COURT OF APPEALS
STATE OF NEW YORK

----------X

MARJORIE BYRNES, individually and as a member of the New York State Assembly, TAWN FEENEY and SUSAN LUNDGREN,

Appellants-Respondents,

-v-

THE SENATE OF THE STATE OF NEW YORK, ANDREA STEWART-COUSINS, as President Pro Tempore and Majority Leader of the Senate, THE ASSEMBLY OF THE STATE OF NEW YORK, CARL HEASTIE, as Speaker of the Assembly,

Respondents-Appellants,

-and-

NEW YORK STATE BOARD OF ELECTIONS, ROBERT ORTT, as Minority Leader of the Senate, and WILLIAM BARCLAY, as Minority Leader of the Assembly,

Defendants,

----------X

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

APL-2024-00083

Appellate Division Docket Number: CA 24-00764

Livingston County Supreme Court Index Number: 000778/2023

Return Date: July 29, 2024

PLEASE TAKE NOTICE, that upon annexed Statement Pursuant to Rules 500.21 and 500.22 of the Court of Appeals Rules of Practice, and the exhibits annexed thereto, the briefs and record filed in the Appellate Division, Fourth Department on the prior appeal in this proceeding, and upon all papers and prior proceedings in this proceeding, Appellants-Respondents, MARJORIE BYRNES,

individually and as a member of the New York State Assembly, TAWN FEENEY and SUSAN LUNDGREN, by their attorneys, McLaughlin & Stern, LLP, will move this court at the New York State Court of Appeals, 20 Eagle Street, Albany, New York on July 29, 2024, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to CPLR § 5602(a)(1)(i) and Rule 500.22 of the Rules of Practice of the Court of Appeals, granting permission to appeal to this Court from a Memorandum & Order of the Appellate Division, Fourth Department, entered on June 18, 2024; and

2. For any such further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that Answering papers, if any, shall be served in accordance with Rule 500.21(c) of the Rules of Practice of the Court of Appeals.

Dated: Garden City, New York
July 15, 2024

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MARJORIE BYRNES, individually and as a member of the New York State Assembly, TAWN FEENEY and SUSAN LUNDGREN

By: _____

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COURT OF APPEALS
STATE OF NEW YORK

----------X

MARJORIE BYRNES, individually and as a member of the New York State Assembly, TAWN FEENEY and SUSAN LUNDGREN,

Appellants-Respondents,

-v-

THE SENATE OF THE STATE OF NEW YORK, ANDREA STEWART-COUSINS, as President Pro Tempore and Majority Leader of the Senate, THE ASSEMBLY OF THE STATE OF NEW YORK, CARL HEASTIE, as Speaker of the Assembly,

Respondents-Appellants,

-and-

NEW YORK STATE BOARD OF ELECTIONS, ROBERT ORTT, as Minority Leader of the Senate, and WILLIAM BARCLAY, as Minority Leader of the Assembly,

Defendants,

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APL-2024-00083

Appellate Division
Docket Number: CA 24-00764

Livingston County Supreme Court Index Number: 000778/2023

Return Date: July 29, 2024

STATEMENT PURSUANT TO RULES 500.21 AND 500.22 OF THE COURT OF APPEALS RULES OF PRACTICE

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STATEMENT PURSUANT TO RULES 500.21 AND 500.22 OF THE COURT OF APPEALS RULES OF PRACTICE

Appellants, Assemblywoman Marjorie Byrnes, Tawn Feeney and Susan Lundgren ("Appellants"), submit this Statement pursuant to Court of Appeals Rules 500.21 and 500.22 in support of their motion for leave to appeal to the Court of Appeals from a decision and order of the Appellate Division, Fourth Department, entered on June 20, 2024, reversing the decision of the Livingston County Supreme Court, entered on May 14, 2024, by which the Appellate Division dismissed Appellants' sole cause of action for failure to comply with the allegedly applicable statute of limitations. A copy of the Appellate Division decision with notice of entry is annexed hereto as **Exhibit "A"**. A copy of the Supreme Court decision with notice of entry is annexed hereto as **Exhibit "B"**.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 1, 2022, Respondents Senate and Assembly of the State of New York (hereinafter "the Legislature") introduced a proposed constitutional amendment that seeks to add new language to Article I §11 of the Constitution ("the Proposed Amendment"). Upon its introduction, the Legislature referred the Proposed Amendment to the Attorney General ("the AG") pursuant to the requirements that govern the amendment of the Constitution set forth at Article XIX §1 of the Constitution ("the Amendment Article"). Both houses of the

Legislature voted on, and adopted, the Proposed Amendment on the day of its introduction.

Pursuant to the requirement of the Amendment Article, the AG issued a written opinion on the Proposed Amendment, dated July 6, 2022 ("the AG Opinion"). The Legislature received the AG Opinion on July 13, 2022, nearly two weeks after both houses had adopted the Proposed Amendment.

In January 2023, the Legislature passed the Proposed Amendment for a second time, pursuant to the process for the amendment of the Constitution set forth in the Amendment Article. The Legislature directed the submission of the Proposed Amendment to the electorate for ratification at the general election of November 5, 2024.

On October 30, 2023, Appellants commenced a plenary action in the Supreme Court, Livingston County. Appellants asserted a single cause of action seeking a declaratory judgment declaring that the Legislature's initial adoption of the Proposed Amendment on July 1, 2022 was invalid and *ultra vires*. Appellants alleged that, in adopting the Proposed Amendment, the Legislature violated the terms of the Amendment Article because the Legislature voted upon and approved the Proposed Amendment prior to its receipt of the AG Opinion. The plain terms of the Amendment Article authorize the Legislature to act on a proposed amendment "upon receiving" the opinion of the AG, but not before receiving the opinion. Until

it receives the opinion of the AG, the Legislature does not have the power to vote on a proposed amendment, unless 20 days have passed since the Legislature referred the proposed Amendment to the AG.

All parties moved for summary judgment in the Supreme Court. By a decision and order dated May 7, 2024, the Supreme Court granted summary judgment in favor of Appellants, declared the adoption of the Proposed Amendment null and void and directed its removal from the ballot for the November 2024 general election.

The Legislature appealed the decision to the Appellate Division, Fourth Department. By decision dated June 18, 2024, the Appellate Division reversed and dismissed Appellants' cause of action. The Fourth Department did not reach the merits of Appellants' claim. Instead, the Appellate Division held that, because Appellants do not challenge the "substance" of the Proposed Amendment, but only the procedures by which it was adopted, Appellants' claim is cognizable as a CPLR Article 78 special proceeding and is subject to a four-month statute of limitations accordingly. Since Appellants did not commence a proceeding within four months of the Legislature's adoption of the Proposed Amendment on July 1, 2022, the Appellate Division dismissed the case as untimely.

On June 21, 2024, Appellants filed a notice of appeal with this Court pursuant to CPLR §5601(b)(1). After a jurisdictional inquiry, by order dated July

11, 2024, the Court dismissed the appeal on the ground that it does not qualify for "as of right' jurisdiction under CPLR Article 56. A copy of said dismissal is annexed hereto as **Exhibit "C"**.

By this motion, Appellants seek permission to appeal pursuant to CPLR §5602(a)(1)(i).

JURISDICTION AND FINALITY

Appellants seek leave to appeal pursuant to CPLR §5602(a)(1)(i). This plenary proceeding originated in the Supreme Court, Livingston County, and the decision of the Appellate Division is a final order by which the Appellate Division dismissed the sole cause of action asserted in Appellants' Verified Complaint. *See* Exhibits "A" and "B".

TIMELINESS

This motion is timely made pursuant to CPLR §5513(b). Appellant filed and served Notice of Entry of the Appellate Division decision on June 20, 2024. *See* Exhibit "A". Appellants served this application within the 30-day period after service of Notice of Entry of the Appellate Division decision. The instant motion was served on July 15, 2024 via overnight delivery upon Respondents' counsel for delivery on July 16, 2024. Therefore, the instant motion is timely pursuant to CPLR 5513(b)[1].

[1] As noted herein, Appellants filed a notice of appeal "as of right" pursuant to CPLR §5601(b)(1). By ordered dated July 11, 2024, this Court dismissed the appeal on the grounds that it does not present a "substantial constitutional

DISCLOSURE STATEMENT NOT REQUIRED

A Disclosure Statement under Rule 500.1(f) of the Court of Appeals Rules of Practice is not required, as Appellants do not have any parents, subsidiaries, or affiliates.

QUESTIONS PRESENTED

1. Did the Appellate Division err in holding that Article XIX §1 of the Constitution is "procedural" in nature and that, as such, Appellants were required to commence the instant action vi a CPLR Article 78 special proceeding within four months of the adoption of the Proposed Amendment on July 1, 2022?

2. Did the Appellate Division err in failing to uphold the decision of the Supreme Court in which the Supreme Court held that, by voting on and adopting the proposed amendment on July 1, 2022, prior to its receipt of the Attorney General's opinion, the Legislature violated Article XIX §1 of the Constitution?

ARGUMENT

This appeal presents questions of significant constitutional importance that warrant review and resolution by this Court.

A. The Appellate Division Decision

The Appellate Division's decision raises issues of constitutional importance that have enormous implications for the fundamentals of New York practice. The

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question" that entitles Appellants to the Court's "as of right" jurisdiction. As such, although Appellants have served this motion within 30 days of the service of notice of entry of the Appellant Division Decision, they would also be entitled to the extension of time within which to seek leave provided by CPLR §5514(a).

Fourth Department's holding is unprecedented. The decision lays down a rule that would require a party who wishes to challenge the Legislature's adherence to the "procedural" mandates of the Constitution to utilize a CPLR Article 78 special proceeding in order to do so. Appellants are aware of not a single instance in the history of the State in which the Legislature has been made a respondent in an Article 78 special proceeding.

Pursuant to Article III §1 of the Constitution, the Legislature constitutes the legislative branch. The Legislature cannot perform executive or administrative functions. It does not issue determinations after hearings. It does not render decisions in quasi-judicial proceedings. When the Legislature acts, it acts in a legislative capacity. Because, as a fundamental matter of separation of powers, the courts do not have the power to review the wisdom or soundness of legislative acts, no court has held that it may review an act of the Legislature, a co-equal branch of government, in a special proceeding.

