

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

THE COUNTY OF NASSAU, THE NASSAU
COUNTY LEGISLATURE, and BRUCE A.
BLAKEMAN, individually and as a voter and in his
official capacity as Nassau County Executive,

Plaintiffs,

v.

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

Defendants.

SUMMONS

Index No.: _____

To the above-named Defendants:

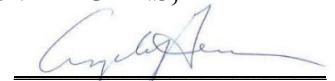
YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of you Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the plaintiffs' attorney within (20) days after the service of this Summons, exclusive of the day of service (or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

Plaintiffs designate Nassau County as the place for trial. The basis of this venue is the Plaintiffs' residence. Plaintiffs' official address is 1550 Franklin Avenue, Mineola, New York 11501.

DATED: April 5, 2024

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

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

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Index No.:

COMPLAINT

Plaintiffs, THE COUNTY OF NASSAU (the “County”), THE NASSAU COUNTY LEGISLATURE (the “County Legislature”), and BRUCE A. BLAKEMAN, individually and as a voter and in his capacity as Nassau County Executive (the “County Executive”), by and through their attorneys, Genova Burns LLP, as and for their Complaint against the above-named defendants, upon information and belief, allege as follows:

NATURE OF THE CASE

1. This declaratory judgment action challenges the constitutionality of Chapter 741 of the Laws of 2023 of the State of New York, 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 Election Law”), which was enacted by the New York State Legislature on June 9, 2023 and signed into law by New York Governor Kathy Hochul on December 22, 2023.

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

3. Article IX § 1 protects the right of local governments to have a legislative body 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.” Article IX § 1 also provides that counties shall be empowered to prepare, adopt, amend, or repeal alternative forms of government.

4. 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.

5. The County exercised its home rule powers protected by Article IX by adopting a county charter as its alternative form of government. The County’s charter expressly provides that county legislators shall be elected for a two-year term and the county executive shall be elected for a four-year term. Pursuant to the Charter, the elections of the County Executive and County legislators, as well as many other County and local officials, are held in odd-numbered years.

6. By changing the election schedule for certain town and county officials from odd-numbered to even-numbered years, the Even Year Election Law directly conflicts with the Nassau County Charter’s provisions prescribing the terms of office and timing of elections of its county legislators and officials. It does this by changing the term of office for the first county legislators to be elected following its enactment from two years to one year and the term of office for the first county executive to be elected following its enactment from four years to three years.

7. Moreover, the Even Year Election Law was enacted without adhering to the constitutional requirement that changes affecting the property, affairs, or government of a local government must be made by general law or by special law only upon 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 on certificate of necessity from the governor with the concurrence of two-thirds of the members elected to each house of the legislature, as stipulated in Article IX, Section 2 of the New York State Constitution. No such request was made by Nassau County, nor was there a certificate of necessity issued by the Governor, rendering the Law's application to Nassau County unconstitutional.

8. Plaintiffs seek a declaratory judgment that the Even Year Election Law is unconstitutional as well as an injunction permanently enjoining the enforcement or implementation of the law.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter pursuant to Article VI § 7(a) of the New York State Constitution and Section 3001 of the New York Civil Practice Law and Rules ("CPLR") because the Plaintiffs are challenging the constitutionality of a State law.

10. An actual justiciable controversy exists among Plaintiffs and Defendants within the meaning of CPLR § 3001.

11. Pursuant to CPLR § 503(a), venue of this action is proper in the County of Nassau because it is the county where the Plaintiffs reside.

PARTIES

12. Plaintiff THE COUNTY OF NASSAU is a municipal corporation duly formed by the laws of the State of New York, with its principal offices in Nassau County, New York.

13. Plaintiff THE NASSAU COUNTY LEGISLATURE is the legislative body of the County of Nassau.

14. Plaintiff BRUCE A. BLAKEMAN was and is the duly elected County Executive for the County of Nassau at all relevant times. He is a resident of Nassau County and was and is an elector and taxpayer of Nassau County at all relevant times.

