

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

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,

v.

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiffs,

v.

Action No. 2
Index No. 605931/2024

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

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

THE COUNTY OF ONEIDA, THE ONEIDA COUNTY BOARD OF LEGISLATORS, ANTHONY J. PICENTE, JR., Individually and as a voter and in his capacity as Oneida County Executive, and ENESSA CARBONE, Individually and as a voter and in her capacity as Oneida County Comptroller,

Plaintiffs,

v.

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,

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RENSSELAER

COUNTY OF RENSSELAER, STEVEN F. MCLAUGHLIN, Individually as a Voter, and in his Capacity as RENSSELAER COUNTY EXECUTIVE, and the RENSSELAER COUNTY LEGISLATURE,

Plaintiffs,

v.

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF JEFFERSON

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.

Action No. 5

Index No.: EF2024-00001746

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, and THE ORANGE COUNTY BOARD OF ELECTIONS,

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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

Plaintiffs,

v.

Action No. 6
Index No.: 032196/2024

THE STATE OF NEW YORK,

Defendant.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

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,

v.

Action No. 7
Index No.: 004023/2024

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

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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.

Action No. 8
Index No. 2024-51659

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

Defendants.

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

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PRELIMINARY STATEMENT

INTRODUCTION

The Dutchess County Plaintiffs seek a declaration that L. 2023 Ch. 741, the “Even Year Election Law” violates Article IX §1, and Article IX, §2 of the New York State Constitution and a judgment awarding Plaintiffs such other and further relief as the Court deems just and proper. The State Defendants (State of New York and Governor Hochul) seek dismissal of the County’s action. For the reasons that follow, it is respectfully submitted that the State Defendants’ motion to dismiss be denied, that to the extent that State defendants purport to seek judgment pursuant to CPLR 3211(c) such application must be dismissed by the Court because the State has failed entirely to produce any argument in support of said application, and the Even Year Election Law be declared void as violative of the New York State Constitution, and that judgment in favor of the Plaintiff County be awarded.

The Dutchess County Plaintiffs seek a declaration that L. 2023 Ch. 741, the “Even Year Election Law” violates Article IX of the New York State Constitution because it purports to rewrite the Dutchess County Charter and upends a quintessential element of the County’s home rule authority: determining the mode of selection and terms of office of the County’s local elected officers.

The Defendants’ motion to dismiss would have this Court distracted by the theory that simply because the Even Year Election Law is allegedly a “general law” of the State of New York, it must supersede the Dutchess County Charter. There is no general obligation for County Charters to conform with the general laws of this State. If County Charters were required to “conform to every applicable general law ... there could never be such a thing as an alternative form of

government or effective home rule...". *Heimbach v. Mills*, 67 A.D.2d 731, 732 (2nd Dept. 1979). The rights, powers, privileges and immunities granted to counties in the Bill of Rights of Local Governments are at their apex when a county charter directs the structure of its own government, the manner in which it shall function, or otherwise sets forth the details of how its local government shall be administered. There is nothing more essential to Dutchess County's local governance than having created the offices of County Legislator, who make up the "legislative, appropriating and policy-determining body of the County", County Executive, "the chief executive officer" of the County, and County Comptroller, "the chief accounting and auditing officer" of Dutchess County. *NYSCEF Doc. No. 99*, pp. 111, 121, 146. Their terms of office are quintessential elements of the structure and functioning of County government that cannot be dictated by the Even Year Election Law.

STANDARD

On a motion to dismiss pursuant to CPLR §3211, the pleading is to be afforded a liberal construction. *See, CPLR §3026*. Courts are to accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *See, Leon v. Martinez*, 84 N.Y.2d 83, (1994) (citing, *Morone v. Morone*, 50 N.Y.2d 481, 484, 429 N.Y.S.2d 592, 413 N.E.2d 1154; *Rovello v. Orofino Realty Co.*, 40 N.Y.2d 633, 634, 389 N.Y.S.2d 314, 357 N.E.2d 970). In assessing a motion under CPLR §3211(a)(7), "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17; *Rovello v. Orofino Realty Co.*, *supra*, 40 N.Y.2d at 636, 389 N.Y.S.2d 314, 357 N.E.2d 970). *Id.*, at 87-88.

The State Defendants have failed to meet the burden imposed upon it as Dutchess County

has a viable and cognizable cause of action in challenging the attempted implementation of the Even Year Election Law.

