SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

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

Plaintiffs,

v.

Action No. 1:
Index No.: 003095/2024

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

Defendants.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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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,

Plaintiff,

v.

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

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

Defendants.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

THE COUNTY OF ONEIDA, THE ONEIDA COUNTY BOARD OF LEGISLATORS, ANTHONY J. PICENTE, JR., Individually and as a voter and in his capacity as Oneida County Executive, and ENESSA CARBONE, Individually and as a voter and in her capacity as Oneida County Comptroller,

Plaintiffs,

Action No. 3
Index No.:EFCA2024-000920

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

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CONSOLIDATION

Plaintiff, Oneida County, New York, fully adopts the Memorandum of Law of Nassau County as authorized by below Counsel, Angelo J. Genova, Esq., of Genova Burns, LLP.

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PRELIMINARY STATEMENT

This Memorandum of Law, together with the accompanying Affirmation in Support of Angelo J. Genova, Esq., dated April 8, 2024 ("Genova Aff."), and the Exhibits annexed thereto, are respectfully submitted in support of the instant motion by Plaintiffs The County of Nassau, The Nassau County Legislature, and the Honorable Bruce A. Blakeman, individually and as a voter and in his official capacity as Nassau County Executive (the "Nassau County Plaintiffs") in Index No. 605931/2024 ("Action No. 2") for an Order (a) pursuant to CPLR § 602, consolidating this action with the action filed by Plaintiffs The County of Onondaga, the Onondaga County Legislature, and J. Ryan McMahon II, individually and as a voter and in his capacity as Onondaga County Executive (the "Onondaga County Plaintiffs") in Index No. 003095/2024 ("Action No. 1") for joint discovery and trial; (b) transferring venue of Action No. 2 to Onondaga County in accordance with the "first county" rule; and (c) granting Plaintiffs such other, further and different relief as the Court deems just, equitable, and proper.

This Memorandum of Law, together the accompanying Affirmation in Support of Robert F. Julian, Esq., dated April 18, 2024, ("Julian Aff."), and the Exhibits attached hereto, are respectfully submitted in support of the instant motion by Plaintiffs, the County of Oneida, The Oneida County Board of Legislators, Anthony J. Picente, Jr., Individually and 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, (the "Oneida County Plaintiffs"), in Index No.: EFCA2024-000920 ("Action No. 3"), for joint discovery and trial; (b) transferring venue of Action 3 to Onondaga County in accordance with the "first county" rule; and (c) granting Plaintiff such other and further and different relief as the Court deems just, equitable and proper.

As explained below Action No. 1, Action No. 2 and Action No. 3 should be consolidated because they arise out of the same event—the Legislature's enactment of the Even Year Election Law, which moves certain local elections to even years—and involve the same legal determination: whether the Even Year Election Law, which conflicts with the County Charters of Onondaga and Nassau Counties, violates Article IX of the New York Constitution. Consolidation would lead to increased efficiency and avoid the risk of inconsistent determinations. Further, since Action No. 1 was filed first and as no special circumstances exist, the cases should be consolidated in Onondaga County.

FACTS

The facts of this case are fully set forth in the Genova Affirmation and the Julian Affirmation which is incorporated by reference. In short, both Onondaga and Nassau County have adopted their own County Charters that include provisions providing for odd year elections of legislators and county executives. (*See* Compl. in Action No. 1 ¶¶ 25-33 (Genova Aff. Ex. A); Compl. in Action No. 2 ¶¶ 19-32 (Genova Aff. Ex. B). On June 9, 2023, the Legislature enacted the Even Year Election Law, amending various laws to move local elections to even years, including the ones governed by the Onondaga, Nassau and Oneida County Charters. The Even Year Election Law was signed by Governor Hochul on December 22, 2023.

