

To Be Argued By: Alan J. Pierce
Time Requested: 15 Minutes

NEW YORK STATE COURT OF APPEALS

ST. LAWRENCE COUNTY and RENEE COLE, in her
capacity as the duly elected Treasurer for the County of St.
Lawrence,

Plaintiffs-Appellants,

vs.

CITY OF OGDENSBURG, OGDENSBURG CITY SCHOOL
DISTRICT, JEFFREY M. SKELLY, in his official capacity as
Mayor of the City of Ogdensburg, and STEPHEN JELLIE, in
his official capacity as the City Manager for the City of
Ogdensburg,

Defendants-Respondents.

CASE NO. APL-22-00118

BRIEF OF PLAINTIFFS-APPELLANTS

Respectfully:

Counsel of Record:

Stephen D. Button, Esq.
COUNTY ATTORNEY
48 Court Street
Canton, New York 13617
Tel: 315-379-2269
Fax: 315-379-2254

Appellate Counsel:

Alan J. Pierce, Esq.
John L. Murad, Jr., Esq.
HANCOCK ESTABROOK, LLP
100 Madison St., Suite 1800
Syracuse, New York 13202
Tel: 315-565-4546
Fax: 315-565-4600

Dated: December 23, 2022

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 500.1(f) of this Court Plaintiffs St. Lawrence County and Renee Cole are a municipal corporation and an individual respectively and therefore this is not applicable to them.

TABLE OF CONTENTS

	<u>Page</u>
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iv
PRELIMINARY STATEMENT	1
JURISDICTION OF THE APPEAL	5
QUESTIONS PRESENTED.....	6
STATEMENT OF FACTS	6
The City’s Adoption of Local Law 2	6
Commencement Of The Action, Pleadings, And Motion To Dismiss	14
Supreme Court’s Judgment	18
The Third Department’s Split Decision	19
STANDARD OF REVIEW	26

ARGUMENT

POINT I: THE COUNTY IS ENTITLED TO A DECLARATORY JUDGMENT THAT LOCAL LAW 2 IS NOT AUTHORIZED BY THE RPTL	27
A. The Dissent Correctly Found That The City Repealed Its 1994 Law Opting Out Of Article 11.....	27
B. Because The City Is Bound By Article 11 Procedures The City Cannot Unilaterally Require The County To “Make Whole” The City For Uncollected City-Levied Taxes And Shift The Responsibility To Enforce Those Delinquent Taxes To The County.....	29

C. The City Can Act Only Through An Agreement With The County Under RPTL 115031

POINT II: THE COUNTY IS ENTITLED TO A DECLARATORY JUDGMENT THAT LOCAL LAW 2 VIOLATES THE STATE CONSTITUTION AND THE MHRL36

POINT III: THE COUNTY’S REQUEST FOR MANDAMUS AND PROHIBITION ARE VALID, BUT UNNECESSARY BECAUSE OF THE CLAIM FOR DECLARATORY JUDGMENT.....41

CONCLUSION43

PRINTING SPECIFICATIONS STATEMENT44

TABLE OF AUTHORITIES

Page(s)

CASES

Al Rushaid v. Pictet & Cie,
28 NY3d 316 (2016)26

County of Orange v. City of Newburgh,
68 Misc2d 998 (Sup Ct, Orange Co 1972)39

Hamburg v. McBarnette,
195 AD2d 275 (1st Dep’t 1993), *aff’d* 83 NY2d 726 (1994)41

Matter of Harvey v. Finnick,
88 AD2d 40, *aff’d sub nom Kelley v. McGee*, 57 NY2d 522 (1982)29

Leon v. Martinez,
84 NY2d 83 (1994)26

Matter of Rodriguez v. Perales,
86 NY2d 361 (1995)41

Rose v. Eichhorst,
42 NY2d 92 (1977)34

Rozler v. Franger,
61 AD2d 46, *aff’d* 46 NY2d 760 (1978).....29

St. Lawrence Co. v. City of Ogdensburg,
208 AD3d 929 (3d Dep’t 2022).....*passim*

Matter of Town of Irondequoit v. County of Monroe,
36 NY3d 177 (2020)35

STATUTES

Municipal Home Rule Law § 10.....*passim*

Real Property Tax Law Article 11*passim*

RPTL 1302.....8

RPTL 1306.....	8
RPTL 1324.....	8
RPTL 1326.....	8
RPTL 1328.....	8
RPTL 1332.....	8, 9
Town Law § 37(1).....	33

OTHER AUTHORITIES

Britannica Dictionary.....	38
Cambridge Dictionary.....	38
CPLR 3211(a).....	15, 26
CPLR 5601(a).....	5
Merriam–Webster Online Dictionary.....	38
New York Constitution article IX § 2(d).....	<i>passim</i>
NY Const, art IX, § 3(d)(1).....	29
5 Ops Counsel SBEA No. 44 (1975).....	33
7 Ops Counsel SBEA No. 44 (1975).....	32
7 Ops Counsel SBEA Nos. 46, 52 (1979).....	32
2 Ops Counsel SBEA No. 100 (1972).....	39
Ops St Comp, No. 86-76 (1986), 1986 WL 31763.....	39
Report to Governor, Real Property Tax Enforcement in New York State: A System in Need of Reform at 15 (Feb. 28, 1989).....	32

PRELIMINARY STATEMENT

This appeal raises important legal issues of first impression regarding local government taxation in this State. Defendant-Respondent City of Ogdensburg (“the City”) adopted Local Law No. 2 of 2021 (“Local Law 2”), effective January 1, 2022, by which the City *unilaterally* changed who is responsible for the enforcement of City real property taxes. For the first time ever in St. Lawrence County (“the County”) – and in New York State to the best of our knowledge – the City unilaterally delegated its legal responsibility under the Real Property Tax Law (“RPTL”) to enforce and collect the City’s delinquent real property taxes. Instead, Local Law 2 obligates and designates the County to act as the delinquent tax enforcement and collection officer for the City. Moreover, under Local Law 2 the County must now “make whole” the City and pay the City for all uncollected delinquent City taxes upon the City’s presentation of its delinquent taxes in a tax warrant, presumably before the County has an opportunity to collect the City’s delinquent property taxes.

The City does not dispute the intent, effect, novelty, and state-wide precedent of Local Law 2. Thus, in the Appellate Division the City admitted:

1. “The Charter amendments shift the City’s former responsibility of enforcing and collecting delinquent City real property taxes to the County. *** [T]he object of the enactment [is to] ‘require the County to guarantee the payment

of delinquent taxes to the City of Ogdensburg and the Ogdensburg City School District, as well as require the County Treasurer to act as the enforcing officer on all tax delinquencies.’ ” City Memorandum of Law at 1, 5, Doc. #42, EFCV-21-161083;

2. “[t]he County’s primary objections [to Local Law 2] appear to be issues of first impression in this State.” City App Div Brief at 2; and

3. “[U]pholding the City’s Charter Amendments would open the door for cities across the state to enact charter amendments of their own that shift delinquent tax collection and enforcement authority to counties, which would, in turn, cause counties to incur increased administrative and financial costs.” *Id.* at 2-3.

The Complaint of the County and its Treasurer, Plaintiff-Appellant Renee Cole (“Cole”), challenged Local Law 2 as (1) not authorized by the RPTL, and (2) unconstitutional under New York Constitution article IX § 2(d) and violative of the Municipal Home Rule Law (“MHRL”) § 10(5). In a 3-2 Memorandum and Order entered on August 11, 2022 (“Order”) the Appellate Division, Third Department affirmed a Decision, Order, and Judgment (“Judgment”) of Hon. Mary Farley entered on December 10, 2021 declaring Local Law 2 valid and enforceable. *St. Lawrence Co. v. City of Ogdensburg*, 208 AD3d 929 (3d Dep’t 2022).

