

SUPREME COURT OF THE STATE OF NEW YORK  
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,

v.

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.

SUMMONS

Index No.: \_\_\_\_\_

To the above-named Defendants:

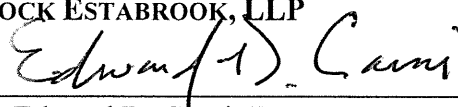
**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the plaintiffs' attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if the Summons was served on you by delivering it to an official of the state authorized to receive service in your behalf or if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiffs designate Onondaga County as the place for trial. The basis of the venue is the Plaintiffs' residence. Plaintiffs' official address is 421 Montgomery Street, Syracuse, New York 13202.

DATED: March 22, 2024

HANCOCK ESTABROOK, LLP

By: \_\_\_\_\_



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To: State of New York  
NYS State Capitol Building  
Albany, NY 12224

The Honorable Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

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Defendants.

**COMPLAINT**

Index No.: \_\_\_\_\_

Plaintiffs, THE COUNTY OF ONONDAGA (“the County”), THE ONONDAGA  
COUNTY LEGISLATURE, and J. RYAN MCMAHON II, individually and as a voter and in his  
capacity as Onondaga County Executive, by and through their attorneys, Hancock Estabrook,  
LLP, as and for their Complaint, upon information and belief, allege as follows:

**NATURE OF THE CASE**

1. In this declaratory judgment action, Plaintiffs seek to declare unconstitutional  
Chapter 741 of the Laws of 2023 of the State of New York, called “AN ACT to amend the town  
law, the village law, the county law, and the municipal home rule law, in relation to moving  
certain elections to even-numbered years” (the “Even Year Election Law”), which was enacted  
by the New York State Legislature in June 2023 and thereafter signed into law by New York  
State Governor Kathy Hochul on December 22, 2023.

2. The Even Year Election Law is a blatant violation of Article IX of the New York State Constitution, which grants expansive home rule rights and powers to local governments, including the County.

3. Article IX § 1 protects the right of local governments to have a legislative body elective by the people and provides that all officers of local government whose election or appointment is not provided for by the Constitution “shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.”

4. Article IX § 1 also provides that counties shall be empowered to prepare, adopt, amend, or repeal alternative forms of government.

5. These rights necessarily include the right to determine when elections for local officials are held and to determine the terms of office of local officials.

6. In accordance with its home rule rights protected by Article IX, the County in 1961 adopted a county charter as its alternative form of government.

7. The County’s charter expressly provides that elections for county legislators for a two-year term, and for the county executive for a four-year term, are to be held in odd-numbered years.

8. Despite the expansive home rule rights granted to local governments in Article IX, the Even Year Election Law purports to require that elections for certain local officials be held in even-numbered years. It accomplishes this by changing the term of office for the first county legislators to be elected following its enactment from two years to one year and the term of office for the first county executive to be elected following its enactment from four years to three years.

9. The Court should declare the Even Year Election Law unconstitutional.

10. Additionally, Article IX § 3 contains a “Savings Clause” which protects that provision of the County’s charter providing for elections for the county executive in odd-numbered years.

11. Therefore, the Court should also declare that Section 301 of the County’s Charter is valid and remains in force notwithstanding the Even Year Election Law.

**PARTIES**

12. Plaintiff THE COUNTY OF ONONDAGA is a municipal corporation duly formed by the laws of the State of New York, with a principal office in Onondaga County, New York.

13. Plaintiff THE ONONDAGA COUNTY LEGISLATURE is the legislative body of the County of Onondaga.

14. Plaintiff J. RYAN MCMAHON II was and is the duly elected County Executive for the County of Onondaga at all relevant times.

15. Plaintiff J. RYAN MCMAHON II resides in Onondaga County and was and is an elector and taxpayer of Onondaga County in the State of New York.

16. Defendant THE STATE OF NEW YORK is the state government constituted by the New York State Constitution.

17. Defendant KATHLEEN HOCHUL is the Governor of the State of New York with her principal office located at the State Capitol in Albany, New York. She is being sued in her official capacity.

18. Defendant DUSTIN M. CZARNY is a Commissioner of the Onondaga County Board of Elections. He is being sued in his official capacity.

19. Defendant MICHELE L. SARDO is a Commissioner of the Onondaga County Board of Elections. She is being sued in her official capacity.

### JURISDICTION AND VENUE

20. The Court has jurisdiction over this matter because Plaintiffs challenge the constitutionality of a State legislative enactment under the New York State Constitution. *See* New York Constitution, Article VI, § 7(a); CPLR 3001.

