To be Argued by:
ERIC R. MCAVEY
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second Department

Docket No.: 2025-03979

In the Matter of the Application of

ARGENTINE LEASING LIMITED PARTNERSHIP, AUBURN LEASING LIMITED LIABILITY COMPANY, BIRCH LEASING LIMITED PARTNERSHIP, BUCKNELL REALTY LIMITED PARTNERSHIP, CANADA LEASING LIMITED LIABILITY COMPANY, CEYLON LEASING LIMITED PARTNERSHIP, COLUMBIA LEASING LIMITED PARTNERSHIP, COPENHAGEN LEASING LIMITED PARTNERSHIP, LA FRANCE LEASING LIMITED PARTNERSHIP, LONDON LEASING LIMITED PARTNERSHIP, ROME REALTY LEASING LIMITED PARTNERSHIP, SYDNEY LEASING LIMITED PARTNERSHIP, TOWN LEASING LIMITED LIABILITY COMPANY, UESS LEASING LIMITED LIABILITY COMPANY, WASHINGTON LEASING LIMITED PARTNERSHIP, and WELLINGTON LEASING LIMITED PARTNERSHIP,

Petitioners-Appellants,

(For Continuation of Caption See Inside Cover)

BRIEF FOR PETITIONERS-APPELLANTS

KUCKER MARINO WINIARSKY
& BITTENS, LLP
Attorneys for Petitioners-Appellants
747 Third Avenue, 12th Floor
New York, New York 10017
(212) 869-5030
emcavey@kuckermarino.com

Queens County Clerk's Index No. 703941/24

CP COUNSEL PRESS (800) 4-APPEAL • (380108)

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

– against –

OFFICE OF COURT ADMINISTRATION, THE CIVIL COURT OF CITY OF NEW YORK, HON. JOSEPH A. ZAYAS, in his capacity as Chief Administrator, BIRDENA FRYE, in her capacity of Clerk of Queens County, ALIA RAZZAQ, in her capacity of Chief Clerk of the Civil Court of the City of New York, and HON. CAROLYN WALKER-DIALLO, in her capacity as Administrative Judge of the Civil Court of the City of New York,

Respondents-Respondents.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

QUESTIONS PRESENTED

1. Whether the trial court erred in finding that petitioners lacked standing?

   Yes.

2. Whether the trial court erred in finding that the bodies and officers named did not suffice for necessary-party purposes under CPLR 7802(b)?

   Yes.

3. Whether the trial court erred in finding that courts' inherent authority over, *inter alia*, their calendars authorized non-compliance with the mandates of RPAPL §§ 732, 745, and 749?

   Yes.

4. Whether the trial court erred in finding that RPAPL §§ 732, 745, and 749 do not impose nondiscretionary duties enforceable by mandamus and prohibition?

   Yes.

5. Whether the trial court erred in finding that the systemwide practices of delaying first appearances, imposing *sua sponte* and unattributed adjournments, and withholding warrants pending extra-statutory submissions did not exceed authorized power and thus did not warrant extraordinary relief?

   Yes.

6. Whether the trial court erred in failing to find that the entrenched departures from Article 7's timing scheme violated separation of powers and denied due process, necessitating corrective writs?

   Yes.

STATEMENT OF THE CASE

Petitioners are property owners who initiated lawful summary proceedings under Article 7 of the Real Property Actions and Proceedings Law ("RPAPL") to recover possession of their real property. Article 7 establishes a comprehensive statutory framework designed to provide swift, fair resolution of possession disputes through mandatory timing requirements: trial dates must be set within three-to-eight days after joinder, adjournments may only be granted upon party request with proper attribution, and warrants must issue immediately upon entry of judgment.

Despite these clear legislative commands, Petitioners encountered systematic violations of Article 7's mandatory procedures. Instead of the statutorily required eight-day calendaring window, Respondents routinely scheduled first appearances months later. Rather than limiting adjournments to those requested by parties, administrative continuances were indiscriminately imposed without attribution. Most egregiously, despite RPAPL § 749's imperative that warrants "shall issue" upon judgment, Respondents instituted standing policies withholding warrants pending extra-statutory paperwork submissions and bureaucratic review.

These departures from statutory mandates were not isolated incidents but admitted entrenched institutional practices, concurrently proven by Petitioners' evidence consisting of 26 exemplar Housing Court cases illustrating systemic noncompliance with Article 7's timing mandates across Queens Housing Court

proceedings. (R. 85-122). First court dates were fixed far beyond the statutory 3–8 days after joinder, averaging approximately 67 days, with many scheduled more than 60 days after answers were filed. The cases were thereafter routinely administratively adjourned without party request in 60–90 day increments, often serially, producing roughly 8–12 months from first appearance to an actual potential trial date. And even after judgments of possession were rendered for petitioners, instead of "upon" judgment, warrant issuance was commonly withheld four-to-six months, further stymied by extra-statutory administrative hurdles – the revelations of which sometimes necessitating resubmissions and associated additional months-long delays. Collectively, these patterns – late first appearances, administrative adjournments, and protracted warrant processing – were demonstrated to be intentional, systemic departures from Article 7 rather than isolated errors, which have since been independently observed by New York State's Bar Association's task force. Furthermore, the Supervising Judge of Queens Housing Court – Honorable Judge John Lansden – admitted that he has directed clerks and judges to ignore the statutory mandates of Article 7 and instead imposed administrative procedures that he believes provide more equal access to justice and a fuller and fairer opportunity to be heard. (R. 153).

Petitioners consequently commenced this CPLR Article 78 proceeding in Supreme Court, Queens County, seeking mandamus to compel Respondents to

comply with the mandatory timelines and procedures in RPAPL §§ 732, 745, and 749, and prohibition to restrain their *ultra vires* practices. (R. 81-84). The Petition documented the systemic delays, unauthorized adjournments, and extra-statutory warrant-withholding policies, which were confirmed through Respondents' own sworn admissions. (R. 12-80; 133-135).

These systematic delays inflicted concrete harm on Petitioners as property owners within Article 7's zone of interests. They suffered prolonged deprivation of property possession, mounting economic losses from unpaid rent, increased litigation costs, and uncertainty regarding enforcement of judicial orders – precisely the harms Article 7's expedited framework was designed to prevent. And these issues are also of extraordinary public significance, affecting the more than two-thirds of New York City residents who live in rental housing. With over 150,000 summary proceedings filed annually, the Housing Court's systematic departures from statutory mandates create uncertainty and delay that harm both landlords and tenants throughout the city's rental market. Petitioners thus possess standing to compel enforcement of the Legislature's commands as a matter of law.

Petitioners also properly named all necessary parties under CPLR 7802(b) by joining the officials and entities responsible for the challenged institutional practices including, *inter alia*, the Chief Administrative Judge, the Administrative Judge for the Housing Part, the Chief Clerk, the County Clerk, and the Housing Court itself

(the "Respondents"). The gravamen of this proceeding challenges court-wide administrative policies, not individual judicial decisions, making these supervisory officials and the entity itself the appropriate respondents with authority to implement systemic relief. Requiring Petitioners to name every individual judge and clerk who should be subject to the requested writs would be practically impossible given the constant turnover of personnel and would risk rendering any relief ineffective as new judges and clerks assume their positions both before and after judgment is rendered.

Nevertheless, by Decision and Order dated February 10, 2025, the Supreme Court dismissed the proceeding, finding that courts' inherent calendar power cannot be constrained by mandamus, even when exercised contrary to statutory mandates. (R. 7-11). The Court also found that Petitioners failed to name necessary parties and lacked clear legal right to relief. Critically, the court did not address the mandatory statutory text, constitutional limits on judicial authority, or the extensive record evidence of entrenched noncompliance. This appeal follows under CPLR 5701(a)(2)(iv).

This appeal presents purely legal questions – standing, necessary parties, and whether mandamus and prohibition lie to enforce statutory mandates – warranting *de novo* review under CPLR 5501(c) and 7804.

PRELIMINARY STATEMENT

What is at stake in this appeal cannot be overstated.

The viability of New York City's rental housing market – upon which millions depend – hangs in the balance. Property owners, burdened by years-long delays in Housing Court, face mounting non-payment with no forum to timely adjudicate possession or recover rent. Languishing cases yield ever-increasing arrears, owners' inability to undertake necessary repairs, and inevitable ownership changes through foreclosure. Tenants, too, suffer; extended uncertainty fosters insurmountable arrears, resulting in preventable displacement unless outside aid intervenes. The system thus now fails both sides of the landlord-tenant relationship. And the consequence is a feedback loop of dysfunction: clogged calendars, unadjudicated cases, and an admittedly overwhelmed court unwilling to discharge its statutory mission.

That abdication of judicial responsibility is now before this Court, whose intervention is not merely warranted but imperative.

Once faced with the same broken system, the Legislature has already composed the remedy. Indeed, two centuries ago, it created a statutory mechanism to ensure disputes over possession were resolved swiftly and fairly to replace the dilatory process of common-law ejectment. The "summary proceeding" is that mechanism, governed by the precise statutory score, dictating the tempo and cadence

of summary proceedings, encapsulated in Article 7. Its provisions require trials calendared within days, adjournments strictly limited and attributed, and the immediate issuance of warrants upon judgment. These commands are not aspirational but binding legislative directives – each essential to preserving the "summary" nature of the proceeding and preventing the return of the injustices Article 7 once abolished.

Such procedural framework reflects a designed balance between expediency and fairness, only reaffirmed through the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), which strengthened tenant protections while retaining Article 7's expedited tempo. And in our tripartite system, it remains the burden and purview of the Legislature – not the courts – to strike that balance. As the Court of Appeals recognized decades ago, it is the Legislature's prerogative to correct whatever evils may exist in the statutory scheme and it is not for the Judiciary to improvise or invent contravening procedures of its own as it sees fit. Article 7 is thus the Legislature's chosen score, already accounting for both justice and mercy.

Yet that carefully composed statutory rhythm has collapsed in its administration – clumsily silenced through Respondents' imprudent, if well-intentioned, administrative intervention. First appearances are delayed for months, adjournments are improperly imposed without party request or attribution, and warrants are withheld for months after judgment and conditioned on documentary

submissions and bureaucratic review wholly absent from the statute. These are also not isolated deviations but admitted entrenched practices, as also observed and documented by the bar associations' Housing Court Task Force[1] (the "Task Force Report").

The result is the judicial repeal of Article 7 and a breach of constitutional duty. Property owners are stripped of the Legislature's promised remedy of summary adjudication, while tenants are deprived of the protections Article 7 guarantees against prolonged uncertainty. As the U.S. Supreme Court held, "[t]he fundamental requirement of due process is 'the opportunity to be heard' … at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). A system in which trials are routinely deferred for months and warrants withheld indefinitely offers neither.