On the first issue of the RPTL the Appellate Division majority and dissent

differed based on the continued validity of the City’s 1994 local law opting out of the newly enacted RPLT article 11. The majority found that since the City had opted out it was authorized by RPTL articles 9 and 11 to simply amend its charter to unilaterally impose an obligation on the County, rather than obtain an agreement with the County under RPTL 1150, to “make whole” the City’s tax delinquencies and then collect them in enforcement actions.

The two-judge dissent written by Presiding Justice Garry noted that in enacting Local Law 2 the City “repealed its [1994] opt-out *** [and a]s a result, the City became bound by RPTL article 11 procedure ***.” 208 AD3d at 934. Therefore, the dissent found that RPTL article 9 is irrelevant and the City could not unilaterally force the County to “make whole” the City and enforce and collect the City’s tax delinquencies by simply amending its charter, but was required to act under an agreement with the County under RPTL 1150.

On the second issue, the majority summarily concluded that Local Law 2 does not violate New York Constitution article IX § 2(d) or MHRL § 10(5) because “[t]his outcome is neither an expansion nor impairment of the County’s powers but simply a consequence of the statutory structure outlined in RPTL articles 9 and 11. *Id.* at 931-932. In contrast, the dissenters engaged in a detailed analysis and found that Local Law 2 violates article IX § 2(d) and MHRL § 10(5) because with no statutory definition the common dictionary definition of “impair”

applies and Local Law 2 “impairs [the County’s] power to fully control its own affairs, such as its budget and its workforce, by weakening that power ***.” *Id.* at 934-937.

The only part of Local Law 2 that is not at issue here is the requirement that the County now collect its own County property taxes from County residents who live in the City and no longer expect to be “made whole” by the City for any delinquency in County real property taxes. What is at issue is the ability of the City – and almost every city in New York – to unilaterally require their resident counties, through the passage of a city charter amendment without any consent or agreement of the county, to collect every cities’ delinquent taxes and “make whole” those cities for any delinquent and unpaid city taxes when the annual warrant is tendered.

As noted, this is an issue of first impression in this State and one that threatens to completely shift city tax enforcement to counties with a tremendous loss of powers and increase in the counties’ costs and personnel, thereby “impairing” the power of the counties’ ability to directly manage their affairs, their property, and effectively manage their budgets and impose their individual real property tax levies. In short, the decisions below are unprecedented and dangerous, must be reversed, and Local Law 2 declared invalid.

JURISDICTION OF THE APPEAL

This Court has jurisdiction over this appeal taken as of right under CPLR 5601(a) because this action originated in the Supreme Court, the order of the Appellate Division finally determined the action, and there was a dissent in the Appellate Division by two justices on the same question of law in favor of Appellants.

The issues presented in this Brief were raised and preserved in the courts below. Specifically,

1. The County's argument that Local Law 2 is not authorized by the RPTL, and is unconstitutional under New York Constitution article IX § 2(d) and violative of MHRL § 10(5) was raised and preserved in the trial court (R31-52, 138-142) and the Appellate Division (*see* 208 AD3d at 929-930, 935-936);

2. The County's argument that it is entitled to a declaratory judgment is raised and preserved in the trial court (R32, 137-139) and the Appellate Division (*see* 208 AD3d at 929-930); and

3. The County's argument that it is entitled to Article 78 relief in the form of mandamus or probation was preserved in the County's Appellate Division Appellants' Brief at 27-34, and was raised in the trial court in the County's Complaint and response to the City's motion to dismiss. (R43-48, 142-146)

QUESTIONS PRESENTED

1. Does Local Law 2 violate the RPTL?

The majority in the Appellate Division answered “No;” the dissent answered “Yes.”

2. Does Local Law 2 violate New York Constitution article IX § 2(d) and MHRL § 10(5)?

The majority in the Appellate Division answered “No;” the dissent answered “Yes.”

3. Is this matter ripe for mandamus, prohibition, or a preliminary or permanent injunction regarding Local Law 2?

The Appellate Division did not answer this question.

STATEMENT OF FACTS

The City’s Adoption of Local Law 2

For decades the City has operated as a second-class city under a charter form of government. (R35-36) As such the City was permitted by RPTL 1104 to opt out of 1993 amendments to RPTL article 11 procedures and collect its own real property taxes, establishing a mechanism by which delinquent taxes could be recovered through enforcement actions. The City opted out of RPTL article 11 in 1994 by enacting Local Law No. 3–1994. (R36)

The County is a non-charter county acting under the various rules associated with the New York County Law. For decades, the County has acted as the real property tax enforcement entity associated with the various towns in the County under RPTL article 11 because towns do not have the ability to enforce a tax delinquency lien or foreclosure actions. (R36-37) Separately, pursuant to Local Law No. 7 for the Year 1977, and pursuant to Resolution 215 for the year 1984 – establishing the date for relay of delinquent village taxes – the County voluntarily undertook the responsibility to act as the tax enforcement and collection entity for all villages in the County. (R37, 63-65)

At all times since the enactment of the RPTL until the effective date of Local Law 2 of January 1, 2022 the City acted as the collection and enforcement tax district with respect to all real property taxes imposed upon the residents of the City – the taxes of the City, the School District, and the County pursuant to the City’s Charter and RPTL articles 9 and 13. (R37) At no time prior to January 1, 2022 has the County acted as a real property tax collecting entity or enforcement entity on behalf of the City, which is the only city in the County.

Thus, prior to the adoption of Local Law 2 whenever a taxpayer failed to remit their real property taxes to the City for the School District or the County, the City would assume the debt after the issuance of a warrant and the City was obligated to pay over the delinquent amount to the County and the School District

based on a provision of the City Charter and pursuant to RPTL article 13. This provision is referred to as the ‘make whole’ provision, permitting the City to become subrogated to the right of the County and the School District to enforce tax collections, which was incorporated in the City Charter under section C-83. (R37, 66 [City Charter § C-83])

In 2020 a review of the County ledgers determined that the City had failed to remit tax delinquencies to the County following the submission of the warrant to the City Tax Collector. Thus, the City was in arrears to the County for several years, amounting to a debt by the City to the County in the amount of approximately \$825,000. (*Id.*) By way of City Bill # 6 adopted on February 22, 2021, the City acknowledged and reaffirmed the debt with a pronouncement that repayment would be made within 18 months. (R39, 67)

In February 2021 negotiations related to a potential agreement on sales tax sharing between the City and the County broke down. (R32) During the sales tax negotiations the City submitted a list of demands of services currently provided by the City that it sought to turnover to the County. In short, it demanded that the County provide it with the “same services” as towns. (R39) Namely, the City demanded the County assume 911 Dispatching Services, real property tax collections and enforcements, police responsibility by the Sheriff within the City jurisdiction, and assessing functions, while ignoring the fact that the City has the

statutory authority to perform these services that the towns do not possess. (R39, 58-60) In short, the City sought to keep the benefits of being a city (e.g.//sales tax pre-emption authority, home rule authority, etc.) while simultaneously offloading its services and responsibilities to the County by suggesting it be treated as a town or village (R39) in an effort to reduce the City's financial obligations. (R32, 58-60)

On or about May 18, 2021, the County received a request from the City that the County assume the real property tax collections and enforcement from the City pursuant to a voluntary agreement. (R40) On May 24, 2021, City Manager Jellie communicated to the County that the sales tax issue had direct bearing on the real property tax collection issue and urged a resolution. (*Id.*) This request was relayed to the County Board of Legislators ("Board") Consolidation Committee on June 11, 2021. (*Id.*)

On July 13, 2021, the City Manager inquired as to the status of the City's request and was informed that the Board had taken no formal action on the request by the City. On that same date, the County received a letter from the City's outside counsel with a demand that the County voluntarily assume the responsibility of real property tax collections and enforcement within the City tax district with respect to delinquent County taxes as well as for delinquent City and School District taxes. (R40, 76-77)

