Charter § C3.02](#); see also [LORC Art. III, Executive Branch, § 5-28, County Executive](#).

16. The first such term commenced on January 1 1986, following a 1985 election.

17. The Laws of Rockland County also mandate the length and timing of County Legislators’ terms, specifying that,

The term of office of a County Legislator shall be for four years and shall begin on the first day of January immediately succeeding his or her election. However, notwithstanding the above provision, the term of office of all Legislators elected on November 4, 1997, shall be for two years, commencing January 1, 1998, and expiring on December 31, 1999.

[LORC Art. II, Legislative Branch, § 5-8, Terms of office of the County Legislators](#).

18. The first such full four-year term commenced on the 2000, following a 1999 election.

19. At no time since that referendum has the Charter or the local laws concerning the terms of the relevant elected officials been challenged or otherwise threatened with rescission.

B. Chapter 741 of 2023

20. In June 2023, the New York Legislature passes S3505B/A4282 mandating the alignment of select local electoral cycles with even-numbered years.

21. Governor Hochul signed the bill into law as NY Session Laws, Chapter 741, on December 22, 2023.

22. Pursuant to Chapter 741, County Law § 400(8), effective January 1, 2025, provides that:

Notwithstanding any provision of any general, special or local law, charter, code, ordinance, resolution, rule or regulation to the contrary, all elections for any position of a county elected official shall occur on the Tuesday next succeeding the first Monday in November and shall occur in an even-numbered year; provided however, this subdivision shall not apply to an election for the office of 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.

23. Pursuant to Chapter 741, MHRL § 34(2), effective January 1, 2025 provides:

Except in accordance with or consistent with laws enacted by the legislature, a county charter or charter law shall not contain provisions relating to: ...

(h) Insofar as it relates to requirements for counties, other than counties in the city of New York, to hold elections in even-numbered years for any position of a county elected official, other than the office of sheriff, county clerk, district attorney, family court judge, county court judge, surrogate court judge, or any county offices with a three-year term prior to January first, two thousand twenty-five.

24. Upon information and belief, the only Rockland County elected officials affected by Chapter 741 are the County Executive and the County Legislators.

25. The changes to County Law § 400 and Municipal Home Rule Law § 34 that are implemented by Chapter 741 are not constitutional under the State and United States Constitutions and common law.

FIRST CAUSE OF ACTION
(State Constitution Art. IX, Section 1)

26. The Plaintiffs will be adversely affected by the application of Chapter 741.

27. The State Constitution's Article IX enshrines local governments' right to self-governance, including the authority to determine the tenure of their elected officials.

28. Article IX provides that local governments have the privileges and immunities necessary to secure their property, affairs or government.

29. This right to self-determination, as codified in MHRL § 33, includes the “manner of election or appointment, terms of office, if any, and removal of [a local government’s] officers.”

30. Sections 3, 4 and 5 of Chapter 741 infringe upon the autonomy provided by the home rule powers of Plaintiffs including, but not limited to, their right to be secure in the power to control their property, affairs and government.

31. As per the State Constitution Article IX, § 3(c), the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.”

32. Therefore, Plaintiffs respectfully request the court grant judgment declaring NY Laws of 2023, Chapter 741, sections 3, 4 and 5, codified as County Law § 400 and MHRL § 34, unconstitutional and in violation of Article IX of the State Constitution, and awarding attorney's fees pursuant to CPLR Art. 86.

SECOND CAUSE OF ACTION
(State Constitution Art. IX, Section 2)

33. The Plaintiffs will be adversely affected by the application of Chapter 741.

34. Chapter 741 violates Article IX by overreaching state legislative powers, infringing upon the County's governance and autonomy.

35. Article IX, § 2(d) of the State Constitution states that alternative governance models are required to articulate a county's structural and operational blueprint, including provisions for the designation or election of county officers.

36. Article IX § 2(b)(1) and (2) restrict State intervention in local electoral affairs to general laws, a criterion not met by Chapter 741.

37. Article IX § 2(b)(1), states that,

A power granted in [a statute of local governments] may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

38. To the extent that Chapter 741 is a repeal, diminishment, impairment, or

suspension of a power granted in a statute of local governments, such as County Law § 400 or MHRL § 34, it has not been passed in two sequential calendar years.

39. Pursuant to Article IX § 2(b)(2), the Constitution limits the ability of the State to interfere with the property, affairs or government of any local government, such as that of the Plaintiffs,

... by general law, or by special law only (a) on request of two-thirds of the total membership of [the local government's] 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.

40. County Law § 400(8) is not a general law.

41. As per the State Constitution Article IX, § 3(d)(1) a general law is “[a] law which in terms *and in effect* applies alike to all counties, [or] all counties other than those wholly included within a city....” (emphasis added).