> The maxim that article 78 does not lie to challenge legislative acts is derived from the separation-of-powers doctrine which made the use of the judiciary's "prerogative writ" unavailable as a vehicle for challenging an act of a legislative body. That same principle, however, has no application to the quasi-legislative acts of administrative agencies. With respect to those acts, there is no reason why article 78 review in the nature of "mandamus to review" should not be available to the extent that the challenge fits within the language and accompanying gloss of CPLR 7801 and 7803(3). *New York City Health & Hosps. Corp. v. McBarnette*, 84 N.Y.2d 194, 203–04 (1994) (internal citations omitted).

Nor are Appellants aware of any case where a party has commenced a challenge to the Legislature's adherence to a constitutional process by way of a special proceeding. For example, the two reported cases in which the courts have adjudicated questions concerning the application of the Amendment Article were litigated as plenary actions for declaratory judgments. *See Browne v. New York*, 241 N.Y. 96 (1925); *Frank v. State*, 61 A.D.2d 466 (2d. Dept. 1978).

The Fourth Department bases its holding principally upon its reading of this Court's decision in *Save the Pine Bush, Inc. v. Albany*. *See* 70 N.Y.2d 193 (1987). In *Save the Pine Bush*, this Court drew a distinction between challenges directed at administrative actions that precede legislative acts and those directed at the legislative act itself. "The general rule is that an article 78 proceeding is unavailable to challenge the validity of a legislative act such as a zoning ordinance. However, when the challenge is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an article 78 proceeding." *Save the Pine Bush*, 70 N.Y.2d at 202.

However, because the Court used the terms "substance of the ordinance" versus "the procedures followed in its enactment" to describe when a party must commence a challenge by Article 78 proceeding, some lower courts, applying *Save the Pine Bush* as the Appellate Division does here, have issued confusing rulings

that incorrectly treat the substantive jurisdictional predicates to a legislative act as "procedural" matters that must be challenged by Article 78 proceedings.

In *P & N Tiffany Props., Inc. v. Village of Tuckahoe*, the Second Department held that a village board had failed to provide the proper public notice for a proposed local law. Despite the failure of compliance, the Second Department dismissed the plaintiff's claim as untimely and allowed the law to stand, holding that, under *Save the Pine Bush*, the claim was directed at "procedure" and was thus cognizable as an Article 78 and subject to the four-month statute of limitations. "The underlying challenge here is whether the local law was enacted without the statutorily-required notice. Regardless of the severity of the failure of notice, such a challenge goes not to the 'wisdom or merit' of the law, but to the procedure by which it was enacted. Since such a procedural claim could have been brought pursuant to CPLR article 78." *See* 33 A.D.3d 61, 65-66 (2d. Dept. 2006) (internal citations omitted).

The Third Department issued a similar ruling in *Llana v. Town of Pittstown*. The challengers alleged that a town had failed to adopt properly a local law, including by its failure to adhere to a requirement for a supermajority vote for the passage of the law. Yet, citing to *Save the Pine Bush*, the Third Department held that the challengers were required to commence their claims under Article 78 and ultimately dismissed the case as time barred. "In short, we find that each of

petitioners' causes of action concern matters of procedure only, eschewing any intrusion into the substance of the matter voted on, and were therefore properly brought in a CPLR article 78 proceeding, to which a four-month Statute of Limitations applies." *See* 234 A.D.2d 881, 883 (3d. Dept. 1996) (internal citations and quotations omitted).

These cases, like the instant matter, misapply *Save the Pine Bush*. *Save the Pine Bush* draws a distinction between claims directed at separate administrative determinations and those directed against the legislative act itself. The plaintiffs in *Save the Pine Bush* asserted causes of action against a city council's determination under the State Environmental Quality Review Act ("SEQRA")—a separate administrative determination that is issued prior to the enactment of a local law. Thus, these claims were directed at an administrative "procedure" in which the city council engaged before it decided to adopt legislation to amend its zoning ordinance. The issuance of a SEQRA determination is an administrative act, not a legislative act. It is a pre-requisite to the legislative process, but it is not part of the legislative process.

But where, as here, there is no separate administrative determination to review, there is nothing to challenge by way of an Article 78 proceeding. Appellants claim that the Legislature failed to follow the procedure for the amendment of the Constitution and, therefore, they raise a question of the

Legislature's jurisdiction and constitutional authority. It is a long and well-established rule that where any legislative body acts in an *ultra vires* manner in enacting legislation, its action is reviewable by declaratory judgment and is not subject to the four-month statute of limitations that governs a special proceeding. *Foy v. Schechter*, 1 N.Y.2d 604, 615 (1956).

In fact, this Court recently reaffirmed the longstanding and entirely logical principle that an *ultra vires* act is void *ab initio* and is always subject to challenge because the act has no legal force. In *Hoehmann v. Town of Clarkstown*, the Court held unenforceable a local law because the town failed to place the law before the voters for ratification at a referendum as required by the Municipal Home Rule Law. *See* 40 N.Y.3d 1 (2023). The local law in question was adopted nearly a decade prior to the commencement of the litigation and, as such, the town argued that the plaintiffs' claim was barred by either the four-month statute of limitations applicable to an Article 78 proceeding or the six-year statute applicable to declaratory judgment actions. The Court rejected the town's position entirely, holding that the law was invalid and without force due it its improper adoption and could not "become operative through the mere passage of time." *Hoehmann*, 40 N.Y.3d at 6.

The Fourth Department decision in this matter, like those of the Second and Third Departments, would allow the opposite result. They permit illegally adopted

laws—even an illegally adopted constitutional amendment—to acquire the force of law unless a party challenges these acts within a four-month window. Such an application of *Save the Pine Bush* is in clear conflict with longstanding precedent and misunderstands *Save the Pine Bush* itself. These holdings confuse the failure to adhere to jurisdictional prerequisites for legislative enactments with the failure to undertake adequate and reasoned administrative actions. They essentially allow a legislative body to legislate in an *ultra vires* manner so long as no one notices the violation for more than 120 days.

This case, therefore, offers the Court the opportunity to reconcile *Save the Pine Bush* with *Hoehmann, Foy* and the long line of cases holding that, where a legislative body acts without power or jurisdiction, a challenge to its act is properly commenced by a plenary proceeding and that such act cannot acquire the force of law by default as result of the passage of time.

Review here will enable the Court to pronounce on the question of whether a party who seeks to enforce certain provisions of the Constitution must do so via an Article 78 proceeding, a question of fundamental constitutional construction.

Review will allow the Court to decide whether the Legislature, as a matter of separation of powers and pursuant to the statutory language that governs Article 78 proceedings, is a proper respondent in a special proceeding.

Review will provide the Court with the opportunity to determine whether challenges against the failure of a legislative body to adhere to the procedures that govern its legislative authority are properly the subject of an Article 78 proceeding and are constrained by its statute of limitations or, on the contrary, are matters that pertain to the power and jurisdiction of a legislative body and are properly the subject of a plenary action.

Review will focus on the question of whether an illegally adopted constitutional amendment or law can acquire legal force should it stand unchallenged for more than four months after its improper enactment.

By taking up this matter, the Court will have the chance to clarify the rule announced in *Save the Pine Bush*, to decide whether the Second, Third and Fourth Departments have applied it correctly and whether and how such application accords with *Hoehmann*.

B. Appellants' Cause of Action

The Court should also reach the merits of Appellants' cause of action. Appellants commenced this action to vindicate the process that the Amendment Article erects for the amendment of the Constitution. As noted above, the Amendment Article requires the Legislature, upon the introduction of a proposed constitutional amendment, to refer the proposal to the AG for her opinion thereon. The AG has a "duty" to issue a written opinion to the Legislature within 20 days of

the referral of a proposed amendment. The Amendment Article authorizes the Legislature to act upon the proposed amendment "upon receiving" the opinion of AG, or at the expiration of said 20 days if no opinion is issued by the AG.

It is undisputed that the Legislature introduced the Proposed Amendment, referred it to the AG for her opinion and immediately proceeded to vote upon and adopted the Proposed Amendment, all on the same day. The Legislature did not vote on the Proposed Amendment "upon receiving" the AG Opinion, but prior to receiving such opinion. The AG issued her opinion on July 6, 2022, and the Legislature received the opinion on July 13, 2022.

Appellants allege that, by voting on the Proposed Amendment prior to the receipt of the AG Opinion, the Legislature violated the plain terms of the Amendment Article. Appellants contend that the Legislature approved the Proposed Amendment at a time when it had no authority or jurisdiction to do so. Only "upon receiving such opinion" (or upon the expiration of the 20-day period if the AG fails to render an opinion) may the Legislature take a vote upon a proposed amendment. Until the Legislature receives the opinion, or the time for the AG to act has expired, the Legislature has no jurisdiction to hold a vote on a proposed amendment. The Supreme Court agreed with Appellants' position and granted summary judgment in their favor accordingly.

Appellants' claim, therefore, clearly raises a question that pertains to the "construction" of the Constitution. Appellants' cause of action *in se* would warrant "as of right" review by this Court pursuant to CPLR §5601(b)(1).

Moreover, the significance of the question it poses is apparent. The role for the AG in the process for the amendment of the Constitution was created in 1938. The legislative history surrounding its crafting strongly indicates that the drafters intended the inclusion of the AG in the process to augment its deliberative nature. Appellants seek to enforce the plain language of the Constitution and the manifest intent of its drafters. The Amendment Article places a substantive brake on the Legislature—it may not act upon a proposed amendment until it receives the AG Opinion, or the 20 days has lapsed since referral by the Legislature to the AG.

The Legislature, on the other hand, claims that it need not await the receipt of the opinion prior to voting upon a proposed amendment. By asserting a right to vote on amendment with or without the opinion, the Legislature has staked out a definitive position on its constitutional powers.

The issue is one of first impression that should not evade review by this Court. This Court exists, primarily, to adjudicate matters that pertain to the Constitution of this State. It has a long and distinguished record of doing so. Indeed, nothing in the history of the Court suggests that ever has it shirked its duty in our constitutional scheme and failed to give final answers to questions that

implicate the meaning and application of the Constitution. Nor has the Court allowed procedural technicalities or the desire to avoid cases whose outcomes may cause disappointment for a political party or partisan faction to prevent it from carrying out its essential function.

The fact that Appellate Division elected not to rule on the merits of Appellants' claim and instead disposed of the case via the application of the statute of limitations should not serve as an immovable barrier to this Court's review of the direct issue of constitutional construction posed by Appellants' cause of action.

ARGUMENTS PRESERVED IN THE RECORD

The foregoing arguments are preserved in the record. Appellants' claim is predicated on the Legislature's failure to follow the mandates of the Amendment Article and the Supreme Court rendered its decision based upon Appellants' contentions. The relevant allegations are preserved in Appellants' Verified Complaint at R. 38-52 and Appellants' arguments in support of summary judgment are preserved at R. 276-331.