On July 27, 2021, the County advised the City that (1) the County was prepared to collect and enforce its own taxes, but was unwilling to assume the responsibility for the City and School District taxes without some consideration; and (2) that even if the County were agreeable to some voluntary transfer of function, the date desired by the City of January 1, 2022, was simply impossible given all of the processes required to be converted in order to carry out the functions. (R40-41) On August 10, 2021, the City informed the County that as a result of a lack of resolution on the issue, the City would unilaterally move forward to amend its charter to require the County to collect its own taxes and enforce its own delinquencies within the City tax district effective January 1, 2022. The City's communication made no mention of the City's plan to unilaterally force the County to collect and enforce the City and School District's delinquent taxes within the city tax district. (R41)

On or about August 26, 2021, a meeting was held between the City Manager, the County Administrator, the County Treasurer, and the County Director of Real Property where it was agreed that the City would cease collections and enforcement of the County's real property taxes effective January 1, 2022, and that the County and City would thereafter work on two separate real property tax collection and enforcement processes. Again, during the course of this meeting no

mention was made by the City Manager that the City intended to shift the delinquent City and School District taxes to the County. (R41, 173)

On September 8, 2021, the City advised the County that it was moving forward with planned amendments to their Charter to not only cease collections, but to also seek to force the County to act as the tax enforcement officer for both the City and School District with a “make whole” provision imposing upon the County the responsibility to pay the City for all tax delinquencies turned over to the County under the City’s tax warrant. The County estimated that the annual amount of this “make whole” warrant would require the County to pay the City approximately \$1.6 million each year. Moreover, it would require the County to assume all of the work associated with the enforcement and collections on the delinquencies, significantly impacting the County Treasurer as the tax collection officer, the County Real Property Director who is responsible for the preparation and mailing of the annual tax billing statements, and the County Attorney, the person responsible for the legal actions as part of delinquent tax enforcement measures on behalf of the County Treasurer. (R41)

On or about September 13, 2021, the City held a meeting where a Resolution was adopted introducing Local Law 2 and providing for public notice and hearing on amendments to the City Charter that deleted Article XVII, § C-80, Article XVII, § C-81, Article XVII, § C-83, and Article VI § 199-43 in their entirety.

(R42) In the place of the deleted provisions, Local Law 2 shifted all real property tax enforcement to the County and purported to adopt the RPTL enforcement measures under Article 11. (*Id.*)

Specifically, Local Law 2 states in pertinent part:

SECTION 2. Article XVII, § C-80 of the City Charter of the City of Ogdensburg entitled Recovery of unpaid taxes shall be deleted in its entirety and replaced with the following:

§ C-80 Unpaid Taxes. The County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the Real Property Tax Law.

SECTION 3. Article XVII, § C-81 of the City Charter of the City of Ogdensburg entitled Sale of Property for Nonpayment of Tax shall be deleted in its entirety and replaced with the following:

§ C-81 Unpaid Taxes. In case any City taxes remain unpaid or uncollected upon the thirty-first day of December succeeding the delivery of the warrant, the City Comptroller shall make and deliver to the County Treasurer or county officer performing the functions of a County Treasurer an account of taxes paid and unpaid, subscribed and affirmed as true. The County Treasurer shall, if satisfied that such account is correct, credit the City with the amount of such unpaid delinquent taxes. (*italics added*).

SECTION 5. Article VI, § 199-43 of the Administrative Regulations of the City of Ogdensburg entitled Collection to be Enforced Pursuant to the City Charter shall be deleted in its entirety. (R56-57)

On September 17, 2021, the County informed the City that it was prepared to move forward with the collection of its own taxes, but that the City lacked the

legal authority to unilaterally impose the City’s enforcement and collection obligations and requirements on the County pursuant to the State Constitution and State law. (R43, 48) On September 27, 2021, the City Council voted unanimously to adopt Local Law 2, effective January 1, 2022. (R78-79) Among the provisions deleted from the City Charter in Local Law 2 were (1) Article VI, § 199-43 of the Administrative Regulations of the City of Ogdensburg and § C–80, which were adopted under Local Law No. 3-1994 in which the City opted out of RPTL article 11 in 1994. (R43, 56-57)

Local Law 3-1994 Section 1 and Article VI, § 199-43 of the Administrative Regulations of the City, adopted as part of Local Law 3-1994 and entitled “Collection of Delinquent Real Property Taxes [Adopted 6-27-1994 by L.L. No. 3-1994],” provided identical language as follows:

Pursuant to § 6 of Chapter 602 of the Laws of 1993, as signed into law by Governor Mario Cuomo on August 4, 1993, the City of Ogdensburg hereby acts by local law, not subject to referendum, to provide that the collection of property taxes shall continue to be enforced pursuant to the provisions of the City Charter of the City of Ogdensburg, as may from time to time be amended.

The County thereafter attempted to engage in a good faith effort to resolve the issue. The City, however, insisted that any resolution requiring the County to assume the real property tax collection and enforcement would be without any financial consideration. (R33)

Commencement Of The Action, Pleadings, And Motion To Dismiss

On November 19, 2021 the County commenced this action by a combined Petition/Complaint (“Complaint”) and Order to Show Cause seeking (1) a declaratory judgment that Local Law 2 is void and unenforceable as unconstitutional under article IX § 2(d) and in violation of the MHRL § 10(5) and the RPTL; (2) a writ of prohibition and mandamus against the City regarding enforcement of Local Law 2; and (3) and a Preliminary Injunction and Temporary Restraining Order (TRO) enjoining the City of Ogdensburg from enforcement of Local Law 2. (R31-52) Ten exhibits were attached in support of the Petition. (R53-84) An Order to Show Cause was signed by Judge Farley requiring that the City and District show cause why a Judgement should not be issued granting the relief requested in the Complaint at a hearing to be held virtually on December 10, 2021. (R85-86)

On December 2, 2021 the School District filed an Answer and Cross-Claims against the City and a supporting Memorandum of Law. (R96-112) The First Cross-Claim sought a declaratory judgment against the City that Local Law 2 “is unlawful and ultra vires, and that the City is obligated to serve as the primary enforcing agency of any delinquencies, and the guarantor of such delinquencies, on behalf of the city school district, with respect to all properties located within the geographical boundaries of the City.” (R107, 109) The School District supported

the County's request for a preliminary injunction preventing the City from enforcing Local Law 2, asserting that the City's transfer to the County of its obligations to enforce and collect on real property tax delinquencies on properties located within the City violates the procedure set forth in the RPTL for the enforcement of school tax delinquencies, and requested nullification of the law in its entirety.