42. County Law § 400(8) applies, in terms or effect, selectively and not uniformly across the State.

43. 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.

44. Thus, Chapter 741, section 3 and 4 is a special law.

45. As per the State Constitution Article IX, § 3(d)(4), a special law is “[a] law which in terms and *in effect applies to one or more, but not all*, counties, [or] counties other than those wholly included within a city....” (emphasis added).

46. As a special law, it was not requested by two-thirds of the County Legislature, nor was it passed in two sequential calendar years by the State Legislature as required by the State Constitution Article IX, § 2.

47. As per the State Constitution Article IX, section 3(c), the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.”

48. Therefore, Plaintiffs respectfully request the court grant judgment declaring NY Laws of 2023, Chapter 741, sections 3, 4, and 5, codified as County Law § 400(8) and MHRL § 34, unconstitutional and in violation of the NYS Constitution, Article IX, and awarding attorney’s fees pursuant to CPLR Art. 86.

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

FIFTH CAUSE OF ACTION
(Takings Clause)

66. Chapter 741 effects a taking on office holders who will be deprived of certain property to which they would be entitled in the absence of Chapter 741.

67. Both the State and Federal Constitutions provide that private property shall not be taken for public use without just compensation.

68. Presently, both the County Executive and Legislators of Rockland County serve four-year terms in accordance with the Charter (Rockland County Charter § C3.01)

and the local laws of the County (Laws of Rockland County § 5-8).

69. Chapter 741 will artificially reduce, by one year, the term of office of the chief executive and legislative officers of the County, which elected officials are presently elected in odd-numbered years.

70. This reduction of term occurs in the first even-numbered year term following the 2025 election.

71. Chapter 741 does not otherwise change the Charter or local laws of the County of Rockland which continue to require a four-year term for those offices at every election following that one with the reduced term.

72. As a result, the County Executive and Legislators suffering the artificially reduced term will lose property to which they are entitled during that term, including one year of salary and one year of pension accumulation.

73. None of those elected officers will be compensated for that loss under the present State legislation.

74. 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

WHEREFORE, Plaintiffs respectfully demand judgment as follows:

A. As and for the First Cause of Action, a declaratory judgment pursuant to CPLR 3001 declaring that Chapter 741 violates the New York State Constitution, At. IX, § 1, enjoining its enforcement, and awarding legal fees pursuant to CPLR Art. 86; and

B. As and for the Second Cause of Action, a declaratory judgment pursuant to CPLR 3001 declaring that Chapter 741 violates the New York State Constitution, Art. IX, § 2, enjoining its enforcement, and awarding legal fees pursuant to CPLR Art. 86; and

C. As and for the Third Cause of Action, a declaratory judgment pursuant to CPLR § 3001 declaring that Chapter 741 violates the NYS and US Constitutions' guarantees of substantive due process, enjoining its enforcement, and awarding legal fees pursuant to CPLR Art. 86 and 42 USC 1983; and

D. As and for the Fourth Cause of Action, a declaratory judgment pursuant to CPLR § 3001 declaring that Chapter 741 violates the NYS and US Constitutions' guarantees of equal protection under the law, enjoining its enforcement, and awarding legal fees pursuant to CPLR Art. 86 and 42 USC 1983; and

E. As and for the Fifth Cause of Action, a declaratory judgment pursuant to CPLR § 3001 declaring that Chapter 741 violates the NYS and US Constitutions' prohibition on uncompensated takings, enjoining its enforcement, and awarding legal fees pursuant to CPLR Art. 86 and 42 USC 1983; and


F. For such other relief as may be just, proper, and equitable under the

circumstances of this case; and

G. For the costs, expenses, and disbursement of this action.

Dated: April 22, 2024
New City, New York

THOMAS E. HUMBACH
County Attorney
Attorneys for Plaintiffs
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New City, NY 10956
845-638-5180

By: 

Thomas E. Humbach
County Attorney
humbacht@co.rockland.ny.us

MUNICIPAL VERIFICATION


THOMAS E. HUMBACH, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms as follows:

1. I am the County Attorney for the County of Rockland, and I am counsel to Plaintiffs. I have read the foregoing Complaint and know the contents thereof to be true, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

2. This verification is made pursuant to CPLR § 3020(d)(2) upon the grounds that the Plaintiffs are a governmental subdivision of the State of New York and a public officer.

3. In my capacity as County Attorney, I am personally acquainted with the facts, upon information and belief, through conferences with the department representatives and upon the records maintained by Plaintiffs and their respective offices.

Dated this 22nd day of April 2024
in New City, New York.

By: 

Thomas E. Humbach, Esq.