

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

—against— *Plaintiffs-Respondents,*

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,

—and— *Defendants-Appellants,*

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.

MOTION FOR LEAVE TO FILE BRIEF FOR *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND DEFENDANTS-INTERVENORS-APPELLANTS

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Attorneys for Amici Curiae Legal Scholars

NOTICE OF MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

PLEASE TAKE NOTICE that, upon the annexed affirmation of Roderick Hills, dated October 18, 2022, and the exhibits annexed thereto, a motion will be made at a term of this Court to be held at 45 Monroe Place, Brooklyn, New York, 11201 on October 31, at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order granting Richard Briffault, Nestor Davidson, Joshua Douglas, Clayton Gillette, and Roderick Hills leave to file the proposed Brief of Amici Curiae in Support of Defendants-Appellants 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, and Defendants-Intervenors-Appellants Hina Naveed, Abraham Paulos, Carlos Vargas Galindo, Emili Prado, Eva Santos Veloz, Melissa John, Angel Salazar, Muhammad Shahidullah, and Jan Ezra Undag, attached hereto as Exhibit A. Pursuant to 22 NYCRR §§ 670.4 and 1250.4, this motion will be submitted on the papers and personal appearance in opposition to the motion is neither required nor permitted.

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PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214 [b],
answering papers, if any, shall be served upon the undersigned counsel at least two
(2) days prior to the return date of this motion.

Dated: New York, New York
October 18, 2022



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SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION
SECOND DEPARTMENT

VITO J. FOSSELLA, NICHOLAS A. LANGWORTHY, X
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 :
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-against- :

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NEW YORK, CITY COUNCIL OF THE CITY OF NEW :
YORK, :

Defendants-Appellants, :

-and- :

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

Defendants-Intervenors-Appellants. X

**AFFIRMATION OF RODERICK HILLS IN SUPPORT OF MOTION FOR
LEAVE TO FILE BRIEF OF AMICI CURIAE**

RODERICK HILLS, an attorney duly admitted to practice before this Court, affirms
under penalty of perjury pursuant to CPLR 2106, as follows:

1. I am a member of the bar of the State of New York. I am the William T. Comfort III Professor of Law at New York University Law School. I am not a party to this action and am in good standing in the Courts of the State of New York.

2. Pursuant to this Court's Rule of Practice 1250.4 [f], Richard Briffault, Nestor Davidson, Joshua Douglas, Clayton Gillette, and myself (together "*Amici*") request permission to appear as amici curiae in the above-captioned case. *Amici* do not request permission to participate in oral argument.

3. On October 14, 2022, my co-counsel and I communicated with counsel for Plaintiffs-Respondents, Defendants-Appellants, and Defendants-Intervenors-Appellants to request their consent for *Amici* to seek leave to participate as amici curiae in this case. None of the parties opposed.

Background and Procedural History

4. This appeal raises the question whether the lower court erred in invalidating Local Law 11 as contrary to the New York State Constitution and New York State Election Law.

5. In December 2021, the New York City Council passed Local Law 11 of 2022. Pursuant to the City's home rule power, this law allows New York City residents who hold green cards or work authorizations and who have lived in the

City for at least 30 days before the election to vote in municipal elections only, including for mayor, public advocate, comptroller, borough president, and councilmembers.

6. On June 27, 2022, the lower court granted a motion by a group of Republican voters, elected officials, and organizations seeking summary judgement. The court found that Local Law 11 was void because it violated the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law, and permanently enjoined the City from implementing it. The City and a group of individuals who would be entitled to vote under Local Law 11 now appeal the lower court's decision and order.

7. Under the "local elections presumption," where state law does not plainly specify otherwise, municipal law presumptively controls the selection of municipal officers and legislators. This principle is deeply rooted in New York precedent, state constitutional text, and the structure of home rule. New York courts have long recognized that absent a clear statement that local control of elections contradicts state law, the constitutional grant of home rule power to local governments protects such local control.

8. The lower court ignored the local elections presumption when it construed Article IX, §1 of the New York Constitution and sections 1-102 and 5-

102 of the Election Law to supplant Local Law 11. Article IX, §1 preserves New York City's power to confer the right to vote on noncitizens in municipal elections. Further, the Election Law contains no indication of a legislative intent to preempt local election rules; in fact, it explicitly provides that local law will control unless the Election Law indicates otherwise. Viewed in light of the local elections presumption and a plain reading of the New York Constitution and the statute, Local Law 11 is not preempted.

Statement of Interest of Proposed *Amici*

9. *Amici curiae* are professors of local government law. Specifically, the *amici* are:

- Richard Briffault, the Joseph P. Chamberlain Professor of Legislation at Columbia Law School. He is the coauthor of the casebook *State and Local Government Law* and has published numerous law review articles on state and local government issues.
- Nestor M. Davidson, the Albert A. Walsh Chair in Real Estate, Land Use, and Property Law at Fordham University School of Law and the Faculty Director of the Urban Law Center. Professor Davidson's scholarship focuses on state and local government law, with an emphasis on local constitutional law and governance.

- Joshua Douglas, the Ashland, Inc-Spears Distinguished Research Professor of Law at University of Kentucky Law School. He is the author of numerous articles on local government law, including municipal powers to define the franchise for local elections.
- Clayton P. Gillette, the Max E. Greenberg Professor of Contract Law at New York University School of Law. He is the author of a major casebook, *Local Government Law: Cases and Materials*, and numerous articles on state and local government law issues, including the proper scope of local government authority and the allocation of powers between state and local governments.
- Roderick M. Hills, Jr., the William T. Comfort III Professor of Law at New York University Law School.

Amici have a scholarly interest in explaining and defending the appropriate allocation of powers between state and local governments, based on decades of teaching, researching, and authoring leading articles, books, and casebooks on local government law. Although each *Amicus* has focused on different legal issues in their individual writing, all *Amici* endorse the principle that the officials presumptively best suited to regulate the process of selecting local officials are those who are elected by residents of the local jurisdiction most affected by that process. This brief

advances *Amici*'s scholarly interest in defending this principle as a basis for home rule in New York and other states.

Request to File Proposed Brief

10. Pursuant to this Court's Rule of Practice 1250.4, *Amici* respectfully request to file the proposed Brief of Amici Curiae, a true and correct copy of which is included with this submission as **Exhibit A**.

11. As required by this Court's Rule of Practice 1250.4, a true and correct copy of the Notice of Appeal with proof of filing is included with this submission as **Exhibit B**.

12. As required by this Court's Rule of Practice 1250.4, a true and correct copy of the Decision and Order appealed from with proof of filing is included with this submission as **Exhibit C**.

13. A true and correct copy of the *Amici*'s curricula vitae is included with this submission as **Exhibit D**.

WHEREFORE, the proposed *Amici* respectfully requests that they be permitted to file their proposed brief.

Dated: New York, New York
October 18, 2022



Roderick M. Hills, Jr.

EXHIBIT A

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**BRIEF FOR AMICI CURIAE LEGAL SCHOLARS RICHARD
BRIFFAULT, NESTOR DAVIDSON, JOSHUA DOUGLAS,
CLAYTON GILLETTE, AND RODERICK HILLS
IN SUPPORT OF DEFENDANTS-APPELLANTS
AND DEFENDANTS-INTERVENORS-APPELLANTS**

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<i>Castine v. Zurlo</i> , 938 F.Supp.2d 302 (N.D.N.Y. 2013)	23
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<i>Strode v. Sullivan</i> , 72 Ariz. 360, 236 P.2d 48 (1951)	8
<i>Town of Aurora v. Village of East Aurora</i> , 32 N.Y.3d 366 (2018)	9, 25
<i>Village of Lacona v. State, Dep’t of Agr. & Markets</i> , 51 A.D.3d 1319 (3d Dep’t 2008)	12

<i>Wallach v. Town of Dryden</i> , 23 N.Y.3d 728 (2014)	9, 10, 22, 25
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Richard Briffault, <i>Home Rule and Local Political Innovation</i> , 22 J.L. & Pol. 1 (2006)	7
Richard Briffault, <i>Home Rule for the Twenty-first Century</i> , 36 URB. LAWYER 253 (2004)	11
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Paul Diller, <i>Intrastate Preemption</i> , 87 B.U. L. REV. 1113 (2007)	11
Joshua A. Douglas, <i>Local Democracy on the Ballot</i> , 111 NW. U. L. REV. ONLINE 173 (2017)	7
Joshua A. Douglas, <i>The Right to Vote Under Local Law</i> , 85 GEO. WASH. L. REV. 1039 (2017)	19
Joshua A. Douglas, <i>The Right to Vote Under State Constitutions</i> , 67 VAND. L. REV. 89 (2014)	18
SUSAN GOODIER & KAREN PASTORELLO, WOMEN WILL VOTE: WINNING SUFFERAGE IN NEW YORK STATE (Cornell University Press 2017)	20
ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES (Basic Books 2000)	19
Tara Kini, <i>Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections</i> , 93 CALIF. L. REV. 271	20
Jeffery C. Mays, <i>New York City’s Noncitizen Voting Law Is Struck Down</i> , N.Y. TIMES (June 27, 2022), https://www.nytimes.com/2022/06/27/nyregion/noncitizen-voting-ruling-nyc.html	20
George Vaubel, <i>Towards Principles of Restraint Upon the Exercise of Municipal Power in Home Rule</i> , 22 STETSON L. REV. 643 (1993)	11

INTEREST OF *AMICI CURIAE*

Amici curiae are professors of local government law. Specifically, the *amici* are:

- Richard Briffault, the Joseph P. Chamberlain Professor of Legislation at Columbia Law School. He is the coauthor of the casebook *State and Local Government Law* and has published numerous law review articles on state and local government issues.
- Nestor M. Davidson, the Albert A. Walsh Chair in Real Estate, Land Use, and Property Law at Fordham University School of Law and the Faculty Director of the Urban Law Center. Professor Davidson's scholarship focuses on state and local government law, with an emphasis on local constitutional law and governance.
- Joshua Douglas, the Ashland, Inc-Spears Distinguished Research Professor of Law at University of Kentucky Law School. He is the author of numerous articles on local government law, including municipal powers to define the franchise for local elections.
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local government law issues, including the proper scope of local government authority and the allocation of powers between state and local governments.

- Roderick M. Hills, Jr., the William T. Comfort III Professor of Law at New York University Law School.¹

Amici do not have a direct personal stake in this litigation. Instead, they have a scholarly interest in explaining and defending the appropriate allocation of powers between state and local governments, based on decades of teaching, researching, and authoring leading articles, books, and casebooks on local government law. Although each *amicus* has focused on different legal issues in their individual writing, all *amici* endorse the principle that the officials presumptively best suited to regulate the process of selecting local officials are those who are elected by residents of the local jurisdiction most affected by that process. This brief advances *amici*'s scholarly interest in defending this principle as a basis for home rule in New York and other states.

¹ Institutional affiliations are provided for identification purposes only. *Amici* sign this brief in their individual capacities.

PRELIMINARY STATEMENT

Amici urge a simple but fundamental principle of statutory construction: Where state law does not plainly specify otherwise, municipal law presumptively controls the selection of municipal officers and legislators. This principle—which we call the “local elections presumption”—is deeply rooted in precedent, state constitutional text, and the structure of home rule.

Courts in New York and numerous other states have long adopted this presumption, acknowledging that, absent a clear indication of legislative intent to the contrary, state law empowers local governments to set their own rules for local elections. The New York Constitution itself reflects this presumption in Article IX, §3(c), which commands that local powers be liberally construed. This requirement serves as an interpretive tiebreaker: For matters of predominantly local concern, courts must resolve statutory and constitutional ambiguities in favor of local control. The regulation of elections for local offices unquestionably falls within the ambit of this constitutional requirement.

This presumption protects not only local self-governance but also state legislative intent. Municipal laws must make way when the state speaks clearly about its intent to displace local authority. But where state law is ambiguous, the state legislature presumptively favors local control over judicial speculation about any unwritten preemptive effect of such an ambiguous state law, especially where a

decision predominantly affects local residents with no spillover effect to other localities.

The Supreme Court ignored the local elections presumption when it construed Article IX, §1 of the New York Constitution and sections 1-102 and 5-102 of the Election Law to supplant Local Law 11 of 2022.² The decision by the City of New York to extend voting rights to noncitizens for *local elections* falls squarely within the subject matter to which the local elections presumption applies. In failing to read state law in light of this presumption, the lower court substituted judicial fiat for statutory text, usurping the decision-making authority that the New York Constitution and state law have left to the City of New York.

ARGUMENT

I. THE SUPREME COURT ERRED IN IGNORING THE PRINCIPLE THAT MUNICIPALITIES' POWERS OVER THE SELECTION OF THEIR OWN OFFICERS AND LEGISLATORS MUST BE BROADLY CONSTRUED.

In concluding that state law preempted Local Law 11, the Supreme Court ignored the local elections presumption—the home rule principle that municipalities' powers to define the rules for their own officers' elections must be broadly construed.

² *Amici* address here only the Supreme Court's error in failing to implement the local elections presumption. *Amici* do not address other issues in the case, but generally agree with appellants' positions.

Amici urge this Court to reaffirm the local elections presumption for three reasons. *First*, the principle reflects the structure of local government law reflected in not only New York state courts' precedents but also the broader consensus on local government law throughout the nation. *Second*, the presumption allows courts to avoid judicial inquiries into unwritten legislative intent while maintaining the appropriate balance between state and local interests. *Finally*, the principle is the soundest reading of the command in Article IX, §3(c) of the New York Constitution that the "[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed."

A. Courts have long adopted the presumption that the selection of municipal officers is a predominantly local concern operating at the heart of home rule.

Cases in New York and numerous other states make clear that under home rule, local governments enjoy especially strong authority over local elections. The New York Court of Appeals has repeatedly rejected arguments that the New York Constitution or Election Law preempts local governments' election rules. In fact, for at least 120 years, New York law has accorded to local governments the power to depart from statewide rules in regulating local elections because of the inherently local character of such elections. These precedents protect local control over a wide variety of rules governing the selection of local officers, including decisions about how local legislators should be replaced, whether to adopt a council-manager form of

government, and whether to elect a local legislature through a system of proportional representation. *See, e.g., Resnick v. County of Ulster*, 44 N.Y.2d 279, 285 (1978) (recognizing as a “guiding legal principle” that local law controls selection of county officers and construing broadly power of county to create rule for filling vacancies occurring in the county legislature different from that provided by state constitution); *Bareham v. City of Rochester*, 246 N.Y. 140, 148-49, (1927) (holding that city can adopt council-manager form of government, despite conflicting provisions in N.Y. Election Law, because of the requirement that local power over local elections be liberally construed); *Johnson v. City of New York*, 274 N.Y. 411, 430 (1937) (upholding system for election through proportional representation in New York City Council against argument that it was inconsistent with popular election under Article II, §1).

Particularly relevant here, the New York Court of Appeals recognized 120 years ago that the qualifications to vote on local matters need not follow lockstep the qualifications to vote for state office. *Spitzer v. Village of Fulton*, 172 N.Y. 285, 289-90 (1902). The *Spitzer* Court explained that qualifications to vote in village elections need not follow those in Article II, §1 of the New York Constitution because state law “is general, relating to the whole state” whereas provisions defining local suffrage are, “in effect local, relating only to the cities and villages of the state.” *Id.*

As *amici*'s scholarship has documented, these precedents reflect a home rule principle that specifically cautions against the preemption of local laws governing the selection of local officers. The basis for this local elections presumption is twofold: First, the predominance of local residents' interests over statewide concerns, and second, the absence of spillover effects on other local governments. As Professor Richard Briffault has explained in his survey of home rule caselaw from across the United States, state courts have repeatedly recognized that "local control of local governance or politics is both of central importance to the local self-determination that is home rule while simultaneously posing little or no threat or cost to the localities or the state beyond local borders." Richard Briffault, *Home Rule and Local Political Innovation*, 22 J.L. & POL. 1, 19 (2006); see also NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY 62 (2020) (stating that the structuring of local governments "is a purely local matter, having little or no extralocal effect, and it is one that local people are best suited to determining"); Joshua A. Douglas, *Local Democracy on the Ballot*, 111 NW. U. L. REV. ONLINE 173, 175 (2017) (highlighting local democracy reforms and explaining that "local laws that enhance democratic participation by expanding the electorate or reducing campaign finance barriers to running for office epitomize the benefits of local democracy and deserve judicial deference").

Courts throughout the nation have similarly endorsed the proposition that local elections primarily implicate local, not statewide, interests, and have therefore applied the local elections presumption to favor municipal laws on election matters. *See, e.g., Cook-Littman v. Board of Selectmen*, 328 Conn. 758, 771, 778, 184 A.3d 253, 261, 265 (2018) (permitting a town charter provision for filling a vacancy on the town governing board to prevail over conflicting state law and recognizing local government as a “matter of purely local concern”); *Nutter v. Dougherty*, 595 Pa. 340, 361, 938 A.2d 401, 414 (2007) (upholding Philadelphia’s campaign finance law against preemption and stating that “[w]e cannot stress enough that a home rule municipality’s exercise of its local authority is not lightly intruded upon, with ambiguities regarding such authority resolved in favor of the municipality”); *Strode v. Sullivan*, 72 Ariz. 360, 368, 235 P.2d 48, 54 (1951) (“We can conceive of no essentials more inherently of local interest or concern to the electors of a city than who shall be its governing officers and how they shall be selected.”); *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 215, 80 N.E.2d 769, 774 (1948) (“It seems to us that there could not be a more forthright statement to the effect that the selection of municipal officers is a matter of purely local concern”); *State v. Callahan*, 1923 OK 1010, 96 Okla. 276, 221 P. 718 (finding that the nomination and election of municipal officers is a matter of purely municipal concern).

Importantly, recognizing the centrality of local election matters to local governance, the New York Court of Appeals has warned that “even 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.” *Resnick*, 44 N.Y.2d at 286 (rejecting a narrow reading of two counties’ powers to overhaul significantly their method of filling vacancies in county legislatures). This longstanding tradition of home rule autonomy over local elections, which has spanned more than a century and survived shifting policies on the powers of local governments, further supports the presumption against preemption of local autonomy in this area. *See Town of Aurora v. Village of East Aurora*, 32 N.Y.3d 366, 375 (2018) (“[I]t is a cardinal principle of statutory interpretation that the intention to change a long-established rule or principle is not to be imputed to the legislature in the absence of a clear manifestation.” (quoting *In re Delmar Box Co.*, 309 N.Y. 60, 66 (1955))).

The local elections presumption aligns with New York courts’ more general skepticism about state laws preempting “core powers of local governance.” *Wallach v. Town of Dryden*, 23 N.Y.3d 728, 743 (2014). Local elections are not the only subject for which New York courts have adopted a presumption against state preemption. For instance, in *Wallach*, the New York Court of Appeals held that New York’s Oil, Gas and Solution Mining Law did not preempt a town’s zoning law

prohibiting oil and gas drilling within the town's jurisdiction despite an apparently sweeping clause stating that the law "supersed[es] all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries." ECL §23-0303(2). In rejecting preemption, the *Wallach* Court emphasized that zoning was one of the town's "core powers of local governance," the preemption of which would require a plain statement from the state legislature. 23 N.Y.3d at 743. *Wallach* noted that "we do not lightly presume preemption where the preeminent power of a locality to regulate land use is at stake," requiring instead "a clear expression of legislative intent to preempt local control over land use." *Wallach*, 23 N.Y.3d at 743 (citation and internal quotation marks omitted).

As precedents dating back to the early twentieth century indicate, the Court of Appeals' recognition that local elections are also one of the "core powers of local governance" is at least as well-established as its presumption against preemption of local land use law.

B. The local elections presumption promotes stability in the law and strikes the right balance between competing interests.

The local elections presumption—favoring local regulation over local elections—not only faithfully reflects New York precedents and longstanding home rule principles, but also makes practical sense. The rule promotes stability in the law by serving as an interpretive tiebreaker, keeping courts out of the business of guessing legislative intent based on otherwise ambiguous statutory text. And it successfully

protects state supremacy over statewide interests while deferring to localities on issues of core local concern.

