To be argued by: Fulvia Vargas-DeLeon and Cesar Ruiz
(Time Requested: 15 Minutes)

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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VITO J. FOSSELLA, NICHOLAS A. LANGWORTHY, JOSEPH BORRELLI, NICOLE MALLIOTAKIS, ANDREW LANZA, MICHAEL REILLY, MICHAEL TANNOUSIS, INNA VERNIKOV, DAVID CARR, JOANNA RIOLA, VICKIE PALADINO, ROBERT HOLDEN, GERARD KASSAR, VERALIA MALLIOTAKIS, MICHAEL PETROV, WAFIK HABIB, PHILLIP YAN HING WONG, NEW YORK REPUBLICAN STATE COMMITTEE, and REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs-Respondents,

-against-

ERIC ADAMS, in his official capacity as Mayor of New York City, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, and CITY COUNCIL OF THE CITY OF NEW YORK,

Defendants-Appellants,

- and –

HINA NAVEED, ABRAHAM PAULOS, CARLOS VARGAS GALINDO, EMILI PRADO, EVA SANTOS VELOZ, MELISSA JOHN, ANGEL SALAZAR, MUHAMMAD SHAHIDULLAH, and JAN EZRA UNDAG,

Defendants-Intervenors-Appellants.

Docket No. 2022-05794

BRIEF FOR DEFENDANTS-INTERVENORS-APPELLANTS

Richmond County Clerk's Index No. 85007/2022

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PRELIMINARY STATEMENT

New York City is home to more than 800,000 authorized immigrants – 10% of the City's population – who have no say in who governs policy about the neighborhoods they live in, the schools their children attend, or the city budgets that affect their livelihoods. Aiming to give lawful permanent residents and other immigrants with federal work authorization a voice in the election of municipal leaders, and using its powers under Municipal Home Rule Law, the New York City Council passed Local Law 2022/011 ("the Municipal Voting Law") on December 8, 2021, and it became law on January 9, 2022. Defendants-Intervenors-Appellants, nine long-time New York City residents from seven countries and five boroughs, all of whom who are lawfully present in the United States, are among those who stood to be enfranchised by the Municipal Voting Law.

A group of Republican elected officials, the Republican National Committee, and several voters (hereinafter "Plaintiffs-Respondents" or "Respondents"), filed suit in New York State Supreme Court on January 10, 2022, naming the New York City Council, Mayor Eric Adams, and the New York City Board of Elections as defendants and challenging the legality of the Municipal Voting Law on constitutional and statutory grounds. Following motions for summary judgment, the trial court struck down the Municipal Voting Law on June 27, 2022, finding that the Municipal Voting Law contradicts language in the New York State Constitution

regarding eligibility to vote; violates Election Law provisions addressing eligibility to vote; and was passed in contravention of the Municipal Home Rule Law, which requires a public referendum to change the method of nominating, electing, or removing an elective officer.

The trial court erred on all these grounds as well as on the threshold issue of standing. Voters, elected officials, and political parties do not suffer a cognizable injury from the expansion of the electorate, and they do not have standing to challenge the rights of their neighbors and constituents to vote. Further, their claims do not fall within the zone of interests of New York State Constitution, Election, or Municipal Home Rule Law. The trial court erred in finding that expansion of the municipal electorate was an injury capable of redress by the courts.

Further, the trial court's holdings on the merits failed to take account of the expansive powers under New York constitutional and statutory law to adopt and amend laws relating to their local affairs of government. Neither Article II nor Article IX of the New York State Constitution impose a requirement of federal citizenship in municipal elections. Moreover, the plain text and legislative history of New York State Election Law allows for local laws to conflict with requirements of state Election Law. And the passage of the Municipal Voting Law, which did not affect the method of election but rather merely expanded the electorate, was well

within the powers of the New York City Council under the Municipal Home Rule Law.

Accordingly, the judgment of the trial court should be reversed. The Appellate Division should hold that Plaintiffs-Respondent did not demonstrate a cognizable, nonspeculative injury, and should further hold the Municipal Voting Law did not violate the New York State Constitution and was authorized by New York State Election Law and Municipal Home Rule Law.

QUESTIONS PRESENTED

1. Did the Supreme Court err in ruling that Plaintiffs-Respondents demonstrate standing to challenge the Municipal Voting Law?

The Supreme Court answered no.

2. Did the Supreme Court err in ruling that the Municipal Voting Law violates Articles II and IX of the New York State Constitution?

The Supreme Court answered no.

3. Did the Supreme Court err in ruling the Municipal Voting Law was preempted by the N.Y. Election Law § 5-102 and in overlooking the plain text and legislative intent N.Y. Election Law § 1-102, which permits "any other law" that conflicts to override certain state law provisions?

The Supreme Court answered no.

4. Did the Supreme Court err in ruling that Municipal Home Rule Law, N.Y. Mun. Home Rule L. § 23(2)(e), required that the Municipal Voting Law be passed by popular referendum even though enlargement of the electorate did not change the "method of electing officers"?

The Supreme Court Answered no.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. PASSAGE OF LOCAL LAW 11 (HEREINAFTER THE "MUNICIPAL VOTING LAW")

The law at the center of this dispute is Local Law 11 (hereinafter "the Municipal Voting Law"), a statute allowing certain noncitizen residents of New York City to register and cast ballots for municipal offices such as Mayor, City Council member, and New York City Comptroller. The Municipal Voting Law was passed by Defendant-Appellant New York City Council, the legislative body for the City of New York, on December 8, 2021.[1] Defendant-Appellant Mayor Adams returned the bill unsigned on January 10, 2022.[2] As the Municipal Voting Law was neither approved nor returned with objections within thirty days, it was deemed adopted pursuant to § 37(b) of the New York City Charter as "Local Law No. 11 of 2022" and was codified in the City Charter as the new Chapter 46-A.

[1] *See* Int. 1867-2020.

[2] *Id*.

The Municipal Voting Law created a new class of persons called "municipal voters," defined as noncitizens who are either lawful permanent residents or persons authorized to work in the United States, "who meet[] all qualifications for registering or pre-registering to vote under the election law, except for possessing United States citizenship[.]"[3] Under the law, "eligible municipal voters shall have the right to vote in municipal elections and shall be entitled to the same rights and privileges as U.S. citizen voters with regard to municipal elections."[4] The Law does not authorize such voters to participate in State or Federal elections. *See* N.Y.C. Charter § 1057-rr.

As Defendant-Appellant Mayor and Defendant-Appellant New York City Council (collectively "the City") have stated, the purpose of the Municipal Voting Law was to "enfranchise the 800,000 to 1,000,000 residents who are in the U.S. legally and live, work, and pay taxes in the City, but were not previously permitted to vote for municipal representatives because they are not U.S. Citizens." *See* Joint R. App. at 1368. Discussing the significance of their contributions to civic life, the City explained that "[t]hese new voters pay taxes and contribute to the economy through employment, purchasing, and owning businesses . . . . They attend schools, live in housing, and use public facilities, and are employed in the City, or, even, by

[3] N.Y.C. Charter § 1057-aa(a).

[4] N.Y.C. Charter § 1057-bb(a).

the City itself." *Id*. Despite these contributions, "immigrants are less likely to receive necessary social and public services due to language barriers and lack of outreach, and more likely to experience food and housing insecurity and inability to access appropriate healthcare." *Id*. The Municipal Voting Law was drafted and passed to provide authorized immigrants with the ability to have a voice in electing the officials who govern daily life in New York City.

B. CHALLENGE TO THE MUNICIPAL VOTING LAW

On January 10, 2022, Respondents filed their Complaint in *Fossella et. al v. Adams et al*. (Index No. 85007). The Complaint alleged that the Municipal Voting Law was invalid under both the New York State Constitution and under statutory provisions of the Election Law and the Municipal Home Rule Law and sought declaratory and injunctive relief. They filed their claims against both New York City Council and Mayor Eric Adams as well as the New York City Board of Elections.

On April 11, 2022, nine individual New York City residents, immigrants who would be entitled to register and vote in municipal elections under the Municipal Voting Law, (hereinafter "Defendants-Intervenors-Appellants") filed a motion to intervene as defendants. NYSCEF No. 36. Defendants-Intervenors-Appellants Hina Naveed, Carlos Vargas-Galindo, Abraham Paulos, Emili Prado, Eva Santos Veloz, Melissa John, Muhammad Shahidullah, Angel Salazar, and Jan Ezra Undag, who are lawful permanent residents or other noncitizens authorized to work in the United

States, reside in five boroughs of New York City. No party opposed the motion to intervene, and on April 13, 2022, the trial court granted intervention. NYSCEF No. 51.

On May 9, 2022, the City, Respondents, and Appellants each cross-filed motions for summary judgement. Joint R. App. 1559-1588; 1498-1521; 1359-1390. On May 27, 2022, each party filed their respective answers opposing each other's contentions and on June 3, 2022, the parties filed their replies. *See* Joint R. App. 1619-1642; 1718- 1744; 1648-1676; 1761-1777; 1778-1794; 1795-1810. Oral arguments were held on June 7, 2022, on Motions 004, 005, and 006.The trial court reserved decision. Joint R. App. 9-22.

