

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RENSSELAER

COUNTY OF RENSSELAER; STEVEN F. MCLAUGHLIN,
Individually as a Voter, and in his Capacity as
RENSSELAER COUNTY EXECUTIVE; and the
RENSSELAER COUNTY LEGISLATURE,

Amended Complaint

Plaintiffs,

v.

Index No.: EF2024-276591

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

Defendants.

Plaintiffs COUNTY OF RENSSELAER; STEVEN F. MCLAUGHLIN, Individually as a
Voter, and in his Capacity as RENSSELAER COUNTY EXECUTIVE; and the RENSSELAER
COUNTY LEGISLATURE (hereinafter collectively referred to as “Plaintiffs”), by and through
their attorneys, the Rensselaer County Attorney, Carl J. Kempf, III, Esq., as and for their
Complaint against Defendants, respectfully allege, upon information and belief, unless otherwise
stated, as follows:

CLAIM SUMMARY

1. This is a declaratory judgment action in which Plaintiffs seek to have Chapter 741 of the Laws of 2023 of the State of New York declared unconstitutional.
2. Chapter 741 of the Laws of 2023 of the State of New York is entitled, “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 Law”), which was enacted by the New York State Legislature in June 2023 and signed into law by Defendant, Governor Kathleen Hochul on December 22, 2023.

3. The Even Year Law violates Article IX of the New York State Constitution, which provides local governments, such as Rensselaer County, with expansive home rule rights and powers.

4. Article IX §1 protects the right of local governments to have a legislative body elected by the people, and provides that all officers or 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.”

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

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

7. In accordance with its home rule rights protected by Article IX, the residents of Rensselaer County adopted the Rensselaer County Charter in 1973 as its alternative form of government.

8. Rensselaer County’s Charter expressly provides that county legislators (RC Charter §2.02) and the county executive (RC Charter §3.01) will be elected for four-year terms, and such elections will be held in odd-numbered years.

9. Despite the expansive home rule rights granted to local governments in Article IX, the Even Year Law purports to require that elections for certain local officials be held in even-numbered years.

10. The Even Year Law changes the term of office for Rensselaer County Legislators and the Rensselaer County Executive by requiring them to be elected following its enactment on

January 1, 2025, from four years to three years, holding the next election thereafter in 2028 instead of 2029.

11. For these reasons, Plaintiffs seek a declaration that the Even Year Law is unconstitutional.

12. In addition, Article IX §3 of the New York State Constitution contains a Savings Clause which protects the provision of the County Charter that provides for elections for the county executive in odd-numbered years, “(e)xcept as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to...Matters other than the property, affairs or government of a local government.” NY Const art IX § 3(a)(3).

13. Therefore, Plaintiffs also seek for this Court to declare that the Rensselaer County Charter, §§2.02, 3.01 are valid and enforceable, regardless of the Even Year Law.

PARTIES

14. The COUNTY OF RENSSELAER (hereinafter “RENSSELAER COUNTY”) is a municipal corporation duly formed by the laws of the State of New York, with a principal office in Rensselaer County, New York.

15. Plaintiff STEVEN F. MCLAUGHLIN (hereinafter “MCLAUGHLIN”) was and is the duly elected County Executive of the County of Rensselaer, State of New York, at all times relevant, and is charged by law with carrying out the duties and obligations of that position, including, as applicable, the laws of the Rensselaer County Charter, the laws of the State of New York (the “State”) and the laws of the United States of America (hereinafter referred to as “United States”).

16. Plaintiff MCLAUGHLIN also is a voter and taxpayer in the State of New York and Rensselaer County.

17. Plaintiff RENSSELAER COUNTY LEGISLATURE (hereinafter “RC LEG”) is a board of duly elected residents and voters of the County of Rensselaer, and is the legislative body charged with representing over 156,000 Rensselaer County residents.

18. Defendant KATHLEEN HOCHUL (hereinafter “HOCHUL”), is the Governor of the State of New York, the head of the Executive Branch of state government, serving as the State’s chief executive and Commander-in Chief, and is required by the Constitution to submit a yearly State Budget to the Legislature; is empowered to: sign or veto legislative bills; convene the Legislature for special sessions; among other duties.

