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Onondaga County Clerk's Index Nos. 003095/2024, 605931/2024,
EFCA2024-000920, EF2024-276591, 006686/2024, EF2024-00001746,
032196/2024, 004023/2024 and 2024-51659
Appellate Division, Fourth Department Docket No. CAE-25-00494

Court of Appeals

STATE OF NEW YORK



Action No. 1, Index No. 003095/2024

THE COUNTY OF ONONDAGA, THE ONONDAGA COUNTY LEGISLATURE,
and J. RYAN MCMAHON, individually and as a voter and in
his capacity as Onondaga County Executive,
Plaintiffs-Appellants,

(Caption Continued on the Reverse and Following Pages)

BRIEF FOR *AMICUS CURIAE* NEW YORK STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PLAINTIFFS-APPELLANTS

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against

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

Defendants-Respondents,

and

KEVIN P. RYAN, in his capacity as Commissioner
of the Onondaga County Board of Elections,

Defendant-Appellant.

Action No. 2, Index No. 605931/2024

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

Plaintiffs-Appellants,

against

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

Defendants-Respondents.

Action No. 3, Index No. EFCA2024-000920

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-Appellants,

against

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

Defendants-Respondents.

Action No. 4, Index No. EF2024-276591
Onondaga County Index No. 006686/2024

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

Plaintiffs-Appellants,

against

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

Defendants-Respondents.

Action No. 5, Index No. EF2024-00001746

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

Plaintiffs-Appellants,

and

ROBERT MATARAZZO, THE TOWN OF BROOKHAVEN,
THE TOWN OF HUNTINGTON and THE TOWN OF NORTH HEMPSTEAD,

Plaintiffs,

against

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

and

MICHELLE LAFAVE, in her capacity as Commissioner of the Jefferson County Board of Elections, JUDE SEYMOUR, in his capacity as Commissioner of 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,

Defendants.

Action No. 6, Index No. 032196/2024

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

Plaintiffs-Appellants,

against

THE STATE OF NEW YORK,

Defendant-Respondent.

Action No. 7, Index No. 004023/2024

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. BONNELLI, THOMAS J. FAGGIONE, JANET SUTHERLAND, PAUL RUSZKIEWICZ, PETER V. TUOHY, BARRY J. CHENEY, RONALD M. FELLER, GLANN 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-Appellants,

against

KATHLEEN HOCHUL, in her capacity as Governor of the State of New York, THE STATE OF NEW YORK, ORANGE COUNTY REPUBLICAN COMMITTEE, ORANGE COUNTY DEMOCRATIC COMMITTEE, CONSERVATIVE PARTY OF NEW YORK STATE and NEW YORK WORKING PARTY,

Defendants-Respondents.

Action No. 8, Index No. 2024-51659

THE COUNTY OF DUTCHESS, THE DUTCHESS COUNTY LEGISLATURE
and SUSAN J. SERINO, individually and as a voter in her capacity as
DUTCHESS COUNTY EXECUTIVE,

Plaintiffs-Appellants,

against

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

Defendants-Respondents.

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INTEREST OF THE AMICUS CURIAE

Amicus Curiae New York State Association of Counties (“NYSAC”) was established in 1925. Its membership consists of New York’s 62 counties, including the five counties comprising the City of New York. Throughout its history, NYSAC has taken on the role of the “official voice” of all New York counties, large and small, regardless of political ideology, representing the interests of its member county’s government. These interests necessarily include the determination of the terms of office of their elected officials, *e.g.*, county executive, county legislators, and as well the timing of the elections for these elected positions.

Currently, all elections for county offices are held in odd-numbered years, with two- and four-year terms of office. Notably, New York’s local municipalities have a longstanding history of holding local elections in odd-numbered years. Holding local elections separate and apart from national and statewide elections held in even-numbered years serve very sound public policy interests of counties and other local municipalities. While counties and local municipalities have had the ability to change their elections to even-numbered years and the terms of office for decades, they have chosen not to, indicating the odd-numbered year elections serve best the interest of their constituents.

