STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

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, vs. 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.	Index No. 003095/2024 Hon. Gerard J. Neri, J.S.C.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

There is only one way that Plaintiffs can prevail on their argument that this Court should strike down the "Even Year Election Law" enacted by the New York state legislature: Plaintiffs must demonstrate that the Even Year Election Law is somehow not a "general law" within the meaning of the New York Constitution, even though it applies by its terms to all counties in the state outside of New York City. *See* Chapter 741 of the Laws of 2023 of the State of New York.

Indeed, the language of Article IX of the state Constitution is quite clear on this point: (1) the Constitution expressly provides that the state legislature "shall have the power to act in relation to the property, affairs or government of any local government only by general law" (N.Y. Const., Art. IX, §2(b)(2)); and (2) the Constitution expressly provides that a local government may enact only laws "not inconsistent with the provisions of this constitution or any general law" (N.Y. Const., Art. IX, §§2(c)(i), (ii)).

And not only that: Article IX defines exactly what a "general law" is: "A law 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." N.Y. Const., Art. IX, §3(d)(1). The Constitution distinguishes a "general law" from a "special law," which it defines as a law that applies "to one or more, but not all, counties…" Art. IX, §3(d)(4). And the plain language of the Even Year Election Law makes absolutely clear that it is a general law: it governs "all elections for any position of a county elected official" and applies by its terms to all "counties, other than counties in the city of New York." Ch. 741, Laws of 2023, §§3, 4.

Indeed, as the Third Department recently recognized in upholding the New York Early Mail Voter Act ("NYEMVA"), "the Court of Appeals has long recognized that the NY Constitution grants the Legislature plenary power to promulgate reasonable regulations for the conduct of elections." *Stefanik v. Hochul,* 2024 N.Y. App. Div. LEXIS 2601, *7 (3d Dept. 2024) (internal quotation marks omitted). For these reasons, as discussed more fully below, the Even Year Election Law should be upheld.

LEGAL ARGUMENT

On a motion to dismiss pursuant to CPLR §3211(a)(7) for failure to state a cause of action, courts afford the complaint a liberal construction, accept the facts as pleaded as true, accord the plaintiff the benefit of every possible favorable inference and determine whether the facts as alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). A court may reach the merits of a properly pleaded cause of action for a declaratory judgment where, as here, no questions of fact are presented by the controversy. *Sullivan v. New York State Joint Commission on Public Ethics*, 207 A.D.3d 117, 124 (3d Dept. 2022). In that

context, the court may treat the motion to dismiss as a declaration in defendant's favor. *Id.*; *see also Minovici v. Belkin BV*, 109 A.D.3d 520, 524 (2d Dept. 2013). This Court should do so here.

POINT I

LEGISLATIVE ACTS ARE ENTITLED TO PRESUMPTION OF CONSTITUTIONALITY

It is well settled that acts of the legislature are entitled to a presumption of constitutionality. *White v. Cuomo*, 38 N.Y.3d 209, 216 (2022). This presumption has been described by the Court of Appeals as "exceedingly strong[.]" *Lighthouse Shores, Inc. v. Islip*, 41 N.Y.2d 7, 11 (1976). Unconstitutionality must be demonstrated beyond a reasonable doubt and courts should strike legislative acts "only as a last resort." *Id.* "It is also presumed that the legislative body has investigated and found the existence of a situation showing or indicating the need for or desirability of the ordinance, and, if any state of facts known or to be assumed justifies the disputed measure, this court's power of inquiry ends." *Id.* at 11-12.

A plaintiff challenging a law on constitutional grounds bears the "substantial" burden of demonstrating that "in any degree and every conceivable application, the law suffers wholesale constitutional impairment." *White v. Cuomo,* 38 N.Y.3d at 216. In short, a Plaintiff must show "no reasonable basis at all" for a law to be stricken as unconstitutional. *Van Berkel v. Power*, 16 N.Y.2d 37, 40 (1965). Only in rare cases should a court of first instance, as here, find acts of the legislature unconstitutional. *Stefanik v. Hochul*, 82 Misc.3d 1126, 1130 (Sup. Ct. Albany Cty. 2024).

Here, the legislature provided multiple reasonable justifications for the Even Year Election Law, including increasing voter turnout and reducing voter confusion about the time of elections. Specifically, the justification for the law in the Senate records reads as follows:

> New York's current system of holding certain town and other local elections on election day, but in odd-numbered years leads to voter confusion and contributes to low voter turnout in local elections. Studies have consistently shown that voter turnout is the highest on the November election day in even-numbered years when elections for state and/or federal offices are held. Holding local elections at the same time will make the process less confusing for voters and will lead to greater citizen participation in local elections.

