

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF JEFFERSON

JASON ASHLAW, JOANN MYERS, TANNER  
RICHARDS, STEVEN GELLAR, EUGENE CELLA,  
ROBERT MATARAZZO, THE COUNTY OF  
SUFFOLK, and THE TOWN OF HEMPSTEAD,

Plaintiffs,

v.

THE STATE OF NEW YORK, KATHLEEN  
HOCHUL, in her capacity as Governor of the State of  
New York, MICHELLE LAFAVE, in her capacity as  
Commissioner of the Jefferson County Board of  
Elections, JUDE SEYMOUR, in his capacity as  
Commissioner of the Jefferson County Board of  
Elections, THE JEFFERSON COUNTY BOARD OF  
ELECTIONS, JOHN ALBERTS, in his capacity as  
Commissioner of the Suffolk County Board of  
Elections, BETTY MANZELLA, in her capacity as  
Commissioner of the Suffolk County Board of  
Elections, THE SUFFOLK COUNTY BOARD OF  
ELECTIONS, JOSEPH KEARNEY, in his capacity as  
Commissioner of the Nassau County Board of  
Elections, JAMES SCHEUERMAN, in his capacity as  
Commissioner of the Nassau County Board of  
Elections, and THE NASSAU COUNTY BOARD OF  
ELECTIONS,

Defendants.

**COMPLAINT**

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

Plaintiffs JASON ASHLAW, JOANN MYERS, TANNER RICHARDS,  
STEVEN GELLAR, EUGENE CELLA, THE COUNTY OF SUFFOLK (“the County”  
or “Suffolk”), and THE TOWN OF HEMPSTEAD (“the Town” or “Hempstead”), by  
and through their attorneys, Troutman Pepper Hamilton Sanders LLP, and Plaintiff

ROBERT MATARAZZO, *pro se*, as and for their Complaint, upon information and belief, allege as follows:

### NATURE OF THE CASE

1. On December 22, 2023, Governor Kathleen Hochul signed into law Assembly Bill A4282B/Senate Bill S3505B, hereinafter referred to as the “Even Year Election Law,” requiring (with some exceptions) that many governments hold their local elections in even-numbered years.

2. For decades, localities throughout New York have held their local elections for positions such as County Executive, Town Councilmember, and District Attorney in odd-numbered years, allowing these localities and their voters to focus solely on those local elections and the local issues that they inherently involve.

3. In January 2023, the New York State Legislature (“Legislature”) introduced the Even Year Election Law to force those “off cycle,” local elections to even-numbered years—upending decades of local practice.

4. By aligning local elections with statewide and federal elections for offices like Governor, U.S. Senator, and President—elections in which more Democrats in New York have historically participated—the Even Year Election Law fundamentally changes local elections.

5. The Legislature waited until the last moment before the Legislature’s summer adjournment to pass the Even Year Election Law, successfully preventing the bill from receiving thorough consideration through the Legislature’s customary public-hearing process.

6. In a similar attempt to avoid thorough public discussion of the law, Governor Hochul signed the Even Year Election Law into law days before the 2023 Christmas holiday.

7. The Even Year Election Law violates the New York Constitution in numerous, independently fatal respects.

8. *First*, the Even Year Election Law impermissibly burdens the fundamental rights to speech and assembly of many New York citizens, including individual Plaintiffs Jason Ashlaw, Joann Myers, Tanner Richards, Steven Gellar, Eugene Cella, and Robert Matarazzo, in violation of Article I, §§ 8 and 9 of the New York Constitution. The Even Year Election Law needlessly moves several local elections to even-numbered years, thus consolidating numerous elections into those even-numbered election years. Such consolidation increases the burdens associated with casting a vote, fundraising, and generating support for candidates, among other essential campaigning activities, while contributing to voter fatigue due to higher numbers of issues and/or candidates on the ballot. Meanwhile, the purported benefits of the Even Year Election Law—such increased voter turnout and costs savings—are entirely illusory, given voter fatigue and ballot drop-off, as well as the fact that localities will still hold elections in both odd and even years due to exceptions to the general even-year rule.

9. *Second*, the Even Year Election Law also denies equal protection of the law to those New York citizens who have had their local election dates modified by the Even Year Election Law, in violation of Article I, § 11 of the New York

Constitution. As noted, the Even Year Election Law does not alter *all* local elections, but rather leaves some localities free to continue holding elections in odd-numbered years—with no sufficient justification for this disparate treatment.

10. *Third*, the Even Year Election Law violates the right to vote enshrined in Article II, § 1 of the New York Constitution. By requiring local elections to proceed alongside statewide and federal elections, the Even Year Election Law makes it harder for citizens to cast a vote. With more candidates on the ballot and higher turnout numbers, voters will face longer ballots, longer voting lines, voter fatigue, and “ballot drop-off” or “roll-off” (the practice of voters not completing “down-ballot” races). These burdens are unjustifiable, as all of the Even Year Election Law’s purported benefits are illusory.

11. *Fourth*, by altering the terms of office for their elected officials set by localities like Jefferson and Suffolk Counties and the Towns of Hempstead, Champion, Islip, and Brookhaven, the Even Year Election Law violates the rights of these localities under Article IX, § 1 of the New York Constitution. Further, by forcing counties like Suffolk to amend their county charters, the Even Year Election Law also violates Article IX, § 1’s provision of authority to counties to adopt alternative forms of government.

