

To be Argued by:
WILLIAM S. BADURA
(Time Requested: 30 Minutes)

APL-2025-00088
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

of the

State of New York

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,
(For Continuation of Caption See Inside Cover)

**BRIEF FOR PLAINTIFFS-APPELLANTS 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**

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Date Completed: June 11, 2025



– 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. 1, Index No. 003095/2024

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. 2, Index No. 605931/2024

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. 3, Index No. EFCA2024-000920

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.

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, 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, 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.

Action No. 5, Index No. EF2024-00001746

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. 6, Index No. 032196/2024

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. 7, Index No. 004023/2024

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.

Action No. 8, Index No. 2024-51659

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PRELIMINARY STATEMENT

In the declaratory judgment action below, plaintiffs-respondents herein, Steven M. Neuhaus, individually and in his capacity as Orange County Executive, the County of Orange and fourteen legislators of the Orange County Legislature, sought to declare as unconstitutional, Chapter 741 of the Laws of 2023 of the State of New York, which was “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”, known as the “Even Year Election Law.”

Primarily, the Orange County plaintiffs alleged that the Even Year Election Law violated the home-rule provisions of Article IX of the State Constitution, which requires that to regulate the property, affairs, and government of local governments, the state Legislature act by either “general law” or by “special law,” and that the Even Year Election Law was neither.

The Hon. Gerard J. Neri, J.S.C. by decision, order and judgment dated October 8, 2024, declared the Even Year Election Law void as violative of the New York State Constitution with respect to Article IX, § 2 because it was not a general law as it did not apply to all counties and was also not a special law because there was no substantial state interest or concern.

By memorandum and order entered on May 7, 2025, the Appellate Division, Fourth Judicial Department reversed the lower court and granted judgment in favor

of the respondents herein, adjudging and declaring that Chapter 741 of the Laws of 2023 did not violate either the New York or United States Constitutions.

QUESTIONS PRESENTED

1. Did the Appellate Division err in holding the Even Year Election Law is a general law and thereby constitutional pursuant to Article IX, § 2 of the New York State Constitution?

2. Did the Appellate Division err in not holding the Even Year Election Law is unconstitutional as it is not a special law pursuant to Article IX, § 2 of the New York State Constitution?

3. Did the Appellate Division err in declining to delay the application of the Even Year Election Law to the 2027 election cycle?

This Court should answer the above questions in the affirmative and reverse the Appellate Division's decision.

STATEMENT OF THE CASE

In New York State there are 57 counties outside the City of New York. Those counties have adopted one of three methods of organization: charter counties with an elected executive or appointed administrative official; counties with an appointed manager or administrator; and counties organized under county law operating under the auspices of a county legislative body. Out of those 57 counties there are 23 charter counties (18 with elected county executives and 5 with appointed

administrators or managers), 21 counties with administrators, 10 with managers and 8 counties that provide oversight and administration through their board chair and/or committees. (R. 1679)

The Orange County Charter and associated Administrative Code (the “Charter) were adopted by the Orange County Board of Supervisors on August 26, 1968, approved by referendum on November 25, 1968, and became effective on January 1, 1970. (R. 317)

Article III of the Charter established the Orange County-wide elected position of County Executive to, among other duties, administer the executive branch of the Orange County government. By and through Article II of the Charter and Article 2 of the Administrative Code, there were established district-wide elected positions of Orange County Legislators to, along with other duties, be the legislative, appropriating and policy determining body of Orange County government. (R. 317)

Section 3.01 of the Charter provides that the County Executive is elected for a term of four years beginning the first day of January next following his election. Each election for that office has occurred in an odd numbered year. Section 2-1 of the Administrative Code provides that County Legislators be elected for a term of four years at an odd numbered year election. This procedure has been followed every four years pursuant to the Charter since the first election for County Executive and County Legislators in 1969. (R. 317 - 318)

The plaintiff Steven M. Neuhaus, the Orange County Executive, and the fourteen legislator plaintiffs are all seeking re-election in 2025. (R. 314 – 315)

The Even Year Election Law revises § 400 of the County Law to require that elections for “county elected official[s]” shall “occur in an even-numbered year” with the exceptions of “election[s] for the office of sheriff, county clerk, district attorney, family court judge, county court judge, or any offices with a three-year term prior to January [1, 2025].” Ch. 741, § 3, 2023 N.Y. Laws: N.Y. County Law § 400(8) (effective Jan. 1, 2025). The sponsor’s memorandum (2023 A.B. 4282) in support of the Even Year Election Law bill proposed that holding local elections in odd-numbered years:

“leads to voter confusion and contributes to low voter turnout in local elections. Studies have consistently shown that voter turnout is highest on the November election day in even-numbered years when elections for state and/or federal offices are held. Holding local elections at the same time will make the process less confusing for voters and will lead to greater citizen participation in local elections.” (R. 649)

ARGUMENT

POINT I

THE EVEN YEAR ELECTION LAW IS NOT A GENERAL LAW PURSUANT TO ARTICLE IX, § 2 OF THE NEW YORK STATE CONSTITUTION

Article IX of the New York State Constitution was amended in 1963, effective January 1, 1964, to establish a bill of rights for local governments and to set forth

the powers and duties of the New York State Legislature. It secures for Orange County, the right of local self-government.

