SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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 MILLIOTAKIS, MICHAEL PETROV, WAFIK HABIB, PHILLIP YAN HING WONG, NEW YORK REPUBLICAN STATE COMMITTEE, and REPUBLICAN NATIONAL COMMITTEE

Plaintiffs,

Index No. 85007/2022

-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,

-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.

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR-DEFENDANTS' MOTION TO DISMISS FOR LACK OF STANDING AND MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

Defendant-Intervenors, long-time New York City residents and authorized immigrants who were granted the right to vote under New York City's Municipal Voting Law, are entitled to summary judgment declaring the Municipal Voting Law constitutional and lawful and protecting their right to participate in New York City's local elections. As a threshold matter, voters and elected officials have not suffered a cognizable injury from the expansion of the electorate, and they do not have standing to challenge the Municipal Voting Law. But even if they could make out a cognizable injury, Plaintiffs' challenge must fail. Local municipalities, including New York City, are granted expansive powers under New York law to adopt and amend laws relating to their local "affairs or government." *See DJL Rest. Corp. v. City of New York*, 96 N.Y.2d 91, 94 (2001). The adoption of the Municipal Voting Law and the expansion of the electorate in New York City's local elections are well within the powers granted to municipalities to make decisions pertinent to the locality.

There are no material issues of fact, and this case rests strictly on questions of law. Accordingly, as New York City is authorized under the State Constitution, the New York Election Law, and the Municipal Home Rule Law to adopt laws related to its local affairs, including local elections, the Municipal Voting Law is constitutional.

STATEMENT OF FACTS

New York City is home to more than 800,000 authorized noncitizen immigrants – 10% of the City's population – who, until now, have not had a say in who governs policy about the neighborhoods they live in, the schools their children attend, or the city budgets that affect their livelihoods. For over a decade, community activists and organizing groups have fought for the passage of a law that would allow authorized immigrants in New York City to have a voice in the election of municipal leaders who make policy about their neighborhoods, their schools, their

boroughs, and their city. They reached their goal on January 9, 2022, when Local Law 2022/011 ("Municipal Voting Law") became law, a month after passage by Defendant New York City Council of Local Law 2022/011.[1] The Municipal Voting Law expanded the right to vote in municipal elections to include any person "who is either a lawful permanent resident or authorized to work in the United States… and who is a resident of New York City and will have been such a resident for 30 consecutive days or longer…"[2] The bill requires Defendant New York City Board of Elections to begin implementing voter registration processes for noncitizens beginning in June, 2022, and provides for eligible noncitizens to cast their first municipal votes on or after January 9, 2023.[3]

Plaintiffs, a combination of Republican elected officials, the Republican National Committee, and several voters, filed suit in this Court on January 10, 2022, challenging the legality of the Municipal Voting Law on constitutional and statutory grounds. Plaintiffs allege that the Municipal Voting Law (1) contradicts language in the New York State Constitution regarding eligibility to vote; (2) violates § 5-102(1) of Chapter 17 of the Laws of New York, the Election Law, which addresses eligibility to vote; and (3) was passed in contravention of Section 23(2)(e) of the Municipal Home Rule Law, which requires a public referendum to change the method of nominating, electing, or removing an elective officer. *See* Compl. ¶¶ 46-60. Further, they allege that they would be harmed by the expansion of the electorate. *See* Compl. ¶ 59. Plaintiffs named New York City Council, Mayor Eric Adams, and the New York City Board of Elections as Defendants.

[1] *See* Local Law 2022/011. *Accessible at:* https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62
[2] *Id.*
[3] *Id.* §1057-vv(3): "Section one of this local law takes effect on December 9, 2022 and shall apply to municipal elections held on or after January 9, 2023."