C. THE TRIAL COURT'S RULING

On June 27, 2022, the trial court issued an opinion and order invalidating the Municipal Voting Law on several grounds. *Id*. First, the court held that Respondents had standing. *Id*. at 16. Second, the court found that the Municipal Voting Law violated specific sections of Art. II and Art. IX of the New York State Constitution. *Id*. at 16-18. Third, the court held that the Municipal Voting Law was preempted by New York State Election Law (hereinafter "the Election Law") and that the "Election Law can only be preempted by inconsistent *state* laws, not local laws." *Id*. at 18-20. Fourth, the court held that Municipal Voting Law violated the state's

Municipal Home Rule Law because it conflicted with the State Constitution, Election Law and was done without a referendum. *Id*. at 20-21.

Holding that the Municipal Voting Law "violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law[,]" the trial court denied the City and Defendants-Intervenors-Appellants' motion for summary judgment and granted Respondents summary judgment. *Id*. at 22. The trial court also denied Defendants-Intervenors-Appellants' motion to dismiss for lack of standing. *Id*. at 21. And the Court permanently enjoined the City from implementing the law. *Id*. at 22.

The City filed its notice of appeal on July 22, 2022, and Defendants-Intervenors-Appellants filed a notice of appeal on July 25, 2022. Joint R. App. 6-8; 3-5.

ARGUMENT

POINT I: THE TRIAL COURT ERRED IN FINDING THAT THE NAMED PARTIES HAVE STANDING TO COMMENCE THE ACTION

Standing ensures that the judicial process is invoked only when necessary and that generalized grievances widely shared by the public are vindicated through the political process. None of the named parties established an injury in fact is "distinct from that of the general public[.]" *Brennan Ctr. for Just. at NYU Sch. of L. v. New York State Bd. of Elections*, 159 A.D.3d 1301, 1304 (3d Dep't 2018). Nor did any of

the named parties demonstrate such an injury that is "capable of judicial resolution." *Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y. 2d 761, 772-73 (1991). Further, the trial court erred in finding that Plaintiffs-Respondents demonstrated that their alleged injuries fall within the "zone of interests [to be] protected by the statute invoked." *Id.* at 772-73. This zone of interest prerequisite is crucial to ensure that groups or individuals "whose interests are only marginally related to, or even inconsistent with, the purposes of the statute cannot use the courts to further their own purposes at the expense of the statutory purposes." *Id.* at 774. In other words, the injury in fact must be more than "conjectural." *Brennan Ctr.*, 159 A.D.3d at 1305. Here, any injuries alleged by the Plaintiffs-Respondents are "abstract and theoretical" and do not confer standing to bring this action. *See Montano v. Cnty. Legislature of Suffolk*, 70 A.D.3d 203, 216 (2d Dep't 2009).

A. NAMED VOTER PLAINTIFFS-RESPONDENTS DO NOT HAVE STANDING TO CHALLENGE THE MUNICIPAL VOTING LAW

The individual voter Plaintiffs-Respondents (the "Individual Voters")[5] do not have standing to challenge the Municipal Voting Law. To establish standing, a plaintiff must demonstrate an injury in fact that falls within the relevant zone of

[5] The Individual Voters are: Vito Fossella, Joseph Borrelli, Nicole Malliotakis, Veralia Malliotakis. Andrew Lanza, Michael Reilly, Michael Tannousis, Inna Vernikov, David Carr, Joann Ariola, Vickie Paladino, Robert Holden, Michael Petrov, Wafik Habib, and Phillip Yan Hing Wong.

interests sought to be protected by the law. *Graziano v. Cnty. of Albany*, 3 N.Y.3d 475, 478-79 (2004). More specifically, "[v]oter standing arises when the right to vote is eliminated or votes are diluted." *Saratoga Cnty. Chamber of Com., Inc. v. Pataki*, 275 A.D.2d 145, 156 (3d Dep't 2000), *aff'd*, 100 N.Y.2d 801 (2003). Neither injury is present here. There is no dispute that the Municipal Voting law does not eliminate the Individual Voters' right to vote. The Individual Voters, and anyone else entitled to vote in local elections, will enjoy uninhibited access to the franchise in the same manner regardless of whether the Municipal Voting Law is enacted. Therefore, the question of standing hinges on whether the Municipal Voting Law dilutes the exercise of these Individual Voters' votes in some cognizable way. It does not. The "vote dilution" that the Individual Voters allege is a hypothetical, future injury premised on the idea that the Municipal Voting Law will lead to an expanded voter pool that will dilute votes in some meaningful way. In other words, the Individual Voters complain that they are injured because the larger the electorate, the less their votes will count. But this is not an injury, much less one that the courts can redress. If that were the case, then the Individual Voters, and every other registered voter in New York State, would have standing to challenge the state's baseline suffrage requirements on every seventeen-year-old's eighteenth birthday, after every new citizen's naturalization ceremony, or after changes to the tax code that encouraged an influx of new residents. Rather, voters suffer injury in fact that

leads to vote dilution when their votes are marginalized and "harmed compared to 'irrationally favored' voters from other districts. *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 1379 (2021) (citing *Baker v. Carr*, 369 U.S. 186, 207-08 (1962)). A voter would also have standing to challenge laws that cause "dilution by a false tally, or by a refusal to count votes from arbitrarily selected precincts, or by a stuffing of the ballot box." *Baker*, 369 U.S. at 208 (cleaned up). However, the Individual Voter Plaintiff-Respondents have not alleged any harm or injury of the sort. No distinct injury results from the "vote dilution" caused by the potential influx of additional votes. Accordingly, the Individual Voter Plaintiffs-Respondents cannot point to an injury in fact sufficient to confer standing. *See New York State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211 (2004) (explaining that the "injury in fact" requirement for standing "implies, the injury must be more than conjectural").

The Individual Voter Plaintiffs-Respondents' claims also fail to meet the zone of interest requirement, which ensures that groups or individuals "whose interests are only marginally related to, or even inconsistent with, the purposes of the statute cannot use the courts to further their own purposes at the expense of the statutory purposes." *See Soc'y of Plastics*, 77 N.Y.2d at 774. To obtain standing, "a plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Hammer v.*

Am. Kennel Club, 304 A.D.2d 74, 80 (1st Dep't 2003). To establish "an injury in fact" within the "zone of interests" protected by a constitutional guarantee, Individual Voters must demonstrate "an abridgment of the right guaranteed by the State Constitution[.]" *Burns v. Egan*, 129 Misc. 2d 130, 133 (N.Y. Sup. Ct. Albany Cnty. 1985). But having the general right to vote does not by itself entitle private citizens to institute a suit to secure by judicial determination whether a statute is valid. Moreover, "the injury-in-fact element . . . requires petitioners to establish that they have suffered or will suffer concrete harm that is distinct from that of the general public[.]" *Brennan Ctr.*, 159 A.D.3d at 1304-06 (citations and quotations omitted). The Individual Voters are simply private parties with no stake in the litigation distinguishable from the general policy interest of every voter. the general policy interest of every voter. Generalized grievances, even if widely shared by the public, without any indication of a particularized or individual injury, are not addressed through litigation, but rather are a matter for the political process. *See New York Cnty. Lawyers' Ass'n v. Pataki*, 188 Misc. 2d 776, 780-81 (N.Y. Sup. Ct. N.Y. Cnty. 2001), *aff'd sub nom. New York Cnty. Lawyers' Ass'n v. State*, 294 A.D.2d 69 (1st Dep't 2002). Further, "the fact that the issue may be one of wide public concern will not [alone] entitle a party to standing." *Rudder v. Pataki*, 246 A.D.2d 183, 186 (3d Dep't 1998), *aff'd*, 93 N.Y.2d 273 (1999). The harm alleged by the Individual Voters is no more than that of a harm suffered by the eligible voting public at large; and

such a generalized grievance is insufficient to confer standing upon the Individual Voters. *See* *Town of Verona v. Cuomo*, 44 Misc. 3d 1225(A), (N.Y. Sup. Ct. Albany Cnty. 2014), *aff'd*, 136 A.D.3d 36 (3d Dep't 2015) (finding a failure to allege sufficient facts to demonstrate an injury in fact where the harm alleged was no greater than that suffered by the public at large). None of the named Individual Voter Plaintiffs-Respondents in this action have demonstrated a justiciable injury, and they therefore have no standing to challenge the Municipal Voting Law.