The arguments concerning applicability of the four-month statute of limitations and the appropriate use of a CPLR Article 78 special proceeding were raised by the Legislature before the Supreme Court (R. 252-255) and opposed by Appellants (R. 280-286).

CONCLUSION

This case raises a myriad of important constitutional, statutory and case law issues, all of which are ripe for resolution by this Court. The Court should grant leave accordingly.

Dated: Garden City, New York
July 15, 2024

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CERTIFICATION PURSUANT TO 22 NYCRR § 130-1.1a

Pursuant to 22 NYCRR § 130-1.1a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contents contained in the annexed documents are not frivolous.

CHRISTIAN BROWNE, ESQ.

Exhibit A

Andrea K. Bailey, County Clerk
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Livingston County Clerk Recording Page

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Plaintiff
Byrnes Marjorie *individually and as a member of the New York State Assembly* Feeney Tawn Lundgren Susan

Defendant
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Andrea K Bailey

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

AKB

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION-FOURTH DEPARTMENT

MARJORIE BYRNES, individually and as a member of the New York State Assembly, TAWN FEENEY and SUSAN LUNDREN,

Plaintiffs-Respondents,

-v.-

THE SENATE OF THE STATE OF NEW YORK, ANDREA STEWART-COUSINS, as President Pro Tempore and Majority Leader of the Senate, THE ASSEMBLY OF THE STATE OF NEW YORK, CARL HEASTIE, as Speaker of the Assembly,

Defendants-Appellants,

-and-

NEW YORK STATE BOARD OF ELECTIONS, ROBERT ORTT, as Minority Leader of the Senate, and WILLIAM BARCLAY, as Minority Leader of the Assembly,

Defendants.

Appellate Case No.: CA 24-00764

(Supreme Court, Livingston County, Index No.: 000778-2023)

NOTICE OF ENTRY

PLEASE TAKE NOTICE, that the within is a true copy of a Memorandum and Order of the Supreme Court of the State of New York Appellate Division, Fourth Judicial Department, entered in the Office of the Clerk of the Court on June 18, 2024 and Certified on June 21, 2024.

Dated: Garden City, New York
June 21, 2024

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Document Type: **CIVIL ACTION - MISC**

Document Desc: **APPELLATE COURT DECISION/ORDER (CERTIFIED COPY)**

Plaintiff
Byrnes Marjorie *individually and as a member of the New York State Assembly* Feeney Tawn Lundgren Susan

Defendant
SEE DOCUMENT

Recorded Information:
Index #: 000778-2023

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County of Livingston

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Andrea K Bailey

Livingston County Clerk

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SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

537.1

CA 24-00764

PRESENT: WHALEN, P.J., CURRAN, BANNISTER, GREENWOOD, AND NOWAK, JJ.

MARJORIE BYRNES, INDIVIDUALLY AND AS A MEMBER OF NEW YORK STATE ASSEMBLY, TAWN FEENEY AND SUSAN LUNDGREN, PLAINTIFFS-RESPONDENTS,

V MEMORANDUM AND ORDER

SENATE OF STATE OF NEW YORK, THE ASSEMBLY OF THE STATE OF NEW YORK, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (DUSTIN J. BROCKNER OF COUNSEL), FOR DEFENDANTS-APPELLANTS AND DEFENDANTS ANDREA STEWART-COUSINS, AS PRESIDENT PRO TEMPORE AND MAJORITY LEADER OF SENATE AND CARL HEASTIE, AS SPEAKER OF ASSEMBLY.

MCLAUGHLIN & STERN, LLP, GARDEN CITY (CHRISTIAN BROWNE OF COUNSEL), AND COX LAWYERS, PLLC, BRONXVILLE, FOR PLAINTIFFS-RESPONDENTS.

PERILLO HILL LLP, SAYVILLE (LISA A. PERILLO OF COUNSEL), FOR DEFENDANTS ROBERT ORTT, AS MINORITY LEADER OF THE SENATE, AND WILLIAM BARCLAY, AS MINORITY LEADER OF THE ASSEMBLY.

WINSTON & STRAWN LLP, NEW YORK CITY (SUSANNAH TORPEY OF COUNSEL), FOR LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, AMICUS CURIAE.

EQUAL PROTECTION PROJECT, LEGAL INSURRECTION FOUNDATION, BARRINGTON, RHODE ISLAND (WILLIAM A. JACOBSON OF COUNSEL), FOR EQUAL PROTECTION PROJECT, AMICUS CURIAE.

ANDREW BATH, GENERAL COUNSEL, CHICAGO, ILLINOIS (CHRISTOPHER A. FERRARA OF COUNSEL), FOR THOMAS MORE SOCIETY, AMICUS CURIAE.

Appeal from a judgment of the Supreme Court, Livingston County (Daniel J. Doyle, J.), entered May 7, 2024. The judgment, insofar as appealed from, granted the cross-motion of plaintiffs for summary judgment, declared that the New York State Legislature violated article XIX section 1 of the New York State Constitution in adopting Senate Bill S.51002 and Assembly Bill A.41002, declared those bills null and void, ordered the proposed constitutional amendment to be removed from the ballot for the general election of November 5, 2024, and denied in part the motion for summary judgment of defendants Senate of the State of New York, Andrea Stewart-Cousins, as the president pro tempore and majority leader of the Senate, Assembly of the State of New York and Carl Heastie, as speaker of the Assembly.

It is hereby ORDERED that the judgment insofar as appealed from is unanimously reversed on the law without costs, the cross-motion is denied, the declaration is vacated, the motion is granted in its entirety, and the complaint is dismissed against defendants Senate of the State of New York and Assembly of the State of New York.

Memorandum: Plaintiffs commenced this action seeking a judgment declaring, inter alia, that the New York State Legislature violated article XIX section 1 of the New York State Constitution in adopting Senate Bill S.51002 and Assembly Bill A.41002 on July 1, 2022 because it advanced a proposed amendment to the Constitution before the Attorney General rendered an opinion in writing as to the effect of the proposed amendment upon other provisions of the Constitution and before the expiration of the 20-day period proscribed for the Attorney General to issue such an opinion. Defendants Senate of the State of New York; Andrea Stewart-Cousins, as the president pro tempore and majority leader of the Senate; Assembly of the State of New York; and Carl Heastie, as speaker of the Assembly (collectively, majority defendants) made a preanswer motion to dismiss the complaint on various grounds, including that the cause of action asserted therein is properly the subject of a CPLR article 78 proceeding and that the four-month statute of limitations applicable to such a proceeding has expired. Plaintiffs cross-moved for summary judgment on the complaint, and Supreme Court converted the majority defendants' motion to dismiss into one seeking summary judgment (*see* CPLR 3211 [c]). Thereafter, the court granted the majority defendants' motion to the extent it sought summary judgment dismissing the complaint against Stewart-Cousins and Heastie, but otherwise denied the majority defendants' motion. The court also granted plaintiffs' cross-motion and issued a declaration in their favor. Defendants-appellants appeal from the judgment to the extent that it denied the motion and granted the cross-motion, and we now reverse the judgment insofar as appealed from.

When a proceeding or action against a state entity "has been commenced in the form of a declaratory judgment action, for which no specific Statute of Limitations is prescribed, it is necessary to examine the substance of that action to identify the relationship out of which the claim arises and the relief sought in order to resolve which Statute of Limitations is applicable" (*New York City Health and Hosps. Corp. v McBarnette*, 84 NY2d 194, 200-201 [1994], *rearg denied* 84 NY2d 865 [1994] [internal quotation marks omitted]). "[I]f the claim could have been made in a form other than an action for a declaratory judgment and the limitations period for an action in that form has already expired, the time for asserting the claim cannot be extended through the simple expedient of denominating the action one for declaratory relief" (*id.* at 201; *see Matter of Foley v Masiello*, 38 AD3d 1201, 1202 [4th Dept 2007]).

It is well settled that "a proceeding under article 78 is not the proper vehicle to test the constitutionality of legislative enactments" (*Matter of Kovarsky v Housing & Dev. Admin. of City of N.Y.*, 31 NY2d 184, 191 [1972]; *see Press v County of Monroe*, 50 NY2d 695, 702 [1980]). When the challenge is directed at the procedures

followed by the legislature rather than the substance of the enactment, however, "it is maintainable in an article 78 proceeding" (*Matter of Save the Pine Bush v City of Albany*, 70 NY2d 193, 202 [1987]).

Here, although plaintiffs characterize the complaint "as a challenge to the constitutionality of [defendants'] actions, [it] actually alleges an erroneous application of a constitutional provision relating to the procedure by which" the proposed amendment was advanced, and therefore it would have been proper to "proceed[ ] by way of a CPLR article 78 proceeding" (*Matter of Straniere v Silver*, 218 AD2d 80, 82 n 2 [3d Dept 1996], *affd for reasons stated* 89 NY2d 825 [1996]; *see Matter of Voelckers v Guelli*, 58 NY2d 170, 176-177 [1983]). Thus, the sole cause of action here is subject to the four-month statute of limitations and is time-barred (*see* CPLR 217 [1]).

The remaining contentions are academic in light of our determination.

Entered: June 18, 2024

Ann Dillon Flynn
Clerk of the Court

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.

I, **Ann Dillon Flynn**, *Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.*

SUPREME COURT APPELLATE DIVISION • FOURTH DEPARTMENT •

***IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this June 18, 2024*

Ann Dillon Flynn

Clerk

NYSCEF Confirmation Notice

Livingston County Supreme Court

The NYSCEF website has received an electronic filing on 06/21/2024 03:43 PM. Please keep this notice as a confirmation of this filing.

000778-2023

Marjorie Byrnes et al v. The Senate of the State of New York et al

Assigned Judge: Daniel J. Doyle

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Exhibit B

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Plaintiff
Byrnes Marjorie *individually and as a member of the New York State Assembly* Feeney Tawn Lundgren Susan

Defendant
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STATE OF NEW YORK:
SUPREME COURT: LIVINGSTON COUNTY

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MARJORIE BYRNES, individually and as a member of the New York State Assemble, TAWN FEENEY and SUSAN LUNDGREN,

Petitioners,

- against -

THE SENATE OF THE STATE OF NEW YORK, ANDREA STEWART-COUSINS, as the President Pro Tempore and Majority Leader of the Senate, ROBERT ORTT, as Minority Leader of the Senate, THE ASSEMBLY OF THE STATE OF NEW YORK, CARL HEASTIE, as Speaker of the Assembly, WILLIAM BARCLAY as Minority Leader of the Assembly, and the NEW YORK STATE BOARD OF ELECTIONS,

Respondents.