ARGUMENT

POINT I

**THE BILL OF RIGHTS OF LOCAL GOVERNMENTS
COMPELS THAT THE EVEN YEAR ELECTION LAW
BE DECLARED UNCONSTITUTIONAL**

Dutchess County’s Charter authority descends directly from the Bill of Rights of Local Governments and the Even Year Election Law must be declared an unconstitutional infringement upon those essential rights of local governance. Defendants’ motion to dismiss all but ignores the County’s First Cause of Action and Article IX, § 1: the Bill of Rights of Local Governments. While Article IX, § 2 concerns itself with the extent of legislative power by the Dutchess County Legislature and the State Legislature, respectively – which is the subject of Dutchess County’s second and third causes of action in its Verified Complaint (NYSCEF Doc # 99) – Article IX § 1 concerns itself with counties’ authority to adopt an alternative form of government or County Charter. Article IX § 1 reads in pertinent part:

Effective local self-government and intergovernmental cooperation are purposes of the people of this state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution:

...

(h)(1) Counties, other than those wholly included within a city shall be empowered by general law, or by special law enacted upon county requests pursuant to section two of this article to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own. *(NY Const. Art. IX § 1.)*

While the Legislature possesses “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) ... on certificate of necessity ...”, under NY Const. Article IX § 2, importantly, it does so “[s]ubject to the bill of rights of local governments” – subject to Article IX, § 1. *NY Const. Art. IX, § 2(b)*.

Unlike local laws, which are subject to general laws as set forth in NY Const. Art IX § 2, there is no general requirement that a Charter Law or Charter amendment be consistent with general state laws. *Heimbach v. Mills*, 67 AD2d 731 (2nd Dept. 1979); *Town of Smithtown v. Howell*, 31 NY2d 365 (1972); 1984 NY Op Atty. Gen (Inf.) 139 (1984); *Dutchess County Charter* (NYSCEF Doc # 99, p. 108, Article I, Section 1.04 (“Any state law which is inconsistent with this Charter shall be superseded by this Charter...”).) The Even Year Election Law impermissibly eviscerates a fundamental element of the County’s right to have created an alternative form of government pursuant to Article IX, Section 1 by modifying the terms of the County’s elective officers and dictating when and how often they shall be elected by the people of Dutchess County. Even assuming *arguendo* that the Even Year Election Law is a general law – which the Dutchess County Plaintiffs most assuredly do not concede – it is not the type of general law which may supersede

the Charter. *Heimbach v. Mills*, 67 AD2d 731, 732 (1979) (“The restrictions on the power to adopt charters contained in subdivision 1 of section 33 (restrictions found “in the constitution, in this article or in any other applicable law”) do not encompass a requirement of consistency with general law...”).

The Bill of Rights of Local Governments also confirms that “in addition to” powers granted “by other provisions of this constitution”, local governments shall have “a legislative body elective by the people thereof,” ... “whose election or appointment is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof...”. *NY Const. Art. IX §1(a), §1(b)*. A County cannot plausibly have been charged with creating its own legislative body and its elective officers without also dictating the terms of office of those elected members and officials. The Even Year Election Law cannot supersede a dictate of the Constitution.

Further, the Even Year Election Law violates NYS Constitution Article IX, § 2(a). The Legislature’s duty set forth in Article IX, § 2(a) is to “provide for” and “secure to” local governments “the rights, powers, privileges and immunities granted to them by this constitution” and more particularly, in the Bill of Rights of Local Governments. *NY Const. Art. IX § 2(a)*. The evidence of this right is explicitly set forth in its implementing legislation, the Municipal Home Rule Law (“The County Charter Law”); *NY Const. Art IX, § 2(a), see, Town of Smithtown, 31 NY2d at 373*.

Municipal Home Rule Law § 33 states that “a county charter shall set forth the structure of county government and the manner in which it is function.” *NY. Mun. Home Rule Law 33(2)*. Dutchess County has done so. The Dutchess County Charter was adopted by the County Board of Supervisors in 1967. *See, Dut. Co. Compl. ¶ 21; (NYSCEF Docket No. 99, p. 7)*. Municipal Home Rule Law § 33(2) empowers counties to dictate the election of county officers “by any method of

nomination and election”. Method of selection has been defined to mean the right to “determine not only that it shall cause its officers either to be elected or appointed but connotes also that a municipality may define the precise method by which ... an election ... shall be effected.” *Bareham v. City of Rochester*, 246 NY 140, 146 (1927).