Hina Naveed, Carlos Vargas Galindo, Abraham Paulos, Emili Prado, Eva Santos Veloz, Muhammad Shahidullah, Melissa John, Angel Salazar, and Jan Ezra Undag (collectively, "Defendant-Intervenors") are long-time New York City residents who are authorized to work in the United States and thus eligible to vote under the Municipal Voting Law. They hail from five boroughs and seven countries. All of them are active in their New York City communities and wish to participate in the political process that has direct effects on the lives of their families and neighbors. Because they would be deprived of their hard-won right to vote by Plaintiffs' lawsuit, they moved to intervene on April 11, 2022, and were granted intervention on April 13, 2022. *See* April 13, 2022, Decision + Order on Motion (NYSCEF Doc.51) ("Motion #002 to intervene is hereby granted without any opposition").

ARGUMENT

I. Legal Standard for Motions to Dismiss and for Summary Judgment.

A. *Motion to Dismiss*

When analyzing a motion to dismiss pursuant to C.P.L.R. § 3211, the Court must accept the facts as alleged in the Complaint to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Further, "on a defendant's motion pursuant to C.P.L.R. § 3211(a)(3) to dismiss the complaint based upon the plaintiff's alleged lack of standing, 'the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law.'" *Bank of New York Mellon v. Chamoula*, 170 A.D.3d 788, 790 (2d Dep't 2019) (quoting *New York Cmty. Bank v. McClendon*, 138 A.D.3d 805, 806 (2d Dep't 2016)).

When addressing a motion to dismiss under C.P.L.R. § 3211(a)(7), the standard is whether the pleading states a cause of action, not whether the plaintiff has a cause of action. *Sokol v. Leader*, 74 A.D.3d 1180, 1181 (2d Dep't 2010); *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977);

Foley v. D'Agostino, 21 A.D.2d 60, 64-65 (1st Dep't 1964). Bare legal conclusions or conclusory allegations that fail to adequately allege the material elements of a cause of action will not withstand a motion to dismiss. *Riback v. Margulis*, 43 A.D.3d 1023 (2d Dep't 2007) ("Although in assessing a motion to dismiss made pursuant to CPLR § 3211(a)(7), the facts pleaded are presumed to be true and are accorded every favorable inference, bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration.").

B. ***Motion for Summary Judgment***

A summary judgment motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." N.Y. C.P.L.R § 3212(b). Where an "issue is one of statutory interpretation, and there is no question of fact or factual interpretation, summary judgment is therefore appropriate as only questions of law are involved." *Hertz Corp. v. Corcoran*, 137 Misc. 2d 403, 404 (Sup. Ct. N.Y. Cnty. 1987); *see also Andre v. Pomeroy*, 35 N.Y.2d 361, 364 (1974).

This case concerns only legal issues, namely whether the Municipal Voting Law violates the New York Constitution, the New York Election Law, and the Municipal Home Rule Law. For the reasons stated herein, the Court should grant summary judgment to Defendant-Intervenors and find that the Municipal Voting Law does not violate the New York State Constitution, State Election Law, or the Municipal Home Rule Law. *See Dewars Mgmt. Co. v. Great N. Ins. Co.*, No. 01-115, 2001 WL 1470342, at *1 (N.Y. App. Div. Aug. 27, 2001) (granting summary judgment where the parties' submissions raised only questions of law).

II. Plaintiffs Have Not Alleged Any Cognizable Harm, and Their Claims Must Be Dismissed for Lack of Standing.

Plaintiffs lack standing to pursue this action, because they have not alleged that the Municipal Voting Law causes them any cognizable harm. "That an issue may be one of 'vital public concern' does not entitle a party to standing." *Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 769 (1991). To demonstrate standing, a plaintiff must show "injury in fact," meaning "an actual legal stake in the matter being adjudicated," which "ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute in a form traditionally capable of judicial resolution." *Id*. at 773. Thus, a plaintiff must show that the harm or injury suffered is in some way "distinct from that of the general public." *Transactive Corp. v. New York State Dep't of Soc. Serv.*, 92 N.Y.2d 579, 587 (1998). Additionally, "the injury a plaintiff asserts must fall within the zone of interests or concerns sought to be promoted or protected by the statutory provision…." *N.Y. State Ass'n of Nurse Anesthetists v. Novello,* 2 N.Y.3d 207, 211 (2004). This requirement also applies to constitutional provisions. *Lasalle Ambulance Inc. v. N.Y.S. Dep't of Health*, 245 A.D.2d 724 (3d Dep't 1997).