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

16. Defendant KATHY 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.

CAPACITY TO SUE AND STANDING

17. This action was duly authorized pursuant to Section 11-3.0(a) of the Nassau County Administrative Code.

18. Plaintiffs have standing in that they are challenging the constitutionality of a statute that impinges upon the County's "Home Rule" powers constitutionally guaranteed under Article IX of the New York State Constitution. *City of New York v. State*, 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 Nassau County Charter

19. Municipal home rule has been a matter of constitutional principle in New York State for well over a century.

20. Pursuant to the authority granted in the "Alternative County Government Law", chapter 879 of the Laws of 1936, at the general election in 1936, the voters of Nassau County adopted the "County Government Law of Nassau County", referred to as the "Nassau County

Charter” (the “Charter”), which became effective as of January 1, 1938. A true and correct copy of the Charter currently in effect is available at <https://www.nassaucountyny.gov/DocumentCenter/View/37579/Charter-1124?bidId=>.

21. The Nassau County Charter was adopted using a multi-step process involving the establishment of the Charter by chapter 879 of the Laws of 1936, a general law; adoption of the Charter by the County as a local law; and approval of the Charter by the voters via referendum.

22. The Nassau County Charter established the structure by which the County is to be governed.

23. Article II of the Charter established the position of county executive, elected from the county at large, to administer the executive branch of the County government.

24. Article XXIII, § 2302 of the Charter, entitled “Time of elections and term of elective officers; vacancies”, provides, in part, that “[c]ommencing with the general election to be held in November, nineteen hundred seventy-three and every fourth year thereafter, the County Executive and the county Comptroller shall be elected for a term of four years.” Pursuant to this provision, the election of the County Executive (as well as other county officials) is held in odd-numbered years. Section 2302 of the Charter remains in force today.

25. The current provision of Section 2302 addressing the timing and term of office of the County Executive was the result of an amendment to the Charter. The operative provisions of that amendment, like the Charter itself, were adopted by a multi-step process involving the adoption of a state chapter law, a local law, and a public referendum.

26. Prior to 1996, the legislative power of Nassau County was vested in a six-member Board of Supervisors. The Board of Supervisors was established in 1937 pursuant to Article IX of the New York State Constitution and Article I of the Nassau County Charter.

27. Following a successful constitutional challenge to the Board of Supervisors form of local government and its system of weighted voting, the legislative branch of the county government was restructured, and the Charter was amended in 1994 to create the Nassau County Legislature, with the structure and powers delineated in the Charter. The Charter provisions to create the Legislature were adopted following adoption of Local Law 11-1994 and a voter referendum.

28. Article I, § 102 of the Charter, provides that “the legislative power of the county shall be vested in the County Legislature which, except as otherwise provided in this act with respect to the powers and duties reserved to the County Executive, shall have and exercise all the powers and duties of the county together with all the powers and duties which now, or may hereafter be conferred or imposed on the County Legislature by laws applicable to such county not inconsistent with this act.”

29. The County Legislature consists of nineteen legislators, one elected from each county legislative district.

30. Section 104 of the Charter provides that the term of office of all county legislators is two years and begins on the first day of January next following their election (except as provided in section one hundred eight of the Charter addressing vacancies.)

31. The first election for the legislature took place in November 1995. Pursuant to the County’s local law, elections for county legislators are held in odd-numbered years.

32. Article I-A, § 162 of the Charter provides for the “full and complete exercise by the County Legislature of powers of local legislation pursuant to the provisions of section two of article nine of the constitution” and states “[t]his article shall be construed liberally.”

II. 1958 Amendment to Article IX of the New York State Constitution and 1959 Adoption of County Law Article 6-A

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

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

35. Article IX was amended in 1958 by following the multi-step process required for amendments under Article XIX of the Constitution, which includes passage by the New York State Legislature and approval by the people at a general election.

36. Article IX was amended in relevant part to read: “The legislature shall provide by law alternative forms of government for counties outside the city of New York and for the submission of one or more such forms of government to the electors residing in such counties.” Article IX § 2(a) (1959).

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

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

39. Article IX provided that “[a]ny such [alternative] form of government shall set forth the structure of the county government and the manner in which it is to function” and “may provide

for the appointment of any county officers or their selection by any method of nomination and election . . .” Article IX § 2(d) (1959).