(https://www.nysenate.gov/legislation/bills/2023/S3505/amendment/B, last visited July 25, 2024).

Further, the Sponsor Memo cites fiscal implications such as "[a]nticipated savings to local governments from the consolidation of various elections at different times of the year[.]" *Id.*

Thus, there are multiple reasonable bases for the law — namely, increasing voter turnout, reducing voter confusion, and cost savings — that entitle the law to a presumption of constitutionality that Plaintiff will be unable to overcome.

POINT II

THE EVEN YEAR ELECTION LAW DOES NOT VIOLATE THE CONSTITUTION

The Even Year Election Law does not violate the state Constitution because the Constitution grants plenary power to the state legislature to regulate elections, as well as the power to regulate local governments by "general laws" such as this one.

First, it is well-settled that the state Constitution grants the legislature "plenary power to promulgate reasonable regulations for the conduct of elections." *Stefanik v. Hochul*, 2024 N.Y. App. Div. LEXIS 2601, *7 (3d Dept. 2024) (*quoting Matter of Davis v. Board of Elections of City of New York*, 5 N.Y.2d 66, 69 (1958)). Indeed, the Constitution specifically provides that elections shall be by ballot "or by such other method as may be prescribed by law." N.Y. Const., Art. II, §7. The Even Year Election Law is a "reasonable regulation for the conduct of elections" (*Stefanik* at *7), and, therefore, falls squarely within the Constitution's grant of legislative power.

The state Constitution further grants the legislature the power to act in relation to the property, affairs or government of any local government. N.Y. Const., Art. IX, §2(b)(2). To do so, the legislature must act via a "general law" broadly applicable through the state, or by a "special law" targeting only a particular county when the local government requests it. *Id.* The County here did not request a special law, so if the law here is a general law, it is a valid exercise of legislative power.

The Even Year Election Law is clearly a general law because it applies by its terms to "all elections for any position of a county elected official," in "all counties, other than counties in the city of New York." Ch. 741, Laws of 2023, §§3, 4. Both the state Constitution and the Municipal Home Rule Law ("MHRL") define a "general law" as, "A law 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." N.Y. Const. Art. IX, §3(d)(1); MHRL §2(5). The use of the disjunctive "or" in the definition necessarily means that a general law can apply to all counties ***or*** to all counties other than those wholly included within a city ***or*** to all cities ***or*** to all towns ***or*** to all villages. *Id.* The Even Year Election Law uses the language "all counties, other than counties in the city of New York," which places it squarely within the "all counties other than those wholly included within a city" part of the definition of a general law.

Plaintiffs claim that the Even Year Election Law amending County Law 400(8) is not a general law because it "does not, in terms or in effect, apply to all counties." Complaint at ¶ 84. Specifically, Plaintiffs argue that it is not a general law because it applies only to counties with an elected executive. *Id.* at ¶ 85. However, that is not what the text of the law says. The text of the law states that it covers "all elections for any position of a county-elected official…" in whatever county that chooses to hold such elections. Nowhere in that language does it exempt

any particular county. If a particular county does not have an elected county executive, that county is still subject to the Even Year Election Law and is still prohibited from adopting a charter or local law that violates the Even Year Election Law — much like people who do not steal are still subject to laws forbidding theft.

Plaintiffs further argue that the Even Year Election Law amending County Law 400(8) is not a general law because it applies only to certain countywide offices. Complaint at ¶ 85. It is true that the law exempts certain elected positions, but, again, the exemptions are the same for every county, so that objection is meritless. The Even Year Election Law applies the same to all counties and is therefore a general law.

The section of the Even Year Election Law amending MHRL §34 likewise is a general law because it expressly applies to "counties, other than counties in the city of New York." MHRL §34(3)(h), effective January 1, 2025. But this fits language fits precisely into the Constitution's definition of a "general law" as one that "applies alike … to all counties other than those wholly included within a city." N.Y. Const., Art. IX, §3(d)(1).

Plaintiffs next argue that the rights of the county to handle the timing of its own elections is provided for in MHRL §33(3)(b). Complaint at ¶73. However, the very first words of MHRL §33 are, "Subject to restrictions in the Constitution, in this article or in any other applicable law…" MHRL §33(1). This makes clear that, the provisions of MHRL are subservient to the Constitution and "other applicable law" — and the Constitution specifically empowers the legislature to make general laws affecting local government.