Virtually every state court has recognized that state statutes sometimes implicitly preempt local laws when the latter frustrate or conflict with the purposes of the former. Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1140-57 (2007) (describing implied preemption doctrine across numerous states). This principle, known as implied preemption, requires a judicial determination about whether the state legislature intended to preempt local law. Such judicial inquiries have produced a notoriously murky body of caselaw guided by few clear principles and resulted in guesswork into unwritten legislative intentions. See Richard Briffault, *Home Rule for the Twenty-first Century*, 36 URB. LAWYER 253, 265 (2004) (noting that “preemption cases on balance seem more ad hoc than principled”); George Vaubel, *Towards Principles of Restraint Upon the Exercise of Municipal Power in Home Rule*, 22 STETSON L. REV. 643, 685-86 (1993) (describing “vehement criticism” and “confusion” generated by implied preemption doctrine).

The local elections presumption limits these difficult inquiries by providing a simple tiebreaking principle for resolving any ambiguities in state election law. Where a state election law is otherwise ambiguous, courts should presume against preemption of local regulations and instead opt in favor of protecting local governments’ power to control their own local elections. Because of the strong local

interest in local elections, courts should only find preemption where there is unambiguous evidence of a legislative intent to preempt. *See, e.g., People v. Diack*, 24 N.Y.3d 674, 677 (2015) (holding that state’s “comprehensive and detailed statutory and regulatory framework for the identification, regulation and monitoring of registered sex offenders prohibits the enactment of a residency restriction law” by local government); *Village of Lacona v. State, Dep’t of Agr. & Markets*, 51 A.D.3d 1319, 1320 (3d Dep’t 2008) (finding that a state law preempted a local law regulating pesticides because the state law gave a state officer “exclusive [j]urisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides” (citation and internal quotation marks omitted)); *Cohen v. Bd. of Appeals of Village of Saddle Rock*, 100 N.Y.2d 395 (2003) (finding “the Legislature intended to occupy the field and thus preempt local supersession authority” to regulate area variances based on “[n]umerous sources in the legislative history”). Absent such clear evidence of a preemptive purpose, however, the presumption would avoid judicial parsing of conflicting or ambiguous materials by consistently choosing the reading of the state statute that preserves local control over local elections.

The local elections presumption not only simplifies the judicial task but also fully preserves the New York legislature’s supremacy over local governments. The New York Constitution places no limit on the state legislature’s power to regulate local affairs through general laws. N.Y. Const. Art. IX, §2(b)(2) (conferring on state

legislature “power to act in relation to the property, affairs or government of any local government” by general law); *see also City of Amsterdam v. Helsby*, 37 N.Y.2d 19, 26 (1975) (noting that Article IX “makes it abundantly clear that the Home Rule powers will sustain an exercise of local authority . . . only to the extent that such exercise is not inconsistent with any general law enacted by the Legislature”). Recognizing the preeminent role assigned to the state legislature, New York courts have deferred to the state legislature’s judgment about what constitutes a statewide concern that is sufficiently weighty to justify even a special law that overrides a local government’s power over its own property, affairs, and government. *Greater N.Y. Taxi Ass’n v. State of N.Y.*, 21 N.Y.3d 289, 301-03, 308 (2013) (upholding special law creating taxi medallion for New York City’s Outer Boroughs); *Adler v. Deegan*, 251 N.Y. 467, 478 (1929) (upholding Multiple Dwelling Law applicable only to New York City’s tenement housing). And again, the local elections presumption would not foreclose implied preemption manifested by unambiguous evidence of a statutory purpose to set aside discordant local laws. *See, e.g., Diack*, 24 N.Y.3d at 677.

Under this principle of state supremacy, the state legislature has the power to displace local rules simply by saying so in clear terms or by enacting a comprehensive statutory scheme that obviously has the purpose of displacing state law. *See, e.g., Diack*, 24 N.Y.3d at 682-83 (inferring field preemption from multiple sources including Governor’s Approval Memo in Bill Jacket stating that purpose of state law

was to protect affordable housing for sex offenders from “well-intentioned” but overly restrictive local regulations). The local elections presumption merely limits judicial power to set aside local laws based on the court’s speculation about unwritten and ambiguous legislative purpose. In fact, replacing judicial guesswork on preemptive intent with the requirement of clear statutory commands was one of the major purposes of home rule. *See, e.g., City of Oakbrook Terrace v. Suburban Bank & Trust Co.*, 364 Ill. App. 3d 506, 514, 845 N.E.2d 1000, 1007 (2006) (“The intent and purpose of the home rule provisions is to severely limit the judiciary’s authority to preempt home rule powers through judicial interpretation of unexpressed legislative intent.”).

The Legislature could, if it so desired, expressly prohibit localities from expanding local voting rights to noncitizens. It could also indicate an intent to displace local election law unambiguously in legislative history. For the court to infer such a prohibition absent such plain indications of preemptive intent, however, would substitute the judiciary’s own view of the matter for the legislature’s and upset the proper balance between state and local authority. The local elections presumption makes for clearer law and appropriately balances significant competing interests.

C. The presumption also reflects the New York Constitution’s command that local power over matters of local concern be liberally construed.

The local elections presumption is also part of constitutional text. Article IX, §3(c) of the New York Constitution provides that the powers conferred by Article IX

should be “liberally construed.” Read in light of New York’s precedents and constitutional text, this broad construction requirement applies with special force to local governments’ power to define how their officers are selected.

Article IX specifically guarantees to local governments the power to “adopt local laws,” “provid[e] by law” for the selection of local officers, and control the “mode of selection and removal . . . of officers and employees.” N.Y. Const. Art. IX, §§1(a), (b), 2(c)(1). Listed as the very first powers of local governments in a provision styled New York’s “bill of rights for local governments,” these powers are essential to the constitutional purpose of guaranteeing “[e]ffective local self-government.” *See id.*; *see also Resnick*, 44 N.Y.2d at 285 (inferring the “importance of this principle” of local control over local elections from “the specific grant of legislative authority to each local government” over the “mode of selection and removal . . . of its officers” in both the New York Constitution and Municipal Home Rule Law (citations and internal quotations omitted)).

Even prior to the ratification of Article IX in 1963, the Court of Appeals recognized that that this requirement of liberal construction applied with full force to selection of local officials. In *Bareham v. City of Rochester*, 246 N.Y. 140, 146 (1927), the Court held that the 1924 Home Rule Law’s delegation of power to cities to determine the “mode of selection . . . of all officers and employees” gave the City of Rochester broad power to adopt a council-manager form of government. In rejecting

a narrower reading of this power, the *Bareham* Court emphasized that it was “impelled toward a liberal construction” by the provision in the City Home Rule Law requiring municipal powers to be liberally construed. *Id.* at 147.

Importantly, *Bareham* was handed down during a period in New York’s history when state courts generally gave municipal powers a narrow construction. *See, e.g., Browne v. City of New York*, 241 N.Y. 96, 124(1925) (Cardozo, J.) (holding that a city-owned bus line was too “notable” an “innovation” to infer from the 1924 statutory grant of home rule power). As *Resnick* held in rejecting a narrow reading of two counties’ power to significantly overhaul their method of filling vacancies in county legislatures, “even 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.” *Resnick*, 44 N.Y.2d at 286. New York’s lengthy history of applying the “liberal construction” requirement to local election law requires that Article IX, §3(c) be construed to encompass Local Law 11.

II. THE SUPREME COURT ERRED IN CONSTRUING ARTICLE IX OF THE NEW YORK CONSTITUTION AND ELECTION LAW §1-102 TO STRIP NEW YORK CITY OF THE POWER TO CONFER THE RIGHT TO VOTE IN MUNICIPAL ELECTIONS ON NONCITIZENS.

In holding that state law set aside New York City’s extension of voting rights to noncitizens, the Supreme Court ignored the presumption favoring local control over local elections. Instead, the court flipped the presumption on its head, finding that the

absence of any express authorization for local law constituted an implied preemption of such laws. As explained below, this faulty premise led to the erroneous conclusion that Local Law 11 was preempted by N.Y. Const. Art. II, §§1 and 3(d)(2) and E.L. §5-102.

A. Article IX, §1 preserves New York City’s power to confer the right to vote on noncitizens in municipal elections.

The Supreme Court ignored the local elections presumption and instead inferred a prohibition on localities’ power to authorize noncitizens to vote in municipal elections from Article II, §1’s guarantee that “[e]very citizen shall be entitled to vote at every election of all officers elected by the people.” The court erroneously believed that “by not expressly including non-citizens in the New York State Constitution, it was the intent of the framers for non-citizens to be omitted.” *Fossella v. Adams*, No. 85007/2022 at 8 (Sup. Ct. June 27, 2022). The court also cited, as further support, Article IX, §3(d)(2)—which defines “the people” by whom local legislators must be “elected” or “elective” under NY Const. Art. IX, §§1(a)-(b). Drawing on that provision, the court inferred that because “[l]ocal government . . . must be elected by the *people*, which is defined as *citizens* under Article II, §1,” it follows that “only ‘citizens’ may vote in elections.” *Id.* at 9.

These inferences flatly ignore the local elections presumption against preemption of local election rules. Under that presumption, given that local elections are one of the “core powers of local governance,” the court must defer to local

governments' power to regulate their own local elections unless there is some plain indication of a legislative intent in state election laws to preempt such local powers.

Here, the state election laws contain no indication of such a legislative intent. Consider, first, New York's constitution. The guarantee of the right to vote for citizens contained in Article II, §1 and Article IX, §3(d)(2) is phrased as an affirmative grant of a right to vote, not a negative restriction on the extension of that right. This phrasing most naturally suggests only a prohibition on local laws' *disenfranchising* citizens, not a prohibition on local laws' *extending the franchise* to noncitizens. This affirmative wording should be read to set a floor, not a ceiling, on voter qualifications. See Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 VAND. L. REV. 89, 105 (2014). As the Court of Appeals has noted in upholding New York City's novel system of proportional representation, "the purpose of the constitutional provision was *solely* to remove the disqualifications which attached to the person of the voter in earlier times and thereby assure to a citizen, qualified by age and residence, the same right to vote as every other similarly qualified voter possessed." *Blaikie v. Power*, 13 N.Y.2d 134, 140 (1963) (emphasis added).

In *Blaikie*, the Court specifically held that "section 1 of article II was designed not to regulate the mode of selection of elective officers but rather to regulate the status of voters and to protect otherwise qualified voters from electoral discrimination." *Id.*; see also *Johnson*, 274 N.Y. at 418 (describing Article II, §1 as

seeking to “remove the disqualifications which attached to the person of the voter”). The New York Constitution represents a positive guarantee (an “entitlement” to vote if conditions are met) rather than a negative restriction (no voting “unless” conditions are met). A comparison to other states reveals that this wording is hardly accidental: There are numerous state constitutions that expressly prohibit extension of the franchise unless a voter meets the qualifications listed in the state constitution. Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 GEO. WASH. L. REV. 1039, 1082-84 (2017) (explaining distinction between state constitutional suffrage provisions phrased as grants as opposed to restrictions).

This interpretation of Article II, §1 and Article IX, §§1 and 3(d)(2) is reinforced by New York’s longstanding practice of permitting local governments such as school boards, villages, and towns to adopt voting qualifications different from those used in state elections. As Professor Alexander Keyssar noted in his history of the right to vote, New York, along with several other states, treated elections to local office as “‘nonconstitutional’ elections” that could be governed by criteria different from those governing elections to state offices. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 186* (Basic Books 2000). Thus, in *Spitzer*, the Court upheld a village charter’s restriction of the right to vote on certain local matters to property holders, despite the lack of property requirement at the state level. 172 N.Y. at 289-90. The

Court described the constitutional provision governing voting in state elections as “general, relating to the whole state” and the provision governing local government as “local, relating only to the cities and villages of the state.” *Id.*

Likewise, New York extended the right to vote to women in school board elections in 1880 and further extended women’s right to vote to include village and town tax propositions in 1913, despite the fact that Article II, §1 of the 1846 and 1894 State Constitutions both guaranteed the right to vote only to “[e]very male citizen.” See SUSAN GOODIER & KAREN PASTORELLO, *WOMEN WILL VOTE: WINNING SUFFRAGE IN NEW YORK STATE* 14, 18-19 (Cornell University Press 2017). Between 1968 and 2002, New York continued this practice of broadening suffrage by permitting noncitizens to vote in school board elections. See Tara Kini, *Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections*, 93 CALIF. L. REV. 271, 271 n.1. (2005); Jeffery C. Mays, *New York City’s Noncitizen Voting Law Is Struck Down*, N.Y. TIMES (June 27, 2022), <https://www.nytimes.com/2022/06/27/nyregion/noncitizen-voting-ruling-nyc.html>.

If the phrase “[e]very citizen shall be entitled to vote at every election” means, as the Supreme Court believed, that all noncitizens are prohibited from voting at every election, then New York never could have allowed noncitizens to vote in school board elections for over thirty years. Nor could it have extended the franchise to women in school district and village elections prior to 1917, at which point Article

II, §1 was finally amended to delete the word “male.” The fact that the state legislature has long read Article II, §1 in this way—as a positive guarantee rather than a negative restriction—confirms that the Supreme Court misread the constitutional text. *See Kolb v. Holling*, 285 N.Y. 104, 112 (1941) (“The practical construction put upon a constitutional provision . . . by the Legislature . . . is entitled to great weight, if not controlling influence, when such practical construction has continued in operation over a long period of time.”). The most logical reading of the state constitutional language, then, is that *at least* every citizen must be allowed to vote in state elections, but that localities might expand voter eligibility for their own elections.

Even if the issue of Article II’s and Article IX’s meaning were a closer question, the local elections presumption counsels in favor of resolving such doubt in favor of local power. The long history of local experimentation in voting rules demonstrates the importance of such local autonomy in New York’s constitutional system. As the Court of Appeals explained in upholding New York City’s 1936 experiment with proportional representation for its City Council, “[i]f the people of the City of New York want to try the system, make the experiment, and have voted to do so, we as a court should be very slow in determining that the act is unconstitutional, until we can put our finger upon the very provisions of the Constitution which prohibit it.” *Johnson v. City of New York*, 274 N.Y. 411, 430

(1937). The Supreme Court was far from putting its finger on any constitutional provision banning extension of the right to vote in municipal elections.

B. Properly Construed in Light of the Local Elections Presumption, New York Election Law §1-102 Includes Local Law as “Any Other Law” That Can Waive Limits Otherwise Imposed by the New York Election Law.

The Supreme Court also erred in holding that Local Law 11 was preempted because it was not excepted from the Election Law pursuant to E.L. §1-102. To start, such a reading is at odds with the plain text of the statute. But even assuming that the text of E.L. §1-102 could plausibly be considered ambiguous, this provision falls short of a “clear expression of legislative intent to preempt local control.” *Wallach*, 23 N.Y.3d at 743 (citation omitted). Thus, if any ambiguity is found, proper application of the local elections presumption compels the conclusion that Local Law 11 is not preempted.

Consider, first, how the plain text on its face excepts local election laws from prohibitions contained in the New York Election Law. E.L. §1-102 provides:

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.

(emphasis added). The literal meaning of the phrase “any other law” unquestionably refers to local as well as state laws. As the federal district court for the Eastern District of New York held in *Castine v. Zurlo*, “[d]eference to the plain, unambiguous

language of Election Law section 1–102 is appropriate” because “[i]t must be presumed that the State Legislature meant what they wrote.” 938 F.Supp.2d 302, 313 (N.D.N.Y. 2013); *see also McDonald v. N.Y.C. Campaign Fin. Bd.*, 40 Misc. 3d 826, 844, 850 (N.Y. Co. 2013), *aff’d & mod.*, 117 A.D.3d 540 (1st Dep’t 2014) (finding no conflict between the City’s campaign finance laws and the E.L., but noting “if it were necessary for its decision to interpret the impact of Election Law §1-102, it would find that Election Law §1-102 means what it says it means, and must be accorded its plain meaning”).

The Supreme Court, however, ignored that clear text and decided instead to follow *Castine v. Zurlo*, 46 Misc. 3d 995 (Clinton Co. 2014), another trial court opinion holding that the apparently plain phrase “any other law” was somehow ambiguous enough to require clarification using legislative history. According to the Supreme Court, this legislative history indicated that the state legislature did not intend to “mak[e] any substantive changes” when it replaced the phrase “education law” with “any other law.” *Fossella*, No. 85007/2022 at 10.

Even without regard to any presumption favoring local control of local elections, this use of legislative history to depart from the plain text of E.L. §1-102 was error. New York courts “have often held that, if the language of a statute is plain and unambiguous, there is neither need nor warrant to look elsewhere for its meaning.” *Roosevelt Raceway, Inc. v. Monaghan*, 9 N.Y.2d 293, 304 (1961); *see also*

Walsh v. New York State Comptroller, 34 N.Y.3d 520, 524 (2019) (“Where the statutory language is unambiguous, a court need not resort to legislative history”). Here, the Supreme Court asserted without explanation that the phrase “any other law” was ambiguous, alleging that the phrase could be read narrowly to refer only to “state law.” This unexplained assertion, however, conflicts with other provisions of New York law where the state legislature has expressly qualified the term “law” with the modifier “state.” *See, e.g.*, N.Y. Banking L. §293 (“[T]he banking board shall have no power to permit any insurance activities other than those expressly authorized under *state law*.”) (emphasis added); N.Y. Pub. Auth. L. §3651(12)(e) (defining “financeable costs” to mean, *inter alia*, those amounts necessary “to finance any county deficit to the extent authorized by *state law*”) (emphasis added). Here, the legislature did not qualify the language by excepting only state laws; it excepted “*any* other law.” Because the text speaks clearly, there is no need to resort to legislative history.

Assuming *arguendo* that the phrase “any other law” were somehow ambiguous, that ambiguity should be resolved using the local elections presumption. As explained in Part I, New York has long recognized the strength of local power over local elections. *See Resnick*, 44 N.Y.2d at 286 (local governments are “accorded great autonomy in experimenting with the manner in which their local officers, including legislative officers, were to be chosen”); *Johnson*, 274 N.Y. at 430 (“[W]e

as a court should be very slow in determining that the act is unconstitutional, until we can put our finger upon the very provisions of the Constitution which prohibit it”); *Bareham*, 246 N.Y. at 146-57 (power to adopt council-manager system is “impelled” by principle of “liberal construction”).

These precedents stand for a larger principle adopted by many states including New York: Given that local residents have the predominant interest in how elections for their own local officials are conducted, courts should hesitate before invoking ambiguous provisions in state laws to deprive local residents of control over “one of the core powers of local governance.” *Wallach*, 23 N.Y.3d at 743 (citation omitted). Against the background of this 120-year-long tradition, it would take much more than such delphic utterances to find state preemption of local election rules. *See Town of Aurora*, 32 N.Y.3d at 375 (“[I]t is a cardinal principle of statutory interpretation that the intention to change a long-established rule or principle is not to be imputed to the legislature in the absence of a clear manifestation.” (quoting *In re Delmar Box Co.*, 309 at 66)). Without a much clearer manifestation of the intention to alter this tradition, the court cannot presume legislative intent to do so.

Further, contrary to the Supreme Court’s characterization, the legislative history here supports a finding that this law did not alter the tradition of local autonomy over local elections. The Supreme Court relied on various statements in the bill jacket by proponents of the law that the proposed bill was a “minor” proposal

that did not make “substantial or highly controversial changes in the law.” *Fossella*, No. 85007/2022 at 10. Given the longstanding tradition in New York (and around the country) of deferring to local governments on matters concerning local elections, understanding “any other law” to mean what it says, *i.e.* to exempt state *and* local laws, is consistent with this legislative history. Moreover, in light of the long history of local governments within New York adopting innovative local election procedures, it makes sense that a law codifying such local autonomy would be uncontroversial. Cities in New York have been pioneers in electoral innovations, ranging from proportional representation to council-manager government. These developments have universally been met with approval by New York courts.

There is nothing in the legislative history that evinces a desire to preempt local law in this area. A comparison to cases in which this Court has found preemption demonstrates the degree of specificity required. The Court of Appeals has, for instance, inferred that state regulation of sex offenders preempted further local housing restrictions, relying on explicit references in the Assembly memorandum and Governor’s approval message that noted how “well-intentioned” local housing restrictions had created a shortage of affordable housing for sex offenders. *Diack*, 24 N.Y.3d at 675. By contrast, nothing in the bill jacket statements referenced by the Supreme Court says anything about a need to preempt local election laws.