Again, Dutchess County has done so. The Dutchess County Charter enacted in 1967 provided for an elected county executive who administers the government, set the term of such office, and provided for an election in odd-numbered years. *See, Dut. Co. Compl.* ¶ 23; (*NYSCEF Docket No. # 99, p. 8*). The Charter created a Board of Representatives to replace the Board of Supervisors (now the Dutchess County Legislature), set the terms of office, and provided for their elections in odd-numbered years. *See, Dut. Co. Compl.* ¶ 25-28; (*NYSCEF Docket No. #99, p. 8*). The County has determined its own method of selection of elective officers as authorized by the Home Rule Article and has set their own terms of office.

As more fully set forth in the appended Affirmation, The Even Year Election Law modifies the terms of office of Dutchess County’s local elected officials by reducing the 2028-2031 term of County Executive from 4 years to 3, and it modifies the 2026-2027 term of County Legislator from 2 years to 1 in direct contravention of Sections 3.01 and 2.011 of the Dutchess County Charter, respectively. *See, Dut. Co. Compl.* ¶ 23, 29; (*NYSCEF Docket No. # 99, pp. 111, 121*). And, the Even Year Election Law shifts their elections to even-numbered years, purporting to re-write the same Charter provisions which require their elections to be held in odd-numbered years.

Next, depending on the meaning of “full term”, which is not defined in the Even Year Election Law, the Law may either extend the term of the Dutchess County Comptroller by three years, or truncate it by one year. *See, Dut. Co. Compl.* ¶ 34; (*NYSCEF Docket No. # 99, pp. 146, 160*). More specifically, the current term of the Dutchess County Comptroller expires on

December 31, 2025. The full term of Comptroller is four years. *See, Dut. Co. Compl. ¶ 34; (NYSCEF Docket No. # 99, p. 146)*. However, due to a mid-term vacancy, effective December 30, 2023, the County Executive made an appointment to fill the vacancy until December 31, 2024. Section 32.01 of the County Charter states that an appointee serves “until the commencement of the calendar year next following the first annual election held not less than 60 days after the occurrence of the vacancy, at which annual election an officer shall be elected from the County at large for the balance of the unexpired term.” *See, NYSCEF Doc. #99, p. 160*. The vacancy having occurred after the November 2023 general election, the “first annual election not less than 60 days after the occurrence of the vacancy” is November 2024. Thus, a November 2024 election is scheduled to determine which person shall be elected Comptroller for the balance of the unexpired term from January 1, 2025 to December 31, 2025.

Note that the Governor did not and does not possess the power to have made an appointment following the December 30, 2023 vacancy notwithstanding County Law Section 400(7) because the Dutchess County Charter clearly supersedes it, given that the office is not one touching upon matters of State concern and through County Law 2(b) and Article IX of the NYS Constitution, the Charter unequivocally prevails over it. *Nydick v. Suffolk Co. Leg., 81 Misc.2d 786, aff'd 47 AD2d 241, aff'd 36 NY2d 951 (1975); Carey v. Oswego Co. Leg., 91 Ad2d 62 (3rd Dept. 1983), aff'd 59 NY 2d 847 (1983); Baranello v. Suffolk Co. Leg., 126 AD2d 296, dismissing app. 69 NY2d 1037 (1987)*. No special election was necessary. *See, Public Officers Law 42(1), (3)*.

However, the office must appear on the ballot again in November 2025 to fill the “full term” of 4 years commencing on January 1, 2026, according to Article XXXII, Section 32.02 of the Charter. *NYSCEF Doc. No. 99, p. 160*. Section 5 of the Even Year Election Law, however,

apparently requires that “a county elected official ... elected and serving their term as of January 1, 2025 shall complete their full term as established by law.” *See, L: 2023, Ch. 741*. In Dutchess County, following the November 2024 election, there will be an elected Comptroller serving a term as of January 1, 2025, but for the “unexpired term”, not the “full term” of 4 years. *See, NYSCEF Doc. No, 99, p. 160; L: 2023, Ch. 741, §5*. To the extent the Even Year Election Law compels that the term of Comptroller be extended from 1 year to 3, in order to abide the requirement that he “shall complete their full term”, which by Charter law is four years, it is unconstitutional. *Loew v. MacNeill, 170 Misc. 647, aff’d 279 NY 806 (1937)*. To the extent the Even Year Election Law may be read to instead permit the 1-year mid-term election to proceed but requires the 4-year term following the November, 2025 election be truncated by one year, it is also violative of Article IX of the New York State Constitution for all the reasons set forth herein.