21. Venue is proper in Onondaga County pursuant to CPLR 503(a) because it is the County where Plaintiffs reside.

### CAPACITY TO SUE AND STANDING

22. This action was duly authorized by a resolution of the Onondaga County Legislature dated February 5, 2024.

23. This action was further authorized by the Onondaga County Executive, J. Ryan McMahon II.

24. Plaintiffs have standing in that they are challenging the constitutionality of a statute that impinges upon the County's "Home Rule" powers constitutionally guaranteed under Article IX of the New York State Constitution. *City of New York v. State of New York*, 86 N.Y.2d 286, 291–92 (1995); *Town of Black Brook v. State of New York*, 41 N.Y.2d 486, 488–89 (1977).

### FACTS

#### **I. The County's Charter**

25. The Onondaga County Charter (the "Charter") was adopted by the County Board of Supervisors on September 5, 1961 and approved by referendum on November 7, 1961. A true and correct copy of the 1961 Charter is attached as **Exhibit A**.

26. Article III of the Charter established the elected position of county executive to administer the executive branch of the County government.

27. Section 301 of the Charter provides that, after a transition period: “A county executive shall be elected at the general election in 1967 and every fourth year thereafter at the general election, and he shall take office on January first, immediately succeeding his election. His term of office then and thereafter shall be for four (4) years.”

28. Section 301 of the Charter has not been amended since 1961 and remains in force today. A true and correct copy of the Charter currently in effect is attached as **Exhibit B** and is also available at <http://www.ongov.net/law/documents/charter.pdf>.

29. At the time of adoption, Section 201 of the Charter provided that the “supervisors of the several cities and towns in the county of Onondaga” constituted the “board of supervisors,” which was to be the legislative body of the County.

30. In 1966, Article II of the Charter was amended to provide that the “legislative branch of the government of Onondaga County shall consist of an elective governing body which shall be known as the county legislature.”

31. Section 202 of the Charter was amended to provide: “Except as provided in this section or as otherwise provided by law, the term of office of the members of the county legislature shall be two years, and shall begin on the first day of January next following their election. Said elections for the county legislators shall be conducted at general elections in each odd-numbered year.”

32. This provision of Section 202 of the Charter remains in force today.

33. The Charter is to be “liberally construed to effectuate its objectives and purposes.” Charter § 2206.

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

34. The County’s Charter was adopted against the backdrop of a 1958 amendment to Article IX of the New York State Constitution—commonly referred to as the “Home Rule”

article—and a new Article 6-A of the County Law passed by the New York State Legislature in 1959.

35. The object of home rule is to promote local autonomy in local matters, permit local self-government, and prevent state legislative interference in local government.

36. Article IX was amended in 1958 effective January 1, 1959 by following the multi-step process set forth in Article XIX of the Constitution required for amendments, which includes passage by the New York State Legislature and approval by the people at a general election.

37. Article IX was amended in relevant part to read: “The legislature shall provide by law alternative forms of government for counties outside the city of New York and for the submission of one or more such forms of government to the electors residing in such counties.” Article IX § 2(a) (1959). A true and correct copy of the 1958 concurrent resolution amending Article IX is attached as **Exhibit C**. A true and correct copy of Article IX in effect in 1959 as excerpted from the Manual for the Use of the Legislature of the State of New York is attached as **Exhibit D**.

38. Article IX was also amended to require the New York State Legislature, on or before July 1, 1959, to “confer by general law upon all counties outside the city of New York power to prepare, adopt and amend alternative forms of county government.” Article IX § 2(b) (1959).

39. Article IX as amended provided that no such alternative form of government would become operative until adopted by a majority of votes both (1) in the area of the county outside of cities and (2) in the area of the cities in the county when considered as one unit. Article IX § 2(c) (1959).



40. Article IX provided that “[a]ny such [alternative] form of government shall set forth the structure of the county government and the manner in which it is to function” and “may provide for the appointment of any county officers or their selection by any method of nomination and election . . . .” Article IX § 2(d) (1959).

41. Pursuant to the constitutional mandate in Article IX § 2(b), the New York State Legislature enacted County Law Article 6-A in 1959 to empower counties outside New York City to prepare, adopt and amend their own charters. A true and correct copy of the act enacting County Law Article 6-A is attached as **Exhibit E**.

42. County Law Article 6-A was the implementing legislation of amended Article IX.

43. County Law § 323(1) provided that “the board of supervisors of a county shall have power to prepare, adopt, amend and repeal a charter law or laws providing a county charter for the county.” County Law § 323(1) (1959).

44. Article 6-A provided that a county charter “shall set forth the structure of the county government and the manner in which it is to function” and that such a charter “shall provide for,” inter alia, the “agencies or officers responsible for the performance of the functions, powers and duties of the county and of any agencies or officers thereof and the manner of election or appointment, terms of office, if any, and removal of such officers.” County Law § 323(2), (3)(b) (1959).