19. HOCHUL has her principal office located in the State Capitol in Albany, New York.

20. HOCHUL is being sued in her official capacity as Governor.

21. Defendant THE STATE OF NEW YORK (hereinafter “NYS”), is the state government constituted by the New York State Constitution.

JURISDICTION AND VENUE

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

23. Venue is appropriate in Rensselaer County pursuant to CPLR §503 because Plaintiffs reside in Rensselaer County.

CAPACITY AND STANDING TO SUE

24. This action was authorized by a resolution of the Rensselaer County Legislature dated March 13, 2024. A copy of the resolution is attached hereto as **Exhibit A**.

25. This action was further authorized by Plaintiff STEVEN L. MCLAUGHLIN, as Rensselaer County Executive.

26. Plaintiffs have standing in that they are challenging the constitutionality of a statute that impinges upon the County's "Home Rule" powers, which are constitutionally guaranteed under Article IX of the New York State Constitution. *City of New York v State of New York*, 86 NY2d 286, 291-291 (1995); *Town of Black Brook v State of New York*, 41 NY2d 486, 488-489 (1977).

BACKGROUND

I. The Rensselaer County Charter

27. In November 1973, Rensselaer County voters voted in favor of a new charter referendum (Local Law, 1972, No. 2 of County of Rensselaer). A copy of the original Rensselaer County Charter is attached hereto as **Exhibit B**.

28. The Rensselaer County Charter became effective as of January 1, 1974 (Art. 20 § 20.00).

29. The express purpose of the Rensselaer County Charter is, "the accomplishment of greater efficiency, economy and responsibility in county government; the securing of all possible county home rule; and, the separation of legislative and executive functions" (Art. 1 § 1.01).

30. The Rensselaer County Charter specifies that "(a)ny State Law which is inconsistent with this Charter shall be superseded by the provisions hereof to the extent of its inconsistency, except where supersession is restricted by State Law" (Art. 1 § 1.03).

31. Article 2 of the Rensselaer County Charter sets forth that the governing body of Rensselaer County shall be the County Legislature (Art. 2 § 2.01).

32. The Rensselaer County Charter provides that the members of the County Legislature “shall be elected at the General election in odd-numbered years for terms of four (4) years commencing with the General election for the year 1973 pursuant to the provisions set forth in Article 17 of this Charter and titled ‘Legislative Apportionment’” (Art. 2 §2.02).

33. Article 17 of the Rensselaer County Charter defines the composition of the County Legislature, again referring to the Municipal Home Rule Law of the State of New York (Art. 17 § 17.00).

34. Article 2, Section 2.07(5) of the Rensselaer County Charter confers upon the Rensselaer County Legislature, the power and duty “[t]o exercise all powers of local legislation in relation to enacting, amending or rescinding local laws, charter laws, legalizing acts or resolutions.”

35. Further, Article 2, Section 2.07(14) of the Rensselaer County Charter confers upon the Rensselaer County Legislature the power and duty “[t]o determine and make provision for any matter of County Government not otherwise provided for, including but not restricted to any necessary matter involved in the transition to this Charter form of Government.”

36. Article 2, Section 2.05 of the Rensselaer County Charter also refers to the election of the members of the County Legislature in odd-numbered years.

37. Article 3 of the Rensselaer County Charter sets forth that “(t)here shall be a County Executive, who shall be the Chief Executive Officer, responsible for the proper administration of all County affairs placed in his charge by law or under any of the provisions of this Charter” (Art. 3 § 3.00).

38. The “Election and Qualifications” section of Article 3 of the Rensselaer County Charter states that the County Executive’s “term of office shall be four (4) years and he shall run for office concurrently with the Legislature” (Art. 3 §3.01).

39. Article 3 of the Rensselaer County Charter set forth the Powers and Duties of the Rensselaer County Executive, including that “(h)e shall execute and enforce all laws, and resolutions of the County Legislature and all other laws required to be enforced through the County Legislature or by any county officers subject to its control, and shall perform all other duties and functions herein prescribed or lawfully delegated to him by the County Legislature” (Art. 3 § 3.03 ([A])).

40. These provisions remain in full force and effect today. A copy of the Rensselaer County Charter in effect today is attached hereto as **Exhibit C**.

41. Prior to the enactment of the Rensselaer County Charter, a Rensselaer County Board of Supervisors existed to manage the business of Rensselaer County.

