

To be Submitted by:

CARL J. KEMPF, III

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,

— 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.

(For Continuation of Caption See Inside Cover)

BRIEF FOR PLAINTIFFS-APPELLANTS COUNTY OF RENSSELAER, STEVEN F. MCLAUGHLIN, INDIVIDUALLY AS A VOTER, AND IN HIS CAPACITY AS RENSSELAER COUNTY EXECUTIVE AND THE RENSSELAER COUNTY LEGISLATURE

RENSSELAER COUNTY ATTORNEY'S OFFICE
Carl J. Kempf, III, Esq., County Attorney
Linda B. Johnson, Esq. & Paul M. Macari, Esq.
SPECIAL COUNSEL TO COUNTY ATTORNEY
*Attorneys for Plaintiffs-Appellants
County of Rensselaer, Steven F. McLaughlin,
individually as a voter, and in his capacity as
Rensselaer County Executive and the
Rensselaer County Legislature
99 Troy Road, 4th Floor
East Greenbush, New York 12061
(518) 270-2950
ckempf@rensco.com*

Date Completed: June 11, 2025



COUNSEL PRESS

(800) 4-APPEAL • (382153)

– 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.

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

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

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	iii
Preliminary Statement.....	1
Questions Presented	5
Jurisdictional Statement	6
Statement of the Case.....	7
Argument.....	17
Point 1	17
Chapter 741 of the Laws of 2023 is unconstitutional and violates Article IX §1 of the New York State Constitution and the Appellate Division erred by holding that the State has the power to enact said law under Article IX §2 of the Constitution and further erred by failing to liberally construe §1 and ignoring historical data.	17
Point 2.....	21
Local elections are matters of purely local concern and the State’s revision of County Law §400(8) is an unconstitutional attempt to circumvent the County’s home rule powers.	21
POINT 3	28

The Even Year Law does not involve a matter of substantial State concern, therefore the State is not entitled to a presumption of constitutionality, nor does it automatically preempt the Rensselaer County Charter laws.28

POINT 438

The Even Year Law violates Article IX § 2 because it is neither a general law nor a special law enacted according to the procedures set forth therein.38

POINT 544

the Even Year Law was adopted in violation of the legislative equivalency doctrine.....44

Conclusion46

TABLE OF AUTHORITIES

Cases

<i>Adler v Deegan</i> , 251 NY 467 (1929).....	29, 30, 31
<i>Affronti v Crosson</i> , 95 NY2d 713 (2001)	33
<i>Albany Area Bldrs. Assn. v Town of Guilderland</i> , 74 NY2d 372 (1989)	28
<i>Amedure v State</i> , 232 AD3d 48 (3d Dept 2024)	34
<i>Baldwin v City of Buffalo</i> , 6 NY2d 168 (1959)	30, 33, 43
<i>Baranello v Suffolk County Legislature</i> , 126 AD2d 296 (2d Dept 1987), <i>app.</i> <i>dismissed</i> , 69 N.Y.2d 1037 (1987)	25, 30, 31, 32
<i>Blass v Cuomo</i> , 168 AD2d 54 (2d Dept 1991), <i>app dismissed</i> , 1991 N.Y. LEXIS 4935 (1991).....	28-29, 30, 32
<i>Board of Educ. Levittown Union Free School Dist. v Nyquist</i> , 57 NY2d 27 (1982)	28
<i>Burton v New York State Dept. of Taxation & Fin.</i> , 25 NY3d 732 (2015)	41
<i>Carey v Oswego County Legislature</i> , 91 AD2d 62(3d Dept 1983), <i>aff'd</i> , 59 NY2d 847 (1983).....	30, 32, 38, 40
<i>City of New York v Patrolmen’s Benevolent Ass’n</i> , 169 Misc.2d 566 (NY County 1996), <i>aff’d</i> , 231 AD2d 422 (1st Dept 1996), <i>aff’d</i> , 89 NY2d 380 (1996) ...	18-19, 30
<i>City of New York v PBA</i> , 89 NY2d 380 (1996)	32

<i>City of Utica v Zumpano</i> , 91 NY2d 964 (1998)	43
<i>Fosella v Adams</i> , 2025 N.Y. Slip Op. 01668; 2025 WL 864620, *6 (NY Court of Appeals, March 20, 2025).....	18
<i>Gallagher v Regan</i> , 42 NY2d 230 (1977).....	43
<i>Greater N.Y. Taxi Assn. v State of N.Y.</i> , 21 NY3d 289 (2013).....	18, 33
<i>Heimbach v Mills</i> , 67 AD2d 731 (2d Dept 1979).....	22, 23, 26
<i>Holland v Bankson</i> , 290 NY 267 (1943)	18
<i>Honovich v County of Putnam</i> , 2025 WL 1132814, 2025 N.Y. Slip Op. 25093 (Sup. Ct. Putnam Cty. April 16, 2025)	18
<i>Kelley v McGee</i> , 57 NY2d 522 (1982)	26
<i>King v Cuomo</i> , 81 NY2d 247 (1993).....	22
<i>Matter of Carey v Morton</i> , 297 NY 361 (1948)	41
<i>Matter of Harkenrider v Hochul</i> , 38 NY3d 494 (2022)	20
<i>Matter of Harvey v Finnicks</i> , 88 AD2d 40 (4th Dept 1982)	42
<i>Matter of Kelley v McGee</i> , 57 NY2d 522 (1982).....	42
<i>Matter of Moran v La Guardia</i> , 270 NY 450 (1936)	42
<i>Matter of Moran v La Guardia</i> , 270 NY 450, 452 (1936)	44
<i>Matter of Radich v Council of City of Lackawanna</i> , 93 AD2d 559, <i>aff'd</i> , 61 NY2d 652 (1983).....	34, 39, 40, 42
<i>Matter of Sherill v O'Brien</i> , 188 NY 185 (1907)	22, 41

<i>Matter of Wallach v Town of Dryden</i> , 23 NY3d 728 (2014).....	18
<i>Mergl v Mergl</i> , 19 AD3d 1146 (4th Dept 2005).....	45
<i>Mitchell v Borakove</i> , 225 AD2d 435 (1st Dept 1996), <i>app dismissed</i> , 88 NY2d 919 (1996).....	18
<i>Monroe v Carey</i> , 96 Misc.2d 238 (Sup. Ct. Orange Cnty. 1977), <i>aff'd</i> , 46 NY2d 847 (1979).....	31
<i>Nydick v Suffolk County Legislature</i> , 81 Misc.2d 786 (Sup. Ct. Suffolk Co. 1975), <i>aff'd</i> 47 AD2d 241 (2d Dept 1975)	39
<i>Palumbo v New York State Senate</i> , 79 Misc.3d 180 (Sup. Ct. Suffolk Co. 2023) ..	26
<i>People v Viviani</i> , 36 NY3d 209 (2022).....	20
<i>Resnick v County of Ulster</i> , 44 NY2d 279 (1978)	40
<i>Roth v Cuevas</i> , 158 Misc.2d 238 (Sup. Ct. NY County 1993), <i>aff'd</i> , 197 AD2d 369 (1st Dept 1993), <i>aff'd</i> 82 NY2d 791 (1993)	30, 332
<i>Stapleton v Pinckney</i> , 293 NY 330, 335 (1944)	42
<i>Stefanik v Hochul</i> , 43 NY3d 49 (2024).....	27-28
<i>Stefanik v Hochul</i> , 229 AD3d 79 (3d Dept 2024).....	20, 34
<i>Torre v County of Nassau</i> , 86 NY2d 421 (1995).....	44
<i>Town of E. Hampton v State</i> , 263 AD2d 94 (3d Dept 1999).....	18
<i>Town of Smithtown v Howell</i> , 31 NY2d 365 (1972).....	24
<i>Tully v Harris</i> , 119 AD2d 7 (4th Dept 1986)	30, 33

<i>Walker v County of Monroe</i> , 216 AD3d 1429 (4th Dept 2023)	45
<i>Wambat Realty Corp. v State of New York</i> , 41 NY2d 490 (1977)	18, 29, 31-32
<i>White v Cuomo</i> , 38 NY3d 209 (2022)	34
<i>Woodman v Woodman</i> , 162 AD3d 1650 (4th Dept 2018).....	45

Statutes

Chapter 741 of the Laws of 2023 of the State of New York ("Even Year Law") ...	1,
2, 7, 20, 38, 42	
County Law §323(1)	10, 11, 12, 39
County Law §323(2)	11
County Law §324(3)	11, 12
County Law §325(1)	11
County Law §325(3)	11, 12
County Law §400.....	4, 7
County Law §400(7)	39-40
County Law §400(8)	14, 39-40
Election Law §17-200(1)	3
Election Law §3-102(14)	23
General Municipal Law §239-m.....	24
Municipal Home Rule Law §2(12).....	3
Municipal Home Rule Law §10(1).....	18