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Index No. 000778/2023

NOTICE OF ENTRY

PLEASE TAKE NOTICE, that annexed is a true and correct copy of the Decision and Judgment in this action entered with the Livingston County Clerk on May 7, 2024.

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Dated: Rochester, New York
May 14, 2024

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants New York State Senate, Andrea Stewart-Cousins, New York State Assembly, and Carl Heastie
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Plaintiff
Byrnes Marjorie *individually and as a member of the New York State Assembly* Feeney Tawn Lundgren Susan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LIVINGSTON

MARJORIE BYRNES, individually and as a member of the New York State Assemble, TAWN FEENEY and SUSAN LUNDGREN,

Plaintiffs,

vs.

THE SENATE OF THE STATE OF NEW YORK, ANDREA STEWART-COUSINS, as the President Pro Tempore and Majority Leader of the Senate, ROBERT ORTT, as Minority Leader of the Senate, THE ASSEMBLY OF THE STATE OF NEW YORK, CARL HEASTIE, as Speaker of the Assembly, WILLIAM BARCLAY as Minority Leader of the Assembly, and the NEW YORK STATE BOARD OF ELECTIONS,

Defendants.

Decision and Judgment

Index No. 000778-2023

Appearances:

Christian Browne, Esq., McLAUGHLIN & STERN, LLP and Bobbie Anne Flower Cox, Esq., COX LAWYERS PLLC for the Plaintiffs

Letitia James, New York Attorney General, by Emily Fusco, Esq., and Heather McKay, Esq., of counsel, for the New York State Senate, New York State Assembly, and the Majority Defendants

Lisa A. Perillo, Esq., Perillo Hill LLP, for the Defendants Robert Ortt, as Minority Leader of the Senate, and William Barclay, as Minority Leader of the Assembly

Daniel J. Doyle, J.,

This case presents novel issues concerning the New York State Legislature's actions in proposing amendments to the Constitution in derogation of the explicit process outlined in § 1 of Article XIX of the New York Constitution and the ability of citizens to challenge those actions in a plenary proceeding.

On July 1, 2022, the New York State Legislature (hereinafter "Legislature") adopted a Concurrent Resolution which sought to amend the Constitution.[1] On October 30, 2023, Plaintiffs initiated this action seeking declaratory judgment that the Legislature violated § 1 of Article XIX of the New York Constitution in adopting the Concurrent Resolution and an order removing the proposed amendment from the ballot for the general election of November 5, 2024.

Defendants, the Senate of the State of New York, Andrea Stewart-Cousins (as the President Pro Tempore and Majority Leader of the Senate), the Assembly of the State of New York, and Carl Heastie (as Speaker of the Assembly of the State of New York) (collectively, the" Majority Defendants") moved to dismiss the complaint for failure to state a cause of action (CPLR Rule 3211 [a][7]), lack of subject matter jurisdiction (CPLR Rule 3211[a][2]), lack of capacity to sue (CPLR Rule 3211 [a][3]), and lack of standing (CPLR Rule 3211 [a][5]). As the parties agreed there were no

[1] The merits of the proposed amendment to the Constitution are not an issue herein.

issues of fact, and upon notice to the parties, the Court converted the motion to a motion for summary judgment.[2] The plaintiffs cross-move for summary judgment on their complaint. Both parties seek a declaration in their favor.[3]

For the reasons that follow, the defendants' summary judgment motion is GRANTED in part, Andrea Stewart-Cousins and Carl Heastie are dismissed as defendants herein and the remaining requested relief is denied. The plaintiffs' summary judgment motion is GRANTED.

Relevant Facts

On July 1, 2022, both houses of the Legislature introduced concurrent resolutions seeking to amend § 11 of Article I of the Constitution, the "Bill of Rights". In the Senate the resolution was advanced as Senate Bill S. 51002 and in the Assembly as Assembly Bill A. 41002 (hereinafter the "Concurrent Resolution"). Immediately following the introduction of the Concurrent Resolution, it was referred to the Attorney General for her opinion, as required by § 1 of Article XIX of the New York Constitution.

§ 1 of Article XIX of the New York Constitution states (emphasis supplied):

[2] See Decision and Order of the Hon. Daniel J. Doyle dated March 14, 2024 (NYSCEF Docket # 41).

[3] Defendant New York State Board of Elections filed a "no position" letter with the Court (NYSCEF Docket # 7).

> Any amendment or amendments to this constitution may be proposed in the senate and assembly whereupon such amendment or amendments *shall be referred to the attorney-general whose duty it shall be within twenty days thereafter to render an opinion in writing to the senate and assembly as to the effect of such amendment or amendments upon other provisions of the constitution.*[4] *Upon receiving such opinion,* if the amendment or amendments as proposed or as amended shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the ayes and noes taken thereon, and referred to the next regular legislative session convening after the succeeding general election of members of the assembly, and shall be published for three months previous to the time of making such choice; and if in such legislative session, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit each proposed

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[4] This language was approved during the 1938 Constitutional Convention. At that Convention, the Chairman explained the proposed amendment as follows (emphasis supplied):

> Mr. Pitcher: Mr. Chairman, may I move No. 77?
>
> The Secretary: General Order No. 77, Int. No. 694, Pr. No. 837, by the Committee on Future Amendments. Proposed constitutional amendment to amend Article XIV of the Constitution, in relation to future amendments and future constitutional conventions.
>
> The Chairman: If you will permit me, gentlemen, I have not the proposal here, but I can explain it. The only substantial change is that provision on lines 6 to 11 of the proposal, whereby it is provided that when a proposed amendment is submitted to the Legislature, it will immediately be forwarded to the Attorney General for his report as to its effect upon other provisions of the Constitution; **and upon this report coming back within 20 days, then the Legislature will proceed to act upon it as it sees fit.** In other words, it was thought that it would be very helpful to the Legislature if the Attorney-General made a report as to the effect of the language of the proposal on other provisions of the Constitution.

Revised Record of the Constitutional Convention of the State of New York (1938).

> amendment or amendments to the people for approval in such manner and at such times as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the constitution on the first day of January next after such approval. *Neither the failure of the attorney-general to render an opinion concerning such a proposed amendment nor his or her failure to do so timely shall affect th[e] validity of such proposed amendment or legislative action thereon.*[5]

The same day the Concurrent Resolution was forwarded to the Attorney General (July 1st), both the Senate and the Assembly voted to adopt the Concurrent Resolution. At the time of their vote, neither the Senate nor the Assembly had received the opinion from the Attorney General.

The Attorney General issued her opinion on July 6th, and it was received by the Legislature on July 13th.

The Legislature referred the proposed amendment to the next session of the Legislature, and on January 24, 2023, both houses adopted the second concurrent resolution. The proposed amendment is scheduled to appear on the ballot to be voted on by the electorate on November 5, 2024.

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[5] This language was approved by the electorate in November of 1941. Neither party has provided any relevant, contemporaneous information – such as legislative memorandums or floor debate – as to the intent of the Legislature in proposing this language.

The Constitution Prevents the Legislature from Acting on a Proposed Amendment until either Receiving the Attorney General's Opinion or Twenty Days has Passed Since Referral to the Attorney General

In assessing the language of § 1 of Article XIX to the Constitution and giving it its ordinary meaning, and ensuring that the entire Article is read to avoid a construction that treats a word or phrase as superfluous,[6] the Court concludes that it was the intent of the People to: (1) ensure that the legislators voting on a proposed constitutional amendment received the benefit of the Attorney General's opinion on its impact on other provisions in the Constitution; (2) require that the Attorney General provide the requested opinion within twenty (20) days; (3) prohibit the Legislature from acting until it received the opinion or the twenty day period had

[6] "We have long and repeatedly held that "in construing the language of the Constitution as in construing the language of a statute, the courts should look for the intention of the People and give to the language used its ordinary meaning" (*Sherrill*, 188 N.Y. at 207, 81 N.E. 124). The " 'starting point for discerning legislative intent is the language of the statute itself' " (*Matter of Lynch v. City of New York*, 40 N.Y.3d 7, 13, 192 N.Y.S.3d 50, 213 N.E.3d 110 [2023], quoting *Matter of DaimlerChrysler Corp. v. Spitzer*, 7 N.Y.3d 653, 660, 827 N.Y.S.2d 88, 860 N.E.2d 705 [2006]), such that the " 'literal language of a statute controls' " (*Lynch*, 40 N.Y.3d at 13, 192 N.Y.S.3d 50, 213 N.E.3d 110, quoting *Matter of Anonymous v. Molik*, 32 N.Y.3d 30, 37, 84 N.Y.S.3d 414, 109 N.E.3d 563 [2018]). All parts of the constitutional provision or statute " 'must be harmonized with each other as well as with the general intent of the whole statute, and effect and meaning must, if possible, be given to the entire statute and every part and word thereof' " (*People v. Pabon*, 28 N.Y.3d 147, 152, 42 N.Y.S.3d 659, 65 N.E.3d 688 [2016], quoting McKinney's Cons. Laws of N.Y., Book 1, Statutes § 98[a]). Indeed, our well-settled doctrine requires us to give effect to each component of the provision or statute to avoid " 'a construction that treats a word or phrase as superfluous' " (*Columbia Mem. Hosp. v. Hinds*, 38 N.Y.3d 253, 271, 172 N.Y.S.3d 649, 192 N.E.3d 1128 [2022], quoting *Matter of Lemma v. Nassau County Police Officer Indem. Bd.*, 31 N.Y.3d 523, 528, 80 N.Y.S.3d 669, 105 N.E.3d 1250 [2018])." (*Hoffmann v. New York State Indep. Redistricting Comm'n*, __ NY3d __; No. 90, 2023 WL 8590407, at *7 [Dec. 12, 2023].)

expired, and (4) authorize the Legislature to act on the proposed amendment after twenty days had passed, even if the Attorney General failed to issue the opinion, or did so after the twenty day period (and the Legislature having already acted).