Dutchess County’s odd-numbered year elections are consistent with long-standing New York State Constitutional principles: “It seems clear that by the adoption of the constitution of 1894 the people indicated an unmistakable intent to adopt, as the policy of the state, a plan by which selection of municipal officers, so far as the time of their selection is concerned, might be unfettered by the consideration of questions affecting the selection of general government officers. Whatever may be the practical result of such plan, the constitutional intent seems to be clear.” *People ex rel. Eldred v. Palmer, 21 AD 101 (2nd Dept. 1897)*.

The Even Year Election Law violates Article IX and the rights granted to the County therein because the law necessarily requires the County to alter the four-year and two-year terms of its County Executive, County legislators, and County Comptroller by shortening each term by one year, and by altering when they are elected.

POINT II

**THE MANNER OF ELECTION AND TERMS OF OFFICE
ARE QUINTESSENTIAL FUNCTIONS OF LOCAL
GOVERNMENT WHICH CANNOT BE SUPERSEDED
BY THE EVEN YEAR ELECTION LAW**

In enacting The Even Year Election Law, the State clearly exceeded its authority to act in relation to the property, affairs, or government of the County in violation of New York State Constitution Article IX, § 2. As stated above, the Legislature's duty under Section 2 of Article IX is to "provide for" and "secure to" local governments our rights set forth in the Bill of Rights of Local Governments. *NY Const. Art. IX, § 2(a)*. The Even Year Election Laws does the opposite by impermissibly diminishing them. Further, the Legislature's powers to act in relation to the "property affairs or government of any local government" under Article IX, § 2(b)(2) is constrained in that it may only act "by general law, or by special law ...". By enacting legislation which affects the property, affairs and government of local government, and doing so in a manner which is not a general law nor a valid special law, the Even Year Election Law is unconstitutional.

The State Defendants have aptly pointed-out that where the subject matter of State legislation is "of sufficient state importance to the State, generally to render it a proper subject of State legislation ... the State may freely legislate, notwithstanding the fact that the concern of the State may also touch upon local matters" and such legislation does not violate the constitutional home rule provisions. *Town of Islip v. Cuomo, 74 NY2d 50, 56-57 (1984)*, citing *Kelly v. McGee, 57 NY2d 522*. But the Even Year Election Law does not legislate a matter of significant State importance.

Nothing is more germane to our local government than the terms of office of local elected officials and the method of their election. “Clearly, the County Executive is a local officer, and not one whose authority touches upon ‘a matter of concern to the State’.” *Baranello v. Suffolk Co. Leg.*, 126 AD2d at 302. In *Baranello*, the Court determined that the Suffolk County Charter prevailed over NY County Law Section 400 finding that “it is clear that [the Charter] is in full accordance with the bill of rights for local government contained in our State Constitution. (*NY Const., Art. IX, Section 1*).” *Id.* at 303. In *Carey v. Oswego Co. Leg.*, the Court found that “the Office of County Legislator, a purely local office under any standard”, could be distinguished from a District Attorney, finding “significant and substantial differences between State concerns in the two offices ...” *Carey*, 91 AD2d 62, *aff’d* 59 NY2d 847 (1983). Likewise, the filling of vacancies in the office of elected county legislator has been deemed a matter which may be controlled by a County, through a local law derived from its home rule powers, notwithstanding a contrary provision of NY County Law Section 400. *Resnick v. Ulster County*, 44 NY2d 279 (1978). Certainly, if the filling of vacancies in local elected offices is within a Charter authority, then the Plaintiff-County may determine when those elective offices commence and end. The establishment and control of fire departments, which are agencies of municipal governments, has also been deemed a matter of local concern. *Osborn v. Cohen*, 272 NY 55 (1936). The State’s claimed state interests in regulating when the County’s local officers are elected to office by County voters is specious. They are local officers whose offices who have been created by the Dutchess County Charter. Their duties and responsibilities do not touch upon matters of state concern, and thus their mode of selection and term of office should be proscribed by the Charter.