45. Article 6-A enumerated certain areas in which a county charter could not supersede any general or special law enacted by the New York State Legislature, including subjects such as taxation, educational systems and school districts, and public benefit corporations. *See* County Law § 324(3) (1959).

46. Article 6-A expressly declared that it was “the intention of the legislature by this article to provide for carrying into effect the provisions of the constitution, article nine, section two, paragraph (b) and, pursuant to the direction contained therein, to empower counties to prepare, adopt and amend county charters by local legislative action, subject to the limitations imposed herein.” County Law § 325(1) (1959).

47. Article 6-A was to be “construed liberally.” County Law § 325(3) (1959).

### **III. 1963 Amendments to Article IX and the Municipal Home Rule Law**

48. Article IX was amended again in 1963, effective January 1, 1964, to establish a bill of rights for local governments and set forth the powers and duties of the New York State Legislature.

49. As with the 1958 amendment, the 1963 amendment required passage by the New York State Legislature and approval by the people at a general election.

50. No substantive changes have been made to Article IX since the 1963 amendments. The current version of the New York State Constitution is available at <https://dos.ny.gov/new-york-state-constitution-0>.

51. Article IX of the New York State Constitution secures to the County the right of local self-government.

52. Article IX as amended in 1963 provides, as part of the bill of rights for local governments, that “[e]very local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof.” Article IX § 1(a).

53. Article IX also provides: “Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county request pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government

provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own.”

Article IX § 1(h)(1).

54. To become effective, an alternative form of government must be “approved on referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit.” Article IX § 1(h)(1).

55. Article IX provides that the New York State Legislature “[s]hall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or except in the case of the city of New York, on certificate of necessity from the governor . . . with the concurrence of two-thirds of the members elected to each house of the legislature.” Article IX § 2(b)(2).

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

57. Article IX dictates that the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.” Article IX § 3(c); *see also* Municipal Home Rule Law (“MHRL”) § 35(3) (“This county charter law shall be construed liberally.”).

58. Article IX also contains a “Savings Clause” which provides: “The provisions of [Article IX] shall not affect any existing valid provisions of acts of the legislature or of local

legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution.” Article IX § 3(b); *see also* MHRL § 35(4) (“All existing state, county, local and other laws or enactments, including charters, administrative codes and special acts having the force of law shall continue in force until lawfully amended, modified, superseded or repealed.”).

59. In or around April 1963, the Legislature passed the new Municipal Home Rule Law (“MHRL”), which would become effective only if the amendment creating a new Article IX was approved at the 1963 general election.

60. The new MHRL replaced the prior City Home Rule Law, Village Home Rule Law, Articles 6 and 6-A of the County Law, and certain sections of the Town Law.

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

62. MHRL § 33 gives counties the power to “prepare, adopt, amend or repeal a county charter.”

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

64. MHRL § 34 contains certain limitations on the power of counties to prepare, adopt, and amend county charters and charter laws regarding areas of constitutional and state concern.

#### IV. The Even Year Election Law

65. In June 2023, the New York State Legislature passed a bill requiring that certain local elections held outside of New York City be held in an even-numbered year. N.Y. Senate Bill S3505B; N.Y. Assembly Bill A4282B. The text of Senate Bill S3505B is available at <https://legislation.nysenate.gov/pdf/bills/2023/S3505B>.

66. Governor Hochul signed the bill into law on December 22, 2023.

67. The Even Year Election Law amended, in relevant part, Section 400 of the County Law and Section 34 of the MHRL.

68. With the enactment of the Even Year Election Law, County Law § 400(8) provides:

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

69. New subsection MHRL § 34(2)(h) provides:

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

70. The Even Year Election Law, in addition to trampling on the County's home rule rights guaranteed under Article IX, implicates a number of significant matters of local concern, including but not limited to: voter turnout for local elections; the right to determine when and how local officials are elected; ballot confusion; diminishing the importance of local issues and

elections in a crowded political campaign season; the increased expense of running local campaigns in the same year as presidential, gubernatorial, or other federal or statewide office elections; and attracting qualified candidates to run for local office.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Violation of the New York State Constitution, Article IX, Section 1)**

71. Plaintiffs repeat and reallege the previous paragraphs as if set forth fully herein.

72. Article IX of the New York State Constitution protects the right of local governments to have an elected legislative body. Implicit in this right is the right to determine the term of office of elected members and officials.

73. The County's right to set terms of office is confirmed by MHRL § 33, which provides that a county charter "shall provide" for, inter alia, the "agencies or officers responsible for the performance of the functions, powers and duties of the county . . . and the manner of election or appointment, *terms of office*, if any, and removal of such officers." MHRL § 33(3)(b) (emphasis added).