12. *Fifth*, the Even Year Election Law is also an impermissible special law under Article IX, § 2 of the New York Constitution. The Legislature can only legislate with respect to counties’ and towns’ property, affairs, and government via “general law,” absent special circumstances. Here, the Even Year Election Law is a special

law, not a “general” law, because it does not affect all localities, and no special circumstances are present here to empower the Legislature to enact such a special law. Further, the Legislature cannot point to any legitimate, substantial state concern to otherwise justify this special law, given the Even Year Election Law’s illusory benefits.

13. *Finally*, the Even Year Election Law violates the “Savings Clause” found in Article IX, § 3 of the New York Constitution—which “Savings Clause” the State added to Article IX when it made certain amendments to that Article in 1963. Suffolk County voters adopted their charter and its provisions providing for election of County officials in odd-numbered years prior to 1963, and other local governments have likewise provided for odd-year elections for local officials prior to 1963. These local-government provisions are “existing valid provisions” of law protected by Article IX, § 3’s “Savings Clause.”

14. For these reasons and those explained herein, Plaintiffs are entitled to injunctive and declaratory relief preventing enforcement of the unconstitutional Even Year Election Law by the named Defendants here.

### **PARTIES**

15. Plaintiff JASON ASHLAW is an individual residing in the Town of Champion, a town within the County of Jefferson.

16. Plaintiff JOANN MYERS is an individual residing in the Town of Champion, a town within the County of Jefferson.

17. Plaintiff TANNER RICHARDS is an individual residing in the Town of Champion, a town within the County of Jefferson.

18. Plaintiff STEVEN GELLAR is an individual residing in the Town of Islip, a town within the County of Suffolk.

19. Plaintiff EUGENE CELLA is an individual residing in the Town of Brookhaven, a town within the County of Suffolk.

20. Plaintiff ROBERT MATARAZZO is an individual residing in the Town of Hempstead, a town within the County of Nassau.

21. Plaintiff THE COUNTY OF SUFFOLK is a municipal corporation duly formed by the laws of the State of New York.

22. Plaintiff THE TOWN OF HEMPSTEAD is a municipal corporation duly formed by the laws of the State of New York.

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

24. 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.

25. Defendant MICHELLE LAFAVE is a Commissioner of the Jefferson County Board of Elections. She is being sued in her official capacity.

26. Defendant JUDE SEYMOUR is a Commissioner of the Jefferson County Board of Election. He is being sued in his official capacity.

27. Defendant JEFFERSON COUNTY BOARD OF ELECTIONS is the board of elections responsible for conduct of elections in Jefferson County.

28. Defendant JOHN ALBERTS is a Commissioner of the Suffolk County Board of Elections. He is being sued in his official capacity.

29. Defendant BETTY MANZELLA is a Commissioner of the Suffolk County Board of Elections. She is being sued in her official capacity.

30. Defendant SUFFOLK COUNTY BOARD OF ELECTIONS is the board of elections responsible for conduct of elections in Suffolk County.

31. Defendant JOSEPH KEARNEY is a Commissioner of the Nassau County Board of Elections. Town of Hempstead is located within Nassau County. Mr. Kearney is being sued in his official capacity.

32. Defendant JAMES SCHEUERMAN is a Commissioner of the Nassau County Board of Elections. Town of Hempstead is located within Nassau County. Mr. Scheuerman is being sued in his official capacity.

33. Defendant NASSAU COUNTY BOARD OF ELECTIONS is the board of elections responsible for conduct of elections in Nassau County.

### **JURISDICTION AND VENUE**

34. The Court has jurisdiction over this matter because Plaintiffs challenge the constitutionality of a state-legislative enactment under the New York Constitution. *See* N.Y. Const., art. VI, § 7(a); N.Y. Civil Practice Law and Rules (“CPLR”) § 3001.

35. Venue is proper in Jefferson County pursuant to CPLR § 503(a) because this is the County where Plaintiffs Ashlaw, Myers, and Richards reside.

### CAPACITY TO SUE

36. The Suffolk County Legislature duly authorized this action by a resolution dated April 4, 2024.

37. The Suffolk County Executive, Edward Romaine further authorized this action.

38. The Town of Hempstead duly authorized this action by a resolution dated March 12, 2024.

### FACTS

#### **I. The New York Constitution**

39. Several provisions of the New York Constitution are relevant to Plaintiffs' lawsuit here.

40. Article I, § 8 of the New York Constitution provides that “[e]very citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.” N.Y. Const. art. I, § 8.

41. Article I, § 9 further provides that “[n]o law shall be passed abridging the rights of the people peaceably to assemble.” *Id.* art. I, § 9.

42. And Article I, § 11 provides that “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.” *Id.* art. I, § 11.



43. Article II, § 1 also protects the right to vote, providing that “[e]very citizen shall be entitled to vote at every election for all officers elected by the people.”

*Id.* art. II, § 1.

44. In 1958, Legislature adopted an amendment to Article IX of the New York Constitution, effective January 1, 1959, commonly referred to as the “Home Rule” article. *See* Exhibit A.

45. “The history of the constitutional home rule provisions demonstrates the evolution of county governments from their previous status as administrative arms of the State to their present status as more autonomous units of local government.” *Kelley v. McGee*, 57 N.Y.2d 522, 536 (1982).

46. As amended in 1958, Article IX specifically delegated rights to counties, stating that “[t]he 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.” *Id.* art. IX, § 2(a).

47. Article IX further instructed the Legislature 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.” *Id.* art. IX, § 2(b).

48. 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.” *Id.* art. IX, § 2(d).