B. NAMED MUNICIPAL OFFICEHOLDER PLAINTIFFS-RESPONDENTS DO NOT HAVE STANDING TO CHALLENGE THE MUNICIPAL VOTING LAW

Individual municipal officeholders (the "Individual Officeholders")[6] also do not have standing to pursue this action. The trial court found that the Individual Officeholders have standing to challenge the Municipal Voting Law because it will "significantly alter the electorate of the City of New York and will force candidates to adjust the way they campaign for reelection." *Fossella v. Adams*, No. 85007/2022 (Sup. Ct. June 27, 2022). But that alleged harm is speculative at best and is not a concrete injury "distinct from that of the general public[.]" *See* *Brennan Ctr.*, 159 A.D.3d at 1304.

[6] The Officeholder Plaintiffs-Respondents are: Vito Fossella, Joseph Borrelli, and Robert Holden.

To establish standing, an injury must be "actual or imminent, not conjectural or hypothetical[.]" *Hassan v. United States*, 441 F. App'x 10, 11 (2d Cir. 2011). The Individual Officeholders' allegation that they will need to alter their strategy in order to attract or offset the influx of new voters and are thus harmed by the Municipal Voting Law is a hypothetical injury. Future injuries may only suffice if the threatened injury is certainly impending or if there is a substantial risk that the harm will occur. *See, e.g.*, *Keach v. BST & Co. CPAs, LLP*, 71 Misc. 3d 1204(A) (N.Y. Sup. Ct. Albany Cnty. 2021) (discussing that amorphous and speculative allegations of potential future injury that remain only a risk do not suffice to confer standing). For one, Plaintiffs-Respondents' argument is based on the unfounded assumptions of the political party affiliations of the new class of voters under the Municipal Voting Law. Further, the trial court did not rely on any facts that show that this expansion of the electorate is any different than the re-strategizing that occurs every year when new voters are added, when districts are changed, or when political agenda priorities shift. The Individual Officeholders' ability to campaign, organize, fundraise, and attract voters has not changed; and if their strategies and positions may have changed, they have not explained how. As the Court of Appeals has explained, "a litigant's 'someday' intentions—without any description of concrete plans, or indeed even any specification of *when* the someday will be—do not support a finding of the 'actual or imminent' injury that our cases require.'" *Ass'n for a*

Better Long Island, Inc. v. New York State Dep't of Env't Conservation, 23 N.Y.3d 1, 7 (2014) (emphasis in original) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992)). Choices about how candidate platforms or strategies develop are for campaign strategists to address and coordinate, and not for this, or any, Court to decide.

This case is not unlike *Brennan Center*. In *Brennan Center* the plaintiffs were current or former candidates for local legislative office who alleged that an Election Law loophole enjoyed by limited liability corporations ("LLCs") hampered "their electoral campaigns by placing them at a competitive disadvantage against opponents who receive larger contributions, [and thereby] damage[d] their ability to represent their constituents[.]" 159 A.D.3d at 1305. The court held that these "political injuries" were "likewise common to all candidates[.]" *Id*. Further, in finding that the candidates lacked standing, the court noted that while the plaintiffs alleged "competitive disadvantages in future electoral campaigns as a result of the LLC Loophole" this "injury [was] conjectural and, therefore, does not operate to establish standing." *Id*.

The facts here fit squarely within the principles articulated in *Brennan Center*. The injuries alleged by the Individual Officeholders, as well as by state and national partisan groups, are speculative, conjectural, and are no different than those suffered by any other political party campaigning in New York City. Expansion of the

electorate may alter the ways in which officeholders campaign for election or reelection, but that is an incontrovertible fact of the political process, not a cognizable injury. Campaign strategies will always shift to garner public support; the Municipal Voting Law does not tilt the scales in favor of one candidate or another and would not require candidates to deviate from the normal political process. In fact, Individual Officeholders' contention that this law will "place candidates who depend on citizen voters for their electoral support at a decided advantage" is entirely speculative and, as discussed, relies on baseless assumptions regarding the political party affiliations of this new class of voters. This injury does is therefore not sufficient to confer standing on the Individual Officeholders. The same is entirely speculative and conjectural and should be rejected in entirety.[7]

[7] The trial court cited *Becker v. Federal Election Commission* for the contention that a candidate for office "suffers a consequent present harm" if he or she is "forced to structure his campaign to offset this potential disadvantage" created by an election law. 230 F.3d 381, 386 (1st. Cir. 2000). But the facts in *Becker* are completely inapposite to the instant matter. The court in *Becker* addressed the disadvantages faced by a candidate who did not accept corporate funds, unlike his competitors, and was therefore forced to decline participation in a corporate-sponsored debate and compete on unequal footing. *Id.* at 389. Those circumstances have no relevance to Individual Voters' allegations that a candidate or officeholder has the right to control the composition of his or her electorate and that a cognizable injury occurs when candidates must alter their campaigns to respond to new voters.

C. NAMED POLITICAL PARTY AND PARTY CHAIR PLAINTIFFS-RESPONDENTS DO NOT HAVE STANDING TO CHALLENGE THE MUNICIPAL VOTING LAW

Plaintiffs-Respondents New York Republican State Committee, Republican National Committee, New York Conservative Party Chair Kassar, and New York Republican Party Chair Nicholas Langworthy (the "Political Party Plaintiffs-Respondents") also do not have standing to pursue this action. The trial court erred in finding that the Political Party Plaintiffs-Respondents "have standing as organizations to bring suit to the same extent as any other 'person . . . seeking to vindicate a legal right.'" Joint R. App. 9-22 (quoting *N.Y. Civ. Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012)).

To establish standing, "an organizational plaintiff must demonstrate a harmful effect on at least one of its members [and] it must show that the interests it asserts are germane to its purposes so as to satisfy the court that it is an appropriate representative of those interests[.]" *Rudder*, 93 N.Y.2d at 980 (citations and quotations omitted). In other words, the Political Party Plaintiffs-Respondents must represent individuals who will be injured by passage of the Municipal Voting Law, and they must demonstrate that they themselves have specific interests that will be harmed by the Law. They can show neither. As discussed above, the Individual Voter Plaintiffs-Respondents do not possess standing, so the Political Party Plaintiffs-Respondents do not have standing by virtue of their connections to

constituents. Nor have the Political Party Plaintiffs-Respondents demonstrated specific harm to the organizations themselves.

The trial court also found that Political Party Plaintiffs-Respondents have standing based on speculation that the Municipal Voting law will "affect their ability to campaign for office." Joint R. App. 16 (quoting *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014). The Political Party Plaintiffs-Respondents alleged that the Municipal Voting Law will "change the way they conduct their activities . . . including creating more non-English-language advertising to target non-citizen communities, [and] recruiting volunteers from non-citizen communities for canvassing and voter turnout efforts." Joint R. App. 1511-12. Some of these claims are purely hypothetical, while others are baseless. For example, it is not known what number or percentages of the new voters speak, read, or write basic English. While counties covered by the language-access provisions in Section 203 of the Voting Rights Act, are already required to use "non-English" advertising materials to ensure equitable and fair access for limited English-proficient voters, there is no such requirement on candidates or political parties.[8] Any changes that the Political Party Plaintiffs-Respondents make to attract voters enfranchised by the Municipal Voting Law will be a result of choice and strategy, not injury. The Municipal Voting Law

[8] *See* 52 U.S.C. §10503.

will affect how the Political Party Plaintiffs-Respondents assist candidates in running for election no more than the usual expansion of the electorate each year or the constant change in political agenda priority will. The Political Party Plaintiffs-Respondents fail to point to, and the trial court did not identify, any concrete, particularized, or actual harm that the Municipal Voting Law will inflict. As the injury in fact requirement for standing "implies, the injury must be more than conjectural." *Novello*, 2 N.Y.3d at 211. The Political Party Plaintiffs-Respondents have not alleged any injury capable of redress by any court. To confer standing on the Political Party Plaintiffs-Respondents and permit them to sue merely to vindicate their own value preferences through the judicial process would severely undermine goals of the standing requirement.

Because none of the named Plaintiffs-Respondents in this action have demonstrated a justiciable injury, this case should be dismissed in its entirety.

POINT II: THE TRIAL COURT ERRED IN FINDING THAT THE MUNICIPAL VOTING LAW VIOLATES THE STATE CONSTITUTION

A. ART. II, § 1 OF THE NEW YORK STATE CONSTITUTION DOES NOT APPLY TO MUNICIPAL ELECTIONS

The trial court erred in finding that the Municipal Voting Law violates Article II, Section 1 of the New York State Constitution. That provision provides that:

> Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over

> and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.