The complaint alleges that "by dramatically increasing the pool of eligible voters, the Non-Citizen Voting law will dilute the votes of United States citizens, including the Plaintiff in this action" Compl. ¶ 44. Vote dilution is not a cognizable harm under New York State Law[4]; it is a harm specific to Section 2 of the federal Voting Rights Act, 52 U.S.C. §§ 10301 *et seq.*, and requires a showing that voter power has been diluted on account of race. "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to

[4] The New York State Senate has introduced Senate Bill 1046, "The John R. Lewis Voting Rights Act of New York" which will address vote dilution under state law. *See* https://www.nysenate.gov/legislation/bills/2021/S1046. It is up to the legislature to fill the gap, not the Courts.

elect their preferred representatives." *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). *See also, e.g., Nat'l Ass'n for Advancement of Colored People, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 377 (S.D.N.Y. 2020), *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Pope v. Cnty. of Albany*, 94 F. Supp. 3d 302 (N.D.N.Y. 2015). Nowhere in their complaint do Plaintiffs even allude to Section 2 of the Voting Rights Act, much less any harm they may suffer on account of race.

The expansion of the electorate in and of itself is not a cognizable injury. Plaintiffs, as registered voters, are not in any different position than they were prior to the enactment of the law. Their right to vote is in no way curtailed by the expansion of the right to vote. That there is now a greater electorate *eligible* to participate in municipal elections does not change the unfettered access to the ballot that Plaintiffs currently enjoy. Additionally, increasing the pool of voters happens regardless of whether non-citizens are part of the pool and in no way impacts the overall power of the vote.[5]

Plaintiffs also argue the law *may change* the strategies candidates use to campaign for election and that expansion of the electorate will also affect the "likelihood of future electoral victory." Compl. ¶ 45. This speculative allegation should be rejected. *See Animal Legal Def. Fund, Inc. v. Aubertine*, 119 A.D.3d 1202, 1204 (3d Dep't 2014) (injury-in-fact requirement must be based on more than conjecture or speculation). First, there is no right to electoral victory. *See Saratoga Cnty. Chamber of Com., Inc. v. Pataki*, 275 A.D.2d 145, 156-57 (3d Dep't 2000) (holding that plaintiff legislators lacked standing where claim was based on a possible "loss of political power rather than the assertion that they have been deprived of something to which they are personally are entitled"). Plaintiffs' allegations that they will now represent additional voters and

[5] New York City gained approximately 630,000 residents between 2010 to 2020, thereby naturally expanding the pool of registered voters. https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/POP010220.

thus may need to shift their political strategy for the sake of winning an election is not an injury that this Court has the power to redress.

III. Defendant-Intervenors Are Entitled to Summary Judgment on All Causes of Action.

A. *The Municipal Voting Law Does Not Violate New York State Constitution.*

Plaintiffs allege that the Municipal Voting Law "directly conflicts with the voting qualifications enshrined in" the New York State Constitution because it allows noncitizens of the United States to vote in municipal elections. *See* Compl. ¶¶ 46-52. In support of their claim that only U.S. citizens are allowed to vote in local elections, Plaintiffs rely on the word "citizen" in Article II and "people" in Article IX of the New York State Constitution. However, Article II does not apply to municipal elections, and neither of those terms restrict the right to vote to only U.S. citizens.

1. Article II, Section 1 Does Not Apply to Municipal Elections.

As a threshold matter, the suffrage requirements set forth in Article II, Section 1 of the New York State Constitution do not even apply to local elections, much less dictate who can vote in those elections. Article II, Section 1 provides, in relevant part, 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 (emphasis added).