Municipal Home Rule Law §23(2)(e)	45
Municipal Home Rule Law §33(1).....	22, 24
Municipal Home Rule Law §33(2).....	14, 24
Municipal Home Rule Law §33(3)(b)	14, 20
Municipal Home Rule Law §34(3)(a) - (g)	23, 24
Municipal Home Rule Law §35(3).....	13
Municipal Home Rule Law §35(4).....	27
Municipal Home Rule Law §43(2) (h)	15
Municipal Home Rule Law §23(2)(e)	44
Municipal Home Rule Law §50(1).....	45

Other Authorities

Rensselaer County Local Law No. 2 (1972).....	7, 10
Rensselaer County Local Law No. 3 (1972).....	10
NY Assembly Bill A4282B	14
NY Senate Bill S3505B	14
Rensselaer County Charter §1.01	7
Rensselaer County Charter §1.03	7
Rensselaer County Charter §2.01	7
Rensselaer County Charter §2.02	2, 3, 4, 5, 7, 27
Rensselaer County Charter §2.05	8

Rensselaer County Charter §2.07	8
Rensselaer County Charter §3.00	8
Rensselaer County Charter §3.01	2, 4, 5, 8
Rensselaer County Charter §3.03	5
Rensselaer County Charter §20.00	7

Rules

New York Civil Practice Law and Rules R 5526	46
New York Civil Practice Law and Rules R 5601(b)(1).....	6

Treatises

<i>5 McQuillin Mun. Corp.</i> §15:19	29
Charles Z. Lincoln, <i>Constitutional History of New York</i> , Vol. I 1609-1822, pgs. 9- 10 (1905).....	19
James D. Cole, <i>Constitutional Home Rule in New York: “The Ghost of Home Rule,”</i> 59 St. John’s L. Rev. 713, 727 (1985)	25
Temporary Commission on the Constitutional Convention, <i>LOCAL GOVERNMENT</i> , pg. 82 (1967)	19

Constitutional Provisions

New York State Constitution Article IX.....	3, 5, 44
New York State Constitution Article IX §1.....	4, 5, 6, 7, 17, 18, 20, 21, 23
New York State Constitution Article IX §1(a)	12

New York State Constitution Article IX §1(h).....	12, 22, 23, 24
New York State Constitution Article IX §2.....	3, 5, 6, 23, 38, 43, 44
New York State Constitution Article IX §2(b)(2)	12, 13, 21
New York State Constitution Article IX §2(c)	3, 4, 18, 22-23, 25
New York State Constitution Article IX §3.....	6
New York State Constitution Article IX §3(a)(3)	6
New York State Constitution Article IX §3(b).....	27
New York State Constitution Article IX §3(c)	6, 13, 17, 39
New York State Constitution Article IX §3(d).....	41
New York State Constitution Article IX §3(d)(1)	13, 41
New York State Constitution Article IX §3(d) (4)	13, 39
New York State Constitution, https://dos.ny.gov/new-york-state-constitution-0 ...	12

Opinions

<i>1984 NY Atty. Gen. (Inf.) 139</i> , 1984 N.Y. AG LEXIS 42, at *1, *3 (Sept. 25, 1984)	25
<i>1994 N.Y. Atty. Gen. (Inf.) 1038</i> , 1994 N.Y. AG LEXIS 21, at *1, *2-3 (July 5, 1994)	25

PRELIMINARY STATEMENT

The County of Rensselaer, Steven F. McLaughlin, individually as a Voter, and in his capacity as Rensselaer County Executive, and the Rensselaer County Legislature (hereinafter collectively “Rensselaer County Plaintiffs-Appellants”) join, rely upon, and incorporate by reference herein, the procedural history, factual statements, and arguments set forth by the other Appellants in their Briefs. This Court should reverse the decision by the Appellate Division. With the New York State Legislature and Governor solely aiming for political gain, the Even Year Law is an unconstitutional override of the Charter enacted by Rensselaer County with the approval of Rensselaer County voters. The Rensselaer County Plaintiffs-Appellants submit this Brief in support of the Rensselaer County Charter, the voters of Rensselaer County, and Rensselaer County Plaintiffs-Appellants’ appeal herein.

While the State has referenced Chapter 741 of the Laws of 2023 of the State of New York as the “Even Year Election Law,” this new law did not amend the New York Election Law, and does not meet the definition of an Election Law case. Chapter 741 of the Laws of 2023 of the State of New York is “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 the “Even Year Law”), which was enacted by the New York State Legislature in June

2023 and signed into law by Defendant, Governor Kathleen Hochul on December 22, 2023. This legislation did not amend the New York State Election Law in any way.

Supreme Court found that the Even Year Law violates the New York State Constitution, and that Sections 2.02 and 3.01 of the Rensselaer County Charter fall within the Savings Clause of Article IX of the New York State Constitution and are valid notwithstanding the enactment of the Even Year Law (R 14-39).¹ It further enjoined the NYS Defendants, Commissioners Czarny and Sardo from enforcing the Even Year Law (R 39). The Appellate Division, Fourth Department reversed Supreme Court's Order by a Memorandum and Order dated May 7, 2025 (R 2244). This appeal to the Court of Appeals ensues.

The State has erroneously insisted and argued that it has a substantial interest in regulating the timing of local elections, and because of that, the State does not need to act in accordance with the rules of a "general law" or a "special law." At the Appellate Division stage of the proceedings, the State could not define what type of law it passed. The State argued that the new law might be a general law which applies uniformly to all local elective offices and that does not trigger the savings clause, or that it might be a special law because it somehow serves the

¹ References preceded by "R" are to the document entitled Joint Record on Appeal, Volumes 1-5; and references preceded by "SR" are to Rensselaer County's Supplemental Record on Appeal.

State's purported interest in maximizing voter turnout (State's Appellate Brief, p. 3).

Supreme Court correctly determined that the 1963 home rule amendment embodied in Section 2 of Article IX of the New York Constitution gave all counties, including Rensselaer County, the constitutional right to set their own terms of office. The Appellate Division erred in reversing Supreme Court's determination. The State is only permitted "invade matters of local concern" by general law or special law (R 30, *N.Y. Const.* Art. IX, §2[c]). The Appellate Division erroneously focused and relied upon Election Law §17-200(1) and §3-102(14), thereby assigning more importance to the Election Law over the County Law and Municipal Home Rule Law, and rejecting the constitutional underpinnings of those two latter bodies of law.

The Appellate Division also erred when it rejected Supreme Court's Order because, prior to the enactment of the Even Year Law, no home rule message was issued by any municipality. Therefore, a "special law" (defined as "[a] state statute which in terms and in effect applies to one or more, but not all ... cities ...") [Municipal Home Rule Law, §2{12}], such as the Even Year Law, can only be enacted by the state legislature at the request of a local government or by a specific vote of the local legislature. As Rensselaer County is governed by its Charter, which expressly provides for odd-numbered year elections for its legislators and

county executive, Rensselaer County did not issue a home rule message prior to the enactment of the Even Year Law.

Article IX §1 of the New York State Constitution protects the right of local governments to have a legislative body elected by the people, and provides that all officers or local government whose election or appointment is not provided for by the 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.” Article IX §1 provides that counties shall be empowered to prepare, adopt, amend, or repeal alternative forms of government. These rights include the right to determine when elections for local government officials are held and to determine the terms of office of local officials. In accordance with its home rule rights protected by the NY Constitution Article IX, the residents of Rensselaer County adopted the Rensselaer County Charter in 1973 (hereinafter “RC Charter”) as its alternative form of government. Rensselaer County’s Charter expressly provides that county legislators (RC Charter §2.02) and the county executive (RC Charter §3.01) will be elected for four-year terms, and such elections will be held in odd-numbered years. Despite the expansive home rule rights granted to local governments in Article IX, the Even Year Law purports to require that elections for certain local officials be held in even-numbered years. The Even Year Law impermissibly shortens mid-cycle the duly established term of

office for Rensselaer County Legislators and the Rensselaer County Executive from four years to three years, undermining the Rensselaer County Charter and Rensselaer County voter expectations. For these reasons, Supreme Court's Order is correct and this Court should reverse the Fourth Department's Order.

QUESTIONS PRESENTED

1. *Question:* Does the New York State Legislature have the power under Article IX § 2 of the New York State Constitution to enact a general law that interferes with the “rights, powers, privileges and immunities” granted to counties and other local governments under Article IX § 1 of the Constitution?