40. Pursuant to the constitutional mandate in Article IX § 2(b), in 1959 the New York State Legislature enacted County Law Article 6-A to implement amended Article IX and empower counties outside New York City to prepare, adopt, and amend their own charters.

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

42. 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).

43. 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).

44. 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).

45. 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).

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

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

47. 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.

48. 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.

49. 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>.

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

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

52. 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).

53. The rights of local self-government enshrined in the Constitution also include the right and power to adopt local laws and the right to have local officers elected by local residents or appointed by local officers.

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

55. 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).

56. Article IX dictates that the “[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.” Article IX § 3I; *see also* Municipal Home Rule Law (“MHRL”) § 35(2) (“This county charter law shall be construed liberally.”).

57. Article IX also contains a “Savings Clause” which provides: “The provisions of [Article IX] shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution.” Article IX § 3(b); *see also* MHRL § 35(4) (“All existing state, county, local and other laws or enactments, including charters,

administrative codes and special acts having the force of law shall continue in force until lawfully amended, modified, superseded or repealed.”).

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

59. 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.

60. 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.

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

62. 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).

63. 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

64. 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. *See* N.Y. Senate Bill S3505B; N.Y. Assembly Bill A4282B. The bill was signed into law by Governor Hochul on December 22, 2023 (and is referred to herein as the Even Year Election Law.)

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

66. 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.

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

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

68. The Even Year Election Law, in addition to violating the County's home rule rights guaranteed under Article IX, implicates a number of significant matters of local concern, including but not limited to: voter turnout for local elections; the right to determine when and how local officials are elected; ballot confusion; diminishing the importance of local issues and elections in a crowded political campaign season; the increased expense of running local campaigns in the same year as presidential, gubernatorial, or other federal or statewide office elections; and attracting qualified candidates to run for local office.

COUNT I

(Violation of the New York State Constitution, Article IX, Section 1)

69. Plaintiffs repeat and reallege the allegations in the previous paragraphs as if set forth fully herein.

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

71. 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).

72. 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.

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

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

COUNT II

(Violation of the New York State Constitution, Article IX, Section 2)

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

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

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

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

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

80. 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.

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

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

83. 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.

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

85. 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).

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

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

88. Because the Even Year Election Law violates the County's rights protected by Article IX, it is void as unconstitutional and must be enjoined.

COUNT III

(Violation of the Doctrine of Legislative Equivalency)

89. Plaintiffs repeat and reallege the allegations in the previous paragraphs as if set forth fully herein.

90. Under New York law, the Doctrine of Legislative Equivalency requires that existing legislation be amended or repealed by a legislative act of equal dignity and import, using the same or equivalent procedures as were used to enact it.

91. The Nassau County Charter was adopted using a three-part process involving (i) the establishment of the Charter by chapter 879 of the Laws of 1936, a general law; (ii) adoption of the Charter by the County as a local law; and (iii) approval of the Charter by the voters via referendum at the 1936 general election.

92. Similarly, the current provisions of the Charter addressing the timing and terms of office of the County Executive and County legislators originated as Chapter Laws, then were adopted as local laws, and then were approved by the electorate via referendum.

93. By changing the election schedule for certain town and county officials from odd-numbered to even-numbered years, the Even Year Election Law seeks to amend and/or repeal the Charter's provisions that prescribe the terms of office and timing of elections of the County's legislators, County Executive and other officials.

94. The Even Year Election Law violates the Doctrine of Legislative Equivalency because it was adopted without using the same or legislatively equivalent procedure used to adopt the Charter.

95. The Even Year Election Law was adopted by the State legislature in June 2023 and was signed into law by Governor Hochul on December 22, 2023. The Even Year Election Law was not adopted as a local law by the legislative body of the County, nor was it approved by the voters of the County by referendum.

96. Plaintiffs are therefore entitled to a declaration that the Even Year Election Law is invalid and void as violative of the Doctrine of Legislative Equivalency.

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 the Even Year Election Law is void as violative of the Doctrine of Legislative Equivalency;
- 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.

Respectfully submitted,
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