

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

-----X
THE COUNTY OF ONONDAGA, THE ONONDAGA
COUNTY LEGISLATURE, and J. RYAN MCMAHON
II, Individually and as a voter and in his capacity as
Onondaga County Executive,

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

Plaintiffs,

-against-

THE STATE OF NEW YORK, KATHLEEN HOCHUL,
in her capacity as Governor of the State of New York,
DUSTIN M. CZARNY, in his capacity as Commissioner
of the Onondaga County Board of Elections, and
MICHELE L. SARDO, in her capacity as Commissioner
of the Onondaga County Board of Elections,

Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

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

Plaintiffs,

v.

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

Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

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

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

Plaintiffs,

v.

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 RENSSELAER

-----X
COUNTY OF RENSSELAER, STEVEN F.
MCLOUGHLIN, INDIVIDUALLY as a Voter, and in his
Capacity as RENSSELAER COUNTY EXECUTIVE,
and the RENSSELAER COUNTY LEGISLATURE,

Action No. 4:
Index No. EF2024-276591

Plaintiff,

v.

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

-----X
JASON ASHLAW, JOANN MYERS, TANNER
RICHARDS, STEVEN GELLAR, EUGENE CELLA,
ROBERT MATARAZZO, ROBERT FISCHER,
JAMES JOST, KEVIN JUDGE, THE COUNTY OF
SUFFOLK, THE TOWN OF HEMPSTEAD, THE
TOWN OF BROOKHAVEN, THE TOWN OF
HUNTINGTON, THE TOWN OF ISLIP, THE TOWN
OF SMITHTOWN, THE TOWN OF CHAMPION,
THE TOWN OF NORTH HEMPSTEAD, and THE
TOWN OF NEWBURGH,

Action No. 5:
Index No. EF2024-
00001746

Plaintiffs,

v.

THE STATE OF NEW YORK, KATHLEEN
HOCHUL, in her capacity as Governor of the State of
New York, MICHELLE LAFAVE, in her capacity as
Commissioner of the Jefferson County Board of
Elections, JUDE SEYMOUR, in his capacity as
Commissioner of the Jefferson County Board of
Elections, MARGARET MEIER, in her capacity as
Commissioner of the Jefferson County Board of
Elections, THE JEFFERSON COUNTY BOARD OF
ELECTIONS, JOHN ALBERTS, in his capacity as
Commissioner of the Suffolk County Board of
Elections, BETTY MANZELLA, in her capacity as
Commissioner of the Suffolk County Board of
Elections, THE SUFFOLK COUNTY BOARD OF
ELECTIONS, JOSEPH KEARNEY, in his capacity as
Commissioner of the Nassau County Board of
Elections, JAMES SCHEUERMAN, in his capacity as
Commissioner of the Nassau County Board of
Elections, THE NASSAU COUNTY BOARD OF
ELECTIONS, LOUISE VANDEMARK, in her
Capacity as Commissioner of the Orange County
Board of Elections, COURTNEY CANFIELD
GREENE, in her capacity as Commissioner of the
Orange County Board of Elections, THE ORANGE
COUNTY BOARD OF ELECTIONS,

Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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

Action No. 6:
Index No. 032196/2024

Plaintiff,

v.

THE STATE OF NEW YORK,

Defendant.

-----X
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

-----X
STEVEN M. NEUHAUS, Individually, and
as a voter and in his capacity as Orange
County Executive, THE COUNTY OF ORANGE,
THE ORANGE COUNTY LEGISLATURE,
ORANGE COUNTY LEGISLATORS, KATHERINE
E. BONELLI, THOMAS J. FAGGIONE, JANET
SUTHERLAND, PAUL RESZKIEWICZ, PETER V.
TUOHY, BARRY J. CHENEY, RONALD M.
FELLER, GLENN R. EHLERS, KATHY STEGENGA,
KEVIN W. HINES, JOSEPH J. MINUTA, LEIGHT J.
BENTON, ROBERT C. SASSI, and JAMES D.
O'DONNELL, Individually and as voters,

Action No. 7:
Index No. 004023/2024

Plaintiffs,

v.

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

-----X
THE COUNTY OF DUTCHESS, THE
DUTCHESS COUNTY LEGISLATURE, and
SUSAN J. SERINO, Individually and as a
Voter and in her capacity as DUTCHESS
COUNTY EXECUTIVE,

Action No. 8:
Index No: 2024-51659

Plaintiffs,

v.