Chapter 741 of the Laws of 2023, commonly referred to as the Even-Year Election Law, upends this current election practice, forcing county-wide elections to

even-numbered years and at the same time truncating the terms of certain elected officials. No messages of support for this bill were submitted by any of New York's counties, and no public hearings were held at which the merits of this bill, if any, could be addressed. Even the New York State Board of Elections opposed the bill.

While the above raises valid concerns that directly impact counties, most importantly to counties it usurps home rule powers granted to counties by Article IX of the New York State Constitution to choose the timing of elections of county officials and the terms of the offices for which election is sought. If the Even-Year Election Law bill is upheld as not violative of the State Constitution, such a ruling would only embolden the Legislature to further control local elections and deprive counties of its state constitutional right to self-governance. Such actions as extending or shortening the terms of elected office, eliminating offices, cancelling elections, and moving dates of elections around to suit the then whim of the Legislature would be fair game for state legislative treatment.

NYSAC on behalf of its member counties has a substantial interest precluding this state takeover of county elections at the expense of diminishing, minimizing and undermining the object of county home rule "to promote local autonomy in local matters, and prevent state legislative interference in local government." (*Holland v. Bankson*, 290 NY 267, 270 [1943]). Hence, the submission of this *amicus curiae* brief in support of the arguments by the appellant counties in this appeal that Chapter

741 of the Laws of 2023 is unconstitutional as it usurps the constitutional right of New York's counties to control the timing of elections for and terms of county offices.

PRELIMINARY STATEMENT

Amicus Curiae New York State Association of Counties (“NYSAC”) submits this Brief in support of the appeals taken by plaintiffs-appellants counties in the eight appeals consolidated for argument from the order of the Appellate Division Fourth Department granting judgment in favor of defendants-respondents by declaring that the Even-Year Election Law (Laws of 2023, ch. 741) does not violate the New York State Constitution. (R2249; 238 AD3d 1535 [4th Dept. 2025]).

QUESTION PRESENTED AND ADDRESSED IN THIS *AMICUS CURIAE* BRIEF

Whether Chapter 741 of the Law of 2023, the so-called “Even-Year Election Law,” is unconstitutional on the ground it violates the constitutional right of New York’s counties to control the timing of elections for and terms of county offices.

NYSAC argues that Article I §1(h)(i) of the New York State Constitution grants the counties such a constitutional right and the State has failed to establish any substantial state interest that would justify absolute state control over the timing of elections for and terms of office of county officials.

STATEMENT OF THE CASE

A. County Home Rule

1. Early Development

The term “home rule” in New York is generally understood to have two components. One is the affirmative grant of powers to local governments to manage their affairs, and the other is the restriction imposed upon the State Legislature from intruding on matters of local, rather than state concern. (*See, Matter of Mitchell v. Borakove*, 225 AD2d 435, 439 [1st Dept. 1996] [Tom, J., concurring]; Hyman, Home Rule in New York, 1941-1965: Retrospect and Prospect, 15 Buf. L. Rev. 335, 337-338 [1965]; Cole, Constitutional Home Rule in New York: “The Ghost of Home Rule,” 59 St. John’s Law Rev. 713, 713 [1989]). Of note, there is no inherent right of municipal home rule under the first component as municipalities are traditionally viewed as mere instrumentalities of the state, subject to complete state legislative control. (*MacMullen, v. City of Middletown*, 187 NY 37, 42-43 [1907]; *see also* Magavern, County Home Rule: Freedom from Legislative Interference, 8 Buf. L. Rev., 252, 252 [1958]). Authority to engage in any specified activity must be supported by a constitutional grant of authority. (*MacMullen*, 187 NY at 42-43).

The object of home rule is to permit, indeed, promote, local autonomy to resolve local matters in determining what is the best course of action for such local matters. As this Court stated in *Matter of Resnick v. County of Ulster*: “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 the affairs of the people of the State as a whole, be solved locally.” (44 NY2d 279, 288 [1978]). Inherent hostility to local laws based on mere purported state rationalizations would be, as Chief Judge Cardozo observed, a step in the wrong direction, contrary to the “new spirit that dictated adoption [of home rule enactments],” making such enactments “another statute of uses, a form of words and little else.” (*Matter of Mayor of City of New York*, 246 NY 72, 76 [1927]).