49. The Legislature amended Article IX again in 1963, effective January 1, 1964.

50. “The comprehensive home rule amendments of 1963 . . . evince a recognition that essentially local problems should be dealt with locally and that effective local self-government is the desired objective.” *Kelley*, 57 N.Y.2d at 535.

51. The 1963 version of Article IX, still in effect today, maintains specific powers granted to counties through the 1958 amendments, providing in Section 1(h)(1): “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.” N.Y. Const. art. IX, § 1(h)(1).

52. An alternative form of government must be “approved on a 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.” *Id.*

53. The 1963 amendments also included a “bill of rights” for local government, which provides, among other “rights, powers, privileges and immunities,” that “[e]very local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof,” N.Y. Const. art. IX, § 1(a), and that “[a]ll officers of every local government whose election or appointment is not provided for by this 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,” *id.* art. IX, § 1(b).

54. Section 2 provides that the Legislature, “[s]ubject to the bill of rights of local governments,” “[s]hall have the power to act in relation to the property, affairs or government of any local government” but “only by general law, or by special law” in two sets of circumstances: “(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 . . . with the concurrence of two-thirds of the members elected to each house of the legislature.” *Id.* art. IX, § 2(b)(2).

55. A “[g]eneral law” is 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.” *Id.* art. IX, § 3(d)(1).

56. A “[s]pecial law” is 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.” *Id.* art. IX, § 3(d)(4).

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

58. Finally, the 1963 amendments also added to Article IX 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.” N.Y. art. IX, § 3(b).

## II. Town Organization And Elections

59. New York law provides that “first class” and “second class” towns must hold elections for certain offices, and the board of elections for the county in which each individual town resides is responsible for conducting town elections and enforcement of election laws. *See, e.g.*, N.Y. Elec. Law §§ 9-200 (counting votes), 9-202 (primary elections), 5-100 (voter registration), 8-400 (absentee voting), 3-103 (record keeping standards), 3-226 (acquisition of voting machines), 11-219 (development of free access system).

60. A “first class” town contains a population of ten thousand or more, while a “second class” town has less than ten thousand residents. N.Y. Town Law § 10.

61. New York Town Law § 20 provides that for every “first class” town “[t]he supervisor, town counsel members, town clerk, town justices, town superintendent of highways and receiver of taxes and assessments . . . shall be elected.” *Id.* § 20(1)(a).

62. New York Town Law § 20 provides that in every “second class” town “[t]he supervisor, justices of the peace, town council members, town clerk, town superintendent of highways, assessors and collector . . . shall be elected.” *Id.* § 20(1)(b).

63. Towns in New York have held odd-year elections for town offices for over a century. For example, the Town of Hempstead has held odd-year elections since as early as 1899. *See* Exhibit B.

64. Further, in 1932, the New York Legislature passed New York Town Law § 80, which provided “a biennial town election for the election of town officers and for the consideration of such questions as may be proposed by the town board or the duly qualified electors . . . shall be held on the Tuesday next succeeding the first Monday in November of every odd-numbered year.” *Id.* § 80; *see* Even Year Election Law § 1; N.Y. Town Law § 80 (effective Jan. 1, 2025) (amending New York Town Law § 80 effective Jan. 1, 1934).

65. As such, other towns within the State of New York have held odd-year elections for town officers since at least 1932.

66. This law remains in place until the Even Year Election Law, described more fully herein, becomes effective on January 1, 2025. *See* Even Year Election Law § 1; N.Y. Town Law § 80 (effective Jan. 1, 2025).

**A. The Town of Champion**

67. The Town of Champion, a “second class” town within Jefferson County, has long held odd-year elections for local officials.

68. In 2004, the Town Board also passed, and the voters of the Town approved by referendum, a local law increasing the term of the Town Supervisor from two to four years. Town of Champion, L.L. No. 2-2004 (effective Dec. 8, 2004).

69. On November 7, 2023, the Town of Champion held its 2023 General Election with voters casting ballots for two Town Councilmembers, as well as Town Justice.

70. In 2022, Town of Champion voters cast ballots for Governor and Lieutenant Governor, New York Comptroller, Attorney General, and U.S. Senator.

71. The Town's last election for Town Supervisor occurred in 2021, and a special election for Town Supervisor will occur this fall, as the current Supervisor has been elected as the Jefferson County Treasurer.

**B. The Town Of Hempstead**

72. Town of Hempstead, a "first class" town within Nassau County, has held odd-year elections since at least 1899, when the Attorney General of New York sent a letter to the Town asserting that local elections of Town officials were conducted in odd years. Exhibit B.

73. Today, the Town of Hempstead elects a Town Supervisor every two years.

74. Town of Hempstead also has six Councilmembers, each assigned to a separate district. Town of Hempstead Code § 16-1.

75. An amendment to the Town Code made via proposition on November 8, 1966, expanded the Town Board from four members to six.

76. With two Town Councilmembers up for election in November 1967, the Town of Hempstead Code, as approved by the electors on November 8, 1966, was also updated to provide: "Four Town Councilmembers shall be elected at the 1967 biennial town election, three for a term of four years each and one for a term of two years, and thereafter at each biennial town election in the Town of Hempstead there shall be elected three Town Councilmembers for the term of four years, each in the same manner as other town elective town officers." *Id.* § 16-3

77. "The term of office of each such Councilman shall begin on the first day of January next succeeding the election at which he was elected." *Id.*

78. Thus, in each odd year, there are three Councilmember positions on the ballot, as well as candidates for Town Supervisor.

