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.

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.

Action No. 1
Index No.: 003095/2024

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.

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

Defendants.

Action No. 2
Index No.: 605931/2024

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.

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

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.

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

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.

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.

Action No. 5
Index No.: EF2024-00001746

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.

THE STATE OF NEW YORK,

Defendant.

Action No. 6
Index No.: 032196/2024

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.

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

Defendants.

Action No. 7
Index No.: 004023/2024

ONEIDA COUNTY PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO THE MOTIONS TO DISMISS AND IN SUPPORT OF JUDGMENT IN FAVOR OF PLAINTIFFS

Dated: August ___, 2024

By: ROBERT F. JULIAN, P.C.
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PRELIMINARY STATEMENT

Plaintiffs the County of Oneida (the "County" or "Oneida County"), the Oneida County Legislature, Anthony J. Picente, Jr. and Enessa Carbone (together, the "Oneida County Plaintiffs") respectfully submit this memorandum of law in opposition to the motions to dismiss of Defendants the State of New York and Governor Kathy Hochul (together, the "State"). Far from the complaint being subject to dismissal, the Oneida County Plaintiffs are entitled to judgment in their favor because the Even Year Election Law blatantly violates their rights under Article IX of the New York Constitution. The Oneida County Plaintiffs are requesting that the Court treat the Defendants' motion as a motion for summary judgment and Oneida County's answering papers as a cross motion for summary judgment.

BACKGROUND

The Oneida County Plaintiffs commenced this declaratory judgment action seeking to declare unconstitutional Chapter 741 of the Laws of 2023 of the State of New York (the "Even Year Election Law") as violative of Article IX of the New York Constitution, which grants expansive home rule rights and powers to local governments. *See generally* Dkt. No. 1.

I. The County's Charter

The Oneida County Charter (the "Charter") was adopted by the County Board of Supervisors on August 30, 1961 and approved by referendum on November 7, 1961 by a wide margin. Article III of the Charter established the elected position of county executive to administer the executive branch of the County government providing that the term of office: "Shall begin with the first day of January, next following his election and shall be for four years except that the term of the County Executive elected in 1962, shall be for five years, commencing January 1, 1963 and every County Executive elected thereafter shall have a term of four years." The Oneida County executive has been elected every four years thereafter at

elections in 1967, 1971, 1975, 1979, 1983, 1987, 1991, 1995, 1999, 2003, 2007, 2011, 2015, 2019, and 2023. The county comptroller was elected in the same years. The County Supervisors and County Board of Legislators thereafter were elected in odd years every two years. At the time of adoption, Section 201 of the Charter provided that the "The supervisor or supervisors of each of the towns or cities in the county" constituted the "Board of Supervisors", which was to be the legislative body of the County. In 1967, Article II of the 1961 Charter was amended to provide that the legislative branch of the government of Oneida County shall consist of an elective governing body which shall be known as the Oneida County Board of County Legislators were and are county legislators elected in odd-numbered years for a two-year term. Charter § 202.

The Oneida County Charter, as adopted in 1961 and approved at referendum established the Department of Audit and Control in Article IV Section 402. That provision states "There shall be a Department of Audit and Control headed by a Comptroller who shall be elected from the County at large. His term of office shall be for four years beginning with the first day of January next following his election, except that the provisions of this section with respect to such election shall not take effect until the general election of 1964 at which a Comptroller shall be elected for a three-year term to commence January 1, 1965 and every Comptroller elected thereafter shall have a term of four years."

This provision of Article IV of the Charter remains in full force and effect today.

II. Article IX and County Law Article 6-A (1958)

The County's Charter was adopted against the backdrop of a 1958 amendment to Article IX of the New York State Constitution and a new Article 6-A of the County Law passed by the

Legislature in 1959.[1] Article IX was amended in relevant part to read: "The legislature shall provide by law alternative forms of government for counties outside the city of New York and for the submission of one or more such forms of government to the electors residing in such counties." Article IX § 2(a) (1959)[2]. Article IX was also amended to require the Legislature, on or before July 1, 1959, to "confer by general law upon all counties outside the city of New York power to prepare, adopt and amend alternative forms of county government." *Id.* § 2(b). Article IX as amended provided that no such alternative form of government would become operative until adopted by a majority of votes both (1) in the area of the county outside of cities and (2) in the area of the cities in the county when considered as one unit. *Id.* § 2(c). Article IX provided that "[a]ny such [alternative] form of government shall set forth the structure of the county government and the manner in which it is to function" and "may provide for the appointment of any county officers or their selection by any method of nomination and election . . . ." *Id.* § 2(d).

Pursuant to the constitutional mandate in Article IX § 2(b), the Legislature enacted County Law Article 6-A in 1959 to empower counties outside New York City to prepare, adopt and amend their own charters. Article 6-A empowered counties to adopt a county charter and provided that a county charter "shall set forth the structure of the county government and the manner in which it is to function" and that such a charter "shall provide for," inter alia, 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." County Law § 323(2), (3)(b) (1959). Article 6-A enumerated certain areas reserved to the State in which a county charter could not supersede any

[1] As used in this memorandum, "Legislature" refers to the New York State Legislature.
[2] Amending the Constitution is done by following the multi-step process set forth in Article XIX of the Constitution, which includes passage by two consecutive sessions of the Legislature and approval by the people at a general election.

general or special law enacted by the Legislature, including subjects such as taxation, educational systems and school districts, and public benefit corporations. *See id.* § 324(3).