N.Y. Const. art II, § 1. As a threshold matter, the suffrage requirements set forth in Article II, Section 1 of the New York State Constitution do not apply to local elections, much less dictate who can vote in those elections. The New York Court of Appeals has held repeatedly that Article II, Section 1 applies only to general elections relating to the governmental affairs of the whole state and ***not*** to local elections. *See* *Spitzer v. Vill. of Fulton*, 172 N.Y. 285, 285 (1902) (stating that Article II, Section 1 "is general and relates only to the general governmental affairs of the state"); *In re Carrick*, 183 A.D. 916, 916 (4th Dep't 1918), *aff'd*, 223 N.Y. 621 (1918) ("provision of section 1 of article 2 of the Constitution . . . applies only to such propositions as relate to the general governmental affairs of the state, and not to local affairs or municipalities"). Accordingly, Article II, Section 1 has been applied to govern only general elections relating to governmental affairs of the whole state, *see* *Turco v. Union Free Sch. Dist. No. 4, Town of N. Hempstead*, 43 Misc. 2d 367, 368 (N.Y. Sup. Ct. Nassau Cnty. 1964), *aff'd*, 22 A.D.2d 1018 (2d Dep't 1964), *appeal denied*, 16 N.Y.2d 483 (1965), but not to restrict the form of local elections, *see, e.g.*, *Esler v. Walters*, 56 N.Y.2d 306, 314 (1982) (holding that a local law may limit voter eligibility to landowning residents in certain types of special elections).

Because Article II, Section of the New York State Constitution applies only to statewide general elections, the Municipal Voting Law does not violate the New York State Constitution.

B. ART. II, § 1 OF THE NEW YORK STATE CONSTITUTION DOES NOT IMPOSE ANY FEDERAL CITIZENSHIP REQUIREMENT

Even if Article II, Section 1 somehow applies to municipal elections—which it does not—it does not require that voters in New York elections be United States citizens. As an initial matter, legislative enactments are accorded a "strong presumption of constitutionality." *White v. Cuomo*, 38 N.Y.3d 209, 216 (2022). Accordingly, they are struck down only as a last unavoidable result, and the party challenging a duly enacted statute faces "the initial burden of demonstrating [its] invalidity 'beyond a reasonable doubt.'" *Id.* (citations omitted). Respondents cannot meet this burden: neither plain meaning nor legislative history supports the strained interpretation they proffer restricting Section 1's mandate to federal citizens only.

a. Plain meaning of the word "citizen" under Article II, Section 1 does not limit the Section to federal citizens.

To begin, the plain language of the provision does not support the interpretation that the word "citizen" as used in Article II, Section I means only "citizen of the United States." If the terms of a statute are "clear and unambiguous," the court must "construe it so as to give effect to the plain meaning of the words used." *Orens v. Novello*, 99 N.Y.2d 180, 185 (2002) (citation omitted). Where, as

here, "the term at issue does not have a controlling statutory definition, courts should construe the term using its 'usual and commonly understood meaning.'" *Id.* at 185-86 (citation omitted). Since Article II does not define "citizen," recourse to the term's "dictionary definition does give some assistance." *Id.* at 186. The Merriam-Webster Dictionary defines a citizen as (1) "an inhabitant of *a city or town*," (2) "a member of *a state*," or (3) "a native or naturalized person who owes allegiance to *a government* and is entitled to protection from it." Merriam–Webster's Dictionary 226 (11th ed. 2020) (emphasis added). Black's Law Dictionary defines a citizen as "Someone who, by either birth or naturalization, is a *member of a political community*, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of *the civil state*, entitled to all its privileges." Black's Law Dictionary (11th ed. 2019) (emphasis added). These definitions demonstrate that the word "citizen" is amorphous and encompassing.[9] Unless the

[9] The United States Constitution, too, does not equate the word "citizen" with only federal citizenship. Rather, it articulates the concept of state citizenship as distinct from Unite States citizenship. *See* U.S. Const. art. IV, § 2, cl. 1 ("The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."). As the Supreme Court has explained, the applications of the word are myriad and shifting, depending on the context:

> Citizens are the members of the *political community* to which they belong . . . . We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own . . . . The same person may be at the same time a citizen of the United States and a citizen of a State,

state or political community is specified, "citizen" cannot be understood as restricted to membership to a particular political community, let alone to represent only *federal* citizenship. Tellingly, the Black's Law dictionary entry also contrasts the general term "citizen" with sub-entries such as "birthright citizen," "citizen by naturalization," "federal citizen," and "natural-born citizen." Section 1 employs none of these limiting phrases.

The absence of any narrowing condition in the Article II, Section 1's text demonstrates that the provision is not limited to federal citizens. The drafters could have employed the terms "federal citizen" or "citizen of the United States," but chose not to. "Where a statute describes the particular situations in which it is to apply and no qualifying exception is added, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." *Matter of Jose*

> but his rights of citizenship under one of these governments will be different from those he has under the other.

United States v. Cruikshank, 92 U.S. 542, 549 (1875) (emphasis added). Accordingly, a host of legislative enactments and court decisions construe "citizen" as denoting state citizenship. As the court in *Halaby v. Board of Directors of University of Cincinnati* describes, "the term, 'citizen,' is often used in legislation where 'domicile' is meant and where United States citizenship has no reasonable relationship to the subject matter and purpose of the legislation in question." 162 Ohio St. 290, 293 (1954) (listing cases where "citizenship" was construed as synonymous with state residence or domicile); *see, e.g.*, *Crosse v. Bd. of Sup'rs of Elections of Baltimore City*, 243 Md. 555, 561 (1966); *Vachikinas v. Vachikinas*, 91 W. Va. 181 (1922); *McKenzie v. Murphy*, 24 Ark. 155, 159 (1863).

R., 83 N.Y.2d 388, 394 (2d Dep't 1994) (internal quotation marks omitted). "[I]f the drafters had wished to adopt [a] special definition of "[citizens]," they would have had to incorporate it explicitly into the constitutional amendment. The drafters did not do so, thereby giving rise to the inference that its omission was intentional." *Hernandez v. State*, 173 A.D.3d 105, 112 (3d Dep't 2019) (holding that there was no basis for reading a limited definition of "employees" into Article I, Section 17 of the New York Constitution). Here, application of plain language principles leads "to the inescapable conclusion that the choice to use the broad and expansive word '[citizens]' . . . without qualification or restriction, was a deliberate one that was meant to afford the constitutional right . . . to any person who fits within the plain and ordinary meaning of that word." *Id.*

Had the New York legislature intended for "citizen" to mean "citizen of the United States," it would have expressly said so—as it has done in other parts of the Constitution. Indeed, there are several other provisions, unrelated to suffrage requirements, where the New York Constitution expressly requires that the individual not just be a citizen, but a "citizen of the United States." *See, e.g.*, N.Y. Const. art. III, § 7 ("No person shall serve as a member of the legislature unless he or she is ***a citizen of the United States***") (emphasis added); *see also, id.* art. IV, § 2 ("No person shall be eligible to the office of governor or lieutenant-governor, except ***a citizen of the United States***") (emphasis added). And where the New York

Constitution invokes the word "citizen" without any federal qualifier, it clearly indicates *state* citizenship, with United States citizenship bearing "no reasonable relationship to the subject matter and purpose of the legislation in question." *Halaby*, 162 Ohio St. at 293. Indeed, the very first provision of the Bill of Rights clearly links the term "citizen" with New York state citizenship, stating: "No member ***of this state*** shall be disfranchised, or deprived of any of the rights or privileges secured to ***any citizen thereof***[.]" N.Y. Const. art. I, § 1 (emphasis added). Article I, Section 8 likewise provides, without qualification, that "***Every citizen*** may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right[.]" *Id.* § 8 (emphasis added). In conjunction with the plain meaning laid out in Section 1, the Court of Appeals has interpreted Section 8 to guarantee the free speech right to citizens of the state. *See O'Neill v. Oakgrove Constr., Inc.*, 71 N.Y.2d 521, 529 n.3 (1988) ("Article I, § 8 of the Constitution assures, in affirmative terms, the right of *our citizens*") (emphasis added).

Contrary to the plain text and these indications that "citizen" in the state constitution means citizen of the state, Respondents urge an interpretation of "citizen" that would eviscerate the rights and privileges guaranteed to *all* New York citizens by Article I, Section 1. Such a reading not only is repugnant to the protective purpose of the Constitution but would prevent a consistent construction that "harmonize[s] [its] several parts." *People ex rel. McClelland v. Roberts*, 34 N.Y.S.

641 (Sup. Ct. 1895), *aff'd*, 36 N.Y.S. 677 (Sup. Ct. 1895), *aff'd*, 148 N.Y. 360 (1896); *see, e.g.*, *Griffin v. Sirva, Inc.*, 29 N.Y.3d 174, 191 (2017) (applying presumption of consistent usage to interpret different parts of statute).

Judicial interpretation of the Article II, Section 1 by New York courts further confirms that the provision's use of "citizen" means citizen of the state. The Fourth Department has stated that the age and residency voting requirements in Article II, Section 1 apply to "citizen[s] of the State of New York." *Rabin v. Onondaga Cnty. Bd. of Elections*, 37 A.D.2d 471 (4th Dep't 1971), *rev'd on other grounds by Atkin v. Onondaga Cnty. Bd. of Elections*, 30 N.Y.2d 401 (1972). A similar statement can be found in a dissenting opinion of Court of Appeals Judge Fuchsberg in which he argued that a local ordinance that restricted participation in a local election to property-owning residents was unconstitutional. *See Esler*, 56 N.Y.2d at 315. Without the definition of "citizen" at issue, Judge Fuchsberg said of Article II, Section 1, that the "guarantee of the right to vote is available to *New York citizens*[.]" *Id.* at 316 (emphasis added). There was no opposition from the majority on this point. *Id.* at 309-14.