"In construing the language of the Constitution[,] as in construing the language of a statute, the courts ... give to the language used its ordinary meaning" (*Matter of Carey v. Morton*, 297 N.Y. 361, 366, 79 N.E.2d 442 [1948], *citing Matter of Sherrill v. O'Brien*, 188 N.Y. 185, 207, 81 N.E. 124 [1907])." (*Burton v. New York State Dep't of Tax'n & Fin.*, 25 NY3d 732, 739 [2015].) "In the construction of constitutional provisions, the language used, if plain and precise, should be given its full effect" and "[i]t must be presumed that its framers understood the force of the language used and, as well, the people who adopted it" (*People v. Rathbone*, 145 N.Y. 434, 438, 40 N.E. 395 [1895]). Our Constitution is "an instrument framed deliberately and with care, and adopted by the people as the organic law of the State" and, when interpreting it, we may "not allow for interstitial and interpretative gloss ... by the other [b]ranches [of the government] that substantially alters the specified law-making regimen" set forth in the Constitution (*Matter of King v. Cuomo*, 81 N.Y.2d 247, 253, 597 N.Y.S.2d 918, 613 N.E.2d 950 [1993])." (*Harkenrider v. Hochul*, 38 NY3d 494 [2022].)

The plain language of Article XIX begins with "the amendment or amendments shall be referred to the attorney-general whose duty it shall be within twenty days thereafter to render an opinion in writing to the senate and assembly as to the effect of such amendment or amendments upon other provisions of the constitution." As explained in the Revised Record of the Constitutional Convention of the State of New York (1938), this language was inserted into the Article as it was believed it would be "very helpful" to the Legislature to obtain the Attorney's General's opinion on the proposed amendment. The language imposes a duty upon the Attorney General to provide the opinion in twenty days.

"Upon receiving such opinion," the Legislature may thereafter vote on the proposed amendment. This language compels the conclusion that the People intended for the Legislature to wait to receive the Attorney General opinion prior to voting on the proposed amendment. This is the only reasonable interpretation and is supported by the characterization provided by the Chairman of the 1938 Constitutional Convention when he stated: "upon this report coming back within 20 days, **then the Legislature will proceed to act upon it** as it sees fit" (emphasis supplied).

The Majority Defendants, however, refer to the language added by amendment in 1941 to argue that regardless of the language outlined above, the

Legislature need not wait the required 20 days and can act on the proposed amendment prior to receiving an opinion from the Attorney General. The Court declines to adopt their interpretation.

In 1941 Article XIX was amended to add the following: "[n]either the failure of the attorney-general to render an opinion concerning such a proposed amendment nor his or her failure to do so timely shall affect th[e] validity of such proposed amendment or legislative action thereon." Although the parties do not provide any contemporaneous legislative memorandums or statements by other officials that elucidate why this amendment was proposed by the Legislature, the most reasonable inference is that it was to prevent a "pocket veto" by the Attorney General of the proposed amendment. Thus, the language addresses two possibilities of non-compliance by the Attorney General: (1) the Attorney General refuses to submit an opinion, and (2) the Attorney General delays providing the opinion beyond the twenty (20) day limit.

The first clause ("[n]either the failure of the attorney-general to render an opinion concerning such a proposed amendment") prevents the Attorney General from thwarting the passage of the proposed amendment by refusing to follow his or her duty in providing the opinion. The second clause ("nor his or her failure to do so **timely** shall affect th[e] validity of such proposed amendment or legislative

action thereon" [emphasis supplied]) allows the Legislature to proceed with the vote on the proposed amendment after the period of twenty (20) days has expired. The use of the word "timely" as a modifier to the word "failure" compels the conclusion that the language refers to the duty to provide the opinion within twenty days, and the issuance of the opinion after that period does not require invalidation of legislative action taken after the period had expired but prior to the receipt of the opinion.

The Majority Defendants argue that this language requires the conclusion that the Legislature is free to act on the proposed amendment at any time- even prior to the expiration of the twenty-day period as occurred here - regardless of whether the Attorney General provides an opinion.[7] This interpretation, however, would require the Court to ignore the plain language of the Article and would render meaningless the intent of the People (to aid the deliberative process). It would also require the Court to conclude that the language "whose duty it shall be within

[7] The Court agrees with the Majority Defendants' position that the issuance of the Attorney General opinion contemplated by Article XIX is not a condition precedent that must be satisfied prior to the Legislature acting upon the proposed amendment. The Legislature is free to act after the opinion is received or the twenty-day period has expired. However, the intent of the People in delineating the procedure outlined in the Article is to provide to the Legislature relevant information (deemed "very helpful" by the drafters) to assist them in their deliberative process. Article XIX compels the Attorney General to act in issuing the opinion, and compels the Legislature to wait for that opinion, unless the Attorney General disregards his or her duty to provide the opinion within twenty days. Only then is the Legislature free to act.

twenty days thereafter to render an opinion" and "upon receiving such opinion" is superfluous. In essence, the Majority Defendants argue for an interpretation that would render the Attorney General's duty to submit an opinion meaningless as the Legislature could act on the proposed amendment at any time, as they did here.[8]

In adopting the 1941 amendment, the People did not remove the phrase "[u]pon receiving such opinion." To harmonize that phrase with the language added by the 1941 amendment the Court must conclude that the intent of the People expressed in Article XIX is to provide the Legislature the authority to act on the proposed amendment only after the Attorney General has provided the opinion or failed in his or her duty to provide the required opinion with the twenty-day period. "When language of a constitutional provision is plain and unambiguous, full effect should be given to "the intention of the framers * * * as indicated by the language employed" and approved by the People (*Settle v. Van Evrea*, 49 N.Y. 280, 281 [1872]; *see also, People v. Rathbone*, 145 N.Y. 434, 438, 40 N.E. 395)." (*King v. Cuomo*, 81 NY2d 247, 253 [1993].)

[8] It is true that the Legislature is free to act upon the proposed amendment regardless of what is contained in the Attorney General's opinion. But that fact is irrelevant. The People's intent under Article XIX is to aid in the deliberative process by requiring the Legislature to consider information provided by the Executive Branch as it considers adopting a proposed amendment, not to provide the Executive Branch the power to prevent it from acting.

The Majority Defendants argue that their position is supported by historical precedents and the fact that the Governor has the authority to call the Legislature into "extraordinary" session at which a proposed amendment may be voted. The Court finds those arguments unavailing.

First, the historical precedent of how the Legislature has proposed amendments after the 1941 amendment to Article XIX – if contrary to the intent of the People as defined by the plain language of the Constitution – is irrelevant. (*King v. Cuomo, supra.*) Second, the Governor's authority to call the Legislature into extraordinary session does not obviate the intent of the People (as expressed in Article XIX) that amendments to the Constitution be pursued by the Legislature in a deliberative manner and with the input of Attorney General. Notably, the Attorney General is not required to wait twenty days to provide his or her opinion. Presumably, should the need to seek an expeditious amendment to the Constitution exist (a dubious proposition), the Attorney General would provide his or her opinion with equal alacrity.[9]

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[9] Additionally, it is clearly the intent of the People not to allow amendment to the Constitution except by an informed, deliberative process. The procedure requires not one vote of the Legislature, but two votes, with the second vote occurring after the next election for members of the assembly (". . . and referred to the next regular legislative session convening after the succeeding general election of members of the assembly"). The entire process is designed to take many months, and two informed votes of two Legislatures, and a vote by the electorate. Nothing about the process is "expedient". "There is little room for misapprehension as to the ends to be achieved by the safeguards surrounding the process

Finally, the Majority Defendants cite to a 1961 Opinion of the Attorney General as support for their position. However, a close examination of that opinion establishes that it does not support the Majority Defendants' position. In that opinion the Attorney General wrote (emphasis added):

> . . .In my opinion the validity of an amendment is not affected by the absence of the Attorney General's opinion thereon, whether due to his failure of otherwise.
>
> **Since the Legislature may recall a concurrent resolution** if in the Attorney General's opinion, the proposed Amendment will affect some other provision of the Constitution, the purpose of the opinion would not be frustrated by the Legislature's acting upon the proposal prior to the receipt of the opinion.

The Attorney General based his opinion upon the fact that at the time the 1961 opinion was issued, the Legislature had the presumed authority to recall a bill it had passed. However, the ability of the Legislature to recall bills was curtailed by *King v. Cuomo, supra*. "In *King*, the Presentment Clause of the New York Constitution (art IV, § 7) was held violated by the bicameral practice of "recalling" or "reacquiring" passed bills after presentment to the Governor, but prior to gubernatorial action on the bill. *King* concluded that the Legislature's practice "undermine[d] the integrity of the law-making process as well as the underlying

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of amendment. The integrity of the basic law is to be preserved against hasty or ill-considered changes, the fruit of ignorance or passion." (*Browne v. City of New York*, 241 NY 96, 109 [1925].)

rationale for the demarcation of authority and power in this process" (*id.*, at 255, 597 N.Y.S.2d 918, 613 N.E.2d 950)." (*Campaign For Fiscal Equity, Inc. v. Marino*, 87 NY2d 235, 239 [1995].)

Although *King v. Cuomo, supra,* concerned bills passed by both houses and sent to the Governor, the procedure outlined in Article XIX does not contemplate a "recall" procedure and instead mandates that upon approval the proposed amendment must be referred "to the next regular legislative session. . ."[10] Thus, referral to the next legislature is mandated by the clear words of the Constitution. Upon such referral, the legislature no longer has the authority to "recall" the bill. As the Court of Appeals noted in *King v. Cuomo, supra*:

> The putative authority of the Legislature to recall a passed bill once it has been formally transmitted to the Governor "is not found in the constitution" (*People v. Devlin*, 33 N.Y. 269, 277). We conclude, therefore, that the practice is not allowed under the Constitution. To permit the Legislature to use its general rule-making powers, pertaining to in-house procedures, to create this substantive authority is untenable. As this Court stated in *Devlin* "[w]hen both houses have * * * finally passed a bill, and sent it to the governor, *they have exhausted their powers* upon it" (*id.*, at 277 [emphasis added])."

(*King v. Cuomo*, 81 NY2d at 252–53.)[11]

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[10] ". . . shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments **shall** be entered on their journals, and the ayes and noes taken thereon, **and referred to the next regular legislative session** . . ." (§ 1 of Article XIX, emphasis supplied.)