III. 1963 Amendments to Article IX and the Municipal Home Rule Law

Article IX was amended again in 1963, effective January 1, 1964, to establish a bill of rights for local governments and set forth the powers and duties of the Legislature.[3] As with the 1958 amendment, the 1963 amendment required passage by the Legislature and approval by the people at a general election. Article IX as amended in 1963 provides, as part of the bill of rights for local governments, that "[e]very local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof." Article IX § 1(a). Article IX also provides that counties shall be empowered 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." Article IX § 1(h)(1). To become effective, an alternative form of government must be "approved on referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit." Article IX § 1(h)(1).

In or around April 1963, the Legislature passed the new Municipal Home Rule Law ("MHRL"), which would become effective only if the amendment creating a new Article IX was approved at the 1963 general election. The new MHRL replaced the prior City Home Rule Law, Village Home Rule Law, Articles 6 and 6-A of the County Law, and certain sections of the Town Law. Like former County Law Article 6-A, the MHRL is implementing legislation that gives effect to the constitutional provisions in Article IX regarding local governments' powers. MHRL § 33 gives counties the power to "prepare, adopt, amend or repeal a county charter."

[3] No substantive changes have been made to Article IX since the 1963 amendments.

MHRL § 33 provides that a county charter "shall set forth the structure of the county government and the manner in which it is to function" and requires a county charter to provide for, inter alia, the "agencies or officers responsible for the performance of the functions, powers and duties of the county . . . and the manner of election or appointment, terms of office, if any, and removal of such officers." MHRL § 33(2), (3)(b).

IV. The Even Year Election Law

The Even Year Election Law was enacted by the Legislature in June 2023 and thereafter signed into law by Governor Kathy Hochul on December 22, 2023. With the enactment of the Even Year Election Law, County Law § 400(8) provides:

> Notwithstanding any provision of any general, special or local law, charter, code, ordinance, resolution, rule or regulation to the contrary, all elections for any position of a county elected official shall occur on the Tuesday next succeeding the first Monday in November and shall occur in an even-numbered year; provided however, this subdivision shall not apply to an election for the office of sheriff, county clerk, district attorney, family court judge, county court judge, surrogate court judge, or any offices with a three-year term prior to January first, two thousand twenty-five.

New subsection MHRL § 34(3)(h) provides:

> Except in accordance with provisions of this chapter or with other laws enacted by the legislature, a county charter or charter law shall not supersede any general or special law enacted by the legislature: . . . (h) Insofar as it relates to requirements for counties, other than counties in the city of New York, to hold elections in even-numbered years for any position of a county elected official, other than the office of sheriff, county clerk, district attorney, family court judge, county court judge, surrogate court judge, or any county offices with a three-year term prior to January first, two thousand twenty-five.

The Even Year Election Law therefore necessarily requires the County to alter the four- and two-year terms of its county executive, county comptroller and county legislators, respectively, but shortening each term by one year.

LEGAL STANDARDS

Ordinarily, a motion to dismiss a cause of action for declaratory judgment for failure to state a claim under CPLR 3211(a)(7) "presents for consideration only the issue of whether a cause of action for declaratory relief is set forth, not the question of whether the plaintiff is entitled to a favorable declaration." *Plaza Drive Grp. of CNY, LLC v. Town of Sennett*, 115 A.D.3d 1165, 1166 (4th Dep't 2014) (citation omitted). Where the case is properly one for declaratory judgment and there are no factual issues precluding a determination of the parties' rights, however, CPLR 3211(a)(7) "empowers a court to grant judgment on the pleadings notwithstanding the absence of a motion for summary judgment" by considering the plaintiff's claims on the merits and "immediately 'declar[ing] the rights of the parties, whatever they may be.'" *Matter of Kerri W.S. v. Zucker*, 202 A.D.3d 143, 153–55 (4th Dep't 2021) (quoting *St. Lawrence Univ. v. Trs. of Theol. Sch. of St. Lawrence Univ.*, 20 N.Y.2d 317, 325 (1967)).

In addition, the Court already recognizing the time sensitive nature of this case ordered that "any motion to dismiss pursuant to CPLR §3211 shall be converted to a CPLR §3212 motion for summary judgment." Dkt. No. 114; *see* CPLR 3211(c) ("Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment."). "To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980) (quoting CPLR 3212(b)). If it appears that a non-moving party is entitled to summary judgment, "the court may grant such judgment without the necessity of a cross-motion." CPLR 3212(b). We ask that the Court grant that this is a motion for summary judgment, that our responsive papers are

couched to satisfy the evidentiary standard for a cross motion and that the relief requested by Plaintiff Oneida County as follows:

A. A declaratory judgment pursuant to CPLR 3001 declaring that the Even Year Election Law is void as violative of the New York State Constitution; and

B. A declaratory judgment pursuant to CPLR 3001 declaring that Sections 201, 301 and 401 of the County's Charter fall within the Savings Clause of Article IX to the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law, and that elections for County Executive, County Comptroller and County Legislators may continue to be held in odd-numbered years; and

C. A judgment awarding Plaintiffs such other and further relief that the Court deems just, proper, and equitable, including but not limited to reasonable attorneys' fees and other relief pursuant to Article 86 of the CPLR, and costs, disbursements, and other allowances of this proceeding.