“The home rule article and statutes receive their inspiration from the deeply felt belief that local problems should, so long as they do not impinge on affairs of the people of the State as a

whole, be solved locally. ... To invalidate the local laws because of the rationalizations urged upon us in these cases would be to take a step in the direction against which Cardozo warned when he observed that the home rule enactments “adopted by the people with much ado and after many years of agitation, will be another Statute of Uses, a form of words and little else, if the courts ... ignore the new spirit that dictated their adoption.” *Resnick v. Ulster County*, 44 NY2d 297, 288 (1978) (citing *Matter of Mayor etc. of NY (Elm St.)*, 246 NY 72 (1927)). New York Constitution Article IX, § 1(a), (b), (h)(1), Article IX, §2(a), (b), (c), and implementing legislation, Municipal Home Rule Law §33, are all evidence of this stated intent of the Constitution, that local governments direct the terms of office of their local elected officials and proscribe when such elections occur. *Stefanik v. Hochul*, ____ NE 3d ____ (August 20, 2024) (2024 WL 3868644) (concerning Article II of the Constitution and the methods of voting, in stark juxtaposition to the term of office and structure of local governments through Article IX, at issue here.)

As a law which clearly affects the property, affairs and government of local government, it must have been enacted as either a general law or a validly enacted special law. *NY Const. Art. IX, § 2*. It is neither. A general law is one which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages. *NY Mun. Home Rule Law § 2(5)*; *Town of Smithtown v. Howell*, 31 NY2d 365, 375 (1972). A special law, on the other hand, “in terms and in effect applies to one or more, but not all, counties...”. *NY Mun. Home Rule Law § 2(12)*. The Even Year Election Law does not apply alike to all counties, or even to classes of counties, as suggested that it may by the State Defendants.

First, the Even Year Election Law does not identify a class of counties to which it applies. In plain terms, it appears to apply to all counties, including charter counties, regardless of population, location, or any other decipherable class. In deed, application of the law may vary

widely from county to county, based on whether it is a charter or non-charter county, whether it maintains a 3-year term or 4-year term elective officer, whether its Comptroller serves a 3-year term pursuant to County Law 575 or a different term pursuant to Charter via County Law 2(b) and NYS Const. Article IX, Section 1 (or alternatively in either a chartered or non-charter county) pursuant to local law via County Law 2(b) and NYS Const. Article IX, Section 2(c)(ii)(1), or, whether it maintains a County Administrator or County Executive, a Board of Supervisors or a County Legislature, and so on. The diversity in effect across a variation of counties, too numerous to classify, is broad, making the Even year Election Law a special law.

As a special law which affects how only some local officers in some counties across this State are elected, whose duties explicitly do not touch upon matters of State concern, the Even Year Election Law cannot supersede New York Constitution Article IX, Section 2(3)(c)(ii)(1). The Constitution vests counties with the express authority to adopt and amend local laws not inconsistent with the constitution or any general law, related to ... “The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation ... of its officers and employees,” regardless of whether “they relate to the property, affairs or government of such local government.” *NY Const. Art. IX, Section 2(3)(c)(ii)(1)(A)*. Special laws cannot supersede such local laws.

Charter laws are adopted by local law, and the Constitution thus vests charter and non-charter counties with the authority to direct the mode of selection and terms of office of their local elected officials through NYS Constitution Article IX §§(1) and (2), and NY Mun. Home Rule Law § 33. Thus, it makes a great deal of sense that the Even Year Election Law would be a special law, impacting each county differently. A county’s right to self-governance presumes the right, within the confines of the Constitution, to tailor its own form of government to the unique needs

of its own community. *NY Const. Art. IX, Section 1(a),(b),(h)(1)*. It follows that the Even Year Election Law cannot be a general law: counties have express constitutional authority to direct the mode of selection and terms of office of their local elected officials, and even though the Even Year Election Law purports to paint all counties with the same broad brush and push local elected offices onto the even year election cycle, counties which have Constitutionally and permissibly designed how their local government functions by charter or by local law will invariably be effected in specific and dynamic ways.