79. On November 7, 2023, the Town of Hempstead held its 2023 General Election, where Town of Hempstead electors voted for candidates for various offices, including Town Supervisor, Town Clerk, Receiver of Taxes, and Councilmembers for the 2nd, 3rd, and 5th Districts.

80. In 2022, Town of Hempstead voters cast votes for Governor and Lieutenant Governor, State Comptroller, Attorney General, and U.S. Senator.

### **C. The Town Of Islip**

81. The Town of Islip, a “first class” town in Suffolk County, has long held odd-year elections for local officials.

82. The Town of Islip has a single Town Supervisor, a position with a four-year term. Town of Islip Code § 47C-3.

83. Among other elected positions, Town of Islip also has four Town Board Members, each assigned to a separate district and elected for four-year terms. *See id.* § 49A-1.

84. In the November 2023 General Election, Town of Islip voters cast ballots for Town Supervisor, Town Clerk, Receiver of Taxes, and Town Board Members for the Third and Fourth Districts.

85. In the 2022 November General Election, Town of Islip ballots included candidates for Governor and Lieutenant Governor, New York Comptroller, Attorney General, and U.S. Senator.

#### **D. The Town Of Brookhaven**

86. The Town of Brookhaven, a “first class” town within Suffolk County, has long held odd-year elections for local officials.

87. Brookhaven elects, among other elected officials, six Town Councilmembers representing six separate districts and a Town Supervisor, each of whom are elected for a four-year term. Town of Brookhaven Code §§ 20-58, 20-62, 20-14.

88. In November 2023, Town of Brookhaven residents voted for Town Supervisor, Receiver of Taxes, Superintendent of Highways, and Town Councilmembers in all districts.

89. In 2022, as in other towns across Suffolk County, voters in the Town of Brookhaven cast votes for Governor and Lieutenant Governor, New York Comptroller, Attorney General, and U.S. Senator.

#### **III. The Municipal Home Rule Law (“MHRL”)**

90. In 1959, the Legislature enacted County Law Article 6-A, empowering counties outside New York City to prepare, adopt, and amend their own charters in accordance with the 1958 amendments to Article IX of the New York Constitution. 1959 N.Y. Laws 1400–06.

91. Specifically, the County Law 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).

92. The County Law further instructed 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,” among other items, 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).

93. The County Law included a section entitled “Limitations and restrictions,” which listed certain areas in which a county charter could not supersede any general or special law enacted by the Legislature, including, among laws, laws providing for taxation, division or enlargement of the county, compensation of the judiciary, court jurisdiction, and certain aspects of the education system. *Id.* § 324(2) (1959).

94. Through the County Law, the Legislature articulated its express intention “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 limitations imposed herein.” *Id.* § 325(1) (1959).

95. The Legislature also instructed courts that the County Law was to be “construed liberally.” *Id.* § 325(3) (1959).

96. In or around April 1963, following the 1963 amendments to Article IX, the Legislature enacted the Municipal Home Rule Law (“MHRL”), replacing Articles 6 and 6-A of the County Law among other laws, including the Village Home

Rule Law, the City Home Rule Law, and certain sections of the Town Law. *See generally* N.Y. Mun. Home Rule Law § 1, *et seq.*

97. 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' powers to adopt and amend local laws.

98. Section 33 of the MHRL provides that, “[s]ubject to restrictions in the constitution, in this article or in any other applicable law, the board of supervisors of any county . . . shall have power to prepare, adopt, amend or repeal a county charter.” N.Y. Mun. Home Rule Law § 33(1).

99. Consistent with County Law Article 6-A, MHRL also provides that “[a] county charter shall set forth the structure of the county government and the manner in which it is to function,” *id.* § 33(2), and that the charters “shall provide for,” among other items, “[t]he 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,” *id.* § 33(3)(b).

100. And, again in a similar manner to County Law Article 6-A, Section 34 of the MHRL 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. *Id.* § 34.

#### **IV. Jefferson County Organization and Elections**

101. Founded in 1805, Jefferson County is now home to more than 100,000 residents, including those residing in towns such as Town of Champion.

102. Jefferson County has 15 separate legislative districts, each assigned to a single County Legislator.

103. County voters also elect a County Clerk, County Sheriff, County Treasurer, District Attorney, County Court Judge, and various judicial officers.

104. In the 2023 General Election, Jefferson County voters cast ballots for Supreme Court Justice, County District Attorney, County Treasurer, and all 15 County Legislator positions.

105. In 2022, voters cast ballots for Governor and Lieutenant, New York Comptroller, Attorney General, and the U.S. Senator.

#### **V. Suffolk County Charter And Elections**

106. The New York Legislature passed the Suffolk County Charter (the “Charter”) in 1958 through Chapter 273 of the Laws of 1958, recodified and renumbered 11-26-1985 by L.L. No. 38-1985.

107. Suffolk County electors adopted the Charter by a referendum vote that same year, and the Charter remains in place to this day.

108. Article III of the Charter established the elected position of County Executive to administer the executive branch of the County government. Suffolk County Charter § C3-1.

109. Section C3-6 of the Charter provides “[t]he first election of the County Executive having been conducted at the general election held in 1959, the election of a County Executive for a full term shall be held each fourth year thereafter.” Thus, under the Charter, elections for County Executive have been held on odd-numbered years. *Id.* § C3-6.

110. Article II of the Charter established a county legislature, tasked with “determin[ing] County policies and exercis[ing] such other functions as may be assigned to it by state law, th[e] Charter or local law.” *Id.* § C2-1.