This Court's intervention is therefore not optional but constitutionally necessary. Unless the Legislature's chosen mechanism is enforced, the statutory framework will remain paralyzed and the harm – daily and compounding – will persist. To restore the cadence and safeguard the integrity of the law, mandamus and prohibition must issue, for nothing less will vindicate the Legislature's command unequivocally set forth in Article 7.

[1] Report of Real Property Law Section New York State Bar Association Housing Court Task Force (Jan. 2025) (distributed at NYSBA Annual Meeting).

ARGUMENT

Petitioners' path to relief begins and ends with the statute. The Legislature enacted Article 7 to impose a strict and expeditious framework for resolving disputes over possession of real property. Yet Respondents' breach that framework with regularity and by design. These entrenched departures from law, adopted as institutional practice and confirmed by Respondents' own admissions, betray the intent of the Legislature and imperil constitutional protections – particularly the right to due process and the separation of powers. In such circumstances, where ordinary channels offer no adequate remedy and the rule of law has been muted, the extraordinary writs of mandamus and prohibition are not only proper – they are the uniquely apt remedies.

POINT I: THE LEGISLATURE HAS MANDATED EXPEDITED PROCEEDINGS UNDER ARTICLE 7; THE HOUSING COURT'S SYSTEMATIC DELAYS DEFY THAT COMMAND

A. Statutory Scheme and Legislative Intent Require Swift Adjudication

Article 7 dictates the tempo of summary eviction proceedings: measured, deliberate, and efficient. Sections 731 through 735 impose strict deadlines for filing, service, answering, and adjudication. Section 745 reinforces this rhythm by requiring application and attribution for adjournments and providing a figurative sword and shield against delay: authorizing compelled deposits of use and occupancy or dismissal when respondents or petitioners respectively prolong proceedings. And Section 749 provides prompt and conclusive finality to the proceedings and the vindication of landlord's property rights after a full and fair adjudication of same. These are integral parts of the legislature's chosen mechanism for the expedited recovery of real property in this State – the summary proceeding.

Three of these crucial provisions – §§ 732, 745 and 749 – are cornerstones of this framework which is under siege in Housing Court. Section 732(2) directs that "the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue;" Section 745(1) permits adjournments only "at the request of either party" or with "consent of all parties;" and Section 749, the coda of the summary proceeding, commands with mandatory diction: "upon rendering a final judgment for petitioner, the court shall issue a warrant." Each provision plays

its part: Section 732 begins the tempo with prompt trials; Section 745 keeps it steady by cabining adjournments; and Section 749 closes with immediate enforcement. Together, they realize the Legislature's paramount commitment to timeliness, replacing common-law ejectment which the Court of Appeals described as "an expensive and dilatory proceeding which in many instances amounted to a denial of justice." *Reich v. Cochran*, 201 N.Y. 450, 453-454 (1911).

Article 7 thus ensures not only the foreclosure of procedural uncertainty and post-judgment limbo, but the preservation of justice itself – guaranteeing that adjudication proceeds in predictable rhythm and culminates in execution rather than endless delay.

B. The Language of Article 7 Is Mandatory, Not Directory

For fear that the statutorily created summary proceeding would devolve into the system it replaced, the Legislature did not entrust the timing of summary proceedings to judicial preference. Article 7 is thus replete with unequivocal directives: the clerk "*shall* fix a date for trial" within three to eight days after joinder of issue; adjournments "*shall*" be granted only upon a party's request; and upon entry of judgment, the warrant "*shall* issue." RPAPL §§ 732, 745 and 749 (emphasis supplied).

The Court of Appeals has long recognized that such language is that of command, not discretion, and thus carries mandatory force. In *Brusco v. Braun*, 84

N.Y.2d 674, 680 (1994), the Court held that where RPAPL § 732 required that "the judge *shall* render judgment in favor of the petitioner" upon proof of service and default, the judge had "*no discretion*;" judgment "must be granted and mandamus lies to compel respondent to do that *which the statute requires*." *Id*. (emphasis supplied). Indeed, New York courts treat "shall" – including where it is employed in Article 7 – as mandatory absent qualifying language or a contrary purpose. *People v. Ricken*, 29 A.D.2d 192, 193 (3d Dept 1968). Courts applying this canon have consistently enforced such ministerial commands indicated by the conspicuous use of "shall." *See also Matter of Mulligan v. Murphy*, 19 A.D.2d 218, 223 (1st Dept. 1963) ("shall" deemed mandatory); *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935) (interpreting "shall" as "the language of command").

This is reinforced by the Legislature's deliberate use of "shall" in similar contexts where discretion is unnecessary or improper. In *Queens Neurology, P.C. v. Travelers Prop. & Cas. Ins. Co.*, the court noted that the Legislature acknowledged that it conspicuously employed "shall" instead of "may" in the language of CPLR § 1017 precisely because "there is no apparent need for discretion." 67 Misc. 3d 171, 175 (Civ. Ct. Queens Cty. 2020) *partially rev'd on other grounds*, 73 Misc. 3d 127(A) (App Term 2021). Likewise, CPLR § 2219(a) requires that "all decisions on motions 'shall be made within sixty days, after the motion is submitted for

decision,'" a provision courts have recognized as mandatory – even when violated. *Matter of Goffredo v. City of N.Y.*, 33 A.D.3d 346, 351 (1st Dept. 2006).

The consequences of such mandatory language are twofold: it precludes judiciary discretion and allows wayward fidelity to be corrected through mandamus and prohibition. Indeed, Courts themselves have admonished judicial innovations which supplant mandatory legislative command even when, as here, allegedly intended to ameliorate perceived unfairness or legislative miscalculation. *See Bright Homes v. Wright*, 8 N.Y.2d 157, 162 (1960) (warning that it is better to leave correction of perceived defects to the Legislature itself). And as the determinative factor for the availability of mandamus is the character of the statutory duty, statutes like Article 7 – which impose ministerial duties through unequivocal commands – are subject to enforcement when disregarded. *See People ex rel. Francis v. Common Council of Troy*, 78 N.Y. 33, 39 (1879) (mandamus compels performance of mandatory duties).

Thus, Respondents' systemic failures to calendar trials, limit adjournments, and issue warrants in accordance with Article 7 are not matters of permissible judicial discretion. They constitute an ongoing abdication of nondiscretionary duties that are subject to extraordinary relief.

C. Legislative History Confirm the Summary Nature of Summary Proceedings

The Legislature reaffirmed the mandatory nature of Article 7 and its commitment to expedited adjudication through the enactment of the HSTPA which deliberately preserved the precise cadence of summary proceedings while simultaneously expanding and fortifying tenant protections – such as requiring written rent demands and extending the time to answer from five to ten days. Indeed, even as it broadened tenant rights, the Legislature preserved RPAPL §§ 732, 745 and 749's strict timing scheme and, likewise, by eliminating sunset provisions, signaled that such timing requirements were not experimental but permanent. It follows that HSTPA is not an invitation to slow Article 7's tempo but a resounding confirmation that the Legislature intended its designed statutory rhythm to endure.

This principle of legislative intent by omission is long-settled. Where a statute describes the particular situations to which it applies, "'an irrefutable inference must be drawn that *what is omitted or not included was intended to be omitted or excluded*.'" *Patrolmen's Benevolent Ass'n v. City of New York*, 41 N.Y.2d 205, 208-209 (1976) (superseded by statute on other grounds, L. 1975, ch. 870) (emphasis supplied). That rule has been repeatedly applied where, as here, the Legislature declined to adopt proposed language that would have fundamentally altered a statute's application. In *Matter of Grand Jury Subpoena Duces Tecum Served on Museum of Modern Art* ("*MoMa*"), the Court of Appeals refused to recognize a

"loophole" that the Legislature had deliberately omitted, holding that "legislative intent may be inferred from the omission of proposed substantive changes in the final legislative enactment." 93 N.Y.2d 729, 738 (1999), citing *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 587 (1998).

So too here. The HSTPA's bill jacket materials reflected robust debate over how far to expand tenant protections. But the Legislature, fully apprised of objections that Article 7's expedited tempo disadvantaged tenants, nevertheless chose not to excise the mandatory language surrounding the statute's tight timeframes.[2] As in *Majewski* and *MoMA*, such deliberate omissions signaled the Legislature's intention that Article 7's timing provisions remain mandatory. This Court has likewise recognized that statutes' "history and purpose provide a sound basis for reaching the conclusion that such a legislative intent may safely be inferred." *Matter of Vil. of Chestnut Ridge v. Town of Ramapo*, 45 A.D.3d 74, 84 (2d Dept. 2007). This Court appropriately examined competing legislative materials therein and concluded that the Legislature's refusal to adopt proposed language reflected a deliberate choice – *one the judiciary was bound to honor*.

[2] *See*, e.g., N.Y. State Senate Bill Jacket, L. 2019, ch. 36 (HSTPA); Memorandum of Assembly Sponsor, *id.*

So too here, the Legislature was presented with calls to decelerate the timing of Article 7, and it chose not to do so. Article 7's refined form thus confirms that the statutory scheme was to remain intact: fairer, more protective – but no slower.

D. Judicial Interpretation Consistently Upholds Expedited Procedures

The judiciary has also consistently recognized that speed is not incidental to summary proceedings – it is their defining feature. Summary proceedings were designed to achieve what common-law ejectment could not: prompt resolution. That statutory purpose governs their interpretation.

The Court of Appeals has consistently emphasized that summary proceedings are "statutory proceedings, in the prosecution of which the requirements of the statute must be met." *Reich*, 201 N.Y.at 455. The Appellate Divisions echo this rule: "[a] summary proceeding is a special proceeding governed entirely by statute and it is well established that there must be strict compliance with the statutory requirements to give the court jurisdiction." *MSG Pomp Corp. v. Doe*, 185 A.D.2d 798, 799–800 (1st Dept. 1992). *See Matter of Blackgold Realty Corp. v. Milne*, 69 N.Y.2d 719, 721 (1987); *Clarke v. Wallace Oil Co.*, 284 A.D.2d 492, 493 (2d Dept. 2001).

The extremity of that consequence – jurisdictional invalidity – underscores the centrality of Article 7's temporal commands. They are not optional. They are not flexible. They are statutory conditions precedent.[3]

Lower courts have accordingly enforced the legislature's prescribed metrical discipline in summary proceedings, confirming that the tempo of Article 7 may not be slowed by judicial improvisation. As the Civil Court explained in *N.Y. Univ. v. Farkas*, "[t]he invention of the summary proceeding was designed to provide the landlord with a simple, expeditious and inexpensive means of regaining possession of his premises in cases where the tenant refused upon demand to pay rent, or where he wrongfully held over without permission after the expiration of the term." 121 Misc. 2d 643, 644 (Civ. Ct. N.Y. Cty. 1983). Thus, "strict compliance with all statutory provisions is demanded." *Masterandrea*, 123 Misc. 2d at 9-10.

