**Action No. 2:**

**Index No.: 605931/2024**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU

------------------------------------------------------------------x

THE COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE, and BRUCE A. BLAKEMEAN, individually and as a voter and in his official capacity as Nassau County Executive,

Plaintiffs,

v.

THE STATE OF NEW YORK and KATHY HOCHUL, in her capacity as the Governor of the State of New York,

Defendants.

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**Action No. 1:**

**Index No.: 003095/2024**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ONONDAGA

------------------------------------------------------------------x

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.

------------------------------------------------------------------x

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ONEIDA

------------------------------------------------------------------x

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,

v.

THE STATE OF NEW YORK and KATHLEEN HOCHUL, in her capacity as Governor of the State of

New York,

Defendants.

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**Action No. 4:**

**Index No. EF2024-276591**

**Action No. 3:**

**Index No.: EFCA2024-**

**000920**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF RENSSELAER

------------------------------------------------------------------x

COUNTY OF RENSSELAER, STEVEN F.

MCLOUGHLIN, Individually as a Voter, and in his

capacity as RENSSELAER COUNTY EXECUTIVE,

and the RENSSELAER COUNTY LEGISLATURE,

Plaintiff,

v.

THE STATE OF NEW YORK and KATHLEEN HOCHUL, in her capacity as Governor of the State of

New York,

Defendants.

------------------------------------------------------------------x

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF JEFFERSON

----------------------------------------------------------------x

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,

Plaintiffs,

v.

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 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.

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**Action No. 5:**

**Index No. EF2024-**

**00001746**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ROCKLAND

------------------------------------------------------------------x

COUNTY OF ROCKLAND and EDWIN J. DAY, in his

Individual and official capacity as Rockland County

Executive,

Plaintiffs,

v.

THE STATE OF NEW YORK,

Defendants.

------------------------------------------------------------------x

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ONONDAGA

------------------------------------------------------------------x

STEVEN M. NEUHAUS, Individually, and

as a voter and 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, PAUL RUSZKIEWICZ, PETER V.

TUOHY, BARRY J. CHENEY, RONALD M.

FELLER, CLENN 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,

v.

KATHLEEN HOCHUL, in her capacity as

Governor of the State of New York and 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.

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**Action No. 7:**

**Index No. 004023/2024**

**Action No. 6:**

**Index No. 032196/2024**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF DUTCHESS

------------------------------------------------------------------x

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,

v.

THE STATE OF NEW YORK, KATHLEEN HOCHUL

In her capacity as Governor of the State of New York,

Defendants.

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**Action No. 8:**

**Index No. 2024-51659**

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS**

THOMAS H. HUMBACH

County Attorney

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# PRELIMINARY STATEMENT

This memorandum of Law is respectfully submitted by the Plaintiffs in Action No. 6, County of Rockland and Edwin J. Day, in his individual and official capacity as Rockland County Executive, in opposition to Defendants’ motion to dismiss Plaintiffs’ Complaint.

Plaintiffs brought this action for declaratory relief to challenge the constitutionality of and enjoin NY Laws of 2023, Chapter 741 sections 3, 4, and 5 (“Chapter 741”), codified in [County Law § 400](https://plus.lexis.com/api/permalink/2f38ebe2-58da-4c6e-a353-99a8073a2b18/?context=1530671) and [Municipal Home Rule Law (MHRL) § 34](https://plus.lexis.com/api/permalink/d906a89e-b65e-4f49-b5e4-b04a50957b48/?context=1530671). 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.

1. 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]](#footnote-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.

Chapter 741 involuntarily and forcibly seeks to eliminate local autonomy 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.

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.

# STATEMENT OF FACTS

1. *The County Charter and Local Affairs of Government*

The County of Rockland, exercising its constitutionally sanctioned home rule liberties, adopted its charter on September 6, 1983 (the “Charter” or “County Charter”). The Charter was approved by referendum at the general election of November 6, 1984, and became effective January 1, 1985. 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. By adopting this alternative form of government, the electorate of the County established its intent in the [County Charter, § C1.01, *Title and Purpose*](https://ecode360.com/13975218#13975218)*,* by “securing of all possible county home rule” powers and duties.