On December 3rd the City filed a pre-answer motion to dismiss (R113-134) the Complaint for failure to state a cause of action under CPLR 3211(a)(7) and for lack of subject matter jurisdiction under CPLR 3211(a)(2). In support of the motion the City submitted the Affirmation of Attorney Nicholas Cortese and two exhibits (the Pre-Amendment Charter Sections and Local Law 2). Attorney Cortese's Affirmation (R115-123) admitted that Local Law 2 completely changes the tax collection and enforcement provisions of the current law between the City and the County as alleged by the County. Specifically, counsel admitted that under the City Charter prior to the adoption of Local Law 2:

1. the City was responsible for collecting its own taxes, as well as taxes levied by the County;
2. the City was obligated to enforce and collect delinquent City and County taxes by placing tax liens on delinquent properties within the City and conducting tax foreclosure sales to recoup the unpaid taxes;

3. in order to ensure the priority of its tax liens, the City had a practice of making the County whole, or crediting the County for unpaid County taxes within the City whether or not the City was able to actually collect the taxes; and

4. the City also collected and enforced delinquent property taxes on behalf of the School District pursuant to RPTL Article 13. (R116)

He asserted that “over time the tax collection and enforcement dynamic set forth in the former Charter became increasingly economically disadvantageous to the City,” which prompted the City to introduce and adopt Local Law 2 “in order to absolve the City of its Charter-based tax enforcement authority *** [and] shift such authority to the County.” (R116-117) Accordingly, he asserted that the City repealed provisions of the old Charter “and replaced it with the requirement that ‘[t]he County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the [RPTL].’” (R117) He also noted that Local Law 2 “borrows language from RPTL 936 and requires the County to make the City whole for delinquent taxes the County is unable to collect.” (R117)

Counsel also noted that Local Law 2 makes “no explicit reference to the collection or enforcement of School District taxes for properties located within the City” and therefore Local Law 2 “do[es] not indicate that the County will bear any tax enforcement authority [for] *** the enforcement of tax delinquencies for city

school districts” like the School District. (R117) He asserted that this would be addressed at a soon to be held City Council meeting in mid-January. (R118)

On December 8th the County submitted an Affirmation of County Attorney Stephen Button, and the Affidavits of Cole, Emily Wilson, and Bruce Green in opposition to the motion to dismiss and in support of the County’s application for a declaratory judgment and preliminary injunction enjoining the City from enforcing Local Law 2. Attorney Button’s Affirmation contained factual information and presented the County’s Memorandum of Law. (R135-154) The Cole, Wilson, and Green Affidavits noted (1) that they were “surprised” by the adoption of Local Law 2 because prior thereto “the County was advised by City Manager [] Jellie that the City intended to continue to handle its own real property tax collections” and “[a]t no time prior to the introduction of the local law did the City *** inform [Cole] that they intended to transfer all responsibilities for real property tax collections and enforcement of the City and City School District taxes to the County” (R164); and (2) the damages and costs, including significant time expended to date, given the urgent need to solve the problems by Local Law 2 for the County to be ready for tax collection for the City starting on January 2, 2022. (R163-176)

Supreme Court’s Judgment

Justice Farley held a virtual oral argument on December 10. (R16-30) On the same day she filed her Judgment dismissing the Petition. (R6-14) At the beginning, Justice Farley stated the agreement of the parties that “the County may be required to collect and enforce County taxes on real property located within the City.” (R7) She proceeded to reject the constitutional and statutory challenges to Local Law 2. First, she rejected the County’s constitutional argument based on article IX, § 2(d) and MHRL § 10(5) because she agreed with the City that “[o]n its face, however, the Local Law does not impair any powers of the County. To the contrary, the Local Law increases the County's tax enforcement powers with respect to delinquent City taxes.” (R9) (Emphasis in original) She also found that “shifting the administrative burdens and associated costs to the County for enforcement of City taxes” at most “impairs” County operations,” not its “powers” as required by the Constitution. (R9)

Second, she rejected the argument that Local Law 2 violates the RPTL because RPTL 1102(6)(b) defines a “tax district” to mean “a city, other than a city for which the county enforces delinquent taxes pursuant to the city charter.”

(Emphasis supplied) Justice Farley found that

[b]y making specific reference to enforcement of delinquent taxes “pursuant to the city charter,” this section implicitly sanctions a city charter which calls for enforcement of delinquent taxes by a county –

the precise situation now before this Court. To presume otherwise would render RPTL 1102(6)(b) either superfluous or meaningless. This directly contradicts a basic canon of statutory construction ***.

(R11)

Accordingly, Justice Farley declared Local Law 2 sections 2, 3, 4, and 6 to be valid and enforceable. She also granted the School District's oral motion at the hearing and issued a preliminary injunction against the City taking any new or different action with respect to School District taxes until the City Council heard and took final action with respect to the proposed amendment to the City Charter regarding the School District taxes. (R11-14)

The Third Department's Split Decision

The County immediately appealed and moved, *inter alia*, for a preference in hearing the appeal. In an Order filed on January 14, 2022 the Third Department granted a preference and set the appeal down for argument during the May 2022 Term of the Court.

In a 3-2 Order issued in August 2022 the Appellate Division affirmed. The majority, in an opinion by Justice Lynch, joined in by Justices Aarons and Reynolds Fitzgerald, found Local Law 2 valid and enforceable. First, they concluded that it was authorized under Articles 9 and 11 of the RPTL.

RPTL article 11, adopted in 1993, is designated the "Uniform Delinquent Tax Enforcement Act" and outlines a statutory scheme for the enforcement and collection of delinquent real property taxes at the

local level *** . The provisions of RPTL article 11 apply to, among other things, all counties and cities in the state “and shall supersede any inconsistent general, special or local law” (RPTL 1104[1]), except where a county or city opted out pursuant to RPTL 1104(2). As pertinent here, RPTL 1104(2) authorized a city, which was enforcing the collection of delinquent taxes pursuant to its charter prior to January 1, 1993, to continue such enforcement provided it adopted a local law, no later than July 1, 1994, opting to do so. The City did so pursuant to City of Ogdensburg Local Law No. 3–1994. As a result, “the collection of taxes in such *** [C]ity *** shall continue to be enforced pursuant to such charter *** as such charter *** may from time to time be amended ” (RPTL 1104[2] [emphasis added]).

Under RPTL article 11, the “[e]nforcing officer” refers to the “officer of any tax district empowered or charged by law to enforce the collection of tax liens on real property” (RPTL 1102[3]). Pertinent here, “where no law provides otherwise, the enforcing officer shall be *** (ii) in a city which is a tax district, the official so empowered or charged by the city charter” (RPTL 1102[3][a]). Correspondingly, a “[t]ax district” includes a county or “a city, other than a city for which the county enforces delinquent taxes pursuant to the city charter” (RPTL 1102[6][a], [b]). Read together, as between a county and a city, the county treasurer serves as the enforcement officer unless the city charter provides otherwise.

By adopting Local Law No. 2, the City amended its charter by deleting the provisions requiring the City to enforce the payment of delinquent taxes, leaving the County with that obligation under RPTL article 11. The City was statutorily authorized to do so pursuant to RPTL 1104(2), which recognizes that a city charter “may from time to time be amended.” As a consequence of the amendment, the City is no longer a “tax district” for purposes of RPTL article 11 (*see* RPTL 1102[6]) and the County treasurer becomes the enforcing officer (*see* RPTL 1102[3][a][i]). As such, the County treasurer is statutorily

required to credit the City for unpaid delinquent taxes upon the return at the end of the fiscal year (*see* RPTL 936).

St. Lawrence, 208 AD3d 930-932.

Second, the majority brushed aside the County’s challenge to Local Law 2 as violative of article IX § 2(d) of the State Constitution and MHRL § 10(5) in one sentence: “This outcome is neither an expansion nor impairment of the County’s powers but simply a consequence of the statutory structure outlined in RPTL articles 9 and 11.” *Id.* at 932.

Presiding Justice Garry’s dissent, joined in by Justice Ceresia, identified a fundamental flaw in the majority’s analysis, which was predicated on the City opting out of RPTL article 11 by the City’s Local Law No. 3–1994. In adopting Local Law 2, the City

repealed its opt-out provision (***) Local Law No. 2–2021 § 5 [deleting Administrative Regulations of the City of Ogdensburg § 199–43, adopted by Local Law No. 3–1994]; *see also* *** § 2 [deleting City of Ogdensburg Charter § C–80] ***. As a result, the City became bound by RPTL article 11 procedure (*see* RPTL 1104[1]; 1106[1]). RPTL article 11 is now of uniform impact on the City and all other local governments that have not opted out of its purview and thus operates as a general law ***.

St. Lawrence, 208 AD3d at 934.