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 (1902) (emphasis added); *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) ("Art. 2, § 1

applied only to general elections relating to governmental affairs of the whole state."); *see also 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.).

The principle that Article II, Section 1 applies only to statewide elections is supported elsewhere in the same article. Section 5 of Article II also confirms that the voting requirements set forth in Article II do not apply to local elections. Article II, Section 5 states:

> Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. ***Such registration shall not be required for town and village elections except by express provision of law***.

N.Y. Const. art II, § 5 (emphasis added).

That Section 5, Article II specifically carves out registration requirements for town and village elections serves to underscore that the voting requirements set forth in Article II are limited only to statewide elections.

Accordingly, because Article II, Section 1 of the New York State Constitution only applies to statewide general elections, Article II, Section 1 does not apply to the Municipal Voting Law.

2. Article II, Section 1 Does Not Impose Any Citizenship Requirement

Even if Article II, Section 1 applies to municipal elections—which it does not—it does not require that voters in New York elections be United States citizens.

First, Article II, Section 1 does not impose any citizenship requirement for voter eligibility. Instead, the provision simply guarantees that a citizen "shall be entitled" to vote and imposes certain qualifications based on age and duration of residency[6]. Plaintiffs argue that Article II,

[6] *See e.g.* Fifth New York State Const.1938, Art. 2, § 1, available at: https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_1938-NY-Constitution-compressed.pdf; *see also* https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_Votes-Cast-Conventions-Amendments-compressed.pdf. The legislative intent is clear. Prior to its amendment, Article II, Section 1 included a requirement

Section 1 imposes citizenship restrictions, but rather than restrict those who could vote in New York, this section was designed to ***remove restrictions*** to allow for more New York voters to engage in the electoral process. Indeed, New York courts have recognized, "[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*, 54 Misc. 2d 543, 545 (Sup. Ct. Onondaga Cnty. 1967).

Second, the plain language of the provision does not support the interpretation that the word "citizen" as used in Article II, Section I means "citizen of the United States." 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 be 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). Thus, the fact that Article II, Section 1 uses the word "citizen" and 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."[7] *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (Courts

that the voter also be a "citizen for ninety days," but this requirement was subsequently removed when the clause was amended.

[7] The United States Constitution articulates the concept of state citizenship as distinct from U.S. 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.").

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 New York*, 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 (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.").

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

3. Article IX of the New York Constitution Does Not Impose a U.S. Citizenship Requirement in Local Elections.

Plaintiffs also point to Article IX, Section 1(a) of the New York Constitution to argue that only U.S. citizens are allowed to vote in New York municipal elections because that article defines the term 'People' to mean 'Persons entitled to vote as provided in section one of article two of this constitution." *See* Compl. ¶¶ 32-33. Again, Plaintiffs are wrong.

Article IX, Section 3(d)(3) provides, in relevant parts:

> (a) ***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 power to adopt local laws as provided by this article.
>
> (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***, or of some division thereof, ***or appointed by such officers of the local government*** as may be provided by law.

N.Y. Const. art. IX, § 1(a)-(b) (emphases added).

As an initial matter, Plaintiffs misquote and mischaracterize the definitions provision in Article IX. 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* Article IX, Section 1(a)-(b)("(a) 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***[.]").[8,9] N.Y. Const. art. IX, § 1(a)-(b) (emphases added).

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

[8] *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).

[9] 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." 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.

B. ***The Municipal Voting Law Does Not Violate New York State Election Law.***

Plaintiffs claim the Municipal Voting Law conflicts with Section 5-102(1) of New York Election Law, which provides, in relevant part, that "no person shall be qualified to register for and vote at any election unless he is a citizen of the United States." Compl. ¶ 55. They also appear to allege that Section 1-102 of New York Election Law does not apply to local laws such as the Municipal Voting Law. But Plaintiffs' allegations do not take into account the plain meaning of the full text of Section 1-102, which has been interpreted to allow local laws to apply even if inconsistent with state law, so long as the Election Law does not specify otherwise.