Moreover, if upheld, the Supreme Court's decision could seriously undermine local autonomy over local elections in contravention of the legislature's intentions. By narrowly construing E.L. §1-102 to exclude local laws from the scope of "any other laws," that decision put at risk not only New York City's adoption of noncitizen voting, but also a host of other election regulations that depart from the rules contained in the Election Law. These include rank-choice voting (New York City Charter §1057-g), a distinctive system of public financing of political campaigns (New York City Charter §1052), and non-partisan independent nominating petitions to fill vacancies in the offices of the Comptroller (New York City Charter §94(c)(7)), Public Advocate (New York City Charter §24(c)(7)), Council member (New York City Charter §25(b)(7)), and Borough President (New York City Charter §81(e)(7)).

The Supreme Court did not cite a shred of evidence that the state legislature sought to impose any such straitjacket on New York's local governments. Allowing the decision below to stand would incite a revolution in how cities govern themselves—based only on random remarks in a bill jacket.

This Court should affirm what has long been clear in precedents from New York and other jurisdictions: Absent a clear indication that local control of elections contradicts state law, the constitutional grant of home rule power to local governments protects such local control. Viewed in light of that vital presumption,

Local Law 11 is a proper exercise of New York City's power to control its own election matters.

CONCLUSION

For the reasons stated above, *Amici* respectfully request that the Court reverse the Supreme Court's ruling.

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Respectfully Submitted,



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Source 1

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REVISED EDITION

the Right to Vote

The Contested History of
Democracy in the United States



Alexander Keyssar

THE RIGHT TO VOTE

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THE RIGHT TO VOTE



*The Contested History of
Democracy in the United States*

REVISED EDITION

ALEXANDER KEYSSAR



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AWSA, was to wring “partial” or “limited” suffrage (on issues such as schooling, prohibition, and municipal taxes) from state authorities.²²

NWSA’s approach in key respects was an extension of Radical Reconstruction: despite their break with former abolitionist allies, their distress at the Fifteenth Amendment, and their sometimes disparaging comments about black suffrage, Stanton and Anthony retained a commitment to equal rights and, for a time at least, a desire to build bridges to labor. Government “based on caste and class privilege cannot stand,” declared Stanton in 1869, and she was convinced that political rights were the solvent that would dissolve these social boundaries. Accordingly, NWSA’s strategy was to pressure the federal government to offer women the same constitutional protections given to freedmen in the Fifteenth Amendment. This view was embodied in a draft constitutional amendment introduced in Congress by Radical Republican George Julian in 1869: it declared that “the right of suffrage in the United States shall be based on citizenship” and that “all citizens . . . shall enjoy this right equally without any distinction or discrimination whatever founded on sex.” In the increasingly conservative and pro-states rights political climate of the 1870s, however, this initial version of the Sixteenth Amendment—which tacitly would have nationalized suffrage in ways akin to the Wilson amendment—made little headway.²³

Anthony consequently drafted a new and narrower version in the late 1870s that was first presented to the Senate by Aaron A. Sargent of California in 1878. Modeled on the Fifteenth Amendment, it stated simply that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.” Although NWSA also lobbied for the expansion of women’s economic and social rights, securing the passage of this amendment was the focal point of its activities, and the organization’s political allies introduced the measure into Congress every year. In 1882, both houses of Congress appointed select committees on women’s suffrage, each of which recommended passage of an amendment. Four years later, thanks in part to the energetic support of Republican Henry Blair of New Hampshire, the amendment was finally brought to a vote on the Senate floor, where, to the great disappointment of suffragists seated in the galleries, it was decisively defeated in January 1887 by a margin of thirty-four to sixteen (with twenty-six abstentions), a far cry from the two-thirds positive vote required for passage. In an echo of the regional politics that remained so salient even after the end of Reconstruction, no southern senator voted in favor of the amendment, while

twenty-two voted against it. For another half dozen years, Congress continued to grapple with the issue, but after 1893, no congressional committee reported it favorably until late in the Progressive era.²⁴

The state-by-state strategy of the AWSA bore little fruit as well. Although the issue was debated in numerous constitutional conventions, and referenda were held in eleven states (eight of them west of the Mississippi) between 1870 and 1910, concrete gains were few. The territory of Wyoming enfranchised women in 1869, a policy affirmed at statehood in 1889; Utah did the same in 1870 and 1896 (interrupted by a brief period when the federal government stripped Utah's women of the suffrage as a curious step in its effort to rid the territory of polygamy); and Idaho and Colorado granted suffrage to women in the mid-1890s. Everywhere else, referenda failed, or the writers of new constitutions chose not to present the proposition to voters for ratification. (See table A.20).²⁵

There were, however, a significant number of locales—states, counties, and municipalities—where partial suffrage was adopted, permitting women to vote in municipal elections, on liquor licensing matters, or for local school boards and on issues affecting education. This unique, even anomalous development—enabling women to vote in certain elections but not in others—was made possible by the complex architecture of voting laws. In most states, the suffrage requirements for “nonconstitutional” elections did not have to be identical to those for offices named in state constitutions; they also could be altered by legislation rather than the cumbersome and difficult process of constitutional amendment (see chapter 5).

The most common form of partial enfranchisement involved schools: legislatures, recognizing women's responsibility for childrearing, as well as their education experience, responded to pressure from the suffrage movement by permitting women to vote on matters affecting schooling. Nearly all state legislatures considered adopting laws of this type, and by 1890, more than twenty states had done so. (See table A.17.) Although activists generally viewed school suffrage as a stepping-stone, an entering wedge for broader electoral participation, legislators tended to view the matter differently: as a gesture to placate prosuffrage forces and an assertion that school matters were distinct from “politics.”²⁶

Placating suffragists, as well as temperance reformers, also was the primary motivation behind laws permitting women to vote on liquor licenses and other matters related to the sale of alcoholic beverages. In many states, such laws were demanded by the large, rapidly growing Woman's Christian

Temperance Union (WCTU), which argued that women had a special interest in voting on such matters because of the impact of alcohol on the family and the links between drunkenness and domestic violence. Similarly, in the 1880s and 1890s, women in a few states were granted the right to vote in municipal elections, or if they were taxpayers, to vote on tax and bond issues. Although sanctioned by the notion that municipal governance was a form of “housekeeping,” such laws also were a response to the suffrage movement’s ongoing agitation in behalf of the inseparability of taxation and representation. Indeed, there was a conservative twist to this expansion of the franchise, since it appealed to those who believed that voting should be restricted to property owners and taxpayers.²⁷ (See table A.18.²⁸)

The limited roster of successes, however, does not do justice to the strength of the movement in the 1870s and 1880s. Local prosuffrage organizations proliferated, referenda were held in numerous states, and after vigorous campaigns, hundreds of thousands of men voted in favor of women’s suffrage, a development that would have been unthinkable forty years earlier. Moreover, even in states where the issue was not submitted to a popular vote, suffrage organizations were active, state legislators were obligated to vote on suffrage bills year after year, and support for enfranchisement often cut across party lines. In Massachusetts, for example, both parties were divided on the issue, and Democrat Ben Butler twice ran for governor on prosuffrage planks. At the Illinois Constitutional Convention of 1869–70, delegates voted forty to twenty-one to submit the question to the voters, only to reverse that vote by a narrow margin a month later. A few years later, in Pennsylvania, the issue was the subject of a lively debate at the constitutional convention, and in the 1880s the Indiana House of Representatives voted several times to endorse women’s suffrage, only to see its actions blocked by Senate filibusters encouraged by fears that female voters would restrict the sale of intoxicating liquors. In California, the constitutional convention of 1878–79 devoted a tremendous amount of time and energy to the question; after prolonged and passionate debate, suffrage was restricted to men by a margin of only ten votes.²⁹

One reason for the growing support was the power of prosuffrage arguments. Impressively diverse, these arguments were voiced not only by suffrage activists but also by political figures, usually but not always Republican, who found themselves in legislatures or constitutional conventions where they had to think through and vote on the issue. The most common argument remained the natural or universal rights view put for-

Constitutional Series, vol. 2 (Madison, WI, 1919), 214–16, 271; *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana, 1850* (Indianapolis, 1850), 517–19; Commonwealth of Massachusetts, *Woman Suffrage in the United States*, Bulletins for the Constitutional Convention, 1917–1918, vol. 2, no. 33 (Boston, 1919), 442.

6. Richard J. Evans, *The Feminists* (London, 1977), 31, 45, 47–48, 56–57; DuBois, “Beyond the Compact,” 837–40; idem, *Feminism and Suffrage*, 22, 31–32, 39–40; Flexner, *Century of Struggle*, 64–65, 78; Suzanne M. Marilley, *Woman Suffrage and the Origins of Liberal Feminism in the United States, 1820–1920* (Cambridge, MA, 1996), 16–17, 43; Rosalyn Terborg-Penn, *African American Women in the Struggle for the Vote, 1850–1920* (Bloomington, IN, 1998), 14–17; Wellman, “Seneca Falls,” 9–32; David Morgan, *Suffragists and Democrats: The Politics of Woman Suffrage in America* (East Lansing, 1972), 13–14; Aileen S. Kraditor, *Up from the Pedestal: Writing in the History of American Feminism* (Chicago, 1968), 14–15. For a compelling analysis of the diverse fronts on which this rethinking was taking place see Isenberg, *Sex and Citizenship*.

7. James Allen Smith, *The Growth and Decadence of Constitutional Government* (New York, 1930), 41–43; Wellman, “Seneca Falls,” 19–21; Isenberg, *Sex and Citizenship*, 15–17.

8. Isenberg, *Sex and Citizenship*, 1–6, 15–21, 32–36.

9. DuBois, *Feminism and Suffrage*, 41–46; idem, “Beyond the Compact,” 839, 841; Flexner, *Century of Struggle*, 82–83; Isenberg, *Sex and Citizenship*, 17–18, 37; Morgan, *Suffragists and Democrats*, 15; Carol C. Madsen, ed., *Battle for the Ballot: Essays on Woman Suffrage in Utah, 1870–1896* (Logan, UT, 1997), 2–3; Israel Kugler, *From Ladies to Women: The Organized Struggle for Woman's Rights in the Reconstruction Era* (New York, 1987), 37; Terborg-Penn, *African American Women*, 14–17. In Kansas in 1859, for example, a constitutional convention agreed to hear a petition, signed by 252 residents, asking for equal suffrage for women, but it did not act on the petition. *Kansas Constitutional Convention: A reprint of the Proceedings and Debates of the Convention July 1859* (Topeka, 1920), 53–59, 72–76, 86–87, 99.

10. Elisabeth Griffith, *In Her Own Right: The Life of Elizabeth Cady Stanton* (New York, 1984), 110; Dale Baum, “Woman Suffrage and the ‘Chinese Question’: The Limits of Radical Republicanism in Massachusetts, 1865–1876,” *New England Quarterly* 56 (March 1983): 65; *Official Report of the Proceedings and Debates of the Third Constitutional Convention of Ohio, 1873*, vol. 2 (Cleveland, 1874), 1802, 1978; Manfred Berg, “Soldiers and Citizens: War and Voting Rights in American History,” *Reflections on American Exceptionalism*, ed. David K. Adams and Cornelis A. Van Minnen (Staffordshire, England, 1994), 197.

11. DuBois, *Feminism and Suffrage*, 59–61; Griffith, *In Her Own Right*, 123.

12. *Proceedings of the First Anniversary of the American Equal Rights Association* (New York, 1867), 7–8, 57.

13. DuBois, *Feminism and Suffrage*, 59–65, 67, 70, 72, 75, 77–78, 79, 80, 87, 95–99, 105–8; Steven M. Buechler, *The Transformation of the Woman Suffrage Movement: The Case of Illinois, 1850–1920* (New Brunswick, NJ, 1986), 5–7; Flexner, *Century of Struggle*, 145–49; Ellen C. DuBois, ed., *Elizabeth Cady Stanton, Susan B. Anthony: Correspondence, Writings, Speeches* (New York, 1981), 88–92; Kraditor, *Up from the Pedestal*, 255; Elizabeth C. Stanton et al., *The History of Woman Suffrage*, vol. 2 (1881; reprint, Salem, NH, 1985), 214, 307–8 (hereafter *HWS*); Griffith, *In Her Own Right*, 119, 123, 134; Baum, “Woman Suffrage,” 64; DuBois, “Beyond the Compact,” 845–46.

14. DuBois, *Feminism and Suffrage*, 112–60; Buhle and Buhle, *Concise History of Woman Suffrage*, 20–22; DuBois, *Stanton*, 99, 142–43; Buechler, *Transformation*, 40–41, 90.

15. *HWS*, vol. 3, 275; *ibid.*, vol. 2, 788. Dale Baum points out that some Massachusetts Republicans believed that they would benefit from women's suffrage in the short run because a significant proportion of pro-Democratic immigrant women could not meet the literacy or citizenship requirements to vote; Baum, “Woman Suffrage,” 68–69. *Debates and Proceedings of the Constitutional Convention of the State of Illinois 1869*, vol. 2 (Springfield, 1870), 1289; for examples of the ideological debates of the period see also *ibid.*, 157, 451, 479, 736, 856, 1277, 1280, 1289, 1291, 1477, 1502.

16. *HWS*, vol. 2, 641–42; *Ohio Constitutional Convention 1873*, vol. 2, 1872; *The Congressional Globe*, 40th Cong., 3d sess., vol. 1 (29 January 1869), 710; *Debates Illinois 1869*, vol. 1, 212.

17. *Minor v. Happersett*, 88 U.S. 162, 163 (1874).

18. Anne F. Scott and Andrew M. Scott, *One Half the People: The Fight for Woman Suffrage* (Philadelphia, 1975), 81–95; DuBois, “Beyond the Compact,” 852–60; Martha G. Stapler, *Woman Suffrage Year*

Source 2

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women. Following the defeat of Anthony's motion, Frederick Douglass, among others, promoted the immediate acceptance of black suffrage and a continuation of work for woman suffrage.³⁵ In spite of calls from the audience for women speakers, according to Anthony's biographer, men "wrested the control of the meeting from the hands of women and managed it to suit themselves."³⁶ Tempers flared, heated arguments ensued, and the membership as a whole could not find any resolution.

This rupture on Wednesday, May 12, 1869, also marks a major division in the ranks of women's rights activists. That evening, Stanton, Anthony, and representatives from nineteen states met at the offices of the Women's Bureau at 49 East 23rd Street. Elizabeth Stuart Phelps had purchased the building and rented space to women's societies and businesses. One of the few public meeting spaces open for women reform activists, it housed the *Revolution*, a weekly women's rights newspaper published by Stanton and Anthony from 1868 through 1870.³⁷ They established the National Woman Suffrage Association at the bureau. After a debate, they voted down a proposal to exclude men from the new organization.³⁸ The most outspoken New York women dominated the national association and worked to gain suffrage rights for women at the federal level. At odds with the national association's strategies, Lucy Stone and her husband, Henry Blackwell, established the Boston-based American Woman Suffrage Association at a convention held in Cleveland, Ohio, in November 1869.³⁹ The American Woman Suffrage Association supported black suffrage and sought enfranchisement for women on a state-by-state basis rather than at the national level. This lack of cohesion at the national level, lasting for another twenty years, allowed New York suffragists to dominate the national movement.⁴⁰

Establishing the New York State Woman Suffrage Association

Even as they led the nascent but intense national-level suffrage activity, New York State women's rights activists also invested a great deal of effort at the local level. While the story of the national-level woman suffrage movement is one of repeated failure until its ultimate success in 1920, the story of the New York State Woman Suffrage Association, founded in 1869, is one of minor, but repeated, successes. The United States Supreme Court decision in *Minor v. Happersett* in 1875 made it clear that the granting of suffrage rights rested with the states while it denied the concept of national citizenship.⁴¹ The New York women's rights activists Martha Coffin Wright, Matilda Joselyn Gage, and Lillie Devereux Blake always focused on gender issues much

broader than obtaining the right to vote. Women's access to higher education and the professions, property rights in marriage, and gender-based salary differences formed the subjects of their writing as much as did woman suffrage.⁴² New York women continued to expand their rights, building on the property rights act of 1860, gaining custody rights to their children in the same year and the right to vote in school board elections in 1880. They also won the right to vote for, and run for, the office of school commissioner in 1892, the right of women property owners to vote on measures concerning assessments and tax increases in 1901, the right to vote on tax propositions in villages and towns in 1913, and the right to full suffrage in 1917.⁴³ The state-level achievements made the existence of the New York State Woman Suffrage Association critical to the strategies, and eventual success, of the national organization.

Matilda Joslyn Gage called for a convention to establish the New York State Woman Suffrage Association on July 13 and 14, 1869, at Congress Hall in the resort town of Saratoga Springs. Prominent reformers such as Amy Post, Martha Coffin Wright, Eliza Wright Osborne, Lydia Strawbridge, Samuel J. May, Susan B. Anthony, and Lillie Devereaux Blake joined more than one hundred other interested women and men to discuss woman suffrage in the state.⁴⁴ According to the *Revolution*, the convention to found the New York State association garnered broad attention and support.⁴⁵ The secretary recorded its constitution in a brand new bound minutes book and laid out the directives of the new organization. Members justified their existence as follows:

Whereas the denial of the right of the ballot to woman is in direct opposition to the genius of our institutions and the Declaration of Independence, which says that "all just governments derive their power from the consent of the governed," and that taxation without representation is base injustice; therefore we the citizens of the State of New York, believing that the ballot is the legalized voice of the people [and] is the right of every law abiding citizen in the state, do associate ourselves together for the purpose of securing it to every woman of the state.⁴⁶

By the close of the convention, the women had elected officers, staffed an advisory council divided by district, gathered commitments from representatives of thirty-three counties, and drawn up a preliminary membership list.⁴⁷ Following the convention, Gage visited central and western counties, including Wayne, Orleans, Niagara, Erie, Genesee, Chemung, Tioga, Tompkins, and Broome, to help establish auxiliaries of the New York association and encourage suffrage activism.⁴⁸



Matilda Joslyn Gage founded the New York State Woman Suffrage Association in Saratoga Springs in 1869. One of the primary theorists of the woman's movement, Gage would write *Woman, Church, and State* in 1893 in one of the first attempts to show how organized religion exacerbates injustice and discrimination against women. Image courtesy of Sally Roesch Wagner and the Matilda Joslyn Gage Foundation, Fayetteville, NY.

The association relied on grassroots organization, urging a “county woman suffrage society, auxiliary to the state association; in each town or village a local society, auxiliary to the county.”⁴⁹ Officers of the state association provided a simple constitution for even small groups of women in rural areas, encouraging them to organize and elect a chair and secretary. Any of the suffrage groups across New York could affiliate with the state association by paying dues of not less than five dollars for a year. They encouraged each group to set aside money for the purchase of books and tracts,

which the New York State Woman Suffrage Association could readily supply. Representatives from each county in the state served the state association as vice-presidents.⁵⁰ Within a few short years of the founding of the New York State Woman Suffrage Association, nearly every county boasted suffrage groups—often called political equality clubs in the rural areas—as affiliates of the association.

The New York State Woman Suffrage Association held annual conventions at various locations across the state to broaden the appeal of suffrage (see appendix 1).⁵¹ Eager women in the county organizations hosted state conventions and managed meeting logistics. Originally members held meetings in the summer, but in 1874, Matilda Joslyn Gage suggested that they hold them during the cooler weather in the autumn.⁵² Although about 800 people attended the founding meeting, various sources reporting on the conventions indicate that annual conventions typically drew between 100 and 150 attendees until suffrage popularity increased after 1890.⁵³ Members welcomed men such as Samuel J. May at their conventions, but fewer men attended meetings as the century drew to a close.⁵⁴ Women came from farms, villages, towns, and cities across the state and met the women who led the movement they had joined. Attending these conventions strengthened networks between women, who took their enthusiasm home with them and shared it with members of their local clubs and communities.

New York suffragists elected Martha Coffin Pelham Wright, Lucretia Mott's younger sister, as their first president. Grace Greenwood, the first female journalist for the *New York Times*, described Martha Wright as "a woman of strong, constant character, and of rare intellectual culture." Despite a reputed "lifelong fear of public speaking," Wright had presided over anti-slavery and women's rights meetings since before the Civil War.⁵⁵ Susan B. Anthony and Matilda Joslyn Gage separately wrote to Wright requesting that she accept the office of president of the state association. For health reasons, she initially turned them down.⁵⁶ With continued pressure exerted by her friends, she eventually accepted the office. Disliking dissension of any kind, she consistently encouraged women to unify for "our cause."⁵⁷ At Wright's unexpected death on January 4, 1875, Matilda Joslyn Gage stepped in as president for the next year.