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

Defendants.
-----X

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

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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*

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PRELIMINARY STATEMENT

This is a declaratory judgment action brought by plaintiffs STEVEN M. NEUHAUS, Individually, and as a voter in his capacity as Orange County Executive, the County of Orange, the Orange County Legislature and Orange County Legislators, Katherin E. Bonelli, Thomas J. Faggione, Janet Sutherland, Paul Ruszkiewicz, Peter V. Tuohy, Barry J. Cheney, Ronald M. Feller, Glenn R. Ehlers, Kathy Stegenga, Kevin W. Hines, Joseph J. Minuta, Leigh J. Benton, Robert C. Sassi and James D. O'Donnell, individually and as voters.

This action seeks to declare as unconstitutional the Even Year Election Law (Assembly Bill A4282B/Senate Bill S3505B), which was signed into law by Governor Kathleen Hochul on December 22, 2023, and which requires elections for certain local government positions be held in even-numbered years. More particularly, the plaintiffs herein are specifically aggrieved by the addition of County Law § 400(8), which effective January 1, 2025, requires, notwithstanding the provisions of the Orange County Charter and Code, that “all elections for any position of a county elected official...” and shall occur in an even-numbered year,” and also new MHRL § 34(3)(h) which allows the Even Year Election Law to supersede county charters and mandates elections of county elected officials (with certain exceptions) to be held in even numbered years.

As pleaded in the two causes of action in their Complaint, it is the position of these plaintiffs, that the Even Year Election Law violates their rights pursuant to New York State Constitution Article IX, §§ 1 and 2.

Article IX, § 1 is violated because the Even Year Election Law interferes with the right of the plaintiff to determine their own form of government and manner of election of local officials.

The Even Year Election Law also violates New York State Constitution Article IX, § 2 as it is an impermissible special law. The New York State Legislature is only allowed to legislate regarding a county's property, affairs and government via a “general law”, except for special

circumstances. Here, the Even Year Election Law is a “special law” and not a “general law”, because it does not affect all localities, and no special circumstances are present that would allow the Legislature to enact a special law. Also, the Legislature has no legitimate, substantial state concern to justify the Even Year Election Law as a special law given its illusory benefits.

STATEMENT OF FACTS

This action is commenced on behalf of Steven M. Neuhaus, in both his individual capacity and in his capacity as Orange County Executive and on behalf of fourteen members of the Orange County Legislature. All intend to seek re-election for their respective positions in 2025.

Pursuant to its “Home Rule” powers Orange County adopted both a Charter and Code. § 3.01 of the Orange County Charter sets forth the term of Orange County Executive is to be four years and was adopted so that the election for that position would be held in an odd-numbered year. Similarly, the Orange County Code states each Orange County Legislator shall be elected at an odd-numbered year election for a four-year term.

As a result of the Even Year Election Law the plaintiffs who are reelected will have their terms, which were established through the Orange County Charter and Code, shortened from four to three years. Furthermore, for their next election, which will be in 2028, they will be down ballot from a presidential election and overshadowed by that election and subject to increased expense and difficulty in advertising their campaigns.

ARGUMENT

POINT I

LEGAL STANDARD FOR CPLR § 3211(a)(7) MOTION

When considering a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7) the court must afford the complaint a liberal construction. *Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994). A court should limit its inquiry to the complaint’s legal sufficiency.

Davis v. Boenheim, 24 N.Y.3d 262, 268 (2014). Therefore, the court should accept the facts as alleged in the complaint as true, accord the plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory. The key criterion is whether the plaintiffs have a viable cause of action, not whether they have stated one. *Leon v. Martinez*, 84 N.Y.2d 83, 87 – 88 (1994). The complaint only has to give the court and parties notice of what is intended to be proved and the material elements of each cause of action. *Meese v. Miller*, 79 A.D.2d 237, 244 (4th Dept. 1981).

Here, the defendants' motion must be denied as the complaint states viable causes of action that the Even Year Election law violates New York Constitution Article IX, §§ 1 and 2.

POINT II
PLAINTIFFS HAVE CAPACITY AND STANDING TO SUE

One of the recognized exceptions to the general rule barring local governmental challenges to State legislation is where the State impinges on “Home Rule “ powers of a municipality constitutionally guaranteed under Article IX of the State Constitution. *City of New York v. State of New York*, 86 NY2d 286, 291-293 (1995); *Town of Black Brook v. State of New York*, 41 NY2d 486 (1977).

Pursuant to its “Home Rule” powers Orange County adopted both a Charter and Code. § 3.01 of the Orange County Charter sets forth the term of Orange County Executive is to be four years and was adopted so that the election for that position would be held in an odd-numbered year. Similarly, the Orange County Code states each Orange County Legislator shall be elected at an odd-numbered year election for a four-year term.