Answer: The Appellate Division erroneously concluded that the state has a substantial interest in local elections, and further erred by its application of Article IX §2 to the analysis because the Even Year Law is neither a general law nor a properly enacted special law.

2. *Question:* Are the terms of office and timing of elections for purely local offices a matter of substantial state concern that would allow the State to avoid the limitations of Article IX §1?

Answer: The Appellate Division erred in its conclusion that Article IX §1 of the New York State Constitution does not grant counties the right to set the terms of office of their elected officials and further erred by failing to follow established precedent, historical data, and public policy establishing that local elections are

matters of purely local concern, and further failed to liberally construe the “[r]ights, powers, privileges and immunities granted to local governments by this article” under NY Const., Art. IX §3(c).

3. *Question:* Does the doctrine of legislative equivalency bar the Legislature’s attempt to change the County’s charter election provisions solely through enactment of the Even Year Law?

Answer: The Appellate Division erred in holding that the doctrine of legislative equivalency does not apply, and therefore does not invalidate the Even Year Law.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this appeal under New York Civil Practice Law and Rules § 5601(b)(1) because the Appellate Division’s May 7, 2025 Memorandum and Order is a final order that completely disposed of all claims in this matter and the case directly involves a substantial constitutional issue under the New York State Constitution. Notice of entry of the Appellate Division’s judgment was served on May 7, 2025 (R 2244). Rensselaer County filed a timely appeal on May 8, 2025 (R 2226). The questions raised in this appeal are preserved because they were fully briefed and argued in the courts below (R 1708-1746).

STATEMENT OF THE CASE

The Rensselaer County Charter

In November 1973, Rensselaer County voters voted in favor of a new charter referendum (Local Law, 1972, No. 2 of County of Rensselaer) (R 231). The Rensselaer County Charter became effective as of January 1, 1974 (RC Charter Art. 20 § 20.00) (SR 29; 61). The express purpose of the Rensselaer County Charter is, “the accomplishment of greater efficiency, economy and responsibility in county government; the securing of all possible county home rule; and, the separation of legislative and executive functions” (RC Charter Art. 1 § 1.01) (SR 7; 36). The Rensselaer County Charter specifies that “(a)ny State Law which is inconsistent with this Charter shall be superseded by the provisions hereof to the extent of its inconsistency, except where supersession is restricted by State Law” (RC Charter Art. 1 §1.03) (SR 7; 36).

Article 2 of the Rensselaer County Charter sets forth that the governing body of Rensselaer County shall be the County Legislature (RC Charter Art. 2 § 2.01) (SR 7; 37). The Rensselaer County Charter provides that the members of the County Legislature “shall be elected at the General election in odd-numbered years for terms of four (4) years commencing with the General election for the year 1973 pursuant to the provisions set forth in Article 17 of this Charter and titled ‘Legislative Apportionment’” (RC Charter Art. 2 §2.02) (SR 7; 37). Article 17 of

the Rensselaer County Charter defines the composition of the County Legislature, again referring to the Municipal Home Rule Law of the State of New York (RC Charter Art. 17 § 17.00) (SR 27). Article 2, Section 2.07(5) of the Rensselaer County Charter confers upon the Rensselaer County Legislature, the power and duty “[t]o exercise all powers of local legislation in relation to enacting, amending or rescinding local laws, charter laws, legalizing acts or resolutions” (SR 9; 38). Further, Article 2, Section 2.07(14) of the Rensselaer County Charter confers upon the Rensselaer County Legislature the power and duty “[t]o determine and make provision for any matter of County Government not otherwise provided for, including but not restricted to any necessary matter involved in the transition to this Charter form of Government.” (SR 9; 39). Article 2, Section 2.05 of the Rensselaer County Charter also refers to the election of the members of the County Legislature in odd-numbered years (SR 8; 37).

Article 3 of the Rensselaer County Charter sets forth that “(t)here shall be a County Executive, who shall be the Chief Executive Officer, responsible for the proper administration of all County affairs placed in his charge by law or under any of the provisions of this Charter” (Art. 3 § 3.00) (SR 10; 40). The “Election and Qualifications” section of Article 3 of the Rensselaer County Charter states that the County Executive’s “term of office shall be four (4) years and he shall run for office concurrently with the Legislature” (Art. 3 §3.01) (SR 10; 40). Article 3

of the Rensselaer County Charter set forth the Powers and Duties of the Rensselaer County Executive, including that “(h)e shall execute and enforce all laws, and resolutions of the County Legislature and all other laws required to be enforced through the County Legislature or by any county officers subject to its control, and shall perform all other duties and functions herein prescribed or lawfully delegated to him by the County Legislature” (RC Charter Art. 3 § 3.03 ([A]) (SR 10; 40).

These provisions remain in full force and effect today. Prior to the enactment of the Rensselaer County Charter, a Rensselaer County Board of Supervisors existed to manage the business of Rensselaer County. A lawsuit commenced in 1968 brought to light a claim that the Board of Supervisors structure of government in Rensselaer County violated the principle of “one man, one vote.” In response, the Board of Supervisors submitted two weighted voting plans to Supreme Court, which were rejected. The Board of Supervisors submitted a third weighted voting plan, which was also rejected by Supreme Court, which ordered that a County Legislature be created in 1969. The Board of Supervisors submitted three reapportionment plans to Supreme Court, dividing Rensselaer County into Legislative Districts, one of which was so ordered by Supreme Court on an interim basis, and upheld by the Appellate Division and Court of Appeals. A Charter Commission was appointed to draft a proposed Rensselaer County Charter toward

the end of 1969. As of January 1, 1970, the first Rensselaer County Legislature took office.

In 1971, Local Law No. 2 was introduced, embodying a Rensselaer County Charter that called for a County Manager to be appointed by the Legislature instead of being directly elected. Local Law No. 2 was passed by the Rensselaer County Legislature, and subject to mandatory referendum. The Local Law No. 2 referendum was defeated in the 1971 general election. Local Law No. 3 was introduced in 1972, adopting a Rensselaer County Charter with a County Executive who was directly elected, was passed by the Rensselaer County Legislature, and subject to mandatory referendum. The Local Law No. 3 referendum was passed by the voters in the 1972 general election. The First Rensselaer County Executive was elected in the 1973 general election.

Article IX of the New York State Constitution and County Law Article 6-A (1958)

In 1958, an amendment to Article IX of the New York State Constitution—the “Home Rule Law”—was adopted and a new Article 6-A of the County Law passed by the New York State Legislature in 1959. The Home Rule Law was designed to promote autonomy in local matters, to permit local self-governance, and prevent state legislative interference in local government affairs. County Law Article 6-A was the implementing legislation of amended Article IX. *County Law* §323(1)

provides that, “the board of supervisors of a county shall have power to prepare, adopt, amend and repeal a charter law or laws providing a county charter for the county.” (*County Law* §323[1] [1959]). Article 6-A provides that a county charter “shall set forth the structure of the county government and the manner in which it is to function” and that such a charter “shall provide for...agencies or officers responsible for the performance of the functions, power and duties of the county and of any agencies or officers thereof and the manner of election or appointment, terms of office, if any, and removal of such officers” (*County Law* §323[2], [3][b] [1959]). Article 6-A enumerated certain areas in which a county charter could not supersede any general or special law enacted by the New York State Legislature, including subjects such as taxation, educational systems and school districts, and public benefit corporations (*County Law* §324[3] [1959]). Article 6-A expressly declared that it was “the intention of the legislature by this article to provide for carrying into effect the provisions of the constitution, article nine, section two, paragraph (b) and, pursuant to the direction contained therein, to empower counties to prepare, adopt and amend county charters local legislative action, subject to the limitations imposed herein” (*County Law* §325[1] [1959]). Article 6-A is to be “construed liberally” (*County Law* §325[3] [1959]).

1963 Amendments to Article IX and the Municipal Home Rule Law

Article IX was again amended in 1963, effective January 1, 1964, to establish a bill of rights for local governments and set forth the powers and duties of the New York State Legislature. As with the 1958 amendment, the 1963 amendment required passage by the New York State Legislature and approval by the people at a general election. No substantive changes have been made to Article IX since the 1963 amendments. The current version of the New York State Constitution is available at <https://dos.ny.gov/new-york-state-constitution-0>. Article IX of the New York State Constitution secures to the County the right of local self-government. Article IX as amended in 1963 provides, as part of the bill of rights for local governments, that “[e]very local government, except a county wholly included within a city, shall have a legislative body elected by the people thereof” (*NY Const.*, Art. IX §1[a]). 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” (*NY Const.*, Art. IX §1[h][1]).