[11] *See also Campaign For Fiscal Equity, Inc. v. Marino*, 87 NY2d 235, 238–39 (1995): "We hold that the practice of withholding from the Governor those bills on which both houses of the

Since the Legislature cannot "recall" a concurrent resolution it has passed,[12] the 1961 Attorney General Opinion is no longer supportive of the Majority Defendants' position. In fact, considering the holding of *King* and its progeny- and the language of Article XIX requiring referral of the proposed amendment to the next legislative session - the 1961 Attorney General opinion supports the plaintiffs' position in that the purpose of seeking the opinion of the Attorney General prior to voting on the proposed amendment "would [] be frustrated by the Legislature's acting upon the proposal prior to the receipt of the opinion."[13]

Legislature have formally acted is violative of article IV, § 7. To hold otherwise would be to sanction a practice where one house or one or two persons, as leaders of the Legislature, could nullify the express vote and will of the People's representatives. This requirement is constitutionally required and would not interfere with the usual and appropriate interaction of the executive and legislative branches in the making of laws."

[12] The Majority Defendants rely upon a treatise on the New York Constitution that states "[t]he legislature can also recall a proposed amendment by concurrent resolution if the attorney general finds it is inconsistent with other parts of the constitution". (Peter J. Galie & Christopher Bopst, The New York State Constitution 350 [2d ed 2012].) However, there is no constitutional language cited, statutory citation, or caselaw citation supporting this assertion and it appears it may be based upon the 1961 Attorney General Opinion.

[13] Additional language in the opinion supports the plaintiffs' position that the opinion of the Attorney General is important to the deliberative process undertaken by the Legislature in considering proposed amendments to the Constitution. Earlier in the opinion the Attorney General noted that the "obvious purpose is to preserve the integrity of the Constitution and to guard against inconsistencies that might result from its amendment." The Attorney General also noted that "[b]eyond peradventure the Legislature may act upon a proposed amendment after the expiration of the twenty day period without the opinion of the Attorney General perforce of the 1941 amendment." However, the Attorney General's opinion that it was permissible for the Legislature to act prior to the expiration of the prior to the receipt of the opinion within the twenty-day period, as noted above, is predicated upon the belief – now invalidated - that the Legislature could recall the concurrent resolution approving of the amendment. (1939 Atty. Gen. 358.)

The Plaintiff's Claims are Justiciable

The Majority Defendants argue that the plaintiffs' cause of action is not justiciable, arguing that: (1) the separation of powers bars judicial review of the Legislature's procedures for adopting the proposed amendment, (2) the issue is not "ripe" for review as the amendment has not been voted on by the electorate, and (3) that the plaintiffs do not have standing. Each argument will be addressed *seriatim*.

The Courts have Authority to Review Unconstitutional Acts of the Legislature

The Majority Defendants argue that this Court cannot intrude upon the internal practices and procedures of the Legislature to review its compliance with Article XIX of the Constitution. The Court rejects this argument.

The procedures utilized by the Legislature in proposing amendments to the Constitution are set forth not in internal rules and procedures of the Legislature, but in Article XIX of the Constitution. "Our precedents are firm that the "courts will always be available to resolve disputes concerning the scope of that authority which is granted by the Constitution to the other two branches of the government" (*Saxton v. Carey*, 44 N.Y.2d 545, 551, 406 N.Y.S.2d 732, 378 N.E.2d 95; *New York State Bankers Assn. v. Wetzler*, 81 N.Y.2d 98, 102, 595 N.Y.S.2d 936, 612 N.E.2d 294; *see also, Myers v. United States*, 272 U.S. 52, 116, 47 S.Ct. 21, 25, 71 L.Ed. 160; *Matter of New York State*

Inspection, Sec. & Law Enforcement Empls. v. Cuomo, 64 N.Y.2d 233, 239, 485 N.Y.S.2d 719, 475 N.E.2d 90)." (*King v. Cuomo*, 81 NY2d at 251.)

Courts have the authority to review actions taken by the Legislature to ensure compliance with the Constitution, even if those acts are fairly characterized as "internal rules"- which is not the case herein. "We conclude that the courts do not trespass "into the wholly internal affairs of the Legislature" (*Heimbach v. State of New York*, 59 N.Y.2d 891, 893, 465 N.Y.S.2d 936, 452 N.E.2d 1264, *appeal dismissed* 464 U.S. 956, 104 S.Ct. 386, 78 L.Ed.2d 331) when they review and enforce a clear and unambiguous constitutional regimen of this nature." (*Id.*)

As the plaintiffs' cause of action concerns whether the Legislature complied with Article XIX in proposing the amendment to the Constitution, this Court has authority to resolve the issues herein.

The Issue Herein is Ripe for Review

The Majority Defendants also argue that the plaintiffs' claims are not ripe for review, as the electorate may not approve the amendment at the general election on November 5, 2024.

Important to the resolution of this issue is the fact that the plaintiffs' claims do not challenge the substance of the proposed amendment. Plaintiffs do not seek to invalidate the proposed amendment arguing that – should it pass - it violates

other constitutional provisions ("facial attack" on its constitutionality) or is unconstitutional as applied to them (an "as applied" challenge), and thus plaintiff *will* be harmed *if* the voters approve of the amendment. Had the plaintiffs made those claims, those claims would not be ripe for review. (*See e.g., New York Pub. Int. Rsch. Grp., Inc. v. Carey*, 42 NY2d 527 [1977].)

Plaintiffs contend instead that the amendment process employed by the Legislature to propose the amendment was unconstitutional as it violated Article XIX of the Constitution. Plaintiffs' claim became "ripe" once the Legislature acted in violation of Article XIX and approved the Concurrent Resolution and thereafter placed the proposed amendment on the ballot. (*See New York State Bankers Ass'n, Inc. v. Wetzler*, 81 NY2d 98 [1993].)

As noted by the Court of Appeals in *New York Pub. Int. Rsch. Grp., Inc. v. Carey* (42 NY2d 527 [1977]):

> That is not to say that the courts may never consider the validity of proposed legislation. This has been done on several occasions, although with reluctance and then only incidentally to resolve a dispute as to whether the proposition should be placed or remain on the ballot (*see, e.g., Matter of McCabe v Voorhis, supra*; *Matter of Tierney v Cohen*, 268 NY 464; *Matter of Osborn v Cohen*, 272 NY 55; *Matter of Mooney v Cohen*, 272 NY 33; *Johnson v Etkin*, 279 NY 1; *Matter of Stroughton v Cohen*, 281 NY 343; *Matter of Atwood v Cohen*, 291 NY 484).
>
> These are not advisory opinions. The effect of the court's determination in those cases does not depend on the outcome of the election. On the

> contrary, those orders have the immediate and practical effect of determining whether the proposition should be submitted to the voters, or whether all the expense and human effort involved in the election process would be wasted because of fatal defects in the law.

(*Id.* at 531-532. *See also Fossella v. Dinkins*, 66 NY2d 162 [1985].)

Plaintiffs claim is that the proposed amendment was passed by the Legislature in derogation of Article XIX of the Constitution and should therefore be removed from the ballot. "Where, as here, the relief requested is the preclusion from the ballot of a proposal sought to be placed before the voters, the proceeding is not rendered premature by the fact that unless approved the challenged law would not become effective, for the requested relief is not dependent upon the result of the election and would instead have an immediate effect." (*Cantrell v. Hayduk*, 45 NY2d 925, 926, [1978].)

Plaintiffs Have Standing to Challenge the Adoption of the Concurrent Resolution

The Majority Defendants argue that citizens do not have standing to challenge unconstitutional acts of the Legislature, and Plaintiff Marjorie Byrnes, as a Member of the Assembly, also lacks standing. The Court disagrees.

Plaintiffs claim the Legislature violated Article XIX of the Constitution in passing the Concurrent Resolution without following the requisite procedures outlined in that Article. The issue of the correct constitutional interpretation of

Article XIX, and whether the Legislature violated same in proposing the amendment herein, are issues of public significance, but there is likely no member of the general public that can allege a specific harm to satisfy common-law standing principles.[14]

However, there is an exception to traditional standing principles applicable herein. As the Court of Appeals noted in *Saratoga Cnty. Chamber of Com., Inc. v. Pataki* (100 NY2d 801 [2003]):

> It follows that our doctrines governing standing must be sensitive to claims of institutional harm. Actions of this type can serve as a means for citizens to ensure the continued vitality of the constraints on power that lie at the heart of our constitutional scheme (*cf. Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 10 [1975]; Committee for an Effective Judiciary v State, 209 Mont 105, 112-113, 679 P2d 1223, 1227 [1984]; *State ex rel. Howard v Oklahoma Corp. Commn.*, 614 P2d 45, 52 [Okla 1980]). Thus, where a denial of standing would pose "in effect ... an impenetrable barrier to any judicial scrutiny of legislative action," our

[14] When questioned during oral argument on their summary judgment motion, able counsel for the Majority Defendants believed that the Attorney General would have standing, but no other person would until the amendment was approved and "as-applied" or "facial challenges" could then be brought. As to the claim that the Attorney General has standing, as noted by the Court of Appeals in *Boryszewski v. Brydges* (37 NY2d 361 [1975]):

> Moreover, it may even properly be thought that the responsibility of the Attorney-General and of other State officials is to uphold and effectively to support action taken by the legislative and executive branches of government. As Judge Fuld wrote generally in *St. Clair* (*supra*, 13 N.Y.2d p. 79, 242 N.Y.S.2d p. 47, 192 N.E.2d p. 19) 'The suggestion * * * that the Attorney-General and other state officials may be relied upon to attack the constitutional validity of state legislation is both unreal in fact and dubious in theory'. His estimate of the situation has been verified in the years since *St. Clair*.

(*Id.* at 364.)

> duty is to open rather than close the door to the courthouse (*see Boryszewski*, 37 NY2d at 364; *see also State ex rel. Clark v Johnson*, 120 NM 562, 904 P2d 11 [1995]; *Rios v Symington*, 172 Ariz 3, 833 P2d 20 [1992]; *State ex rel. Sego v Kirkpatrick*, 86 NM 359, 363, 524 P2d 975, 979 [1974]).

(*Id.* at 814.)[15]

Should this Court not grant plaintiffs standing, it is likely that the actions of the Legislature in proceeding contrary to the requirements of Article XIX would be insulated from judicial review. As noted above, the procedures outlined in Article XIX express the intent of the People that the Legislature receive input from the Attorney General on the impact of the proposed amendment on the Constitution's provisions, thus improving the deliberative process. Accordingly, this Court concludes that plaintiffs, as citizens, have standing to address the claim herein that the Legislature's passing of the Concurrent Resolution was in contravention to the

---

[15] *See also Boryszewski v. Brydges*, 37 N.Y.2d 361, 364 [1975]:

> Where the prospect of challenge to the constitutionality of State legislation is otherwise effectually remote, it would be particularly repellant today, when every encouragement to the individual citizentaxpayer is to take an active, aggressive interest in his State as well as his local and national government, to continue to exclude him from access to the judicial process—since *Marbury v. Madison, 1 Cranch* (5 U.S.) 137, 2 L.Ed. 60, the classical means for effective scrutiny of legislative and executive action. The role of the judiciary is integral to the doctrine of separation of powers. It is unacceptable now by any process of continued quarantine to exclude the very persons most likely to invoke its powers.

procedures required by Article XIX. (*Saratoga Cnty. Chamber of Com., Inc. v. Pataki, supra*.)