Consequently, when first appearances are uniformly delayed, adjournments are imposed without request, and warrants are withheld in defiance of § 749's mandate, the Legislature's metrical rhythm is impermissibly broken.

[3] The lesson of *Clarke* and *Blackgold* applies with particular force to RPAPL § 732: its command that trial be calendared within three to eight days after joinder of issue is a jurisdictional imperative. Consistent with that mandate, the Civil Court has emphasized that "[a] trial date ***must*** be established within three to eight days after answer [under RPAPL § 732(2)]," and courts have upheld these timing provisions, together with RPAPL § 745's safeguards against delay, as constitutional and fully consistent with due process. *Zenila Realty Corp. v. Masterandrea*, 123 Misc. 2d 1, 5 (Civ. Ct. N.Y. Cty. 1984) (emphasis supplied). *See Lang v. Pataki*, 176 Misc. 2d 676, 685 (Sup. Ct. N.Y. Cty. 1998).

E. Application to the Present Case Demonstrates Systemic Violations

Even though the HSTPA preserved the cadence of expedited adjudication that defines summary proceedings, justice is nevertheless withheld by virtue of the actions and inactions of Respondents.

The command of RPAPL § 732 – guaranteeing an opportunity for prompt resolution – is disregarded as a matter of course. Instead of trial dates fixed "not less than three nor more than eight days" after joinder of issue, clerks set initial appearances months later – with no recourse for petitioners – in direct contravention of the statute.

Adjournments are thereafter routinely imposed without party application and without attribution. Clerks administratively reschedule cases – often before a judge has ever even been apprised of or assigned to it –for months later, often without any party having requested or consented to the delay. These practices directly violate RPAPL § 745(1) and reflect a structural breakdown in calendaring compliance and, with it, an undermining of the statute's two complimentary procedural safeguards against unreasonable delay, § 745(2)(a) and (e).

The former authorizes a landlord's application for use and occupancy after two adjournments or sixty days of adjournments attributable to respondents, a disincentive that ensures that continued possession without payment does not unfairly shift the burden. Indeed, "[o]ne of the primary reasons for the creation of an

expedited proceeding is the fact that during the pendency of the dispute the landlord is not receiving any rent for the premises." *Farkas*, 121 Misc. 2d at 646. Courts have recognized that the lack of interim use and occupancy during the pendency of a summary proceeding is "manifestly unfair." *MMB Assoc. v. Dayan*, 169 A.D.2d 422, 422 (1st Dept 1991); *see also Lindsey v. Normet*, 405 U.S. 56, 64–65 (1972) (upholding requirements to pay rent during the action). The latter places congruous obligations upon petitioners, whereby the court may dismiss any summary proceeding "without prejudice and with costs to the respondent by reason of excessive adjournments requested by the petitioner." RPAPL § 745(2)(e).

Thus, like two sides to the same procedural coin, respondents' repeated delays can result in a use and occupancy order, undue delays by petitioners expose them to dismissal of their petitions – a symmetry designed to keep both parties moving the case toward resolution. But when delays are imposed administratively, without attribution, the Legislature's balance is destroyed, and the foregoing statutory mechanisms rendered toothless.

Moreover, Article 7 is undermined again at the final act when Respondents withhold what the Legislature explicitly commanded: "[u]pon rendering a final judgment for petitioner, the court shall issue a warrant." RPAPL § 749. To the contrary, Respondents have instituted standing directives that condition the issuance of warrants on extra-statutory paperwork and clerical review, expressly instructing

clerks to withhold or postpone warrants until those conditions are satisfied. These admitted practices subordinate the Legislature's imperative command in RPAPL § 749 to administrative preference, suspending finality in defiance of the statute.

These delayed initial hearings, administrative continuances, and indefinitely postponed warrants transform what should be 30-day proceedings into ordeals stretching for months or years.

This is precisely the kind of systemic breakdown that warrants extraordinary relief: "[a] fundamental tenet of our system of remedies is that when a government agency seeks to act in a manner adversely affecting a party, judicial review of that action may be had." *Matter of Dairylea Coop., Inc. v. Walkley*, 38 N.Y.2d 6, 10 (1975).

Petitioners therefore seek this Court's intervention to restore the Legislature's command. The Housing Court's delays are not protected by judicial discretion; they are contrary to law.

POINT II: RPAPL § 749(1) IMPOSES A NONDISCRETIONARY DUTY TO ISSUE THE WARRANT UPON ENTRY OF JUDGMENT

A. The Trial Court's Reliance on Calendar Authority Was Misplaced

Given the immediate issuance of warrants following a judge's rendering of judgment for a petitioner is entrusted to the clerk, the error in the trial court's dismissal of Petitioners' claims under § 749 by invoking judges' inherent authority over calendars is plain. Indeed, RPAPL § 749 – the Legislature's chosen mechanism for ensuring that adjudication culminates in execution – is entirely separate and apart from any judge's authority to administer his or her calendar. A judge's discretion over trial scheduling pertains only after a case is before them and prior to judgment; it has nothing to do with the issuance of warrants, which is a purely ministerial act performed by clerks after judgment has concluded and the proceeding is no longer on the "calendar." By statute, the warrant must issue, and Respondents' refusal to perform this nondiscretionary task exceeds their lawful authority.

B. Statutory Text and Early Authority Confirm the Ministerial Duty

The Legislature has spoken with unmistakable clarity: "*[u]pon rendering a final judgment* for petitioner, the court *shall issue a warrant* directed to the sheriff of the county." RPAPL § 749(1) (emphasis supplied). That imperative formulation mirrors the structure the Court of Appeals enforced in *Brusco*: when statutory predicates are satisfied, the consequence is compelled. *See Brusco*, 84 N.Y.2d at 678–80.

And just as the issuance of the judgment was ministerial in *Brusco*[4], so too here is the issuance of the warrant: "[t]he warrant in summary proceeding shall be issued over the signature of the clerk, *going to show that its issuance is a ministerial act in aid of the judgment and final order made in the proceeding*." *People ex rel. Halperin v. Strahl*, 113 Misc. 23, 26 (Sup. Ct. Kings Cty. 1920) (emphasis supplied).

Therefore, just as the congruous language in § 732 (3) dictated the outcome in *Braun*, so too does § 749 here, as the explicit language of the statute forecloses judicial improvisation, compelling immediate issuance of the warrant as the Legislature's chosen mechanism of finality.

C. The Consequences of The Warrant

The effect of the ministerial act of warrant issuance is profound. As the Court of Appeals explained long before HSTPA, the effect of the statute was to cancel the agreement for the use of the premises and to "annul 'the relation of landlord and tenant[.]' [I]t terminates the lease, as such, the same as if it had 'been voluntarily canceled and given up.'" *Michaels v. Fishel*, 169 N.Y. 381, 384 (1902). Later decisions reaffirmed that bright line: "the execution of the warrant terminates the lease[,] … the summary proceeding and the jurisdiction of the court." *Matter of Dixon v. County of Albany*, 192 A.D.3d 1428, 1431 (3d Dept. 2021). *See Iltit Assoc.*

[4] *See Brusco,* 84 NY2d at 683 ("a mere ministerial duty--the entry of judgment.")

v. Sterner, 63 A.D.2d 600, 601 (1st Dept. 1978) (same); *Solack Estates v. Goodman*, 78 A.D.2d 512, 513 (1st Dept. 1980).

The HSTPA preserved this sequence while refining its effects. RPAPL § 749(3) provides that issuance of the warrant no longer annuls the landlord-tenant relationship and preserves limited judicial discretion "to stay or vacate *such warrant for good cause shown prior to the execution thereof*, or to restore the tenant to possession subsequent to execution of the warrant." (emphasis supplied). Critically, however, and contrary to Judge Lansden's erroneous claim that "a judge may stay … the *issuance* of a warrant of eviction," the statute conditions the discretion to stay the *execution* of the warrant on it *having already been issued upon rendering of the judgment in compliance with the statute*. (Lansden Aff., ¶ 28, R.140) (emphasis supplied). The sequencing remains intact: the warrant must issue as soon as judgment is entered; only then does the court's narrow power to stay, vacate, or restore arise, and even then, only "for good cause shown." To conflate this limited grant of post-issuance discretion with a license to withhold the warrant's issuance altogether is to invert the statute.

Issuance thus remains the Legislature's chosen mechanism for *effectuating* judgment, and any delay or withholding in the name of policy is defiance of that command. Such defiance is more than statutory error; it is a constitutional violation. The Judiciary may not enlarge its own authority where the Legislature has spoken

with such clarity. In other words, by delaying or withholding issuance pending extra-statutory review, Respondents do not exercise lawful discretion – they exceed the limits of jurisdiction the Legislature has conferred.

D. Constitutional and Precedential Limits on Judicial Authority

The Constitution and precedent foreclose such overreach. Article VI, § 30 of the New York Constitution vests regulation of practice primarily in the Legislature, and the Court of Appeals has enforced that line with vigor. Indeed, under N.Y. Const. art. VI, § 30, "the authority to regulate practice and procedure in the courts is delegated primarily to the legislature … [A]ny rules the courts adopt *must be consistent with existing legislation*." *A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1, 5-6 (1986) (emphasis supplied). The Court of Appeals has likewise held that judicial rulemaking authority cannot impair statutory remedies, emphasizing that such power is strictly limited to ensure consistency with existing legislative command. *See People v. Ramos*, 85 N.Y.2d 678, 681 (1995).

E. Extraordinary Relief Is Warranted to Restore the Legislature's Command

RPAPL § 749(1) is unambiguous, the duty imposed thereby is not discretionary, and the actions at issue involve no judicial decision-making within the bounds of lawful authority. The Legislature having spoken in mandatory terms, Respondents' warrant practices constitute unauthorized arrogations of power. Where ministerial duties are flouted and statutory mandates are ignored, only the requested

extraordinary relief to which Petitioners are entitled can restore the Legislature's command.

POINT III: RESPONDENTS' SYSTEMIC DISREGARD OF RPAPL §§ 732 AND 745 WARRANTS MANDAMUS AND PROHIBITION

Just as RPAPL § 749 provides the automatic and ministerial process for closure, RPAPL §§ 732 and 745 comprise the Legislature's carefully balanced mechanism for ensuring that summary proceedings remain swift and fair during their pendency. Yet these core safeguards are openly and deliberately disregarded by the Housing Court and its administrators.

As Supervising Judge, Judge Lansden explained that calendaring practices reflect administrative judgment rather than legislative command, stating that because calendaring authority is derived from his office rather than the RPAPL, clerks did not control Housing Court calendars. *See* Lansden Aff. ¶ 80. ("A clerk cannot control the calendar for any housing court part or individual judge.") (R. 153).

Judge Lansden also admitted to policies, such as the formation of an "intake part" and compulsory adjournments of first appearances following implementation of "Right-to-Counsel." (Lansden Aff. ¶¶ 37 & 65, R. 142 & 149).