Article IX, § 2(b)(2) of the New York Constitution provides the 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 only (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 reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature” (*NY Const.*, Art. IX, §2[b][2]).

Section 3 of Article IX 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” (*NY Const.*, Art. IX §3[d][1], [4]).

Article IX dictates that the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed” (*NY Const.*, Art. IX §3[c]; *Municipal Home Rule Law* §35[3] [“This county charter law shall be construed liberally”]). In or around April 1963, the Legislature passed the MHRL, which would become effective only if the amendment creating a new Article IX was approved at the 1963 general election. The new MHRL replaced the prior City Home Rule Law, Village Home Rule Law, Articles 6 and 6-A of the

County Law, and certain section of the Town Law. Like former County Law Article 6-A, the MHRL is implementing legislation that gives effect to the constitutional provisions in Article IX regarding local governments' power to adopt and amend local laws.

MHRL §33 gives counties the power to “prepare, adopt, amend or repeal a county charter.” MHRL §33 provides that a county charter “shall set forth the structure of the county government and the manner in which it is to function,” and requires a county charter to provide for, “agencies or officers responsible for the performance of the functions, powers and duties of the county ... and the manner of election or appointment, terms of office, if any, and removal of such officers” (*MHRL* §33[2], [3][b]).

The Even Year Law

In June 2023, the New York State Legislature passed a bill requiring that certain local elections held outside of New York City be held in an even-numbered year (*NY Senate Bill* S3505B; *NY Assembly Bill* A4282B; <https://legislation.nysenate.gov/pdf/bills/2023/S3505B>). Governor Hochul signed the bill into law on December 22, 2023. The Even Year Law amended, in pertinent part, Section 400 of the County Law and Section 34 of the MHRL. With the enactment of the Even Year Law, County Law §400(8) provides:

Notwithstanding any provision of any general, special or local law, charter, code, ordinance, resolution, rule or regulation to the contrary,

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

New subsection MHRL §43(2) (h) provides:

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

The Even Year Law, in addition to trampling on the County's home rule rights guaranteed under Article IX, implicates a number of significant matters of local concern, including but not limited to: voter turnout for local elections; the right to determine when and how local officials are elected; ballot confusion; diminishing the importance of local issues and elections in crowded political campaign seasons; the increased expense of running local campaigns in the same year as presidential, gubernatorial, or other federal or statewide office elections; and attracting qualified candidates to run for local office. The Even Year Law was motivated by political agendas, as is reflected in the Bill Co-Sponsor's (James Skoufis) public comments, including: "The bill is good government. The only

reason why you and Rs are opposed is because you prefer lower turnout” (X, @JamesSkoufis, May 27, 2022, 9:32 A.M.) (the Senate bill was sponsored by Skoufis (D) and co-sponsored by Salazar (D, WF). The Assembly bill was sponsored by Paulin (D) and co-sponsored by Sillitti (D), Walker (D), Darling (D), Dickens (D), Burgos (D), and Ramos (D) (R 643, 650).

Furthermore, the transcript demonstrates the disparate impact that the politically-motivated Even Year Law will have on upstate municipalities, the executives of which are overwhelmingly politically opposed by State lawmakers (X, @anvaendarnamnoa, Feb. 1, 2024, 4:29 P.M.). Excerpts from the Legislative History and discussion during the hearings regarding the legislation at issue herein, are relevant to demonstrate that the Legislation is not an “Election Law” and was not treated as an “Election Law” matter by the Legislature (R 657-833; 1246-1377). The legislation was not passed through the Election Committee of either legislative body, and it did not amend the New York State Election Law. Rather, it amended local municipal laws – County Law, Town Law, Village Law, and Municipal Home Rule Law. Yet, New York State would have this Court believe that this legislation was a matter of such state importance that the state should be entitled to Legislative immunity, and a myriad of other protections, in support of upholding this law as constitutional. For the reasons set forth below, Supreme Court’s determination that the Even Year Law is unconstitutional was correct and

the Appellate Division, Fourth Department’s reversal thereof was erroneous and should be reversed.

ARGUMENT

POINT 1

CHAPTER 741 OF THE LAWS OF 2023 IS UNCONSTITUTIONAL AND VIOLATES ARTICLE IX §1 OF THE NEW YORK STATE CONSTITUTION AND THE APPELLATE DIVISION ERRED BY HOLDING THAT THE STATE HAS THE POWER TO ENACT SAID LAW UNDER ARTICLE IX §2 OF THE CONSTITUTION AND FURTHER ERRED BY FAILING TO LIBERALLY CONSTRUE §1 AND IGNORING HISTORICAL DATA.

The rights of local governments to control local affairs is enshrined in the New York Constitution, Article IX, §1, entitled the “Bill of Rights for Local Governments.” It provides that, “[e]ffective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution: (a) Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.” Limitations on local self-governance must be express and not implied. Article IX, §3(c) states that the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.”

The Municipal Home Rule “has long existed in New York State and is the basis for local control over the structure of local government.” *Fosella v Adams*, 2025 WL 864620, *6 (N.Y. Court of Appeals, March 20, 2025). Article IX of the NY Constitution “grants local governments broad powers to manage their own affairs, which can be displaced by the legislature only in ways contemplated by the Constitution,” thereby preventing state legislative interference in local government. *Id.*; see also *Greater N.Y. Taxi Assn. v State of N.Y.*, 21 NY3d 289, 300-301 (2013); *Holland v Bankson*, 290 NY 267, 270 (1943); *Mitchell v Borakove*, 225 AD2d 435, 439 (1st Dept 1996), *app dismissed*, 88 NY2d 919 (1996). “A local government enjoys broad autonomy under ‘the “home rule” provision of the New York Constitution,’ but that autonomy does not extend to actions ‘that conflict with the State Constitution or any general law.’” *Honovich v County of Putnam*, 2025 WL 1132814, 2025 N.Y. Slip Op. 25093 (Sup. Ct. Putnam Cty. April 16, 2025); quoting *Matter of Wallach v Town of Dryden*, 23 NY3d 728, 742-43 (2014); see *NY Const.*, Art. IX, §§ 1, 2[c][ii]; *Municipal Home Rule Law* § 10(1).

The 1958 and 1963 amendments to the Constitution expanded and strengthened the municipal home rule powers that were already enshrined in the Constitution for decades. *Town of E. Hampton v State*, 263 AD2d 94, 96 (3d Dept 1999), quoting *Wambat Realty Corp. v State of New York*, 41 NY2d 490, 496 (1977); *City of New York v Patrolmen’s Benevolent Ass’n*, 169 Misc.2d 566, 574

(NY County 1996), *aff'd*, 231 AD2d 422 (1st Dept 1996), *aff'd*, 89 NY2d 380 (1996) (internal citation omitted).

The required liberal construction set forth in Article IX, §3(c) of the Municipal Home Rule powers granted to local governments can be traced back to the 1600s. In *Constitutional History of New York*, Vol. I 1609-1822, by Charles Z. Lincoln, pg. 9-10 (1905), the author discusses the beginnings of municipal home rule during the Dutch Period as follows: “[i]n July, 1640, a new charter of ‘Freedoms and Exemptions’ was granted...Municipal authority was specified to be exercised in ‘towns,’ instead of in ‘cities,’...Each settlement on a river, bay, or island was permitted to designate a deputy, once in two years, who should annually report to the governor and council, and assist them in promoting the interest of such settlement. This was home rule.”

Tracing forward to 1967, the compilation by the Temporary State Commission on the Constitutional Convention, LOCAL GOVERNMENT, pg. 82, March 31, 1967, reviewed the advisory commission’s 1957 recommendation to enact a “Statute of Local Governments” instead of a constitutional article. It describes the purpose of the Statute as designed “to accord to those home rule powers not warranting constitutional protection a form on quasi-constitutional protection. Under the Statute of Local Governments, no power granted to a local

government therein can be repealed, diminished, impaired or suspended except by the action of two successive Legislatures with the concurrence of the Governor.”

The County’s right to set terms of office—and, consequently, to set the year in which an election is to be held—is confirmed by the MHRL, implementing legislation that gives effect to constitutional provisions in Article IX. Specifically, MHRL § 33 provides that a county charter “*shall* provide” for the “agencies or officers responsible for the performance of the functions, powers and duties of the county . . . and the manner of election or appointment, *terms of office*, if any, and removal of such officers.” MHRL § 33(3)(b) (emphasis added). The Even Year Law did not amend MHRL § 33. Therefore, the County still has the right to determine the terms of office of its elected officials and must include this in its Charter. Because Article IX §1 grants the County the right to adopt its own form of government, the Constitution prohibits the Even Year Law which interferes with that right grounded in the Constitution. *See Stefanik v Hochul*, 229 AD3d 79 (3d Dept 2024) (noting that duly enacted statutes enjoy a presumption of constitutionality, but that they will be struck down when they are in conflict with the Constitution beyond a reasonable doubt); *citing People v Viviani*, 36 NY3d 209, 216 (2022); *Matter of Harkenrider v Hochul*, 38 NY3d 494, 509 (2022).