An inclusive reading of the phrase "every citizen" as used in Section 1 comports with the legislative purpose behind this constitutional provision—the expansion of the right to vote. Rather than restrict those who could vote in New York, Article II, Section 1 was originally designed and has been since amended to

remove restrictions to allow for more New Yorkers to engage in the electoral process. Indeed, New York courts have recognized that "[t]he enactment of section 1 of article II of the New York Constitution had ***as its purpose the removal of disqualifications*** which had formerly attached to the person of the voter . . . . The amendment of section 1 of article II greatly broadened and liberalized the general qualifications voters now need to possess in order to vote in this State." *Kashman v. Bd. of Elections of Onondaga Cnty.*, 54 Misc. 2d 543, 545 (N.Y. Sup. Ct. Onondaga Cnty. 1967). Construing "every citizen" as a cap on the voter base, as the Richmond County court did, subverts both the plain text and the spirit of the enactment.

Finally, notwithstanding any dispute over the meaning of "citizen," nothing in Article II, Section 1 limits the right to vote to citizens alone. The text simply provides that "[e]very citizen" shall be entitled to vote, on the condition that the citizen meets a list of qualifiers, which are clearly demarcated following the words, "provided that." The words "every citizen" are a floor, not a ceiling. Had the drafters wished to prevent noncitizens from enjoying the right to suffrage, they could easily have employed the alternate phrase, "only citizens." Notably, they did not, nor have they in subsequent attempts to revise the Article's language as such. Indeed, a recent bill proposing such an amendment was introduced to no success. *See* 2021 New York Assembly Bill No. 9095, New York Two Hundred Forty-Fourth Legislative Session.

The plain language of the provision is decisive: the fact that Article II, Section 1 uses the word "citizen" but does not expressly state "citizen of the United States" evinces the legislative intent that the word "citizen" as used in Article II does not mean "citizen of the United States." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (courts should not interpret any statutory provision in a way that would render it or another part of the statute inoperative or redundant); *Koch v. Mayor of City of N.Y.*, 152 N.Y. 72, 85 (1897) (construing a provision so that "the Constitution [is] saved from the imputation of meaningless surplusage or idle repetition."); *Henry & Pierce v. Bank of Salina*, 5 Hill 523, 539 (N.Y. 1843) ("These latter words, if the rule of interpretation now insisted upon be correct, are utterly destitute of all force, and amount to nothing more than a 'vain repetition'—mere idle surplusage."); *Boswell v. Sec. Mut. Life Ins. Co.*, 119 A.D. 723, 727 (3d Dep't 1907) ("It should be so construed if possible as to give force and effect to the entire phraseology and not so as to render some portion thereof meaningless or surplusage.").

b. Legislative intent clarifies that Article II, Section 1 does not apply only to federal citizens.

At one-point, qualifying language was used to cabin the definition of citizen in Section 1, but that language has since been removed. *Compare* N.Y. Const. art. II, § 1, before 1966 (requiring a person to be a citizen "at least ninety days prior to the day of election" in order to vote); *Haub v. Inspectors of Election in 12th Election*

Dist. of 37th Assembly Dist. of State of N.Y., 126 Misc. 2d 458, 460 (N.Y. Sup. Ct. Queens Cnty. 1984) (construing this earlier requirement as a "90-day waiting period for naturalized citizens"); *Matter of Phillips (Hubbard)*, 284 N.Y. 152, 158 (1940) (same) *with* N.Y. Const. art. II, § 1 (stating that "[e]very citizen shall be entitled to vote). Following the removal of the 90-day waiting period as a requirement for voting, there is no indication that Article II, Section 1 as amended means for the term "citizen" to refer solely to United States citizen, as its predecessor once did. Further, a proposal to reintroduce a United States citizenship restriction to the voting requirements of Section 1 was rejected by voters in 1967. *See Official Text of the Proposed Constitution to the State of New York*, 7 (Nov. 7, 1967), https://heinonline.org/HOL/Page?collection=nycowconst&handle=hein.cow/oftxpcstny0001&id=9&men_tab=srchresults. Subsequent amendments to Article II, Section 1 in 1995 and 2001 have neither reinserted this qualifying language nor added any other limiting language that would otherwise narrow the interpretation "citizen" to mean only "citizen of the United States." Again, this omission is revealing. Reinsertion of qualifying terms that the drafters deliberately removed and voters expressly rejected would be regressive and contrary to legislative intent.

In sum, because Article II, Section 1 does not limit voters to "citizens of the United States," the Municipal Voting Law does not violate the New York State Constitution.

C. ART. IX OF THE NEW YORK STATE CONSTITUTION DOES NOT IMPOSE A FEDERAL CITIZENSHIP REQUIREMENT

The trial court erred in finding that the Municipal Voting Law violates Article IX, Section 1 and § 3 of the New York State Constitution. Article IX, § 1 of the New York State Constitution states:

> Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have the power to adopt local laws as provided by this article.

N.Y. Const. art. IX, § 1(a). "Local government" is defined by Article IX, § 3(d)(2) as "[a] county, city, town or village." *Id.* § 3(d)(2). The "people" is defined within Article IX, § 3(d)(3) as "[p]ersons entitled to vote as provided in section one of article two of this constitution." *Id.* § 3(d)(3). In analyzing the language of Section 3(d)(3), the court below did not quote the Section's first sentence, leaving out a provision critical to understanding the broad definitions they are meant to encompass. Joint R. App. 9-22. In fact, Section 3(d)(3) of Article IX states: "Whenever used in this article the following terms shall mean ***or include*** . . . ." and goes on to list a series of terms, among them, the term "People." N.Y. Const. art. IX, § 3(d)(3) (emphasis added). The use of the phrase "mean or include" makes clear that the definition of the "People" eligible to vote in local elections was not intended to be limited to the citizen voters of Article II, Section 1.

As discussed *supra*, Article II, Section 1 does not impose a federal citizenship requirement on otherwise eligible voters in New York. Accordingly, "people" as used in Article IX likewise does not refer to U.S. citizens. Rather, the term "people" in Article IX refers to "people" of the local government. *See* N.Y. Const. art. IX, § 1(a)-(b) ("Every local government, except a county wholly included within a city, shall have a legislative body elective ***by the people thereof*** . . . (b) All officers of every local government whose election or ***appointment is not provided for by this constitution*** shall be elected ***by the people of the local government***[.]") (emphases added).[10]

Lastly, Article IX, § 3 states: "Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed." N.Y. Const. art. IX, § 3(c). Thus, a liberal construction of the term "people" would be in

[10] *See, e.g.*, *Dworsky v. Farano*, 41 N.Y.2d 780, 781 (1977) (finding that article IX, § 1(b) stands for the premise "that the State Constitution vests local government with the right to confer upon their officers the authority to appoint other officers of local government."); *Resnick v. Ulster Cnty.*, 44 N.Y.2d 279 (1978); *Carey v. Oswego Cnty. Legislature*, 91 A.D.2d 62 (3d Dep't 1983).

Moreover, the term "People" was meant to be inclusive. Section 3(d)(3) of Article IX states: "Whenever used in this article the following terms shall mean or include . . . ." and goes on to list a series of terms, among them, the term "People." N.Y. Const. art. IX, § 3(d)(3). The use of the phrase "mean or include" makes clear that the definition of the "People" eligible to vote in local elections was not limited to the U.S. citizen voters of Article II, Section 1.

keeping with the permissive spirit of Article IX by empowering local governments to expand the franchise for elections bearing on matters of local concern.

In sum, because Article IX, Section 1 and 3 does not limit voters to "citizens of the United States," the Municipal Voting Law does not violate the New York State Constitution.

POINT III: THE TRIAL COURT ERRED IN HOLDING THAT THE MUNICIPAL VOTING LAW IS PREEMPTED BY NEW YORK STATE ELECTION LAW

The trial court held that the "Election Law can only be preempted by inconsistent state laws, not local laws." *See* Joint R. App at 20. But this statement misreads the scope of N.Y. Election Law § 1-102 (hereinafter "§ 1-102"), which permits local laws to conflict with the N.Y. Election Law § 5-102(1) (hereinafter "§ 5-102(1)"). The court's determination regarding the scope of § 1-102 disregards the plain text of § 1-102, is not supported by the legislative history, and conflicts with other court findings that § 1-102 is inclusive of local laws.