Lastly, the State Defendants' argument that the Legislature has "full and unquestionable power to abolish" offices "of its creation" or modify their term is entirely misplaced as it concerns Plaintiff County. The State did not create the offices of Dutchess County Executive, or Dutchess County Legislator, or Dutchess County Comptroller. The Dutchess County Charter created these offices. Courts have consistently placed limitations on the Legislature's authority to exert control over the mode of selection of local officers, whose terms are not dictated by the New York Constitution, and whose duties do not touch upon matters of State concern. *Nydick, 81 Misc2d at 790; Resnick, 44 NY2d at 289; Baranello, 126 AD2d at 302; 1984 NY Op. Atty. Gen (Inf.) 139 (charter supersedes Public Health Law concerning term of Health Commissioner)*. See also, *Carey, 91 AD2d at 65-66 (1983)*.

Further evidence of the incongruity between the alleged general-impact of the Even Year Election Law and its reality may be found in its plain terms. Section 3 of the Even Year Election Law amended County Law Section 400 by adding a new subsection (8). The County Law, as a body, is a special law. The County Law was always intended to cede to the contrary provisions of an alternative form of government. County Law Section 2(b) states: "The provisions of this chapter insofar as they are in conflict with or in limitation of a provision of any alternative form

of county government ... adopted ... pursuant to ...article nine of the constitution, or any administrative code ... shall not be applicable to the county.” Further, the Courts have repeatedly held that County Law Section 400(7) may be superseded by a County Charter, or in a non-charter County, by a County local law, addressing matters of the mode of selection of vacancies in local offices. *Nydick*, 81 Misc2d at 790; *Resnick*, 44 NY2d at 289; *Baranello*, 126 AD2d at 302.

“...[E]ven in the era when a very narrow interpretation was given to the home rule provisions, municipalities were accorded great autonomy in experimenting with the manner in which their local officers, including legislative officers, were to be chosen. In some instances, this was predicated directly on the provision dealing with the ‘mode of selection and removal’ of their officers. At other times, it was derived more generally from the concept that such measures fell within the scope of their power to manage their ‘property, affairs or government.’” *Resnick v. Ulster County*, 44 NY2d at 286 (citing *Bareham v. City of Rochester*, 246 NY 140); *Matter of Mayor of City of N.Y.*, 246 NY at 77 (“a form of words and little else ...”).

The State cannot have reasonably expected that adding a new subsection (8) to County Law Section 400 -- a body of law which is by its nature a special law meant to bow to prevailing charters -- and declaring that singular subsection (8) apply uniformly to supersede all charters, local laws, and ordinances, could actually effect results of equal application in a State with a Constitution that accords local governments the right to dictate the terms of office and mode of selection of their local officers.

POINT III

THE COUNTY HAS STANDING AND CAPACITY TO SUE

The State Defendants fail to satisfy their burden in showing lack of standing on behalf of Dutchess County. On a defendant's motion pursuant to CPLR § 3211(a)(3) to dismiss the complaint based upon the plaintiff's alleged lack of standing:

[T]he burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law” (*New York Community Bank v. McClendon*, 138 A.D.3d 805, 806, 29 N.Y.S.3d 507; see CPLR 3211[a][3]; *Arch Bay Holdings, LLC—Series 2010B v. Smith*, 136 A.D.3d 719, 719, 24 N.Y.S.3d 533). “To defeat a defendant's motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the plaintiff's submissions raise a question of fact as to its standing” (*Deutsche Bank Trust Co. Ams. v. Vitellas*, 131 A.D.3d 52, 60, 13 N.Y.S.3d 163; see *New York Community Bank v. McClendon*, 138 A.D.3d at 806, 29 N.Y.S.3d 507).
See, *U.S. Bank Nat'l Ass'n v. Clement*, 163 A.D.3d 742, 743 (2018).

The law is clear, the State Defendants violated Article IX of the New York State Constitution by passing and enacting the Even Year Election Law. The Defendants argue that the County lacks standing and capacity to challenge the Even Year Election Law pursuant to Article IX of the New York State Constitution. However, their arguments are without merit and are baseless attempts to seek a dismissal of the Complaint on standing grounds to avoid judicial review of the substantive and real constitutional issues at stake – which is whether or not home rule authority will become a legal nullity by illegal state action, in violation of Article IX.