The Oneida County Plaintiffs respectfully request oral argument on the pending motions.

ARGUMENT

I. Article IX grants the County the right to set terms of office, and the Even Year Election Law does not validly supersede that right.

Defendants' motions should be denied, and a declaration issued in the Oneida County Plaintiffs' favor, because Article IX grants the County the right to set the terms of office of its local officials, and the Even Year Election Law does not supersede that right.

A. Section 1 of Article IX establishes the County's right to determine terms of office.

Article IX established a bill of rights for local governments and secures to the County the right of local self-government. As part of the bill of rights for local governments, Article IX provides that "[e]very local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof." Article IX § 1(a). The bill of rights further provides:

> Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county request 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.

Article IX § 1(h)(1). An alternative form of government must be "approved on referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit." *id.*, and the County adopted its Charter pursuant to this double-referendum process.

The County's constitutional right to adopt an alternative form of government necessarily encompasses the right to determine the terms of office of its elected officials, as the creation of an elective office necessarily requires setting the first day and term of that office. *See Matter of Resnick v. County of Ulster*, 44 N.Y.2d 279, 286 (1978) (noting that "even 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 . . . were to be chosen" and that the "manifest intent" of Article IX "was to encourage local governments to make a living document of the bill of rights for local governments"); *see also* Article IX § 3(c) ("Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed."); Article IX § 1(b) ("All officers of every local government 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, or appointed by such officers of the local government as may be provided by law."). Indeed, setting the terms of office is one of the basic building blocks included in a county charter.

The County's right to set terms of office—and, consequently, to set the year in which an election is to be held—is confirmed by the MHRL, implementing legislation that gives effect to constitutional provisions in Article IX. Specifically, MHRL § 33 provides that a county charter "*shall* provide" for, inter alia, the "agencies or officers responsible for the performance of the functions, powers and duties of the county . . . and the manner of election or appointment, *terms of office*, if any, and removal of such officers." MHRL § 33(3)(b) (emphases added).[4] It is telling that the Even Year Election Law did not amend MHRL § 33. Therefore, the County still has the right to determine the terms of office of its elected officials and must include this in its Charter.

Defendants' moving papers fail to address the County's Article IX right to set its terms of office, and Defendants appear to concede that the Even Year Election Law forces the County to alter its officials' terms of office. Although the State argues that the law "may shorten the terms of the local public officials," Dkt. No. 143 at 22, it cites no authority to support that proposition. Rather, the State only cites caselaw stating the unremarkable proposition that a legislative body may modify the term of an office *of its own creation*. *See id.* at 20.[5]

The County's constitutional right to set its terms of office could be altered or taken away by constitutional amendment, but that is not what happened here. Because, as discussed below,

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[4] Even prior to the 1963 amendments to Article IX and the adoption of the MHRL, a county adopting a charter form of government was *required* to include terms of office.

[5] Unlike in the cases the State cites, the County does not challenge the Even Year Election Law as improperly aimed at an incumbent office holder, but rather seeks to vindicate the County's constitutional right to determine its form of government.

the Legislature's attempt to alter the terms of office of the County's officials is without constitutional authority, the Even Year Election Law cannot supersede the County's rights under Article IX and is unconstitutional.[6]

Moreover, the State is Not Entitled to a Presumption of Constitutionality. For all of the Attorney General's sermonizing in her brief that the Even Year Election Law enjoys a presumption of constitutionality (*see* Att'y Gen. Br. At 17), she ignores that the County' Charter likewise enjoys a strong presumption of Constitutionality (*see Lighthouse Shores, Inc. v Town of Islip*, 41 NY2d 7, 11 [1976] ["The exceedingly strong presumption of constitutionality applies not only to enactments of the Legislature but to ordinances of municipalities as well. While this presumption is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt and only as a last resort should courts strike down legislation on the ground of unconstitutionality"]). This lawsuit pits the enactments of two legislatures against each other. The State's enactment should receive no special presumption of Constitutionality over the County Charter which, unlike the Even Year Election Law, was ratified by the voters.

B. The Legislature exceeded its authority under Article IX § 2 because County Law § 400(8) is not a general law.

The Even Year Election Law also violates Article IX because the Legislature exceeded its authority to act in relation to the property, affairs, or government of the County in violation of Section 2 of Article IX.

Article IX provides that the Legislature

> [s]hall 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

[6] Because the Even Year Election Law violates a specific constitutional right protected by Article IX, the Law's presumption of constitutionality is rebutted. *See People v. Viviani*, 36 N.Y.3d 564, 576 (2021) (concluding that law was facially unconstitutional despite challengers' "heavy burden").

> 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 except in the case of the city of New York, on certificate of necessity from the governor . . . with the concurrence of two-thirds of the members elected to each house of the legislature.

Article IX § 2(b)(2) (emphases added).

The Even Year Election law, and most specifically County Law § 400(8), which requires elections for "any position of a county elected official" to occur in even-numbered years, is plainly a law which acts in in relation to the property, affairs, or government of the County, and Defendants do not contend otherwise. Nor do Defendants argue that either of the two conditions precedent for the Legislature to act by special law was met with respect to the Even Year Election Law. Therefore, pursuant to Article IX § 2(b)(2), the Legislature had the authority to act with respect to elections for local officials and terms of office only by general law.