He further described instructing clerks and judges to maintain calendars not based upon the statute but to ensure what *he envisioned* as equal access to justice and a full and fair opportunity to be heard. (Lansden Aff. ¶ 80, R. 153). But laudable goals cannot license disregard of mandatory statutory commands. Substitution of administrative preference for statutory mandate is precisely what precedent forbids. As the Court of Appeals has cautioned: "courts are obliged to interpret a statute to

effectuate the intent of the Legislature, and when the statutory 'language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words' used … [C]ourts are not to legislate under the guise of interpretation." *People v. Finnegan*, 85 N.Y.2d 53, 58 (1995).

Yet that is exactly what has occurred here. Notwithstanding that RPAPL 732 specifically delineates the clerk as the state actor compelled to set a trial or hearing date within eight days and RPAPL 745 defines conditions precedent to the issuance of an adjournment, the Supervising Judge of Queens County's Housing Court – in his administrative capacity – has imbued himself as the sole arbiter over procedural calendar practices the County-over. These are not acknowledgments of case-by-case delay – they are sworn admissions that statutory calendaring obligations have been indiscriminately displaced by administrative policy.

Most strikingly, Judge Lansden conceded that compliance with Article 7's mandates is not merely difficult but *unattainable* under his administrative regime. *See* Lansden Aff. ¶ 75 (R. 152). Such a concession is the antithesis of the Legislature's chosen timing, which cannot be realized if those charged with maintaining it declare it "impracticable and impossible." *Id.*

A. RPAPL § 732 Mandates Prompt Calendaring to Preserve the Summary Nature of the Proceeding

RPAPL § 732 initiates the procedural tempo of the proceeding which, when satisfied, ensures summary litigation begins promptly and progresses swiftly.

Subsection (1) requires a tenant to answer the petition within ten days of service and subsection (2) correspondingly provides that "[i]f the respondent answers, the clerk *shall fix a date* for trial or hearing *not less than three nor more than eight days after joinder of issue*" RPAPL § 732(2) (emphasis supplied). The statute is unequivocal: the clerk must set the trial or hearing within a fixed, nondiscretionary window of eight days.

This rigid schedule is not a technicality – it is the very safeguard that distinguishes summary proceedings from plenary litigation – and it has been all but forgotten in Queens County Housing Court. Petitioners submitted at least seventeen examples of trial dates set between forty-one (41) and eighty-nine (89) days after joinder – flagrant departures from the statute's mandatory eight-day calendaring window – similarly observed by the Task Force which noted that "the time between the filing of a petition until the parties make their first court appearance may lapse as long as five (5) months," with "the average time for disposition … as long as fifteen (15) months." (Task Force Report, at 3–4). These delays are thus not conjecture but undisputed facts. And the reasons for these departures from statute are not a mystery but lauded by Judge Lansden in his own sworn statements acknowledging that administrative fiat, not legislative command, governs the calendar in Queens County Housing Court. (R. 153).

B. RPAPL § 745: Adjournments May Only Be Granted as the Statute Commands

If RPAPL § 732 sets the tempo, § 745 ensures it is maintained. It governs the case once underway – guarding against disruptive delay by sharply restricting adjournments: they may occur only "at the request of either party" or by consent of all parties. RPAPL § 745(1).

These enumerated limitations work in tandem with Subdivision (2)'s carefully balanced remedial scheme – a sword and shield. If respondents repeatedly adjourn, the court may require deposits of use and occupancy; if petitioners protract the case, dismissal protects tenants from uncertainty. This equilibrium embodies fairness and efficiency. The legislature thus ensured that unreasonable or prejudicial delay in the context of summary proceedings is not without consequence.

But when adjournments occur without party request or attribution in violation of Subdivision (1)'s mandates, and thus quantifying the number and length of adjournments for which each party is responsible is a fruitless enterprise, then Subdivision (2)'s safeguards collapse, and protections therefrom are rendered inert. Landlords lose their opportunity to obtain interim use and occupancy – removing the incentive for tenants to move toward resolution – while tenants forfeit dismissal's protection. The "sword and shield" vanishes, along with the disincentives to delay. And this harm is not confined to the parties: cases that should have ended months earlier instead languish on clogged dockets, draining judicial resources and

compounding delays that are harangued by Respondents as excuses for yet more delays and the breakdown of the statutory scheme. Systemic noncompliance thus undermines both the Legislature's cadence and the court system's ability to administer justice.

The Legislature enacted § 745 to foreclose such dysfunction. By disregarding its plain commands, Respondents substitute improvisation for statutory discipline, leaving landlords and tenants unprotected and the court system encumbered. The remedies therefor are Petitioners' requested writs.

C. The Housing Court's Institutional Refusal Warrants Mandamus and Prohibition

To be clear, Respondents' violations of RPAPL §§ 732 and 745 are not isolated errors of case-by-case discretion for which mandamus and prohibition may be unavailable. They are instead deliberate policies that reject legislative mandates in favor of administrative convenience, impermissibly attempting to expand Respondents' jurisdiction beyond that which has be explicitly circumscribed by the legislature. This cannot stand.

Indeed, courts may not enlarge or abridge rights conferred by statute or rewrite statutory procedures by rule or practice. This Court has held as much in markedly similar circumstances in *LaSalle Bank, N.A. v. Pace*, wherein this court affirmed the striking down of a Chief Administrative Judge's order that imposed requirements not authorized by the RPAPL, reaffirming that "*no court rule can enlarge or abridge*

rights conferred by statute," for practice and procedure remain "by constitutional fiat, vested in the Legislature." 31 Misc 3d 627, 633,631 (Sup Ct, Suffolk County 2011), aff'd , 100 AD3d 970 (2d Dept 2012) (emphasis supplied). Courts may not vary or override statutory prescriptions. *See People v. Mezon*, 80 N.Y.2d 155, 161 (1992). The Judiciary may thus not malform the Legislature's carefully balanced tempo into a new, unauthorized scheme of delay.

Writs are the exclusive solution. "Mandamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought." *Klostermann v Cuomo*, 61 NY2d 525, 539 (1984); *see also Scheinman*, 53 N.Y.2d at 16. Prohibition likewise lies where a court "acts or threatens to act without jurisdiction … or where it exceeds its authorized powers in a proceeding over which it has jurisdiction." *Dondi v. Jones*, 40 N.Y.2d 8, 13 (1976). These extraordinary remedies fit squarely into the abscesses of order here: they can be employed with precision to the very duties Respondents have refused to perform and their *ultra vires* conduct that must be forestalled. Accordingly, writs must issue compelling strict calendaring under RPAPL § 732, prohibiting *sua sponte* adjournments absent party request, and requiring attribution and recordation of all adjournments.

Point IV: Judicial Discretion May Not Override Legislative Mandates

A. Legislative Supremacy Leaves No Room for Judicial Improvisation

The Legislature has already composed the procedural score for summary proceedings; Respondents need only perform it faithfully. Each provision at issue is written in imperatives – ministerial duties incumbent upon Respondents. Judicial improvisation in their place violates both statute and Constitution.

1. Inherent Authority Cannot Override Explicit Legislative Command.

The New York Constitution, Article VI, § 30, provides that court rules and practices must be "consistent with the general practice and procedure as provided by statute or general rules."

This limit on courts' inherent power is sacrosanct; repeatedly enforced by the highest court in New York State's judiciary:

> A court may not significantly affect the legal relationship between litigating parties through the exercise of its rule making authority. Furthermore, *no court rule can enlarge or abridge rights conferred by statute, and this bars the imposition of additional procedural hurdles that impair statutory remedies*.

Ramos, 85 N.Y.2d at 687 (emphasis supplied).

The Court likewise cautioned in *Finnegan* that courts cannot use interpretation to create procedures the Legislature did not enact. 85 N.Y.2d at 58. This precept is well over a century old and sacrosanct in this State, even where, as here, the judiciary identifies potential pitfalls to a legislative scheme and believes it

necessary to use its inherent power to craft a solution: "[t]he doctrine that courts have an inherent jurisdiction to mould the proceedings to meet new conditions and exigencies, is true, but in a *limited sense*. *They cannot, under cover of procedure or to accomplish justice in a particular case, invade recognized rights of person or property*." *McQuigan v. Delaware, Lackawanna & W.R.R. Co.*, 129 N.Y. 50, 55–56 (1891) (emphasis supplied)[5]. "The office of interpretation is to bring sense out of the words used, and *not bring a sense into them*." *McCluskey v. Cromwell*, 11 N.Y. 593, 602 (1854) (emphasis supplied). And courts thus "cannot, by construction, cure a *casus omissus*, however just and desirable it may be." *McKuskie v. Hendrickson*, 128 N.Y. 555, 558 (1891).

Courts in this Department have thus reiterated that "courts may not … restrict the scope of legislation … or engraft exceptions where none exist." *Ackerman v. Berkowitz*, 54 Misc. 3d 867, 879 (Civ. Ct. Kings Cty. 2016). And when a rule "runs counter to the clear wording of a statutory provision, *it should not be accorded any weight*." *Roberts v. Tishman Speyer Props., L.P.*, 13 N.Y.3d 270, 285 (2009) (emphasis supplied) (superseded by statute in part on unrelated point by 2019 N.Y. Laws ch. 36, pt. D [HSTPA]) (not relevant to the point cited). In other words, as this

[5] In the parallel scenario with respect to the executive exercising its inherent powers, the Court of Appeals confirmed that "no matter how well-intentioned [the executive's] actions may be, [it] may not unlawfully infringe upon the legislative powers reserved." *Under 21 v. City of New York*, 65 N.Y.2d 344, 356 (1985).

Court has affirmed, "[s]ince rule-making authority cannot significantly affect the legal relationship between litigating parties, the imposition of additional matters that impair statutory remedies or enlarge or abridge rights conferred by statute are not the proper subjects of rules promulgated by court administrators." *LaSalle*, 31 Misc. 3d at 633-634.

Inherent authority is thus sharply limited and never a license to disregard express legislative command under controlling precedent. It is a bright-line rule: the Judiciary may not displace legislative command with administrative preference. Judge Lansden's directives – which elevate internal policy over plain statutory command – are precisely the substitution of administrative judgment for legislative will that this canon forbids.

The refusal to adhere to RPAPL §§732, 745, and 749 is therefore not an allowable exercise of discretion but an impermissible repudiation of binding statutory duty. Unable to defend these practices as lawful discretion, Respondents turn to practical obstacles and local policy to justify systemic departures.

