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Editor:
Robert S. Rosborough IV

Summarizing recent significant New York appellate cases

The Court of Appeals is back with its first opinions of the 2025–26 session. And it didn't waste any time addressing a big election issue. The Even Year Election Law, which provides that elections for most county, town, and village officials will be held on even-numbered years, and will no longer be held on odd-numbered years, does not violate the New York Constitution's home rule provisions, the Court held. Article IX of the Constitution only guarantees local governments the right to adopt alternative forms of government, and does not usurp the Legislature's role in setting election dates as a matter of state election policy. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

ELECTION LAW, EVEN YEAR ELECTION LAW

County of Onondaga v State of New York, 2025 NY Slip Op 05737 (Ct App Oct. 16, 2025)

Issue: **Does the Even Year Election Law, which provides that elections for most county, town, and village officials would be held on even-numbered years, and would no longer be held on odd-numbered years, as some County charters provide, violate article IX of the New York Constitution, which grants home rule powers to local governments?**

Facts: The EYEL amended certain provisions of the County Law, Town Law, Village Law, and Municipal Home Rule Law to provide that "elections for most county, town, and village officials would be held on even-numbered years, and would no longer be held on odd-numbered years, effective January 1, 2025 (L 2023, ch 741). Exceptions were made for the offices of town justice, sheriff, county clerk, district attorney, family court judge, county court judge, and surrogate court judge—each of which has a term of office provided in the New York Constitution—as well as town and county offices with preexisting three-year terms, all offices in towns coterminous with villages, and all offices in counties located in New York City." The EYEL also barred "county charters from superseding the newly enacted County Law § 400 (8)." "The EYEL purports to encourage an increased voter turnout in local elections now scheduled in odd-numbered years, which are years without federal or state-wide elections on the ballot, consistent with the State's public policy of encouraging participation in the elective franchise by all eligible voters to the maximum extent, and the mandate of the New York Board of Elections to take all appropriate steps to encourage the broadest possible voter participation in elections."

Plaintiffs, in eight consolidated actions, challenged the EYEL, arguing that it is "unconstitutional because, among other reasons, it violates article IX of the New York Constitution," which, they contended, "grants local governments the constitutional right to set the terms of office for their officers." Supreme Court denied the State's motion for summary judgment, "declared the EYEL unconstitutional, and enjoined defendants from enforcing or implementing the EYEL."

The Fourth Department reversed, holding that "the EYEL does not violate article IX of the New York Constitution." The Court held, "article IX, § 1 says nothing about terms of office for public officials. Instead, it provides, *inter alia*, that a local government has a right to 'a legislative body elective by the people' of each jurisdiction (NY Const, art IX, § 1 [a]) and that a county has a right to 'adopt . . . alternative forms of county government' (NY Const, art IX, § 1 [h] [1]), but neither of those provisions gives a county exclusive local control over the manner in which local elections will be held or the specific details of each office . . . We cannot conclude that the EYEL, by limiting the power of counties to schedule certain elections in odd-numbered years and aligning the date of federal, state, and most local elections, renders illusory any of the rights and guarantees set forth in article IX, § 1."

Holding: The Court of Appeals affirmed, holding that "[n]othing in article IX limits, expressly or by implication, the otherwise plenary authority of the legislature to mandate the timing of certain elections, as the EYEL does. Consequently, without any such constitutional limitation, the EYEL is a proper exercise of that authority." The Court explained, "[t]he 'home rule' provisions in the State Constitution . . . allocate[e] power between the State Legislature and local governments, encouraging local responsibility to deal with matters properly characterized as local, while at the same time reserving to the state the power to deal with matters of broader concern."

The Court reasoned that "only the right to form an alternative form of government is guaranteed by [Article IX,] section 1 (h) (1), that right does not implicitly include a right to set terms of office or timing of elections, and the authority delegated to local governments in the Municipal Home Rule Law is statutory. Nothing in the EYEL infringes the rights provided by article IX's bill of rights." The Court next rejected the plaintiffs' argument that "the EYEL is unconstitutional under article IX, section 2 (b) (2) because the legislature is only empowered to act in this manner pursuant to general law or a duly enacted special law and, in their view, the EYEL is neither." The Court held that the EYEL is a "general law because it applies to all counties, with reasonable exceptions, and has an equal impact on a rationally defined class

similarly situated. While the EYEL contains exemptions, its terms are general, and the category of counties and offices it affects is defined by common conditions and related to the statute's purpose." Thus, the Municipal Home Rule article of the Constitution did not limit the Legislature's authority to enact the EYEL.

CRIMINAL LAW, SPECIAL DISTRICT ATTORNEY

***People v Callara*, 2025 NY Slip Op 05739 (Ct App Oct. 16, 2025)**

Issue: Is a special district attorney's failure to satisfy the residency requirement contained within County Law § 701 (1) (a) a mere irregularity that is waived if the defendant fails to timely raise the issue, or a non-waivable jurisdictional prerequisite for a valid prosecution?

Facts: After the defendant was charged with a crime in Orleans County, the District Attorney moved to be disqualified because of his relationship with the victim, and the trial court appointed a special prosecutor pursuant to County Law § 701 (1) (a). Section 701 provides that upon a district attorney's disqualification, the trial court may "appoint some attorney at law having an office in or residing in the county, or any adjoining county, to act as special district attorney." But the special prosecutor appointed here didn't live or have an office in Orleans County. Although the defendant received information before the trial court that the special prosecutor did not satisfy the residency requirement of section 701, he didn't raise it for the first time until on direct appeal from his conviction. The Appellate Division, Fourth Department nevertheless "agreed with defendant that the court exceeded its authority by appointing a special district attorney who did not satisfy the residency requirement and dismissed the indictment on this ground."

