

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,

**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.

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 official capacity as
Nassau County Executive,

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

Plaintiffs,

-against-

THE STATE OF NEW YORK and KATHY
HOCHUL, in her capacity as the 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 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,

Action No. 3:
Index No.: EFCA 2024-000920

-against-

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

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

Plaintiffs,

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

-against-

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

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
CONSOLIDATE UNDER CPLR §602(b)**

STATEMENT OF FACTS

Plaintiffs COUNTY OF RENSSELAER; STEVEN F. MCLAUGHLIN, Individually as a Voter, and in his Capacity as RENSSELAER COUNTY EXECUTIVE; and the RENSSELAER COUNTY LEGISLATURE (hereinafter the “Rensselaer County Plaintiffs”) submit this Memorandum of Law in support of the Rensselaer County Plaintiffs motion to consolidate Action No. 4 with Action No. 1, captioned 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 (hereinafter the “Onondaga County Plaintiffs”) for joint discovery and trial pursuant to CPLR §602, and to transfer venue to Onondaga County, pursuant to the “first county” rule. Rensselaer County supports the motions by Nassau County and Oneida County for consolidation of their actions, designated as Action No. 2 (Nassau) and Action No. 3 (Oneida) with the Onondaga County Action No. 1, and for a transfer of venue to Onondaga County for all cases.

Action No. 4 should be consolidated with Action No. 1 because they arise out of the New York State Legislature’s enactment of Chapter 741 of the Laws of 2023, entitled “AN ACT to amend the town law, the village law, the county law, and the municipal home rule law, in relation to moving certain elections to even-numbered years” (hereinafter referred to as the “Even Year Law”). Governor Hochul signed the Even Year Law into law on December 22, 2023. All of the above-captioned actions request a declaratory judgment finding that the Even Year Law, which directly conflicts with the County Charters of Rensselaer and Onondaga Counties, is unconstitutional and in violation of Article IX of the New York Constitution. In

terms of the proper venue, Onondaga County filed its lawsuit first, and no special circumstances exist, therefore consolidation in the venue of “first filing” is proper.

All four of the above-captioned actions have common issues of law and fact. Both Onondaga County and Rensselaer County have adopted County Charters which provide for certain local elections to take place in odd-numbered years, namely, the County Legislators and the County Executives. The Onondaga County Plaintiffs filed Action No. 1 on March 22, 2024. The Rensselaer County Plaintiffs filed Action No. 4 on April 15, 2024.¹ Both actions seek a declaratory judgment ruling that the Even Year Law violates the provisions of Article IX of the New York State Constitution.

Consolidation of the actions would foster judicial economy for all parties and the Supreme Court. If consolidated, the discovery would be streamlined and would not be duplicative; and the depositions of each witness could be conducted once versus four separate times. If four separate trials were held, there could be inconsistent verdicts on a matter of constitutional interpretation pertaining to the Even Year Law. None of the named parties will suffer any substantial prejudice as a result of the actions being consolidated. The actions are at the same political posture as the pleadings have just been filed within the last month and the discovery has not yet commenced. According to the “first county” common law rule, the venue of all actions would be appropriate in Onondaga County, as there are no special circumstances that would warrant transfer to any other venue.

ARGUMENT

POINT I

ACTION NO. 1 AND ACTION NO. 4 SHOULD BE CONSOLIDATED PURSUANT TO CPLR § 602 BECAUSE THEY SHARE COMMON QUESTIONS OF LAW AND FACT AND SEPARATE ACTIONS RISKS INCONSISTENT VERDICTS.

¹ Nassau County filed its lawsuit on April 5, 2024 and Oneida County filed its lawsuit on April 9, 2024.

CPLR § 602 provides: (a) Generally. When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all of the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (b) Cases pending in different courts. Where an action is pending in the supreme court it may, upon motion, remove itself an action pending in another court and consolidate it or have it tried together with that in the supreme court. CPLR § 602(a)-(b).

CPLR § 602 provides the Court with broad discretion to join or consolidate the actions if they have a common question of law or fact (*Maigur v Saratogian, Inc.*, 47 AD2d 982, 983 [3d Dept 1975]). “[W]here common questions of law or fact exist, a motion pursuant to CPLR § 602(a) to consolidate or for a joint trial should be granted absent a showing of prejudice to a substantial right of the party opposing the motion” (*Whiteman v Parsons Transp. Group of New York, Inc.*, 72 AD3d 677, 678 [2d Dept 2010]) (emphasis added). Thus, consolidation is generally favored unless a party opposing the motion can demonstrate prejudice of a substantial right in a specific, non-conclusory manner (*Humiston v Grose*, 144 AD2d 907, 908 [4th Dept 1988]; *Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]) (holding the burden is on any opposing party to demonstrate prejudice). The mere desire to have one’s dispute heard separately does not, by itself, constitute prejudice involving a “substantial right” (*Vigo S.S. Corp. v Marship Corp. of Monrovia*, 26 NY2d 157, 162 [1970]; *Symphony Fabrics Corp. v Bernson Silk Mills, Inc.*, 12 NY2d 409 [1963]). Consolidation is favored, because, “[w]here complex issues are intertwined, albeit in technically different actions, it would be better . . . to facilitate one complete and comprehensive hearing and determine all of the issues involved between the parties at the same time” (*Shanley v Callanan Industries, Inc.*, 54 NY2d 52 [1981]).