2. Neither Administrative Convenience Nor Municipal Law Can Excuse Respondents' Brazen Non-Compliance.

The governing principles are settled: statutory mandates control practice and procedure; court rules and administrative practices cannot enlarge or abridge rights conferred by statute, and local enactments may not conflict with statewide law. *See* N.Y. Const. art. VI, § 30; *Ramos*, 85 N.Y.2d at 681; *Mezon*, 80 N.Y.2d at 158–59;

Garcia v. N.Y.C. Hous. Auth., 31 N.Y.3d 601, 617 (2018). Nonetheless, Respondents invoke funding and staffing shortfalls, post-pandemic backlogs, and "Right-to-Counsel" consultations as justification for systemic departures from Article 7's commands. But precedent roundly forecloses such defenses.

a. The Legislature's Will Must Be Enacted As Written

Courts may not "legislate" to cure a perceived ill of the statute. The Court of Appeals addressed this very issue in *Bright Homes* wherein the Court reminded its own division of government of the well-defined and zealously enforced separation of powers in this State: "Courts are *not supposed to legislate under the guise of interpretation,* and in the long run it is better to adhere closely to this principle and *leave it to the Legislature to correct evils if any exist.*" 8 N.Y.2d at 162 (emphasis supplied). Deference to the legislature to cure any unintended "evils" of statutes' implementation is time-honored throughout this State's jurisprudence, as reiterated by the Court of Appeals in *Roberts*: "[i]f the statute imposes unacceptable burdens, defendants' remedy is to seek legislative relief." 13 N.Y.3d at 287.

This holds true with respect to Respondents' justifications for their admitted non-compliance with Article 7's commands, such as the alleged lack of judges to adjudicate cases and clerks to coordinate calendars or timely issue warrants. These excuses, like the rest, have been unequivocally rejected by this State's highest court.

The First Department and Court of Appeals grappled with these very issues in the context of a similar article 78 proceeding in *NRDC*. *See* 188 AD2d 415 (1st Dept 1992), 83 NY2d 215 (1994). Like petitioners here in the context of Article 7, the petitioners there sought "to compel respondents' *implementation* of a City-wide recycling program in compliance with Local Laws … and established a schedule for such compliance." 188 AD2d at 415 (emphasis supplied). Like Respondents here, "respondents had *purposely* failed" to meet the *many* discrete "mandatory dictates of Local Law No. 19" including preparing a City-wide recycling plan, establishing deposit or reclamation programs for certain materials, creating recycling centers in each borough, and meeting mandated solid waste tonnage targets. 83 N.Y.2d 219 (emphasis supplied).

Petitioners thus appropriately sought to ensure the implementation of the *entire* city-wide program envisioned by the legislature. "Taking into account the unambiguous phrasing of the legislation, its stated purposes and intent, and admissions made by the City in this and other proceedings", the First Department found that "Local Law No. 19 imposes on respondents[‘] mandatory affirmative duties requiring strict compliance" and affirmed the lower court's granting of a writ of *mandamus*. *Id*. at 415. The Court of Appeals affirmed notwithstanding the same justifications raised by Respondents for their non-compliance with Article 7, *to wit*, the lack of staff and funding. The *NRDC* Court addressed this head on and found it

wanting: "manifestly, *the Legislature may or may not appropriate funds necessary to fund these obligations, but the Commissioner does not discharge this statutory duty unless [s]he complies with the mandate contained in [the statute]*" 83 NY2d at 222 (emphasis supplied).

It is thus axiomatic under Court of Appeals precedent that failures to comply "cannot be justified by lack of staff or facilities." *Kesselbrenner v. Anonymous*, 33 N.Y.2d 161, 168 (1973). *See In re Lavette M.*, 35 NY2d 136, 143 (1974) (same); *Klostermann, supra*. In other words, "limited resources is not a proper justification" for noncompliance. *Martin A. v Gross*, 138 Misc 2d 212, 224 (Sup Ct, NY County 1987). *See also Grant v Cuomo*, 134 Misc 2d 83, 91 (Sup Ct, NY County 1986) ("[T]he failure to comply with a legislative mandate cannot be justified by a lack of staff.") It is thus black letter law that where an "obligation" is "absolute and therefore ministerial," it must be performed notwithstanding strained resources or, as bemoaned by Respondents here, a "heavy caseload." *Gianelli v. N.Y. State DHCR*, 142 Misc. 2d 285, 287 (Sup. Ct. Queens Cty. 1989).

These are precisely the circumstances that Respondents paint here: lack of funding and staff preclude the enforcement the Legislature's chosen scheme. Judge Lansden's own admissions thus illustrate the applicability and dispositive nature of the foregoing precedent: "compliance with the directives in the RPAPL are paramount concerns … [but] *to do so in a short period of time as shown by the*

complicating factors discussed above would be impracticable and impossible" (Lansden Aff. ¶ 75, R. 152) (emphasis supplied).

These *exact* justifications for administrative deviation have already been dispositively rejected by this State's highest court, as they should be again here.

b. *Local Initiatives Cannot Likewise Rewrite Statewide Statutory Mandates.*

Respondents' last, desperate *ad hoc* justification for their indiscriminate practice of administrative adjournments is the local implementation of what Respondents coin as "Right to Counsel". Judge Lansden admitted that "one immediate result of the Right to Counsel law was that *first time appearances were adjourned* so that a tenant can be referred to a consultation with a 'designated legal service provider'." (Lansden Aff. ¶ 37, R. 142) (emphasis supplied).

But as valorous as this excuse may be, it is black letter law that local policy cannot preempt state law – it is indeed the other way around. "A local law will be preempted either where there is a direct conflict with a state statute (conflict preemption) or where the legislature has indicated its intent to occupy the particular field (field preemption)." *Garcia*, 31 N.Y.3d at 617. And this principle "represents a fundamental limitation on home rule powers" and embodies "the untrammeled primacy of the [l]egislature to act … with respect to matters of State concern." *Albany Area Bldrs. Ass'n v. Town of Guilderland*, 74 N.Y.2d 372, 377 (1989). This

is especially so where, as here, there is the need for "State-wide uniformity." *People v. Diack*, 74 N.Y.2d 372, 377 (1989); 24 N.Y.3d 674, 679 (2015).

In this respect, the Legislature has already furnished "a complete system of procedure in conformance with all constitutional requirements" for resolving possession disputes, thus triggering field preemption. *Hanover Estates v. Finkelstein*, 194 Misc. 755, 760 (Mun. Ct. 1949). The practices of administratively adjourning these first appearances are also in direct conflict with RPAPL § 745(1), which limits adjournments to party application and requires attribution, thus triggering conflict preemption.

As *Hanover Estates* warned, needless postponements are "inconsistent with and destructive of [the Legislature's] intent and purpose" and cannot be excused by purported obligations to local law. 194 Misc. at 759. Local overlays thus cannot rewrite the State Legislature's thoughtful design. Article 7 is the State's chosen procedure. It binds. It governs. It controls.

B. Systemic Defiance: Admissions and Evidence of Statutory Nullification

Article 7 sets a tempo measured in days. Respondents have replaced it with dissonance measured in months if not years. As demonstrated by Petitioners' evidence and admitted by Respondents, this departure is not accidental but systemic. The undisputed evidence thus establishes a deliberate and illegal displacement of statutory mandate by administrative edict.

1. Calendaring Delays Nullify RPAPL § 732's Eight-Day Command.

While RPAPL § 732(2) commands that the clerk fix a date for trial or hearing within eight days after issue is joined, it remains undisputed that Respondents have universally failed to comply.

Indeed, Petitioners' evidence shows that first appearances of at least seventeen (17) proceedings before the Housing Court were calendared not less than forty-one (41) days and as many as eighty-nine (89) days after joinder. This factual record (R. 85-122, 206-523) demonstrates, *inter alia*, Respondents' systemic statutory defiance: in *Lafrance Leasing L.P. v. Kishor Regmi, et al.* (L&T Index No. 317844/2023) (the "Regmi Proceeding"), the delay was eighty-nine (89) days (R. 28; Petition's Exhibit A, R. 85); in *Columbia Leasing L.P. v. Esteban Soto* (L&T Index No. 317852/2023) (the "Soto Proceeding"), it was eighty-three (83) days (R. 28, Petition's Exhibit B, R. 86-87); and in *Columbia Leasing L.P. v. Jacinta Jurado* (L&T Index No. 312557/2023) (the "Jurado Proceeding"), it was seventy-six (76) days (R. 28, Petition's Exhibit C, R. 88-89).

This came as no surprise to the Bar Associations' Task Force, which observed that such endemic delays remain: "[t]oday, parties can expect to wait months before making their first appearance in a courtroom," often "*as long as five (5) months*." (Task Force Report, at 2-4) (emphasis supplied).

And even Judge Lansden acknowledged that the first available trial dates in the three Trial Parts were *months away*. (Lansden Aff. ¶ 71., R. 151).

The Record thus establishes as a matter of law that the statutory tempo composed by the Legislature has been stymied at the very outset. The fault lies not with the statutory scheme but with its stewards, Respondents, who no longer appropriately look to the statute for guidance but are instead ensnared by an administrative regime in which Judge Lansden declares that control of the calendar "comes directly from myself, as Supervising Judge" (*id*. ¶ 80) (R. 153).

2. *Sua sponte* Adjournments Extinguish RPAPL § 745's Safeguards.

RPAPL § 745(1) authorizes adjournments only on party application and requires attribution. Respondents disregard both requirements. Judge Lansden acknowledged that he established an extra-statutory "intake" part in Queens County Housing Court and that thereafter "Right-to-Counsel" has caused first time appearances to be adjourned as a matter of course. Such practices not only contradict the explicit mandate of § 745 but they consequently nullify the statutory safeguards that prevent indefinite postponements. (R. 142, 149-150)

The consequences are evident. For example, upon information and belief, in *Ceylon Leasing LP v. Darlene Peterson, et al.* (L&T Index No. 310543/2023) (the "Peterson Proceeding"), the case was administratively adjourned *sua sponte* sixty-six (66) days from August 1, 2023 to October 6, 2023 (R. 37; Petition's Exhibit U,

R. 122-123); and in *Copenhagen Leasing L.P. v. Yvonne Reden, et al.* (L&T Index No. 308260/2023) (the "Reden Proceeding"), the first appearance – which was first scheduled sixty-three (63) days after joinder – was administratively adjourned without request a further eighty-three (83) days from August 8, 2023 until October 30, 2023 (R. 36; Petition's Exhibit N, R. 107-108). These are not outliers but patterns. By substituting indiscriminate adjournments for statutory cadence, Respondents patently violate their statutory mandates.