The Court also concludes that Plaintiff Marjorie Byrnes, as a Member of the Assembly, has standing in her capacity of a member of the New York State Legislature. The harm alleged here - failure of the Legislature to follow the mandates of Article XIX of the Constitution – deprived Assemblymember Byrnes of the opinion of the Attorney General and necessarily impacted her obligations as a member of the Legislature voting on a resolution seeking to amend the constitution. The Court determines this is sufficient to confer standing. (*See gen. Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 NY2d 761 [1991]; *see also Sullivan v. Siebert*, 70 AD2d 975 [3rd Dept. 1979]: "However, the challenge to the standing of petitioner [Assemblymember] Sullivan to pursue the relief sought must fail. Section 164 of the Executive Law provides that annual reports are to be made to the Governor and the Legislature. As a member of the Legislature, Sullivan has a statutory right to receive copies of the reports. This right confers standing upon Sullivan to pursue this action.")

This Action is Properly a Plenary Action and Not a Special Proceeding

The Majority Defendants argue that as the plaintiffs are challenging the procedures used by the Legislature in the adoption of the proposed amendment,

this action is properly maintained as an Article 78 proceeding and thus subject to a four month statute of limitations.

Regardless of how the instant action was initiated, this Court must determine "the true nature of the case" to determine the appropriate statute of limitations period. "In making such a determination, where the nature of an action is at issue, it is necessary to ""examine the substance of [the] action to identify the relationship out of which the claim arises and the relief sought" (citations omitted). If the court determines that the parties' dispute can be, or could have been, resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs (citations omitted)." (*Dandomar Co., LLC v. Town of Pleasant Valley Town Bd.*, 86 AD3d 83, 90–91 [2nd Dept. 2011]; *see also Foley v. Masiello*, 38 AD3d 1201 [4th Dept. 2007].)

As the parties dispute the operative effect of the language employed in Article XIX of the Constitution, the essence of this case is one of constitutional interpretation- not whether clearly defined procedures were properly followed. (*See e.g., P & N Tiffany Properties, Inc. v. Vill. of Tuckahoe*, 33 AD3d 61 [2nd Dept. 2006].) Challenging the validity of a legislative act is properly a declaratory judgment action. (*See Rochester Police Locust Club, Inc. v. City of Rochester*, 196 AD3d 74, 77 [4th Dept. 2021], *aff'd*, 41 NY3d 156 [2023]): "The gravamen of plaintiffs' lawsuit is that Local Law

No. 2 is invalid in certain key aspects, and "it is well established that an article 78 proceeding is not the proper vehicle to test the validity of a legislative enactment" (*Kamhi v Town of Yorktown*, 141 AD2d 607, 608 [2d Dept 1988], *affd* 74 NY2d 423 [1989])." *See also Parker v. Town of Alexandria*, 138 AD3d 1467 [4th Dept. 2016]; *Foley v. Masiello, supra.*)

Furthermore, "[] where the substance of the law, "its wisdom and merit" (*Matter of Voelckers v Guelli*, 58 NY2d 170, 177 [1983]), **or its constitutionality**, is challenged, then the proper procedure is to commence an action for a declaratory judgment (*see New York City Health & Hosps. Corp. v McBarnette*, 84 NY2d 194 [1994]; *P & N Tiffany Props., Inc. v Village of Tuckahoe*, 33 AD3d 61, 64 [2006])." (*Highland Hall Apartments, LLC v. New York State Div. of Hous. & Cmty. Renewal*, 66 AD3d 678, 681 [2nd Dept. 2009], [emphasis supplied].) Here, the parties are disputing the meaning of the language of Article XIX and what duties it imposes both upon the Attorney General and the Legislature. As the parties are urging different constitutional interpretations of the provisions contained in Article XIX, and thus disputing whether the passage of the Concurrent Resolution was constitutional, a declaratory judgment action is appropriate.

Laches does not Bar this Action

The Majority Defendants argue that the plaintiffs' delay in initiating this action requires the Court to dismiss under the doctrine of laches.[16]

"We have defined laches as an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party (*see Matter of Barabash*, 31 NY2d 76, 81 [1972]; *see also Matter of Dreikausen v Zoning Bd. of Appeals*, 98 NY2d 165, 173 n 4 [2002]). The mere lapse of time, without a showing of prejudice, will not sustain a defense of laches (*see Galyn v Schwartz*, 56 NY2d 969, 972 [1982]; *Sorrentino v Mierzwa*, 25 NY2d 59 [1969]; *Skrodelis v Norbergs*, 272 AD2d 316 [2d Dept 2000]). The defense has been applied in equitable actions and declaratory judgment actions (both of which are governed by the six-year catchall provision of CPLR 213 [1]) where the defendant shows prejudicial delay even though the limitations period was met. [FN omitted]." (*Saratoga Cnty. Chamber of Com., Inc. v. Pataki*, 100 NY2d at 816.)

The Majority Defendants fail to allege sufficient prejudice. In alleging prejudice, the Majority Defendants argue that the proposed amendment is scheduled to be voted upon at the general election in November of 2024 and

[16] The Majority Defendants argue that the delay is either sixteen months (from initial passage of the Concurrent Resolution in July of 2022) or nine months (from the second passage of the Concurrent Resolution in January of 2023).

"forc[ing] the entire process to start anew" would be prejudicial. They also argue that a declaration in favor of the plaintiffs would deprive the voters of the ability to vote on the amendment. This does not constitute sufficient prejudice to warrant invocation of laches.

Unlike challenges brought under election law proceedings where the delay in initiating the action may deprive voters of their right to vote (*see e.g., Amedure v. State*, 210 AD3d 1134 [3rd Dept. 2022]) or impose insurmountable burdens on Defendant New York Board of Elections to oversee an efficient election process (*see e.g., League of Women Voters of New York State v. New York State Bd. of Elections*, 206 AD3d 1227 [3rd Dept. 2022], *leave to appeal denied*, 38 NY3d 909 [2022], *reargument denied*, 38 NY3d 1120 [2022]), the delay here did not result in any prejudice to the Legislature. The Legislature may follow the proper procedures mandated by Article XIX and place the proposed amendment on the ballot on a future date.[17] Additionally, the voters have no right to vote on an amendment placed

[17] To the extent the Majority Defendants argue that the plaintiffs' delay impermissibly prejudiced the Legislature from placing the proposed amendment on the ballot for the 2024 general election, this argument must fail. Had the plaintiffs initiated this action after the Concurrent Resolution first passed, assuming it was "ripe" (in July of 2022), invalidation of that Legislative action would have necessitated the process begin anew and it is not clear that the instant action would have been resolved in time to allow the Legislature to vote again on the Concurrent Resolution prior to the general election in November of 2022. The Majority Defendants have not met their burden in showing that they were prejudiced from placing the proposed amendment on the 2024 general election ballot, or that the failure for it to appear on that ballot constitutes sufficient prejudice to invoke the laches doctrine.

on the ballot in derogation of the procedures required by Constitution. (*See e.g., Town of Cortlandt v. Vill. of Peekskill*, 281 NY 490 [1939].)

Defendants Stewart-Cousins and Heastie are Dismissed from Suit

Andrea Stewart-Cousins and Carl Heastie move to dismiss the action as to them arguing that legislative immunity prevents suit for legislative actions taken by them. The Court agrees.

As observed by the Court of Appeals in *People v. Ohrenstein* (77 NY2d 38 [1990]):

> The State Constitution provides: "For any speech or debate in either house of the legislature, the members shall not be questioned in any other place" (N.Y. Const., art. III, § 11). We have not previously considered the scope of the immunity granted by this section, but it appears that it was intended to provide at least as much protection as the immunity granted by the comparable provision of the Federal Constitution (New York State Constitutional Convention Committee, Problems Relating to Legislative Organization and Powers, at 57 [1938]). The Supreme Court has held that the Speech or Debate Clause confers immunity on members of Congress for legislative acts but does not extend to everything a legislator does which is somehow related to his role even though the act is lawful and generally expected of a legislator (*Hutchinson v. Proxmire, supra*).
>
> Legislative acts have been defined as those which are an integral part of the legislative process, and have been held to include votes and speeches on the floor of the House as well as the underlying motivations for these activities (*Hutchinson v. Proxmire, supra*; *United States v. Johnson*, 383 U.S. 169, 86 S.Ct. 749, 15 L.Ed.2d 681; *United States v. Brewster*, 408 U.S. 501, 92 S.Ct. 2531, 33 L.Ed.2d 507).

(*Id.* at 53-54.)

"The fundamental purpose of the clause is to insure that the legislative function may be performed independently (*Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 502, 95 S.Ct. 1813, 1820–21, 44 L.Ed.2d 324; *Gravel v. United States*, 408 U.S. 606, 618, 92 S.Ct. 2614, 2623–24, 33 L.Ed.2d 583). The US Supreme Court has interpreted the Federal Speech or Debate Clause broadly to effectuate its purposes, holding that any acts by members of Congress or their aides within the performance of their legislative functions are beyond judicial scrutiny (*see, Gravel v. United States, supra*, at 616, 624–625, 92 S.Ct. at 2622–2633, 2626–2627). The clause not only shields legislators from the consequences of litigation, but also protects them from the burden of defending themselves in court (*see, Powell v. McCormack*, 395 U.S. 486, 502–503, 89 S.Ct. 1944, 1953–54, 23 L.Ed.2d 491; *Dombrowski v. Eastland*, 387 U.S. 82, 85, 87 S.Ct. 1425, 1427–28, 18 L.Ed.2d 577)." (*Straniere v. Silver*, 218 AD2d 80, 83 [3rd Dept. 1996].)

Here, Stewart-Cousins and Heastie – to the extent they are sued as representatives for the Senate and Assembly, respectively, are immune from suit and must be dismissed from this action.[18]

[18] Plaintiffs did not oppose this requested relief. "We note at the outset that plaintiff has abandoned the wrongful death cause of action, inasmuch as she failed to oppose that part of defendants' motion with respect to it and, indeed, has not addressed it on appeal (*see Ciesinski v Town of Aurora*, 202 AD2d 984 [1994])." (*Donna Prince L. v. Waters*, 48 AD3d 1137, 1138 [4th Dept. 2008].)