Moreover, Defendants fail to specifically challenge the allegations raised by the County in its Complaint. Defendants generally argue that the County is not entitled to standing based on violations of freedom of speech and assembly, equal protection, the right to vote, the takings clause, and substantive due process. These allegations are not raised in the County's Complaint

and as such, Defendants have failed to raise any specific argument to support their Motion to Dismiss the Complaint as to Dutchess County for lack of standing and capacity to sue. Notwithstanding this fatal flaw in Defendants' papers, the County has standing to challenge the Even Year Election Law as it violates the New York State Constitution, Article IX, which directly impacts the County's right to home rule.

The Court of Appeals has affirmed the test for plaintiffs seeking to challenge governmental actions:

"Standing is, of course, a threshold requirement for a plaintiff seeking to challenge governmental action. The two-part test for determining standing is a familiar one. First, a plaintiff must show "injury in fact," meaning that plaintiff will actually be harmed by the challenged administrative action. As the term itself implies, the injury must be more than conjectural. Second, the injury a plaintiff asserts must fall within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted, *see, Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 773, 570 N.Y.S.2d 778, 573 N.E.2d 1034 [1991]; *Matter of Colella v. Board of Assessors*, 95 N.Y.2d 401, 409-410, 718 N.Y.S.2d 268, 741 N.E.2d 113 [2000]. *See, New York State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211, 810 N.E.2d 405, 407 (2004)."

Defendants allege that the County's injuries are not cognizable as a matter of law; speculative and not concrete; or is a generic harm suffered by the public at large. All three arguments raised by Defendants are neither persuasive nor legally applicable to Dutchess County and must fail as a matter of law.

First, the County's injuries result from the Even Year Election Law's fundamental altering of the governance structure and electoral processes within the County, which have been controlled by the County's Charter provision prescribing the mode of selection, terms of office, and timing of elections of its County legislators and officials for decades. The purpose of the Charter, since

its original adoption in 1967, is for, “securing the maximum county home rule, the separation of legislative and executive functions and the establishment of an efficient and responsible county government.” *See, NYSCEF Doc. No. 99, p. 108.* As such, the Even Year Election law would fundamentally alter the Charter’s legal authority in determining the mode of selection and term of office of the County’s local elected officials.

Additionally, passage of the Even Year Election Law implicates additional particular and concrete injuries to the County should it be upheld and implemented. These other injuries include impacting voter turnout for local elections, the right of the County to determine the mode of selection and terms of office of its local officers, 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, increased expenses of running local campaigns in the same year as federal and statewide office elections, and attracting qualified candidates to run for local office.

Second, the County has a direct and substantial interest in ensuring that the State Defendants do not violate home rule authority that is enshrined in Article IX. The objective of home rule is to promote local autonomy in local matters, permit local self-government, and prevent state legislative interference in local government. The harm confronting the County by enactment of the Even Year Election Law is specific to the County as its ability to control its mode of selection and term of office for County officers would be voided. If the County’s Charter becomes void on these grounds, this would be a harm specific to the County and not a generic harm to the public at large as the Charter’s authority over the County’s local elections would become a legal nullity by State decree. As such, the Even Year Election Law imposes a significant risk to the County’s ability to manage its local elections and structure of government, thereby causing irreparable harm to the County’s legitimate control over its government.

As such, Dutchess County has standing to challenge the unconstitutional and illegal Even Year Election Law.

Additionally, Defendants' argument that the County lacks capacity to sue is without merit. Defendants incorrectly argue that the County fails to satisfy the home rule exception to file suit by stating that the County relies on the takings clause, equal protection, or substantive due process rights to satisfy the home rule exception. Defendants' arguments are wrong as Dutchess County does not challenge the Even Year Election Law on these grounds. Rather, the County successfully shows that the Even Year Election Law specifically impacts its ability to manage its local elections, which is constitutionally guaranteed through home rule.

In terms of municipalities establishing capacity to sue, the Court of Appeals affirmatively supports the County's right to bring suit and challenge the State's infringement on home rule. In *Town of Black Brook v. State of New York*, 41 N.Y.2d 486 (1977), the Court of Appeals resolved the question of a municipality's standing to challenge an enactment of the State Legislature as violative of the home rule protection afforded by Article IX.

In *Town of Black Brook*, the plaintiff-Town was deemed to have the capacity to challenge the State's encroachment on home rule. The Court specifically ruled:

Safeguarding the guarantees and protections of Article IX is not the concern only of private persons ... Since much home rule controversy stems from tensions of a political nature, the local government has a direct political interest in ensuring the preservation of its home rule power, regardless of whether a violation of the home rule power affects anyone else.

...

For, when a home rule challenge is brought, the powers the locality is seeking to protect are not suffered at the will of the State

Legislature, but directly and specifically guaranteed by the Constitution.

It is reasonable, therefore, that when an act of the State Legislature is alleged to have encroached upon the powers of a locality in violation of the home rule article, the standing doctrine may not impede the local government from asserting its political rights, rights directly and specifically provided in Article IX ... it follows analysis of the purposes of the home rule article and the principles underlying the general standing doctrine. *Id.* at 489.

The injuries sustained by the County stem from the enactment and potential enforcement of the Even Year Election Law. The Even Year Election Law violates the protections guaranteed to local governments in Article IX of the New York State Constitution, which grants expansive home rule authority to local governments, which encompass the County. As such, the State Defendants' flagrant violation of the constitutional right to home rule gives the County capacity to challenge this constitutional infringement and seek relief through the courts.

As the County has shown, the Even Year Election Law violates Article IX in the following ways: 1) it jeopardizes the County's right to form its own legislative body by altering the mode of selection and the term years of office for elected officials; and, 2) it is a law which purports to legislate the property and affairs or government of County government, but was not enacted as a general law nor as a valid special law that received the necessary two-thirds legislative approval or a valid certificate of necessity, and 3) as a special law which attempts to dictate "mode of selection" and "terms of office" of local officers in the County, "whether or not they relate to the property, affairs or government of such local government", it may not supersede any local law of the County to the contrary. *See, NY Const. Art. IX, Sections 1 (a), (h)(1), Section 2(a), (b)(2), 3(c)(ii)(1).*

Accordingly, the County has a valid political interest in ensuring the preservation of its Charter as it relates to the affairs of local government and the running of its local elections.

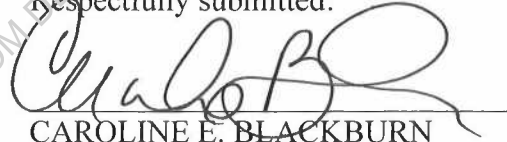
Prohibiting the County from challenging the State's unconstitutional Even Year Election Law on standing and capacity grounds would ignore the purpose of home rule and its constitutional safeguards from the State's encroachment into local affairs – specifically as it relates to how the County chooses to control its own legitimate government affairs.

For these reasons, the State Defendants' Motion to Dismiss must be denied as Defendants failed to satisfy their burden in showing that the County lacks standing and capacity to bring suit to challenge the Even Year Election Law.

CONCLUSION

It is respectfully submitted that based upon the foregoing, Defendant State's motion to dismiss must be denied as a matter of law and that the Even Year Election Law must be declared void as violative of the NYS Constitution's Home Rule provisions.

Respectfully submitted:



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WORD COUNT CERTIFICATION
PURSUANT TO SECTION 202.8-b OF THE UNIFORM
CIVIL RULES FOR THE SUPREME COURT
AND COUNTY COURT

I, CAROLINE E. BLACKBURN, am an attorney duly admitted to practice law before the Courts of the State of New York and am the County Attorney for the County of Dutchess, attorney for Plaintiffs, **COUNTY OF DUTCHESS, DUTCHESS COUNTY LEGISLATURE and SUSAN J. SERINO.**

I hereby certify that the within MEMORANDUM OF LAW is of 6,363 words, exclusive of the parts exempted from Rule 202.8-b. The word count herein was prepared using a word-processing system. I hereby certify that the MEMORANDUM OF LAW complies with the word count limit as set forth in Section 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court.

Dated: Poughkeepsie, New York
August 23, 2024.


CAROLINE E. BLACKBURN
County Attorney

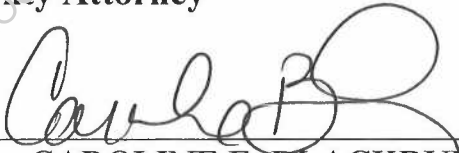
PART 130 CERTIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

I hereby certify that that, to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the papers that I have served, filed or submitted to the court in this action are legitimate and their allegations are correct and are not frivolous as defined in subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator of the Courts.

Dated: Poughkeepsie, New York
August 23, 2024

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