The State’s attempt to invoke Article IX §2(b)(2) of the Constitution to override the County’s home rule rights is improper (State’s Brief, Pt. 1). Article IX

§2(b)(2) provides that, “[s]ubject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature...[s]hall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of 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 reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law, and in such latter case, with the concurrent of two-thirds of the members elected to each house of the legislature.” For the reasons discussed below, the Even Year Law is neither a general law, nor a special law. The County’s constitutional right to set its terms of office could be altered or taken away by constitutional amendment, but that did not occur. The Legislature’s attempt to alter the terms of office of the County’s officials is without constitutional authority. Thus, the Even Year Law is in direct conflict with the Constitution, and cannot supersede the County’s rights under Article IX §1.

POINT 2

**LOCAL ELECTIONS ARE MATTERS OF PURELY LOCAL CONCERN
AND THE STATE’S REVISION OF COUNTY LAW §400(8) IS AN
UNCONSTITUTIONAL ATTEMPT TO CIRCUMVENT THE COUNTY’S
HOME RULE POWERS.**

Article IX §2(b)(2) of the Constitution gives the State the power to interfere in local government matters only by passing a proper general or special law. The ordinary means by which the State Legislature enacts laws is inapplicable when it comes to passing legislation relating to the property, affairs or government of any local government.

It has long been the rule that, “[i]n construing the language of the Constitution as in construing the language of a statute, the courts should look for the intention of the People and give to the language used its ordinary meaning.” *Matter of Sherill v O’Brien*, 188 NY 185, 207 (1907). With regard to the State Legislature, the Court of Appeals has stated that “[s]ince the authority of the Legislature is ‘wholly derived from and dependent upon the Constitution’, the discrete rules of the two houses do not constitute organic law and may not substitute for or substantially alter the plain and precise terms of that primary source of governing authority.” *King v Cuomo*, 81 NY2d 247, 251 (1993).

Article IX § 2(c) does not apply to county charter laws adopted under Article IX § 1. This can be seen from the text of Section 2[c] itself, which states:

In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have the power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the

following [enumerated] subjects,² whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government.

When courts have considered this question in other contexts, they have held that when the conflicting law results from the powers under Article IX §1 of the Constitution and the MHRL, that law controls.

In *Heimbach v Mills*, the court addressed a challenge to a county charter provision that authorized the county executive to fix equalization rates in the county. *Heimbach v Mills*, 67 AD2d 731 (2d Dept 1979). The charter provision was inconsistent with certain sections of the New York Real Property Tax Law, but the court ruled that the charter provision “validly superseded” the state law. *Id.* at 732. The court noted that Article IX § 2 “is concerned with all units of local government and its focus is on general local legislative power, not charters or alternative forms of county government.” *Id.* at 731. The first line of Article IX § 2[c] is clear that the power to adopt local laws “not inconsistent” with the general laws under Section 2[c] is “[i]n addition to powers granted in the statute of local governments or any other law.” For charter counties, the power to adopt an alternative form of government derives from “other law” – i.e., Article IX § 1[h], and the MHRL – and

² See *NY Const.*, art IX, § 2(c), subsections (1) through (10).

neither contain a requirement that charter laws be consistent with general law. The court thus found that Article IX § 1[h] “certainly [did] not prohibit what was done here, even if it [did] not specifically authorize it,” and the restrictions on the power to adopt charters contained in MHRL § 33(1) “do not encompass a requirement of consistency with general law.” *Id.* at 731. While the power of a charter county is not unlimited, MHRL § 34 states that, “[e]xcept in accordance with the provisions of [the MHRL] or with other laws enacted by the legislature, a county charter or charter law shall not supersede any general or special law enacted by the legislature” relating to a number of areas, including taxation, educational systems and school districts, public benefit corporations, and numerous state statutes. *MHRL* § 34(3)(a) - (g). However, these specific areas involve subjects of constitutional and/or state concern rather than purely local issues as is the case in the present matter.

In *Town of Smithtown v Howell*, 31 NY2d 365 (1972), the Court of Appeals held that a Suffolk County Charter provision transferring functions from a town to the county and giving the county commission veto power of certain zoning changes superseded contrary provisions in General Municipal Law § 239-m. The court explained that a “charter law” in MHRL § 32(2) was passed by the double referendum system required under both the Constitution and MHRL § 33, which gave it constitutional underpinnings. *Id.* at 376.

Other decisions and authorities are in accord in holding or opining that a county charter provision does not have to be consistent with general law. *Baranello v Suffolk County Legislature*, 126 AD2d 296, 302 (2d Dept 1987), *app. dismissed*, 69 NY2d 1037 (1987) (holding that provisions of County Law § 400 (7) giving the Governor the power to fill vacancies in county elective offices “have no application at all to the extent that they conflict with the provisions of the Suffolk County Charter.”); 1994 NY *Atty. Gen. (Inf.)* 1038, 1994 N.Y. AG LEXIS 21, at *1, *2-3 (July 5, 1994) (stating that “a county may enact a charter provision establishing the membership of the board of health which differs from the composition established by State law” because “[unlike local laws adopted by municipalities, which are required to be consistent with general State laws (NY Const Art IX § 2[c]), neither the Constitution nor the County Charter Law requires that charter laws be consistent with general State laws.”); 1984 NY *Atty. Gen. (Inf.)* 139, 1984 N.Y. AG LEXIS 42, at *1, *3 (Sept. 25, 1984) (finding that a county operating under a charter form of government may adopt a charter law establishing a term for the county health commissioner differing from the term established by the Public Health Law because a “charter Law adopting or amending a county charter need not be consistent with “general state laws”). See also James D. Cole, *Constitutional Home Rule in New York: “The Ghost of Home Rule,”* 59 St. John’s L. Rev. 713, 727 (1985) (“Neither the constitution nor the county charter law require[s] that charter laws be consistent

with general state laws. This contrasts with local laws, which must be consistent with general state laws.”).

In short, the County’s authority to adopt charter provisions establishing the terms of office and timing of election of its local officials is not derived from or dependent on the authority to adopt local laws referred to in Article IX § 2[c], and thus is not subject to restriction by the Legislature under that provision. The State’s argument that county charter provisions specifying odd-year elections must yield to the state’s general power to legislate has no constitutional basis. It also makes no sense within a constitutional framework granting expansive home rule: if “every charter provision would have to conform to every applicable general law . . . there could never be such a thing as an alternative form of government or effective home rule in the localities.” *Heimbach*, 67 AD2d at 732. Under the interpretation advanced by the State, local governments would revert to what they were *before* Article IX was adopted: mere “administrative arms” of the State rather than “more autonomous units of local government.” *Kelley v McGee*, 57 NY2d 522, 536 (1982).

The Rensselaer County Charter provisions providing for odd-year elections for county legislators, executive and officers are valid and supersede the contrary provisions of the Even Year Law. The State cannot unilaterally modify the County’s constitutional home rule rights by ordinary legislation; a constitutional amendment is required. *Palumbo v New York State Senate*, 79 Misc. 3d 180 (Sup. Ct. Suffolk

Co. 2023) (“The constitution can only be changed or altered by a constitutional amendment”).

Supreme Court also correctly held the Rensselaer County Charter §§2.02 and 3.01 fall within the Savings Clause of Article IX of the State Constitution and are valid notwithstanding the enactment of the Even Year Law (SR 7; 10; 37; 40). The Savings Clause preserves the validity of any existing valid acts of local legislation, stating they “shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution.” Article IX § 3(b); MHRL § 35(4) (“All existing state, county, local and other laws or enactments, including charters, administrative codes and special acts having the force of law shall continue in force until lawfully amended, modified, superseded or repealed.”). Because the State has not acted in accordance with the Constitution, the charter provisions providing for odd-year elections for county legislators, executive and officers are valid and continue in effect unless and until they are superseded by a constitutional amendment.

As “[I]t is the ‘responsibility of the courts’ to define the rights and prohibitions set forth in the State Constitution, ‘which constrain the activities of all three branches’ of the government,’” Rensselaer County now requests that this Court reverse the Appellate Division’s Order in all respects. *Stefanik v Hochul*, 43

NY3d 49, 58 (2024), citing *Board of Educ., Levittown Union Free School Dist. v Nyquist*, 57 NY2d 27, 39 (1982).