42. A lawsuit commenced in 1968 brought to light a claim that the Board of Supervisors structure of government in Rensselaer County violated the principle of “one man, one vote.”

43. In response, the Board of Supervisors submitted two weighted voting plans to Supreme Court, which were rejected.

44. The Board of Supervisors submitted a third weighted voting plan, which was also rejected by Supreme Court, which ordered that a County Legislature be created in 1969.

45. The Board of Supervisors submitted three reapportionment plans to Supreme Court, dividing Rensselaer County into Legislative Districts, one of which was so ordered by Supreme Court on an interim basis, and upheld by the Appellate Division and Court of Appeals.

46. A Charter Commission was appointed to draft a proposed Rensselaer County Charter toward the end of 1969.

47. As of January 1, 1970, the first Rensselaer County Legislature took office.

48. In 1971, Local Law No. 2 was introduced, embodying a Rensselaer County Charter that called for a County Manager to be appointed by the Legislature instead of being directly elected.

49. Local Law No. 2 was passed by the Rensselaer County Legislature, and subject to mandatory referendum.

50. The Local Law No. 2 referendum was defeated in the 1971 general election.

51. Local Law No. 3 was introduced in 1972, adopting a Rensselaer County Charter with a County Executive who was directly elected, was passed by the Rensselaer County Legislature, and subject to mandatory referendum.

52. The Local Law No. 3 referendum was passed by the voters in the 1972 general election.

53. The First Rensselaer County Executive was elected in the 1973 general election.

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

54. In 1958, an amendment to Article IX of the New York State Constitution—the “Home Rule Law”—was adopted and a new Article 6-A of the County Law passed by the New York State Legislature in 1959.

55. The Home Rule Law was designed to promote autonomy in local matters, to permit local self-governance, and prevent state legislative interference in local government affairs.

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

57. County Law §323(1) provides 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]).

58. Article 6-A provides 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...agencies or officers responsible for the performance of the functions, power 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]).

59. 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 (County Law §324[3] [1959]).

60. 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 local legislative action, subject to the limitations imposed herein” (County Law §325[1] [1959]).

61. Article 6-A is to be “construed liberally” (County Law §325[3] [1959]).

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

62. Article IX was again amended 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.

63. 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.

64. 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>.

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

66. 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 elected by the people thereof” (Article IX §1[a]).

67. 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]).

68. Article IX, § 2(b)(2) of the New York Constitution provides the 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 (b) except in the case of the city of New York, on certificate of

necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature” (N.Y. Const, art. IX, §2[b][2]).

69. 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]).

70. Firstly, the law must be determined to be special, rather than general. A general law is a “law which in terms and effect applies alike to all counties.”

71. Since the law in issue is special in that it is impossible for it to apply equally to all counties, it must be passed in accordance with the aforementioned procedure. Option (a) requires a “home rule message” to be sent to the State from the local government. This can be created by a “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.” Additionally, New York’s Governor can bypass the “home rule message” requirement by declaring a valid emergency with the concurrence of two-thirds of both houses of the State Legislature. Rensselaer County’s Legislature did not request the State to enact this special law, the County Executive did not request the State to enact this special law, and no valid emergency with respect to the years in which local elections are held was declared by New York’s Governor.

72. Option (b) for the enactment of this special law is clearly irrelevant because it does not impact New York City, nor did the Governor declare, with the concurrence of two-thirds of each house of the Legislature, an emergency to have existed requiring the enactment of

the law. Since neither Option (a) nor Option (b) were satisfied, the law was passed without a “home rule message.”

73. In very limited cases, the State is permitted to enact a special law in the absence of a “home rule message.” Those are instances in which the special law appeals to a “matter of state concern.” In a concurring opinion for *Alder v. Deegan* (1929), Judge Cardozo articulated the test to determine when an issue is a “matter of state concern.” He wrote, “[I]f the subject be *in a substantial degree* a matter of State concern, the Legislature may act, though intermingled with it are concerns of the locality.” Through the case law, “substantial degree” has been determined to mean a special law that was not enacted as a result of a “home rule message” must “serve a supervening State concern,” and “relate to life, health, and the quality of life [of the People of the State].” Lastly, the “supervening state concern” cannot be derived “purely from speculative assertions on possible Statewide implication of the subject matter, having no support in the language, structure or legislative history of the statute.”