As a result of this critical recognition and distinction, the dissent wrote:

[T]he majority here errs in relying upon and applying the provisions set forth in RPTL article 9; these provisions were not

discussed by the parties in this manner because they do not govern this dispute. Although it is true that, pursuant to RPTL 936, counties must “guarantee” and credit a collecting officer with “certain ‘unpaid delinquent taxes’ ” *** , the warrant subject to RPTL article 9 procedure is a county warrant (see RPTL 904[1]). Counties generally have no authority to assess real property – that power has traditionally been delegated to cities, towns and villages ***.

Here, in contrast, it is the City Council of *** [the] City *** that levies the annual real property tax for the City budget ***. It is the City Manager – not any official of [the] *** County (compare RPTL 900[1]; 904[1]) – who signs the tax warrant directing the City Comptroller to collect City taxes (see City of Ogdensburg Charter § C-71). This levy is wholly in line with the City’s general powers (see General City Law § 20[4]; Municipal Home Rule Law § 10[1][ii][a][8]). Thus, we disagree that RPTL 936 requires the County to make the City whole for uncollected City-levied taxes and therefore operates to shift the responsibility to enforce those delinquent taxes to the County. For the reasons set forth below, we find that the City has erred in attempting to unilaterally impose an obligation upon the County to enforce and guarantee payment of the City tax levy.

St. Lawrence, 208 AD3d at 932-933 (footnote omitted).

Citing this Court’s numerous and well-established precedents, the dissent wrote:

“[L]ocal governments ‘have only the lawmaking powers the Legislature confers on them’ ” *** . Regarded as “[p]erhaps the most significant delegation of state legislative authority” *** N.Y. Constitution, article IX, § 2 “empower[s] municipalities to legislate in a wide range of matters relating to local concern” *** . The Municipal Home Rule Law was enacted to implement the foregoing article *** and both sources of law grant similar powers and establish similar

limitations on those powers. Generally, “[s]o long as local legislation is not inconsistent with the [NY] Constitution or any general law, localities may adopt local laws both with respect to their ‘property, affairs or government’ (N.Y. Const, art IX, § 2[c][i]; see Municipal Home Rule Law § 10[1][i]), and with respect to other enumerated subjects, except ‘to the extent that the [L]egislature shall restrict the adoption of such a local law’ ” *** . One such subject is the “[t]he levy, collection and administration of local taxes authorized by the [L]egislature” (N.Y. Const, art IX, § 2[c][ii][8]; see Municipal Home Rule Law § 10[1][ii][a][8]-[9]).

St. Lawrence, 208 AD3d at 933-934.

Because the City repealed Local Law 3-1994 and its Administrative Regulations “opting out” of RPTL Article 11 in Local Law 2 the dissent agreed with the County, and concluded that the City was now bound by “the procedure set forth in RPTL article 11” including RPTL 1150. *Id.* at 935. In that statute, the Legislature

has expressly authorized “tax districts *** to make agreements with one another with respect to any parcel of real property upon which they respectively own tax liens in regard to the disposition of such liens, of the parcel of real property subject thereto and of the avails thereof” (RPTL 1150[1]). This provision has been used to mutually accomplish a variety of shared goals regarding delinquent real property taxes *** , specifically including the establishment of the exact sort of arrangement that, here, the City unilaterally adopted and imposed upon the County following a breakdown of negotiations for same ***. *** The idea that arrangements like the one presented here must be reached mutually is not unique to RPTL article 11 ***. In our view, the City’s circumvention of RPTL 1150 renders Local Law

No. 2 inconsistent with a general law, and it is therefore violative of the N.Y. Constitution and the Municipal Home Rule Law.

St. Lawrence, 208 AD3d at 935-936, citing RPTL 578(2)(a), 972(1), and 1442(1)(c).

The dissent also agreed with the County’s specific constitutional argument “that the enactment ‘impair[s] the powers’ of the County and thereby violates” the State Constitution, article IX, § 2(d) and MHRL § 10(5). *Id.* at 936. Applying the rules of statutory construction in McKinney’s Cons Laws of NY, Book 1, Statutes, the dissent engaged in a comprehensive analysis of the issue and wrote:

[t]he term “impair” is not defined in either source of law *** , but impairment of a power is referenced elsewhere in the same section and article of the N.Y. Constitution, and it is to be presumed that the word “impair” is used in the same sense throughout ***. The term “impair” should be given its own meaning and not be rejected as mere superfluity ***. The term must thus mean something other than to “repeal[], diminish[] ... or suspend[]” (N.Y. Const, art IX, § 2[b][1]) or to “restrict” (N.Y. Const, art IX, § 3[a]). Guided by dictionary definitions *** and the purpose and spirit of the laws *** we would find that to impair a power within the meaning of *** article IX, § 2(d) and *** § 10(5) is to weaken that power ***.

It appears that Supreme Court accepted the view that Local Law No. 2 did not impair any power of the County because it did not diminish, or take away, any such power – the court holding that, “[t]o the contrary, [Local Law No. 2] increases the County’s tax enforcement powers with respect to delinquent City taxes.” Certainly, the City would have no authority to increase the County’s taxation power; the delegation of any part of the state’s taxation power may

only come expressly from the state ***. What is increased by Local Law No. 2 are the obligations that the County must fulfill with its own revenue and resources. The unilateral imposition of an unfunded mandate onto the County does more than merely “relate to [the County's] *** affairs” *** or, as Supreme Court stated, “inconvenience[]” its “operations.”

As the County asserts, Local Law No. 2 impairs its power to fully control its own affairs, such as its budget and its workforce, by weakening that power *** . This is perhaps most clear with respect to the make-whole provision of Local Law No. 2 § 3, which “impair[s]” the County's power by “requir[ing] the [C]ounty to guarantee [the payment of City-levied taxes] *** even though it is not required to do so under the [RPTL]” *** . The administrative guidance states that a city may not lawfully amend its charter “to require [a] county to .*** enforce taxes (either the city or the county-state levy) according to procedures established by the city” (2 Ops Counsel SBEA No. 100 [1972]).

St. Lawrence, 208 AD3d at 936-937 (citing Merriam–Webster Online Dictionary, Cambridge Dictionary, Oxford Learner's Dictionaries, and Britannica Dictionary for definitions of the work “impair”).

The County timely appealed as of right from the Order based on the two-judge dissent on the same question of law. (R224) Following a discontinued jurisdictional inquiry on finality, this appeal is now presented.

STANDARD OF REVIEW

Although both the County and the City sought declaratory judgment and the County submits the cases is ripe for declaratory relief it is important to note that procedurally the Judgment and Third Department Order were issued in the context of the City's pre-answer motion to dismiss "pursuant to CPLR 3211(a)(7) for failure to state a cause of action." (R113) On such a motion the Court must "accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Leon v. Martinez*, 84 NY2d 83, 87-88 (1994); *see also Al Rushaid v. Pictet & Cie*, 28 NY3d 316, 327 (2016) (the Court must accord the Complaint a liberal construction, accepting the allegations contained therein as true and affording plaintiff the benefit of every favorable inference.).

ARGUMENT

POINT I

THE COUNTY IS ENTITLED TO A DECLARATORY JUDGMENT THAT LOCAL LAW 2 IS NOT AUTHORIZED BY THE RPTL

A. The Dissent Correctly Found That The City Repealed Its 1994 Law Opting Out Of Article 11

With respect to the validity of Local Law 2 under the RPTL the difference between the majority and the dissent was the continuing validity and effectiveness of the City’s 1994 law opting out of RPTL article 11. There is no doubt and no disagreement between the majority and dissent that

RPTL article 11, adopted in 1993, is designated the “Uniform Delinquent Tax Enforcement Act” and outlines a statutory scheme for the enforcement and collection of delinquent real property taxes at the local level *** . The provisions of RPTL article 11 apply to, among other things, all counties and cities in the state “and shall supersede any inconsistent general, special or local law” (RPTL 1104[1]), *except where a county or city opted out pursuant to RPTL 1104(2)*. As pertinent here, RPTL 1104(2) authorized a city, which was enforcing the collection of delinquent taxes pursuant to its charter prior to January 1, 1993, to continue such enforcement provided it adopted a local law, no later than July 1, 1994, opting to do so. *The City did so pursuant to City of Ogdensburg Local Law No. 3–1994*. As a result, “the collection of taxes in such *** [C]ity *** shall continue to be enforced pursuant to such charter *** as such charter *** may from time to time be amended” (RPTL 1104[2] [emphasis added]).