The Legislature exceeded its authority under Article IX § 2(b)(2) because County Law § 400(8) is not a general law. *See* Article IX § 3(d)(1) (defining general law as a law which "in terms and in effect applies alike to all counties . . ."). Not all counties have an elected executive: many counties have appointive executives, managers, and/or directors. County Law § 400(8) does not speak to the timing or method of appointing non-elected county officials. The legislation also exempts certain countywide offices and any offices with a three-year term and therefore would not apply to any county utilizing three-year terms. Thus, by its plain terms, Section 400(8) does not apply in terms or *in effect* to all counties and cannot be considered a general law. *See* 1985 N.Y. Op. Atty. Gen. (Inf.) 113, 1985 WL 194022, at *2 (June 11, 1985) (opining that County Law § 400(1) establishing a three-year term for elected coroners was not a general law because, inter alia, "some counties have established the position of medical examiner

in place of coroner".[7] See also *Westchester Cnty. Civ. Serv. Emp. Ass'n Inc. v. Del Bello*, 70 A.D. 2d 604, 608 (2d Dep't 1979) (O'Connor, J. dissenting), *rev'd sub nom.* 47 NY2d 886 (1979) (reversing on dissert below)).[8]

At least one court has held that another provision of Section 400 is a special law. In *Nydick v. Suffolk County Legislature*, the court considered whether County Law § 400(7) is a general or special law. *See generally* 81 Misc.2d 786 (Sup. Ct. Suffolk Cnty. 1975), *aff'd*, 47 A.D.2d 241 (2d Dep't 1975), *aff'd on the Special Term and Appellate Division opinions*, 36 N.Y.2d 951 (1975). Section 400(7) provides that, with certain exceptions, "a vacancy in an elective county office[] shall be filled by the governor by appointment and for the office of sheriff with the advice and consent of the senate if in session." N.Y. County Law § 400(7). The *Nydick* court reasoned that this provision was not a general law because it "appear[ed] to mandate election of certain county officers." 81 Misc.2d at 789. Because charter counties were specifically permitted to provide for the *appointment* of any county officers, Section 400(7) "d[id] not apply to all counties" and therefore was a special law. *Id.* at 789–91. Similarly, here, the fact that some counties may have appointive rather than elected county officials, renders Section 400(8) a special law which does not apply to all counties in terms or in effect (See also *Johnson v. Etkin*, 279 NY 1 (1938).

[7] Article IX expressly defines what it means by a "general" or Special" law. But the State cites cases discussion whether a law is a general law for purposes of Article III, which prohibits "private or local" bills in certain situations. *See, e.g., Matter of New York Elevated R.R. Co.*, 70 N.Y. 327, 350 (1877); *Farrington v. Pinckney*, 1 N.Y.2d 74, 78-79 (1956); *see also* 1992 N.Y. Op. Atty. Gen. (Inf.) 1001, 1992 WL 549093 (Jan. 22, 1992) (noting that Article IX is "clear and specific in its definition of a general law" and that the term "'general law' is used in other provisions outside of Article IX has a different meaning").

[8] Article IX expressly defines what it means by a "general" or "special" law. But the State cites cases discussing whether a law is a general law for purposes of Article III, which prohibits "private or local" bills in certain situations. *See, e.g., Matter of New York Elevated R.R. Co.*, 70 N.Y. 327, 350 (1877); *Farrington v. Pinckney*, 1 N.Y.2d 74, 78–79 (1956).

Accordingly, the Legislature did not act either by general law or by special law in the circumstances allowed by Article IX, and the Even Year Election Law violates the Constitution.

C. The Even Year Election Law is unconstitutional even if County Law § 400(8) were deemed a general law.

Even if the Court were to deem County Law § 400(8) a general law, however, Article IX nonetheless restricts the Legislature's authority to override the County's constitutional right to adopt an alternative form of a government and set terms of offices. Although Defendants point to the Legislature's power to act in relation to the property, affairs, or government of a local government by general law under Section 2(b)(2) of Article IX, they conspicuously ignore that provision's introductory language. The Legislature's power under Section 2(b)(2) is expressly made "[s]ubject to the bill of rights of local governments and other applicable provisions of this constitution." Article IX § 2(b). As explained above, the bill of rights grants the County the right, as part of adopting its own form of government, to set the terms of office of its officials (and, consequently, in which years elections will be held). Thus, the Legislature's power to act by general law is subject to that right and the Even Year Election Law unconstitutionally forces the County to alter its terms of office.

Furthermore, although Defendants refer to Article IX § 2(c), that section deals with non-charter local legislation. *See also* MHRL § 10. Nothing in Article IX requires that the County's charter be consistent with general state laws, and therefore the Charter's provisions regarding odd-year elections for county executive and county legislators are valid despite enactment of the Even Year Election Law. *See* James D. Cole, *Constitutional Home Rule in New York: "The Ghost of Home Rule,"* 59 St. John's L. Rev. 713, 727 (1985) ("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.").

A close reading of Section 2(c) reveals two indications that a county's charter is not required to be consistent with general law. First, Section 2(c) expressly refers to a local government's power to adopt and amend *local laws*, which are distinct from a county's charter setting forth its form of government. Second, and importantly, the powers granted in Section 2(c) are "[*i*]*n addition to* powers granted in the statute of local government *or any other law*." The powers granted in Article IX and in MHRL include the power to adopt a county charter setting forth the county's form of government, including terms of office. Article IX § 1(h)(1); MHRL § 33(3). Thus, the County's authority to adopt a charter provision providing for the terms of office of its elected officials and when those elections are to be held is not dependent on the authority to adopt local laws referred to in Article IX § 2(c) which is subject to restriction by the Legislature, and there is nothing in Article IX or MHRL otherwise expressly requiring that county charters be consistent with state general law. *See Heimbach v. Mills*, 67 A.D.2d 731, 732 (2d Dep't 1979) ("[I]f 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").[9] Indeed, the MHRL, which implemented the Local Government Bill of Rights, provides separate definitions for "charter laws" and "local laws", signifying that the legislature's restrictions on the ability to adopt local laws does not apply to charter laws (see MHRL § 32(2), (1)).

[9] The Legislature has imposed statutory limitations on the powers of counties to adopt and amend county charters and charter laws. As most relevant here, MHRL § 34 provides that, "[e]xcept in accordance with the provisions of [the MHRL] or with other laws enacted by the legislature, a county charter or charter law shall not supersede any general or special law enacted by the legislature" relating to certain subjects. MHRL § 34(3). The Even Year Election Law amended Section 34 so that a county charter cannot supersede a general or special law with respect to the requirement to hold certain county elections in even-numbered years. MHRL § 34(3)(h). However, other "provisions of th[e MHRL]" already expressly grant counties the authority to determine terms of office in their charters. Because the Even Year Election Law necessarily alters the county executive and county legislators' terms of office in the future, the exception in MHRL § 34(3) applies, leaving the Charter provisions in force.

In *Heimbach v. Mills*, the Second Department considered the validity of a county charter provision that vested power to fix county equalization rates in the elected county executive, which was inconsistent with certain provisions of the Real Property Tax Law. 67 A.D.2d at 731. The court first noted that Article IX § 2 "is concerned with all units of local government and its focus is on general local legislative power, not charters or alternative forms of county government." *Id.* at 731. Article IX § 1(h), on the other hand, authorizes counties to adopt alternative forms of government and "certainly d[id] not prohibit what was done here, even if it d[id] not specifically authorize it." *Id.*; *see id.* at 731 (noting that the restrictions on the power to adopt charters contained in MHRL § 33(1) "do not encompass a requirement of consistency with general law"). The court acknowledged that MHRL § 34 enumerates "certain limitations on the powers of counties to adopt charters," but none of the limitations applied to the determination of county equalization rates. *Id.* at 732. Therefore, the county charter provision "validly superseded" the inconsistent provisions of the Real Property Tax Law. *Id.* In *Town of Smithtown v. Howell*, the Court of Appeals also distinguished between "charter law" and "local law," noting that the former must be passed by the double referendum system set forth in Article IX § 1 and MHRL § 33. 31 N.Y.2d 365, 376 (1972). The Court of Appeals concluded that a provision of the Suffolk County Charter giving the county commission veto power of certain zoning changes superseded General Municipal Law § 239-m, a general law that provided for regional review of zoning changes. *Id.* at 372–76; *see also* 1994 N.Y. Atty. Gen. (Inf.) 1038, 1994 WL 441775, at *2 (July 5, 1994) (opining that "a county may enact a charter provision establishing the membership of the board of health which differs from the composition established by State law" because "neither the Constitution nor the County Charter Law requires that charter laws be consistent with general State laws" and there was no limitation in MHRL § 34 that would

prohibit or restrict the county from enacting such a charter provision); 1979 N.Y. Op. Atty. Gen. (Inf.) 209, 1979 WL 34379 (Aug. 16, 1979) (opining that there was no prohibition against a charter amendment transferring the function of administration and operation of the county's jails from the Sheriff to a County Commissioner of Corrections); 1984 N.Y. Op. Atty. Gen. (Inf.) 139, 1984 WL 186601, at *2 (Sept. 25, 1984) (opining that the "establishment of the term of a county health commissioner clearly relates to the structure and functions of county government" and that a county charter law establishing a term for a county health commission differing from the term established by general state law was valid).

Accordingly, the Even Year Election violates Article IX and the Oneida County Plaintiffs are entitled to judgment in their favor.

D. There is no substantial state concern that usurps the County's constitutional right to determine terms of office and run local elections.

Regardless of whether the Even Year Election Law is deemed a general or special law, the Law does not implicate any substantial state concern that allows the Legislature to legislate without regard to the County's constitutional rights.