74. The law in question is a special law that was enacted in the absence of a “home rule message.” It cannot be reasonably construed as to apply to a “matter of state concern” because it does not “relate to life, health, and the quality of life [of the People of the State].” Accordingly, it fails the *Alder* test. By being passed without a required “home rule message” and failing the *Alder* test, this law directly contradicts Article IX, § 2(b)(2) and is procedurally unconstitutional.

75. 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]; Municipal Home Rule Law §35[3] [“This county charter law shall be construed liberally”]).

76. In or around April 1963, the Legislature passed the MHRL, which would become effective only if the amendment creating a new Article IX was approved at the 1963 general election.

77. 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 section of the Town Law.

78. 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.

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

80. 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, “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]).

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

IV. The Even Year Law

82. 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 (NY Senate Bill S3505B; NY Assembly Bill A4282B; <https://legislation.nysenate.gov/pdf/bills/2023/S3505B>).

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

84. The Even Year Law amended, in pertinent part, Section 400 of the County Law and Section 34 of the MHRL.

85. With the enactment of the Even Year 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.

86. New subsection MHRL §43(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.

87. The Even Year 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 crowded political campaign seasons; 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.

88. The Even Year Law was motivated by political agendas, as is reflected in the Bill Co-Sponsor's (James Skoufis) public comments, including: "The bill is good government. The only reason why you and Rs are opposed is because you prefer lower turnout" (X, @JamesSkoufis, May 27, 2022, 9:32 A.M.) (the Senate bill was sponsored by Skoufis (D) and

co-sponsored by Salazar (D, WF). The Assembly bill was sponsored by Paulin (D) and co-sponsored by Sillitti (D), Walker (D), Darling (D), Dickens (D), Burgos (D), and Ramos (D)).

89. Furthermore, the map attached hereto as **Exhibit D**, demonstrates the disparate impact that the politically-motivated Even Year Law will have on upstate municipalities, the executives of which are overwhelmingly politically opposed by State lawmakers (X, @anvaendarnamnoa, Feb. 1, 2024, 4:29 P.M.).

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

90. Plaintiffs repeat and reallege the paragraphs hereinabove as if fully set forth herein.

91. Article IX 1(a) of the New York State Constitution provides that every local government shall have a legislative body elective by the people thereof. Implicit in this right is the right to determine the terms of office of elected members and officials.

92. The County's right to set terms of office is confirmed by MHRL §33, which provides that a county charter "shall provide" for 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]).

93. 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.

94. The Even Year 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.

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

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

96. Plaintiffs repeat and reallege the paragraphs hereinabove as if fully set forth herein.

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

98. The Even Year Law and 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.

99. Rensselaer County did not request a special law relating to even-year elections.

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

101. 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.

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

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

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

105. In addition, in a letter dated November 28, 2023, the Albany County Board of Elections detailed various flaws and failure of the Even Year Law. A copy of the letter is attached hereto as **Exhibit E**.

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

107. 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]).

108. Because the bill of rights of local governments found in Article IX §1 protects Rensselaer County's right to set the terms of office and term 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.

109. 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 provision regarding odd year elections for the County Executive and County Legislators are valid.

110. The Even Year Law violates Rensselaer County's rights protected by Article IX and is therefore must be declared to be unconstitutional.

WHEREFORE, Plaintiffs respectfully demand judgment as follows:

A. A declaratory judgment pursuant to CPLR 3001 declaring that the Even Year Law is void as violative of the New York State Constitution; and

B. A judgment awarding Plaintiffs such other and further relief that the Court deems just, proper, and equitable, including, but not limited to, reasonably attorneys' fees and other relief pursuant to Article 86 of the CPLR, and costs, disbursements and expenses related to this proceeding.

Dated: East Greenbush, NY
May 3, 2024

RENSSELAER COUNTY ATTORNEY



By: Carl J. Kempf, III, Esq.
Counsel to Plaintiffs
99 Troy Road
East Greenbush, NY 12061
Tel: (518) 270-2950
Email: Cjkempf@renesco.com

RETRIEVED FROM DEMOCRACYDOCKET.COM