The dissent noted, however, that in adopting Local Law 2 the City

repealed its opt-out provision (***) Local Law No. 2–2021 § 5 [deleting Administrative Regulations of the City of Ogdensburg § 199–43, adopted by Local Law No. 3–1994]; *see also* *** § 2 [deleting City of Ogdensburg Charter § C–80] ***. As a result, the City became bound by RPTL article 11 procedure (*see* RPTL 1104[1]; 1106[1]). RPTL article 11 is now of uniform impact on the City and all other local governments that have not opted out of its purview and thus operates as a general law ***. As a result, the City became bound by RPTL article 11 procedure (*see* RPTL 1104 [1]; 1106 [1]). RPTL article 11 is now of uniform impact on the City and all other local governments that have not opted out of its purview and thus operates as a general law ***.¹

St. Lawrence, 208 AD3d at 934, citing *Matter of Radich v. Council of City of Lackawanna*, 93 AD2d 559, 564 (4th Dep’t) (“A ‘general law’ is defined as ‘[a] law which in terms and in effect applies alike to all counties *** all cities, all

¹ Section 5 of Local Law 2 states: “Article VI, § 199-43 of the Administrative Regulations of the City of Ogdensburg entitled Collection to be Enforced Pursuant to the City Charter shall be deleted in its entirety.” (R134) *See supra* at p 13.

Section 2 provides: “Article XVII, § C-80 of the City Charter of the City of Ogdensburg entitled Recovery of unpaid taxes shall be deleted in its entirety and replaced with the following: § C-80 Unpaid Taxes. The County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the Real Property Tax Law.” (R133) The prior § C-80 stated in relevant part:

§ C-80. Recovery of unpaid taxes. [Amended 9-10-2007 by L.L. No. 3-2007]

All taxes and assessments charged upon real estate, including those for local improvements and other charges, shall be a lien upon the same from the time of completing the tax roll therefor, and such lien shall be prior and superior to all other liens and encumbrances. All such taxes, assessments and other charges may also be recovered in an action brought by the City against any person liable therefor ***. (Emphasis supplied)

towns or all villages.’ (NY Const, art IX, §3, subd [d], par [1].) An act is deemed general if it applies uniformly to a class, entry into which is governed by conformity or compliance with specified conditions related to the subject of the statute ***.”); *Matter of Harvey v. Finnick*, 88 AD2d 40, 47 (4th Dep’t) (“section 183-a of the Judiciary Law is a general law within the constitutional provisions” and is constitutional), *aff’d sub nom Kelley v. McGee*, 57 NY2d 522, 538 fn 13 (1982); *Rozler v. Franger*, 61 AD2d 46, 51-52 (4th Dep’t) (“the Village Law is a general law”), *aff’d “on the opinion by Mr. Justice Stewart F. Hancock, Jr., at the Appellate Division”* 46 NY2d 760 (1978).

This is a fundamental flaw in the majority’s analysis, which was predicated on the City opting out of RPTL article 11 by Local Law No. 3–1994 and that opt-out remaining effective. The majority did not respond to this critical distinction in the dissent’s analysis.

B. Because The City Is Bound By Article 11 Procedures The City Cannot Unilaterally Require The County To “Make Whole” The City For Uncollected City-Levied Taxes And Shift The Responsibility To Enforce Those Delinquent Taxes To The County

Accordingly, the majority’s analysis that under the City Charter as amended by Local Law 2 the “enforcing officer” became the County Treasurer under RPTL 1102(3) and 1102(6)(a) and (b) is misplaced. *St. Lawrence*, 208 AD3d at 931 (“Read together, as between a county and a city, the county treasurer serves as the enforcement officer unless the city charter provides otherwise.”). Contrary to the

majority’s opinion, since the County Treasurer does not become the “enforcing officer” and the City remains a “tax district” under RPTL 1102(6) the County Treasurer is not statutorily required to credit the City for unpaid delinquent taxes upon the return at the end of the fiscal year under RPTL 936. *Id.* at 930-932.

The dissent correctly explained this error as follows:

[T]he majority here errs in relying upon and applying the provisions set forth in RPTL article 9; these provisions were not discussed by the parties in this manner because they do not govern this dispute. Although it is true that, pursuant to RPTL 936, counties must “guarantee” and credit a collecting officer with “certain ‘unpaid delinquent taxes’ ” *** , the warrant subject to RPTL article 9 procedure is a county warrant (*see* RPTL 904[1]). Counties generally have no authority to assess real property – that power has traditionally been delegated to cities, towns and villages ***.

Here, in contrast, it is the City Council of *** [the] City *** that levies the annual real property tax for the City budget ***. It is the City Manager – not any official of [the] *** County (compare RPTL 900[1]; 904[1]) – who signs the tax warrant directing the City Comptroller to collect City taxes (see City of Ogdensburg Charter § C-71). This levy is wholly in line with the City’s general powers (see General City Law § 20[4]; Municipal Home Rule Law § 10[1][ii][a][8]). Thus, we disagree that RPTL 936 requires the County to make the City whole for uncollected City-levied taxes and therefore operates to shift the responsibility to enforce those delinquent taxes to the County. For the reasons set forth below, we find that the City has erred in attempting to unilaterally impose an obligation upon the County to enforce and guarantee payment of the City tax levy.

St. Lawrence, 208 AD3d at 932-933 (footnote omitted).

Citing this Court’s numerous and well-established precedents, the dissent wrote:

“[L]ocal governments ‘have only the lawmaking powers the Legislature confers on them’ ” *** . Regarded as “[p]erhaps the most significant delegation of state legislative authority” *** N.Y. Constitution, article IX, § 2 “empower[s] municipalities to legislate in a wide range of matters relating to local concern” *** . The Municipal Home Rule Law was enacted to implement the foregoing article *** and both sources of law grant similar powers and establish similar limitations on those powers. Generally, “[s]o long as local legislation is not inconsistent with the [NY] Constitution or any general law, localities may adopt local laws both with respect to their ‘property, affairs or government’ (N.Y. Const, art IX, § 2[c][i]; see Municipal Home Rule Law § 10[1][i]), and with respect to other enumerated subjects, except ‘to the extent that the [L]egislature shall restrict the adoption of such a local law’ ” *** . One such subject is the “[t]he levy, collection and administration of local taxes authorized by the [L]egislature” (N.Y. Const, art IX, § 2[c][ii][8]; see Municipal Home Rule Law § 10[1][ii][a][8]-[9]).

St. Lawrence, 208 AD3d at 933-934.