New York first embraced home rule governance to expand home rule authority of municipalities in 1894, but addressing only cities. (Briffault, *Local Government and the New York State Constitution*, 1 Hofstra L. & Pol. Symp. 79, 86 [1996]; Cole, *supra*, at 713-714, n. 4). Cities were authorized to act with respect to their local property, affairs and government so long as the matter was not dealt with by a state law generally applicable to municipalities throughout the state. (Millenbach, *Municipal Home Rule in New York*, 22 Syracuse L. Rev. 736, 737 [1971]).

The first step toward the granting of home rule to counties was the Fearon Amendment to the State Constitution, adopted in 1935. (NY Const. art. III, §26 [1935] [repealed 1963]). Among other matters, it directed the Legislature to provide

alternative forms of government which could be adopted by the counties. (*See, Magavern, supra*, at 252-254).

Over the next several years, other measures were adopted modifying the original Fearon Amendment. (*See, Magavern, supra* at 254-267). Among these measures was the enactment of the Alternative County Government Law, which became effective in 1954. (Alternative County Government Law, ch. L. 1952, 834). It provided greater powers to county governments over local officers and included the power to designate these officers as elective or appointive. (Cole, *supra* at 725-726). Additionally, Article IX of the State Constitution was amended, effective January 1, 1959, 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.” (R166). Article IX as amended also 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 . . .” (R167).

2. Article IX as Adopted in 1963 and the Municipal Home Rule Law, Effective January 1, 1964

In 1963, current article IX of the State Constitution was adopted. Governor Rockefeller had advocated for its adoption as it “strengthened the ability of localities to solve their own problems” and to “meet local needs.” (State of New York, Public

Papers of Nelson A. Rockefeller, Fifty-Third Governor of the State of New York, 1963, 1113-1114). Citing to Governor Rockefeller's comments, this Court in *Wambat Realty Corp. v. State of New York* noted the 1963 amendment "undoubtedly" was intended to expand and secure the powers enjoyed by local governments. (41 NY2d 490, 496 [1977] [Breitel, CJ]).

Article IX, §1, titled "Bill of Rights" for local governments, has an avowed purpose of "[e]ffective local self-government." (NY Const., art IX §1). It grants every local government the right to "a legislative body elective by the people thereof." (*Id.* §1[a]). It provides that "[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 of some division thereof, or appointed by such officers of the local government as may be provided by law." (*Id.* §1[b]). Article IX also 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." (*Id.* §1[h][1]).

Article IX, §2 limits the Legislature's power to "act in relation to the property, affairs or government of any local government." (*Id.* §2[b][2]). It states: "Subject to the bill of rights of local governments," clearly referring to §1, "[t]he 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” that is passed with a home rule message. (*Id.*). A home rule message can be created either “(a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b) 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.” (*Id.*).

The Legislature then enacted the contemporaneous Municipal Home Rule Law (“MHRL”) to implement Article IX. (Laws of 1963, ch. 843). MHRL §50 states that “the intention of the legislature” in enacting the MHRL is “to provide for carrying into effect provisions of article nine . . . and to enable local governments to adopt and amend local laws for the purpose of fully and completely exercising the powers granted to them under the terms and spirit of such article.”]; *see also* Putrino, Home Rule: A Fresh Start, 14 Buff. L. Rev. 484, 484 n. 1 [“[T]he legislature [] passed the Municipal Home Rule Law to implement the provisions of the new [Home Rule Bill Of Rights] [A]mendment.”)].

It is important to keep in mind that MHRL §33(1) confirms the constitutionally conferred right of counties under Article IX §1 to “prepare, adopt, amend, or repeal a county charter” as an alternative form of government. MHRL §33

then requires the county charter “to set forth the structure of the county government and the manner in which it is to function” and to provide for the officers responsible for the performance of the functions, powers and duties of the county . . . and the manner of election or appointment, term of office, if any, and removal of such officers. (MHRL §§33[2][3][b]).