3. Judicial Holds Defy RPAPL § 749's Immediate Warrant Mandate.

While RPAPL § 749(1) directs that "the court shall issue a warrant" upon judgment, Judge Lansden described warrant-issuance practices conditioning processing on additional documentation and moving "incomplete" files to the bottom of the queue (Lansden Aff. ¶¶ 14–15, R. 137), a policy that predictably compounds already documented delays in Housing Court processing. These extra-statutory hurdles transform the inherent immediacy of "upon" into "after indeterminate bureaucratic review." Indeed, the required submission of "all the necessary documentation" for a warrant – the ambiguity of which invariably dubious – amounts to a fabricated extra-statutory condition for the issuance of a warrant, a violation of § 749(1), and the *exact practice* forbidden by the Court of Appeals in *Brusco* and the Second Department in *Mennella*:

> The plain language of the statute establishes two factual predicates to be determined by the court: whether

> petitioner has submitted an affidavit or certificate of service of the notice of petition and petition, and whether the tenant has failed to respond within five days of the date of service. If both conditions are met, the statute requires that "the judge *shall* render judgment in favor of the petitioner" (RPAPL 732 [3] [emphasis supplied]). The statute not only commands an action; it dictates the result. Where, as here, petitioner has proven service of the notice of petition and petition and the tenant has failed to appear, *respondent has no discretion; judgment in favor of petitioner must be granted and mandamus lies to compel respondent to do that which the statute requires*.

Brusco, supra (emphasis supplied). *See Mennella v Lopez-Torres*, 229 AD2d 153, 156 (2d Dept 1997) ("The statute clearly mandates the entry of judgment in favor of the petitioner if the petitioner has proven service of the petition and the tenant has defaulted. No other discretion is afforded to the respondent Judge.")

The Record illustrates this harmful practice: in *Bucknell Realty L.P. v. Socorro Collado Simon, et al.* (L&T Index No. 55717/2020) (the "Simon Proceeding"), a judgment of possession was entered on October 14, 2022, a warrant requisition was submitted on October 22, 2022, and the warrant of eviction was issued nearly six (6) months later on April 3, 2023. (R. 39). In *UESS Leasing L.L.C. v. Julius Adekanmbi* (L&T Index No. 308605/2023) (the "Adekanmbi Proceeding"), following respondents' default, a request for default judgment with warrant requisition was submitted on July 14, 2023 and a warrant was still not issued until nearly four (4) months thereafter on November 13, 2023. (R. 39). And likewise, in *Town Leasing L.L.C. v. Leticia Diaz* (L&T Index No. 306428/2023) (the "Diaz

Proceeding"), a request for default judgment with warrant requisition was submitted on June 3, 2023 and over six (6) months later, on December 12, 2023, notice was provided that the warrant was conditioned upon the submission of an affidavit stating that a lease was in effect when the proceeding was commenced despite respondent's default in answering (R. 41).

Such delays are not results of novel and discretionary interpretation – they are suspension of law, plain and simple.

4. The Task Force's Study of a System in Open Defiance.

In discussing the state of summary proceedings, the Task Force observed that "[t]he process has become anything but 'expeditious.' The statutory framework detailed in the RPAPL has been pushed to the wayside" and that "[t]he data obtained and reviewed by the Task Force evidences a system that is in dire need of repair" (Task Force Report, at 2, 12). Although not part of the evidentiary record, this commentary reinforces that Petitioners' evidence reflects systemic dysfunction.

The Record thus establishes more than simple deviation – it reveals a pattern of deliberate noncompliance that undermines the entire statutory framework of Article 7. And when courts substitute improvisation for adherence and administrative fiat displaces statutory command, the result is not merely delay but violation of statute and, moreover, constitutional injury which require redress by this Court.

C. Constitutional Consequences: Separation of Powers Breached, Due Process Denied

The Housing Court's systemic departure from RPAPL §§ 732, 745, and 749 constitutes a constitutional breach, striking simultaneously at the doctrine of separation of powers and the fundamental guaranty of due process.

1. Separation of Powers: Judicial Substitution of Legislative Command

The Court of Appeals has called the separation of powers "the bedrock of the system of government adopted by this State," essential for "the preservation of liberty itself." *Maron v. Silver*, 14 N.Y.3d 230, 258 (2010). Each branch must be "free from interference, in the discharge of its peculiar duties, by either of the others." *Id*. In codifying such tripartite separation, Article VI, § 30 of the New York Constitution entrusts the Legislature with the power to prescribe procedure, mandating that judicial rules remain "consistent with the general practice and procedure as provided by statute or general rules."

Yet Judge Lansden admits open revolt against such separation, attesting that "*while the RPAPL directs a clerk* to calendar a hearing or trial within a certain time limitation, the authority of a clerk to assign a hearing or a trial to a certain date comes *directly from myself, as Supervising Judge*." Lansden Aff. ¶ 80 (R. 153). This concession confirms that calendaring in Queens Housing Court is governed not by the Legislature's command but by judicial edict. As in *Boreali v. Axelrod*, where an agency wrongfully "reached its own conclusions about the proper accommodation

among … competing interests" without legislative sanction, Respondents have impermissibly assumed for themselves the power to decide how statutory mandates will yield to administrative policy. 71 N.Y.2d 1, 6 (1987).

This Court has zealously defended the separation of powers in these circumstances, affirming a lower court's decision invalidating the Chief Administrative Judge's rules imposing extra-statutory requirements which held that "no court rule can enlarge or abridge rights conferred by statute" because practice and procedure are appropriately governed "by constitutional fiat, vested in the Legislature." *LaSalle*, 31 Misc 3d at 631, 633, aff'd 100 AD3d 970. Indeed, "substantive requirements … not contemplated by the statutes" are void. *Id*. at 635. Even the federal bench has ruled in consonance that "the Chief Administrative Judge lack[s] the authority to override the Legislature's clear intent and any contrary, judge-created rule [is] invalid." *Menashe v. Steven J. Baum, P.C.*, 2011 U.S. Dist. LEXIS 111082, *10 (E.D.N.Y. 2011).

The rule is longstanding, as a court's disregard of statutory mandate may <u>*only*</u> be justified by a finding of unconstitutionality *not present here*:

> When a controversy arises between litigants, in which controversy the Constitution and an act of the legislature are each invoked and they are in conflict, it is necessary to follow the Constitution which is the supreme law, and ignore the act of the legislature, and thus incidentally and necessarily the courts pass upon an act of a co-ordinate and independent department of government. <u>*That is the extent*</u>

> *of the power of the judiciary over the legislative branch of government*.

Schieffelin v. Komfort, 212 N.Y. 520, 530 (1914) (emphasis supplied).

Housing Court's extra-statutory warrant holds, administrative adjournments, and trial delays, instituted explicitly contrary to statutory warrant, fall squarely within this prohibition against judicial overreach into legislative authority.

2. Due Process: The Right to a Meaningful Time and Manner of Hearing

The U.S. and New York Constitutions further forbid deprivation of property without due process. As the Supreme Court held, "[a] fundamental requirement of due process is 'the opportunity to be heard.' It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Manzo*, 380 U.S. at 552.

Determining whether due process has been violated by these delays "requires balancing the interests of the State against the individual interest sought to be protected" using the three factors set forth in *Mathews v. Eldridge*: (1) the private interest affected, (2) the risk of erroneous deprivation and the probable value of additional procedural safeguards, and (3) the government's interest, including the burdens of additional process. *Ramos*, 85 N.Y.2d at 684. *See* 424 U.S. 319, 335 (1976). Where, as here, systemic deviations from statute threaten to deprive parties of statutory and constitutional rights, that balancing weighs decisively in Petitioners' favor.

The "private interest" affected, *to wit*, the possession of property, is a fundamental right. Article 7 protects this interest by mandating trials within days, limiting adjournments, and requiring immediate warrants. The risk of erroneous deprivation of landlord's fundamental rights to possess their property posed by the ubiquitous delays that pervade Housing Court is self-evident in light of the trials scheduled five-to-fifteen months out, adjournments imposed without request or attribution, and warrants withheld by fiat. The Task Force documented such months-delayed first appearances and protracted dispositions. These delays are not anomalies but entrenched patterns, compounding the risk of erroneous deprivation with every passing month. The Task Force confirmed that "[t]hese extraordinary lapses in time are counterintuitive to the spirit of the 'summary proceeding' and are equally detrimental to owners and tenants." *Id*.

The Record provides concrete proof.

Without limitation, in the Regmi Proceeding, Soto Proceeding and Jurado Proceeding, first appearances weren't scheduled until at least two-and-a-half to three months after joinder, *approximately eleven (11) times longer than the statutory maximum*. (R. 28; 85, 86-87, and 88-89). In the Peterson Proceeding and Reden Proceeding, upon information and belief, the cases were *administratively adjourned sua sponte sixty-six (66) days and eighty-three (83) days*, respectively (R. 36, 37, 122-123 & 107-108). In the Simon Proceeding and the Adekanmbi Proceeding,

warrants were not issued until six and four months after judgments of possession were rendered and associated warrant requisitions were submitted, the landlord in procedural limbo in the interim. (R. 39). And in the Diaz Proceeding, six months after the submission of a warrant requisition, such request was rejected with instructions to resubmit with paperwork not required by RPAPL § 749 before such request would be considered. (R. 41).

And even the stated "government interests" are ultimately of no moment. Respondents invoke docket congestion and benevolent goals like "Right to Counsel" consultations. But it is black letter law that administrative difficulties cannot justify the infringement on an established right, and municipal mandates are preempted when in conflict with State law. Indeed, as *Klostermann* held and as was acknowledged in *NRDC*, administrative difficulty does not render nonjusticiable a claim to compel compliance with a statute that is otherwise mandatory on its face. *See* 61 N.Y.2d at 536; 83 NY2d at 221-222. Judge Lansden conceded that compliance with the directives in the RPAPL are "impracticable and impossible" (Lansden Aff. ¶ 75) (R.152). This excuse for non-compliance is precisely that which was rejected in both *Klostermann* and *NRDC*. *See Klostermann*, 61 NY2d at 530 ("Their claims do not present a nonjusticiable controversy merely because the activity contemplated on the State's part may be complex and rife with the exercise of discretion."); *NRDC*, 83 NY2d at 221("Compliance with almost any statutory

directive will involve some measure of discretion exercised by those implementing its terms, but this will not render nonjusticiable a claim which asks the courts to compel compliance with a statute that is otherwise mandatory on its face.").

Petitioners thus prevail decisively under the *Mathews* balancing: the private interest is fundamental, the risk of erroneous deprivation severe, and the asserted governmental justifications legally inadequate. Respondents' systemic practices thus constitute a violation of constitutionally guaranteed due process as a matter of law.

D. Statutory Command and Constitutional Necessity

What confronts this Court is not a string of hard calls at the margins, but a settled practice that steps outside the statute. Where the Legislature has written "shall," the Judiciary may not answer "not yet." N.Y. Const. art. VI, § 30; *Ramos*, 85 N.Y.2d 678, 681 (1995); *Mezon*, 80 N.Y.2d at 158–59; *Bright Homes*, 8 N.Y.2d at 161–62. And the Record bears it out: months-delayed first appearances, adjournments imposed without request or attribution, and warrant holds conditioned on extra-statutory paperwork. *See* Lansden Aff. ¶¶ 37, 71, 75, 80, 14–15) (R. 142-153); Task Force Report, at 2–4.