Basic principles of legislative interpretation require the Court to allow for local laws to expand the electorate the way New York City has done here. New York Election Law §1-102 provides:

> This chapter shall govern the conduct of all elections . . . . ***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).

A plain reading of this provision evinces the Legislature's intent to allow potentially conflicting provisions in "any other law" to take effect *unless* New York Election Law has specified otherwise. *See, e.g., N. Syracuse Cent. Sch. Dist. v. N.Y. State Div. of Hum. Rts.*, 19 N.Y.3d 481, 498 (2012) (noting that New York courts have long held that the plain reading of a statute is the clearest indication of legislative intent). The term "any other law" has been interpreted to include local laws such as the Municipal Voting 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, nearly every court that has considered the question has concluded that the phrase "any other law" in § 1-102 should be

understood to authorize local laws that are inconsistent with the Election Law. *See, e.g.*, *La Cagnina v. City of Schenectady*, 100 Misc. 2d 72, 75–76 (N.Y. Sup. Ct. Schenectady Cnty. 1979), *aff'd*, 70 A.D.2d 761 (3d Dep't 1979) (Discussing how § 1-102 "provides that the Election Law does not apply when it is inconsistent with another law" when deciding city council had the power to adopt a local law which repealed an earlier local law creating the "strong mayor" form of government); *Lane v. Town of Oyster Bay*, 149 Misc. 2d 237, 241–42 (N.Y. Sup. Ct. Nassau Cnty. 1990), *aff'd*, 197 A.D.2d 690 (2d Dep't 1993) (Discussing how strict compliance of local law with Election Law is not required under §1-102); *N.Y.P.I.R.G.—Citizen's All. v. City of Buffalo*, 130 Misc. 2d 448, 449 (N.Y. Sup. Ct. Erie Cnty. 1985) (Holding that Election Law was unavailable to Petitioners, under §1-102, who sought to invalidate certain provisions of the City Charter); *City of New York v. N.Y. City Bd. of Elections*, No. 41450/91, slip op. at 4 (N.Y. Sup. Ct. Apr. 3, 1991) (Where the Supreme Court of New York upheld the charter revisions, and the Appellate Division affirmed, finding no contradiction between the state law and the charter revision).

The only contrary authority is a lone lower-court decision from Clinton County, New York, *Castine v. Zurlo*, 46 Misc. 3d 995, 1001 (N.Y. Sup. Ct. Clinton Cnty. 2014). There, the plaintiff sought a declaratory judgment that a local law prohibiting any political candidate from serving as Election Commissioner was invalid under the Election Law. The court concluded that the plain language of § 1-102 was ambiguous and that, based on the legislative history, the provision should be read to refer only to state law. *Id*. at 1000. However, no other court has cited to or relied on the *Castine* decision. Notwithstanding *Castine*, § 1-102 is best understood to permit local laws that are inconsistent with the Election Law.

1. The Legislature's "Carve Out" of Local Laws Further Supports That § 1-102 Applies to Local Laws.

Additionally, the legislature's "carve out" of local laws from the state's Election Law applicability shows that the legislature intended for § 1-102 to apply to local laws. Section 1-102 includes language to allow the legislature to "carve out" specific provisions of the Election Law and ensure that those provisions apply regardless of any conflicting local laws.[10] A review of additional Election Law provisions shows that the legislature has indeed, carved out several provisions from the scope of § 1-102, all of which were plainly intended to regulate localities.[11] The legislature's "carve out" of these local law provisions supports the conclusion that § 1-102 in fact applies to local laws in the absence of such an exception explicitly noted by the law.