111. Article XXI of the Charter provides that “County Legislators shall be elected at the general election in odd-numbered years.” *Id.* § C21-3.

112. The Charter is to be “liberally construed to effectuate the objects and purposes thereof.” *Id.* § C24-7.

113. The last Suffolk County Executive election took place during the General Election on November 7, 2023. That same day, Suffolk County electors cast their votes for County Legislators and Justice of the Supreme Court for the 10th Judicial District.

114. During the 2022 General Election, Suffolk County electors cast votes for Governor and Lieutenant Governor, State Comptroller, Attorney General, and U.S. Senator.

## **VI. The Even Year Election Law**

115. On June 9, 2023, the Legislature passed the Even Year Election Law, Assembly Bill A4282B/Senate Bill S3505B, 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.” Senate Bill S3505B, The New York State Senate.<sup>1</sup>

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<sup>1</sup> Available at <https://www.nysenate.gov/legislation/bills/2023/S3505/amendment/B> (all websites last visited Apr. 18, 2024).

116. Governor Hochul signed the Even Year Election Law into law on December 22, 2023.

117. The Even Year Election Law moves the elections for certain town and county elected officials—including officials from the Counties of Jefferson and Suffolk, and from the Towns of Hempstead, Champion, Islip, and Brookhaven—from odd-numbered years to even-numbered years, to coincide with state and federal general elections.

118. Section 1 of the Even Year Election Law amends Section 80 of the N.Y. Town Law to provide as follows: “Notwithstanding any provisions of any general, special or local law, charter, code, ordinance, resolution, rule or regulation to the contrary, a biennial town election for the election of town officers . . . and for the consideration of such questions as may be proposed to the town board or the duly qualified electors . . . shall be held on the Tuesday next succeeding the first Monday in November of every even-numbered year.” Even Year Election Law § 1; N.Y. Town Law § 80 (effective Jan. 1, 2025).

119. The Law makes an exception for “town justices or any town office with a three-year term prior to January [1, 2025].” Even Year Election Law § 1; N.Y. Town Law § 80 effective Jan. 1, 2025).

120. Additionally, “[a]ny town completely coterminous with a village shall continue to elect its officers, including town justices, in odd-numbered years if both such villages and town last held such elections in an odd-numbered year prior to

January [1, 2025].” Even Year Election Law § 1; N.Y. Town Law § 80 (effective Jan. 1, 2025).

121. The Even Year Election Law also amends Section 400 of the County Law to provide as the new subdivision (8): “Notwithstanding any provision of any general, special or local law, chapter, 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.” Even Year Election Law § 3; N.Y. County Law § 400(8) (effective Jan. 1, 2025).

122. The statute makes an exception for certain positions within a county, including “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 [1, 2025].” Even Year Election Law § 3; N.Y. County Law § 400(8) (effective Jan. 1, 2025).

123. The Even Year Election Law does not extend to municipal races in New York City, which city remains unaffected due to its separate electoral schedule. Currently, New York City conducts its mayoral, comptroller, public-advocate, city-council, and borough-president races in odd-numbered years. Even Year Election Law § 4; N.Y. Mun. Home Rule Law § 34(3)(h) (effective Jan. 1, 2025).

124. When introducing the bill that became the Even Year Election Law, the New York State Senate stated, without support, that the purpose of the bill was to boost voter turnout. S.B. 3505, 246th Sess. (N.Y. 2023).

125. The New York State Association of Counties (“NYSAC”) publicly opposed the Even Year Election Law.

126. A former president of the NYSAC explained there are “significant concerns regarding this legislation.” See NYSAC, *Counties Fight to Preserve Local Elections*.<sup>2</sup>

127. “First, in even-year elections, state and national politics will drown out local concerns that have a direct impact on the everyday lives of New Yorkers. It is for this very reason why some municipalities have constitutional protections to have odd-year election—so the focus can be on local issues.” *Id.*

128. High-profile and highly contested races for statewide and federal offices will inevitably receive the bulk of the media and electorate’s attention, making it more difficult for local candidates to reach voters and to encourage meaningful debate and discussion on local issues.

129. Holding local elections at the same time as statewide and federal races will impede voters’ ability to cast informed votes that align with their priorities and preferences.

130. Similarly, local candidates and parties will find it significantly more difficult to fundraise, register voters, attract volunteers, and generate support for local candidates and causes as they compete with voters’ attention on statewide and federal elections.

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<sup>2</sup> Available at <https://www.nysac.org/news/posts/counties-fight-to-preserve-local-elections/>.

131. Further, a longer ballot drastically increases what is called “ballot drop-off” or “roll-off,” where voter fatigue causes voters not to vote for “down-ballot” races. See NYSAC, *Counties Fight*, *supra*; Citizens Union Policy Report, Moving Municipal Elections to Even-Numbered Years 29 (Dec. 2022).<sup>3</sup>

132. Indeed, “making more decisions before a particular decision increases the likelihood of abstention.” Ned Augenblick & Scott Nicholson, *Ballot Position, Choice Fatigue, and Voter Behaviour*, 83 Rev. of Econ. Stud. 460, 460 (Sept. 2015).

133. Provided that local elections will fall at the end of these newly expanded ballots, it is the local elections that will be affected by this “ballot drop-off.” See NYSAC, *Counties Fight*, *supra*; Citizens Union Policy Report, *supra*; Augenblick & Nicholson, *supra*.