As is more fully set forth below, the plaintiffs here have standing because the Even Year Election Law shortens their terms and requires their elections be held in even-numbered years

instead of odd-numbered ones. This is a violation of “Home Rule” powers and the right of a county to determine its own form of government and election of officials as granted by Article IX, § 1.

POINT III
EVEN YEAR ELECTION LAW VIOLATES NEW YORK
CONSTITUTION ARTICLE IX, § 1

In 1958, the Legislature adopted an amendment to Article IX of the New York State Constitution, effective January 1, 1959, which is commonly referred to as the “Home Rule” article. The Legislature amended Article IX again in 1963, effective January 1, 1964. The amendment in 1963 evinced a recognition that essentially local issues should be dealt with locally and that effective self-government is the desired objective. The history of the constitutional home rule provisions demonstrates the evolution of county governments from administrative arms of the State to more autonomous units of local government. *Matter of Kelley v. McGee*, 57 N.Y.2d 522, 535 - 536 (1982).

The 1963 amendment to Article IX included a “bill of rights” for local governments which in Article IX, § 1(a) provides among other “rights, powers, privileges, and immunities,” 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(b) states “[a]ll 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 some division thereof, or appointed by such officers of the local government as may be provided by law.”

Article IX, § 1(h) (1) provides: “Counties ... shall be empowered ... to prepare , adopt, amend or repeal alternative forms of their own”.

Article IX, § 3(c) states that the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.”

In or around April 1963, following the 1963 amendments to Article IX, the legislature enacted the Municipal Home Rule Law (MHRL). The MHRL is implementing legislation that gives effect to the constitutional provisions in Article IX regarding the powers of local governments to adopt and amend local laws. MHRL § 33(1) provides that “[s]ubject to restrictions in the constitution, in this article or in any other applicable law, the board of supervisors of any county ... shall have power to prepare, adopt, amend or repeal a county charter.” MHRL § 35(3) sets forth the “county charter law shall be construed liberally.”

MHRL § 33(3)(b) confirms a county’s right to set terms of office by stating a county charter “shall provide” for 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.” To determine the “terms of office” for its “officers”, a county must necessarily set forth the length of that term and the first and last day of the term.

Orange County became a charter county effective January 1, 1970. Pursuant to § 3.01 of its Charter “[t]here shall be a County Executive who shall be elected from the County at large for a term of four years beginning with the first of January next following his election.” An Orange County executive was first elected as a result of an odd-year election held in 1969, with a term commencing on January 1, 1970. Orange County Code § 2-1 sets forth that each Orange County Legislator “shall be elected from his district at a general odd-numbered year election for a term of four years commencing on the first day January following his election.” The Even Year Election Law violates the rights of the plaintiffs provided in Article IX, § 1 by altering the length of the

next term of office of county executive and county legislator from a four-year term to a three-year term.

Pursuant to the Orange County Charter and Code the election of its County Executive and County Legislators are to be conducted in odd-numbered years and have set terms of office of four years. The Even Year Election Law violates Orange County's Charter and Code by shortening terms and requiring elections to be held in even-numbered years. This violates Orange County's right to determine its own form of government and election of officials in violation of Article IX, § 1.

POINT IV
EVEN YEAR ELECTION LAW VIOLATES NEW YORK
CONSTITUTION ARTICLE IX, § 2

Article IX, § 2(b)(2) of the New York Constitution provides the New York State 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” in two sets of circumstances: “(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 the majority of such membership, or (b) 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.” Pursuant to Article IX, § 2(b) the Legislature’s authority to act in relation to the “property or government of any local government” is explicitly “[s]ubject to the bill of rights of local governments and other applicable provisions of this constitution.”

Pursuant to Article IX, § 3(d)(1) a general law is one “which in terms and effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or villages.”

Neither of the two conditions by which the Legislature may act by special law apply to here as there was no request by two-thirds of its legislative body or by its county executive concurred by a majority of its legislative body and also no certificate of necessity from the governor.

Pursuant to Article IX, § 3(d)(4) a special law is one “which in terms and effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.”

The new County Law § 400(8) is a special and not general law because it does not, in terms or in effect, apply to all counties. Rather, it applies only to counties with “a county elected official”, and not to counties with non-elected executives. Of the 57 counties outside the City of New York, there are 23 charter counties (18 with elected county executives and five with appointed administrators or managers). Of the remaining counties, there are 21 with administrators, 10 with managers and 8 that provide administration through their board chair and/or committees.

As the Even Year Election Law is not a general law because it does not apply alike to all counties and also not a properly enacted special law, it is in violation of Article IX § 2, making that cause of action viable and requiring denial of the motion to dismiss.