A few specific provisions in the Election Law illustrate this point. For instance, N.Y. Election Law § 7-209, which prohibits the use of punch card ballots, includes language carving out any inconsistency or conflict with the state Election Law by including "notwithstanding any other provision of law."[12] Here, the Legislature likely included this carve-out to prevent localities from using § 1-102 to retain punch card ballots during the state's transition to computerized voting. Similarly, N.Y. Election Law § 6-204 requires village candidates to collect petition signatures from five percent of enrolled voters "notwithstanding any other provision of law."[13] Here, the "carve-out" language sought to prevent individual villages from using § 1-102 to eliminate or set aside

[10] N.Y. Elec. Law § 1-102 (stating that "any other law which is inconsistent" shall apply "unless a provision of [the Election Law] specifies that such provision . . . shall apply notwithstanding any other provision of law.")
[11] *See* § 4-104(3-a), (-b) (authorizing the denial of tax exemptions, loans, and other benefits to persons or entities who refuse to make eligible polling places available); § 5-202(6) (authorizing boards of election to provide that there shall be no meeting for local registration except in certain years); § 6-158(10) (extending deadlines to file petitions for an office to be filled when a vacancy arises within a certain period of time); § 7-203(2) (empowering the state board of elections to designate minimum and maximum numbers relating to voting machines); § 8-106(1), (2), (3) (setting up special rules intended to facilitate student education about the electoral process); § 15-108(3)(b) (requiring 5% of the enrolled voters who reside in a village to sign a designating petition and outlining the procedure to determine the number of resident enrolled voters).
[12] N.Y. Elec. Law § 7-209.
[13] N.Y. Elec. Law § 6-204.

balloting requirements for village elections. Lastly, in the case of § 4-104(3), the Legislature further made clear its understanding that, absent the "notwithstanding" language, the Election Law would yield to inconsistent local law by specifically inserting in that provision language that explicitly barred inconsistent local law.[14] These three examples are among the many in the Election Law which support the fact that § 1-102 applies to local laws in the absence of such a carve out by the legislature.[15] Had the Legislature regarded § 1-102 as not pertaining to local law, the inclusion of local law in the "notwithstanding" clause of these Election Law provisions would have been unnecessary.

Notably, New York Election Law § 5-102 is not among the statutory provisions that contain language requiring that they "shall apply notwithstanding any other provision of law." It is fair to presume that the legislature did not intend to carve out any provision of a local law that may conflict.[16]

2. The Legislative History of § 1-102 Shows that "Any Other Law" includes Local Laws.

The legislative history of § 1-102 further supports that the language "any other law" in § 1-102 includes local laws. First, the language of the predecessor to § 1-102 explicitly listed local laws as among the laws that would not be affected by the Election Law.[17] Second, § 1-102 was added with the re-codification of the Election Law in 1976,[18] a derivation table included in chapter 233 states that § 1-102 was derived from four sections of the previous Election Law, §§ 130, 190, 265, and 351.[19] In the codification, the Legislature opted to have one general section governing

[14] N.Y. Elec. Law § 4-104(3).
[15] *See supra* note 17.
[16] *See* N.Y. Elec. Law § 5-102.
[17] *See* N.Y. Elec. Law § 17-130 (1922) ("This 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.")
[18] Laws of 1976 chs. 233, 234.
[19] *Id.*

the applicability of the entire Election Law, as opposed to the approach in the previous Election Law of different sections narrowly governing the applicability of specific provisions.[20] Tellingly, in 1978 when the Legislature had an opportunity to address the scope of § 1-102 specifically, it expanded the section's scope.[21] Lastly, the most recent update to § 1-102 in 1991 regarding the application of the sentence permitting other inconsistent laws was broadened from "the education law" to "any other law"; in addition, the section was clarified to add the concept that express language would be necessary for an Election Law to control over other law.[22]

Furthermore, other historical sections of the Election Law demonstrate the Legislature's intent for § 1-102 to apply to local laws. For example, the Election Law provided that violations of the Election Law shall be "imposed under this chapter or pursuant to any other law." N.Y. Elec. Law § 14-210 (emphasis added) (repealed 2014). This use of the phrase "any other law" included local laws because it provided statutory authority for local Boards of Election to impose civil penalties on candidates for violating local election regulations. *See* Campaign Finance Board Rules and Regulations, New York City, N.Y., Rules, Tit. 52, § 7-02 (explaining the process for determining liability for civil penalties).

The legislative history of § 1-102 and the larger statutory context demonstrate that the phrase "any other law" encompasses local laws. Because § 1-102 permits local laws that are inconsistent with New York State Election Law and the state has not preempted the field of fields of local election law, voter qualifications, or registration, the Municipal Voting Law is a permissible exercise of New York City's legislative authority under state law.

---

[20] *Id.*

[21] *See* L. 1978, ch. 374 Bill Jacket (N.Y. 1978) (expanding the scope of §1-102 to limit the Election Law's effect on school district elections); *See also* Opinion to James H. Eckl, Esq., 1980 N.Y. Op. Atty. Gen. (Inf.) 109 (1980) (State Attorney General concluding that "any other law" in § 1-102 includes any other local law.)

[22] *See* L. 1991, ch. 727 Bill Jacket (N.Y. 1991); *See also McDonald v. N.Y. City Campaign Fin. Bd.*, 40 Misc. 3d 826, 840 (N.Y. Sup. Ct. 2013) ("[N]ot only did the Legislature specifically re-enact § 1-102, it even chose to amend and extend its scope").

C. *The Municipal Voting Law Does Not Violate New York Municipal Home Rule Law.*

1. Expanding the Electorate is a Permissible Exercise of Local Legislative Power, Because Neither the State Constitution Nor State Election Law Expressly Exclude Non-U.S. Citizens from the Right to Vote.

New York State Constitution Art. 9 § 2 (b) provides, "…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…" and New York State Constitution Art. 9 § 3(a)(3) further provides, "[e]xcept as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to …matters other than property, affairs or government of a local government." Read together, these provisions "grant[] significant autonomy to local governments to act with respect to local matters, and correspondingly, 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, 385-386 (2001) (internal citation 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.[23]

The Municipal Voting Law is a valid exercise of local authority under the municipal home rule provisions, because neither the State Constitution nor State Election Law explicitly exclude noncitizens from being eligible to vote.[24] First, as shown in Part 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 Part II (B) *supra*, New York Election Law § 5-102 did not explicitly exclude non-citizens as a class of ineligible voters. The Municipal Voting

[23] N.Y. Const. art. 9, § 2 (b); N.Y. CONST. Art. 9 § 3(a)(3).
[24] *See* N.Y. Const. art. II, § 3; See also N.Y. Election Law § 5-102; See also N.Y. Election Law § 1-102.

Law is therefore a permissible exercise of local legislative power under the New York State Constitution.

2. New York 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[25] and statutory[26] 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). "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.* Courts have recognized that such municipal police powers extend to enacting laws focused on purely local elections. *See Resnick v. Ulster Cnty.*, 44 N.Y.2d 279, 286 (1978) ("[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. In some instances, this was predicated directly on the provision dealing with the 'mode of selection and removal' of their officers. At other times, it was derived more generally from the concept that such measures fell within the scope of their power to manage their 'property, affairs or government.'") (internal citations omitted); *Blaikie v. Power*, 19 A.D.2d 779, 779 (1st 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

[25] N.Y. Const. art. IX, § 2(c)(i) ("Every local government shall have the power to adopt and amend local laws, not inconsistent with the provisions of the constitution or any general law relating to its property, affairs or government").
[26] N.Y. Mun. Home Rule L. § 23(2)(e).

(1963); *Bareham v. City of Rochester*, 246 N.Y. 140, 149 (1927) ("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.[27]

Both Section 23 of the Municipal Home Rule Law and the New York City Charter[28] 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."[29] (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 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 of Town Administrator. *Sacco v. Maruca*, 175 A.D.2d 578, 578 (4th Dep't 1991).

[27] N.Y. Mun. Home Rule Law §§ 10(1)(i) & (ii); N.Y. Mun. Home Rule Law § 11.
[28] N.Y.C. Charter § 38(4), (5).
[29] N.Y. Mun. Home Rule L. §23(2)(e)

Plaintiffs are wrong to allege that Municipal Voting Law changes the method of electing officers of the City of New York. Compl. ¶ 58. Expanding the electorate does not resemble the methods 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. In fact, given that this law is specific to the New York City electorate and local elections, the City was well within its power under constitutional and statutory provisions to expand the category of eligible voters without a referendum.

CONCLUSION

Plaintiffs have not suffered a cognizable injury and do not have standing to maintain this action seeking to invalidate the Municipal Voting Law. Further, there are no issues of material fact in this case; whether the Municipal Voting Law can stand is a question purely of law. The Municipal Voting Law is valid under the New York State Constitution and Election Law, and a referendum was not required to expand the electorate under the Municipal Home Rule Law. Defendant-Intervenors respectfully request that this Court dismiss Plaintiffs' claims, deny Plaintiffs' motion for summary judgment and grant Defendant-Intervenors' cross-motion for summary judgment.

Respectfully submitted,

Dated: New York, NY
May 9, 2022

/s/ Fulvia Vargas-De Leon
Lourdes Rosado

Fulvia Vargas-De Leon
Cesar Ruiz
Ghita Schwarz
Jackson Chin
LatinoJustice PRLDEF
475 Riverside Drive, Suite 1901
New York, NY 10115
(212) 739-7580
fvargasdeleon@latinojustice.org
cruiz@latinojustice.org
gschwarz@latinojustice.org
jchin@latinojustice.org

Jerry Vattamala
Susana Lorenzo-Giguere
Patrick Stegemoeller
ASIAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, NY 10013
(212) 966-5932 (phone) (212) 966-4303 (fax)
jvattamala@aaldef.org
slorenzo-giguere@aaldef.org
pstegemoeller@aaldef.org

Tsion Gurmu
Legal Director
Black Alliance for Just Immigration (BAJI)
1368 Fulton Street, Suite 311
Brooklyn, NY 11216
Email: tsion@baji.org

Council on American-Islamic Relations,
New York, Inc (CAIR-NY)
Ahmed Mohamed
Legal Director
80 Broad Street, Suite 531
New York, NY 10004
(646) 665-7599
Email: ahmedmohamed@cair.com

Attorneys for Intervenor-Defendants

CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-b

According to Microsoft Word, the portions of the Memorandum of Law that must be included in a word count contain 6998 words, and comply with Uniform Civil Rule 202.8-b.

Respectfully submitted,

Dated: New York, NY
May 9, 2022

/s/ Fulvia Vargas-De Leon
Lourdes Rosado

Fulvia Vargas-De Leon
Cesar Ruiz
Ghita Schwarz
Jackson Chin
LatinoJustice PRLDEF
475 Riverside Drive, Suite 1901
New York, NY 10115
(212) 739-7580
fvargasdeleon@latinojustice.org
cruiz@latinojustice.org
gschwarz@latinojustice.org
jchin@latinojustice.org

Jerry Vattamala
Susana Lorenzo-Giguere
Patrick Stegemoeller
ASIAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, NY 10013
(212) 966-5932 (phone) (212) 966 4303 (fax)
jvattamala@aaldef.org
slorenzo-giguere@aaldef.org
pstegemoeller@aaldef.org

Tsion Gurmu
Legal Director
Black Alliance for Just Immigration (BAJI)
1368 Fulton Street, Suite 311
Brooklyn, NY 11216
Email: tsion@baji.org

Council on American-Islamic Relations,
New York, Inc (CAIR-NY)
Ahmed Mohamed
Legal Director
80 Broad Street, Suite 531

New York, NY 10004
(646) 665-7599
Email: ahmedmohamed@cair.com

Attorneys for Intervenor-Defendants