Under Gage's tenure, a women's committee formed to appeal to the New York State legislature to amend the state constitution to provide for women's voting rights. The judiciary committee reported adversely on the proposal. Women's rights advocates made similar but ultimately unsuccessful efforts every year thereafter, until 1894. Additionally, three of the state association presidents in the early years also served at the national level.

Their ideas influenced activities at both the state and national levels, often linking their initiatives. They participated in state legislative hearings and, in 1874, asked that women be released from paying taxes until they had the right to vote. Not surprisingly, that bill failed. Other state legislative activities included advocating for the right to vote for the United States president, vice-president, and state officers. Women from other states often attended New York State Woman Suffrage conventions, adding to the potential for broader influence on the part of New York activists.⁵⁸

In 1876, as part of the Philadelphia celebration to commemorate the centennial of the founding of the United States, Gage and Anthony illegally presented the "Declaration of Rights of Woman." Prior to the event, Gage rented office space to prepare for the exposition. She drafted the declaration and procured five tickets for the event to be held in Independence Hall. A congressman from Michigan, Thomas W. Ferry, denied them permission to present the document during the ceremony. Nevertheless, Gage and Anthony interrupted the proceedings and defiantly handed a parchment copy of the declaration to the shocked chairman and left the building, scattering additional copies of the declaration amid the stunned audience. Then they appropriated an empty bandstand outside, and Anthony read the declaration aloud to a predominantly female audience, after which they adjourned to the First Unitarian Church for a five-hour meeting with speeches and music by members of the Hutchinson family of singers.⁵⁹

The New York State Woman Suffrage Association benefited from the unique attributes of its respective leaders and remained stable during the nineteenth century. While the capable Susan B. Anthony functioned as president of the New York State association from 1876 until 1877, her national tours promoting woman suffrage often precluded her from presiding at the annual conventions or from being directly involved with work at the state level.⁶⁰ Between 1875 and 1878, Gage frequently represented the state association in Albany, addressing legislative committees, working for a wide variety of women's rights bills, and participating in rallies in New York City.⁶¹ Gage, accompanied by Lillie Devereux Blake and Dr. Clemence S. Lozier, who founded the New York Medical College and Hospital for Women in 1863, the first for women in New York State, addressed the New York State legislature in 1876 on the woman suffrage question. According to the report given at the eighth annual National Woman Suffrage Association convention held in Washington that year, legislators "favorably received" the report, and the press extensively quoted its words.⁶²

One of the most inspired examples of direct activism on the part of these women was their attempt to register and vote in various kinds of elections

in towns and cities such as in Brooklyn, New York City, Buffalo, Albany, Ithaca, Ogdensburg, Utica, Poughkeepsie, Rochester, Freeville, Canastota, Randolph, and West Winfield.⁶³ In May 1868, Schenectady women had voted in a local election on the question of erecting waterworks.⁶⁴ Gage, like other women's rights activists, took every opportunity to challenge the political barriers women faced. In July 1871, she led nine property-holding women in an attempt to vote in an election to decide on a tax levy.⁶⁵ The following month, she justified her reasons for taking part in the action, contending that "it is simply impossible for any person to do as well for another person as that person will do for [herself]. There is no protection quite equal to self-protection."⁶⁶ When Rochester authorities arrested Anthony for voting in 1872, Gage heavily supported her, canvassing throughout the state and presenting her speech "The United States on Trial: *Not* Susan B. Anthony."⁶⁷ In 1873, the Rochester residents Amy Post and Sarah E. Owen attempted to register to vote in a state election. These experiences highlighted the necessity of a federal amendment to enfranchise women, for a right granted by a state could easily be rescinded.⁶⁸

Winning the Vote in School Elections

From at least 1876, New York suffragists agitated for the right to vote in school elections. Like women of other northeastern states, they argued that women should vote on issues relating to children. In 1877, the state senator from Monroe County, William N. Emerson, proposed legislation that would allow any woman who met the same qualifications required of men to be elected to any office of school administration. Lillie Devereux Blake led a passionate campaign for the passage of this bill during several sessions of the New York State Assembly.⁶⁹ Despite an outpouring of support from across the state and in both houses of the legislature, Governor Lucius Robinson vetoed the bill, claiming that because under the Constitution women did not have the "right of suffrage," that deemed them ineligible for "all offices connected with the department of education."⁷⁰ Seething over Robinson's opposition to school suffrage, Blake and other members of the New York State Woman Suffrage Association responded to the governor's bid for reelection in 1878 by coordinating the efforts to oppose him. Suffragists wrote letters and published circulars, raised money, and organized a statewide speaking tour.⁷¹ Their efforts may have had some effect, for Robinson's opponent, the suffragist-endorsed Republican candidate Alonzo B. Cornell, won the election. Blake herself won election as president of the New York State Woman Suffrage Association in 1879. Bold, exciting, and sometimes controversial activities characterized her eleven-year tenure.

Blake and other suffragists celebrated when the new governor signed the bill granting New York women the right to vote in school elections on February 15, 1880.⁷² Women who met the property and citizenship requirements could vote for “school trustees, district clerk, tax collector and librarian, and . . . on questions of taxation and on all matters” put before the school meetings of the district where they resided. The officers of the New York State Woman Suffrage Association urged women to use this right, seeing it as a “long step toward the end of an old and vast wrong—the total disenfranchisement of a majority of the grown people of the Empire State.”⁷³ Later that year, Matilda Joslyn Gage proudly led 102 women to the polls in Fayetteville, where they helped to elect an all-female school board.⁷⁴

While many women across the state voted in school elections, “hundreds of women in this State were debarred by falsehood and intimidation.” People heard “wild statements”: the governor had recalled the bill, it did not apply to cities and villages, it had been repealed, or only rich women could vote. Some women faced threats of physical violence at the hands of their husbands if they voted, and men blew smoke in the faces of women who exercised their right in the dirty little room set aside for voting in Port Jervis. Men in Long Island City stoned a woman for encouraging other women to vote. The newspaper in New Brighton threatened women with jail if they attempted to vote.⁷⁵ It is a wonder that any women actually voted in school elections under these circumstances. Nevertheless, women realized that they did have some power to affect political decisions and elections.

Testing the Reach of Women’s Political Power

Competition, rivalry, and personality conflicts plagued the woman suffrage movement, as they do all movements, in New York as elsewhere. In 1884, in order to cover the city of New York more effectively, Lillie Devereux Blake and Dr. Clemence Lozier created the New York City Woman Suffrage Party. Lozier served as president of a New York City suffrage organization from 1873 to 1886.⁷⁶ The existence of these multiple, sometimes competing organizations shows the internal power struggles that sometimes hampered the progression of the suffrage movement. Although Lozier presided for Anthony at the ninth annual meeting of the state association, held at Republican Hall in New York City, the state and city organizations often clashed on issues related to strategy. Blake’s outspoken and confrontational tactics made many moderate upstate members uncomfortable.⁷⁷

Religion represented one of the most controversial issues among women’s rights activists at every level. Although most meetings opened and closed



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27. DuBois, *Feminism and Suffrage*, 65–67.
28. Stanton, Gage, and Anthony, *History of Woman Suffrage*, vol. 2, 183.
29. Garland, “Irrespective of Race, Color, or Sex,” 64.
30. “Constitution of the United States of America: Analysis and Interpretation,” <https://www.congress.gov/constitution-annotated/> (accessed November 13, 2015).
31. DuBois, *Feminism and Suffrage*, 163–64.
32. *Ibid.*, 54.
33. Sally Roesch Wagner, *Sisters in Spirit: Haudenosaunee Influence on Early American Feminists* (Summertown, TN: Native Voices Book Publishing Company, 2001), 42.
34. Wagner, *Sisters in Spirit*, 42–44, 88.
35. For details of the last American Equal Rights Association convention see DuBois, *Feminism and Suffrage*, 186–91.
36. Ida Husted Harper, *The Life and Work of Susan B. Anthony*, vol. 1 (Indianapolis: Hollenbeck Press, 1898), 324.
37. Stanton, Gage, and Anthony, *History of Woman Suffrage*, vol. 2, 400; Ann D. Gordon, ed. *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony*, vol. 2, *Against an Aristocracy of Sex, 1866–1873* (New Brunswick, NJ: Rutgers University Press, 2000), 357.
38. Gordon, *Selected Papers*, vol. 2, 242–43.
39. Harper, *Life and Work*, vol. 1, 326–27; Sherry H. Penney and James D. Livingston, *A Very Dangerous Woman: Martha Wright and Women’s Rights* (Amherst, MA: University of Massachusetts Press, 2004), 182–83.
40. Dubois, *Feminism and Suffrage*, 53–78.
41. Allison Sneider, “Woman Suffrage in Congress: American Expansion and the Politics of Federalism,” in Jean Baker, ed., *Votes for Women: The Struggle for Suffrage Revisited* (New York: Oxford University Press, 2002), 77–87.
42. Penney and Livingston, “Getting to the Source: Hints for Wives—and Husbands,” *Journal of Women’s History* 15, no. 2 (Summer 2003): 183.
43. Paula Baker, *The Moral Frameworks of Public Life: Gender, Politics, and the State in Rural New York, 1870–1930* (New York: Oxford University, 1991), 74, 117.
44. “Officers and Members of the New York State Woman Suffrage Association,” Minutes Book, vol. 1, pp. 1–8, box 1, MS 1369, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University, New York, NY.
45. Susan B. Anthony wrote many letters inviting prominent women around the country to attend the founding meeting of the New York association. Mary Rice Livermore, for example, responded to Anthony from Chicago, telling her that she could not attend the meeting in Saratoga. Gordon, *Selected Papers*, vol. 2, 251.
46. New York State Woman Suffrage Association Minutes Book, vol. 1, p. 1, box 1, MS 1369, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University.
47. Ten women served the New York State Woman Suffrage Association as presidents between 1869 and 1917: Martha Coffin Wright (1869–75), Matilda Joslyn Gage (1875–76, 1878), Susan B. Anthony (1876–77), Lillie Devereux Blake (1879–90), Jean Brooks Greenleaf (1890–96), Mariana Wright Chapman (1896–1902), Ella Hawley

Crossett (1902–10), Harriet May Mills (1910–13), Gertrude Foster Brown (1913–15), and Vira Boarman Whitehouse (1915–17). New York State Woman Suffrage Association Minutes Book, vol. 1, 2–8, MS 1369, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University, New York, NY. Ann D. Gordon, ed., *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony*, vol. 4, *When Clowns Make Laws for Queens, 1880–1887* (New Brunswick, NJ: Rutgers University Press, 2006), 156–57.

48. It is not clear how many women founded formal suffrage or women's rights clubs as a result of Gage's tour. There is limited evidence that representatives of some of these county groups attended the New York State Woman Suffrage Association conferences. For example, Calista Andrews from McLean, near Groton, New York, in her role as suffrage representative of Tompkins County, attended the May 1878 convention in New York City. Lucy Hawley Calkins from Ithaca in Tompkins County attended the Buffalo Convention at Castle Inn in 1902 as a delegate. Convention Minutes, New York State Woman Suffrage Association, vol. 1 and vol. 5, box 1, box 1, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University.

49. "New York State Woman Suffrage Society," Lillie Devereux Blake Collection, Missouri History Museum Archives, St. Louis, MO.

50. Ibid.

51. President Blake did not call a convention in 1880. According to Ronald Yanosky, that year Blake lobbied at major party conventions that year, which likely interfered with her calling a suffrage convention. Yanosky, "Blake, Lillie Devereux," *American National Biography Online*, <http://www.anb.org/articles/15/15-00067.html> (accessed December 10, 2013).

52. Martha Coffin Wright to Susan B. Anthony, letter dated Auburn, June 25, 1874. Ann D. Gordon, ed., *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony*, vol. 3, *National Protection for National Citizens, 1873 to 1880* (New Brunswick, NJ: Rutgers University Press, 2003), 90.

53. New York State Woman Suffrage Association Minutes Book, vol. 1, pp. 1–8, box 1, MS 1369, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University.

54. Dennis Landis, "Samuel Joseph May," *Dictionary of Unitarian and Universalist Biography*, <http://uudb.org/articles/samueljmay.html>, May 30, 2003.

55. Penney and Livingston, *A Very Dangerous Woman*, 186, 227; Penney and Livingston, "Getting to the Source: Hints for Wives—and Husbands," 184; *Revolution* 3 (February 4, 1869), 66.

56. Wright complained of exhaustion and feeling unwell. Martha Coffin Wright, diaries, box 271, Garrison Family Papers, Sophia Smith Collection, Smith College, Northampton, MA.

57. Penney and Livingston, *A Very Dangerous Woman* 186.

58. "Woman Suffrage," hand dated May 11, 1876. Unattributed newspaper clipping attached to New York State Woman Suffrage Association Minutes Book, vol. 1,

p. 12, box 1, MS 1369, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University.

59. Eleanor Flexner and Ellen Fitzpatrick, *Century of Struggle: The Woman's Rights Movement in the United States* (Cambridge: Belknap Press, 1996 [1959]), 163–64; Boland, "Matilda Joslyn Gage," 144–48.

60. "Annual Convention of the State Woman Suffrage Association at Masonic Hall Yesterday—A Plea for Woman's Enfranchisement—Governor Robinson Denounced," unattributed newspaper clipping attached to New York State Woman Suffrage Association Minutes Book, vol. 1, box 1, p. 16, MS 1369, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University.

61. Boland, "Matilda Joslyn Gage," 147.

62. Stanton, Gage, and Anthony, *History of Woman Suffrage*, vol. 3, 4–6.

63. Gordon, *Selected Papers*, vol. 4, 444–45.

64. *New York World*, May 23, 1868.

65. Gordon, *Selected Papers*, vol. 2, 650.

66. Matilda Joslyn Gage, "Women Taxpayer," *Weekly Recorder* (Manlius), August 3, 1871, copy in collection of Sally Roesch Wagner.

67. *Woman's Journal*, November 15, 1873; Gordon, *Selected Papers*, vol. 2, 610.

68. Boland, "Matilda Joslyn Gage," 147–48.

69. Farrell, *Lillie Devereux Blake*, 152.

70. Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, eds., *History of Woman Suffrage*, vol. 3 (Rochester: Susan B. Anthony, 1886), 417, 422–23; Grace Farrell, *Lillie Devereux Blake: Retracing a Life Erased* (Amherst, MA: University of Massachusetts Press, 2002), 152.

71. Farrell, *Lillie Devereux Blake*, 152; Matilda Joslyn Gage, "To the People of the State of New York," *National Citizen and Ballot Box* 4, no. 5 (September 1879), 4.

72. Farrell, *Lillie Devereux Blake*, 153. Cornell did not fully support women's rights, however, and was "found wanting in courage and conscience" when it came to signing the bill providing for the hiring of police matrons, another of Blake's causes. *Who's Who in New York City and State* (New York: L. R. Hamersly, 1904), 64; Stanton, Anthony, and Gage, *History of Woman Suffrage*, vol. 3, 432–33.

73. Lillie Devereux Blake, "The School Elections," unattributed newspaper clipping (August 18, 1880), copy in the collection of Sally Roesch Wagner; "City and Suburban News," *New York Times*, February 24, 1880, 8.

74. Barbara Rivette, *Fayetteville's First Woman Voter* (Fayetteville, NY: Matilda Joslyn Gage Foundation, 2006).

75. Stanton, Gage, and Anthony, *History of Woman Suffrage*, vol. 3 429–30.

76. "Clemence S. Lozier," *Woman's Words* (n.d.), box 2, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University.

77. Gordon, *Selected Papers*, vol. 4, 467; New York State Woman Suffrage Association Minutes Book, vol. 1, p. 23, box 1, MS 1369, Woman Suffrage Association of New York State and Woman Suffrage Party of New York City Records, 1869–1919, Rare Book and Manuscript Library, Butler Library, Columbia University.

78. The full text of Gage's *Woman, Church, and State* may be found at <http://www.sacred-texts.com/wmn/wcs/index.htm> (accessed December 15, 2013).

EXHIBIT B

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**Supreme Court of the State of New York
County of Richmond**

----- X

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,

- 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,

- 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.

----- X

PLEASE TAKE NOTICE that defendants Eric Adams, in his official capacity as Mayor of New York City, and the City Council of the City of New York appeal to the Appellate Division, Second Department, from the decision and order of Supreme Court, Richmond County (Porzio, J.) dated and entered June 27, 2022 (NYSCEF Nos. 172–174).

Dated: New York, New York
July 22, 2022

HON. SYLVIA O. HINDS-RADIX
*Corporation Counsel
of the City of New York*



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Supreme Court of the State of New York

Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
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,		Date Notice of Appeal Filed	
- 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,		For Appellate Division	
- 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.			
Case Type	<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	Filing Type
<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278		<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review	
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input checked="" type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment	<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court		County: Richmond	
Dated: 06/27/2022		Entered: 06/27/2022	
Judge (name in full): Hon. Ralph J. Porzio		Index No.: 85007/2022	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.			
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.			
By decision and order of Supreme Court, Richmond County (Porzio, J.), among other things, denied defendants' dispositive motions, granted summary judgment to plaintiffs, declared Local Law No. 11 of 2022 null and void, and permanently enjoined defendants from registering non-citizens to vote.			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Did Supreme Court err in, among other things, denying summary judgment to the City Council and the Mayor and in granting summary judgment to plaintiffs, where Local Law No. 11 of 2022 is consistent with the State Constitution, Election Law, and Municipal Home Rule Law?

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	VITO J. FOSSELLA	Plaintiff	Respondent
2	NICHOLAS A. LANGWORTHY	Plaintiff	Respondent
3	JOSEPH BORRELLI	Plaintiff	Respondent
4	NICOLE MALLIOTAKIS	Plaintiff	Respondent
5	ANDREW LANZA	Plaintiff	Respondent
6	MICHAEL REILLY	Plaintiff	Respondent
7	MICHAEL TANNOUSIS	Plaintiff	Respondent
8	INNA VERNIKOV	Plaintiff	Respondent
9	DAVID CARR	Plaintiff	Respondent
10	JOANNA RIOLA	Plaintiff	Respondent
11	VICKIE PALADINO	Plaintiff	Respondent
12	ROBERT HOLDEN	Plaintiff	Respondent
13	GERARD KASSAR	Plaintiff	Respondent
14	VERALIA MALLIOTAKIS	Plaintiff	Respondent
15	MICHAEL PETROV	Plaintiff	Respondent
16	WAFIK HABIB	Plaintiff	Respondent
17	PHILLIP YAN HING WONG	Plaintiff	Respondent
18	NEW YORK REPUBLICAN STATE COMMITTEE	Plaintiff	Respondent
19	REPUBLICAN NATIONALCOMMITTEE	Plaintiff	Respondent
20	ERIC ADAMS	Defendant	Appellant

Informational Statement - Civil

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

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Party or Parties Represented (set forth party number(s) from table above): 21

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Party or Parties Represented (set forth party number(s) from table above): 23-31

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Additional Party Information

21	BOARD OF ELECTIONS IN THE CITY OF NEW YORK	Defendant	Respondent
22	CITY COUNCIL OF THE CITY OF NEW YORK	Defendant	Appellant
23	HINA NAVEED	Defendant-Intervenor	Respondent
24	ABRAHAM PAULOS	Defendant-Intervenor	Respondent
25	CARLOS VARGAS GALINDO	Defendant-Intervenor	Respondent
26	EMILI PRADO	Defendant-Intervenor	Respondent
27	EVA SANTOS VELOZ	Defendant-Intervenor	Respondent
28	MELISSA JOHN	Defendant-Intervenor	Respondent
29	ANGEL SALAZAR	Defendant-Intervenor	Respondent
30	MUHAMMAD SHAHIDULLAH	Defendant-Intervenor	Respondent
31	JAN EZRA UNDAG	Defendant-Intervenor	Respondent

EXHIBIT C

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

Plaintiffs,

-against-

Index #: 85007/2022

DECISION & ORDER
Motions #004, 005, 006

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

Upon the papers filed in support of the application and the papers filed in opposition thereto, and after hearing oral arguments, it is

ORDERED that Motion #004 by Defendants Mayor Eric Adams and the New York City Council seeking summary judgment pursuant to §CPLR 3212 is hereby denied.

ORDERED that Motion #005 by Plaintiffs seeking summary judgment declaring Local Law No. 11 of 2022 is illegal, null and void because it violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law and permanently enjoining the implementation of the law is hereby granted.