As per the [County Charter § C1.03](https://ecode360.com/13975220):

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.

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](https://ecode360.com/13975259); *see also* [Laws of Rockland County Art. III, *Executive Branch,* § 5-28](https://ecode360.com/9662969), County Executive. The first such term commenced on January 1 1986, following a 1985 election.

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)*](https://ecode360.com/9662867)

The first such full four-year term commenced in January 2000, following a 1999 election. 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 recission.

*B. Chapter 741 of 2023*

In June 2023, the New York Legislature passed S3505B/A4282 mandating the alignment of select local electoral cycles with even-numbered years. Governor Hochul signed the bill into law as NY Session Laws, Chapter 741, on December 22, 2023.

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.

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.

The only Rockland County elected officials affected by Chapter 741 are the County Executive and the County Legislators. 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.

Accordingly, Plaintiffs seek a declaration that Chapter 741 violates the Home Rule provisions of Article IX of the New York State Constitution, as well as the substantive due process provisions of the New York State and United States Constitutions and common law, and the Equal Protection and Takings Clauses of the New York State and United States Constitutions.

This Motion to Dismiss all eight complaints as consolidated by the Court’s previous Orders followed.

# LEGAL STANDARD

When considering a motion to dismiss for failure to state a claim under [NY CPLR § 3211(a)(7](file:///\\rockland.ny.us\shareddrives\Law\_Colon,%20Jeylan\Litigation%20Matters\Even-Numbered%20Year%20Elections\(CPLR%20§%203211%20(Consol.)))), the court must “afford[ ]” the complaint “a liberal construction.” [*Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994)](https://plus.lexis.com/api/permalink/af83d4e5-aca5-43ab-aae9-766fd8e43b07/?context=1530671) (citing [NY CPLR § 3026](https://plus.lexis.com/api/permalink/7e88eb1f-df93-48c4-bb39-fe55a7bcfc66/?context=1530671)); *see also* [*William Metrose Ltd. Builder/Dev.* *v. Waste Mgmt. of NY, LLC*, 225 A.D.3d 1223, 1224 (4th Dep’t 2024)](https://plus.lexis.com/api/permalink/c66a6f31-ac7f-4a53-9bde-1596b935c6a3/?context=1530671). A court “limit[s] [its] inquiry” to the complaint’s “legal sufficiency.” [*Davis v. Boeheim*, 24 N.Y.3d 262, 268 (2014)](https://plus.lexis.com/api/permalink/146d3127-28b7-4cad-a374-9bd3feb4a06c/?context=1530671). Thus, the court “accept[s] the facts as alleged in the complaint as true, accord[s] plaintiffs the benefit of every possible favorable inference, and determine[s] only whether the facts as alleged fit within any cognizable legal theory.” [*Leon*, 84 N.Y.2d at 87–88](https://plus.lexis.com/api/permalink/ad77c63c-6956-4d2d-8790-12e8a74d7874/?context=1530671) (citation omitted); *see also* [*Falso v. Child. & Fam. Servs.,* 227 A.D.3d 1466, 1467 (4th Dep’t 2024)](https://plus.lexis.com/api/permalink/710922a8-3ea6-4040-820e-a3ba54db4353/?context=1530671). The key “criterion” is whether the plaintiff “has a [viable] cause of action, not whether he has stated one.” [*Leon*, 84 N.Y.2d at 88](https://plus.lexis.com/api/permalink/5a1c3fa6-b09c-43bf-963d-8805426868d0/?context=1530671) (quoting [*Guggenheimer v. Ginzburg,* 43 N.Y.2d 268, 275 (1977)](https://plus.lexis.com/api/permalink/476b9967-e3a2-40d4-9fa7-6e18fb6f33fb/?context=1530671)).

The complaint need only “give the court and the parties notice of what is intended to be proved and the material elements of each cause of action.” [*Meese v. Miller*, 79 A.D.2d 237, 244 (4th Dep’t 1981)](https://plus.lexis.com/api/permalink/47ac9b9a-2743-4b7a-99ac-72edbbd9c931/?context=1530671) (citation omitted); *see also* [NY CPLR § 3013](https://plus.lexis.com/api/permalink/840948be-5e67-414d-af57-2b19d17d716b/?context=1530671) (“Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.”).