The standard for determining the meaning of a statute is well established, and the court disregarded these well-founded principles in finding the Municipal Voting Law preempted by State Election Law. The Court of Appeals has been clear that "[t]o interpret a statute, [a court must] first look to its plain language, as that represents the most compelling evidence of the Legislature's intent." *Tompkins Cnty. Support Collection Unit ex rel. Chamberlin v. Chamberlin*, 99 N.Y.2d 328, 335

(2003). Further, the "the legislative history of an enactment may also be relevant and 'is not to be ignored, even if words be clear.'" *Id.* (quoting *Riley v. Cnty. of Broome*, 95 N.Y.2d 455, 463 (2000)). Ultimately, "[t]he primary goal of the court in interpreting a statute is to determine and implement the Legislature's intent." *Id.*

The trial court erred in analyzing the applicability of § 1-102 to inconsistent local law. The court's reading of § 1-102 to allow only for inconsistent state laws, not inconsistent local laws, contravened traditional principles of statutory interpretation by ignoring the plain text of § 1-102, by ignoring crucial pieces of legislative history, and by overlooking court findings that found § 1-102 to be inclusive of local laws.

A. THE TRIAL COURT DISREGARDED THE PLAIN TEXT OF § 1-102, WHICH ALLOWS FOR LOCAL LAWS SUCH AS THE MUNICIPAL VOTING LAW TO CONFLICT WITH THE ELECTION LAW

Section 1-102 governs the applicability of Election Law and addresses when other laws that are inconsistent with § 5-102(1) may apply. N.Y. Election Law § 1–102 states:

> This chapter shall govern the conduct of all elections at which voters of the state of New York may cast a ballot for the purpose of electing an individual to any party position or nominating or electing an individual to any federal, state, county, city, town or village office, or deciding any ballot question submitted to all the voters of the state or the voters of any county or city, or deciding any ballot question submitted to the voters of any town or village at the time of a general election. *Where a specific*

> *provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law.*

N.Y. Elec. Law § 1–102 (emphasis added). Thus, the plain text of § 1-102 allows for "any other law" that is inconsistent with § 5-102(1) to prevail unless otherwise specified. The plain meaning of "any other law" is not specific to state laws; instead, it includes local laws such as the Municipal Voting Law.

The trial court disregarded this plain text. *See* Joint R. App. at 18-20. Instead of acknowledging the plain meaning of this text, the court adopted the legislative history analysis set forth in a state Supreme Court case, *Castine v. Zurlo*, 46 Misc. 3d 995 (N.Y. Sup. Ct. Clinton Cnty. 2014). The *Castine* court, evaluating a local law that disqualified election commission employees from running for local office, concluded the State Election Law did not permit local laws that conflicted with the Election Law, because the 1976 amendments to the Election Law were intended to "eliminate obsolete and conflicting provisions therein" and not "to make substantive changes to the law."[11] As discussed *infra*, *Castine* is the lone authority standing for this interpretation, and it directly contravenes the plain text of the statute. N.Y. Elec. Law § 1-102. While § 5-102(1) states: "No person shall be qualified to register for

[11] Joint R. App. at 18-20 (quoting *Castine*, 46 Misc. 3d at 100).

and vote at any election unless he is a citizen of the United States," notably missing from this provision is any language stating that § 5-102(1) "shall apply notwithstanding any other provision of law." Without such carve-out language, a local law inconsistent with this provision may prevail. N.Y. Elec. Law § 5-102(1); N.Y. Elec. Law § 1-102. Because § 5-102(1) does not explicitly prevent local laws from conflicting, the Municipal Voting Law is not preempted by Election Law. *Id*.

B. THE LEGISLATIVE HISTORY SUPPORTS A FINDING THAT THE LEGISLATURE INTENDED TO ALLOW LOCAL LAWS TO CONFLICT WITH THE ELECTION LAW

The trial court overlooked crucial elements of the legislative history of § 1-102 in holding that the Legislature did not intend the phrase "any other law" to allow for inconsistent local laws. A full look at the legislative history in facts supports a reading that inconsistent local laws are permissible.

First, one of the bases for the current version of § 1-102 was the Election Law of 1922, c. 588, which contained multiple sections governing the applicability of the Election Law. Section 130 is particularly notable; it contained explicit language providing that local laws would not be affected by the passage of the state Election Law: "[T]his article shall not repeal nor affect the provisions of a statute, *general or local*, prescribing a particular method of making nominations of candidates for certain school or city offices." N.Y. Elec. Law § 130 (1922) (emphasis added). The

legislature thus openly contemplated and expressly permitted local laws to conflict with state Election law at the time of passage.

In 1976 the State legislature recodified the Election Law twice.[12] Those recodifications, seeking to consolidate sections of the previous Election Law, made several changes to the Election Law, including creating § 1-102.[13] In the first iteration of § 1-102, the Legislature acknowledged the existence of school board elections throughout the state, including in New York City, by expressly providing for school board elections to conflict with state Election Law. "Where a **specific provision of law exists in the education law**, which is inconsistent with the provisions of this chapter, such provision shall apply." 1976 N.Y. Laws ch. 233 (emphasis added).

At that time, and since 1968, local school board elections, governed by New York State Educ. Law § 2590-c, permitted "every registered parent of a child attending any school under the jurisdiction" of the school board "who is a citizen of the state, a resident of the city of New York for at least 30 days and at least eighteen years of age shall be eligible to vote." N.Y. Educ. Law § 2590-c(3) (1969). The Education Law provision excluded only those New York residents barred from

[12] 1976 N.Y. Laws ch. 233

[13] *Id*.

voting by § 5-106, an Election Law excluding certain categories of voters that notably contained no discussion of citizenship status. Thus, noncitizens who resided in New York and had children registered in New York City's public schools were eligible to register and vote in local school board elections, and indeed did so for decades. *See* Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage*, 141 U. Pa. L. Rev. 1391 (April 1993). In 2003, when New York City's school boards were dissolved through changes to the education law and the centralization of public-school decision making in an executive Department of Education, voting for school board officers ended—for all New York City residents and parents, citizen and non-citizen alike. N.Y. Session Law of 2002 ch. 91.

Accordingly, § 1-102, from its inception, expressly permitted state education law to conflict with the Election Law. But this language, codified in Chapter 233 of the Laws of the State of New York of 1976, lasted only a few months. In the very same year, the State Legislature adopted new language in § 1-102, to broaden the category of laws that could conflict with the Election Law. Chapter 234 of the Laws of the State of New York of 1976 now provided for § 1-102 to read: "Where a specific provision of law exists in **any other law which is inconsistent with the provisions of this chapter**, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any

other provision of law." 1976 N.Y. Laws ch. 234 (emphasis added). This shift in language evinced the Legislature's intent to allow for more than just school board elections to conflict with state Election Law; instead, it allowed "any other law"—with no caveat identifying just state laws—to conflict with provisions of state election law unless those provisions specified otherwise. That this language was intended to include not just inconsistent state laws is obvious, because New York State Education Law in 1976 *still provided for school board elections*. If "any other law" were intended to be limited to just state law conflicts, this language change would have prohibited noncitizens from voting in local school board elections—a major, substantive change that did not occur. *See* Raskin, *Legal Aliens, Local Citizens*, 141 U. Pa. L. Rev. 1391, *supra*. Absent any qualifying language in § 1-102 to exclude local laws, it is reasonable to presume that the legislature did in fact intend to allow for local laws to conflict. *Id.*

The bill jackets to the amendments do not undermine this broader reading. The 1976 Ch. 233 Bill Jacket describes the law as "[a]n act in relation to the [E]lection law, recodifying the provisions thereof," and includes testimonial letters raising concerns or objections to different aspects of the bill; none of those objections touch on the scope of § 1-102 and its applicability to state or local laws.[14] The 1976

[14] *Id.*

Ch. 234 Bill Jacket similarly states that the bill "makes many technical and typographical corrections . . . [and] also eliminates a few of the substantive changes in existing law which are made by the recodification by returning to existing law . . . [and] also makes several changes from existing law."[15] None of the language in this Bill Jacket or letters[16] touches upon the scope of § 1-102. The inconclusive nature of the bill jackets[17] does not demonstrate that the Legislature intended "any other law" to be read narrowly.

In 1978, the legislature passed an amendment to § 1-102 which clarified that Election Law would not apply to school district elections unless specifically provided by the Election or Education Law. 1978, ch. 374 Bill Jacket (N.Y. 1978). As the bill jacket stated, the Legislature believed "it is possible that the present

[15] *See also* N.Y. State Bill Jackets 1976 Ch. 234:

https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1_ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2_ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3_ss%3A%221970s%22%3E%3Ebrowse4_ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1_lib

[16] *See* Joint R. App. at 20 (citing letters by the State Board of Elections, Association of the Bar of the City of New York and League of Women Voters of New York State as definitive proof of that the 1976 ch. 234 changes "were not intended to make substantive changes.").

[17] *Supra* note 10.

statute could be construed to require that the election law applies to school district elections," a plainly non-state election. *Id.* In adding language clarifying the applicability of the Election Law,[18] the Legislature notably left untouched the phrase "any other law," leaving open the possibility that local laws could conflict with the Election Law. *See* N.Y. Session Law 1978 ch. 374.