Lastly, it must be noted that Article IX mandates a liberal construction of the 1963 Amendment to “further [e]ffective local self-government,” stating that local government’s “rights, powers, privileges and immunities,” including those in Article IX, §1, “shall be liberally construed.” (Article IX, §§1[3][c]). MHRL §35(3) reiterates this command, providing “[t]his county charter law shall be construed liberally.”

B. County Home Rule Post-1963

1. Diversity of New York’s Counties Outside New York City

New York State outside New York City is divided into 57 counties. These counties are diverse in populations and demographics. As the Division of Local Government Services, a division of the New York State Department of States has observed: St. Lawrence County is the largest geographical area with over 2700 square miles and Rockland County is the smallest, with an area of 175 square miles; the most densely populated county is Nassau County with more than 4,700 people per square mile and the most sparsely populated county is Hamilton County with

fewer than 3 people per square mile; while all counties include towns and villages, the number of each vary widely; and 21 counties contain no cities. (Local Government Handbook, p. 45 [available at docs.ny.gov/system/files/documents/2025/01/localgovernmenthandbook_2024.pdf] [last viewed July 24, 2025]).

As the foregoing shows, not all counties in New York are alike. Indeed, they are quite diverse. This diversity has led to diverse governing county structures, reflecting each county's interests, concerns and needs as will now be discussed.

2. County Government: Variations

Currently, every county has power to enact laws, adopt resolutions, and take other actions having the force of law within its county. This power is vested in a legislative body, either an elected legislature or a Board of Supervisors. (Local Government Handbook, pp.46-48). As discussed *supra*, the MHRL delineates the general authority and restrictions on county's ability to enact local laws; and sets forth provisions known as the County Charter Law which establishes the process by which counties may adopt a county charter to define the powers of a county government.

New York's 57 counties outside the City of New York have generally adopted, as permitted by Article IX and the MHRL, one of three methods of county government. (R1902, 1906 [County Government Organization in New York State]).

One method is “charter counties.” Twenty-three counties have adopted a county charter, 18 with county executives elected in county-wide elections and 5 with appointed administration or managers. The 34 “non-charter” counties operate under two methods. Twenty-six counties have enacted local laws to create a county administrator or manager position to oversee their county’s government; and the remaining 8 counties have retained control of their county through their legislative body. (*Ibid.*)

It is important to note that Article 4 of MHRL article 4, MHRL §33 empowers counties to adopt a county charter to establish the structure of county government as long as an elected legislative body is maintained to determine county policy. The county charter adoption process may be initiated through resolution of a legislative body or through a petition process of county voters. A new county charter, however, cannot take effect until it has been approved by the county votes through a public referendum. (MHRL §33[5], [6]).

3. Timing of Elections For and Terms of Office of County Officials

Once a county’s elective office(s) is decided upon, *e.g.*, county executive, county legislator, it necessarily follows that a determination as to the timing of the election for that office, and the terms of that office must be made. Counties have chosen to hold the elections in odd-numbered years with 2-and 4-year terms of office.

As to odd-numbered year elections for county officials, this timing is not one established on a mere whim. Rather, New York localities have a longstanding history of holding odd-numbered year elections for local offices, going back more than 100 years. (R856; 2056, ¶10; 2058, ¶24; 2063, ¶58).¹ The reason for odd-numbered year elections is to keep elections for local offices separate and apart from statewide and national elections, allowing voters to focus their attention exclusively on local elections. (*See*, The Citizens' Union, New York Times, Nov. 19, 1897).² In this regard, national issues such as immigration and border security, gun control and abortion can and will overshadow a local election for an office or a local ballot to fund a new sewer district or build a new park. Local municipal entities fully recognized this, and opted for odd-numbered year elections instead of even-numbered year elections when statewide and federal elections are held. Counties made the same decisions.

Notably, local governments, including counties, could desire to convert their elections to even-numbered years on their own authority or request home rule legislation at the state level to grant the locality such authority. The vast majority not have done so. Sound public policy concerns show why.

¹ Currently, nearly all elections on the local level are held on odd-numbered years.

² Available at <https://timesmachine.nytimes.com/timesmachine/1897/11/19/102099373.pdf>. (last accessed July 24, 2025).

County and election officials have noted “ballot fatigue” occurs with lengthy and/or complicated ballots, encompassing various offices and propositions. (R850-851; 863; 872). Additionally, down-ballots for local elections are buried by non-local ballots. (R933). This leads to diminished interest in down-ballot offices, if not outright skipping of them, which results in less informed choice for those down-ballot races. Imposing local elections to be held in even-numbered years with statewide and federal elections will, un sum, lead to diminished interest in the down-ballot local races. Local offices will suffer that fall off in both interest and participation, results which are to be avoided.

Furthermore, if local elections were to be held in even-numbered years, candidates running for local office will face severe disadvantages as they will now be competing with national and state races which will likely draw the substantial political contributions because they are higher profile races, leaving little moneys for local races. (R854). There will then exist a systemic disadvantage for candidates for local offices.

Additionally, it cannot be doubted that media buys generated by well-financed national and state candidates will certainly consume prime time radio and television advertising opportunities. Little or diminished opportunities to reach local voters will result. This creates an information vacuum around local races when voters need guidance most.

In sum, counties, along with other local municipalities, have made a conscious choice, permitted by home rule, to conduct local elections in odd-numbered years, a choice that is in the best interest of their county.

C. Even-Year Election Law

Chapter 741 of the Law of 2023, as pertinent to the New York's counties, amends County Law §400(8) and MHRL §34.

County Law §400 is amended to provide a new subdivision 8, which provides as follows:

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.

MHRL §34(3) is amended to add a new paragraph h, which prescribes as follows:

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.

Of considerable significance is that the Even Year Election Law was not based upon any legislative hearing; indeed, there were none. Nor was there any real discussion/debate at a Senate/Assembly Committee meetings on the merits of the

Law. Rather, the Law was passed during the final hours of the 2023 legislative session with no support from the local governments it would impact, and little public notice. (R855; 914). The Governor signed the bill as passed into law with no support from local governments as shown by the absence of letters in support from local governments in the bill's bill jacket. (R834-1245).

D. Impact Upon Counties Of The Even-Numbered Year Election Law

With the enactment of this Even Year Election Law, the election schedule for certain county official has been changed from odd-numbered to even-numbered years; shortened the terms of county offices elected in an odd-numbered year after January 1, 2025 by one year; and restricted a county's ability to establish a one-, three-, or five-year term of office for any county official in the future.

As to the loss of a full year of representation, it must be kept in mind that voters elected hundreds of current county officials to serve them for a specific term. The Even Year Election Law will force these current elected officials to lose one year of representation. The Legislature is clearly superseding the will of the local voters regarding who they want to represent them and for how long they wish their elected officials to serve.

The claimed justification for these changes as mandated by the state was that they could increase voter turnout for county and other local elections, and make the

election process “less confusing for voters.” (R805 [Legislative Memorandum in Support]).

ARGUMENT

THE STATE LEGISLATURE’S ALTERATION OF THE CURRENT, AND HISTORICAL, RIGHT OF ELECTIONS FOR COUNTY OFFICES FROM ODD-NUMBERED YEAR ELECTIONS TO EVEN-NUMBERED YEAR ELECTIONS AND THE CURRENT TERMS OF COUNTY OFFICES VIOLATES ARTICLE IX §1(h)(1) OF THE STATE CONSTITUTION WHICH GRANTS COUNTIES THE RIGHT TO DETERMINE THE TIMING FOR COUNTY ELECTIONS AND TERMS OF COUNTY OFFICES, WHICH RIGHT CAN ONLY BE ALTERED BY AMENDMENT OF THE STATE CONSTITUTION

A. Introduction

In determining the constitutionality under the State Constitution of state legislative enactments, the question is “not whether the State Constitution permits the act but whether it prohibits it.” (*Stefanik v. Hochul*, 43 NY3d 49, 58 [2024]; accord, *Fossella v. Adams*, __ NY3d __, 2025 NY Slip Op. 01668, *2 [March 20, 2025] [citing *Stefanik*]). In making that determination, the legislative enactment is entitled to a strong presumption of constitutionality . . . , and courts strike them down only as a last unavoidable result . . . after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible.” (*White v. Cuomo*, 38 NY3d 209, 216 [2022] [internal quotation marks and citations omitted]; *Stefanik*, 43 NY3d at 57 citing *White*)).

Here, NYSAC argues, as do the appellant counties, that the Even-Year Election Law is unconstitutional as Article IX, §1(h)(1) of the State Constitution grants the counties the right to determine the timing for elections and terms of county officers, thereby prohibiting the state legislature from dictating the timing of elections for county offices and the terms of those offices. Proper interpretation of Article IX §1(h)(1) compels this conclusion, thereby rebutting any presumption of constitutionality of the Even-Year Election Law. The State's arguments to the contrary are meritless.

B. Article IX §1(h)(1) Granting To Counties The Right To Adopt A Form Of County Government Appropriate For A County Includes The Right To Determine The Timing Of Elections For Specified County Offices And The Terms Of These County Offices

As discussed *supra* at pp 8-9, Article IX §1(h)(1) empowers counties either to adopt alternative forms of government provided by the Legislature or to prepare and adopt alternative forms of their own. The right to establish the form of county government necessarily includes the right to have an elected legislative body and elected county officials. There simply cannot be any debate about this. Once it is so concluded that a county will have elected officials, legislators or administrators, it becomes incumbent upon a county to specify what the offices are, the terms of each office, *i.e.*, length thereof, and the timing of the elections for such offices, *i.e.*, when will elections for the offices be held. As the appellant counties have ably noted, a county simply cannot establish a form of county government without

specifying what those offices are, the length of terms of each office, and the timing of the elections to fill these offices. Expressed differently, the constitutionally granted right to establish a county's form of government would be "hollow" if these matters were not deemed to be encompassed within the constitutional grant. (Brief of Appellant Nassau County, pp. 22-23).

Any doubt on this point is dispelled when one considers the contemporaneous adoption of the MHRL in 1963. In this regard, MHRL §33(1) gives counties the power to "prepare, adopt, amend or repeal a county charter;" and MHRL §33(2)(3)(b) requires a county charter to "set forth the structure of the county government and the manner in which it is to function" and to provide for the "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." By these provisions, the Legislature has clearly acknowledged that a county's right to adopt an alternative form of government pursuant to Article IX §1(h)(3) includes the right to set terms of offices for its elected officials and the timing of elections to fill those offices.

The State takes the position, which position was accepted by the Fourth Department below, that as Article IX §1's provisions say nothing about the timing of elections and terms of office for county officials, a county was not given a constitutional right to so act; only the Legislature has such power. The problem with

this argument is that while the State Constitution did not expressly address these matters, it certainly could have. A laundry list of “do’s” and “don’t s” was obviously avoided, a recognition that in view of the diversity and varying interests of New York’s 62 counties a constitutional provision addressing these matters, either as a “one size fits all” provision or specific detailed provisions addressing them, as well as related ones that could be envisaged as arising, would be inappropriate; rather, it would be best for each of New York’s counties to decide for itself how to proceed. This is especially so when the power to determine the terms of office and the timing of elections for such offices is, as discussed *supra* at pp. 18-19, an inherent aspect of establishing an “alternative” form of county government. (See, *Saltzer & Weinsier v. McGoldrick*, 295 NY 499, 506 [1946]). Thus, the absence of express language directed at prohibiting the counties from so acting on the matters cannot then be used affirmatively, as did the Fourth Department, to prohibit the counties from so acting.

Lastly, to the extent any doubt exists that the constitutional right conferred upon the counties under Article IX §1 to establish a form of county government to its choosing includes the right of a county to determine the terms of office and the timing of elections for such offices, such doubt is dispelled by Article IX §3(c)’s command that the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.” This command resolves any doubt in favor of county home rule on the matters raised.

C. There Is No Substantial State Concern That Would Justify The State To Override And Undermine A County's Constitutional Right To Determine The Timing Of Elections And Terms Of Office For County Officials³

The State contends that the Even-Year Election Law does not violate any claimed constitutional right of a county granted by Article IX §1 because the State may freely legislate with respect to “matters of state concern,” citing to *Kelly v. McGee* (57 NY2d 522, 538 [1982] [The home rule provisions of article IX do not operate to restrict the Legislature in acting upon matters of state concern.”]). The purported state interests advanced here to justify the Even-Year Election Law is that by having local elections held on even-numbered years with state and federal elections, there will be greater turnout of voters for local elections, and will make the election process overall less confusing for voters. (R806 [Legislative Memorandum in Support]). The argument must be rejected as there is no proof, much less explanation, as to why this will occur, and more significantly, why they are matters of substantial state interest.

This Court has held that a statute invokes a matter of state concern when its subject matter “is of sufficient importance to the State.” (*Matter of Kelly*, 57 NY2d at 538; *see also Adler v. Deegan*, 251 NY 467, 491 [1929] [Cardozo, C.J., concurring] [“The test is . . . that if the subject be in a substantial degree a matter of

³ In making this argument, NYSAC adopts the argument made by appellant counties in their respective briefs that County Law §400(8) is not a general law or a valid special law.

state concern, the State may act, though intermingled with it are concerns of the locality.”)). What constitutes a substantial state interest is dependent on the “stated purpose and legislative history of the act in question.” (*Greater N.Y. Taxi Assn. v. State of New York*, 21 NY3d 289, 302 [2013]). Proof is required that the statute “bear[s] a reasonable relationship to the legitimate, accompanying substantial concern.” (*City of New York v. Patrolmen’s Benevolent Assn. of City of N.Y.*, 89 NY2d 380, 391 [1996] [alterations in original]). Notably, the “mere statement by the Legislature that the subject matter of the statute [in issue] does not in and of itself create a state concern nor does it afford the state such a presumption.” (*Town of Monroe v. Carey*, 96 Misc.2d 238, 241 [Sup. Ct. Orange Co. 1977], *affd.* 46 NY2d 847 [2d Dept. 1979]).

Here, the State has not shown a state interest, much less a substantial interest, in regulating and controlling the timing of elections and terms of office of county officials. The absence of such a showing is not surprising as they are purely local matters that do not involve any issue of state concern. (*See e.g. Baranello v. Suffolk County Legislature*, 126 AD2d 296, 302 [2d Dept. 1987] [“Clearly, the County Executive is a local officer, and not one whose authority touches upon a matter of concern to the State”]; *Carey v. Oswego County Legislature*, 91 AD2d 62, 65 [3d Dept. 1983] [the office of county legislator is “a purely local office under any standard”]).

It must also be pointed out that the purported state interests fall flat when one considers that the Even-Year Election Law exempts numerous county-wide elected offices and the State's largest city – New York City – with its five counties is exempt as well. It has no statewide impact. Thus, the State should not be heard to proclaim that it has a “substantial” interest in voter confusion and voter turnout with respect to local elections.

In sum, there is no matter of substantial state concern that allows the State to usurp control over county elections as the Even Year Election Law does.

CONCLUSION

For the foregoing reasons, *amicus curiae* New York State Association of Counties respectfully requests that this Court should hold that the Even-Year Election Law is void as violative of the New York State Constitution and issue a declaratory judgment pursuant to CPLR 3001 declaring that the Even-Year Election Law is violative of the New York State Constitution.

Dated: August 4, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR § 500.13(c) that the foregoing brief was prepared on a computer.

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Dated: August 4, 2025

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NEW YORK STATE ASSOCIATION OF COUNTIES
IN SUPPORT OF PLAINTIFFS-APPELLANTS

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