Because the City is bound by the “general law” of RPTL article 11 the Legislature has by article 11 “restrict[ed] the adoption of [L]ocal [L]aw” 2 dealing with “[t]he levy, collection and administration of local taxes ***.” *Id.*

C. The City Can Act Only Through An Agreement With The County Under RPTL 1150

Accordingly, the dissent correctly agreed with the County that an agreement under RPTL 1150 is the City’s only option to have the County “make the City

whole for uncollected City-levied taxes” and to “shift the responsibility to enforce those delinquent taxes to the County.” *Id.* at 933. The City cannot “unilaterally impose an obligation upon the County to enforce and guarantee payment of the City tax levy.” *Id.*

RPTL 1150(1) expressly authorizes “[a]ll tax districts *** to make agreements with one another with respect to any parcel of real property upon which they respectively own tax liens in regard to the disposition of such liens, of the parcel of real property subject thereto and of the avails thereof ***.” The dissent noted that “[t]his provision has been used to mutually accomplish a variety of shared goals regarding delinquent real property taxes ***, specifically including the establishment of the exact sort of arrangement that, here, the City unilaterally adopted and imposed upon the County following a breakdown of negotiations for same ***.” *Id.* at 935, citing 5 Ops Counsel SBEA No. 44 (1975), 7 Ops Counsel SBEA Nos. 46, 52 (1979), and State Board of Equalization and Assessment, Report to Governor, Real Property Tax Enforcement in New York State: A System in Need of Reform at 15 (Feb. 28, 1989) (hereinafter “SBEA Report”).

The dissent also noted that “the idea that arrangements like the one presented here must be reached mutually is not unique to RPTL article 11” and section 1150. *Id.* at 935. Other RPTL provisions requiring mutual consent and agreement between a county and other municipalities within it include section

578(2)(a) (authorizing a county and any city, town, village or school district therein to enter into contracts with each other for the collection of taxes by the county treasurer), and section 1442(1) (authorizing a county to adopt a local law providing for the collection of delinquent village taxes if such collection is requested by the village). *See id.*

Thus, the dissent concluded that “the City’s circumvention of RPTL 1150 renders Local Law No. 2 inconsistent with a general law,” specifically RPTL article 11, and “the NY Constitution and the Municipal Home Rule Law.” 208 AD3d at 935-936.

The dissent thus rejected the City’s attempt to act unilaterally and without utilizing the statutory provision of section 1150 to be treated the same as villages and towns in the County, just as villages and towns in the County utilize the statutory and other authorized procedures for having the County enforce their delinquent taxes. For villages, as noted above, RPTL 1442(1) authorizes a county to adopt a local law providing for the collection of delinquent village taxes.² As for towns, it is well-established that towns are responsible for collecting taxes (Town Law § 37(1) [“it shall be the duty of such receiver of taxes and assessments to receive and collect all state, county, town and school taxes”]), but they generally

² Notably, prior to the adoption of RPTL 1442(1) counties and villages used RPTL 1150 to accomplish this. *See* 208 AD3d at 937 fn3, citing SBEA Report at 15; 5 Ops Counsel SBEA No. 44 (1975).

have no role in the enforcement of delinquent taxes. *See Rose v. Eichhorst*, 42 NY2d 92, 95-96 (1977) (“Should the amount of taxes collected by the town tax collector be less than the sum levied for town purposes, the county must pay the town the difference *** . At this point, the responsibility for collecting the delinquent tax shifts to the county *** . The county, rather than the town, holds a lien for the unpaid town taxes *** . The county, but not the town, is authorized to collect the delinquent taxes (*see* RPTL arts 10, 11 ***).”); *see also* SBEA Report, at 14. 208 AD3d at 937 fn3.

Thus, the Legislature “created specific procedures to centralize the enforcement of delinquent taxes with respect to counties and villages (*see* RPTL 1442), counties and towns (*see* RPTL 976), counties and non-city school districts (*see* RPTL 1330),” and counties and cities (RPTL 1150). *Id.* at fn4. Section 1150 is “the mechanism by which cities may – cooperatively – accomplish what the City seeks here.” *Id.*³

³ RPTL 976 provides in relevant part:

1. *** [T]he *collecting officer of a town* which has adopted a resolution pursuant to section nine hundred seventy-three of this chapter, shall make and deliver *to the county treasurer* a list of the names of the owners of real property who have elected to pay such taxes in installments pursuant *** together with an account, subscribed[] and affirmed by him as true under the penalties of perjury, of the balance of all taxes listed on the tax roll which such owners have elected to pay in installments and which remain unpaid at such time. *The county treasurer shall, if satisfied that such account*

The dissent correctly rejected the City’s argument and Justice Farley’s conclusion (R11) that the definitional provision in RPTL 1102(6)(b) that a “[t]ax district’ means *** a city, other than a city for which the county enforces delinquent taxes pursuant to the city charter” means the City could act unilaterally by simply amending its Charter. As the County asserted below this definition just refers to counties and cities that have reached an agreement under RPTL 1150 for the County to enforce city taxes. 208 AD3d at 937 fn5. The use of this “definitional” provision for a substantive holding by Justice Farley and the Appellate Division majority (208 AD3d at 932) is contrary to this Court’s ruling in *Matter of Town of Irondequoit v. County of Monroe*, 36 NY3d 177 (2020), that rejected Monroe County’s reliance on “the definition of ‘tax’ in the general definitions section at the beginning of the RPTL—section 102(20)” and conclude that “the RPTL 102(20) definition on which the County relies is not controlling.” *Id.* at 183.

is correct, credit him with the amount of such unpaid taxes. Such return shall be in the form prescribed by the county treasurer. Upon such return, the warrant with respect to such taxes as were included in such return shall be deemed expired.

2. Within ten days after such collecting officer shall have made his return of unpaid installments of taxes as provided in subdivision one of this section, the county treasurer shall pay over to the supervisor of such town the amount of such unpaid installments of taxes, included in such return, which were levied for town and special district purposes. (Emphasis supplied)

In fact, the County “provided th[e lower] Court[s] with several examples of RPTL 1150 agreements between cities and counties concerning county enforcement of delinquent city taxes. *Id.* at fn3. See (R156-163 [1150 agreement between the City of Jamestown and Chautauqua County]) and (R189-206 [1150 agreements between the City of Binghamton, its School District, and Broome County]). Presumably, each of these cities would have just acted unilaterally like the City did here if they thought they could do so.

POINT II

THE COUNTY IS ENTITLED TO A DECLARATORY JUDGMENT THAT LOCAL LAW 2 VIOLATES THE STATE CONSTITUTION AND THE MHRL

There was another critical difference between the analysis of the issues presented by the County and Local Law 2 in the Appellate Division. The majority brushed aside the County’s challenge to Local Law 2 as violative of article IX § 2(d) of the State Constitution and MHRL §10(5) in just one sentence: “This outcome is neither an expansion nor impairment of the County’s powers but simply a consequence of the statutory structure outlined in RPTL articles 9 and 11.” 208 AD3d at 932. Thus, the majority accepted – without analysis – the City’s argument (R22, 119) and the conclusion of Justice Farley that “[o]n its face, however, the Local Law does not impair any powers of the County. To the

contrary, the Local Law increases the County's tax enforcement powers with respect to delinquent City taxes. (R9) (Emphasis in original)

The dissent, however, engaged in a thorough analysis of the constitutional question and agreed with the County “that the enactment ‘impair[s] the powers’ of the County and thereby violates” the State Constitution, article IX, § 2(d) and MHRL § 10(5). 208 AD3d at 936. Applying several rules of statutory construction in McKinney’s Cons Laws of NY, Book 1, Statutes, the dissent correctly concluded:

1. “[t]he term “impair” is not defined in either source of law.” *Id.* at 936;
2. “but impairment of a power is referenced elsewhere in the same *** article of the N.Y. Constitution, and it is to be presumed that the word ‘impair’ is used in the same sense throughout,” (*see* art. IX, § 3(a) [“Except as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to *** ”]). *Id.*;
3. “The term ‘impair’ should be given its own meaning and not be rejected as mere superfluity ***. The term must thus mean something other than to ‘[repeal[], diminish[] *** or suspend[]’ (art IX, § 2[b][1]) or to ‘restrict’ (art IX, § 3[a]).” *Id.*; and
4. Guided by dictionary definitions *** and the purpose and spirit of the laws *** we would find that to impair a power within the meaning of *** article

IX, § 2(d) and *** § 10(5) is to weaken that power ***. *Id.*; see Merriam–Webster Online Dictionary (“to diminish in function, ability, or quality: to weaken or make worse”); Cambridge Dictionary (“to spoil something or make it weaker so that it is less effective”); Britannica Dictionary (“to make (something) weaker or worse ”); and Oxford Learner’s Dictionaries (“to damage something or make something worse”).