POINT 3

THE EVEN YEAR LAW DOES NOT INVOLVE A MATTER OF SUBSTANTIAL STATE CONCERN, THEREFORE THE STATE IS NOT ENTITLED TO A PRESUMPTION OF CONSTITUTIONALITY, NOR DOES IT AUTOMATICALLY PREEMPT THE RENSSELAER COUNTY CHARTER LAWS.

The State has argued that the Even Year Law is constitutional because it relates to an area of State concern that preempts local laws – namely, the State’s “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....” (State’s Appellate Brief, at 37-38). The State’s reliance on *Albany Area Bldrs. Assn. v Town of Guilderland* is misplaced because that case pertains to the State’s regulation of highways, citing the extensive body of general laws demonstrating that “the State preempted the field” in terms of highway regulation, which has mandates for highway funding, fundraising, transparency of accounting, and more. Therefore, the local law passed by the Town of Guilderland was preempted and deemed invalid. *Albany Area Bldrs. Assn. v Town of Guilderland*, 74 NY2d 372, 377-378 (1989). It is noted that the law in question in the *Guilderland* case was a local law, not a charter law (the difference is explained *supra*), as is the case in the present matter. *Id.* at 375. Therefore, the

local law in *Guilderland* case did not have the same constitutional underpinnings as do the Rensselaer County Charter laws at issue herein.

Furthermore, the State has not preempted the field of county elections. To the contrary, the State has specifically empowered counties by Constitutional amendment and MHRL to create alternate forms of government and determine the timing and manner of their own local elections. *5 McQuillin Mun. Corp.* §15:19 (discussing three types of preemption, including field preemption, stating that the “preemption is implied when the legislative scheme is so pervasive as to virtually evidence an intent to preempt the particular area of field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the legislature.”) Thus, the State is not entitled to limit Rensselaer County’s home rule power under the doctrine of preemption.

In order to overcome the home rule constraints of Article IX, the Legislature must do more than assert a State interest in the subject matter of the law. The State must show that the subject law involves “in a substantial degree a matter of state concern....” *Adler v Deegan*, 251 NY 467, 491 (1929); *see also Wambat Realty Corp*, 41 NY2d at 494 (subject matter of legislation must be “of sufficient importance to the State, transcendent of local or parochial interests or concerns,” to avoid the limitations of Article IX.)

Supreme Court appropriately found that the State has no valid interest in regulating the timing of local elections and terms of office of the county executive or county legislators because they are purely local offices that do not touch upon any issue of State concern. In *Baranello v Suffolk County Legislature*, the Second Department stated, “[c]learly, the County Executive is a local officer, and not one whose authority touches upon “‘a matter of concern to the State’.” *Baranello v Suffolk County Legislature*, 126 AD2d at 302; accord *Blass v Cuomo*, 168 AD2d 54, 57-58 (2d Dept 1991), *app dismissed*, 1991 N.Y. LEXIS 4935 (1991) (“the office of County Executive”...[is] a purely local office.”). The same is true of county legislators, whose office the Third Department has called a “purely local office under any standard.” *Carey v Oswego County Legislature*, 91 AD2d 62, 66 (3d Dept 1983), *aff’d*, 59 NY2d 847 (1983).

Previous attempts by the State Legislature to interfere with municipal home rule powers by claiming a significant State interest have been invalidated by New York courts. *Baldwin v City of Buffalo*, 6 NY2d 168, 174 (1959) (the alteration of ward boundaries is “properly an affair of the municipality”); *Roth v Cuevas*, 158 Misc.2d 238, 245-246 (Sup. Ct. N.Y. Cnty. 1993), *aff’d*, 197 A.D.2d 369 (1st Dep’t 1993), *aff’d* 82 NY2d 791 (1993) (the State has no substantial interest in term limit legislation that would affect New York City public officers); *Tully v Harris*, 119 AD2d 7, 11-12 (4th Dept 1986) (the administration of a county health

district is a matter of local concern). The same result is warranted in the present matter.

The State's attempt to claim that some local elections need to be in even years with State and federal elections to increase voter participation when so many local elections, including elections for many countywide offices, will continue to occur in odd-numbered years under the law is a thinly-veiled political excuse. "The mere statement by the Legislature that the subject matter of the statute is of State concern . . . does not in and of itself create a State concern nor does it afford the statute such a presumption." *Monroe v Carey*, 96 Misc.2d 238, 241 (Sup. Ct. Orange Cnty. 1977), *aff'd*, 46 NY2d 847 (1979). Instead, State legislation "impacting especially on a locality is only valid if 'it can be stated that the statutes in question 'serve a supervening State concern'." *City of New York v PBA*, 89 NY2d 380, 391 (1996).

The State argues if deemed a special law, the Even Year Law does not run afoul of the Constitution because it relates to the State's substantial "interest in increasing voter participation in elections" and "maximizing the representative nature of local governments, which are often responsible for implementing state law and carrying out matters of state concern" (State Brief, at 1, 22). However, the State must show that the subject law involves "*in a substantial degree* a matter of state concern...." *Adler*, 251 NY at 491 (emphasis added); *see also Wambat*

Realty Corp, 41 NY2d at 494 (subject matter of legislation must be “of sufficient importance to the State, transcendent of local or parochial interests or concerns,” to avoid the home rule constraints of the NY Constitution, Article IX). State legislation “impacting especially on a locality is only valid if ‘it can be stated that the statutes in question *serve* a supervening State concern.’” *PBA I*, 89 NY2d at 391 (emphasis in original).

The State lacks a substantial interest in regulating the timing of elections and terms of office of the county executive or county legislators because they are purely local offices that do not touch upon any issue of State concern. In *Baranello v Suffolk County Legislature*, the Second Department stated, “[c]learly, the County Executive is a local officer, and not one whose authority touches upon “a matter of concern to the State.” 126 AD2d at 302; *accord Blass*, 168 AD2d at 57-58 (“the office of County Executive...[is] a purely local office.”). The same is true of county legislators, whose office the Third Department has called a “purely local office under any standard.” *Carey*, 91 AD2d at 66.

The State also cannot plausibly claim that aligning the dates of only some local elections with State and national elections will meet the Legislature’s asserted goals of promoting consistency and improving voter participation when numerous countywide elected offices are exempt from the law as well as all cities, including

New York City, which alone makes up 43% of the State’s population.³ When a law “does not and cannot accomplish the most clearly expressed legislative objective,” and “does not serve to advance” the substantial State concerns, it is a “special law” that “cannot be cured under the substantial State interest exception.” *Greater NY Taxi Ass’n v State*, 21 NY3d at 393-94.

When the Legislature has attempted to interfere with municipal home rule powers under the guise of protection of a significant State interest, New York courts have not hesitated to reject those claims and uphold municipal home rule. *See e.g., Baldwin*, 6 NY2d at 174 (holding that the alteration of ward boundaries is “properly an affair of the municipality”); *Roth v Cuevas*, 158 Misc. 2d 238, 245-246 (Sup. Ct. N.Y. Cnty. 1993), *aff’d*, 197 AD2d 369 (1st Dep’t 1993), *aff’d* 82 NY2d 791 (1993) (upholding challenge to local term limit legislation under Constitutional home rule power and the MHRL because the State has no substantial interest in term limit legislation that would affect New York City public officers only); *Tully*, 119 AD2d at 11-12 (holding that the administration of a

³ *See* https://data.census.gov/profile/New_York_city,_New_York?g=160XX00US3651000 (last accessed on April 21, 2025.) *See also Affronti v Crosson*, 95 NY2d 713, 720 (2001) (holding that census data “is a proper subject of judicial notice because it is taken from public records”).

county health district is a matter of local concern). That same result should occur here.

The presumption of constitutionality that attaches to state statutes applies only to “duly enacted” statutes, with local concerns properly relegated only when there is a substantial degree of State interest in the law. *See Stefanik*, 229 AD3d at 83 (“Duly enacted statutes enjoy a ‘strong presumption of constitutionality’”); *citing White v Cuomo*, 38 NY3d 209, 216 (2022); *see also Matter of Radich v Council of City of Lackawanna*, 93 AD2d at 566, *aff’d*, 61 NY2d 652 (1983) (“So long as there exists a substantial degree of State interest in the subject matter of the legislation, evidence of local concern is of no consequence.”). Those conditions have not been met here, but if a presumption of constitutionality does attach to the Even Year Law, the County and other Plaintiffs-Respondents have rebutted that presumption by showing beyond any reasonable doubt that the law conflicts with Article IX of the Constitution. *Amedure v State*, 232 AD3d 48, 55 (3d Dept 2024).

