

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-

**Action No. 1:
Index No: 003095/2024**

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.

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 Nassau County Executive,

Plaintiffs,

-against-

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

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

Defendants.

STATE OF NEW YORK
 SUPREME COURT ONEIDA COUNTY

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-

**Action No. 3:
Index No: EFCA2024-000920**

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

Defendants.

STATE OF NEW YORK
 SUPREME COURT RENSSELAER COUNTY

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-

**Action No. 4:
Index No: EF2024-276591**

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

Defendants.

STATE OF NEW YORK
SUPREME COURT JEFFERSON COUNTY

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,

**Action No. 5:
Index No: EF2024-00001746**

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

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

Plaintiffs,

-against-

**Action No. 6:
Index No: 032196/2024**

THE STATE OF NEW YORK,

Defendant.

STATE OF NEW YORK
SUPREME COURT ONONDAGA COUNTY

STEVEN M. NEUHAUS, Individually, and as a voter in
his capacity as Orang 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-

**Action No. 7:
Index No: 004023/2024**

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.

**MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO
DISMISS**

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PRELIMINARY STATEMENT

Defendants, the State of New York and Governor Kathleen Hochul, respectfully submit this reply memorandum in support of their motion to dismiss the plaintiffs' consolidated complaints challenging the constitutionality of New York's "Even Year Election Law" (Chapter 741 of the Laws of 2023). Plaintiffs have failed to demonstrate any concrete injury or legal basis for their claims, and therefore dismissal is necessary. The Even Year Election Law is a constitutional exercise of the state's legislative power, aimed at improving voter turnout and electoral integrity.

ARGUMENT

I. Plaintiffs Do Not Have Standing.

Plaintiffs lack standing because their claims of constitutional violations are hypothetical, speculative, and general. The Court is “prohibited from giving advisory opinions or ruling on academic, hypothetical, moot, or otherwise abstract questions.” *Saratoga Cnty. Chamber of Comm., Inc. v. Pataki*, 100 N.Y.2d 801, 810-13 (2003) (quoting *Matter of Hearst Corp. v. Clyde*, 50 N.Y.2d 707, 713 (1980)) (asserting that plaintiff as a taxpayer must assert a “sufficient nexus to fiscal activities of the State” in order to confer standing). Plaintiffs’ heavy reliance on *Saratoga* to argue that they have requisite standing is misplaced. In *Saratoga*, Plaintiffs alleged that certain legislation would cause them financial injury. The court conferred standing based on the plaintiffs’ status as taxpayers, noting that in that unique context, “[u]nlike other plaintiffs, citizen-taxpayers need not demonstrate an injury-in-fact to acquire standing. Instead, pursuant to State Financial Law section 123-b(1), a citizen-taxpayer may bring suit to prevent the unlawful expenditure of

state funds ‘whether or not such person is or may be affected or specially aggrieved’ by the challenged action.” *Saratoga* at 813 (additional citation omitted). The court forewarned that “it is one thing to have standing to correct clear illegality of official action and quite another to have standing in order to interpose litigating plaintiffs and the courts into the management and operation of public enterprises.” *Id.* Unlike in *Saratoga*, here there is no statutory granting of standing for the Even Year Election Law. Nor have plaintiffs alleged any illegal official act, or any purported financial injury to themselves. The instant action is precisely what the *Saratoga* court warned against: an attempt “to interpose litigating plaintiffs and the courts into the management and operation” of the government.

Plaintiffs allege a host of hypothetical and speculative effects that the law may have on their future abilities to campaign and vote. See *Affidavits of Matarazzo, Gellar, and Judge* (NYSCEF Nos. 151-53) at ¶¶ 5-6 (“the Even Year Election law *will* burden these activities . . . *will* also burden me as a voter”) (emphasis supplied). The Amended Complaint fails to allege with particularity any concrete facts about what these burdens are, and the affidavits supplied in their response do no better. Of course, Plaintiffs have not pled with particularity because the facts do not exist: the law has yet to take effect, the supposed ramifications of the law have not been felt, and thus there is only conjecture and made-up claims at this point. These supposed injuries cannot be identified in further litigation: there is nothing at this point that depositions, interrogatories or any other discovery tools could plumb and uncover about the injuries because they simply have not happened yet. Only time will tell if injuries of any sort come to pass, and as such the claims are not justiciable at the moment. The unripened constitutional claims should be dismissed.

Plaintiffs string cite cases to support their standing arguments, but these cases are

