

Richmond County Clerk's Index No. 85007/2002

New York Supreme Court
Appellate Division: Second Department

VITO J. FOSSELLA, NICHOLAS A. LANGWORTHY, JOSEPH BORRELLI, NICOLE MALLIOTAKIS, ANDREW LANZA, MICHAEL REILLY, MICHAEL TANNOUSIS, INNA VERNIKOV, DAVID CARR, JOANN ARIOLA, 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,

Docket No.
2022-05794

Plaintiffs-Respondents,

against

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

Defendants-Appellants,

(caption continued inside)

MOTION TO EXPEDITE AND FOR CALENDAR PREFERENCE

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October 11, 2022

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GALINDO, EMILI PRADO, EVA SANTOS VELOZ, MELISSA
JOHN, ANGEL SALAZAR, MUHAMMAD SHAHIDULLAH,
and JAN EZRA UNDAG,

Defendants-Intervenors-Appellants.

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**New York Supreme Court
Appellate Division: Second Department**

VITO J. FOSSELLA et al.,

Docket No.
2022-05794

Plaintiffs-Respondents,

against

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Defendants-Appellants.

**NOTICE OF MOTION TO EXPEDITE
AND FOR CALENDAR PREFERENCE**

PLEASE TAKE NOTICE that upon the annexed affirmation, the City appellants—the Mayor and the City Council—will move this Court, located at 45 Monroe Place, Brooklyn, New York 11201, on October 24, 2022, at 10:00 a.m., or as soon thereafter as counsel can be heard, to expedite consideration of these election-related appeals and for a calendar preference, and for such other relief as the Court may deem just and proper.

Dated: New York, New York
October 12, 2022

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**New York Supreme Court
Appellate Division: Second Department**

VITO J. FOSSELLA et al.,

Docket No.
2022-05794

Plaintiffs-Respondents,

against

ERIC ADAMS et al.,

Defendants-Appellants.

**AFFIRMATION IN SUPPORT OF MOTION
TO EXPEDITE AND FOR CALENDAR PREFERENCE**

MACKENZIE FILLow, an attorney admitted to practice in the courts of this state, affirms under the penalties of perjury as follows.

1. I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York. I submit this affirmation in support of the City appellants' motion to (a) expedite consideration of these election-related appeals and (b) grant a calendar preference. *See generally* CPLR 5521(a); 22 NYCRR § 1250.15(a)(2). The intervenor appellants consent to the requested relief. Plaintiffs-respondents and defendant-respondent Board of Elections take no position on the motion, neither consenting nor objecting.

2. These appeals are about the right to vote—a right “of the most fundamental significance.” *Matter of Walsh v. Katz*, 17 N.Y.3d 336, 343 (2011) (cleaned up). The City appellants and the intervenor appellants have perfected appeals from an order of Supreme Court, Richmond County (Porzio, J.), that struck down the City Council’s presumptively valid law enfranchising New York City residents with green cards or work authorizations for the purpose of local elections.

3. As explained in appellants’ opening briefs, Supreme Court’s ruling is deeply flawed in numerous ways. But the purpose of this motion, the more fundamental point is that there is, at a bare minimum, a substantial question as to whether the court erred in striking down the law. And against that backdrop, unduly delaying the resolution of these appeals threatens to disenfranchise nearly one million New Yorkers who would otherwise be entitled to vote in future municipal elections.

4. Time is of the essence. A special election could be called at any time in the new year, when the law was to enter into effect. And before impacted New Yorkers can actually vote, the City must first undertake significant preparatory work—like registering these voters—but Supreme Court either precluded such efforts by entering a permanent

injunction or made such efforts unwise until the cloud cast by Supreme Court's ruling is lifted. To guard against the disenfranchisement of nearly one million New Yorkers, this Court should expedite the resolution of these appeals and grant a calendar preference.

BACKGROUND

5. New York City is home to nearly a million lawfully present adults who are not U.S. citizens (Record on Appeal ("R") 303). These New Yorkers are integral to our community, contributing enormously to the economy and paying billions in taxes (R301, 303, 309). During the darkest days of the pandemic, they helped keep the City going: 20% of the City's essential workers are not U.S. citizens (*id.*). Yet they have no voice in local policies on public safety, sanitation, or housing.

6. To address this problem, the City Council exercised its home rule powers to enact Local Law 11 of 2022 (R279-89). The law allows New York City residents who hold green cards or work authorizations to vote in municipal elections only, including for mayor, public advocate, comptroller, borough president, and councilmembers (*id.*). They cannot vote for any federal or statewide office.

7. Plaintiffs—a collection of politicians, political entities, and residents—convinced Supreme Court to invalidate the law (R10-22). The court ruled that the State Constitution and Election Law permit only U.S. citizens to vote (R16-20), and that the law changed the “method” of electing municipal officers, requiring a referendum (R20-21). The court declared the law void and permanently enjoined the City from implementing it (R22). Appellants promptly appealed.

**REASONS TO EXPEDITE THE APPEAL
AND GRANT A PREFERENCE**

8. There is good cause to expedite consideration of these appeals and grant a calendar preference, especially given that no party opposes this relief. Supreme Court’s decision annuls an important local law that goes to the heart of the right to vote, democratic governance, and municipal home rule. The City strongly believes that lawfully present immigrants should have a say in local policies, even if they are not U.S. citizens—and that such a step would strengthen our local government. For the reasons explained in our brief, the City appellants are confident of success.

9. To avoid disenfranchising those who are entitled to vote under the law, this case must be resolved well in advance of the next mu-

municipal election. The local law requires significant preparatory work by the Board of Elections, but Supreme Court enjoined the Board from engaging in that work. And even without that injunction, the City could not prudently take certain steps—like registering non-U.S. citizens to vote and implementing a voter education campaign—while the law’s validity is in doubt.

10. Although the next municipal election is not scheduled until 2025, a special election could be required due to a vacancy at any time. Special elections for local officers occur often. There were four in 2021, one in 2020, and two in 2019. *See* Board of Elections, Election Results Summary, <https://vote.nyc/page/election-results-summary>. If an election is held before this case is resolved, those entitled to vote under the local law will be disenfranchised, and the City will be denied the right to self-govern in the manner that it has determined to be the most effective.

11. Moreover, whichever party is unsuccessful before this Court may seek review by the Court of Appeals, potentially delaying a final resolution of this matter even further. A prompt resolution by this Court is thus necessary to avoid disenfranchising those who are entitled to vote under a presumptively valid law of the City Council.

WHEREFORE, we respectfully request that this Court enter an order expediting the appeals and granting a calendar preference.

Dated: New York, New York
October 12, 2022



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