Article IX, §1(a) 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(h)(1) sets forth that: “Counties, other than those wholly included within a city, shall be empowered by general law, or 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) also states that 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.” Pursuant to this authority Orange County adopted its Charter and alternative form of government which became effective on January 1, 1970. (R. 314)

Article IX, §2(b)(2) provides that 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 special law only (a) on the request of two-thirds of the total membership of its legislative body or on the 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.”

Article IX, §§3(d)(1), (4) defines a general law as one “which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages” and a special law as one “which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.”

The Even Year Election Law enacted County Law §400(8) which provides that “ ... all elections for any position of a county elected official ... shall occur in an even-numbered year ...” except for the “election for the office of sheriff, county clerk, district attorney, family court judge, county court judge, or any office with a three-year term prior to January 1, 2025.”

In finding the Even Year Election Law to be a general law the Appellate Division determined while it “does not apply to all county officials, some of whom are appointed, it applies to all counties”. It further went on to “conclude that the classification is reasonable and that the Even Year Election law has an equal impact on all members of a rationally defined class similarly situated” citing *Matter of Harvey v. Finnick*, 88 A.D.2d 40, 47 (4th Dept. 1982); *Uniformed Firefighters Assn. v. City of New York* 50 N.Y.2d 85, 90 – 91 (1980); *Matter of Radich v. Council of*

City of Lackawanna, 58 N.Y.2d 973 (4th Dept. 1983) 2025 N.Y. Slip Op. 02818; 2025 WL 1337586 at *6.

It is respectfully submitted the Appellate Division erred in finding the subject Even Year Election Law classification was “reasonable” and “that there was a rationally defined class similarly situated”.

The separation of the local races of county executive and county legislator from the other local races, such as for sheriff, county clerk, district attorney, etc. has no reasonable relation to the subject of the Even Year Election Law, which according to the sponsor’s memorandum in support of it, was to increase voter turnout in local elections and to make the process less confusing for the voters. It is obvious that the race for county executive would be one of the highlighted ones in a local election. By removing it from odd-year elections would then logically create less interest in local elections and lead to lower voter turnout in those years. It would also be seemingly logical that separation of the local races of county executor and county legislator from the other local races would create and not lessen voter confusion as the average voter would reasonably seem to expect all local races to be conducted in the same odd year as they have traditionally been, and be held jointly with the other local races.

As the Even Year Election Law is neither “reasonable” nor “rationally defined” there was no basis for it to be found a general law.

It is also respectfully submitted The Appellate Division was incorrect in its attempt to distinguish *Nydick v. Suffolk County Legislature*, 81 Misc.2d 786, 790 – 791 (Sup Ct, Suffolk County 1975) *affd* 47 A.D.2d 241 (2nd Dept 1975), *affd* 36 N.Y.2d 951 (1975).

In what was determined to be a “well-reasoned” opinion by the Appellate Division, which was affirmed by the Court of Appeals, the original court in *Nydick* began its analysis with the holding in *Johnson v. Etkin*, 279 N.Y. 1 (1938), that a statute was not a general law unless it was ‘binding’ upon all local governments of the class and not merely available to them as an option.

The court in *Nydick* then referred to MHLR §33(2) which states a county charter “ ... may provide for the appointment of any county officers or their selection by any method of nomination and election...”. While in *Nydick* the court focused on the language in that statute of “to provide for the appointment of any county officers”, equally applicable is the language that follows it – “or their selection by any method of nomination and election”. Pursuant to the Orange County Charter that method of election was four-year terms with elections being held on odd numbered years.

Nydick then went on to hold that since the New York State Legislature specifically permitted charter counties to “provide for the appointment of any county officers”, County Law §400 was not a general law as it appeared to mandate certain

elections and did not apply to all counties, as they have the option to have either appointed or elected officials. Similarly, County Law §400(8) also does not apply to all counties as it is restricted to “elections for any position of a county official” and not to counties with appointed officials.

POINT II

THE EVEN YEAR ELECTION LAW IS NOT A SPECIAL LAW PURSUANT TO ARTICLE IX, § 2 OF THE NEW YORK STATE CONSTITUTION

Article IX, § 2(b)(2) allows the New York State Legislature to act in relation to the property, affairs or government of any local government by special law “ only (a) on the requests 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 ... or with the concurrence of two-thirds of the members elected to each house of the legislature.”