The Onondaga County Plaintiffs filed Action No. 1 on March 22, 2024, the Nassau County Plaintiffs filed Action No. 2 on April 5, 2024. (Genova Aff ¶¶ 6 & 8) and the Oneida County Plaintiffs filed Action No. 3 on April 9, 2024 (Julian Affirmation ¶8). Both actions seek a declaration that the Even Year Election Law violates Article XI of the New York Constitution.

ARGUMENT

I. ACTION NO. 1 ACTION NO. 2 AND ACTION 3 SHOULD BE CONSOLIDATED PURSUANT TO CPLR § 602 BECAUSE THEY SHARE COMMON QUESTIONS OF LAW AND FACT AND SEPARATE ACTIONS RISKS INCONSISTENT VERDICTS.

CPLR § 602 provides:

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

CPLR § 602(a)-(b).

CPLR § 602 provides the Court with broad discretion to join or consolidate the actions if they have a common question of law or fact. *See Coakley v. Africano*, 181 A.D.2d 1071, 581 N.Y.S.2d 515 (4th Dep't 1992).

"[W]here common questions of law or fact exist, a motion pursuant to CPLR § 602(a) to consolidate or for a joint trial ***should be granted absent a showing of prejudice to a substantial right of the party opposing the motion***." *Whiteman v. Parsons Transp. Group of New York, Inc.*, 72 A.D.3d 677, 678 (2d Dep't 2010) (emphasis added). Thus, consolidation is generally favored unless a party opposing the motion can demonstrate prejudice of a substantial right in a specific, non-conclusory manner. *See, e.g., Amcan Holdings, Inc. v. Torys LLP*, 32 A.D. 3d 337, 821 N.Y.S. 2d 162 (N.Y.A.D. 1st Dep't 2006) (holding the burden is on any opposing party to demonstrate

prejudice). The mere desire to have one's dispute heard separately does not, by itself, constitute prejudice involving a "substantial right." *Vigo S.S. Corp. v. Marship Corp. of Monrovia,* 26 N.Y.2d 157, 162 (1970); *Symphony Fabrics Corp. v Bernson Silk Mills, Inc.*, 12 N.Y.2d 409 (1963).

Consolidation is favored, because, as the Court of Appeals has explained: "Where complex issues are intertwined, albeit in technically different actions, it would be better . . . to facilitate one complete and comprehensive hearing and determine all of the issues involved between the parties at the same time." *Shanley v. Callanan Industries, Inc.,* 54 N.Y.2d 52 (1981). Consolidation is appropriate where it would avoid unnecessary duplication of trials, save unnecessary costs and expense in discovery and prevent injustice which would result from divergent decisions based on the same facts. *Chinatown Apartments, Inc. v. N.Y. City Transit Auth.*, 100 A.D.2d 496 (4th Dep't 1984). Additionally, where it is evident that common issues are presented, the fact that answers have not been served does not preclude the granting of consolidation. *Cushing v. Cushing*, 85 A.D.2d 809 (3d Dep't 1981).

The Appellate Court has further held that fragmentation of related matters increases unnecessary litigation, places an unnecessary burden on the Court, and imposes the risk of inconsistent verdicts. *See*, *Shanley*, 54 N.Y.2d 52. "In the interest of judicial economy, ***in order to avoid inconsistent verdicts***, and in the absence of demonstrable prejudice", a motion to consolidate actions should be granted. *Boyman v. Bryant*, 133 AD2d 802 (2d Dep't 1987) *citing Megyesi v. Automotive Rentals*, 115 A.D.2d 594 (2d Dep't 1985) (emphasis added).

These three actions are the prototypical examples of the need for consolidation under CPLR § 602. The three actions involve the same essential facts and will require the same legal determination. Specifically, Onondaga County, Nassau County and Oneida County have each

adopted County Charters that provide for odd year elections of legislators and county executives. (*See* Genova Aff. ¶ 9). The Onondaga County Plaintiffs, Nassau County Plaintiffs as well as the Oneida County Plaintiffs allege that their control of the timing of elections is permitted by the broad home rule rights afforded counties by Article IX § 1 of the New York Constitution and that the Even Year Election Law is unconstitutional because it violates the Counties home rule rights under Article IX § 1 of the New York Constitution. (*See* Genova Aff. ¶¶ 8-11). See Julian Aff. ¶¶4-13).