Holding: The Court of Appeals affirmed, holding that "County Court's authority to appoint a special district attorney to act in place of the disqualified, duly elected district attorney is derived solely from County Law § 701. Section 701 requires a special district attorney to have an office in or reside in the relevant county or an adjoining county. The court is therefore without authority to appoint as special district attorney an attorney who does not satisfy the residency requirement. To allow the court to violate the statute by appointing an attorney who fails to satisfy the residency requirement so long as the defendant fails to timely object would change the character of the statutory limitation that the legislature saw fit to impose on this 'extraordinary' and 'exceptional superseder authority.'" Indeed, the Court explained, "separation of powers concerns [are] at play when the judiciary replaces the district attorney—an elected constitutional officer—pursuant to County Law § 701 . . . In light of these separation of powers concerns, the Court concluded that a very important purpose is served by adhering to the plain language of the statute and to its exceptional function of displacing an elected constitutional officer."

Finally, the Court noted in response to several amici who argued that "it can be difficult to find qualified attorneys who are willing and able to serve as special district attorney, particularly in rural counties, under section 701 as currently drafted," that the remedy for that problem lies "in amendment of the statute by the legislature, not disregard of the plain statutory text by the courts."

CRIMINAL LAW, SEVERANCE OF TRIAL FROM CODEFENDANT

***People v Everson*, 2025 NY Slip Op 05738 (Ct App Oct. 16, 2025)**

Issue: Did the trial court abuse its discretion in denying defendant's request to sever his trial from that of his codefendant?

Facts: Defendant and codefendant each fired guns from a car into a crowd of people in a park, in retaliation for a similar shooting of codefendant a few days before. "Defendants were charged in a single indictment with murder in the second degree and four counts of criminal possession of a weapon in the second degree, on an acting-in-concert theory. Prior to their joint trial, defendant moved for severance. As relevant here, defendant asserted that the trials should be severed because [codefendant's] counsel intended to argue that defendant was responsible for the shooting. The court denied the motion, observing that the argument lacked specificity, but stated that, 'if this assertion does come to fruition, we'll address it during the course of the trial.'"

At trial, both defendant's and codefendant's strategy was to discredit the eyewitnesses. It wasn't until the codefendant's counsel's summation that he "argued that the trial evidence supported the conclusion that defendant was one of the shooters. Specifically, [codefendant's] counsel asserted: 'we know two things for sure about the car, shots came from it and there were two guns. . . . There's two guns. There's three people in the vehicle. Okay. So how do we know who did what? Well, we know who one of those persons was that had the gun. That's the person who confessed to his girlfriend that he did. We know one of the shooters was Mr. Everson because he told his girlfriend that.'"

Defendant then renewed his motion to sever the trials, "based on codefendant's closing argument in which he in effect acted as a second prosecutor against defendant in pointing the finger directly at him and essentially blaming him for the homicide. The court denied the motion, observing that it had instructed the jury prior to summations that the attorneys' arguments were not evidence and should not be considered as such. The court added that that it did not 'see any reason to . . . sever this matter at this stage.' In its final instructions, the court reiterated its admonition to the jury that closing statements were not evidence and further advised them that the evidence had to be considered as it applied to each defendant separately." The defendant was ultimately convicted, and the Appellate Division, Fourth Department, with on Justice dissenting, affirmed the conviction.

Holding: The Court of Appeals too affirmed, explaining that "[w]here two defendants are jointly charged in a single indictment, their trials may be severed based upon a showing of 'good cause,' which may be supported by a determination that a defendant 'will be unduly prej-

udiced by a joint trial' (CPL 200.40 [1]). Whether to grant severance is a question ordinarily left to the discretion of the trial judge, subject to review under an abuse of discretion standard. Where, as here, the same evidence supplies the proof against both defendants, only the most cogent reasons warrant a severance. While that is particularly true where the defendants are charged with acting in concert, in all cases a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses." Although some degree of prejudice is "inherent in every joint trial," the Court noted, "severance is not required solely because of hostility between the parties, differences in their trial strategies or inconsistencies in their defenses. It must appear that a joint trial necessarily will, or did, result in unfair prejudice to the moving party and substantially impair their defense." Thus, the trial court must engage in a two-part fact-specific inquiry "requiring severance where the core of each defense is in irreconcilable conflict with the other and where there is a significant danger, as both defenses are portrayed to the trial court, that the conflict alone would lead the jury to infer defendant's guilt."

Here, the Court held, "[n]o similar degree of prejudice was created by codefendant's closing argument here. As noted, defendant raised the specter of a potential irreconcilable conflict between the defenses prior to trial, but apart from the comments made in summation, the defenses were remarkably consistent in their primary focus on discrediting the eyewitness. Although [codefendant's] argument that the evidence supported the conclusion that defendant was guilty was diametrically opposed to defendant's claim of innocence, this type of discord emerging between codefendants only in summation did not rise to the level of an irreconcilable conflict for purposes of severance in these particular circumstances. Moreover, the trial court properly instructed the jury that the attorneys' arguments were not evidence and should not be considered as evidence when they judged the facts. That being so, and given that the jury is presumed to have followed the court's instructions, any conflict raised solely by counsel's arguments could not have formed the basis of the jury's verdict. In sum, there was no 'undue' prejudice to defendant."

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