Notwithstanding the procedural requirements for a special law found in Article IX, § 2(b)(2), it has been long held the State may freely legislate with respect to “matters of State concern”. A statute involves a matter of State concern when its subject matter is of sufficient importance to the State generally to render it a proper subject of State legislation. *Kelly v. McGee*, 57 N.Y.2d 522, 538 (1982). “The mere statement by the Legislature that the subject is a matter 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 Cty. 1977), *aff’d* 46 N.Y.2d 847 (1979). The legislation at issue must also bear a “reasonable relationship to the legitimate, accompanying State concern.” *Greater N.Y. Taxi Ass’n v State of New York*, 21 N.Y.3d 289 (2013) (citations omitted).

The positions of county executive and county legislator are plainly related to the affairs of local government. The office of county executive is a purely local office. *Blass v. Cuomo*, 168 A.D.2d 54, 57-58 (2nd Dept. 1991); *Baranello v. Suffolk County Legislature*, 126 A.D.2d 296, 302 (2nd Dept. 1987). Similarly, “the office of county legislator, [is] a purely local office by any standard.” *Carey v. Oswego County Legislature*, 91 A.D.2d 62, 65 (3rd Dept. 1983). Given that these offices clearly concern the affairs of local government, the State may only properly legislate with respect to them if the legislation is a matter of legitimate State concern and that legislation bears a reasonable relationship to that concern. The Even Year Election Law is not a legitimate State concern and also does not bear a reasonable relationship to the contended concern.

It was alleged in the sponsor’s memorandum in support of the Even Year Election Law bill, that holding local elections in odd numbered years leads to voter confusion and contributes to low voter turnout in those elections. These are not

legitimate State concerns. As set forth above, the offices of county executive and county legislator are, as a matter of law, offices of purely local and not state concern.

The Even Year Election Law also does not have any reasonable relationship to the contended State concerns. By separating the races of county executive and county legislator from the other local races, including sheriff, county clerk and district attorney confusion will not be lessened but will be added to it would be expected that all local races would be conducted together. Regarding the concern of greater voter participation, the lower court decision of Onondaga Supreme Court Justice Gerard J. Neri in his decision pointed to quantifiable data that the races down ballot, where local contests will be, are less likely to be voted on because of voter fatigue. Adding additional contests and lines on the ballot on odd numbered years will only exacerbate this tendency.

Furthermore, the separation of holding federal and state elections in even years and local elections in odd years allows local elections from having to compete for attention with the more widely covered federal and state races. It allows for those races to be managed upon their own merits, uncontrolled by national and State politics. *Matter of O'Brien v. Boyle* 219 N.Y. 195, 199 (1916). For example, if the Even Year Election Law were to remain in effect, following the 2025 election, the next election for Orange County Executive and Orange County Legislators would be held in 2028. Given the contentiousness and tremendous amount of media

attention of the last two presential elections, those local races would certainly be drowned out in 2028.

Also, while the State maintains moving selected local races to even years will increase voter turnout, it ignores what seemingly would be the effect on the local races that will remain in odd numbered years. The races for county executive and county legislator would be top of the ballot contests for local elections. Removing those races from odd year elections would then naturally lead to less voter interest and participation in those elections. This can only lead to the conclusion that the State cannot have a legitimate interest in increasing voter participation in select local races when it arguably will have the effect of lessening voter interest in the remaining local elections held in odd numbered years.

Based on the lack of substantial State interest in the subject local elections the Appellate Division erred in failing to hold that the Even Year Election Law is not a special law.

POINT III

IF NOT OVERTURNED THE EVEN YEAR ELECTION LAW SHOULD NOT BE ENFORCED ON THE 2025 ELECTION CYCLE

Pursuant to Election Law § 4-106(2) “[e]ach county, city, village and town clerk, by February first in the year of each general election, shall make and transmit to the board of elections of each county, city, village or town office, respectively to be voted for at each such election.” Based on this statute the respective local

elections were well under way before the Appellate Division reinstated the Even Year Election Law pursuant to its memorandum and order of May 7, 2025. This would include the gathering and filing of petitions for races that during that time period for office terms unabrogated by the Even Year Election Law.

In declining to delay the application of the Even Year Election Law until after the 2025 election cycle, the Appellate Division held the effect of the law not being in effect at the start of this election cycle “has no obvious bearing on a voter’s decision to sign a designating petition and does not prejudice any candidate as against an opponent.” This holding, however, was not on point to the issue raised below which was the local 2025 election cycle began with the law not being in effect and the subject races having unabrogated terms. More specifically, the petitions were gathered for positions with full terms and the candidates entered the races with that same understanding. To change the terms of the subject offices in the middle of the election cycle would have a harmful effect on the integrity of the election process. The terms of office that were in effect when this election cycle began should be carried out through the entire election, so it is a coherent and not disordered one.

CONCLUSION

It is respectfully requested this Court should reverse the order of the Appellate Division.

Dated: Goshen, New York
June 10, 2025

Respectfully submitted,


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**NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE**

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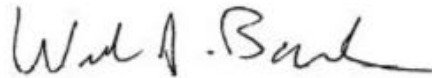
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Dated: June 10, 2025



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