fundamentally inapposite. The Even Year Election Law is a forthcoming procedural change to the time and place of certain elections. It does not restrict or threaten any speech, association, ability to run for election, campaign, or, indeed vote. It does not proscribe any individual activity whatsoever. As such, there should not be any “relaxed standing” applied, as the court allowed in *Brooklyn Branch of NAACP v. Kosinski*, No. 21-CIV-667, 2024 WL 2846687, at *5 (S.D.N.Y. May 30, 2024) (a ban on handing out food and drink to voters at polling places allows ‘pre-enforcement challenges’ because it is a ban on constitutionally protected first amendment activity). Plaintiffs’ other citations include cases alleging actual infringement of threshold access to either polls or ballots, or laws that explicitly limit political campaigning. *See, e.g., Frederick v. Lawson*, 481 F. Supp. 3d 774 (S.D. Ind. 2020) (finding injury in fact where voters had their ballots rejected because of updated mail-in voting restrictions); *SAM Party of N.Y. v. Kosinski*, 483 F. Supp. 3d 245 (S.D.N.Y. 2020) (denying a party’s efforts to preliminarily enjoin a state law moderating ballot access because the law supported a reasonable state interest and the burden on first amendment rights was not severe); *Marin v. Town of Southeast*, 136 F. Supp. 3d 548 (S.D.N.Y. 2015) (addressing content-based restrictions on political signs, subject to strict scrutiny under the First Amendment); *Ostrom v. O’Hare*, 160 F. Supp. 2d 486 (E.D.N.Y. 2001) (law denying election campaign finance matching funds, affecting candidates’ ability to compete in elections); *Common Cause/New York v. Brehm*, 432 F. Supp. 3d 285 (S.D.N.Y. 2020) (failure to provide inactive voter lists to precincts, directly impacting voters’ ability to cast ballots. Injury in fact must be established, and because there has been none (and will be none), Plaintiffs have failed at the outset to plead a justiciable case.

II. The Even Year Election Law Does Not Impermissibly Burden Plaintiffs' Constitutional Rights

It is true that in a motion made pursuant to CPLR 3211, the facts pleaded are presumed to be true and are accorded every favorable inference. *Caniglia v. Chicago Tribune- New York New Syndicate, Inc.*, 204 A.D.2d 233, 233 (1st Dep't 1994). However, “conclusory allegations—claims consisting of bare legal conclusions with no factual specificity—are insufficient to survive a motion to dismiss.” *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009) (citing *Caniglia*, 204 A.D.2d at 233-34 (“allegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration”). Plaintiffs’ pleadings fail here for two reasons: first, the allegations are too bare and conclusory to warrant consideration; and secondly, *even if* the Court were to deem them as true, the allegations do not establish a substantial burden on Plaintiffs’ rights to overcome the legislative presumption of constitutionality, (see *White v. Cuomo*, 28 N.Y.3d 209 [2022]), and the asserted legitimate state interests involved in the Even Year Election Law. See *Kowal v. Mohr*, 216 A.D.3d 1472 (2023) (declaring a state election law constitutional, writing “We agree . . . that the legislature’s stated justification for the statute . . . constitutes a legitimate interest supporting the legislation.”); *Walsh v. Katz*, 17 N.Y.3d 336, 346 (reviewing legislative intent, and finding that a residency requirement has no direct and appreciable impact on residents’ right to vote, nor has any class been disenfranchised . . . stating “to be sure, the [law] affects the right to vote, but only in an incidental and remote way.”).

Plaintiffs reiterate repeatedly the speculative future injuries that they may possibly endure, such as that “local candidates and parties will find it significantly more difficult to fundraise, register, voters, attract volunteers, and generate support for local candidates and causes as they

compete with voters' attention on statewide and federal elections." Plaintiffs' baldly allege that "voters will experience longer lines and associate wait times, which may prevent voters of certain socioeconomic statuses from participating" They repeat phrases such as "ballot drop-off, voter fatigue, and voter confusion." *See* Pl. Resp. (NYSCEF No. 150) at 24-26. However, none of these events has yet to occur, and none is the logical outcome of the Even Year Election Law. We respectfully request that the Court not entertain Plaintiffs' incredible claims. *See Maslow v. Board of Elections in City of New York*, 658 F.3d 291, 298 (2d Cir. 2011) ("As Plaintiffs have no demonstrated any non-trivial burden to their First Amendment rights, we need not closely analyze New York's justification for the [law].").

The Even Year Election Law is an administrative law that will move certain local elections to even, rather than odd, years. The law does not deny any citizen the right to vote: on the contrary, it aims to increase voter turn-out. The law does not restrain or abridge the liberty of speech or assembly: the law is content neutral, and citizens will continue to enjoy all of the rights entitled to them without restriction. Nor does the law deny any individual or group equal protection of the law: it applies uniformly to all voters regardless of race, color, creed, religion, or any other protected characteristic. Interestingly, Plaintiffs concede that this law is a return to a prior system, one that apparently caused no constitutional harm. *See* Pl. Resp. (NYSCEF No. 150) at 12.

Moreover, the State's justification for the law is strong. As explained in the Bill's Sponsor Memo, the law is intended to make voting "less confusing for voters and [] lead to greater citizen participation in local election." NYSCEF No. 132. Increasing voter turnout and limiting confusion are, without a doubt, important state interests. *See, e.g., Kowal v. Mohr*, 216 A.D.3d 1472 (2023) which concluded that the State's important interests justified reasonable and nondiscriminatory burden on constitutional rights ("Because adequate ballot access is afforded . . . we conclude that

the statute imposes only a limited burden on voters' rights, one fairly described as incidental and remote").

CONCLUSION

It is respectfully submitted that for these, and all other reasons outline in the briefings, Defendants are entitled to dismissal of all the complaints as consolidated, or alternatively, a declaration that the Even year Election Law is constitutional.

Dated: Syracuse, New York
August 12, 2024

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Certification of word count

I hereby certify that the word count of this document complies with the word limits of 22 NYCRR § 202.8-b(a). According to the word-processing system used to prepare this document, the total word count for all printed text exclusive of the material omitted under 22 NYCRR § 202.8-b(b), at the request of Defendants is 1,623 words.

DATED: August 12, 2024

s/ *Timothy P. Mulvey*
Timothy P. Mulvey

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