Consolidation is appropriate where it would avoid unnecessary duplication of trials, save unnecessary costs and expense in discovery and prevent injustice which would result from divergent decisions based on the same facts (*Chinatown Apartments, Inc. v N.Y. City Transit Auth.*, 100 AD2d 496 [4th Dept 1984]). Where common issues are clearly presented, the fact that issue has not yet been joined does not preclude consolidation (*Cushing v Cushing*, 85 AD2d 809 [3d Dept 1981]). Failure to consolidate related matters increases unnecessary litigation, places an unnecessary burden on the Court, and imposes the risk of inconsistent verdicts (*Shanley*, 54 NY2d at 52). “In the interest of judicial economy, in order to avoid inconsistent verdicts, and in the absence of demonstrable prejudice,” a motion to consolidate actions should be granted (*Boyman v Bryant*, 133 AD2d 802 [2d Dept 1987], citing *Megyesi v Automotive Rentals*, 115 AD2d 594 [2d Dept 1985] [emphasis added]).

The actions at issue involve the same essential facts and will require the same legal determination. Thus, consolidation is appropriate under CPLR 602. Specifically, Onondaga County and Rensselaer County have each adopted County Charters that provide for odd year elections of legislators and county executives. Both the Onondaga County Plaintiffs and Rensselaer County Plaintiffs allege that their control of the timing of elections is permitted by the broad municipal home rule rights afforded counties by Article IX § 1 of the New York Constitution and that the Even Year Law is unconstitutional because it violates the Counties’ home rule rights under Article IX § 1 of the New York Constitution.

Consolidation would lead to efficiencies for all of the parties and promote judicial economy. The majority of the Defendants in Action No. 4 are named in Action No. 1. Except for the election officials that Onondaga sued, both actions involve the same principal party defendants. Any discovery would be redundant in all four actions and, if the actions remained

separate, the same fact witnesses would be called upon to provide the same, repetitive testimony, in four separate courts.

Finally, if these matters were to proceed separately, there would be a risk of inconsistent judgments on an important constitutional question. Justice and judicial economy would be best served by consolidating these actions, resulting in a single determination on the constitutionality of the Even Year Law. Therefore, to avoid inconsistent judgments and duplicative discovery costs, joining Actions No. 1 and No. 4 is necessary (*Flaherty v RCP Assocs.*, 208 AD2d 496 [2d Dept 1994]).

POINT II

ACTION NO. 4 SHOULD BE TRANSFERRED TO ONONDAGA COUNTY PURSUANT TO THE “FIRST COUNTY RULE.”

It is well established that “[w]here two [or more] actions are pending in the Supreme Court in different counties, the motion to consolidate may be made in either County” (*Gomez v Jersey Coast Egg Producers, Inc.*, 186 AD2d 629 [2d Dept 1992]). “Generally, where actions commenced in different counties have been consolidated pursuant to CPLR § 602, the venue should be placed in the county where the first action was commenced, unless special circumstances are present” (*Id.*; see also *In re Wilber*, 2 AD3d 1266, 1266 [4th Dept 2003] [affirming consolidation and transfer where first action was properly commenced]; *Arnheim v Prozeralik*, 191 AD2d 1026, 1026 [4th Dept 1993] [“We further conclude that the court properly changed the venue of the second action from Niagara County to Erie County because the action first commenced was brought in Erie County”]). The types of “special circumstances” that may lead to the action being sent to a county other than the first-filed county is if the majority of witnesses and evidence are in the county of the second-filed case or if the second-filed case has already progressed (*Pub. Serv. Truck Renting, Inc. v Ambassador Ins. Co.*, 136 AD2d 911, 912

[4th Dept 1988]). Here, Action No. 1 was filed first (on March 22, 2024) in Onondaga County and no special circumstances are present. Action No. 1 contains additional parties not party to Action No. 4 and none of the evidence is specifically located in either of the counties. Further, issue has not been joined in either action. As such, efficiency dictates that Action No. 4 be transferred to Onondaga County under the First County Rule.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the instant motion be granted, and that the above captioned actions be consolidated, and Action No. 4 be transferred to Onondaga County.

Dated: May 3, 2024
East Greenbush, NY



Carl J. Kempf, III, Esq.
Counsel to Rensselaer County
Rensselaer County Attorney's Office
99 Troy Road
East Greenbush, New York 12061
Tel.: (518) 270-2950
Email: ckempf@rensco.com

TO: HANCOCK ESTABROOK, LLP
Edward D. Carni, Esq.
Daniel B. Berman, Esq.
Erica L. Masler, Esq.
Attorneys for Plaintiffs
1800 AXA Tower I
100 Madison Street
Syracuse, NY 13202
Tel: (315) 565-4500
Email: ecarni@hancocklaw.com
dberman@hancocklaw.com
emasler@hancocklaw.com

Timothy P. Mulvey
Assistant Attorney General, Of Counsel
300 South State Street – Suite 300
Syracuse, NY 13202
Tel: (315) 448-4800
Email: timothy.mulvey@ag.ny.gov

Angelo J. Genova, Esq.
GENOVA BURNS, LLP
Trinity Centre
115 Broadway, 15th Floor
New York, NY 10006
Tel: (212) 566-7188
Email: agenova@gonovaburns.com

Robert F. Julian, Esq.
ROBERT F. JULIAN, PC
2037 Genesee Street
Utica, NY 13501
Tel: (315) 797-5610
Email: robert@rfjulian.com

Dustin M. Czarny
Onondaga County Elections Commissioner
1000 Erie Boulevard West
Syracuse, NY 13204

Michele L. Sardo
Onondaga County Elections Commissioner
1000 Erie Boulevard West
Syracuse, NY 13204