Plaintiffs also argue that, even if the Even Year Election Law is found to be a general law, which it is, the county charter "need not be consistent with general state laws." Complaint at ¶89. Again, that position is incorrect. A municipality is empowered to adopt local laws

relating to its property, affairs, and government, but only so long as those laws are not inconsistent with the terms of the Constitution of the State of New York and not inconsistent with any general law of the state, such as the Even Year Election Law. *See* N.Y. Const., Art. IX, §2(b)(2)); Art. IX, §§2(c)(i), (ii). Indeed, the Constitution unequivocally says that local governments may enact laws "not inconsistent with the provisions of this constitution or any general law." N.Y. Const., Art. IX, §§2(c)(i), (ii); *see also Gizzo v. Town of Mamaroneck*, 36 A.D.3d 162, 165 (2d Dept. 2006); MHRL §10(1)(i). Thus, if the County's charter is inconsistent with general state laws, the county charter is invalid. This makes sense; otherwise, a county would be free to write any rules it wants and there would be no need for the MHRL or Article IX of the Constitution. That obviously cannot be the case. *See, e.g., Matter of Monroe Cty. Public Sch. Dists. v. Zyra*, 51 A.D.3d 125, 130 (4th Dept. 2008) (*citing Matter of Branford House v. Michetti*, 81 N.Y.2d 681, 688 (1993)) (finding that courts should construe a statute to avoid rendering its language superfluous).

In addition, Plaintiffs argue that Article IX of the state Constitution contains a savings clause that prevents the legislature from enacting the Even Year Election Law. However, this interpretation is incorrect. The New York Constitution states as follows: "The provisions of this article shall not affect any existing provisions of acts of the legislature of local legislation and such provisions shall continue in force until repealed, amended, modified or *superseded*[1] in accordance with the provisions of this constitution." N.Y. Const., Art. IX, §3(b) (emphasis added). For all the reasons stated heretofore, the Even Year Election Law, as a valid act of the legislature, supersedes the county charter, as specifically permitted by the so-called savings clause.

[1] Plaintiffs appear to misread this as "suspended" rather than "superseded." *See* Complaint at ¶95 ("Section 301 . . . has not been repealed, amended, modified or suspended.")

Finally, Plaintiffs also argue that the state Constitution provides the County an "implicit" right to determine the term of office of its elected officials. Complaint at ¶72. There is no such thing as an "implicit" right that contravenes the explicit rights and rules set forth in the Constitution. As discussed above, the Constitution explicitly provides that the state legislature may govern local governments by "general law" (N.Y. Const., Art. IX, § 2(b)(2)), and that a local government may enact laws "not inconsistent with the provisions of this constitution or a general law." N.Y. Const., Art. IX, §§2(c)(i), (ii). This plain language should be enforced as written. *See, e.g., Lynch v. City of New York*, 35 N.Y.3d 517, 523 (2020) (standing for propositions that the court's primary consideration is to give effect to the intent of the legislature and that the literal language of a statute controls).

POINT III

A CONSTITUTIONAL AMENDMENT IS NOT REQUIRED

Plaintiffs may argue that the Even Year Election Law is unconstitutional because it was enacted by the legislature and not as an amendment to the state Constitution. However, this argument is simply wrong. There are many examples of legislative acts affecting local voting procedures that have been found constitutional. *See, e.g.,* 2023 N.Y. ALS 481, 2023 N.Y. Laws 481, 2023 N.Y. Ch. 481, 2023 N.Y. SB 7394; 2019 N.Y. ALS 5, 2019 N.Y. Laws 5, 2019 N.Y. Ch. 5, 2019 N.Y. AB 779.

A recent example comes from just a year ago, when the state legislature passed the NYEMVA, which empowered registered voters to vote early by mail subject to certain regulations and safeguards. Election Law §§8-700 *et. seq*. Interestingly, that Act had the express purpose of facilitating "ease of participation" in hopes of increasing voter turnout, which is the same purpose of the instant law. *See Stefanik v. Hochul*, 2024 N.Y. App. Div. LEXIS

2601 (3d Dept. 2024) at *3 (*citing* Senate Introducer's Memo in Support of 2023 NY Senate-Assembly Bill S7394, A7632). Under Plaintiff's argument here, the NYEMVA would necessarily be unconstitutional, in that it affected the manner of election or appointment of county officials. However, the Third Department has found the NYEMVA to be constitutional. *See Stefanik*. This Court should reach the same result as to the Even Year Election Law.

CONCLUSION

For the reasons set forth above, the Defendant's motion should be granted, and the Even Year Election Law should be declared constitutional, along with any such other and further relief the court deems just and proper.

Dated: July 26, 2024

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

The undersigned attorney hereby certifies as follows:

The foregoing MEMORANDUM OF LAW complies with the word count limitations set forth in Rule 202.8-b (c) of the Uniform Civil Rules for the Supreme Court and the County Court as amended by the Administrative Order 270.20, effective February 1, 2021. According to the word processing system used in this office, the document, exclusive of the sections not required to be counted by Rule 202.8-b (b), contains 2,532 words.

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