74. Setting the term of office for an agency or officer necessarily requires setting the first and last day of a term and, consequently, when an election for that office is to be held.

75. The Even-Year Election Law violates Article IX and the rights granted to the County therein because the law necessarily requires the County to alter the four- and two-year terms of its county executive and county legislators, respectively, by shortening each term by one year.

76. This shortening of terms of office invalidly conflicts with the County's prerogative to determine its own form of government as enshrined in Article IX § 1.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Violation of the New York State Constitution, Article IX, Section 2)**

77. Plaintiffs repeat and reallege the previous paragraphs as if set forth fully herein.

78. The Even Year Election Law also violates Article IX because the New York State Legislature exceeded its authority to act in relation to the property, affairs, or government of the County in violation of Section 2 of Article IX.

79. The Even Year Election Law and most specifically County Law § 400(8), which requires elections for “any position of a county elected official” to occur in even-numbered years, is a law which acts in relation to the property, affairs, or government of the County because determining terms of office and when elections for local offices are to be held is quintessentially a matter of the County’s property, affairs, and government.

80. The County did not request a special law relating to even-year elections.

81. There has been no certificate of necessity from the Governor with the requisite concurrence of the New York State Legislature.

82. Therefore, pursuant to Article IX § 2(b)(2), the New York State Legislature only has the authority to act with respect to elections for local officials by general law.

83. The New York State Legislature exceeded its authority under Article IX § 2(b)(2) because it did not act by general law.

84. County Law § 400(8) is not a general law because it does not, in terms or in effect, apply to all counties.

85. For example, County Law § 400(8) only applies to counties that have an elective executive, rather than a non-elected executive, and it exempts certain countywide offices and any offices with a three-year term of office.

86. Therefore, the New York State Legislature did not act either by general law or by special law in the circumstances allowed by Article IX, and the Even Year Election Law violates the Constitution.

87. The New York State Legislature's authority to act in relation to the "property, affairs or government of any local government" is also "[s]ubject to the bill of rights of local governments and other applicable provisions of th[e] constitution." Article IX § 2(b).

88. Because the bill of rights of local governments found in Article IX § 1 protects the County's right to set the terms of office and time of election for its officials, the New York State Legislature cannot rely on Section 2(b)(2) as its basis of authority to pass the legislation.

89. Moreover, even if County Law § 400(8) were deemed to be a general law, the County's Charter need not be consistent with general state laws and the Charter's provisions regarding odd-year elections for county executive and county legislators are nonetheless valid.

90. Because the Even Year Election Law violates the County's rights protected by Article IX, it is void as unconstitutional.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Violation of the New York State Constitution, Article IX, Section 3)**

91. Plaintiffs repeat and reallege the previous paragraphs as if set forth fully herein.

92. The Savings Clause provides: "The provisions of [Article IX] shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution." Article IX § 3(b).

93. Section 301 of the County's Charter provided that, following a transition period, a county executive was to be elected "at the general election in 1967 and every fourth year thereafter at the general election." Charter § 301.



94. Section 301, which was adopted in 1961, predates the 1963 amendments to Article IX, including the Savings Clause.

95. Section 301 is an “existing valid provision[]” and has not been repealed, amended, modified, or suspended.

96. Section 301 complied with and did not violate Article IX or County Law Article 6-A as those laws were in effect in 1961.

97. The Savings Clause therefore preserves the County’s valid, preexisting provision providing for the election of the county executive in odd-numbered years.

98. Plaintiffs are therefore entitled to a declaration that Section 301 of the Charter is valid and remains in force notwithstanding the enactment of the Even Year Election Law.

**WHEREFORE**, Plaintiffs respectfully demand judgment as follows:

- A. A declaratory judgment pursuant to CPLR 3001 declaring that the Even Year Election Law is void as violative of the New York State Constitution; and
- B. A declaratory judgment pursuant to CPLR 3001 declaring that Section 301 of the County’s Charter falls within the Savings Clause of Article IX to the New York State Constitution and is valid notwithstanding the enactment of the Even Year Election Law; and
- C. A permanent injunction prohibiting Defendants Dustin M. Czarny and Michele L. Sardo, their agents, and anyone acting on their behalf from enforcing and/or implementing the Even Year Election Law; and
- D. A judgment awarding Plaintiffs such other and further relief that the Court deems just, proper, and equitable, including but not limited to reasonable attorneys’ fees and other relief pursuant to Article 86 of the CPLR, and costs, disbursements, and

other allowances of this proceeding.

Dated: March 22, 2024  
Syracuse, New York

By: Edward D. Carni

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