Consolidation would lead to efficiencies for all of the parties and promote judicial economy. The Defendants in Action No. 2 are all named in Action No. 1. Less the election officials that Onondaga sued, both actions involve the same principal party defendants. Any discovery would be largely duplicative in both actions and, if the actions remained separate, the same fact witnesses would be called upon to provide the same, repetitive testimony, in two separate courts.

Finally, and perhaps most significantly, if these matters were to proceed separately, there would be a risk of inconsistent judgments on an important constitution question. Justice and judicial economy would be best served by consolidating these actions, resulting in a single determination on the constitutionality of the Even Year Election Law. Therefore, to avoid inconsistent judgments, the inconvenience of all the parties, and duplicative discovery costs, joining Actions No. 1 and No. 2 is necessary in this instance. *Flaherty v. RCP Assocs.*, 208 A.D. 2d 496 (2d Dep't 1994).

II. ACTION NO. 3 SHOULD BE TRANSFERRED TO ONONDAGA COUNTY PURSUANT TO THE "FIRST COUNTY RULE."

It is well established that "[w]here two [or more] actions are pending in the Supreme Court in different counties, the motion to consolidate may be made in either County." *Gomez v. Jersey Coast Egg Producers, Inc.*, 186 A.D.2d 629 (2d Dep't 1992). "Generally, where actions

commenced in different counties have been consolidated pursuant to CPLR § 602, the venue should be placed in the county where the *first action* was commenced, unless special circumstances are present." *Id.* (*emphasis added*); *see also In re Wilber*, 2 A.D.3d 1266, 1266 (4th Dep't 2003) (emphasis added) (affirming consolidation and transfer where first action was properly commenced); *Arnheim v. Prozeralik*, 191 A.D.2d 1026, 1026 (4th Dep't1993) ("We further conclude that the court properly changed the venue of the second action from Niagara County to Erie County because the action first commenced was brought in Erie County.").

The types of "special circumstances" that may lead to the action being sent to a county other than the first-filed county is if the majority of witnesses and evidence are in the county of the second-filed case or if the second-filed case has already progressed. *See, e.g.*, *Pub. Serv. Truck Renting, Inc. v. Ambassador Ins. Co.*, 136 A.D.2d 911, 912 (4th Dep't 1988).

Here, Action No. 1 was filed first (on March 22, 2024) in Onondaga County and no special circumstances are present. Action No. 1 contains additional parties not party to Action No. 2 and none of the evidence is specifically localized in either of the counties. What's more, issue has not been joined in either action.

As such, efficiency dictates that Action No. 2 be transferred to Onondaga County under the First County Rule.

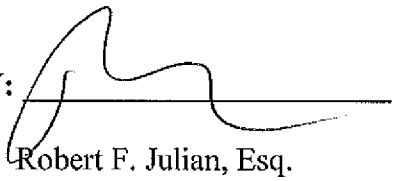
CONCLUSION

For the foregoing reasons, it is respectfully submitted that the instant motion be granted, and that the above captioned actions be consolidated, with Action No. 2 transferred to Onondaga County.

Dated: April 18, 2024
Utica, NY

Respectfully submitted,

ROBERT F. JULIAN, P.C.

BY: 

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CERTIFICATE OF WORD COUNT

I hereby certify pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court that this Memorandum of Law was prepared on a computer using Microsoft Word using Times New Roman typeface, Size 12 font, with Double Spacing.

The total number of words in the memorandum of law is 2,569 words.

Dated: April 18, 2024

Robert F. Julian, Esq.