ORDERED that Motion #006 by Defendant-Intervenors seeking summary judgment pursuant to CPLR §3212, CPLR §3211(a)(3) dismissing the Complaint based on a lack of legal capacity to sue; CPLR §3211(a)(7) dismissing the Complaint for failure to state a cause of action is hereby denied.

FACTUAL AND PROCEDURAL HISTORY

On December 9, 2021, the New York City Council (hereinafter “City Council”) passed Intro 1867-A and entitled “A Local Law to amend the New York City Charter, in relation to allowing lawful permanent residents and persons authorized to work in the United States in New York City to participate in municipal elections.” The law created a new class of voters called “municipal voters,” defined as

a person who is not a United States Citizen on the date of the election on which he or she is voting, who is either a lawful permanent resident or authorized to work in the United States, who is a resident of New York city and will have been such a resident for 30 consecutive days or longer by the date of such election, who meets all qualifications for registering or pre-registering to vote under the election law, except for possessing United States citizenship and who has registered or pre-registered to vote with the board of elections in the city of New York under this chapter.

Once passed by the City Council, the bill was sent to former Mayor Bill deBlasio, who declined to veto the bill, but also declined to sign it prior to leaving office at the end of 2021. Incoming Mayor Eric Adams also failed to sign or veto the bill. As the bill was neither signed, nor vetoed, within thirty days of its passage, the bill was deemed adopted pursuant to 37(b) of the New York City Charter as Local Law No. 11 of 2022 and is codified in the City Charter as the new Chapter 46-A, entitled “Voting by Lawful Permanent Residents and Persons Authorized to Work in the United States,” consisting of Sections 1057-aa through 1057-vv.

Local Law 11 of 2022 (hereinafter known as “Municipal Voting Law”) enfranchises lawful permanent residents and green card holders who are residents of the City of New York to vote for municipal offices, which are defined as “the offices of mayor, public advocate, comptroller, borough president, and council member.” City Charter, Ch. 46-A 1057-aa(a). Local Law 11 does not permit these residents to “vote for any state or federal office or political party position or on any state or federal ballot question.” The Municipal Voting Law may ultimately permit approximately 800,000 to 1,000,000 residents who legally live, work, and pay taxes in the City to vote in local elections, despite not being citizens of the United States. Furthermore, in addition to voting in elections, the Municipal Voting Law allows non-citizen voters to enroll in political parties and to sign and witness petitions for municipal offices and referenda. See City Charter §§1057-ff and 1057-uu.

The New York City Board of Elections (hereinafter “Board of Elections”) is tasked with “adopting all necessary rules and carrying out all necessary staff training to carry out the provisions of this chapter.” City Charter §1057-cc. These changes include creating non-citizen voter registration forms, maintaining a unified voter registration list that distinguishes between citizen and non-citizen voters; and allowing citizens and non-citizens to vote at the same polling places. See City Charter §§1057-dd(a); 1057-dd(b); 1057-ee(a); 1057-hh(d).

The instant action was brought by the Plaintiffs with the filing of a Summons and Complaint on January 10, 2022. Defendant New York City Board of Elections moved by Motion #001 on February 25, 2022, for an application pursuant to CPLR §2004 and §3012(d) to extend the time in which to serve a response to the Complaint. The Court granted that application on March 18, 2022. Proposed Defendant-Intervenors moved by Motion #002 to intervene in the action, pursuant to CPLR 1012 and/or 1013. Motion #002 was granted without any opposition. The New York City Board of Elections filed Motion #003 on May 3, 2022, seeking an order to join the New York State Board of Elections as a Defendant. Motion #003 was granted without opposition. Defendants Mayor Eric Adams and the New York City Council brought Motion #004 on May 9, 2022, seeking summary judgment pursuant to CPLR §3212. Plaintiffs filed Motion #004 on May 9, 2022, seeking summary judgment, a declaratory judgment that Local Law 11 violates the New York State Constitution, the New York State Election Law, and the New York State Municipal Home Rule Law and a permanent injunction from implementing and enforcing the law. Motion #006 was brought on May 9, 2022, by Defendant-Intervenors seeking summary judgment pursuant to CPLR §3212, §3211(a)(2) and CPLR §3211(a)(7). Motion #007 was filed by the Immigration Reform Law Institute seeking to file a brief as amici curiae on May 26, 2022. Motion #007 was granted without opposition. Oral arguments were held on June 7, 2022, on Motions #004, #005, and #006 and the Court’s decision was reserved.

SUMMARY JUDGMENT STANDARD OF REVIEW

It is well settled that a motion for summary judgment should 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.” CPLR 3212(b). The proponent of a motion for summary judgment must make a prima facie showing by offering sufficient evidence to eliminate any material issues of fact from the case that as a matter of law the

movant is entitled to summary judgment. *Winegrad v. NYU Medical Center*, 64 NY2d 851, 853 (1985).

In order for the court to grant summary judgment, “it must clearly appear that no material triable issue of fact is presented” and it is not for the court to resolve issues of fact, “but merely to determine whether such issues exist.” See *Rebecchi v. Whitmore*, 172 AD2d 600 [2d Dept. 1991]. Further, Courts have consistently held that allegations amounting to no more than unsubstantiated conclusory assertions are not sufficient to defeat the motion. *Ihmels v. Kahn*, 126 AD2d 701 [2d Dept. 1987].

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. NY. Cty. 1987]; see also *Andre v. Pomeroy*, 35 NY2d 361, 364 [1974].

MOTION TO DISMISS STANDARD OF REVIEW

Upon a motion to dismiss a complaint pursuant to CPLR §3211, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff.” *Morris v. Gianelli*, 71 AD3d 965, 967 [2d Dept. 2010]. A motion to dismiss should be granted where the Complaint fails to “contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.” *Matlin Patterson ATA Holdings LLC v. Fed. Express Corp.*, 87 AD3d 836, 839 (1st Dept. 2011).

CPLR §3211(a)(7) provides that “A party may move for judgment dismissing one or more causes of action asserted against him on the ground that...the pleading fails to state a cause of action.” The Court will consider “whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail.” *Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 (1977). Dismissal pursuant to CPLR 3211(a)(7) is warranted if the evidentiary proof disproves an essential allegation of the complaint, even if the allegations of the complaint, standing alone, could withstand a motion to dismiss for failure to state a cause of action. *Korinsky v. Rose*, 120 AD3d 1307, 1308 (2d Dept. 2014). Courts have repeatedly granted motions to dismiss where the factual allegations in the claim were merely conclusory and speculative in nature and not supported by any specific facts.” See *Residents for a More Beautiful Port Washington, Inc. v. Town of North*

Hempstead, 153 AD2d 727 [2d Dept. 1989]; *Stoianoff v. Gahona*, 248 AD2d 525 [2d Dept. 1998].

On a defendant's motion pursuant to CPLR §3211(a)(3) to dismiss a Complaint based upon an 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 AD3d 788, 790 [2d Dept. 2019] quoting *New York Cmty. Bank v. McClendon*, 138 AD3d 805, 806 [2d Dept. 2016].

ANALYSIS

STANDING

The Court may reach the merits of Plaintiff's motion for summary judgment if "at least one plaintiff" has standing. See *Empire State Chapter of Assoc. Builders & Contractors, Inc. v. Smith*, 21 NY3d 309, 315 [2013]. A plaintiff has standing if he establishes an injury in fact and that his injury is "capable of judicial resolution." *Soc'y of Plastics Indus., Inc. v. Cty. Of Suffolk*, 77 NY2d 761, 772 [1991]. The injury requirement is satisfied if the injury "falls within the zone of interests protected by the statute invoked." *Id.* at 773. In this action there are a number of Plaintiffs, including elected officeholders, political party leadership, political parties, and voters. Defendant-Intervenors have moved to dismiss the action claiming that the Plaintiffs lack standing to proceed. The Court will address the standing issue as to each of the groups of Plaintiffs.

Voters

It is well established in the New York State Constitution that "no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof." *Landes v. Town of N. Hempstead*, 20 N.Y.2d 417, 421 [1967], citing to §1 of Article I of the State Constitution. Plaintiffs are United States citizens and registered voters in New York, who therefore retain the right to participate in municipal elections as voters.

These Plaintiffs allege that their votes will be diluted based upon the addition of new voter registrations. "Voter standing arises when the right to vote is eliminated or votes are diluted." *Saratoga Cty. Chamber of Com. Inc. v. Pataki*, 275 AD2d 145, 156 (3d Dept. 2000), aff'd 100 NY2d 801 [2003]. The United States Supreme Court held in the *Reynolds* matter that "one cannot speak of 'debasement' or 'dilution' of the value of a vote until there is first defined a standard of reference as to what a vote should be worth." *Landes v. Town of N. Hempstead*, 20 N.Y.2d 417,

421 (1967), citing *Reynolds v. Sims*, 377 US 533 [1964]. “The right of suffrage... can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Id.*

Defendant-Intervenors claim that the Plaintiffs lack standing because “vote dilution is not a cognizable harm under New York State Law.” However, the Plaintiffs did not raise a cause of action under the Voting Rights Act, or any state law equivalent. The causes of action were for declaratory judgments for purported violations of the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law. This Court finds that the registration of new voters will certainly affect voters, political parties, candidate’s campaigns, re-elections, and the makeup of their constituency and is not speculative. The weight of the citizens’ vote will be diluted by municipal voters and candidates and political parties alike will need to reconfigure their campaigns. Though the Plaintiffs have not suffered any harm today, the harm they will suffer is imminent, and it is reasonably certain that they will suffer their claimed harm if the proposed municipal voters are entitled to vote. See *Police Benevolent Assn. of NY State Troopers, Inc. v. Division of NY State Police*, 29 AD3d 68, 70 [3d Dept. 2006].

“Voting is of the most fundamental significance under our constitutional structure” (*Matter of Walsh v. Katz*, 17 NY3d 336 [2011] citing *Illinois Bd. Of Elections v. Socialist Workers Party*, 440 US 173, 189 [1979]). The addition of 800,000 to 1,000,000 non-eligible votes into municipal elections significantly devalues the votes of the New York citizens who have lawfully and meaningfully earned the right to vote pursuant to constitutional requirements. The allowance of the Municipal Voting Law is asking this Court to diminish this standard. Therefore, plaintiffs are well within their rights to bring this suit, to protect the value of their vote, and to decrease injuries that will ensue from dilution.

Municipal Officeholders and Political Parties

The Plaintiff elected officeholders allege that the Municipal Voting Law will significantly alter the electorate of the City of New York and will force candidates to adjust the way they campaign for reelection. A candidate for office “suffers a consequent present harm” if he is “forced to structure his campaign to offset a potential disadvantage” created by an election law. *Becker v. Fed. Election Comm’n*, 230 F.3d 381, 386 [1st Cir. 2000].

Plaintiffs New York Republican State Committee and Republican National Committee also claim that they have standing as organizations to bring suit to the same extent as any other

“person...seeking to vindicate a legal right.” *NY Civil Liberties Union v. NYV Transit Auth.*, 684 F3d 286, 294 [2d Cir. 2012]. It is well established that political parties have standing to challenge election laws that effect their ability to “campaign for office.” *Green Party of Tennessee v. Hargett*, 767 F3d 533, 544 [6th Cir. 2014]. Furthermore, Courts have routinely held that chairs of political parties have standing to bring actions on behalf of the interests of their parties. *Schulz v. Williams*, 44 F3d 48, 52 [2d Cir. 1994]. Plaintiffs also allege that their claims are plainly “within the zone of interests” protected by the Municipal Home Rule Law’s referendum requirement, which was enacted to “ensure that electors have a voice” regarding any significant changes to local governance.” *Gizzo v. Town of Mamaroneck*, 36 AD3d 162, 168 [2d Dept. 2006] lv. Denied, 8 NY3d 806 [2007].

Therefore, this Court finds that the Plaintiffs have standing to proceed with this action, as current elected office holders, candidates, and political parties, who are subject to the New York State Constitution, the New York State Election Law and the Municipal Home Rule Law. The influx of the number of voters in New York City will affect their ability to campaign for office. Furthermore, these Plaintiffs certainly have claims “within the zone of interests” under the Municipal Home Rule Law’s referendum requirement.

NEW YORK STATE CONSITUTION

Article II

The New York State Constitution expressly establishes voting qualifications for local elections. Under Article II, §1, voting is defined as a right of “citizens”:

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.

Furthermore, “citizens” is again addressed under Article II, §5, which 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.

“[T]he strongest indication of [a] statute’s meaning is in its plain language.” *People v. Badii*, 36 N.Y.3d 393, 399 [2021]. Defendants claim that Article II, §1 does not apply to municipal elections and even if it did, it does not require that voters be United States citizens. However, based upon a plain reading of the New York State Constitution, “every citizen,” in this Court’s opinion, means every citizen of the United States. “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 R.*, 83 NY2d 388, 394 [1994]. Article II, §5 furthers this point, providing that “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.” N.Y. Const. Art. II, § 5.

The New York State Constitution explicitly lays the foundation for ascertaining that only proper citizens retain the right to voter privileges. It is this Court’s belief that by not expressly including non-citizens in the New York State Constitution, it was the intent of the framers for non-citizens to be omitted.

Article IX

Article IX, §§1 and 3 of the New York State Constitution reaffirms that only United States citizens are permitted to vote in New York elections. 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. *Emphasis added.*

Local government is defined by Article IX, §3(d)(2) states:

“Local government.” A county, city, town or village.

The “people” is defined within Article IX, §3(d)(3) as:

“People.” Persons entitled to vote as provided in section one of article two of this constitution.

“The Constitution is the voice of the people speaking in their sovereign capacity, and it must be heeded.” *In re NY E. R. Co.*, 70 NY 327, 342 [1877]. Furthermore, the “Constitution is to be construed...to give its provisions practical effect, so that it receives a ‘fair and liberal

construction, not only to its letter, but also according to its spirit and the general purposes of its enactment.” *Ginsberg v. Purcell*, 51 NY2d 272 [1980]. Reading these sections of the New York State Constitution together, it is clear to this Court that voting is a right granted to citizens of the United States. Local governments, including city governments, must be elected by the *people*, which is defined as *citizens* under Article II, §1. Based upon the foregoing analysis, the Court finds that the Municipal Voting Law explicitly violates the New York State Constitution, as only “citizens” may vote in elections.

ELECTION LAW

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. Emphasis added.*

“The primary consideration...in the construction of statutes is to ascertain and give effect to the intention of the legislature.” *Castine v. Zurlo*, 46 Misc. 3d 995, 999 [Sup. Ct. Clinton County 2014] citing *Matter of Tutunjian v. Conroy*, 55 AD3d 1128, 1130 [2008]. “To ascertain that intent, the court must first read the statute literally and determine whether its language is unambiguous and clearly expresses the Legislature’s intent.” *Id.*

On its face, the Municipal Voting Law is inconsistent with the Election Law, specifically Election Law 5-102(1). However, despite that inconsistency, the question arises whether the intent of Election Law 1-102 was applicable to inconsistent laws made by cities, towns, or villages, or whether “any other law” was intended to mean any other *state* law. This Court finds the latter.

The matter of *Castine v. Zurlo*, the Supreme Court of New York in Clinton County engaged in an in-depth analysis of the *Election Law* and the intent of the legislature regarding “*any other law*” within 1-102. The *Election Law* was recodified in chapter 233 of the Laws of 1976, to “eliminate obsolete and conflicting provisions therein.” *Castine v. Zurlo*, 46 Misc. 3d 995, 1000

[Sup. Ct. Clinton County 2014] *citing* Sponsor’s Mem., Bill Jacket, L1976 ch. 233. In 1976, prior to the recodification of the Election Law, §1-102, stated:

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 or deciding any matter whereon a vote of its citizens is required or permitted. Where a specific provision of law exists in the *education* law, which is inconsistent with the provisions of this chapter, such provision shall apply.

The Bill Jacket is replete with statements that the law was intended to correct oversights and did not make any substantive changes. For example, the State Board of Elections stated, “The bill contains a minimum of substantive changes, none of which are of major significance, but makes numerous technical and procedural amendments.”¹ The Association of the Bar of the City of New York submitted, “the bill...would amend the newly enacted revised election law. The amendments are minor in nature and for the most part intended to correct defects in the new law.”² The League of Women Voters of New York State agreed, “this recodification eliminates obsolete sections and duplication; reorganizes the law in logical, clear order; and has been written in language more easily understood...It is truly a recodification, not making substantial or highly controversial changes in the law.”³

The Court finds the recodification of the Election Law in 1976 was not intended to make substantive changes to the law as it was previously written and how it was modified to its current form. The removal of “education” law and the insertion of “any other law” does not change the intent of the provision and its applicability to state laws, rather than local laws.

Furthermore, Election Law 5-102(1) states clearly and unequivocally,

“No person shall be qualified to register for and vote at *any* election unless he is a citizen of the United States.”

¹ New York State Bill jackets- L- 1976-Ch-0234, Letter from State Board of Elections dated May 27, 1976; [² New York State Bill jackets- L- 1976-Ch-0234, Letter from the Association of the Bar of the City of New York dated May 27, 1976; \[³ New York State Bill jackets- L- 1976-Ch-0234, Letter from the League of Women Voters of New York State dated May 20, 1976; \\[10\\]\\(https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1 ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2 ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3 ss%3A%221970s%22%3E%3Ebrowse4 ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1 lib, last accessed June 15, 2022.</p></div><div data-bbox=\\)\]\(https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1 ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2 ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3 ss%3A%221970s%22%3E%3Ebrowse4 ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1 lib, last accessed June 15, 2022.</p></div><div data-bbox=\)](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, last accessed June 15, 2022.</p></div><div data-bbox=)

The Court need not look to the legislative intent of this section to know there is no carveout for non-citizens to vote under the Election Law. This section applies to “any” election within New York State.

Based upon the foregoing analysis, the Court finds that the Municipal Voting Law explicitly violates the Election Law, as it states only “citizens” may vote in elections. If Election Law §1-102 “was interpreted to mean any other law whatsoever, municipalities would have the ability to rewrite all but 12 sections of the *Election Law*.” See *Castine, supra*. The Court finds that the Election Law can only be preempted by inconsistent *state* laws, not local laws.

MUNICIPAL HOME RULE LAW

New York State Constitution Article IX, §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 Article 9, Section 3(a)(3) provides, “except 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 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.” See *Patrolmen’s Benevolent Ass’n of City of New York Inc. v. City of New York*, 97 NY2d 378, 385-386 [2001].

The *Municipal Home Rule Law* sets forth the general powers of local governments to adopt and amend local laws in accordance with Article IX of the New York State Constitution. *Boening v Nassau County Dept. of Assessment*, 157 AD3d 757, 764, 69 N.Y.S.3d 666. Under §23 of the *Municipal Home Rule Law*, any law that “changes the method of nominating, elevating, or removing an elective officer,” must be approved by a public referendum held within sixty days after the law’s adoption. *Municipal Home Rule Law* 23(1), 23(2)(e); see also *Mayor of City of N.Y. v Council of City of N.Y.*, 38 AD3d 89, 96, 825 NYS2d 201 [2006]. “Where a local law is subject to mandatory referendum, the failure to conduct the referendum invalidates the law.” 1986 NY Op. Att’y Gen. (Inf.) 57 (1986).

Furthermore, the New York State Constitution Article IX, Section 2(c) is echoed within the *Municipal Home Rule Law* §10 which states:

In addition to powers granted in the constitution, the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws *not inconsistent* with the provisions

of the constitution or not inconsistent with any general law relating to its property, affairs or government...

Local laws may not be inconsistent with the provisions of the Constitution or of any general law. *City of Amsterdam v. Helsby*, 371 NYS2d 404 [1975]; *Toia v. Regan*, 387 NYS2d 309 [1976]. “Where local government is otherwise authorized to act, it will be prohibited from legislating on a subject only if the State pre-empts the field through legislation evidencing a state purpose to exclude the possibility of varying local legislation.” *Monroe-Livingston Sanitary Landfill, Inc. v. Caledonia*, 51 NY2d 679 [1980]. Based upon the above analysis, the Municipal Voting Law is wholly inconsistent with the 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.

Assuming arguendo that there was not a prima facie violation and inconsistency with the New York State Constitution or the New York Election Law by the Municipal Voting Law, the question before this Court then becomes whether the Municipal Voting Law “changes the method” of electing officers, such that it cannot be done without a referendum. This Court believes that it does.

The Court of Appeals in the *McCabe* matter has explained that in New York, public policy is made by elected representatives and referenda are a limited exception that must be grounded in a particular constitutional or statutory source. “Government by representation is still the rule. Direct action by people is the exception.” *McCabe v. Voorhis*, 243 NY 401, 413 (1926). However, here, in enacting the Municipal Voting Law, the City Council have effectively changed the suffrage requirements first implanted in the New York Constitution and the Election Law. By 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. The failure to conduct a referendum in this matter further invalidates the Municipal Voting Law.

CONCLUSION

The Municipal Voting Law is “impermissible simply and solely for the reason that the Constitution says that it cannot be done.” See *Protect the Adirondacks! Inc. v. New York State Dep’t of Env’t Conservation*, 37 NY3d 73, 84 [2021].

The New York State Constitution expressly states that *citizens* meeting the age and residency requirements are entitled to register and vote in elections. The New York State Election Law reaffirms that *citizens* meeting the age and residency requirements are entitled to register and vote in elections. There is no statutory ability for the City of New York to issue inconsistent laws permitting non-citizens to vote and exceed the authority granted to it by the New York State Constitution. Though voting is a right that so many citizens take for granted, the City of New York cannot “obviate” the restrictions imposed by the Constitution. *See Protect the Adirondacks! Inc. v. New York State Dep’t of Env’t Conservation*, 37 NY3d 73, 84 [2021]. This Court finds that Municipal Voting Law violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law.

Based upon the foregoing, in summary, it is

ORDERED that Motion #004 by Defendants Mayor Eric Adams and the New York City Council seeking summary judgment pursuant to §CPLR 3212 is hereby denied.

ORDERED that Motion #005 by Plaintiffs seeking summary judgment declaring Local Law No. 11 of 2022 is illegal, null and void because it violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law and permanently enjoining the implementation of the law is hereby granted.

ORDERED that Motion #006 by Defendant-Intervenors seeking summary judgment pursuant to CPLR §3212, CPLR §3211(a)(3) dismissing the Complaint based on a lack of legal capacity to sue; CPLR §3211(a)(7) dismissing the Complaint for failure to state a cause of action is hereby denied.

ORDERED that a declaratory judgment is hereby granted, declaring the Municipal Voting Law void as violative of the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law.

ORDERED that a permanent injunction prohibiting Defendants from registering non-citizens to vote is hereby granted.

This constitutes the Decision and Order of the Court.

Date: June 27, 2022

ENTER



HON. RALPH J. RORZIO
J.S.C.

EXHIBIT D

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- Vice Dean, 1997-2001, 2002-2005, 2011-2012
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- Director, Legislative Drafting Research Fund, 1995 to date
- Professor of Law, 1990-1997
- Associate Professor of Law, 1984-1989
- Assistant Professor of Law, 1983-1984

Primary areas of research, writing and teaching are State and Local Government Law, Election Law, Government Ethics, and Property

Princeton University

- Fellow, Program in Law and Public Affairs,
Woodrow Wilson School of Public and International Affairs, 2005-2006

Harvard University

- Visiting Scholar, A. Alfred Taubman Center for State and Local Government, John F. Kennedy School of Government, 1996-1997

University of Toronto Law School

- Distinguished Visiting Professor, October 2000

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PROFESSIONAL EXPERIENCE

Reporter, Drafting Committee on Public Meetings During
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Reporter, Study Committee on State Governance During Public Health
Emergencies, Uniform Laws Commission, 2020

Chair, Conflicts of Interest Board of the City of New York,
2014-2020

Commissioner, Moreland Act Commission to Investigate Public Corruption,
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Reporter, Project on Principles of Government Ethics
American Law Institute, 2010-

Consultant, New York State Commission on Local Government
Efficiency & Competitiveness, 2007-2008

Consultant, Temporary New York State Commission on Constitutional Revision,
1993-1995

Member, Real Property Tax Reform Commission, City of New York, 1993

Member, Legal Audit Group, President's National Health Care Task Force, 1993
-- Advised on constitutional and legal issues raised by national
health care reform proposal

Consultant, New York State Charter Commission for Staten Island, 1992

Consultant, New York City Council Districting Commission, 1990

Consultant, Local Government Restructuring Project,
Nelson A. Rockefeller Institute of Government, 1990

Consultant, New York City Charter Revision Commission, 1987-1989
-- Prepared studies of the Voting Rights Act and constitutional
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local preemption, land use regulation and public contracting

Counsel, Governor's Advisory Commission on Liability Insurance,
State of New York, 1986

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Harvard Law School
J.D., magna cum laude, 1977

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Developments Editor, 1976-1977
Editor, 1975-1976

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PUBLICATIONS

Books and Monographs

STATE AND LOCAL GOVERNMENT LAW, (West Academic, 9th edition (2022), with Laurie Reynolds, Nestor Davidson, Erin Scharff, and Rick Su; 8th Edition, with Laurie Reynolds (2016); 7th Edition, with Laurie Reynolds (2009); 6th Edition, with Laurie Reynolds (2005); 5th Edition, with William D. Valente, David. J. McCarthy, and Laurie Reynolds (2001)

PRINCIPLES OF HOME RULE FOR THE TWENTY-FIRST CENTURY
(National League of Cities, Feb. 12, 2020), with Nestor M. Davidson, Paul A. Diller, Sarah Fox, Laurie Reynolds, Erin A. Scharff, Richard Schragger & Rick Su

THE NEW PREEMPTION READER: Legislation, Cases and Commentary on the Leading Challenge in Today's State and Local Government Law
(West Academic Publishing 2019), with Nestor Davidson and Laurie Reynolds)

DOLLARS AND DEMOCRACY: A BLUEPRINT FOR CAMPAIGN FINANCE REFORM,
Report of the Commission on Campaign Finance Reform, The Association of the Bar of the City of New York (Fordham University Press 2000)

FAIRNESS AND THE FARE: EQUITY AND ADEQUACY IN THE FINANCING OF THE OPERATING AGENCIES OF THE METROPOLITAN TRANSPORTATION AUTHORITY,
with Elliott D. Sclar and Walter Hook (Legislative Drafting Research Fund, Columbia Law School 1998)
– coauthored study and report undertaken pursuant to the Settlement Agreement that ended a lawsuit between the New York Urban League and the Metropolitan Transportation Authority

BALANCING ACTS: THE REALITY BEHIND STATE BALANCED BUDGET REQUIREMENTS
(Twentieth Century Fund Press 1996)

CLEANING UP HAZARDOUS WASTE: IS THERE A BETTER WAY? with Orin Kramer
(I.I.I. Press 1993)
-- Coauthored study of Federal Superfund law and the broader legal, fiscal, and scientific questions raised by the hazardous waste cleanup policy

WORKERS COMPENSATION: STRENGTHENING THE SOCIAL COMPACT,
with Orin Kramer (I.I.I. Press 1991)
-- Coauthored study of Workers Compensation system and the public
policy questions raised concerning prevention of and compensation for
workplace-related injuries

Articles

Election Law Localism and Democracy,
100 N.C.L. Rev. 1421 (2022)

The Promise and Peril of Local Election Administration,
The Penn Regulatory Review, Sept. 27, 2021,
<https://www.theregreview.org/2021/09/27/briffault-promise-and-peril-of-local-election-administration/>

Elected-Official-Affiliated Non-Profits: Closing the Public Integrity Gap,
35 Notre Dame J. Ethics & Pub. Pol. 591 (2021)

Preemption: The Continuing Challenge,
36 J. Land Use & Env. L. ____ (2022) (forthcoming)

Election Law Localism in the Time of COVID-19, U. Chi. L. Rev. Online,
June 26, 2020,
<https://lawreviewblog.uchicago.edu/2020/06/26/election-law-localism-briffault/>

“Sanctuary” and Local Government Law, Duke Center for Firearms Law,
May 6, 2020, <https://firearmslaw.duke.edu/2020/05/sanctuary-and-local-government-law-2/>

The Single-Subject Rule: A State Constitutional Dilemma
82 Albany L. Rev. 1629 (2019)

The Challenge of the New Preemption
70 Stan. L. Rev. 1995 (2018)

The Supreme Court, Judicial Elections and Dark Money
67 DePaul L. Rev. 281 (2018)

On Family Law Localism: A Comment on Sean Hannon Williams’s “Sex in the
City,” 43 Ford. Urb. L.J. 1175 (2016)

Of Constituents and Contributors
2015 U. Chi. Legal Forum 29

The Uncertain Future of the Corporate Contribution Ban

- 49 Val. Univ. L. Rev. 397 (2015)
- Three Questions for the “Right to Vote” Amendment
23 William & Mary Bill of Rights J. 27 (2014)
- The Anxiety of Influence: The Evolving Regulation of Lobbying
13 Elec. L. J. 160 (2014)
- The Future of Public Funding
49 Willamette L. Rev. 521 (2013)
- Coordination Reconsidered
113 Colum. L. Rev. Sidebar 88 (2013)
- Bloomberg’s Legal Legacy – Closing Remarks
City Square by the Fordham Urb. Law J. (Dec. 4, 2012)
- Super PACs
96 Minn. L. Rev. 1644 (2012)
- Updating Disclosure for the New Era of Independent Spending
27 J. L. & Pol. 683 (2012)
- Nonprofits and Disclosure in the Wake of *Citizens United*
10 Elec. L.J. 337 (2011)
- On Dejudicializing American Campaign Finance Law
27 Ga. St. U. L. Rev. 887 (2011)
- Corporations, Corruption and Complexity:
Campaign Finance After *Citizens United*
20 Cornell J. L. & Pub. Pol. 643 (2011)
- Two Challenges for Campaign Finance Disclosure After
Citizens United and *Doe v. Reed*
19 Wm. & Mary Bill of Rights J. 983 (2011)
- The Business Improvement District Comes of Age
3 Drexel L. Rev. 19 (2010)
- Election Campaigns and Democracy: A Review of James A. Gardner,
*What are Campaigns for? The Role of Persuasion in
Electoral Law and Politics*
58 Buff. L. Rev. 1175 (2010)
- Campaign Finance Disclosure 2.0

- 9 Elec. L.J. 273 (2010)
- Skelos v. Paterson*: The Surprisingly Strong Case for the Governor's
Surprising Power to Appoint a Lieutenant Governor
73 Alb. L. Rev. 675 (2010)
- The Most Popular Tool: Tax Increment Financing and the Political
Economy of Local Government
77 U. Chi. L. Rev. 65 (2010)
- Town of Telluride v. San Miguel Valley Corp.*:
Extraterritoriality and Local Autonomy
86 Denver U. L. Rev. 1311 (2009)
- Davis v. FEC*: The Roberts Court's Continuing Attack
on Campaign Finance Reform
44 Tulsa L. Rev. 475 (2009)
- Life of the Parties? Money, Politics and Campaign Finance Reform
8 Elec. L. J. 207 (2009)
- Lobbying and Campaign Finance: Separate and Together
19 Stan. L. & Pol. Rev. 105 (2008)
- WRTL II*: The Sharpest Turn in Campaign Finance's Long and Winding Road
1 Albany Govt L. Rev. 101 (2008)
- WRTL* and *Randall*: The Roberts Court and the Unsettling
of Campaign Finance Reform Law
68 Ohio State L.J. 807 (2007)
- Home Rule and Local Political Innovation
22 J. L. & Pol. 1 (2006)
- Beyond City and Suburb: Thinking Regionally
116 Yale L.J. Pocket Part 203 (2006)
- LULAC* on Partisan Gerrymandering: Some Clarity, More Uncertainty
105 Mich. L. Rev. First Impressions 58 (2006)
- A Changing Supreme Court Considers Major Campaign Finance Questions
5 Elec. L.J. 74 (2006)
- Electing Delegates to a State Constitutional Convention:
Some Legal and Policy Issues
36 Rutgers L.J. 1125 (2005)

The 527 Problem . . . and the *Buckley* Problem
74 Geo. Wash. L. Rev. 949 (2005)

The Return of Spending Limits: Campaign Finance After *Landell v. Sorrell*
32 Fordham Urb. L. J. 399 (2005)

Defining the Constitutional Question in Partisan Gerrymandering
14 Cornell J. Law & Pub. Pol. 397 (2005)

Clingman v. Beaver and the First Amendment Right of a Minor Political
Party to Open Its Primary to Major Party Voters
4 Elec. L.J. 51 (2005)

Judicial Campaign Codes After *Republican Party of Minnesota v White*
153 U. Penn. L. Rev. 181 (2004)

Home Rule for the Twenty-first Century
36 Urban Lawyer 253 (2004)

McConnell v FEC and the Transformation of Campaign Finance Law
3 Election L. J. 147 (2004)

The Disfavored Constitution: State Fiscal Limits and State Constitutional Law
34 Rutgers L. J. 907 (2003)

What Did They Do and What Does it Mean? The Three-Judge Court's Decision
in *McConnell v FEC* and the Implications for the Supreme Court
1 U. Penn. J. Const. L. 58 (2003)

Beyond Congress: The Study of State and Local Legislatures
7 N.Y.U. J. Leg. & Pub. Pol. 23 (2003)

Reforming Campaign Finance Reform: A Review of *Voting With Dollars*
91 Cal. L. Rev. 643 (2003)

The Future of Reform: Campaign Finance Reform After
the Bipartisan Campaign Reform Act of 2002
34 Ariz. St. L. J. 1179 (2002)

Facing the Urban Future After September 11, 2001
34 Urban Lawyer 563 (2002)

The Contested Right to Vote
100 Mich. L. Rev. 1506 (2002)

Smart Growth and American Land Use Law
21 St. Louis Public L. Rev. 253 (2002)

Public Funds and the Regulation of Judicial Campaigns
35 Ind. L. Rev. 819 (2002)

Soft Money Reform and the Constitution
1 Election L. J. 343 (2002)

Bush v Gore as an Equal Protection Case
29 Florida State U. L. Rev. 325 (2002)

Nixon v Shrink Missouri Government PAC: The Beginning of the End of the
Buckley Era?
85 Minn. L. Rev. 1729 (2001)

Comment: Three Issues for the City in the 21st Century
32 Urban Lawyer 409 (2000)

The Political Parties and Campaign Finance Reform
100 Colum. L. Rev. 620 (2000)

Localism and Regionalism
48 U. Buffalo L. Rev. 1 (2000)

Public Funding and Democratic Elections
148 U. Penn. L. Rev. 563 (1999)

Issue Advocacy: Redrawing the Elections/Politics Line
77 Tex. L. Rev. 1751 (1999)

A Government For Our Time? Business Improvement Districts and Urban
Governance
99 Colum. L. Rev. 365 (1999)

The New York City Charter and the Question of Scale
42 New York Law School L. Rev. 1059 (1998)

The Rise of Sublocal Structures in Urban Governance
82 Minn. L. Rev. 503 (1997)

Campaign Finance, The Parties and the Court: A Comment on
Colorado Republican Campaign Committee v FEC
14 Const. Comm. 91 (1997)

Ballot Propositions and Campaign Finance Reform

- 1996 Annual Survey of American Law 413 (1996)
- The Local Government Boundary Problem in Metropolitan Areas
48 Stanford L. Rev. 1115 (1996)
- Local Government and the New York State Constitution
1 Hofstra Law & Policy Symposium 79 (1996)
- Race and Representation After Miller v Johnson
1995 U. Chi. Legal Forum 23 (1995)
- Lani Guinier and the Dilemmas of American Democracy
95 Colum. L. Rev. 418 (1995)
- "What About the 'Ism'?" Normative and Formal Concerns in Contemporary Federalism
47 Vanderbilt L. Rev. 1303 (1994)
- Federalism and Health Care Reform: Is Half a Loaf Really Worse Than None?
21 Hastings Const. L. Q. 611 (1994)
- Who Rules at Home? One Person/One Vote and Local Governments
60 U. Chi. L. Rev. 339 (1993)
- The Item Veto in State Courts
66 Temple L. Rev. 1171 (1993)
- Voting Rights, Home Rule, and Metropolitan Governance:
The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination
92 Colum. L. Rev. 775 (1992)
- The Role of Local Control in School Finance Reform
24 Conn. L. Rev. 773 (1992)
- Home Rule, Majority Rule, and Dillon's Rule
67 Chicago-Kent L. Rev. 1011 (1992)
- Our Localism: Part I -- The Structure of Local Government Law
90 Colum. L. Rev. 1 (1990)
- Our Localism: Part II -- Localism and Legal Theory
90 Colum. L. Rev. 346 (1990)
- The Item Veto: A Problem in State Separation of Powers
2 Emerging Issues in State Constitutional Law 85 (1989)

Taking Home Rule Seriously: The Case of Campaign Finance Reform
37 Proceedings of the Academy of Political Science 35 (1989)

Localism in State Constitutional Law
496 The Annals of the Amer. Acad. of Pol. & Soc. Sci. 117 (1988)

The New York State Agency Shop Fee and the Constitution
41 Indus. & Labor Rel. Rev. 279 (1988)

State-Local Relations and Constitutional Law
13 Intergovernmental Perspective 10 (1987)

Distrust of Democracy
63 Tex. L. Rev. 1347 (1985)

The Federal Election Campaign Act and the 1980 Election
84 Colum. L. Rev. 2083 (1984)

Developments in the Law -- Section 1983 and Federalism
90 Harv. L. Rev. 1133 (1977) (editor)

Case Comment on Rizzo v. Goode in The Supreme Court, 1975 Term
90 Harv. L. Rev. 238 (1976)

Developments in the Law -- Class Actions
89 Harv. L. Rev. 1318, 1454-1536 (1976)

Case Comment on Local 1547, IBEW v. Local 959, Teamsters
89 Harv. L. Rev. 440 (1975)

Book Chapters and Other Published Papers

“The New Preemption: Placing Cities in American Federalism,” in
CITIES IN FEDERAL CONSTITUTIONAL THEORY (Erika Arban, ed., Oxford Univ.
Press 2022)

“The Single-Subject Rule: Uncertain Solution for Omnibus Legislation,” in
COMPARATIVE MULTIDISCIPLINARY PERSPECTIVES ON OMNIBUS LEGISLATION
(Ittai Bar-Siman-Tov, ed., Springer Nature Switzerland AG 2021)

“COVID-19 and the Law: Elections,” in
LAW IN THE TIME OF COVID-19 K. Pistor, ed., Columbia Law School e-book
(2020)

- “A Better Financing System? The Death – and Possible Rebirth
– of the Presidential Nomination Public Financing Program,” and
“Constitutional Law and the Presidential Nomination Process,” in
THE BEST CANDIDATE: PRESIDENTIAL NOMINATION IN POLARIZED TIMES
(Eugene D. Mazo & Michael Dimino, eds., Cambridge Univ. Press 2020)
- “Punitive Preemption: An Unprecedented Attack on Local Democracy,”
(Local Solutions Support Center, July 2018),
<https://www.abetterbalance.org/wp-content/uploads/2018/10/Punitive-Preemption-White-Paper-FINAL-8.6.18.pdf>
- “Reforming Campaign Finance Reform: The Future of Public Financing,” in
DEMOCRACY BY THE PEOPLE: REFORMING CAMPAIGN FINANCE IN AMERICA
(Eugene D. Mazo & Timothy K. Kuhner, eds., Cambridge Univ. Press
2018)
- “The Troubling Turn in State Preemption: The Assault on Progressive Cities and
How Cities Can Respond,” with N. Davidson, P. Diller, O. Johnson & R.
Schragger, American Constitution Society Issue Brief (Sept. 2017)
- “Cities, Suburbs, and the Challenge of Metropolitan Governance,” in
INFINITE SUBURBIA (Alan M. Berger, Joel Kotkin with Celina Balderas
Guzman, eds., Princeton Architectural Press 2017)
- “Local Autonomy and Constitutional Law: An Uncertain Relationship,” in **LAW
BETWEEN BUILDINGS: EMERGENT GLOBAL PERSPECTIVES IN URBAN LAW**
(Nisha Mistry and Nestor M. Davidson, eds., Routledge 2017)
- “CON: Resolved, Congress should remove the caps on the amount that
individuals can contribute to candidates for federal office,” in **DEBATING
REFORM: CONFLICTING PERSPECTIVES ON HOW TO FIX THE AMERICAN
POLITICAL SYSTEM** (Richard J. Ellis & Michael Nelson, eds., Sage CQ
Press 2017)
- “Mind the Gap’: The Promise and Limits of Home Rule in New York,” in **NEW
YORK’S BROKEN CONSTITUTION: THE GOVERNANCE CRISIS AND THE PATH TO
RENEWED GREATNESS** (Peter J. Galie, Christopher Bopst, and Gerald
Benjamin, eds., SUNY Press 2016)
- “Constitutional Revision in New York: The Democracy Agenda,” in **MAKING A
MODERN CONSTITUTION: THE PROSPECTS FOR CONSTITUTIONAL REFORM IN
NEW YORK** (Rose Mary Bailly & Scott N. Fein, eds., NYS Bar Ass’n 2016)
- “The United States,” in **CHECKBOOK ELECTIONS? POLITICAL FINANCE IN
COMPARATIVE PERSPECTIVE** (Pippa Norris & Andrea Abel van Es, eds.,
Oxford Univ. Press 2016)

"More Speech' as a First Amendment Violation: *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett* and the Challenge to Public Funding"
in **ELECTION LAW STORIES** (Joshua A. Douglas & Eugene D. Mazo, eds., Foundation Press 2016)

"On Dejudicializing American Campaign Finance Law"
in **MONEY, POLITICS AND THE CONSTITUTION: BEYOND CITIZENS UNITED**
(Monica Youn, ed. The Century Foundation 2011)

Campaign Finance: Can Congress Authorize the Opponents of Self-Financed
Candidates to Receive Extra-Large Contributions
ABA Preview of Supreme Court Cases, Vol. 35, No. 7, April 14, 2008

Public Financing and Presidential Elections
Insights on Law & Society (ABA Div. for Pub. Educ.), Vol. 9, No. 1
(Fall 2008)

"The Central Place of States and Local Governments in American Federalism,"
in **THE HANDBOOK OF MUNICIPAL BONDS** (Sylvan G. Feldstein & Frank J.
Fabozzi, eds., John Wiley & Sons, Inc., 2008)

"Courts, Constitutions, and Public Finance: Some Recent Experiences from the
States," in **FISCAL CHALLENGES: AN INTERDISCIPLINARY APPROACH TO
BUDGET POLICY** (Elizabeth Garrett, Elizabeth A. Graddy & Howell E.
Jackson, eds., Cambridge Univ. Press 2008)

"Adding Adequacy to Equity,"
in **SCHOOL MONEY TRIALS: THE LEGAL PURSUIT OF EDUCATIONAL ADEQUACY**
(Martin R. West & Paul E. Peterson, eds., Brookings Inst. Press 2007)

"State and Local Finance"
in **STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY, VOLUME 3: THE
AGENDA OF STATE CONSTITUTIONAL REFORM** (G. Alan Tarr & Robert F.
Williams, eds., SUNY Press 2006)

"Soft Money, Congress, and the Supreme Court,"
in **PARTY FUNDING AND CAMPAIGN FINANCING IN INTERNATIONAL PERSPECTIVE**
(K.D. Ewing & S. Issacharoff, eds., Hart Pub., 2006)

"Campaign Finance"
in **THE LIMITS OF MARKET ORGANIZATION** (R. Nelson, ed., Russell Sage
Foundation 2005)

"The Local School District in American Law,"

- in **BESIEGED: SCHOOL BOARDS AND THE FUTURE OF EDUCATION POLITICS** (W. Howell, ed., Brookings Inst. Press 2005)
- "Federalism and the Future of Health Care Reform," with Sherry Glied,
in **THE PRIVATIZATION OF HEALTH CARE REFORM: Legal and Regulatory Perspectives** (M. Gregg Bloche, ed., Oxford Univ. Press 2003)
- "Federalism in Political Structure and Power: The New Role of Federal Law in Constraining Political Processes in American State and Local Governments,"
in **GOVERNMENT STRUCTURES IN THE U.S.A. AND THE SOVEREIGN STATES OF THE FORMER U.S.S.R.** (James E. Hickey, Jr. and Alexej Ugrinsky, eds., Greenwood Press 1996)
- "Paradoxes of Federalism,"
in **HARMONIZATION OF LEGISLATION IN FEDERAL SYSTEMS: CONSTITUTIONAL, FEDERAL AND SUBSIDIARITY ASPECTS -- THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA COMPARED** (Ingolf Pernice, ed., Nomos Verlagsgesellschaft Baden-Baden, 1996)
- "The Unfunded Mandates Reform Act of 1995," Report of the Committee on Federal Legislation, Ass'n of the Bar of the City of New York,
50 Record of the Ass'n 669 (1995)
- "State Constitutions in the Federal System;" "Principal Provisions of State Constitutions: A Brief Overview;" "Intergovernmental Relations;" "Local Government and the State Constitution: A Framework for Analysis;" "The Voting Rights Act and the Election of Delegates to a Constitutional Convention," "The Election of Delegates to a Constitutional Convention: Some Alternatives," in **DECISION 1997: CONSTITUTIONAL CHANGE IN NEW YORK** (Rockefeller Inst. Press 1997)
- "Some Clarity, More Uncertainty," 105 Mich. L. Rev. First Impressions 58 (2006),
Online Symposium on Partisan Gerrymandering,
<http://yalelawjournal.org/2006/12/11/briffault.html>
- "Beyond City and Suburb: Thinking Regionally," 116 Yale L. J. Pocket Part 203 (2006), <http://yalelawjournal.org/2006/12/11/briffault.html>

Magazine and Newspaper Op-Ed Articles

- "Constitutional Failure," comment on Matter of Harkenrider v. Hochul,
<https://twentyeagle.com/constitutional-failure/>, May 4, 2022.
- "Money Matters But It Doesn't Decide: The Case of Michael Bloomberg's

- Presidential Campaign,” April 9, 2020,
Australian Outlook, Australian Institute of International Affairs,
<http://www.internationalaffairs.org.au/australianoutlook/money-matters-but-it-doesnt-decide-the-case-of-michael-bloombergs-presidential-campaign/>
- “When presidential campaigns end, what happens to the leftover money?”
The Conversation, Feb. 12, 2020, <https://theconversation.com/when-presidential-campaigns-end-what-happens-to-the-leftover-money-130042>
- “What is ‘dark money’? 5 questions answered,”
The Conversation, October 25, 2019, <https://theconversation.com/what-is-dark-money-5-questions-answered-118310>
- “Albany Reform Looking Like Smoke and Mirrors,”
Crain’s New York Business, June 25, 2019
- “Campaign spending isn’t the problem – where the money comes from is,”
The Conversation, <https://theconversation.com/campaign-spending-isnt-the-problem-where-the-money-comes-from-is-104093>
- “Anti-gerrymandering rule would be a big step for N.Y.”
Albany Times-Union, Oct. 30, 2014
- “McCutcheon and the Future of Campaign Finance”
JURIST, Forum, Nov. 4, 2013, <http://jurist.org/forum/2013/11/richard-briffault-mccutcheon-campaign.php>
- “Sticking Up for the Small Donor,”
The Atlantic, July 27, 2012 (online)
<http://www.theatlantic.com/politics/archive/2012/07/sticking-up-for-the-small-donor/260410/>
- “Give Voters a Voice in Redistricting,”
Albany Times-Union, Feb. 24, 2012
- “The Need for Public Subsidies”
Boston Review, July 22, 2011 (online)
http://www.bostonreview.net/BR36.4/ndf_richard_briffault_campaign_finance_reform.php
- “Nothing Illegal About Ravitch,”
Albany Times-Union, July 20, 2009
- Lawyer’s Bookshelf: “Fighting for the City: A History of the Corporation Counsel’s Office” (book review)
New York Law Journal, Jan. 29, 2008

"School Financing Highlights Significant Cases"
New York Law Journal, Sept. 10, 2007

"An Historic Moment for Separation of Powers"
New York Law Journal, Sept. 12, 2005

"Confronting Regulatory and Liability Issues"
New York Law Journal, Sept. 7, 2004

"With Strings Attached: The Limits on Local Control"
Education Next, Summer 2004

"A Fickle Federalism"
The American Prospect, March 2003

"The Ruling Comes With a Dark Cloud,"
Newsday, December 14, 2000

"Supremes' Challenge: Don't Be Partisan,"
New York Daily News, December 12, 2000

"We Must Stay Calm in Election Mess,"
Newsday, November 14, 2000

"Court Of Appeals: The Year In Review Government And Municipal Law:
Constitutional Questions Spur Dissents,"
New York Law Journal, October 2, 2000

"Court Of Appeals: The Year In Review Government And Municipal Law:
Statutory Interpretation and Unanimity,"
New York Law Journal, October 4, 1998

"Government & Municipal Law: Local Officials Did Not Fare Well in Past Term,"
New York Law Journal, October 5, 1998

"Beware the Lure of Democracy If It Results in Poor Initiatives,"
New York Newsday, October 27, 1997

"New York Court of Appeals Roundup: The School Finance Cases"
New York Law Journal, August 10, 1995

"Focus: Even Bigger Than Albany's Budget Gap Is . . . The Democracy Deficit,"
New York Newsday, April 9, 1995

"Money's Weak Right to Talk,"

New York Newsday, April 4, 1990

LEGISLATIVE AND REGULATORY TESTIMONY

New York State Public Financing Commission,
New York City, September 10, 2019

New York City Charter Revision Commission 2019,
Panel on Corruption and Conflict of Interest, March 14, 2019

Federal Election Commission, Forum on Corporate Political Spending and
Foreign Influence, June 23, 2016

Federal Election Commission, Public Hearing on the *McCutcheon v. FEC*
Advance Notice of Proposed Rulemaking, February 11, 2015

Hearing on New York Attorney General's Proposed Charity Disclosure
Regulations, January 15, 2013

Hearing of New York State Senate Committee on Investigations and Government
Operations Concerning the State's Authority to Tax the Sale of Cigarettes
on Tribal Lands, January 26, 2010

Hearing on Prevention of Deceptive Practices and Voter Intimidation in Federal
Elections: S. 453, United States Senate, Committee on the Judiciary,
June 7, 2007

Hearing of New York City Council Committee on Governmental
Operations Concerning Campaign Finance Reform, December 11, 2003

Hearing on the Authority of Congress to Regulate Federal Election Campaigns,
United States House of Representatives, Committee on the Judiciary,
Subcommittee on the Constitution, May 5, 1999

COMMUNITY AND PROFESSIONAL RECOGNITION AND ACTIVITIES

Member, NYS Bar Ass'n Committee on Professional Ethics, 2022-

International Municipal Lawyers Association, Amicus Service Award
2021

Association of American Law Schools Section on Election Law,
John Hart Ely Prize in the Law of Democracy, 2021

Council on Government Ethics Laws, COGEL Award 2020

City & State New York, "Law Power 100" -- #51 -- March 2020

City & State New York, "Law Power 50" -- #32 -- May 2019

Member, New York City Charter Revision Task Force,
New York City Bar Association, 2018-2019

Member, Task Force on New York State Constitutional Convention,
New York City Bar Association, 2015-2017

Member, Board of Trustees, Metropolitan Montessori School, 2013-2017

Member, American Law Institute, 2011-

Member, Government Reform Policy Committee,
Spitzer Gubernatorial Transition, 2006

Member, Mayor's Committee on City Marshals, City of New York, 2003-2013

Executive Director, Commission on Campaign Finance Reform,
Association of the Bar of the City of New York, 1998-2000

Member, Board of Directors, Citizens Union of the City of New York,
1996-2002, 2003-2009
Vice-Chair, 2008-2009

Member, Board of Directors, Citizens Union Foundation, 2009-
Vice-Chair, 2009-

Member, Executive Committee, Section on State and
Local Government Law, Association of American Law Schools
Chair of the Section, 1994, 2009

Member, Association of the Bar of the City of New York
Task Force on New York State Constitutional Convention,
2015-
Committee on Government Ethics, 2011-2014
Task Force on New York State Constitutional Convention,
1994 -1997
Committee on Federal Legislation, 1993-1996
Committee on Municipal Affairs, 1987-1990
Special Committee on Election Law, 1985-1987
Committee on Labor and Employment Law, 1984-1987
Committee on the Civil Court, 1983-1984

Member, Advisory Board of the Mayor's Office for Homeless and
SRO Housing Services, City of New York, 1987-1988

Member, Mayor's Early Childhood Education Commission,
City of New York, 1985-1986

BAR ADMISSIONS

New York State, 1979

U.S. District Court, Southern District of New York, 1979

U.S. District Court, Eastern District of New York, 1979

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PROFESSIONAL
EXPERIENCE

FORDHAM LAW SCHOOL

Albert A. Walsh Chair in Real Estate, Land Use and Property Law, 2017-present
Professor, 2012-17
Associate Professor, 2011-12

Associate Dean for Academic Affairs, 2014-17
Founder and Faculty Director, Urban Law Center

UNIVERSITY OF COLORADO LAW SCHOOL
Associate Professor, 2004-09, 2010-11

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Principal Deputy General Counsel, 2009-10

COLUMBIA LAW SCHOOL
Visiting Scholar, 2008

LATHAM & WATKINS, LLP
Senior Associate, Finance and Real Estate, Litigation Departments, 2001-04

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Special Counsel to the Secretary, 1999-2001

AMERICORPS – CORPORATION FOR NATIONAL SERVICE, 1994

WHITE HOUSE OFFICE OF LEGISLATIVE AFFAIRS, 1993-94

JUDICIAL
CLERKSHIPS

HON. DAVID H. SOUTER, SUPREME COURT OF THE UNITED STATES, 1998-99

HON. DAVID S. TATEL, UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT, 1997-98

EDUCATION

COLUMBIA LAW SCHOOL, J.D. 1997

Columbia Law Review, Articles Editor, 1996-97; Member 1995-96

Honors

John Ordronaux Prize (highest academic average in class)
James Kent Scholar (highest academic honor), 1994-95; 1995-96; 1996-97
Charles Bathgate Beck Prize (best examination in real property)
Class of 1912 Prize (first-year contracts prize)
Whitney North Seymour Medal (promise in trial advocacy)
Tony Patiño Fellow (merit scholarship for leadership in public service)

HARVARD UNIVERSITY, A.B. 1990

Honors

Magna cum laude in Social Studies
 Senior Honors Thesis: *Family Homelessness and the Construction of Social Problems*
 Dean's List all semesters
 Harvard College Scholarship for Academic Excellence

SCHOLARSHIP

WORKS IN
 PROGRESS

Cities and the Rule of Law

Crypto as Anti-Property

ARTICLES
 AND ESSAYS

Home Rulings, 23 WIS. L. REV. (forthcoming 2023)

Megalopolis Bound?, 24 THEORETICAL INQUIRIES L.(forthcoming 2023)

Law in Place: Reflections on Rural and Urban Legal Paradigms, 50 FORDHAM URB. L. J. (forthcoming 2023) (with Alan R. Romero)

Preempting Police Reform: A Roadblock to Social Justice, 94 TEMP. L. REV. 663 (2022) (with Marissa Roy and Rick Su)

Do Local Governments Really Have Too Much Power? Understanding the National League of Cities' Principles of Home Rule for the Twenty-First Century, 100 N.C. L. REV. 1385 (2022) (with Richard C. Schragger)

Local Constitutions, 99 TEX. L. REV. 839 (2021)

Takings Localism, 121 COLUM. L. REV. 215 (2021) (with Timothy Mulvaney)

Reprinted in ZONING AND PLANNING LAW HANDBOOK (2022)

Reprinted in SHELLEY ROSS SAXER, LAND USE & ENVIRONMENT LAW REVIEW, 2021-22 ed. (2022)

Much Obligated: Moral Psychology and the Social Obligation of Property (An Essay in Honor of Gregory Alexander), 29 CORNELL J. L. & PUB. POL'Y 551 (2020)

The Dilemma of Localism in an Era of Polarization, 128 YALE L.J. 954 (2019)

Law and Neighborhood Names, 72 VAND. L. REV. 757 (2019) (with David Fagundes)

Reviewed by Rashmi Dyal-Chand in the Journal of Things We Like Lots (JOTWELL), June 24, 2019, <https://property.jotwell.com/whats-in-a-name/>

Localist Administrative Law, 126 YALE L.J. 564 (2017)

Resetting the Baseline of Ownership: Takings and Investor Expectations After the Bailouts, 75 MARYLAND L. REV. 722 (2016)

The Sharing Economy as an Urban Phenomenon, 34 YALE L. & POL'Y REV. 215 (2016) (with John Infranca)

Reprinted in DAVID L. CALLIES & J.B. RUHL, LAND USE AND ENVIRONMENTAL LAW REVIEW, 2018-2019 ed. (2018)

Regleprudence – at OIRA and Beyond, 103 GEO. L.J. 259 (2015) (with Ethan J. Leib)

The Mobility Case for Regionalism, 47 U.C. DAVIS L. REV. 63 (2013) (with Sheila R. Foster)

New Formalism in the Aftermath of the Housing Crisis, 93 B.U. L. REV. 389 (2013)

Property and Identity: Vulnerability and Insecurity in the Housing Crisis, 47 HARV. C.R.-C.L. L. REV. 119 (2012)

Sketches for a Hamiltonian Vernacular as a Social Function of Property, 80 FORDHAM L. REV. 1053 (2011)

Property's Morale, 110 MICH. L. REV. 437 (2011)

Property in Crisis, 78 FORDHAM L. REV. 101 (2010) (with Rashmi Dyal-Chand)

Leaps and Bounds, 108 MICH. L. REV. 957 (2010) (reviewing GERALD E. FRUG & DAVID J. BARRON, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION)

Values and Value Creation in Public-Private Transactions, 94 IOWA L. REV. 938 (2009)

Property and Relative Status, 107 MICH. L. REV. 757 (2009)

Standardization and Pluralism in Property Law, 61 VAND. L. REV. 1597 (2008)

The Problem of Equality in Takings, 102 NW. U. L. REV. 1 (2008)

Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty, 93 VA. L. REV. 959 (2007)

Reprinted in 28 IMMIGR. & NATIONALITY L. REV. 167 (2007)

Relational Contracts in the Privatization of Social Welfare: The Case of Housing, 24 YALE L. & POL'Y REV. 263 (2006)

CASEBOOKS AND TREATISES

PROPERTY (Aspen Student Treatise Series, 6th ed. 2022) (with Joseph W. Singer)

PROPERTY LAW: RULES, POLICIES AND PRACTICES (8th ed. 2022; 7th ed. 2017; 6th ed. 2014) (with Bethany Berger, Eduardo M. Peñalver, and Joseph W. Singer)

CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW (9th ed. 2022) (with Richard Briffault, Laurie Reynolds, Erin Scharff, and Rick Su)

EDITED
VOLUMES

PROCEEDINGS OF THE SEVENTH ANNUAL INTERNATIONAL AND COMPARATIVE URBAN LAW CONFERENCE, *City Square* (editor, on-line collection of works in progress) (2022)

LAW AND THE NEW URBAN AGENDA (Routledge 2020) (co-editor, with Geeta Tewari)

THE NEW PREEMPTION READER: LEGISLATION, CASES, AND COMMENTARY ON THE LEADING CHALLENGE IN TODAY'S STATE AND LOCAL GOVERNMENT LAW (West Academic 2019) (co-editor, with Richard Briffault and Laurie Reynolds)

THE LEGAL POWER OF CITIES: GLOBAL PERSPECTIVES IN URBAN LAW (Routledge 2018) (co-editor, with Geeta Tewari)

THE CAMBRIDGE HANDBOOK OF THE LAW OF THE SHARING ECONOMY (Cambridge University Press 2018) (co-editor, with John Infranca and Michèle Finck)

LAW BETWEEN BUILDINGS: EMERGENT GLOBAL PERSPECTIVES ON URBAN LAW (Routledge 2017) (co-editor, with Nisha Mistry)

AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS (Ashgate 2009) (co-editor, with Robin Paul Malloy)

BOOK CHAPTERS

Innovation in Digitalization and the Future of Fair Housing (with Some Notes of Caution), HARVARD JOINT CENTER ON HOUSING STUDIES (forthcoming 2022)

Toponymy in Legal Perspective, in NAMES, IDENTITY, AND THE LAW (Routledge forthcoming 2022) (with David Fagundes)

Sharing in Cities: Why Here? Why Now?, in MODERN GUIDE TO THE URBAN SHARING ECONOMY (Edward Elgar Publishing 2021) (with John Infranca)

The Fair Housing Act's Original Sin: Administrative Discretion and the Persistence of Segregation, in PERSPECTIVES IN FAIR HOUSING (Penn University Press 2020) (with Eduardo Peñalver)