The 1978 Bill Jacket is particularly instructive in discerning the Legislature's preference for local control of local elections. *See* Bill Jacket of N.Y Laws of 1978 ch. 374. In its Memorandum of Support, the Legislature provides numerous statements of its preference for localized control of local elections, recognizing that "[t]he unintended expansion of the application of the Election Law contained in § 1-102 has created many questions and problems for local boards of elections and local officials . . . ." *Id.* at 5. It further acknowledged that "[s]trictly adhering to all provisions of the Election Law in conducting [local] elections is both unnecessary

[18] The clarifying language added by the legislature reads, "[t]his chapter shall govern the conduct of all elections at which voters of the state of New York may cast a ballot for the purpose of electing an individual to any party position or nominating or electing an individual to any federal, state, county, city, town or village office, or deciding any ballot question submitted to all the voters of the state or deriding any ballot question submitted to the voters of any county, city, town or village it the time of a general election." This amendment removed previous language stating, "This chapter shall govern the conduct of all elections at which voters of the state of New York may cast a ballot for the purpose of electing an individual to any office be deciding any matter where on it vote of its citizens is required or permitted."

and a waste of taxpayer money." *Id*. at 6. The Memorandum concludes by clarifying that "[o]f course it would still be possible for other elections to be conducted in accordance with the Election Law if the law authorizing such election so provides." Taken together, these statements evince the legislature's intent to allow for local laws to conflict with the Election Law.

Consistent with these indicia of legislative intent, in 1980, the State Attorney General's Office released an opinion clarifying that § 1-102 included local laws. *See* Opinion to James H. Eckl, Esq., 1980 N.Y. Op. Atty. Gen. (Inf.) 109 (1980) (concluding that "any other law" in § 1-102 includes Village laws and stating that local law would control because the Election Law "contains no provision making it applicable notwithstanding any other provision of law.") Similarly, in 1991, the legislature passed an amendment clarifying that "election law governs the conduct of all elections deciding any ballot question submitted to all voters *of a city or county* to the extent not inconsistent with relevant provisions of other laws." L. 1991, ch. 727 Bill Jacket (N.Y. 1991) (emphasis added). As in 1976, the 1991 amendment did not disturb the broad scope of § 1-102 or narrow the categories that could conflict with the Election Law to just state law. The trial court misread this history. It ruled that the insertion of the phrase "any other law" was ministerial and did "not change the intent of the provision and its applicability to state laws, rather than local laws." To justify this conclusion, the trial court surmised that all 1976 amendments were

"intended to correct oversights and did not make any substantive changes." *Id*. But in fact the "any other law" language, inserted into § 1-102 so soon after the Legislature provided for inconsistent education laws, indicates that the intent was to broaden the flexibility of local governments to maintain or enact local laws inconsistent with state Election Law. The trial court reasoned that it "need not look [further] to the legislative intent of [§ 1-102] to know there is no carve-out for non-citizens to vote under the Election Law." *Id*. But in failing to look at the full legislative history, the trial court ignored crucial pieces of legislative history demonstrating an intent to allow local laws to conflict with the Election Law.

At best, the full legislative history shows that the applicability of § 1-102 to solely state law is not well established. Review of the full history does not demonstrate conclusively that it was intended to be solely applicable to state law. Indeed, the history of the 1922 law, and the amendments in the century since, provide numerous examples of the legislature accepting more expansive readings of § 1-102 and the phrase "any other law." Thus, the trial court erred in holding that the intent of the Legislature was to allow only state laws to conflict with the Election Law.

C. THE COURT OVERLOOKED CONTRARY PRECEDENT HOLDING THAT ELECTION LAW § 1-102 ALLOWS FOR INCONSISTENT LOCAL LAWS

The trial court cited just one authority for its holding that § 1-102 applies only to inconsistent state laws: a lone lower-court decision from Clinton County, New

York, *Castine v. Zurlo*, 46 Misc. 3d at 1001 (hereinafter "*Castine*"). *See* Joint R. App. at 18-19. In holding that § 1-102 was only applicable to any other state law, the trial court adopted the *Castine* court's assessment of the legislative history of § 1-102 and ignored contrary state court decisions. *Id*. at 19. Those decisions provide ample support for a reading of § 1-102 is best understood to permit not just state laws, but also local laws that are inconsistent with the Election Law.

While the New York Court of Appeals has not authoritatively concluded that the phrase "any other law" in § 1-102 should be understood to include local laws, several courts that have considered the question have concluded that the phrase "any other law" in § 1-102 should be understood to authorize local laws that are inconsistent with the Election Law. For example, in *N.Y.P.I.R.G.—Citizen's Alliance v. City of Buffalo*, 130 Misc. 2d 448 (N.Y. Sup. Ct. Erie Cnty. 1985), the Court held that petitioners could not rely on Election Law to invalidate a provision of the Buffalo City Charter, because "Election Law was unavailable to these Petitioners" under § 1-102, which "render[s] itself inapplicable when inconsistent with any other law[.]" *Id*. at 449. Similarly, in *McDonald v. New York City Campaign Finance Board*, 40 Misc. 3d 826, 840 (N.Y. Sup. Ct. N.Y. Cnty. 2013), the New York County Supreme Court found "persuasive" New York City's argument that § 1-102 permitted local laws that might be inconsistent with State Election Law. In doing so,

it specifically addressed legislative history: "[N]ot only did the legislature specifically reenact § 1-102, it even chose to amend and extend its scope." *Id.* at 840.

Finally, in *City of New York v. New York City Board of Elections*, No. 41450/91, 1991 N.Y. Misc. LEXIS 895 (N.Y. Sup. Ct. Apr. 3, 1991), *aff'd*, 1991 N.Y. App. Div. LEXIS 18134 (1st Dep't Apr. 5, 1991), the Supreme Court of New York County upheld the charter revisions, finding no contradiction between the Election Law and the charter revision. The analysis in this case is perhaps the most helpful to an assessment of the validity of the Municipal Voting Law here. *City of New York v. New York City Board of Elections* involved a controversy around the vacancy in a New York City Council district. Specifically, the plaintiff City alleged that Section 25 (b) (7) of the City Charter conflicted with multiple provisions of the Election Law. *Id.* The court, citing § 1-102, found that "[t]here is actually no conflict between city Charter § 25 (b)(7) and any provision of the Election Law," because "the Election Law gives way to inconsistent local law provisions." *Id.* Indeed, the court recognized that there was a "a policy of deference" built into the Election Law, citing the Court of Appeals decision in *Bareham v. City of Rochester*, 246 N.Y. 140 (1927). In *Bareham*, the Court of Appeals set forth the principle that "[t]he municipality is empowered to modify an election law in so far as that law affects the property, government or affairs of the municipality, *i.e.*, in so far as it affects the election of the local officers." *Id.* at 149. Adopting this principle nearly a century

later, the Supreme Court in *New York City Board of Elections* addressed and dismissed arguments claiming that the City Charter section at issue "is not a 'law' within the contemplation of Election Law § 1-102 because it is not a state statute." 1991 N.Y. Misc. LEXIS 895, at *4. As the Court held, "[t]he charter provision in question is consistent with the power to make local laws conferred upon municipalities by NY Constitution Article IX, § 2 (c) and Municipal Home Rule Law § 10 (1) (a) (1)," and the "facial plainness" of § 1-102 was inclusive of local laws. *Id*. at *5. The Appellate Division affirmed,[19] and a motion for leave to appeal at the Court of Appeals was denied[20] on the grounds that the case gave rise to no substantial constitutional question.

Ultimately, the trial court's reliance on *Castine* alone was in error. Numerous other cases have interpreted state Election Law to allow inconsistent local laws. Section 1-102 permits local laws to conflict with § 5-101, and the Municipal Voting Law should stand.

[19] *City of N.Y. v. N.Y.C. Bd. of Elections in the City of N.Y.*, No. 43026, 1991 N.Y. App. Div. LEXIS 18134 (1st Dep't Apr. 5, 1991).

[20] *City of N.Y. v. N.Y.C. Bd. of Elections*, No. 41450-91, 1991 N.Y. LEXIS 6169 (Apr. 10, 1991).

POINT IV: THE TRIAL COURT ERRED IN FINDING A PRIMA FACIE VIOLATION OF THE MUNICIPAL HOME RULE LAW, BECAUSE THE MUNICIPAL VOTING LAW IS A PERMISSIBLE EXERCISE OF LOCAL LEGISLATIVE POWER

Expanding the electorate in local elections is a permissible exercise of local legislative power, as neither the New York State Constitution nor State Election Law expressly exclude non-U.S. citizens from the right to vote. Yet the trial court held that "the Municipal Voting Law is wholly inconsistent with provisions of suffrage in the New York State Constitution and the New York State Election Law and therefore, the Municipal Voting Law violates the Municipal Home Rule Law." Joint R. App. at 21. This finding was wrong.