134. The way to combat drop-off is to “hold more frequent elections” and thereby “limit the length of ballots.” Augenblick & Nicholson, *supra* at 470.

135. Combining elections in even-numbered years will not save taxpayer money either. As the NYSAC has noted, the Even Year Election Law creates exceptions for certain county and town elections, see Even Year Election Law §§ 3, 4, meaning, localities cannot eliminate odd-year elections altogether, see NYSAC, *Counties Fight*, *supra*.

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<sup>3</sup> Available at [https://citizensunion.org/wp-content/uploads/2023/01/Moving-Municipal-Elections-to-Even-Numbered-Years-Citizens-Union-report\\_FINAL.pdf](https://citizensunion.org/wp-content/uploads/2023/01/Moving-Municipal-Elections-to-Even-Numbered-Years-Citizens-Union-report_FINAL.pdf).



136. Additionally, voters will also experience longer lines and associated wait times in even-year elections, which may prevent voters of certain socioeconomic statuses from participating if they cannot miss hours of work to cast a ballot.

137. The Even Year Election Law will also make it more difficult for citizens to keep track of the correct election dates for each local office.

138. And given all the exceptions to the new even-year rule, citizens may find that their election dates differ from neighbors in nearby towns, villages, and counties.

139. Thus, changing the years in which certain elections take place will also cause voter confusion, especially because local governments in New York have long held odd-year elections—and some for over a century.

140. Significantly lengthened ballots will also contribute to voter confusion by multiplying the choices to be made in one election cycle.

141. For example, the individual Plaintiffs here will have a difficult time making informed decisions with respect to each of the offices that are included on 2026 ballots, as they will need to consider not only options for state positions like Governor, Attorney General, and Comptroller, but also local positions for their towns of residence.

142. Typically, the individual Plaintiffs carefully consider each candidate and their positions on all relevant issues before making a decision as to who they will support, and with so many elections occurring at one time, they will be unable to devote the same amount of attention to each candidate.

143. Further, the individual Plaintiffs intend to campaign for local candidates but fear they will have a difficult time finding volunteers to support the local candidates, as they will be consumed with the much more high-profile statewide elections.

144. Finally, under the Even Year Election Law, Jefferson and Suffolk Counties and the Towns of Hempstead, Champion, Islip, and Brookhaven will have to change when they hold their local elections to even numbered years, defeating their choice to hold those elections on odd-numbered years, and imposing substantial additional election administration costs upon them.

#### **COUNT I**

#### **Violation of N.Y. Const. art. I, §§ 8, 9 – Freedom of Speech and Assembly**

145. Plaintiffs hereby reallege and incorporate by reference each of the preceding allegations as though each were specifically set forth at length herein.

146. The Even Year Election Law violates the individual Plaintiffs' fundamental rights of association and free speech secured by Article I, §§ 8 and 9 of the New York Constitution.

147. Article I, § 8 provides that “[e]very citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or the press.” N.Y. Const. art. I, § 8.

148. Article I, § 9 provides that “[n]o law shall be passed abridging the rights of the people peaceably to assemble and to petition the government, or any department thereof.” N.Y. Const. art. I, § 9.

149. By moving several local elections to even-numbered years, the Even Year Election Law consolidates numerous elections into even-numbered election years, thereby burdening citizens' fundamental rights to speech and assembly.

150. By increasing the number of offices and candidates on the ballot in one election year, the Even Year Election Law increases burdens associated with—among other activities—casting a vote, fundraising, registering voters, attracting volunteers, generating support for candidates, and recruiting candidates to run for office.

151. Additionally, the Even Year Election Law burdens associational rights by contributing to voter fatigue, making it more difficult for political parties and local groups to capture the attention of New York voters due to higher numbers of issues and/or candidates on the ballot.

152. Meanwhile, the purported benefits of the statute—including increasing voter turnout and saving costs—are illusory, as any advantages associated with voter turnout are swamped by such issues as voter fatigue and ballot drop-off.

153. Additionally, localities will still hold elections in both odd and even years due to exceptions to the general even-year rule, further defeating any purported voter-turnout or cost-savings benefits of the law.

154. Thus, the Even Year Election Law's burdens are unjustifiable and cannot constitutionally be imposed on individual Plaintiffs' associational rights as guaranteed under Article I, §§8 and 9 of the New York Constitution.

155. Plaintiffs are entitled to a declaration that the Even Year Election Law violates Article I, §§ 8 and 9 of the New York Constitution and to an injunction prohibiting Defendants from enforcing and/or implementing the law.

**COUNT II**  
**Violation of N.Y. Const. art. I, § 11 – Equal Protection**

156. Plaintiffs hereby reallege and incorporate by reference each of the preceding allegations as though each were specifically set forth at length herein.

157. The Even Year Election Law denies equal protection under the law to those New York citizens, including individual Plaintiffs, who have had their local election dates modified by the law.

158. Article I, § 11 of the Constitution provides that “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

159. New York’s “equal protection guarantee . . . is as broad in its coverage as that of the Fourteenth Amendment.” *In re Walsh v. Katz*, 17 N.Y.3d 336, (2011) (citing *Golden v. Clark*, 76 N.Y.2d 618, 624 (1990)).

160. “[A] court considering an equal protection challenge to a state election law must weigh ‘the character and magnitude of the asserted injury’” to citizens’ fundamental right to vote “against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Id.* at 343–44 (citation omitted).

161. By moving several local elections to even-numbered years, the Even Year Election Law consolidates numerous elections into even-numbered election years.