The dissent rejected the majority’s adoption of Justice Farley’s conclusion that “did not impair any power of the County,” but in fact “increases the County’s tax enforcement powers with respect to delinquent City taxes,” because “the City would have no authority to increase the County’s taxation power; the delegation of any part of the state’s taxation power may only come expressly from the state ***.” 208 AD3d at 937. “What is increased by Local Law No. 2 are the obligations that the County must fulfill with its own revenue and resources. The unilateral imposition of an unfunded mandate onto the County does more than merely ‘relate to [the County’s] *** affairs’ *** or, as Supreme Court stated, ‘inconvenience[]’ its ‘operations.’ ” *Id.*

Thus, the dissent agreed with the County’s assertion that “Local Law No. 2 impairs its power to fully control its own affairs, such as its budget and its workforce, by weakening that power *** [which] is perhaps most clear with respect to the make-whole provision of Local Law No. 2 § 3, which ‘impair[s]’ the

County's power by 'requir[ing] the [C]ounty to guarantee [the payment of City-levied taxes] *** even though it is not required to do so under the [RPTL]' *** .”

Id.

As noted by the dissent its conclusion is fully supported by the administrative guidance of the SBEA as well as the State Comptroller. 2 Ops Counsel SBEA No. 100 (1972), 1972 WL 19610, resolved a question between Orange County and the City of Newburgh not resolved in *County of Orange v. City of Newburgh*, 68 Misc2d 998 (Sup Ct, Orange Co 1972) (Sweeney, J). While the court decision determined that Newburgh could unilaterally amend its charter to require Orange County to collect and enforce the county taxes, the decision did not determine if Newburgh could also require Orange County to collect and enforce the city and its school district's delinquent taxes through a simple city charter amendment. The SBEA Counsel opined that

the city charter cannot be amended to require the county to collect and enforce taxes (either the city or the county-state levy) according to procedures established by the city. The county's collection and enforcement activities are governed by the Real Property Tax Law.

(R80-81).

Like the SBEA Counsel the State Comptroller has rejected the power of a municipal entity to unilaterally impose tax obligations on a county. In Ops St Comp, No. 86-76 (1986), 1986 WL 31763, (R82-84), the Comptroller was

confronted with a request for an opinion on whether a village, which owns and operates an electric utility, may adopt a local law authorizing the levy and collection of delinquent electric charges with the annual general taxes. The Comptroller expressed his opinion that the village could only make the unpaid utility charges a lien on the real property under MHRL § 10(1)(ii)(a)(9-a), and that a “village local law which requires unpaid utility charges to be levied and collected in the same manner as real property taxes *** would constitute an unauthorized exercise of the power of taxation.” The Comptroller further wrote:

it is our opinion that the adoption of a local law requiring the levy of unpaid electric charges would nonetheless be prohibited by Municipal Home Rule Law, § 10(5) in those instances where delinquent taxes are collected by the county (see Real Property Tax Law, § 1442). That statute provides, as it is relevant here, that “a local government shall not have power to adopt local laws which impair the powers of any other public corporation.” However, because Real Property Tax Law, § 1442(4) requires a county which enforces delinquent taxes for a village to pay over to the village the amount of returned delinquent taxes, the effect of a village local law which provides for the levy of unpaid utility charges by the county would be to require the county to guarantee their payment to the village even though it is not required to do so under the Real Property Tax Law. Under these circumstances, a village local law providing for the collection of unpaid utility charges with village taxes would impair the powers of the county and would be improper in the absence of a State statute which expressly authorizes this procedure. (R84) (Emphasis supplied)

While the Opinions of the SBEA and Comptroller are not binding, they are persuasive. “Generally a reviewing court will respect the interpretation placed on a

statute by an administrative agency unless the agency's interpretation is irrational or unreasonable." *Hamburg v. McBarnette*, 195 AD2d 275, 277 (1st Dep't 1993), *aff'd* 83 NY2d 726 (1994), citing *Matter of Fineway Supermarkets v. State Liq. Auth.*, 48 NY2d 464, 468 (1979); see *Matter of Rodriguez v. Perales*, 86 NY2d 361, 367 (1995) ("The conclusion of the Committee on Open Government that FOIL does not permit an agency to charge for employee time spent searching for paper documents is not unreasonable or irrational ***.").

POINT III

THE COUNTY'S REQUEST FOR MANDAMUS AND PROHIBITION ARE VALID, BUT UNNECESSARY BECAUSE OF THE CLAIM FOR DECLARATORY JUDGMENT

The City spent ten (10) pages of its Appellate Division ("AD") Brief arguing that the County is not procedurally entitled to Article 78 relief in the form of mandamus or probation. The County's Appellants' AD Brief (at 27-34) addressed these issues, as did the County in its Complaint and response to the City's motion to dismiss. (R43-48, 142-146) Accordingly, these forms of relief are preserved, but are unnecessary because it is undisputed that the County asserted a claim for declaratory judgment. See City's AD Brief at 1, 7, 20, 28 ("Relevant Legal Standards Pertaining to the City's Motion to Dismiss the County's Claim for Declaratory Judgment") (Emphasis supplied).

The County stands by its argument in its Appellants' AD Brief (at 27-34) and in the trial court that it is entitled to relief in the form of mandamus and prohibition, and nothing more needs be stated here. Moreover, although not critical it is simply not true that the County "abandoned its mandamus argument on appeal." City AD Brief at 12-13. It was raised and fully briefed in the trial court (R43-44) and was part of Point C in Appellants' AD Brief at 27 ("C. The County Is Entitled To Writs Of Prohibition And Mandamus Because Local Law 2 Is Pre-Empted By State Law.").

Finally, the City claimed (AD Brief at 18-19, fn 2) that "[t]he County raised [a] specific [prohibition] argument for the first time in its reply affirmation in opposition to the City's motion to dismiss [compare R: 31-51 with R: 143-146]." This is meritless. The County did not submit "reply" papers on the City's motion to dismiss. The cite to R31-51 are to pages in the Complaint. The cite to R 143-146 is to the Opposition Affirmation of County Attorney Stephen Button in opposition to the motion to dismiss. The Record is clear on this.

CONCLUSION

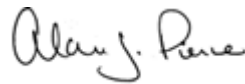
For all the foregoing reasons the Order appealed from should be reversed, the City's motion to dismiss denied, and Local Law 2 declared invalid and unenforceable, together with such other and further relief as this Court deems just and reasonable.

Dated: December 23, 2022

Attorneys for Plaintiffs-Appellants

Appellate Counsel:

HANCOCK ESTABROOK, LLP



Alan J. Pierce, Esq.
John L. Murad Jr., Esq.

100 Madison St., Suite 1800
Syracuse, New York 13202
Tel: 315-565-4500
apierce@hancocklaw.com
Counsel of Record:

Stephen D. Button, Esq.
COUNTY ATTORNEY
48 Court Street
Canton, New York 13617
Tel: 315-379-2269

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(f)(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

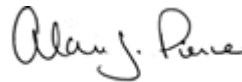
Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, and this Statement, is 10,789 words.

Dated: December 23, 2022

Attorneys for Plaintiffs-Appellants

HANCOCK ESTABROOK, LLP



By: _____
Alan J. Pierce, Esq.

100 Madison St., Suite 1800
Syracuse, New York 13202
(315) 565-4546
apierce@hancocklaw.com