New York State Constitution Art. 9 § 2(b)(2) provides that "… the legislature … Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only ….". N.Y. Const. art. IX, § 2(b)(2). Article 9 § 3(a)(3) further states that "[e]xcept as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to …[m]atters other than the property, affairs or government of a local government." N.Y. Const. art. IX, § 3(a)(3). Read together, these provisions "grant[] significant autonomy to local governments to act with respect to local matters[, and] [c]orrespondingly, it limit[] the authority of the State Legislature to intrude in local affairs by requiring it to act through general or special laws." *Patrolmen's Benevolent Ass'n of City of New York Inc. v. City of New York*, 97 N.Y.2d 378, 385-

86 (2001) (internal citation and quotations omitted). When the state restricts or limits the law-making of local municipalities, the state must do so explicitly or risk violating the home rule law provisions. N.Y. Const. art. IX, § 2(b); N.Y. Const. Art. IX, § 3(a)(3).

The Municipal Voting Law is a valid exercise of local authority under the Municipal Home Rule Law, because neither the State Constitution nor State Election Law explicitly exclude non-U.S. citizens from being eligible to vote. *See* N.Y. Const. art. II, § 3; *see also* N.Y. Election Law § 5-102; N.Y. Election Law § 1-102. First, as shown in Point II (A) *supra*, New York State Constitution Article II § 3, which defines "person excluded from the right to suffrage," does not include non-U.S. citizens. Second, as demonstrated in Point III *supra*, New York Election Law § 5-102 did not explicitly exclude non-citizens as a class of ineligible voters in local elections. The Municipal Voting Law is therefore a permissible exercise of local legislative power under the New York State Constitution and Election Law. The trial court erred in finding that the Municipal Voting Law violated the Municipal Home Rule Law.

POINT V: THE TRIAL COURT ERRED IN RULING THAT THE MUNICIPAL VOTING LAW CHANGES THE METHOD OF ELECTING OFFICERS AND THUS VIOLATES

MUNICIPAL HOME RULE LAW, AND NEW YORK CITY HAS THE AUTHORITY TO ADOPT LAWS EXPANDING THE ELECTORATE WITHOUT A REFERENDUM

The trial court found that the Municipal Voting Law was invalid for a further reason: it was passed by the City Council rather than by full voter referendum. The Municipal Home Rule Law requires a local law to be subject to referendum when it "changes the method of nominating, electing or removing an elective officer."[21] But contrary to the trial court's finding, expansion of the electorate does not change the method of electing officers, and the City therefore had the authority to adopt the Municipal Voting Law.

The trial court held that "[b]y discounting the citizen requirement and increasing the number of individuals in the electorate by permitting non-citizens to vote, the method by which all municipal elective officers are elected has been fundamentally changed, requiring a referendum." Joint R. App. at 21. The trial court further held that the failure to hold a referendum invalidated the Municipal Voting Law. *Id*. But this analysis expands the word "method" far beyond its plain meaning and, if accepted, would limit New York City's authority in ways that undermine the purpose and text of the Municipal Home Rule Law. Contrary to the trial court's

[21] N.Y. Mun. Home Rule L. § 23(2)(e).

holding, it is clear that the City has the authority to adopt laws expanding the electorate without a referendum.

The New York Municipal Home Rule Law grants New York City, like other municipalities, constitutional[22] and statutory[23] authority to adopt and amend laws over local affairs. Indeed, municipal home rule has been deemed "a matter of constitutional principle" for more than a century in New York State. *Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 428 (1989). As the Court of Appeals has explained:

> Article IX of the State Constitution declares that effective local self-government and intergovernmental cooperation are purposes of the people of this State, and it directs the Legislature to provide for the creation and organization of local governments so as to secure the rights, powers, privileges and immunities granted by the Constitution.

Id. Numerous New York courts have recognized that such municipal police powers extend to enacting laws focused on purely local elections. *See Resnick*, 44 N.Y.2d at 286 ("[E]ven in the era when a very narrow interpretation was given to the home rule provisions, municipalities were accorded great autonomy in experimenting with the manner in which their local officers, including legislative officers, were to be chosen.") (internal citations omitted); *Blaikie v. Power*, 19 A.D.2d 779, 779 (1st

[22] N.Y. Const. art. IX, § 2(c)(i) ("[E]very local government shall have the power to adopt and amend local laws, not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government").

[23] N.Y. Mun. Home Rule L. § 23(2)(e).

Dep't 1963) (per curiam) (recognizing the "express vesting in the city of the broad home rule power to enact laws relating to the method and mode of election or selection of its public officers"), *aff'd*, 13 N.Y.2d 134 (1963); *Bareham*, 246 N.Y. at 149 ("The municipality is empowered to modify an election law in so far as that law … affects the election of the local officers."). The Municipal Home Rule Law lists twelve exceptions, but none impact the City's ability to pass law on who has the right to elect local candidates.[24]

Both Section 23 of the Municipal Home Rule Law and the New York City Charter[25] mandate a referendum when the locality seeks to pass a law which "abolishes an elective officer, or *changes the method of nominating, electing, or removing an elective officer*, or changes the term of an elective office, or reduces the salary of an elective officer during his term of office."[26] (emphasis added). Expanding the electorate is not a "method" of doing any of these tasks.

Indeed, challenges under this provision are construed narrowly, and courts have generally deferred to localities and the laws they choose to enact within this statutory power. The Second Department has held that despite the express language

[24] N.Y. Mun. Home Rule Law §§ 10(1)(i) & (ii); N.Y. Mun. Home Rule Law § 11.

[25] 8 N.Y.C. Charter § 38(4), (5).

[26] N.Y. Mun. Home Rule L. § 23(2)(e).

on "chang[ing] the term of an elective officer," changing the term limits without changing the length of the term itself, did not require a referendum. *Golden v. New York City Council*, 305 A.D.2d 598, 599 (2d Dep't 2003). Similarly, a local law barring an elected official from holding two offices concurrently, despite limiting what that official could do, did not actually curtail the power of an elected official, but merely changed the "eligibility" criteria for holding office, and thus did not require a referendum. *Holbrook v. Rockland Cnty.*, 260 A.D.2d 437, 438 (2d Dep't 1999). In contrast, courts have held a referendum is required when a law, on its face, explicitly violated the statutory requirements by, for example, reducing the salary of an elected official or establishing a new elective position. *Sacco v. Maruca*, 175 A.D.2d 578, 578 (4th Dep't 1991).

The court erred in holding that the Municipal Voting Law changes the method of electing officers of the City of New York. Joint R. App. at 21. Expanding the electorate does not resemble the "method" of electing officials or change the terms of their offices as do the narrow categories set forth in the Municipal Home Rule Law. The method of voting in primary election requires a voter to have a designated political affiliation while general elections allow all registered voters regardless of political affiliation, to participate. The Municipal Voting Law has not changed a single provision in how a candidate is elected for local office. Voters must still meet residency and age requirements as well as the requirements for voting in primary

and general elections to vote for their candidate of choice. No referendum was required under Municipal Home Rule Law.

Additionally, the expansion of the electorate in and of itself is not one of the categories specifically delineated under Section 23(2)(e) or the New York City Charter which triggers a referendum. Because the Municipal Voting Law is specific to the New York City electorate and the election of municipal officers in local elections, the City was well within its power under constitutional and statutory provisions to expand the category of eligible municipal voters without a referendum.

In conclusion, the Municipal Voting Law required no referendum, because it did not change the method of electing officers. The court erred in invalidating the Municipal Voting Law upon this ground.

CONCLUSION

For the foregoing reasons, the Court should reverse the Supreme Court's opinion and order invalidating the Municipal Voting Law.

Dated: October 11, 2022
New York New York

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Dated: October 11, 2022
New York New York

STATEMENT PURSUANT TO CPLR § 5531

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Plaintiffs-Respondents,

-against-

ERIC ADAMS, in his official capacity as Mayor of New York City, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, and CITY COUNCIL OF THE CITY OF NEW YORK,

Defendants-Appellants,

- and –

HINA NAVEED, ABRAHAM PAULOS, CARLOS VARGAS GALINDO, EMILI PRADO, EVA SANTOS VELOZ, MELISSA JOHN, ANGEL SALAZAR, MUHAMMAD SHAHIDULLAH, and JAN EZRA UNDAG,

Defendant-Intervenors-Appellants.

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1. The index number of the case in the court below is 85007/2022.

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

3. The action was commenced in Supreme Court, Richmond County.

4. The nature and object of the case involves the validity of Local Law 2022/011, a statute allowing certain noncitizen residents of New York City to register and cast ballots for municipal offices.

5. The action was commenced on or about January 10, 2022 by the filing of a complaint seeking to invalidate the law.

6. This appeal is from a Decision and Order of the Honorable Ralph J. Porzio, dated June 27, 2022, which permanently enjoined the implementation of Local Law 2022/011; declared Local Law 2022/011 void as violative of the New York State Constitution, the New York Election Law and the Municipal Home Rule Law; and ordered a permanent injunction prohibiting Defendants-Appellants from registering non-citizens to vote.

7. The appeal is on the full reproduced record.