162. The Even Year Election Law burdens individual Plaintiffs' right to vote in several ways, including because it contributes to voter confusion by, for example, altering the timing of certain local elections that had been in place for decades and significantly increases the length of even-year ballots.

163. The Even Year Election Law also burdens individual Plaintiffs' right to vote by making it more difficult to cast their ballot through increased wait times and longer lines on Election Day.

164. Additionally, increasing the number of offices and candidates on the ballot in a single election year contributes to ballot drop-off, given that voters experience decision fatigue as they move down the ballot to local elections.

165. In these ways, the Even Year Election Law makes it more difficult for individual Plaintiffs to exercise their right to vote.

166. Meanwhile, the purported benefits of the statute—including increasing voter turnout and saving costs—are illusory, as any advantages associated with voter turnout are swamped by issues related to voter fatigue and ballot drop-off.

167. Further, under the Even Year Election Law, localities will still hold elections in both odd and even years due to exceptions to the general even-year rule, further defeating any purported voter-turnout or cost-savings benefits of the law.

168. Plaintiffs are entitled to a declaration that the Even Year Election Law violates the equal protection clause of the New York Constitution and to an injunction prohibiting Defendants from enforcing and/or implementing the law.

**COUNT III**  
**Violation of N.Y. Const. art. II, § 1 – Right to Vote**

169. Plaintiffs hereby reallege and incorporate by reference each of the preceding allegations as though each were specifically set forth at length herein.

170. The Even Year Election Law violates citizens' fundamental right to vote under Article II, § 1 of the New York Constitution.

171. Article II, § 1 of the New York Constitution provides that “[e]very citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that” the citizen meets the State’s citizenship, age, and residency requirements. N.Y. Const. art. II, § 1.

172. Article I, § 1 of the New York Constitution further provides that “[n]o member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or her peers,” N.Y. Const, art. I, § 1—further enshrining this fundamental right to vote in the State’s Constitution.

173. By moving several local elections to even-numbered year, the Even Year Election Law consolidates numerous elections into even-numbered election years, thereby burdening individual Plaintiffs’ fundamental right to vote.

174. The Even Year Election Law burdens citizens’ right to vote in several ways including because it contributes to voter confusion by, for example, altering the

timing of certain local elections that had been in place for decades and significantly increases the length of even-year ballots.

175. The Even Year Election Law further burdens citizens' right to vote by making it more difficult to cast their ballot through increased wait times and longer lines on Election Day.

176. Additionally, increasing the number of offices and candidates on the ballot in a single election year contributes to ballot drop-off, given that voters experience decision fatigue as they move down the ballot to local elections.

177. In all of these ways, the Even Year Election Law makes it more difficult for New York citizens to exercise their right to vote.

178. Meanwhile, the purported benefits of the statute—including increasing voter turnout and saving costs—are illusory, as any advantages associated with voter turnout are swamped by issues related to voter fatigue and ballot drop-off.

179. Additionally, localities will still hold elections in both odd and even years due to exceptions to the general even-year rule, defeating any purported voter-turnout or cost-savings benefits of the law.

180. Thus, the Even Year Election Law's burdens are unjustifiable burdens on individual Plaintiffs' right to vote guaranteed under Article II, § 1 of the New York Constitution.

181. Plaintiffs are entitled to a declaration that the Even Year Election Law violates Article II, § 1 of the New York Constitution and to an injunction prohibiting Defendants from enforcing and/or implementing the law.

**COUNT IV**  
**Violation N.Y. Const. art. IX, § 1**

182. Plaintiffs hereby reallege and incorporate by reference each of the preceding allegations as though each were specifically set forth at length herein.

183. Article IX of the New York Constitution protects the right of local governments to have an elected legislative body, which implicitly includes the right to set the term of office of its elected officials.

184. Specifically, Article IX grants local governments “rights, powers, privileges and immunities,” including that “[e]very local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof,” N.Y. Const. art. IX, § 1(a), and that “[a]ll officers of every local government whose election or appointment is not provided for by this 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,” N.Y. Const. art. IX, § 1(b).

185. As such, the Even Year Election Law violates the rights of Jefferson and Suffolk Counties and the Towns of Hempstead, Champion, Islip, and Brookhaven provided in Article IX, § 1 by altering the terms of office set by those localities for their elected officials.

186. Further, 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.” N.Y. Const. art. IX, § 1(h)(1).

187. An alternative form of government must be “approved on a 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.” N.Y. Const. art. IX, § 1(h)(1).

188. 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.

189. Section 33 of the MHRL confirms counties’ implicit right to set term of office, stating 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.” N.Y. Mun. Home Rule Law § 33(3)(b).

190. To determine the “terms of office” for “agencies [and] officers,” a county must necessarily set a first and last day of any term, and, by extension, set an appropriate election day. *Id.*

191. Suffolk County electors adopted the Suffolk County Charter in 1958 by referendum, and although the Charter was drafted by the New York Legislature prior to the amendments to Article IX effective in 1959 and 1963, the County, through those amendments, obtained the ability to select its own, alternative form of government and amend or repeal its own charter.

192. Suffolk County and its electors have chosen to keep the 1958 Charter and have not repealed the provisions providing for the election of the County Executive and County Legislators in odd-numbered years or otherwise altered the “terms of office” identified for these county officials. *Id.*

193. The Even Year Election Law violates MHRL as it requires Suffolk County to amend its charter and alter the four- and two-year terms of its County Executive and County Legislators, respectively, by shortening each term by one year.