# ARGUMENT

**(i)**

Perhaps the most significant delegation of state legislative authority is embodied in Article IX of the New York Constitution, the home rule article (*see* [NY CLS Const Art. IX](https://plus.lexis.com/api/document/collection/statutes-legislation/id/5CT2-JHJ1-DYB7-M53T-00000-00?cite=NY%20CLS%20Const%20Art.%20IX&context=1530671)). Article IX "empower[s] municipalities to legislate in a wide range of matters relating to local concern". [(*Matter of Baldwin Union Free Sch. Dist. v. County of Nassau*, 22 NY3d 606, 611 (2014))](https://plus.lexis.com/api/permalink/a07e3869-959f-416c-acf4-1e4a4484e8f4/?context=1530671) The so-called even year election law in New York, which mandates that elections for certain local offices be held in even-numbered years, is unconstitutional under the New York State Constitution's home rule provision [*Buffalo v. Lawley*, 6 AD2d 66 (4th Dept 1958)](https://plus.lexis.com/api/permalink/8ee7d9c3-3c57-4d4c-acf9-cc067ccb2a02/?context=1530671), [*Newcomb v Talento*, 16 Misc 2d 148 (Sup Ct, Westchester County 1958)](https://plus.lexis.com/api/document/collection/cases/id/3RRS-D7G0-003C-D1CT-00000-00?cite=16%20Misc.%202d%20148&context=1530671) aff’d on appeal [*Newcomb v. Talento*, 6 AD2d 1053 (2d Dept 1958)](https://plus.lexis.com/api/document/collection/cases/id/3RRT-4810-003C-C30B-00000-00?cite=1958%20N.Y.%20App.%20Div.%20LEXIS%204537&context=1530671). The [New York State Constitution Article IX, Section 2(b)](https://plus.lexis.com/api/permalink/1b29338b-52b7-4c7d-b634-fc0655aa1079/?context=1530671) grants local governments the power to adopt and amend local laws relating to their property, affairs, or government, subject to the provisions of the constitution and any general laws enacted by the state legislature *Bates v. County of Steuben*, 113 Misc. 2d 68 (Supr. Ct. Steuben Co. 1982). This provision is designed to protect the autonomy of local governments in managing their own affairs, including the timing of local elections. In the case of [*City of NY v. State*, 94 NY2d 577 (2000)](https://plus.lexis.com/api/document/collection/cases/id/3YYN-3690-0039-434V-00000-00?cite=94%20N.Y.2d%20577&context=1530671), the Court of Appeals held that the state may legislate without home rule approval only when state interests are involved "to a substantial degree, in depth or extent". *Citizens for the Hudson Valley v. NY State Bd. on Elec. Generation Siting*, 281 A.D.2d 89 (3d Dep’t 2001). This principle was further supported in *City of New York v. Patrolmen's Benevolent Association*, where the court stated that no home rule message is required when the legislative enactment constitutes a general law or a special law which serves a substantial state concern *Patrolmen's Benevolent Ass'n v. City of New York*, 285 A.D.2d 52 (3d Dep’t 2001), *Dalva v. Pataki*, 2006 N.Y. Misc. LEXIS 9370 (Sup. Ct. NY Co. 2006). However, the even year election law does not demonstrate a substantial state interest that would justify overriding local autonomy. The law's primary effect is on the timing of local elections, a matter that is traditionally within the purview of local governments.

A substantial state interest in necessary to justify state interference in local governance. The even year election law fails to meet this threshold, as it does not address a state-wide concern of sufficient importance to override the home rule provision.

**Start here**

Additionally, the New York Constitution Article IX, Section 15, which mandates that the election of all city officers must be held in odd-numbered years, further supports the argument that the even year election law is inconsistent with the constitutional framework governing local elections *Newcomb v. Talento*, 16 Misc. 2d 148 (Sup Ct, Westchester County 1958), [*Reycroft v. Binghamton*, 138 Misc 257 (Sup Ct, Broome County 1930)](https://plus.lexis.com/api/document/collection/cases/id/3S3K-3BF0-0044-F0SV-00000-00?cite=138%20Misc.%20257&context=1530671). This provision indicates a clear constitutional preference for odd-year elections for local offices, reinforcing the autonomy of local governments in determining the timing of their elections. Chief Judge Cardozo's concurrence in *Adler v. Deegan* ([251 NY 467](https://plus.lexis.com/api/permalink/f822baae-4a29-4630-896e-cf64ae648351/?context=1530671), *rearg. denied* [252 NY 574](https://plus.lexis.com/api/permalink/26a47244-8809-4414-868f-e41cfaabcc85/?context=1530671), *remittitur amended by* [252 NY 615](https://plus.lexis.com/api/permalink/e17773fb-5fda-40ff-8d5f-0d81a9478143/?context=1530671)) set the standard for balancing State and local interests in resolving the question of whether a home rule message is required: “if the subject be in a substantial degree a matter of State concern, the Legislature may act”. [*Adler v. Deegan*, 251 NY 467, 491 (1929)](https://plus.lexis.com/api/document/collection/cases/id/3RRM-S8H0-003F-64WG-00000-00?cite=251%20N.Y.%20467&context=1530671).

The New York Court of Appeals established that while the state may enact laws impacting localities, the legislation must address a substantial state concern and not merely regulate local matters under the guise of broader interests [*Adler v. Deegan*, 251 NY. 467, 476 (1929)](https://plus.lexis.com/api/permalink/d429cd4f-ed91-41cc-9e87-de4b4e93293d/?context=1530671).

When the controlling law is applied to the facts of the case at bar, it is clear that the even year election law violates the home rule provision of the New York State Constitution. It does not serve a substantial state interest that would justify overriding local autonomy, and it is inconsistent with the constitutional mandate for odd-year elections for city officers. Therefore, the law is unconstitutional and unenforceable under New York law.

(ii)

Municipalities generally lack the capacity to challenge state legislation. However, there are specific exceptions to this rule, one of which is when a state statute impinges upon the "home rule" powers of a municipality as constitutionally guaranteed under Article IX of the New York State Constitution [*Matter of World Trade Ctr. Lower Manhattan Disaster Site Litigation*, 30 N.Y.3d 377 (2017)](https://plus.lexis.com/api/permalink/61478005-e14f-4658-bd72-2d12eb59f754/?context=1530671); [*Matter of Town of Verona (Oneida County) v. Cuomo*, 44 Misc. 3d 1225(A) (Sup. Ct. Albany Co. 2014)](https://plus.lexis.com/api/permalink/e628e65a-ea4a-4a3c-a869-c776a26cc588/?context=1530671). This "home rule" exception allows municipalities to challenge state actions that infringe upon their constitutionally protected powers to govern local affairs.

The New York Court of Appeals has recognized that when a local government's claim is based on the protections of Article IX, the general rule prohibiting municipalities from questioning legislative action affecting their powers is no longer applicable. This means that if a municipality believes that a state statute violates its "home rule" powers, it has the capacity to bring a constitutional challenge against the state [*Matter of World Trade Ctr. Lower Manhattan Disaster Site Litigation*, 30 N.Y.3d 377 (2017)](https://plus.lexis.com/api/permalink/61478005-e14f-4658-bd72-2d12eb59f754/?context=1530671), [*Matter of Town of Verona (Oneida County) v. Cuomo*, 44 Misc 3d 1225[A], 2014 NY Slip Op 51332[U] (Sup Ct, Albany County 2014)](https://plus.lexis.com/api/document/collection/cases/id/5D24-0X81-F04J-80J0-00000-00?cite=44%20Misc.%203d%201225(A)&context=1530671).

In summary, while municipalities typically cannot contest state legislation, the "home rule" exception provides a pathway for them to assert federal constitutional claims when their constitutionally guaranteed local governance powers are at stake.

For clarification, the holding in [*City of NY v. State*, 94 NY2d 577 (2000)](https://plus.lexis.com/api/document/collection/cases/id/3YYN-3690-0039-434V-00000-00?cite=94%20N.Y.2d%20577&context=1530671) establishes that only substantial state interests can justify state legislation impacting local matters without requiring home rule approval. In that case, the Court of Appeals properly found that the repeal of New York City’s commuter tax was justified by a substantial state interest in easing the tax burden on state residents working in the city but living outside its limits.

Similarly, in [*Matter of Baldwin Union Free Sch. Dist. v. County of Nassau*, 22 NY3d 606 (2014)](https://plus.lexis.com/api/document/collection/cases/id/5BJB-21Y1-F04J-63B7-00000-00?cite=22%20N.Y.3d%20606&context=1530671), Nassau County was barred from passing local tax laws that conflicted with state laws.

The state has not provided compelling evidence that Chapter 741’s provisions are necessary to achieve the stated goal of increased voter turnout. Without such evidence, the law cannot be justified as addressing a substantial state concern that outweighs the constitutionally protected rights of local governments to manage their own electoral processes.

Chapter 741 fails to qualify as addressing a substantial state concern necessary to justify overriding local governance autonomy. The law’s selective application and the lack of compelling evidence for the purported benefits further undermine the Defendants' argument. Therefore, the Plaintiffs respectfully request that the Court recognize that Chapter 741, even if considered a special law, is unconstitutional under the Home Rule provisions and does not meet the requirements of addressing a genuine and substantial state interest.

The purported state interest in increasing voter turnout and making the process less confusing for voters, is not only highly speculative and patronizing, but does not constitute a compelling reason to override local governance autonomy. Chapter 741 fails to demonstrate how standardizing election timing across diverse localities, particularly without empirical evidence of the purported benefits, meets this stringent standard.

Chapter 741, the Even Year Election Law, directly impacts local governance powers by altering the timing and structure of local elections, a core aspect of Home Rule. The law fails to comply with the procedural requirements of Article IX, §2(b)(1), as it was not enacted and re-enacted in consecutive years. Furthermore, the state has not demonstrated a compelling interest that justifies this infringement on local autonomy, nor has it shown that the law is narrowly tailored to meet its stated goals. Therefore, the Plaintiffs respectfully request that the Court find that Article IX, §2(b)(1) applies to Chapter 741, rendering the law unconstitutional under the New York State Constitution.

The cases cited by Defendants in their motion to dismiss purporting to support their argument that Article IX, §2(b)(1) does not apply to Chapter 741 are all readily distinguishable from the facts of the case at bar. All of the cases concede that whether or not a state concern transcends local interests must be defined on a case-by-case basis [(*Baldwin v. Buffalo*, 6 NY2d 168 (1959))](https://plus.lexis.com/api/document/collection/cases/id/3RRS-X450-003C-C4KV-00000-00?cite=6%20N.Y.2d%20168&context=1530671).

The case Matter of County of Nassau v. Nassau County Interim Fin. Auth. involves the Nassau County Interim Finance Authority (NIFA), a public benefit corporation created by the State of New York to oversee Nassau County's finances and prevent insolvency [(*Matter of County of Nassau v. Nassau County Interim Fin. Auth.*, 33 Misc 3d 227, 259 (Sup Ct, Nassau County 2011))](https://plus.lexis.com/api/document/collection/cases/id/52FV-NFY1-F04J-8063-00000-00?cite=33%20Misc.%203d%20227&context=1530671) involved the Nassau County Interim Finance Authority (NIFA), a public benefit corporation created by the State of New York to oversee Nassau County's finances and prevent insolvency following a unanimous request from the Nassau County Legislature to address the county's severe financial crisis and restore fiscal health while allowing the county to operate independently as a municipal corporation.

*Carlino v. Albany* actually supports Plaintiff’s argument, illustrating the application of the municipal home rule law in New York, confirming that local laws can supersede state laws like the Second Class Cities Law when enacted under the home rule authority. This case underscores the principle that local governments have the power to enact laws that can override state statutes, provided they follow the procedures outlined in the municipal home rule law [(*Carlino v. Albany*, 118 AD2d 928 (3d Dept 1986))](https://plus.lexis.com/api/document/collection/cases/id/3S3K-12V0-003D-G3KX-00000-00?cite=118%20A.D.2d%20928&context=1530671) involved rent control, clearly a matter of State concern.

When the controlling law is applied to the facts of the case at bar, it is clear that Chapter 741 infringes upon local elections without a substantial state interest for doing so. In fact, 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. Thus, Chapter 741, section 3 and 4 is a special law. 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). 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.

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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. [↑](#footnote-ref-1)