In support of Rensselaer County’s assertion that it has demonstrated beyond a reasonable doubt that the Even Year Law is not entitled to the presumption of constitutionality, New York State did not treat this matter as one of state concern during the bill process. As can be seen from the discussions on the Assembly and Senate floor, the bills were not passed through the Election Law committee and

they do not amend the NYS Election Law (R 731-733). For instance, the Assembly debate on June 8, 2023 provided as follows:

Mr. Tague: Have any - - any of those counties asked for a change or taken a position for or against this law?

Ms. Paulin: No. Not to my knowledge.

...

Mr. Tague: ...Because of the problems that I have, and I want to ask this question, is why didn't this legislation go through Election Law Committee?

Ms. Paulin: It wasn't ready yet.

Mr. Tague: Well, then maybe we shouldn't bring it to the floor if it's not ready.

Ms. Paulin: We were still making changes to make the bill better.

Mr. Tague: But I think that what we did is we disenfranchised the members of the Election Law Committee that are experienced with Election Law issues, didn't have the opportunity to debate or discuss this in Committee and we just rushed it to Codes and now we've got it on the floor without being able to get the information out to the people that this is going to affect.

Ms. Paulin: We - - we were not prepared yet, and we had to make amendments based on input we got from the Board of Elections and so forth. So the bill wasn't - - was just recently amended.

Mr. Tague: Also, what exactly is the supposed cost-savings to this measure?

Ms. Paulin: As I've state before, we're - - we have not been - - we are not able to assess cost-savings until this process begins.

Mr. Tague: So county BOEs, Board of Elections, must still run special elections and elections to fill vacancies. So those could still - - those could still happen as it appears under this bill, correct?

Ms. Paulin: Yes. We don't change that.

Mr. Tague: So how would that be a cost-savings to county BOEs if you still have to run, for instance, elections for county court or Supreme Court judges?

Ms. Paulin: As I said, those are - - those would require a constitutional amendment and the, you know, my plan - - because, you know, I'm very much in favor of the counties being able to save money as a result of consolidating the elections - - would be to put

forward additional legislation and resolutions that would allow for that. (R 731-733).

As can be seen from the Assembly discussion, the proponents of the bill did not treat this as a matter of State concern, and did not treat it as an Election Law issue when they intentionally failed to pass the bill through the Election Law Committee.

Similarly, on the Senate floor, the debate included the following discourse:

Senator Walczyk: I sit as the ranker on the Elections Committee, but I don't remember this bill ever being spoken about in the Elections Committee. Did it go through the Elections Committee when you sponsored it during the last session?

Senator Skoufis: ...Mr. President, last year the bill didn't advance through committee, that's correct.

...

Senator Walczyk: And did the - - did that advance - - did I just miss that agenda that day? It didn't advance this year through the Elections Committee either, did it?

Senator Skoufis: ...My colleague knows full well how this chamber operates. And towards the end of session bill can be discharged from committees to Rules, which is I believe what happened here.

...

Senator Walczyk: Do you know if the bill passed through the Assembly Elections Committee? Did they talk about it in the committee in the other house, or was it also discharged directly to the floor over there?

Senator Skoufis: ... The bill was not discharged to the floor in the Assembly. I believe the bill as discharged to Rules or another committee in the Assembly. And again, this is a process that my colleague is familiar with. He has a number of local government bills that were discharged out of Local Government and not passed through Local Government just this session.

Senator Walczyk: I appreciate you talking about my bill. When I put one of those local bills in, what I do is I also put in a request-out

slip so that the committee knows that I would like it to move through that committee. Did you put a request-out slip with the Elections Committee on this bill this session?

Senator Skoufis: ...that's not required. I didn't put in a slip. But I certainly put in a request.

...

Senator Walczyk: In three years of work on this bill which will impact local elections, what support or counsel did you receive from local governments?

Senator Skoufis: ...One of the reasons why we got to a D print last year is because we were in significant consultation with NYCOM and the Association of Counties. And while it's true they are not exactly in love with this bill, they provided significant input that was incorporated into versions of this bill.

...

Senator Walczyk: So not receiving support from the Association of Counties or the Conference of Mayors. Did you receive support from the Town Highway Superintendents?

Senator Skoufis: ...I'm not aware of any position they've taken.

...

Senator Walczyk: What about the Association of Towns?

Senator Skoufis: ...I do not believe they've issued a memo of support, if that's you're your getting at....

Senator Walczyk: What about the County Executives?

Senator Skoufis: ...the county executives - - is there an association of county executives? I'm not even sure what you're referring to.

Senator Walczyk: Do you have any support from any county executives that you could voice to the chamber?

Senator Skoufis: ...We reached out to a host of elected officials last year as part of outreach. We incorporated a lot of feedback based on input from elected officials from the associations I mentioned before. And so this suggestion that we're doing this in a vacuum, which I think is what you're suggesting, is off base.

...

Senator Walczyk: Did you receive support or feedback from the Elections Commissioners Association?

Senator Skoufis: ...we did have significant consultation with may elections commissioners at the county as well as the state level, State BOE, and much of their feedback was incorporated into this

final version. I'm curious to note that in this long list of associations and elected officials that you're rattling off, you've left out the most important group, voters.

...

Senator Walczyk: ...But I just want to understand that not only has it not gone through the Elections Committee...there were also no public hearings... (R 1346-1358).

For all of these reasons, the State's thinly-veiled attempt to mask this as a matter of State concern, should be seen for what it is—an attempt to overrun upstate counties that do not vote with the majority, by forcing all local elections to be so far down ballot from the state-wide elections that it waters down the local elections to meaningless byproducts of majority-ruled elections.⁴ Therefore, the Even Year Law is unconstitutional as a result, and Supreme Court's Order should be affirmed.

POINT 4

THE EVEN YEAR LAW VIOLATES ARTICLE IX § 2 BECAUSE IT IS NEITHER A GENERAL LAW NOR A SPECIAL LAW ENACTED ACCORDING TO THE PROCEDURES SET FORTH THEREIN.

Even if the State could act by general law under Article IX § 2 to modify Rensselaer County's § 1 home rule rights, it has not done so because the Even

⁴ A state's attempt to force local governments to move local elections to even-numbered years was studied and reported in the Seattle Times, in an article entitled "Local issues need voters' attention. Keep odd-year elections." The study reported that "[l]ocal concerns deserve their own space in a crowded marketplace of ideas...There's voter drop-off as you go further down the ballot. You go from president to state Supreme Court, it's a 20% drop-off...Voter fatigue is very, very real." <https://www.seattletimes.com/opinion/editorials/local-issues-need-voters-attention-keep-odd-year-elections/>.

Year Law is not a general law, which Supreme Court correctly determined (R 30). Article IX 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.” *NY Const.*, Art. IX, § 3(d)(1). In contrast, a “special law” is 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.” *NY Const.*, art IX, § 3(d)(4). The Even Year Law is not a general law because it does not apply alike to all counties or to all counties other than those wholly included within a city.

The fact that the Even Year Law does not encompass counties that appoint, rather than elect their officials is, on its own, fatal to a finding that it is a general law. This was the conclusion reached by the court in *Nydick v Suffolk County Legislature*, 81 Misc.2d 786 (Sup. Ct. Suffolk Cnty. 1975), *aff’d*, 47 AD2d 241 (2d Dept 1975), interpreting another section of the County Law. In *Nydick*, the court held that County Law § 400(7), which addressed the filling of vacancies in a “county elective office,” was not a general law applicable to all counties precisely because charter counties are permitted under Article IX and the MHRL to provide for the appointment of county officers, leaving the law inapplicable to those counties. *Id.* at 789-91. The State’s effort to distinguish *Nydick*, upon which Supreme Court relied in the present case, was based on that statute relating to the

filling of vacancies, as opposed to elections (State Brief, at 18). County Law § 400(7), like the newly enacted County Law § 400(8) in this case, is directed only at county elective offices, as opposed to all counties. That fact, coupled with the fact that some counties have appointed rather than elected officials, caused the *Nydick* court to find that County Law § 400(7) was not a general law (R 30). *See also Carey*, 91 AD2d at 65; *Resnick v County of Ulster*, 44 NY2d 279, 287 (1978). That same reasoning compels the finding that the Even Year Law is not a general law.