The Appropriate Relief

As the Court finds that the Legislature violated the procedure required by Article XIX, the appropriate remedy is declaring the Concurrent Resolution adopted in derogation of the constitutional procedures void and removing the proposed amendment from the ballot.

The Court declines to adopt the arguments advanced by the Majority Defendants that the Legislature "substantially complied" with requirements of Article XIX, or to apply the "harmless error doctrine", or that the relief herein should be limited to the Court determining that Article XIX was violated but refusing to remove the proposed amendment from the ballot. The Constitution is the supreme will of the People. Its amendment should be undertaken by strict adherence to the will of the People as expressed in Article XIX. "Substantial" compliance is not compliance, and this Court cannot condone actions taken by the Legislature in derogation of the expressed will of the People. The Legislature's vote on the Concurrent Resolution prior to receiving the opinion of the Attorney General frustrated the deliberative process intended by the People in § 1 of Article XIX.

Nor does the Court accept the Majority Defendants' argument that finding in favor of the plaintiffs imperils other amendments passed by the Legislature under the flawed procedures it previously employed. Those amendments are not subject

to challenge here, and the defense of laches would likely invalidate challenges to amendments already adopted by the People.

Based upon the foregoing, the oral argument conducted on April 16, 2024, and the papers submitted herein,[19] it is hereby

ORDERED that the Majority Defendants' motion for summary judgment in GRANTED, in part, and Defendants Andrea Stewart-Cousins and Carl Heastie are dismissed from suit, and the motion is otherwise is DENIED; and it is further

ORDERED that the plaintiffs' motion for summary judgment is GRANTED; and it is further

ORDERED, ADJUDGED and DECREED that that the New York State Legislature violated §1 of Article XIX of the Constitution in adopting the Concurrent Resolution, and the Concurrent Resolution is declared null and void, and the proposed amendment shall be removed from the ballot for the general election of November 5, 2024.

[19] Summons and Complaint, with exhibits (NYSCEF Docket #s 1-4); Notice of Motion (NYSCEF Docket # 10); Affirmation in Support with exhibits (NYSCEF Docket #s 11-15); Memorandum of Law in Support (NYSCEF Docket # 16); Affirmation in Support of Motion with exhibits (NYSCEF Docket #s 42-76); Affirmation in Reply (NYSCEF Docket # 77); Affirmation in Support (NYSCEF Docket # 79); Notice of Cross-Motion (NYSCEF Docket # 26); Affirmation in Support with exhibits (NYSCEF Docket #s 27-31); Affirmation in Opposition to Cross-Motion with exhibits (NYSCEF Docket # 32-37); Memorandum of Law in Opposition to Cross-Motion (NYSCEF Docket # 38); Affirmation in Reply (NYSCEF Docket # 40); Affirmation (NYSCEF Docket # 78).

This constitutes the Decision and Order of the Court.

Dated: May 7, 2024

Honorable Daniel J. Doyle, JSC

Exhibit C

State of New York
Court of Appeals

Decided and Entered on the eleventh day of July, 2024

Present, Hon. Rowan D. Wilson, *Chief Judge, **presiding**.*

SSDs 23 & 24
Marjorie Byrnes, &c., et al.,
Appellants,
v.
Senate of the State of New York et al.,
Respondents,
Robert Ortt, &c., et al.,
Appellants,
et al.,
Defendant.

Appellants Marjorie Byrnes, &c., et al. and appellants Robert Ortt, &c., et al. having separately appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal taken by Marjorie Byrnes, &c., et al. is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved; and it is further

ORDERED, that the appeal taken by Robert Ortt, &c., et al. is dismissed without costs, by the Court sua sponte, upon the ground that they are not parties aggrieved (*see* CPLR 5511).

Lisa LeCours
Clerk of the Court

AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
} **ss.:**
COUNTY OF NASSAU }

CAMI NEGUS, being duly sworn, deposes and says, that deponent is not a party to this action, is over 18 years of age and resides in Mineola, New York 11501.

That on the 15th day of July, 2024, deponent served the within **NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS AND STATEMENT PURSUANT TO RULES 500.21 AND 500.22 OF THE COURT OF APPEALS RULES OF PRACTICE WITH LETTER REQUEST FOR A CALENDAR PREFERENCE PURSUANT TO §500.17(B) OF THE RULES OF PRACTICE** on the attorneys herein listed at the address designated by said attorneys by depositing a true copy of same enclosed in a wrapper addressed as shown below, into the custody of Federal Express for overnight delivery, prior to the latest time designated by that service for overnight delivery.

DUSTIN JACOBS BROCKNER, ESQ.
NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
Attorneys for Respondents-Appellants
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CAMI NEGUS

Sworn to before me this
15th day of July, 2024

Notary Public

JESSICA RIDOUT
Notary Public, State of New York
No. 01RI0010530
Qualified in Nassau County
Commission Expires 07/03/2027

Transaction Record

FedEx

TRACKING NO.:	SHIP DATE:	ESTIMATED SHIPPING CHARGES:
777397981709	Jul 15, 2024	16.13 USD

From address

Cami Ellen Negus
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Package information

Pieces	Weight	Dimensions (LxWxH)	Carriage value	Package options
1 x	1.00 lb			n/a

Packaging type:
Your Packaging

Service:
FedEx Priority Overnight

Pickup / drop-off type:
I have already scheduled a pickup at my location

Billing information

Bill transportation cost to: ******108
Bill duties, taxes and fees to:
Your reference:

P.O. No.:
Invoice No.:
Department No.:

Transaction Record

FedEx

TRACKING NO.:	SHIP DATE:	ESTIMATED SHIPPING CHARGES:
777397950310	Jul 15, 2024	20.78 USD

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Phone: 2122944690
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Package information

Pieces	Weight	Dimensions (LxWxH)	Carriage value	Package options
1 x	1.00 lb			n/a

Packaging type:
Your Packaging

Service:
FedEx Priority Overnight

Pickup / drop-off type:
I have already scheduled a pickup at my location

Billing information

Bill transportation cost to: ******108
Bill duties, taxes and fees to:
Your reference:

P.O. No.:
Invoice No.:
Department No.:

Please note: This transaction record is neither a statement nor an invoice, and does not confirm shipment tendered to FedEx or payment. FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

Transaction Record

TRACKING NO.:	SHIP DATE:	ESTIMATED SHIPPING CHARGES:
777397914940	Jul 15, 2024	16.13 USD

From address

Cami Ellen Negus
MCLAUGHLIN & STERN
1122 Franklin Avenue
Suite 300
11530 NY GARDEN CITY
US
Phone: 5168296900
cnegus@mclaughlinstern.com

To address

Lisa Angela Perillo, Esq.
Perillo Hill LLP
285 W. Main Street, Suite 203
11782 NY SAYVILLE
US
Phone: 6315829422
lperillo@perillohill.com

Package information

Pieces	Weight	Dimensions (LxWxH)	Carriage value	Package options
1 x	1.00 lb			n/a

Packaging type:
Your Packaging

Service:
FedEx Priority Overnight

Pickup / drop-off type:
I have already scheduled a pickup at my location

Billing information

Bill transportation cost to: ******108
Bill duties, taxes and fees to:
Your reference:

P.O. No.:
Invoice No.:
Department No.:

Transaction Record

FedEx

TRACKING NO.:	SHIP DATE:	ESTIMATED SHIPPING CHARGES:
777397888104	Jul 15, 2024	16.13 USD

From address

Cami Ellen Negus
MCLAUGHLIN & STERN
1122 Franklin Avenue
Suite 300
11530 NY GARDEN CITY
US
Phone: 5168296900
cnegus@mclaughlinstern.com

To address

Kevin Gordon Murphy, Esq.
NYS Board of Elections
40 N. Pearl Street, Suite 5
12207 NY ALBANY
US
Phone: 5184746220
kevin.murphy@elections.ny.gov

Package information

Pieces	Weight	Dimensions (LxWxH)	Carriage value	Package options
1 x	1.00 lb			n/a

Packaging type:
Your Packaging

Service:
FedEx Priority Overnight

Pickup / drop-off type:
I have already scheduled a pickup at my location

Billing information

Bill transportation cost to: ******108
Bill duties, taxes and fees to:
Your reference:

P.O. No.:
Invoice No.:
Department No.:

Transaction Record

FedEx

TRACKING NO.:	SHIP DATE:	ESTIMATED SHIPPING CHARGES:
777397836677	Jul 15, 2024	16.13 USD

From address

Cami Ellen Negus
MCLAUGHLIN & STERN
1122 Franklin Avenue
Suite 300
11530 NY GARDEN CITY
US
Phone: 5168296900
cnegus@mclaughlinstern.com

To address

Dustin J. Brockner, Esq.
NYS Office of the Attorney General
The Capitol
12224 NY ALBANY
US
Phone: 5187762007
brockner@ag.ny.gov

Package information

Pieces	Weight	Dimensions (LxWxH)	Carriage value	Package options
1 x	1.00 lb			n/a

Packaging type:
Your Packaging

Service:
FedEx Priority Overnight

Pickup / drop-off type:
I have already scheduled a pickup at my location

Billing information

Bill transportation cost to: ******108
Bill duties, taxes and fees to:
Your reference:

P.O. No.:
Invoice No.:
Department No.:

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Transaction Record

TRACKING NO.:	SHIP DATE:	ESTIMATED SHIPPING CHARGES:
777397779298	Jul 15, 2024	11.66 USD

From address

Cami Ellen Negus
MCLAUGHLIN & STERN
1122 Franklin Avenue
Suite 300
11530 NY GARDEN CITY
US
Phone: 5168296900
cnegus@mclaughlinstern.com

To address

Christopher A. Ferrara, Esq.
14829 Cross Island Parkway
11357 NY WHITESTONE
US
Phone: 7183571040
cferrara@thomasmoresociety.org

Package information

Pieces	Weight	Dimensions (LxWxH)	Carriage value	Package options
1 x	1.00 lb			n/a

Packaging type:
FedEx Envelope

Service:
FedEx Priority Overnight

Pickup / drop-off type:
I have already scheduled a pickup at my location

Billing information

Bill transportation cost to: ******108
Bill duties, taxes and fees to:
Your reference:

P.O. No.:
Invoice No.:
Department No.: