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.

STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

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.

DECISION, ORDER, and JUDGMENT

Motion #7
Motion #8

Index No: 003095/2024

STATE OF NEW YORK
SUPREME COURT NASSAU COUNTY

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.

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

STATE OF NEW YORK
SUPREME COURT ONEIDA COUNTY

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-

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

Defendants.

Action No. 3:
Index No: EFCA2024-000920

STATE OF NEW YORK
SUPREME COURT RENSSELAER COUNTY

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.

Action No. 4:
Index No: EF2024-276591

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 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 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, 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

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,

Action No. 8:
Index No: 2024-51659

Plaintiffs,

-against-

THE STATE OF NEW YORK, KATHLEEN HOCHUL, In her capacity as Governor of the State of New York,

Defendants.

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] (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", the "Governor", and 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 (Doc. No. 129). Plaintiffs Jason Ashlaw, Joann Myers, Tanner Richards, Steven Gellar, Eugene Cella, Robert Matarzzo, Robert Fischer, James Jost, Kevin Judge, the County of Suffolk, the Town of Hempstead, the Town of Brookhave, the Town of Huntington, the Town of Islip, the Town of Smithtown, the Town of Champion, the Thown 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 plainitffs' favor (Doc. No. 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 (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 (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 (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, Katherin 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 (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 (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 (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 seeks judgment in favor of the plaintiffs (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” (N.Y. 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, 207 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* Memorandum of Law, Doc. No. 128).

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 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 evidence 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 the 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 office 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 Plaintiff 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 set 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 Plaintiff 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 though 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 establishing the terms of office, and the Rensselaer was approved by the voters of

Rensselaer, only 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.

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. Caselaw 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, 3503;[3] attorney general, 3,297;[4] federal senator, 1,645;[5] member of the House of Representatives, 2,800;[6] 48th State Senate 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

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[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
[7] *ibid*, p. 85
[8] *ibid,* p. 91
[9] *ibid*, p 94

District, 799,[10] the 128th Assembly District, 1,202, 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 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

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[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] *ibid*, p. 139
[15] *ibid*, p. 12
[16] *ibid*, p. 179

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 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 as acknowledged by the Attorney General's Office during oral argument. Are the urbane voters of New York City less likely to be confused by odd year elections than the rubes

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

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* N.Y. 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 Plaintiff's 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 brings 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

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

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* N.Y. Const. Art. IX, §1[h]), and those rights "shall be liberally construed" (*see* N.Y. 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 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 'subject 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

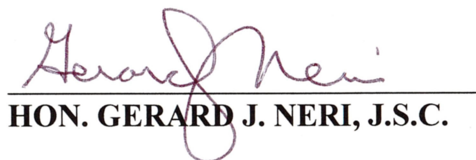
ORDERED and ADJUDGED, that pursuant to CPLR 3001 it is declared that Section C.01 of the Rockland County Charter and Rockland County local Law §5-8 fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law;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



HON. GERARD J. NERI, J.S.C.

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