

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONEIDA

THE COUNTY OF ONEIDA, THE ONEIDA  
COUNTY BOARD OF COUNTY 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,

v.

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

Defendants.

**COMPLAINT**

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

Plaintiffs, THE COUNTY OF ONEIDA (“the County”), THE ONEIDA COUNTY BOARD OF COUNTY 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, by and through their attorneys, Robert F. Julian, P.C., 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 (“Constitution”), which grants expansive home rule rights and powers to local governments, including the County.

3. Constitution Article IX § 1 protects the right of local governments to have a legislative body elected 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. Constitution 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 Constitution Article IX, the County in 1961 adopted a county charter as its alternative form of government. (**Exhibit A**)

7. The County’s charter expressly provides for elections for County Legislators for a two-year term, and expressly both for the County Executive and the County Comptroller for a four-year term. Such elections are held in odd-numbered years.

8. When the Oneida County Charter was adopted in 1961, the legislative body was the Board of Supervisors, elected from each Town in the County to serve as members of the County Board of Supervisors for a two-year term in odd years pursuant to Town Law Section 24. In 1967 the Oneida County Charter and Administrative Code were amended to provide that Section 201 of the Charter would rename the office of Supervisor to County Legislator and that the office of County Legislator would appear on designating petitions for the 1967 general election. (**Exhibit**

B) Charter Section 2303 of the Oneida County Charter codifies the existence of a two-year term for County Legislators. (**Exhibit C**)

9. Despite the expansive home rule rights granted to local governments in Constitution Article IX, the Even Year Election Law purports to require that elections for certain local officials be held in even-numbered years. The effect of this is to change 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 and County Comptroller to be elected following its enactment from four years to three years.

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

11. Additionally, Constitution Article IX § 3 contains a “Savings Clause” which protects that provision of the County’s charter providing for elections for the County Executive, County Comptroller and County Legislators in odd-numbered years.

12. Therefore, the Court should also declare that Section 201, Section 301, and Section 401 of the County’s Charter are valid, remain in force notwithstanding the Even Year Election Law, and that elections for County Executive, County Comptroller and County Legislators may continue to be held in odd-numbered years.

### **PARTIES**

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

14. Plaintiff THE ONEIDA COUNTY BOARD OF COUNTY LEGISLATORS is the legislative body of the County of Oneida and the successor to the Oneida County Board of Supervisors, having been duly elected in November 2023.

15. Plaintiff ANTHONY J. PICENTE, Jr. was and is the duly elected County Executive for the County of Oneida at all relevant times.

16. Plaintiff ANTHONY J. PICENTE, Jr. resides in Oneida County and was and is an elector and taxpayer of Oneida County in the State of New York serving his fifth term having been duly re-elected in November 2023.

17. Plaintiff ENESSA CARBONE is the Oneida County Comptroller as of January 1, 2024, having been duly elected in the general election of November 2023.

18. Plaintiff ENESSA CARBONE resides in Oneida County and was and is an elector and taxpayer of Oneida County in the State of New York.

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

20. 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.

**JURISDICTION AND VENUE**

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

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

### CAPACITY TO SUE AND STANDING

23. This action was duly authorized by a resolution of the Oneida County Board of County Legislators dated February 14, 2024, a true copy of the same being attached hereto and made a part hereof as **Exhibit D**.

24. This action was further authorized by the Oneida County Executive, Anthony J. Picente, Jr. and Oneida County Comptroller Enessa Carbone, and the County Attorney Amanda L. Cortese-Kolasz.

25. 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 Constitution Article IX. *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**

26. The Oneida County Charter was adopted by the County Board of Supervisors on August 30, 1961 and approved by referendum on November 7, 1961 ("1961 Charter"). A true and correct copy of the 1961 Charter is attached previously as **Exhibit A**.

27. At the time of adoption and referendum in 1961, Section 201 of the 1961 Charter provided that the supervisors of the several cities and towns in the county of Oneida constituted the "Board of Supervisors," which was to be the legislative body of the County.

28. In 1967, Article II of the 1961 Charter was amended to provide that the legislative branch of the government of Oneida County shall consist of an elective governing body which shall be known as the Oneida County Board of County Legislators.

29. This provision of Article II of the 1961 Charter remains in force today.

30. Elections through today to the Board of Legislators of Oneida County and its predecessor body the County Board of Supervisors have been held every two years in odd numbered years. Such elections are for a two-year term beginning in an even year and ending in an odd year. The result is that electors for a new term occur in an odd year.

31. Article II of the Charter established the elected position of County Executive to administer the executive branch of the County government.

32. Section 301 of the 1961 Charter provides that the County Executive term of office “shall begin with the first day of January, next following his election and shall be for four years except that the term of the County Executive elected in 1962, shall be for five years, commencing January 1, 1963 and every County Executive elected thereafter shall have a term of four years.”

33. Because the first County Executive term was for five years - 1963, 1964, 1965, 1966 and 1967 - elections for County Executive take place in odd years (i.e., 1967). Such elections are for a four-year term ending in an odd year (for example, 1968-1971). The result is that the election for the next term occurs in an odd year.

