

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,

Index No. 003095/2024

Hon. Gerard J. Neri, J.S.C.

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.

REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

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ARGUMENT

THE EVEN YEAR ELECTION LAW IS VALID BECAUSE IT IS A “GENERAL LAW.”

A. The Fourth Department has already rejected Plaintiffs’ argument.

This reply memorandum will focus on one narrow – and dispositive – issue: whether the Even Year Election Law is a “general law” within the meaning of the state constitution. As discussed below, under settled law including very clear Fourth Department precedent, the Even Year Election Law is a general law.

Indeed, Plaintiffs make just one argument on the question of whether the Even Year Election Law is a general law. They contend that it is a “special law” rather than a general law because it will not immediately alter elections in all counties throughout the state, as follows:

Not all counties have an elected executive: many counties have appointive executives, managers, and/or directors. County Law § 400(8) does not speak to the timing or method of appointing non-elected county officials. The legislation also exempts certain countywide offices and any offices with a three-year term and therefore would not apply to any county utilizing three-year terms. Thus, by its plain terms, Section 400(8) does not apply in terms or *in effect* to all counties and cannot be considered a general law.

[Plaintiffs’ memorandum at 10.](#)

Plaintiffs’ argument is directly refuted by the Fourth Department’s decision in *Radich v. Council of Lackawanna*, 93 A.D.2d 559 (4th Dept. 1983), *aff’d*, 61 N.Y.2d 652. *Radich* involved a conflict between a state law and a city charter over succession to the office of mayor in the event of a vacancy. The state law (General City Law § 2-a) provided “that the president of the city council is to succeed to the office.” 93 A.D.2d at 560. The city charter, on the other hand, “empowers the council to appoint a successor.” *Id.*

In *Radich*, the City Council of Lackawanna made exactly the same argument that Plaintiffs make here. The city council argued that the state law was not a general law because it

applied to “every city in which the Mayor and the president of the local legislative body are elected (1) at-large, (2) at the same time and (3) for the same term” (93 A.D.2d at 560) – and not every city in the state fell into that category. Likewise, in this case Plaintiffs argue that the Even Year Election Law is not a general law because not every county has an elected county executive or meets the other conditions for the law’s application.

In *Radich*, the Fourth Department rejected the plaintiff’s argument and ruled that the state law was a general law, in language that is directly applicable to this case, as follows:

Section 2-a did not run afoul of home rule merely because it was not applicable to every city in the State A "general law" is defined as "[a] law which in terms and in effect applies alike to all counties * * * all cities, all 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

Section 2-a was a general law when enacted because its specified conditions are common to the class which it creates and are related to the subject of the statute. It applies only to cities which elect the president of their legislative body (1) at-large, (2) at the same time and (3) for the same term as their Mayor. These conditions create a recognizable class of cities with special uniformity in the method of electing their chief executive and chief legislative officers. Contrary to appellants' arguments, the fact ***that the class so created does not include every city in the State does not make section 2-a a special law. Any city is free to enact local legislation changing the mode of election of local officials to one that meets the statute's conditions.*** Absent a showing that other cities could not meet the statutory specifications or absent a finding to that effect which could be made as a matter of law, a court is in no position to hold this legislation unconstitutional as special legislation.

Radich, 93 A.D.2d at 564-65 (emphasis added; internal citations and quotation marks omitted).

The Court of Appeals affirmed the Fourth Department’s decision in *Radich*, ruling that the state law “is a proper exercise of legislative power in an area of State-wide significance and, therefore, does not implicate the home rule provisions of article IX of the Constitution.” 61 N.Y.2d 652, 654 (1983).

Just like in *Radich*, in this case the Even Year Election Law is a general law although not every county in the state has an elected county executive, because every county “is free to enact local legislation changing the mode of election of local officials to one that meets the statute's conditions.” *Radich*, 93 A.D.2d at 565. Any county that chooses to have an elected county executive and to meet the statute’s other conditions must conduct elections in accordance with the statute. This is the very essence of a “general law.” *See id.* at 564 (“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.”).¹

Many other cases support these settled principles of law. For example, in the recent decision in *Matter of Buenos Hill Inc. v. Saratoga Springs Planning Board*, 83 Misc.3d 494 (Sup. Ct. Saratoga Co. 2024), the court upheld the constitutionality of the Marijuana Regulation and Taxation Act. The court cited *Radich* and ruled that the statute is a “general law” although municipalities may – and many do – opt out of its provisions allowing certain cannabis businesses. *See* 83 Misc.3d at 500-01 (“all municipalities” in the state have “an equal opportunity to opt out As such, all localities are treated equally under the statute and the opt out is general in application”). *See also Harvey v. Finnick*, 88 A.D.2d 40, 47 (4th Dept. 1982), *aff’d sub nom Kelley v. McGee*, 57 N.Y.2d 522 (“To be deemed general, ***an act need not apply to all persons, places or things in the State if it applies to a class, entry into which is governed by conformity or compliance with specified conditions***”) (emphasis added; citing *Farrington v. Pinckney*, 1 N.Y.2d 74, 78 (1956)).

¹ That *Radich* involved a city charter rather than a local law undermines Plaintiffs’ argument in their memorandum (at 11-14) that charters should be allowed to override “general laws” enacted by the state legislature even though other local legislation may not. Furthermore, Plaintiffs have failed to establish that Onondaga County has adopted an “alternative form of County government” within the meaning of Article IX of the constitution (or the New York Alternative County Government Law) that is somehow exempt from being amended by a general state law.

B. The Even Year Election Law is unambiguously a general law.

As discussed in our initial memorandum, Article IX of the state constitution 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.

CONCLUSION

For these reasons as well as those set forth in our initial memorandum and in the papers of the State of New York defendants, the Defendant’s motion should be granted, and the Even Year Election Law should be declared constitutional, along with any further relief the court deems just and proper.

Dated: August 30, 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 1,273 words.

Dated: August 30, 2024

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