The remedies follow the wrongs. Mandamus restores the tempo the Legislature set; prohibition stills what the statute forbids. *See Scheinman*, 53 N.Y.2d

at 16; *Klostermann*, 61 N.Y.2d at 540; *Brusco*, 84 N.Y.2d at 680; *Dondi*, 40 N.Y.2d at 13; *Holtzman*, 71 N.Y.2d at 568 (1988); *Mennella*, 229 A.D.2d at 156–57.

In a regime of "shall," delay is not discretion – it is denial. The writs should therefore issue.

POINT V: MANDAMUS AND PROHIBITION ARE REQUIRED TO REMEDY RESPONDENTS' SYSTEMIC DISREGARD OF MANDATORY RPAPL PROCEDURES

The noncompliance detailed above is not an aberration; it is Housing Court's operating procedure. As illustrated by the evidence in the underlying proceeding, contextualized by the Task Force's findings, and confirmed by Judge Lansden's sworn admissions, Respondents have supplanted the Legislature's chosen mechanism with unauthorized administrative inventions.

It is in precisely such circumstances – where legislative mandates are disregarded and litigants are deprived of statutory and constitutional rights – that extraordinary relief lies. Petitioners therefore seek mandamus and prohibition, not as a matter of convenience, but as their only recourse and necessary response to systemic and ongoing violations of nondiscretionary statutory duties. Without these writs, the Legislature's summary process will remain paralyzed, litigants' discordant uncertainty and interminable waits will continue unabated, and the statutory cadence the Legislature composed will remain unrealized.

A. Mandamus Lies to Compel Compliance with Statutory Duties

Mandamus is the chosen instrument when courts fail to perform duties that the Legislature has rendered purely ministerial. As the Court of Appeals explained, "mandamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought." *Scheinman*, 53 N.Y.2d at 16 (1981). In

Klostermann, the Court reaffirmed that mandamus may compel acts that "officials are duty-bound to perform." 61 N.Y.2d at 540. And further explained in *NRDC*, even when implementation of statutory mandates involves administrative difficulty and "entails some exercise of discretion," mandamus may still "compel acts that officials are duty-bound to perform, regardless of whether they may exercise their discretion in doing so." 83 N.Y.2d at 221.

While mandamus thus "does not lie to compel an act which involves an exercise of judgment or discretion," Petitioners do not seek to dictate *how* Housing Court judges resolve disputed facts or exercise judgment. *Matter of Town of Riverhead v. County of Suffolk*, 237 A.D.3d 944, 945-946 (2d Dept. 2025). They seek only to compel the nondiscretionary duties the Legislature itself commanded: calendaring within eight days (RPAPL § 732), limiting adjournments to those requested and attributed (RPAPL § 745), and issuing warrants upon judgment (RPAPL § 749). When these nondiscretionary commands are ignored, mandamus is not merely permitted – it is required.

The Court of Appeals emphasized this principle in *Brusco*: "[t]he statute not only commands an action; it dictates the result." 84 N.Y.2d at 680. Likewise, in *Capital Equity Mgmt., LLC v. Sunshine*, a trial court of this Department found mandamus lay to compel a clerk to enter judgment because CPLR 3215 provided the clerk "*shall* enter judgment" once statutory conditions were satisfied, reasoning

that the statute envisioned "direct adherence to a governing rule or standard with a compulsory result." 73 Misc. 3d 1072, 1076 (Sup. Ct. Kings Cty. 2021) (emphasis supplied).

Notwithstanding the compulsory nature of the commands of Article 7, Judge Lansden's admissions confirmed what Petitioners' evidence illustrated and the Task Force observed: that Respondents' disregard of such commands and the consequent egregious delays are universal. Judge Lansden further described contemporaneous circumstances that reveal little hope for self-correction in the near future, admitting that Queens Housing Court was operating "down two (2) but soon to be three (3) court attorney positions… [and] down four (4) clerk positions" (Lansden Aff. ¶ 68) (R. 150). He further confirmed that compliance with RPAPL's directives – plainly mandated by State law – is, in his own words, "impracticable and impossible" (*id.* ¶ 75) (R. 152). Such findings and admissions, considered together, define a system in utter disrepair – disrepair institutionalized under official policy – which begs remedy through compulsory compliance with law by mandamus.

B. Prohibition Lies to Restrain Judicial Acts Taken in Excess of Jurisdiction

Prohibition is the corollary to mandamus: where mandamus compels performance of duties, prohibition restrains their unlawful excess. Simply put, the writ of prohibition lies to prevent a body or officer from exercising a power in excess of its jurisdiction. *See Dondi,* 40 N.Y.2d at 13.

The doctrine has been applied repeatedly where statutory limits are disregarded. In *Schumer v. Holtzman*, 60 N.Y.2d 46, 51 (1983), the Court, in holding that statutory powers may only be delegated as authorized by law and may *not be enlarged for reasons of administrative convenience*, granted prohibition to prevent judicial authority from "proceed[ing] without or in excess of its jurisdiction."

The Court of Appeals even made clear that a court's inherent powers cannot justify acts taken outside of statutorily defined jurisdiction, finding that *"courts' inherent power to control their own calendars does not include the power to 'depart from the clear wording of [a statute]."*" *Mezon*, 80 N.Y.2d at 158 (emphasis supplied). The *Mezon* trial court, in purporting to act in the interests of expediency, entertained an oral suppression motion despite the unambiguous statutory requirement that same be made in writing and upon notice. The Court of Appeals reversed, declaring that statutory "prescriptions must be obeyed, and courts have no authority to vary or override them." *Id*. at 159.

That principle applies with equal force here. Just as *Mezon* rejected the substitution of judicial preference for legislative directive, Respondents' systemwide calendaring and warrant-issuance practices – predicated on administrative convenience rather than the precise procedures and timelines set by the RPAPL – constitute judicial acts in excess of jurisdiction. The statute, not the court's internal

policies, governs; when courts depart from the Legislature's clear wording, prohibition lies to halt the usurpation.

Respondents' practices thus fit squarely within the purview of *Mezon*'s holding. Judge Lansden confirmed that, under his erroneous understanding of the circumscription of legislative authority, "the authority of a clerk to assign a hearing or a trial to a certain date comes directly from myself, as Supervising Judge" (Lansden Aff. ¶ 80, R. 153), and that warrant clerks, under his standing directives, place "incomplete" files "at the bottom of the pile until such time as petitioner provides the court with such documentation" (*id.* ¶ 14). These are not case-by-case judgments but administratively imposed systemwide-policies which supplant statutory mandates and infringe upon legislative authority – practices squarely within the scope of prohibition.

Prohibition is thus warranted here, where there is such a "gross abuse of power … so serious an excess of power incontrovertibly justifying and requiring summary correction." *La Rocca v. Lane*, 37 N.Y.2d 575, 580 (1975).

C. Extraordinary Relief Is Required to Remedy Institutional Violations of RPAPL §§ 732, 745, and 749

Notwithstanding that the summary proceeding, "a special proceeding governed entirely by statute," is conditioned on "strict compliance with statutory requirements," the foregoing challenged practices invert the purpose of the summary proceeding and amount to entrenched frameworks that purposefully override

statutory mandates. *Tik Sun Cheung v. Xiao Man Li*, 148 Misc. 2d 55, 57 (Civ. Ct. Kings Cty. 1989). The jurisprudence of this State, and that of this Court especially, demonstrate the propriety – and necessity – of extraordinary relief where, as here, there is such clear institutional overreach and arrogation of the legislature's prerogative.

Indeed, this Court has affirmed that jurisdiction over procedure is "by constitutional fiat, vested in the Legislature" and consequently reversed the civil court's attempt to condition issuance of a warrant under RPAPL § 732(3) on additional mailing requirements. . *LaSalle*, 31 Misc 3d at 631. *See Mennella*, *supra*. This Court resoundingly rejected that improvisation, holding that the judge was "without discretion to impose an additional … requirement" and compelled issuance of the warrant "without further proceedings or the submission of any additional documents." 229 A.D.2d at 157. The parallel of this to, *inter alia*, Respondents' warrant-hold practices is exact: unauthorized conditions interposed between judgment and warrant in direct defiance of statute for which extraordinary relief is warranted.

Likewise, in *In re Nana O.*, this Court disallowed *sua sponte* adjournments by the trial court where it found the statutorily prescribed condition precedents for same, *to wit*, "special circumstances," had not be satisfied. 209 A.D.2d 621, 623 (2d Dept. 1994). The same reasoning applies here: RPAPL § 745(1) requires a request

before an adjournment is granted and Respondents' practices otherwise are thus *ultra vires*.

It thus remains plain that Respondents are simultaneously abdicating their responsibility to enact Article 7 as written and, in doing so, are acting with purported jurisdiction explicitly absent from and thus withheld by statute. And in such circumstances, the only remedy by which appellants-petitioners – and all other litigants before the Housing Court subject to Respondents' administrative regime – can reclaim the rights guaranteed to them by statute is through the requested narrow writs of mandamus and prohibition.

D. This Court's Intervention Is Required to Prevent Ongoing Irreparable Harm

Extraordinary relief is warranted where, as here, government actors persistently violate nondiscretionary statutory mandates, and no adequate remedy exists through ordinary legal channels. The harm here is both concrete and irretrievable. Petitioners cannot recover the months of possession lost to systemic calendaring delays, nor retroactively (a) compel hearings calendared within eight days, (b) limit adjournments to those requested and attributed, or (c) compel prompt issuance of warrants. Each lost day of possession represents a deprivation of a constitutionally and statutorily protected right which must be rectified by this Court through reversal and issuance of the requested writs.

The separation of powers principle admits of no other outcome. When the Legislature has prescribed duties in mandatory language, the Judiciary may not substitute contrary procedures in the name of expediency. Article 7 is the Legislature's chosen mechanism for resolving possession disputes. Any modification to the mandates of such statute cannot be realized by judicial improvisation, only by "legislative relief." *Roberts,* 13 N.Y.3d at 287. Otherwise, ministerial execution is incumbent; delay is verboten.

Mandamus therefore must issue to compel calendaring under RPAPL § 732, proper limits on adjournments under § 745, and immediate issuance of warrants under § 749. Prohibition must likewise issue to restrain Respondents from continuing unauthorized practices – first appearance delays, *sua sponte* adjournments, and extra-statutory warrant holds – that exceed their jurisdiction and nullify the Legislature's command. Only such extraordinary relief can enjoin these violations and restore the two-century old metrical rhythm of justice the Legislature composed.

POINT VI: RESPONDENTS' PROCEDURAL DEFENSES ARE MERITLESS AND CANNOT BAR RELIEF

Respondents' procedural defenses – standing and joinder –each collapse under the weight of controlling law. While the court below erroneously considered and accepted these defenses, they are not unsupported by precedent, legally unfounded, factually inaccurate, and incapable of foreclosing this Court's review.