New York courts have held that, notwithstanding the home rule provisions in Article IX, the State may freely legislate with respect to "matters of State concern," i.e., involving matters "other than the property, affairs or government of a municipality." *Kelley v. McGee*, 57 N.Y.2d 522, 538 (1982). A statute involves a matter "other than the property, affairs or government of a municipality" for purposes of Article IX § 2—i.e., involves a matter of state concern—when the "subject matter of the statute is of sufficient importance to the State generally to render it a proper subject of State legislation." *Id.*; *see also Adler v. Deegan*, 251 N.Y. 467, 491 (1929) (Cardozo, J., concurring) (framing the question as whether the subject is "in a substantial degree a matter of State concern"). The phrase "property, affairs or government of a municipality" 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, 173–74 (1959) (concluding that the alteration of ward boundaries is "properly an affair of the municipality"); *see also Resnick*, 44 N.Y.2d at 288 ("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."). "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." *Town of Monroe v. Carey*, 96 Misc.2d 238, 241 (Sup. Ct. Orange Cnty. 1977)

Here, the State's stated justifications for the Even Year Election Law—decreased voter confusion and higher voter turnout in local elections—do not implicate a substantial state concern. *See* Dkt. No. 132 at 2 ("Holding local elections at the same time [as elections for state and/or federal offices] will make the process less confusing for voters and will lead to greater citizen participation in local elections.").[10] First, and most fundamentally, the Even Year Election Law directly implicates the County's "property, affairs or government" by dictating its officers' terms of office and when its officers may run for office, matters in which the State can claim no substantial interest. *See Hoerger v. Spota*, 109 A.D.3d 564, 566 (2d Dep't 2013) (describing the power of a local government to adopt laws relating to, inter alia, terms of office as a local concern); *Carey v. Oswego Cnty. Legislature*, 91 A.D.2d 62, 65 (3d Dep't 1983) (referring to the

[10] The sponsor's memorandum also mentions "[a]nticipated savings to local governments from the consolidation of various elections," although such savings are not listed as a justification for the Law. Dkt. No. 132 at 2. In any event, it cannot seriously be contended that the State has a substantial concern in fiscal savings to *local* governments. *See* Dkt. No. 136 at 12 (Division of the Budget memorandum acknowledging that the Law "may reduce local spending" but "does not impact State finances"); *see also* N.Y. Election Law § 4-136 (providing that election expenses "shall be a charge upon the county in which such election district is situated:). Further, given that a number of elections remain in odd-numbered years, there is no discernible connection between the Law and fiscal savings.

office of county legislator as "a purely local office under any standard"). This demarcation of local interest is confirmed by the fact that Article IX grants counties the right to adopt an alternative form of government and determine terms of office. In other words, the issue has already been decided; the constitutional provisions of Article IX have already categorized a county's right to adopt its own form of government and determine terms of office and in which years local elections are held as a matter *not* involving State concern but rather one which involves *local* concerns properly entrusted in counties as a matter of constitutional law. Thus, the Law does not implicate "other" matters involving a substantial state concern regarding which the State is free to legislate. *see* Article IX § 3(a)(3), and the State's conclusory assertions of state concern are insufficient, *Carey*, 96 Misc.2d at 241.

Moreover, even if that were not the end of the inquiry, there is no authority to support the proposition that increased voter turnout *for local elections* or decreased voter confusion relating to such elections is a matter of state concern. Local governments, including counties, are broadly vested with the power to determine when and how local officials are selected. For example, the Constitution allows counties the right to determine that their leaders will be appointed, apparently without implicating a matter of state concern. It would seem inconsistent, in the face of such a right, for the State to later claim that voter turnout and voter confusion—in the specific context of elections for local officials which are not required in the first place—presents a matter of substantial State concern. *Baldwin*, 6 N.Y.2d at 173–74; *Village of Tully v. Harris*, 119 A.D.2d 7, 12 (4th Dep't 1986) (concluding that the administration of a county health district is a matter of local concern); *see also* 1985 N.Y. Op. Atty. Gen. (Inf.) 113, 1985 WL 194022, at *1 (June 11, 1985) (opining that the office of coroner is a local office and that "the determination of the term of a local officer is a subject within the 'affairs and government' of the county"). The

State's stated justification is also undermined by the fact that the legislation specifically exempts elections held in New York City. If the State in fact had a substantial interest in voter confusion and voter turnout in local elections, surely that interest would extend to local elections in the State's largest city.

Voter turnout for local elections is more appropriately considered a matter of local concern. Other local concerns implicated by the Law also predominate over any negligible state concern. 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. Keeping county elections in odd-numbered years allows these candidates to make themselves known to voters and prevent local issues from being eclipsed by national and statewide issues. Local governments, with the input of their constituents, have weighed these concerns for decades with no State involvement.

Because there is no substantial State concern implicated by the Even Year Election Law, the State's "preemption" argument is misplaced. *See* Dkt. No. 143 at 26–27. In any event, Defendants have not established any intent by the Legislature to preempt local legislation regarding the timing of local elections. Although Defendants state in conclusory fashion that the Even Year Election Law is "comprehensive legislation designed to cover all elections within the State, showing a desire by the State Legislature to exclude local laws for a unified purpose," Dkt. No. 143 at 26, that is plainly not the case. The Even Year Election Law excludes a number of

offices from its requirements, including sheriff, county clerk, district attorney, supreme court justices, family court judges, county court judges, surrogate court judges, and offices with a three-year term. The Law also does not apply to New York City, precluding any notion that the Legislature enacted a "pervasive scheme" occupying the field of local elections.

Contrary to the Attorney General's contention in Point I(B) of her brief, the Even Year Election Law does not relate to an area of State concern because it effects only purely local offices—such as those of County Executive and County Comptroller—while carving out offices with connection to State concerns, such as the Sheriff and District Attorney (*see* Ch. 471, L. 2023, § 3). The State has an interest in certain local offices sufficient to invade local prerogatives, such as the office of District Attorney (*see Kelley v McGee*, 57 NY2d 522, 539 [1982] [State may legislate salaries of District Attorneys]). But other local offices—particularly those created pursuant to a Charter—remain areas of local prerogative (*see, e.g.*, *Westchester County Civ. Serv. Emp. Ass'n, Inc. v Del Bello*, 70 AD2d 604, 608 [2d Dept 1979] [O'Connor, J., dissenting] [in dissent, opining that local law should be upheld that created office of Department of Public Safety and abolished Sheriff's Office prior to expiration of three-year term of Sheriff's Office set forth in State law], *rev'd sub nom. Westchester County Civ. Serv. Employees Ass'n, Inc. v Del Bello*, 47 NY2d 886 [1979] [upholding local law based on Justice O'Connor's dissenting opinion]; *see also Nydick v Suffolk County Legislature*, 81 Misc 2d 786 [Sup Ct., Suffolk Cnty. 1975], *affd* 47 AD2d 241 [2d Dep't 1975], *affd* 36 NY2d 951 [1975]).

Accordingly, there is no matter of State concern that supersedes the County's rights under Article IX and the Even Year Election Law is unconstitutional.

E. The Even Year Election Law does not fall within the Legislature's plenary power to regulate the "conduct" of elections.

Defendants' arguments that the Even Year Election Law relates to the "conduct" or "integrity" of elections are a red herring which does not preclude judgment in the Oneida County Plaintiffs' favor. Although the Court of Appeals has recognized the Legislature's "plenary power 'to promulgate reasonable regulations for the conduct of elections,'" that authority is traced to Article II § 7 of the State Constitution. *Stefanik v. Hochul*, 211 N.Y.S.3d 574, 579 (3d Dep't 2024) (citations omitted). Article II § 7 provides: "All elections by the citizens . . . shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved." This authority to regulate conduct is plainly related to the *how* of elections. *See, e.g.*, *Stefanik*, 211 N.Y.S.3d at 579 (considering challenge to statute allowing for universal mail-in voting); *Davis v. Bd. of Elections of City of N.Y.*, 5 N.Y.2d 66, 69 (1958) (upholding law conditioning right to sign independent nominating petition as an "administrative necessity"); *see also Burr v. Voorhis*, 229 N.Y. 382, 388 (1920) (noting that regulations regarding the conduct of elections must nonetheless be "in harmony with constitutional provisions").

The Even Year Election Law does not concern the conduct or methods of elections and has no bearing on the manner in which citizens cast their votes. Rather, the Law dramatically alters in which years candidates can run for office in the first place and consequently the terms of office. Nor is the Even Year Election Law about safeguarding the "integrity" of the electoral process. *Contra* Dkt. No. 143 at 24.[11] There has been no suggestion that odd-year elections lack integrity or that citizens are not just as able to vote in odd years as in even years.

[11] The State's citation to *Hawatmeh v. New York State Board of Elections*, 68 Misc.3d 449 (Sup. Ct. 2020), does not support its position. The trial court in that case simply made passing reference to maintaining the integrity of the electoral process via the mechanics of the petitioning process in light of the State's "compelling interest in responding to an unprecedented global health crisis." *Id.* at 456.

Accordingly, because the Even Year Election Law does not relate to the conduct of elections—and because the Legislature's regulations regarding conduct must be reasonable and consistent with other constitutional provisions, including Article IX—Defendants' motions must be denied.

II. Alternatively, the Charter's provision providing that elections for the county executive are held in odd-numbered years is valid under Article IX's Savings Clause.

Assuming the Court does not find that the Even Year Election Law is unconstitutional as outlined above, the provision of the County's 1961 Charter providing that elections for the county executive and county comptroller shall be held in odd-numbered years is protected by Article IX's "Savings Clause." Accordingly, the County Plaintiffs are entitled to a declaration that Section 301 and 401 of the Charter is valid and remains in force notwithstanding the enactment of the Even Year Election Law.

Section 3 of Article IX provides: "The provisions of [Article IX] 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." Article IX § 3(b); *see also* MHRL § 35(4) ("All existing state, county, local and other laws or enactments, including charters, administrative codes and special acts having the force of law shall continue in force until lawfully amended, modified, superseded or repealed."). Section 301 of the County's Charter provided that, in 1962 the County Executive was to be elected for a term of five years and thereafter to be elected for a term of four years thereafter, at the general election. The Oneida County Comptroller was to be elected for a term of three years and thereafter every four years. Sections 301 and 402, which were adopted in 1961, predate the 1963 amendments to Article IX, including the Savings Clause. Sections 301 and 401 are "existing valid provisions" and have not been materially repealed, amended,

modified, or superseded except to remove vestigial references to the first term. Sections 301 and 401 complied with and did not violate Article IX or County Law Article 6-A as those laws were in effect in 1961. The Savings Clause therefore preserves the County's valid, preexisting provision providing for the election of the County Executive in odd-numbered years. *Cf. Boening v. Nassau County Dep't of Assessment*, 157 A.D.3d 757, 762–63 (2d Dep't 2018) (concluding that certain provisions of the Nassau County Charter "still have the force and effect of a statute" under the Savings Clause).

Defendants do not contest that Sections 301 or 401 are existing valid provisions, but rather assert in conclusory fashion that they have been superseded or preempted by the Even Year Election Law. Defendants' arguments lack merit for at least two reasons. First, the most natural reading of the Savings Clause is that a preexisting valid provision remains in force until repealed, amended, modified, or superseded by the same legislative body that adopted it. Here, the County has not superseded Section 301 or Section 402. Second, and importantly, Defendants' interpretation would render the Savings Clause meaningless. If a local charter provision could be "superseded" by the simple enactment of a state law, the Savings Clause has no force and provides no protection at all. *See Matter of Hoffman v. N.Y.S. Indep. Redistricting Comm.*, 41 N.Y.3d 341, 359 (2023) ("Indeed, our well-settled doctrine requires us to give effect to each component of the provision or statute to avoid 'a construction that treats a words or phrase as superfluous.'" (citation omitted)).

For similar reasons, the State's argument that the Savings Clause has no effect in the face of the State's purported authority to preempt local enactments cannot be correct. The State has not explained how garden-variety preemption doctrine can overcome an *express* constitutional provision saving valid local enactments, or what meaning the Savings Clause has in the face of

such unchecked State power. Nor has the State provided any authority to support its argument. Indeed, *Buenos Hill Inc. v. Saratoga Springs Planning Board*, 206 N.Y.S.3d 902 (Sup. Ct. 2024), has nothing to do with the Savings Clause. The Savings Clause must have some meaning, and the State cannot simply wish it away.

Accordingly, the Oneida County Plaintiffs are entitled to a declaration that Sections, 201, 301 and 401 of the Charter are valid and remains in force.

III. Governor Hochul is not entitled to legislative immunity.

Finally, the Oneida County Plaintiffs' claims are not subject to dismissal against Governor Hochul on the ground of legislative immunity. Although the doctrine of legislative immunity may bar claims for injunctive relief against state officials sued in their official capacities, such a defendant must first show that (1) "the acts giving rise to the harm alleged in the complaint . . . were undertaken when defendants were acting in their legislative capacities" and (2) that the "particular relief sought" would "enjoin defendants in their legislative capacities, and not in some other capacity in which they would not be entitled to legislative immunity." *State Emps. Bargaining Agent Coalition v. Rowland*, 494 F.3d 71, 88–89 (2d Cir. 2007). Here, even assuming that Governor Hochul acted in a legislative capacity when she signed the Even Year Election Law into law, she fails to demonstrate that the relief sought in this action would enjoin her in a legislative capacity, as opposed to in her executive capacity as Governor. The Oneida 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.

Accordingly, the State has not met its burden of demonstrating Governor Hochul's entitlement to legislative immunity at this stage and the State's motion should be denied.

IV. It Takes an Amendment to Change the Constitution.

The only way for the State Legislature to change the Constitution is to amend it and to submit the amendment to the People for ratification (*see* New York State Const. art. XIX, § 1). The Legislature cannot rewrite the Constitution by ordinary legislation (*see, e.g.*, *Kuhn v Curran*, 294 NY 207, 219 [1945]).

The Constitution gives the voters the right to approve an alternative form of County government (*see* New York Const. art IX § 1[h]). And the Municipal Home Rule Law—effectuating the home rule provisions of the Constitution—grants counties the power to "select . . . terms of office" for their officers (MHRL § 10[1][a][1]). Imagine that in 1961, the voters in approving the County Charter had chosen one-year terms for their officers, in an effort to limit terms of office and welcome new views (*see, e.g.*, *Roth v Cuevas*, 158 Misc 2d 238, 244 [Sup Ct, NY County 1993], *aff'd* 197 AD2d 369, 369 [1st Dept 1993]). So brief a term would have been Constitutional, and naturally would have required an election every year, *including odd years*. Yet the Even Year Election Law would bar this—barring the voters from exercising their Constitutional right to choose an alternative government.

The voters of Oneida County in 1961 established a charter form of government with an odd-numbered initial term of office for their County Executive and Comptroller (*see* Charter §§ 301, 401), for the purpose of ensuring that local issues receive attention during a local election cycle. This Constitutionally-authorized choice stood for 62 years—until the State Legislature ignored Article IX and adopted the Even Year Election Law. The State Legislature now seeks to undo that voter-approved choice.

CONCLUSION

WHEREFORE, the Oneida County Plaintiffs respectfully request that the Court (1) issue a declaratory judgment pursuant to CPLR 3001 declaring that the Even Year Election Law

is void as violative of the New York State Constitution; (2) issue a declaratory judgment pursuant to CPLR 3001 declaring that Sections 201, 301 and 401 of the County's Charter fall within the Savings Clause of Article IX to the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law; (3) issue a permanent injunction prohibiting Defendants the State of New York and Kathleen Hochul, their agents, and anyone acting on their behalf from enforcing and/or implementing the Even Year Election Law; and (4) grant such other and further relief that the Court deems just and proper.

Respectfully submitted,

Dated: August 23, 2024
Syracuse, New York

By: _____

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Certification Pursuant to 22 NYCRR § 202.8-b

I, Robert F. Julian, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law complies with the word count limit set forth in 22 NYCRR § 202.8-b, because it contains 8,780 words, excluding the parts exempted by § 202.8-b(b). In preparing this certification, I have relied on the word count of the word-processing system used to prepare the Memorandum of Law.

Dated: August 23, 2024
Syracuse, New York

Robert F. Julian, Esq.