34. Section 301 of the Charter has been amended since 1961 but retains the County Executive’s four-year term. A true and correct copy of the Charter currently in effect is attached previously as **Exhibit B** (“Charter”).

35. The Oneida County Charter, as adopted in 1961 and approved at referendum established the Department of Audit and Control in Article IV Section 402. That provision states “There shall be a Department of Audit and Control headed by a Comptroller who shall be elected from the County at large. His term of office shall be for four years beginning with the first day of January next following his election, except that the provisions of this section with respect to such election shall not take effect until the general election of 1964 at which a Comptroller shall be

elected for a three year term to commence January 1, 1965 and every Comptroller elected thereafter shall have a term of four years.”

36. This provision of Article IV of the Charter remains in full force and effect today.

37. The Charter is to be “liberally construed to effectuate its objectives and purpose.” Charter §2306.

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

38. The County’s Charter was adopted against the backdrop of a 1958 amendment to Article IX of the 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.

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

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

41. Constitution 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 of such forms of government to the electors residing in such counties.” Constitution Article IX § 2(a) (1959). A true and correct copy of the 1958 concurrent resolution amending Constitution Article IX is attached as **Exhibit E**. A true and correct copy of Constitution 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 F**.

42. Constitution 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.” Constitution Article IX § 2(b) (1959).

43. Constitution 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. Constitution Article IX § 2(c) (1959).

44. Constitution 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 . . . .” Constitution Article IX § 2(d) (1959).

45. Pursuant to the constitutional mandate in Constitution 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 G**.

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

47. 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).

48. 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).

49. 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).

50. 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).

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

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

52. Constitution 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.

53. 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.

54. No substantive changes have been made to Constitution Article IX since the 1963 amendments.

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

56. Constitution 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.” Constitution Article IX § 1(a).

57. Constitution 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.” Constitution Article IX § 1(h)(1).

58. 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.” Constitution Article IX § 1(h)(1).

59. Constitution 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.” Constitution Article IX § 2(b)(2).

60. Section 3 of Constitution 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 other than those wholly included within a city, cities, towns or villages.” Constitution Article IX § 3(d)(1), (4).

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

62. Constitution 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.” 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.”).

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

64. 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.

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

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

67. 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).

68. 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

69. 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.

70. Governor Hochul signed the bill into law on December 22, 2023. A copy of the Even Year Election Law is annexed as **Exhibit H**.

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

72. 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.

73. MHRL § 34 imposes limits on County Charter. The Even Year Election Law adds a new subsection, MHRL § 34(3)(h), which 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.”

74. The Even Year Election Law, in addition to trampling on the County’s home rule rights guaranteed under Constitution 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)**

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

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

77. 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).

78. 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.

79. The Even Year Election Law violates Constitution 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, County Comptroller and County Legislators, respectively, by having the effect of shortening each term by one year.

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

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

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

82. The Even Year Election Law also violates Constitution 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 Constitution Article IX.

83. The Even Year Election Law and most specifically its amendments to add 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.

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

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

86. Therefore, pursuant to Constitution 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.

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

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

89. 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.

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

91. 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." Constitution Article IX § 2(b).

92. Because the bill of rights of local governments found in Constitution 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.

93. 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, County Comptroller and County Legislators are nonetheless valid.

94. Because the Even Year Election Law violates the County's rights protected by Constitution 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)**

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

96. 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.” Constitution Article IX § 3(b).

97. Section 301 of the County’s 1961 Charter provided that a county executive was to be elected at the general election in 1962 for a five-year term and every four years thereafter, Charter § 301. Section 401 of the County Charter provides that the County Comptroller shall be elected for a three-year term in 1964 and thereafter for a four-year term. Section 201 of the County Charter is explained in paragraph 8 above and intended a two-year term for the legislative body to be elected in an odd year when the Charter was adopted in 1961 and carried forward that intent with the subsequent amendment to the Charter renaming the body the Board of County Legislators. That intent was codified by Charter provision Section 2303.

98. Sections 201, 301 and 401, which were adopted in 1961, predate the 1963 amendments to Constitution Article IX, including the Savings Clause.

99. Sections 201, 301 and 401 are “existing valid provision[s]” and have not been materially repealed, amended, modified, or suspended, except for updates in ensuing versions to remove the no longer required initial term language.

100. Sections 201, 301 and 401 complied with and did not violate Constitution Article IX or County Law Article 6-A as those laws were in effect in 1961.

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

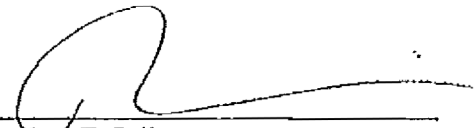
102. Plaintiffs are therefore entitled to a declaration that Section 201, Section 301, and Section 401 of the Charter are valid and remain in force notwithstanding the enactment of the Even Year Election Law.

**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 Sections 201, 301 and 401 of the County's Charter fall within the Savings Clause of Article IX to the New York State Constitution and are valid notwithstanding the enactment of the Even Year Election Law, and that elections for County Executive, County Comptroller and County Legislators may continue to be held in odd-numbered years; and
- C. 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: April 4, 2024  
Utica, New York

By:   
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