A. Petitioners Have Standing Based on Both Concrete Injury and Public Interest

The court below erroneously found that Petitioners did "not establish[] that they have suffered an injury" and thus suffered no "injury-in-fact." (Decision & Order at 3) (R. 11). The Record proves otherwise. As property owners who initiated lawful summary proceedings under RPAPL Article 7, Petitioners were denied timely trial dates under § 732, subjected to *sua sponte* adjournments without attribution under § 745, and prevented from obtaining warrants despite judgments of possession under § 749. These are concrete and prolonged deprivations of statutorily and constitutionally protected property rights which further caused substantial economic losses, and increased litigation costs and uncertainty concerning enforcement of judicial orders.

Such injuries place Petitioners squarely within the zone of interests protected by RPAPL Article 7. *See Dairylea Coop., Inc.*, 38 NY2d at 9 (standing requires both "harmful effect on the petitioner" and that the interest sought to be protected is

"arguably within the zone of interest to be protected by the statute"). Petitioners' position as property owners actively invoking §§ 732, 745, and 749 establishes a direct connection between the harm suffered and the statutory rights those provisions confer. Their injury is thus distinct from that of the general public, entitling them to standing herein.

Moreover, standing also lies where, as here, the claims present matters of great "public significance." *Saratoga Cty. Chamber of Com. v. Pataki*, 100 N.Y.2d 801, 814 (2003). Summary proceedings govern access to adjudication of rental obligations in New York City, where more than two-thirds of the population resides in rental housing, and thus the policies and practices implemented therein and challenged here implicate interests of extraordinary public concern. Indeed, both landlords and tenants are directly affected by how these cases are processed and resolved. *See* Task Force Report at 8 ("These extraordinary lapses in time are counterintuitive to the spirit of the 'summary proceeding' and are equally detrimental to owners and tenants."). "The significant number of summary proceedings filed annually is indicative of the necessity for a solution as thousands of owners and tenants remain in a state of uncertainty for months at a time with no end in sight." *Id*. at 3. The filing of 151,676 summary proceedings across the five boroughs from July 1, 2023 to September 30, 2024 – amid admitted systemic failures – is, at minimum, a matter of substantial public concern. *See id*.

In such cases, public interest alone confers standing. In fact, this Court has held that "every citizen has a right to compel the performance by public officers of the duty imposed upon them of executing laws of the State which are enacted for the benefit of the community," and that mandamus is proper "where the act omitted to be performed affects the public interests generally, and all citizens are equally concerned in securing its performance." *People ex rel. Kay v. Swanstrom*, 79 A.D. 94, 96–97 (2d Dept. 1903). *See also People ex rel. Stephens v. Halsey*, 37 N.Y. 344 (1867).

Because Petitioners have demonstrated both individualized injury within the statutory zone of interest and the presentation of a matter of extraordinary public importance, standing is doubly established as a matter of law. *See Police Conference of N.Y., Inc. v. Mun. Police Training Council*, 62 A.D.2d 416, 417 (3d Dep.t 1978) ("This is especially so where the matter involved is one of great public interest, and granting the relief requested would benefit the general public.").

B. All Proper and Necessary Respondents Were Named

The lower Court's finding that Petitioners inappropriately failed to name every Housing Court judge rests on a misreading of CPLR 7802(b) and controlling precedent. That statute requires only that the "body or officer" whose action or inaction complained of be named, not every individual officer within that body. Here, Petitioners did exactly that by naming Respondents – the officials, supervisors,

and entities responsible for the challenged court-wide and institutional practices. The court below nevertheless stated that Petitioners "failed to name the necessary parties to the action." (R. 10) That conclusion cannot be reconciled with the statute's plain text nor the jurisprudence interpreting it.

Precedent confirms that Petitioners' named respondents suffice. In *Matter of Maron v. Silver*, 14 N.Y.3d 230, 247 (2010), the Court of Appeals permitted a systemic constitutional challenge naming high-level state officials with supervisory authority, even though not every implicated legislator was joined. The Court acknowledged that, where the gravamen of the complaint is institutional policy rather than individualized acts, it is the supervisory officials – not every member of the affected body – who are properly named. *See id*. ("[a]ll parties having agreed that the Assembly, Senate and State were proper parties"). That principle applies equally to the Housing Court as an institution.

Indeed, so too here. The challenged practices – prolonged delays in calendaring, administrative adjournments without attribution, and post-judgment warrant holds – are not traceable to the discretionary rulings of individual judges but to entrenched, court-wide procedures. That distinction was recognized in *Lang v. Pataki*, 176 Misc. 2d 676, 680–83 (Sup. Ct. N.Y. Cty. 1998), where plaintiffs challenged Housing Court's systemic policies by naming the Chief Administrative Judge, the Administrative Judge of the Civil Court (on behalf of all Housing Part

judges), and the Chief Clerk. The court indicated that the absence of every individual Housing Court judge did not bar relief because, as here, the named officials adequately represented the institution and were capable of implementing remedial directives if the relief requested had been appropriate.

Critically, Petitioners do not seek to direct how judges rule on the merits of cases. As *Lang* underscored, administrative judges have the authority to manage the business of the courts but "do not have authority to dictate how Civil Court and Housing Court Judges must rule" (*id.* at 692). Petitioners' writs seek only to end entrenched administrative practices that contravene statutory mandates – not to interfere with judicial decision-making. Relief directed at the supervisory officers and the Housing Court itself is therefore not only proper but precisely what CPLR 7802(b) envisions.

Requiring Petitioners to name every individual judge on the lower court's stated basis would also be impractical to the point of futility. Housing Court judges hold renewable five-year terms, are frequently reassigned to other counties or parts, and are otherwise replaced. Even if Petitioners named all contemporaneously sitting judges at commencement, the bench's composition would inevitably change before judgment and any relief granted could therefore presumably exclude newly assigned judges, leaving them outside the scope of the writs despite the institutionalized and

ongoing complained-of practices. Such a requirement would risk partial and ineffective relief – an absurd result the law does not countenance.[6]

As *Klostermann* makes clear, extraordinary relief must be framed so that it can be enforced effectively against those with the power to comply; the law does not countenance the exercise in futility of compelling relief against parties lacking such authority. Here, naming the Housing Court and the officials who control Housing Court's administrative policies ensures that any order will bind those with the actual ability to halt the unlawful practices, regardless of judicial turnover.

Accordingly, the lower court's indispensable-party basis for dismissal is of no moment. The proper bodies and officers are before the Court. To hold otherwise would elevate form over substance, frustrate the remedial purpose of Article 78, and effectively shield systemic violations from review.

Respondents' procedural defenses – standing, indispensable parties, and inherent authority, each resting on a misapplication of controlling law – provided no lawful basis to deny relief and, in so finding, the trial court committed reversible error.

[6] This absurdity is equally applicable to the naming of every clerk employee, who are collectively entrusted to schedule first appearances and issue warrants upon judgment.

CONCLUSION

The Legislature's voice in Article 7 is not a suggestion; it is a command. It set the pace, the order, and the limits. That tempo has been broken. In its place, delay has become the rule, adjournments the reflex, and warrants a hostage to policy. These are not harmless deviations – they are the slow bleed of justice itself.

Every day these practices persist, owners lawfully entitled to possession are left in limbo, and tenants lose the certainty and fairness that only the statute's strict cadence can provide. Time – once the Legislature's chosen safeguard – is now the instrument of harm.

In such moments, the law does not ask courts to stand aside; it calls upon them to act. The writ of mandamus exists to restore what has been unlawfully withheld; the writ of prohibition, to halt what has been unlawfully seized. Both are needed here – not as abstractions, but as the only tools capable of ending the ongoing and entrenched defiance of law in the Housing Court.

This Court should reverse and order relief that will bring the Housing Court back within the boundaries the Legislature drew: trials fixed within three to eight days, adjournments confined to the statute's terms, and warrants issued the moment judgment is entered. Only then will the statutory rhythm be restored, and with it, the due process that is not a gift of government, but the birthright of every litigant.

Dated: September 12, 2025

/s/ Eric R. McAvey
ERIC R. MCAVEY
KUCKER MARINO WINIARSKY
& BITTENS, LLP
Attorneys for Petitioners-Appellants
747 Third Avenue, 12th Floor
New York, New York 10017
(212) 869-5030
emcavey@kuckermarino.com

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface:	Times New Roman
Point size:	14
Line spacing:	Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is 13,999.

Dated: September 12, 2025

STATEMENT PURSUANT TO CPLR § 5531 [1-2]

New York Supreme Court

Appellate Division—Second Department

In the Matter of the Application of

ARGENTINE LEASING LIMITED PARTNERSHIP, AUBURN LEASING LIMITED LIABILITY COMPANY, BIRCH LEASING LIMITED PARTNERSHIP, BUCKNELL REALTY LIMITED PARTNERSHIP, CANADA LEASING LIMITED LIABILITY COMPANY, CEYLON LEASING LIMITED PARTNERSHIP, COLUMBIA LEASING LIMITED PARTNERSHIP, COPENHAGEN LEASING LIMITED PARTNERSHIP, LA FRANCE LEASING LIMITED PARTNERSHIP, LONDON LEASING LIMITED PARTNERSHIP, ROME REALTY LEASING LIMITED PARTNERSHIP, SYDNEY LEASING LIMITED PARTNERSHIP, TOWN LEASING LIMITED LIABILITY COMPANY, UESS LEASING LIMITED LIABILITY COMPANY, WASHINGTON LEASING LIMITED PARTNERSHIP, and WELLINGTON LEASING LIMITED PARTNERSHIP,

Petitioners-Appellants,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

– against –

OFFICE OF COURT ADMINISTRATION, THE CIVIL COURT OF CITY OF NEW YORK, HON. JOSEPH A. ZAYAS, in his capacity as Chief Administrator, BIRDENA FRYE, in her capacity of Clerk of Queens County, ALIA RAZZAQ, in her capacity of Chief Clerk of the Civil Court of the City of New York, and HON. CAROLYN WALKER-DIALLO, in her capacity as Administrative Judge of the Civil Court of the City of New York,

Respondents-Respondents.

---

1. The index number of the case in the court below is 703941/24.

2. The full names of the original parties are as set forth above. There have been no changes.

3. The proceeding was commenced in Supreme Court, Queens County.

4. The proceeding was commenced on or about February 21, 2024 by filing of a Notice of Petition and Verified Petition. Issue was joined on or about May 30, 2024 by service of a Verified Answer.

5. This is an Article 78 proceeding.

6. This proceeding is from the Decision and Order of the Honorable Denise N. Johnson J.S.C., which entered on February 11, 2025.

7. This proceeding is on the full reproduced record.