POINT V
EVEN YEAR ELECTION LAW DOES NOT ADVANCE ANY
LEGITIMATE INTEREST OF STATE CONCERN

On page 7 of the defendants’ memorandum of law in support of their motion to dismiss it is alleged that as a special law the Even Year Election Law is constitutional because “it addresses a special area of State interest”. This is ‘its interest in advancing the free exercise of the right to vote, improving voter turnout, limiting voter confusion and generally protecting the integrity of

the electoral process statewide, by developing a coherent system of elections to be applied in the class of political subdivisions outlined therein.” None of these claims has any merit.

As far as “advancing the free exercise of the right to vote” this is something that can be done in either an odd or even election year. Nothing about continuing to have all elections of local officials in odd years prevents the free exercise to vote in those years.

The claim that the Even Year Election Law will improve voter turnout is also specious. By removing top of the ballot positions in odd year elections, such as county executive and county legislators, the result may be the decrease in voter turnout for the remaining county wide positions such as sheriff, county clerk, district attorney, etc.

Instead of lessening voter confusion the Even Year Election Law instead only creates confusion by separating local races. Your average voter would seem to expect that all local races would be conducted together instead of being split between odd and even years. How does separating races for county executive and county legislators from races for the sheriff, county clerk and district attorney make any sense to a voter? Instead, it makes much more sense to keep all these races together as they have been.

Rather than “protecting the integrity of the electoral process statewide” the Even Year Election Law makes a mockery of it. No “State” interest is being promoted here. What is instead being advanced is an apparent political interest in having certain higher level local races conducted when more of their party’s voters turn out.

POINT VI
THE EVEN YEAR ELECTION LAW IS AN UNREASONABLE CHANGE TO LOCAL ELECTIONS THAT INFRINGES ON PLAINTIFF’S CONSTITUTIONAL RIGHTS

The State legislature’s power, while plenary, is limited by the State Constitution. The State Constitution generally operates to limit the State’s plenary power by imposing restrictions on the

legislature's exercise of its powers. The question in determining the constitutionality of a legislative action is not whether the State Constitution permits the act but whether it prohibits it. Therefore, to resolve the constitutionality of a legislative act a court must start with the text of the State Constitution. *Stefanik v. Hochul*, 2024 WL 3868644, page 3. Here, a review of the text of the State Constitution establishes the Even Year Election Law is unconstitutional.

Included in the text of the State Constitution is Article IX, §1. As set forth above, Article IX is a "bill of rights" for local governments. To implement Article IX the Legislature enacted the MHRL. MHRL § 33(3)(b) grants Orange County the right to adopt a charter that and in that charter to establish "the manner of election" and "terms of office". Therefore, Orange County has the constitutional right to set when it holds its elections for its officers and their terms of office. The Even Year Election Law violates these constitutional rights by initially decreasing the terms of office from four to three years and also by violating the County's right to determine its manner of election by changing elections of certain of its officials from odd to even-numbered years.

The Even Year Election Law also violates Article IX, § 2. As set out above, the Even Year Election Law is a special and not a general law. In order to be a properly enacted special law it had, pursuant to § 2(b)(2), to be at the request of two-thirds of the local government legislative body or its chief executive or, on a certificate of necessity from the governor with the concurrence of two-thirds of each legislature house. As neither of the two procedures required by § 2(b)(2) were followed the Even Year Election Law was improperly implemented and therefore in violation of the State Constitution.

POINT VII

GOVERNOR IS NOT ENTITLED TO LEGISLATIVE IMMUNITY

In arguing for immunity, the defendants on page 31 of their memorandum of law rely on *Larabee v. Spitzer*, 19 Misc. 3d 226, 237 (Sup. Ct. NY County 2008) which relied on *Bogan v.*

Scott-Harris, 523 U.S. 44, 55 (1998). *Bogan*, involved, along with other defendants, a mayor being sued in a § 1983 action for violation of First Amendment rights by a fired employee. The instant action involves causes of action alleging the Governor signed into law legislation that violated the defendants' rights under the New York State Constitution. As there are alleged in the complaint causes of action alleging violations of specific provisions of the New York State Constitution, the Governor is not immune from suit and must remain as a defendant in the action. *Town of Verona v. Cuomo*, 44 Misc.3d 1225(A) (Sup. Ct. Albany County 2014).

CONCLUSION

For all the reasons set forth in the affirmation and this memorandum of law, the plaintiffs herein request this Court deny the motion of the defendants to dismiss the complaint pursuant to CPLR §§ 3211(a)(3), (a)(7) and (c), together with such other and further relief as this court deems just and proper.

Dated: Goshen, New York
August 23, 2024

Respectfully submitted,



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