The State prefers to ignore established precedent, instead arguing that the Even Year Law is a general law based on dicta in the Fourth Department case of *Matter of Radich* which dealt with a an amendment to General City Law §2-a(3), relating to mayoral succession upon a vacancy. State Brief, at 16; *Radich*, 93 AD2d at 564. The Court in *Radich* stated that a general law “applies uniformly to a class, entry into which is governed by conformity or compliance with specified conditions related to the subject of the statute.” *Id.* at 564. In *Radich*, this court held that a mayoral succession rule in a state statute was a general law that superseded a contrary city charter provision, because the conditions in the statute created “a recognizable class of cities with special uniformity in the method of electing their chief executive and chief legislative officers.” *Id.* at 565. This hyper-specific circumstance is inapplicable to the matter at issue herein.

The State goes on to argue that as long as the Even Year Law applies to “all county and local offices, to the extent such offices are elective rather than appointed,” then it is a general law (State Brief, at 16). However, that class definition is at odds with the plain language of Article IX § 3 (d), which requires a general law to apply to “all counties” or “all counties other than those wholly included within a city,” without exception.

As noted above, “[i]n construing the language of the Constitution[,] as in construing the language of a statute, the courts ... [must] give to the language used its ordinary meaning.” *Burton v New York State Dept. of Taxation & Fin.*, 25 NY3d 732, 739 (2015), *quoting Matter of Carey v Morton*, 297 NY 361, 366 (1948), *citing Sherill*, 188 NY at 207. Under the plain language and meaning of IX § 3(d), the Even Year Law is not a general law.

However, even if a general law defined under Art IX § 3[d](1) could be predicated on a sub-class that does not apply alike to all counties or other constituent local governments, the Even Year Law still fails because it does not apply to all of the offices within the class claimed to be controlling: all county and local elective offices. The law does not apply to any offices with a three-year term prior to January 1, 2025. It also does not apply to elections for the county sheriff, county clerk, district attorney, family court judge, county court judge, surrogate’s court judge, nor to elections for any city officers. A law cannot be considered a

general law “where attempted ‘classification’ is based on conditions ‘which cannot be recognized as common to a class [;] ... [i]n such case there is in truth no ‘class’ created but merely identifying marks of the locality or localities for which the Legislature is enacting a special law.” *Stapleton v Pinckney*, 293 NY 330, 335 (1944) (internal quotations and citations omitted); *Radich*, 93 AD2d at 564-65 (A special law is one which specifies conditions “which create[] a purported class in name only.”)

The cases cited by the State which deemed certain state laws to be valid general laws are distinguishable from this case on that basis. In *Matter of Harvey v Finnicks*, 88 AD2d 40 (4th Dept 1982), *aff’d sub nom.* In *Matter of Kelley v McGee*, 57 NY2d 522 (1982), this Court held that a statute governing the salary to be paid to district attorneys was a general law, despite the fact that it applied only to counties over a certain population and in which the district attorney position was full-time, because those specified conditions for entry into the class applied uniformly within that class. The same cannot be said of the Even Year Law. The law’s “specified condition” for entry into the class is that the offices be “offices . . . [that] are held on an elective basis” (State Brief, at 16). However, that condition cannot be applied uniformly to all elective offices because multiple countywide elective offices are exempt from the law.

The State relies upon *City of Utica v Zumpano*, a non-charter county case in which a New York State Civil Service law (N.Y. Civ. Serv. Law § 209-a (1)(e)) that applied only to public employers but not private employers was deemed a general law because it applied uniformly to “all public employers.” *City of Utica v Zumpano*, 91 NY2d 964, 965 (1998). In contrast, the Even Year Law does not apply uniformly to its asserted class of all local and county elective offices because multiple county and local elective offices are exempt from the law.

The State tries to circumvent the obvious problem that the Even Year Law does not include all county elective offices by stating that the exempt positions being Constitutionally mandated, does “not transform it from a general law to a special one” (State Brief, at 20). By asking the Court to create a general class of all local and county elective offices, in effect, the Even Year Law affects purely local offices, the handling of which Article IX and the municipal home rule were crafted to divest to local governments. The law thus does precisely what the State claims it does not: “attempt to gerrymander a particular class of elections” rather than “employ[] a straightforward condition (the regulated office must be elective rather than appointed) in order to achieve its objective....” (State Brief, at 19-20.)

In the absence of a general law, the Legislature could only act under Article IX § 2 to adopt a law that alters the timing of elections and terms of office of local government officials through a special law pursuant to a home rule message or

certificate of necessity from the Governor with a legislative supermajority. The State did not do that here, nor does it claim that it did. The Even Year Law was enacted in violation of Article IX § 2 of the Constitution and Supreme Court's Order declaring it unconstitutional should have been upheld by the Appellate Division on that basis.

POINT 5

THE EVEN YEAR LAW WAS ADOPTED IN VIOLATION OF THE LEGISLATIVE EQUIVALENCY DOCTRINE.

The doctrine of legislative equivalency provides that legislation may only be amended or repealed through use of the same procedures that were used to enact it originally. *Torre v County of Nassau*, 86 NY2d 421, 426 (1995); *Gallagher v Regan*, 42 NY2d 230, 234 (1977); *Matter of Moran v La Guardia*, 270 NY 450, 452 (1936) (“To repeal or modify a statute requires a legislative act of equal dignity and import”). The State argues that the doctrine does not apply because it is only relevant “when assessing the effect of the act of one level of government on another enactment passed by the same level of government.” (State Brief, at 37). However, Defendants’ argument fails to consider the Constitutional underpinnings of the MHRL, or the multi-step procedures that were required and followed by the County to effectuate the home rule powers conferred under Article IX and the MHRL.

The MHRL is not an ordinary legislative enactment; it is the implementing legislation that gives effect to the constitutional provisions in Article IX regarding local governments' power to adopt and amend local laws. *See MHRL § 50(1)* (“It is the intention of the legislature by this [statute] to provide for carrying into effect provisions of article nine of the constitution....”). The 1958 and 1963 Amendments to Article IX were adopted using the multi-step process required for amendments under the Constitution which involved adoption by the Legislature and approval by the voters at a general election. The MHRL became effective only when the 1963 amendment to Article IX was approved at the general election.

The County's Charter, which created the positions and terms of office for its county legislators and officers, was adopted using a multi-step process involving the establishment of the Charter by general law, adoption of the Charter by the County as a local law, and approval of the Charter by the voters via referendum at the general election (SR 6). The current Charter provisions providing for four-year terms of office and odd-year elections were approved by the electorate via referendum. Both the MHRL and the County Charter require adoption of a local law and voter referendum to change the term of office of a county elective office (SR 33-65). *See MHRL§ 23(2)(e)* (“a local law shall be subject to mandatory referendum if it, among other things, “changes the term of an elective office”).

In contrast, the Even Year Law was enacted without amending the New York Constitution, or the adoption of any local law or any voter referendum which would have allowed County residents to have a voice concerning when and for how long their local leaders would be elected. The law violates the doctrine of legislative equivalency because it was adopted without using the same or legislatively equivalent procedures to repeal Rensselaer County's odd-year local voting structure (SR 2). As such, the Even Year Law is invalid and void as violative of the doctrine of legislative equivalency and the Appellate Division's Order should be reversed.

CONCLUSION

For the foregoing reasons, Appellant Rensselaer County respectfully requests that the Court of Appeals reverse the Memorandum and Order of the Appellate Division, Fourth Department, declare that the Even Year Law is unconstitutional in violation of Article IX of the New York State Constitution, and enjoin enforcement and/or implementation thereof.

Dated: East Greenbush, New York
June 11, 2025

RENSSELAER COUNTY ATTORNEY



By: Carl J. Kempf, III, Esq.
*Counsel to Rensselaer County Plaintiffs-
Appellants*

99 Troy Road
East Greenbush, NY 12061
Tel: (518) 270-2950
Email: Cjkempf@rensco.com

On the brief: Linda B. Johnson, Esq. & Paul M. Macari, Esq.

TO: All counsel of record via NYSCEF

PRINTING SPECIFICATIONS STATEMENT

Pursuant to the Rules of Practice of the Court of Appeals §500.13, this brief was prepared on a computer. A proportionally spaced, Times New Roman font was used as follows:

Typeface: Times New Roman

Font size: 14

Line spacing: Double (except where otherwise permitted)

The total number of words in this brief, inclusive of all point headings and footnotes, and exclusive of pages containing the Table of Contents, Table of Authorities, proofs of service, Printing Specifications Statement, or any authorized addendum containing statutes, rules or regulations, is 11,536.

Dated: East Greenbush, New York
June 11, 2025

RENSSELAER COUNTY ATTORNEY



By: Carl J. Kempf, III, Esq.
*Counsel to Rensselaer County Plaintiffs-
Appellants*