194. This shortening of terms of office invalidly conflicts with Suffolk County’s authority to determine its own form of government as provided in Article IX § 1.

195. Plaintiffs are entitled to a declaration that the Even Year Election Law violates Article IX, § 1 of the New York Constitution and to an injunction prohibiting Defendants from enforcing and/or implementing the law.

**COUNT V**  
**Violation of the N.Y. Const. art. IX, § 2**

196. Plaintiffs hereby reallege and incorporate by reference each of the preceding allegations as though each were specifically set forth at length herein.

197. Article IX, § 2 of the New York Constitution 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” in two sets of circumstances: “(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 . . . with the concurrence of two-thirds of the members elected to each house of the legislature.” N.Y. Const. art. IX, § 2(b)(2).

198. Setting terms of office and when elections for local offices are to be held is a matter of a county’s or a town’s property, affairs, and government.

199. Further, the Legislature’s authority to act in relation to the “property, affairs or government of any local government” is also explicitly “[s]ubject to the bill of rights of local governments and other applicable provisions of th[e] constitution.” *Id.* art. IX, § 2(b).

200. Included in the bill of rights of local governments found in Article IX § 1 is the right of Jefferson County, Suffolk County, the Town of Hempstead, the Town of Champion, the Town of Islip, and the Town of Brookhaven to set the terms of office and time of election for their officials.

201. By enacting the Even Year Election Law, the Legislature exceeded its authority under Article IX § 2(b)(2) because it acted in relation to the property, affairs, or government of Jefferson County, Suffolk County, the Town of Hempstead, the Town of Champion, the Town of Islip, and the Town of Brookhaven with an impermissible special law, not a general law.

202. Section 3 of the Even Year Election Law is a special law, not a general law, because it does not, in terms or in effect, apply to all counties. Instead, it applies only to counties with “a county elected official,” rather than a non-elected executive. Even Year Election Law § 3; N.Y. County Law § 400(8).

203. Further, the new County Law § 400(8), enacted by the Even Year Election Law, also exempts certain countywide offices and any offices with a three-year term of office, providing: “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 [1, 2025].” Even Year Election Law § 3; N.Y. County Law § 400(8).

204. Similarly, Section 1 of the Even Year Election Law, which amends Section 80 of the N.Y. Town Law, is a special law because it exempts “[a]ny town completely coterminous with a village”—those towns “shall continue to elect its officers, including town justices, in odd-numbered years if both such villages and town last held such elections in an odd-numbered year prior to January [1, 2025].” Even Year Election Law § 1; N.Y. Town Law § 80.

205. Neither of the two circumstances in which the Legislature may act by special law under Article IX, § 2 apply in this case, as there was no “request of two-thirds of the total membership of [Suffolk County’s, the Town of Hempstead’s, the Town of Champion’s, the Town of Islip’s, [or] the Town of Brookhaven’s] legislative bod[ies]” or of their “chief executive officer[s],” and there was no “certificate of necessity” issued by the Governor. N.Y. Const. art. IX, § 2(b)(2).

206. Thus, the Even Year Election Law is not a permissible special law under Article IX § 2, meaning that the Legislature exceeded its authority under Article IX § 2 to act in relation to the property, affairs, or government of local government with the Even Year Election Law.

207. To the extent that the Legislature may invoke as a defense of the Even Year Election Law the “recognized exception to the home rule message requirement” for special laws that “serve[ ] a substantial State concern,” *Patrolmen’s Benevolent Ass’n of City of N.Y. Inc. v. City of New York*, 97 N.Y.2d 378, 386 (2001), that exception is inapplicable here.

208. The Even Year Election Law is accordingly unconstitutional under Article IX, § 2 of the New York Constitution.

209. Plaintiffs are entitled to a declaration that the Even Year Election Law violates Article IX, § 2 of the New York Constitution and to an injunction prohibiting Defendants from enforcing and/or implementing the law.

#### **COUNT VI**

#### **Violation of N.Y. Const., art. IX, § 3**

210. Plaintiffs hereby reallege and incorporate by reference each of the preceding allegations as though each were specifically set forth at length herein.

211. The Savings Clause of Article IX 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.” N.Y. Const. art. IX, § 3(b).

212. Article III of the Suffolk County Charter established the elected position of County Executive to administer the executive branch of the County government. Suffolk Charter § C3-1.

213. Section C3-6 of the Charter provides “[t]he first election of the County Executive having been conducted at the general election held in 1959, the election of a County Executive for a full term shall be held each fourth year thereafter.” *Id.* § C3-6. Thus, elections for County Executive have been held on odd-numbered years.

214. Section C3-6, which was adopted in 1958, predates the 1963 amendments to Article IX, including the Savings Clause.

215. These local government provisions for odd-year elections are “existing valid provisions” that have not been “repealed, amended, modified, or suspended.” N.Y. Const. art. IX, § 3(b).

216. The Savings Clause thus preserves these valid, preexisting provisions for the election of local officials in odd-numbered years.

217. Plaintiffs are therefore entitled to a declaration that these local government provisions for odd-year elections 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 Constitution, and that any provisions not affected by such unconstitutionality (if there are any) are not severable; and
- B. A declaratory judgment pursuant to CPLR 3001 declaring that Section C3-6 of Suffolk County’s Charter and all similar provisions fall within the Savings Clause of Article IX to the New York Constitution and are

valid notwithstanding the enactment of the Even Year Election Law;  
and

- C. A permanent injunction prohibiting Defendants, 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.

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