The Place of the Sharing Economy, in THE CAMBRIDGE HANDBOOK OF THE LAW OF THE SHARING ECONOMY (Cambridge University Press 2018) (with John Infranca)

Property, Wellbeing, and Home: Positive Psychology and Property Law's Foundations, in LAW AND THE PRECARIOUS HOME: SOCIO-LEGAL PERSPECTIVES ON THE HOME IN INSECURE TIMES (Hart Publishing 2018)

The Urban in Law, in DEFINING THE URBAN: INTERDISCIPLINARY AND PROFESSIONAL PERSPECTIVES (Routledge 2017)

Department of Housing and Urban Development v. Rucker: *Public Housing as Housing of Last Resort*, in THE POVERTY LAW CANON: EXPLORING THE MAJOR CASES (Marie Failing & Ezra Rosser eds., University of Michigan Press 2016)

Notaries and Legal Professionals, in THE INTERNATIONAL ENCYCLOPEDIA OF HOUSING AND HOME (2011)

Crisis and the Public-Private Divide in Property, in THE PUBLIC NATURE OF PRIVATE PROPERTY (2011) (with Rashmi Dyal-Chand)

The Bullhorn and the Bell Jar: Hernando de Soto and Communication Through Title, in HERNANDO DE SOTO AND PROPERTY IN A MARKET ECONOMY (2010)

Introduction, in AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS (with Robin Paul Malloy) (2009)

The Value of Lawyering in Affordable Housing Transactions, in AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS (2009)

OTHER WORKS

Governance Failure as Corruption?, 98 NYU L. REV. ONLINE (forthcoming 2023)

Local Governments "Pushing Back" in the Pandemic, in LOCAL POWER & POLITICS REV. Vol. 2 (2022) (with Sabrina Adler)

Property's Contingent Categorization, LAW AND POLITICAL ECONOMY (LPE) BLOG (2020) (blog symposium on HANOCH DAGAN, A LIBERAL THEORY OF PROPERTY (2020))

NATIONAL LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE TWENTY-FIRST CENTURY (2020) (with Richard Briffault, Paul Diller, Erin Scharff, and Richard Schragger)

The New State Preemption, the Future of Home Rule, and the Illinois Experience, 3 ILLINOIS MUNICIPAL POL'Y J. 19 (2019) (with Laurie Reynolds)

The Challenge of Regulating the Sharing Economy, PUBLIC LAWYER (2019) (with John Infranca)

The States and Administrative Law, Panel Before the 2018 Federalist Society National Lawyers Convention (Nov. 15, 2018), in 98 NEB. L. REV. 151 (2019) (with Christopher Green, Miriam Seifter, Judge Jeffrey Sutton, and Judge Michael Scudder)

A Better Approach to Urban Opportunity, 27 J. AFF. HOUS. & COMM. DEV. L. 449 (2019) (reviewing RASHMI DYAL-CHAND, COLLABORATIVE CAPITALISM IN AMERICAN CITIES: REFORMING URBAN MARKET REGULATIONS (2018))

Affordable Housing Law and Policy in an Era of Big Data, 44 FORDHAM URB. L. J. 277 (2017)

Reprinted in ZONING AND PLANNING LAW HANDBOOK (2018 ed.)

The Sharing Economy and the Upside of Disrupting Local Governance, HARV. L. REV. BLOG (Nov. 21, 2017) (with John J. Infranca)

The Place of Flourishing Families, 43 FORDHAM URB. L. J. 963 (2017) (with Clare Huntington)

Nationalization and Necessity: Takings and a Doctrine of Economic Emergency, 3 BRIGHAM-KANNER PROP. RTS. CONF. J. 187 (2014)

Towards Engaged Scholarship, 33 PACE L. REV. 990 (2013) (one of several co-authors; John R. Nolon ed.)

What is Urban Law? An Introductory Essay in Honor of the 40th Anniversary of the Fordham Urban Law Journal, 40 FORDHAM URB. L. J. 1579 (2013)

A Most Useful Ball of Thread, 21 J. AFF. HOUS. & COMM. DEV. L. 285 (2013) (reviewing NAVIGATING HUD PROGRAMS: A PRACTITIONER'S GUIDE TO THE LABYRINTH)

Judicial Takings and State Action: On Rereading Shelley after Stop the Beach Renourishment, 6 DUKE J. CONST. L. & PUB. POL'Y 75 (2011)

Fostering Regionalism: Comment on The Promise and Perils of "New Regionalist" Approaches to Sustainable Communities, 38 FORDHAM URB. L. J. 675 (2011)

Elevate 2009: Climate Change and the New Frontiers of Urban Development, 80 U. COLO. L. REV. (2009) (with William Shutkin)

Comment, Vertical Learning: On Baker and Rodriguez's Constitutional Home Rule and Judicial Scrutiny, 86 DENV. U.L. REV. 1425 (2009)

Comment, Reconciling People and Place in Housing and Community Development Policy, 17 GEO. J. ON POVERTY L. & POL'Y 1 (2009)

Reprinted in THE AFFORDABLE HOUSING READER (Elizabeth Mueller & Rosie Tighe eds. 2012)

Comment, Rights as a Functional Guide for Service Provision in Homeless Advocacy, 26 ST. LOUIS UNIV. PUB. L. REV. 45 (2007)

Comment, "Housing First" for the Chronically Homeless: Challenges of a New Service Model, 15 J. AFF. HOUS. & COMM. DEV. L. 125 (2006)

Note, Constitutional Mass Torts: Sovereign Immunity and the Human Radiation Experiments, 96 COLUM. L. REV. 1203 (1996)

AWARDS

Dean's Medal of Recognition, Fordham Law School, 2017

Jules Milstein Faculty Writing Award, Colorado Law School, 2008, for *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty* (annual award recognizing excellence in scholarship by a Colorado Law faculty member)

BLOGGING

Co-founder, *State and Local Government Law Blog* (@sloglawblog)

EDITING

Editor, *State and Local Government Law eJournal*, Social Science Research Network (with Patricia Salkin)

CONFERENCE
ORGANIZATION

International and Comparative Urban Law Conference

- Ninth* – Accra, Ghana, 2023
- Eighth* – Vancouver, Canada, July 14-16, 2022
- Seventh* – Berlin, Germany, and online, July 15-17, 2021
- Sixth* – Sydney, Australia, July 11-12, 2019
- Fifth* – São Paulo, Brazil, June 21-22, 2018
- Fourth* – Cape Town, South Africa, July 18-19, 2017
- Third* – Hong Kong, China, June 29, 2016
- Second* – Paris, France, June 29, 2015
- First* – London, England, June 30, 2014

Progressive Property, New York, New York, May 26-27, 2020

The Theory and Pedagogy of Urban Law, Rome, Italy, November 9-10, 2019 (with Christian Iaione)

Seventh Annual State and Local Government Works in Progress Conference, New York, New York, September 24-25, 2018

The Columbia-Fordham-NYU International Sustainable Cities Conference, New York, New York, May 1-2, 2018

Sharing Economy, Sharing City: Urban Law and the New Economy, New York, New York, April 24-25, 2015

Smart Law for Smart Cities, New York, New York, February 27-28, 2014

Until Civil Gideon, New York, New York, November 1, 2013 (with the Feerick Center for Social Justice)

The Bloomberg Administration's Legal Legacy, New York, New York, November 27 and December 4, 2012 (with the New York City Bar Association)

2012 Property Works in Progress Conference, New York, New York, May 31 to June 2, 2012 (with D. Benjamin Barros)

2009 Property Works in Progress Conference, Boulder, Colorado, June 1-3, 2009 (with D. Benjamin Barros)

Elevate 2009: Climate Change and the New Frontiers of Urban Development, Denver and Boulder, Colorado, February 26-27 (2009) (with William Shutkin)

2008 Property Works in Progress Conference, Boulder, Colorado, June 12-14, 2008 (with D. Benjamin Barros)

Workshop on Affordable Housing and Public-Private Partnerships, Boulder, Colorado, October 19-20, 2007 (with Robin Paul Malloy)

2007 Property Works in Progress Conference, Boulder, Colorado, June 14-15, 2007 (with D. Benjamin Barros)

SELECTED RECENT
PRESENTATIONS

Home Rule Reform—Imperatives, Models, and Prospects, Urban Affairs Association Annual Conference, April 2022

Keynote, *On the Principles of Home Rule for the Twenty-First Century*, North Carolina Law Review Symposium, October 2021

Time and Sustainability: The Temporal Mismatch Problem for Family Housing and the Law, Third Annual FamLAPP Workshop, Aalborg, Denmark, June 2021

Takings Localism

Local Autonomy and Energy Law Symposium, Florida State University, February 2021

Eighth Annual State and Local Government Works in Progress Conference, Virginia Law School, September 2019

Association for Law, Property, and Society, Syracuse Law School, May 2019

Much Obligated: Moral Psychology and the Social Obligation of Property, Progressive Property Conference, Cornell Law School, May 2019

Local Constitutions

Sixth Annual International and Comparative Urban Law Conference, Sydney, Australia, July 2019

The Marshall M. Criser Distinguished Lecture and Workshop Series, University of Florida Levin College of Law, March 2019

University of Kansas Law School, February 2019

Yale Law School Chartering the City Conference, February 2019

Property Works in Progress Conference, October 2018

State and Local Government Law Works in Progress Conference, September 2018

Fordham Law Scholarship Retreat, May 2018

The Dilemma of Localism in an Era of Polarization

Yale Law School, November 2018

Alabama Law School, February 2018

Texas A&M Law School, February 2018

Cardozo Law School, November 2017

State and Local Government Works in Progress, October 2017

Neighborhood Identity in Legal Perspective

Association for Law, Property, and Society, Maastricht University Law School, June 2018

Progressive Property Conference, Harvard Law School, May 2018

Property Works in Progress, Northeastern University Law School, September 2017

Affordable Housing Law and Policy in an Era of Big Data

Tulane Law School Property Roundtable, October 2016

Property Works in Progress, Boston University Law School, September 2016

Assailing the Unassailable Case Against Affordable Housing, Evidence and Innovation in Housing Law & Policy, University of Chicago Law School, June 2016

Privacy in Local Perspective

Third Annual International and Comparative Urban Law, Hong Kong, China, June 2016
 Fordham Law Scholarship Retreat, May 2016

The Effects of Law on the Layout and Quality of Cityscapes in the United States: Boundaries and Exclusion,

Cityscapes Conference, Yale Law School, April 2016

The Sharing Economy as an Urban Phenomenon

Local Government Works in Progress, Rutgers School of Law, November 2015
 Legal Scholarship 4.0 Conference, Northeastern University School of Law, October 2015
 Second Annual International and Comparative Urban Law Conference, June 2015

Bending the Arc: On Joseph Singer and the Legal Architecture of Decency, 2015 Brigham-Kanner

Conference on Property Rights, William & Mary Law School, October 2015

Resetting the Baseline of Ownership: Takings and the Fire Next Time, 18th Annual Conference on

Litigating Takings Claims, Maryland Law School, September 2015

Property, Well-being, and Home, Onati International Institute Workshop, The Precarious Home:

Socio-Legal Perspectives on the Home in Insecure Times, June 2015

Localist Administrative Law

Chapman Law School Dialogue, March 2015
 Willamette Law School, February 2015
 Maryland Law School, January 2015

COURSES TAUGHT

Property
 Land Use Planning
 Real Estate Transactions
 State and Local Government Law
 Urban Lab: Dynamics of Neighborhood Change
 Seminar: Law of the City of New York
 Seminar: Affordable Housing Development
 Seminar: Cities, Suburbs, and the Law
 Short Course, Urbanism and the Law, National Law School India (Bangalore), January 2013
 Short Course, Affordable Housing Law and Policy, Interdisciplinary Center, Hertzliya, Israel, April-May, 2013

PRIMARY LAW

SCHOOL SERVICE

Fordham Law School

Associate Dean for Academic Affairs, 2014-17
 Founder and Faculty Director, Fordham Urban Law Center
 Co-Moderator, Fordham Urban Law Journal, 2012 - present
 Chair, Reappointment, Tenure, and Promotion (RTP) Committee, 2022 - present
 House Leader, 2019-22
 Curriculum Committee, 2017-19
 Faculty Appointments Committee, 2011-12; 2012-13; 2021-22
 Long-Range Planning Committee, 2011-12; 2012-13 (Chair), 2017-20
 Student-Faculty/Services Committee, 2017-18
 Technology Committee, 2014

Colorado Law School

Clinical Faculty Review Committee, 2010-11

Appointments Committee, 2005-06; 2006-07; 2008-09

Technology Committee, 2007-08

Admissions Committee, 2004-05

EXTERNAL SERVICE

Founder, Association for Urban Law Scholars (AULS)

President, Association for Law, Property and Society (ALPS), 2019-20

Board Member, New York State Housing Finance Agency, 2013-19

Board of Advisors, Yale State and Local Policy Review

BAR MEMBERSHIPS

New York

District of Columbia (inactive)

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JOSHUA A. DOUGLAS

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ACADEMIC EXPERIENCE

University of Kentucky J. David Rosenberg College of Law

Lexington, KY

Ashland, Inc.-Spears Distinguished Research Professor of Law (2020-present)

Thomas P. Lewis Professor of Law (2018-2020)

Robert G. Lawson & William H. Fortune Associate Professor of Law (2014-2018)

Assistant Professor of Law (2010-2014)

Courses:

- Civil Procedure I
- Constitutional Law II
- Election Law
- Supreme Court Decision Making

Research Areas:

- Election law and voting rights
- Constitutional right to vote, including state constitutions and local voting laws
- Procedural aspects of election law cases
- Vote counting rules and disputes

Select Service Activities:

- Elected Member, American Law Institute (ALI)
- Faculty Advisor to *Kentucky Law Journal*, Election Law Society, and American Constitution Society
- Current committee assignments include Speakers (Chair), Appointments, Clerkships, and University Senate Hearing Panel (Privilege and Tenure). Previously served as Chair of Institutional Compliance Committee
- Primary Creator and Initial Chair, AALS Section on Election Law; Prior Member, AALS Committee on Sections

Visiting Positions:

- *Visiting Scholar*, University of Edinburgh Law School, May 2017
- *Faculty*, London Law Consortium, Spring 2014

AWARDS

Ashland, Inc.-Spears Distinguished Research Professorship, 2020-25.

Robert M. and Joanne K. Duncan Teaching Award, 2019-20.

University of Kentucky College of Law nominee, University Alumni Professorship, 2018.

SEALS Call for Papers, Winner, 2011-12.

ACADEMIC PUBLICATIONS

BOOKS:

The Court vs. The Vote: Ten Cases That Destroyed American Democracy (Beacon Press forthcoming 2024).

Vote for US: How to Take Back Our Elections and Change the Future of Voting (Prometheus Books 2019).

Election Law Stories (Foundation Press 2016) (editor, with Eugene D. Mazo).

Election Law and Litigation: The Judicial Regulation of Politics (Aspen 2014) (2nd ed. 2022) (with Edward B. Foley and Michael J. Pitts).

LAW REVIEW ARTICLES:

"How the Sausage Gets Made": Voter ID and Deliberative Democracy, 100 NEBRASKA LAW REVIEW 376 (2021).

Bring the Masks and Sanitizer: The Surprising Bipartisan Consensus About Safety Measures for In-Person Voting During the Coronavirus Pandemic, 55 GEORGIA LAW REVIEW 1585 (2021) (with Michael A. Zilis)

The Loch Ness Monster, Haggis, and a Lower Voting Age: What America Can Learn from Scotland, 69 AMERICAN UNIVERSITY LAW REVIEW 1433 (2020) (symposium issue).

Precedent, Three-Judge District Courts, and the Law of Democracy, 107 GEORGETOWN LAW JOURNAL 413 (2018) (with Michael Solimine).

- Cited in *Gonidakis v. LaRose*, No. 2:22-cv-0773 (S.D. Ohio Apr. 20, 2022) (three-judge court)
- Cited in *Lavergne v. U.S. House of Rep.*, 2018 WL 4286404 (D.D.C. Sept. 6, 2018) (three-judge court)

A Voice in the Wilderness: John Paul Stevens, Election Law, and a Theory of Impartial Governance, 60 WILLIAM & MARY LAW REVIEW 335 (2018) (with Cody Barnett).

The Right to Vote Under Local Law, 85 GEORGE WASHINGTON LAW REVIEW 1039 (2017).

Local Democracy on the Ballot, 111 NORTHWESTERN LAW REVIEW ONLINE 173 (2017), <http://northwesternlawreview.org/online/local-democracy-ballot>.

In Defense of Lowering the Voting Age, 165 UNIVERSITY OF PENNSYLVANIA LAW REVIEW ONLINE 63 (2017), <http://www.pennlawreview.com/online/165-U-Pa-L-Rev-Online-63.pdf>.

A Checklist Manifesto for Election Day: How to Prevent Mistakes at the Polls, 43 FLORIDA STATE LAW REVIEW 353 (2016).

State Judges and the Right to Vote, 77 OHIO STATE LAW JOURNAL 1 (2016).

(Mis)trusting States to Run Elections, 92 WASHINGTON UNIVERSITY LAW REVIEW 553 (2015).

- Cited in *Texas Dem. Party v. Hughs*, No. SA-20-CA-438 (Request for Additional Briefing, Aug. 13, 2021).
- Cited in *United States v. Louisiana*, 196 F. Supp. 3d 612, 625 (M.D. La. 2016).

The Right to Vote Under State Constitutions, 67 VANDERBILT LAW REVIEW 89 (2014).

- Cited in *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018).
- Cited in *Young v. Red Clay Consol. Sch. Dist.*, 122 A.3d 784, 810 n.17 (Del. Ch. 2015).

Election Law Pleading, 81 GEORGE WASHINGTON LAW REVIEW 1966 (2013).

Procedural Fairness in Election Contests, 88 INDIANA LAW JOURNAL 1 (2013) (winner of the 2011-12 SEALS Call for Papers).

- Cited in *Johnson v. Secretary of State*, No. 162286 (Mich. 2020) (Viviano, J., dissenting).
- Cited in *Rock v. Lankford*, 301 P.3d 1075, 1082 (Wyo. 2013).

The Procedure of Election Law in Federal Courts, 2011 UTAH LAW REVIEW 433.

The Significance of the Shift Toward As-Applied Challenges in Election Law, 37 HOFSTRA LAW REVIEW 635 (2009).

Is the Right to Vote Really Fundamental?, 18 CORNELL JOURNAL OF LAW AND PUBLIC POLICY 143 (2008).

- Cited in *Ruddick v. Commonwealth of Australia* (Australia High Court, March 22, 2022).
- Cited in *Veasey v. Abbott*, 888 F.3d 792, 806 (5th Cir. 2018) (Higginbotham, J., concurring).

BOOK CHAPTERS, ESSAYS, AND SOLICITED PIECES:

State Constitutions and Youth Voting Rights, 74 RUTGERS UNIVERSITY LAW REVIEW ____ (forthcoming 2022).

Establishing Justice, Securing the Blessings of Liberty: Why Civic Duty Voting Is Constitutional in ONE HUNDRED PERCENT DEMOCRACY: THE CASE FOR UNIVERSAL VOTING (E.J. Dionne and Miles Rapaport, authors) (New Press 2022) (co-author of this chapter)

Undue Deference to States in the 2020 Election Litigation, 30 WILLIAM AND MARY BILL OF RIGHTS JOURNAL 59 (2021)

- Cited in *Texas Democratic Party v. Scott*, No. SA-20-CA-438 (July 22, 2022).
- Reprinted with permission as part of the AALS Conference on Rebuilding Democracy in 26 LEWIS & CLARK LAW REVIEW 405 (2022).

The Case for Same-Day Voter Registration, THE JUSTICE COLLABORATIVE INSTITUTE, August 2020.

Congress Must Count the Votes: The Danger of Not Including a State's Electoral College Votes During a Disputed Presidential Election, 81 OHIO STATE LAW JOURNAL ONLINE 183 (2020) (Election Law Roundtable Edition).

Lift Every Voice: The Urgency of Universal Civic Duty Voting, UNIVERSAL VOTING WORKING GROUP, BROOKINGS INSTITUTION AND THE ASH CENTER FOR DEMOCRATIC GOVERNANCE AND INNOVATION, HARVARD KENNEDY SCHOOL (2020) (co-author of legal section and contributor to full report).

Elections as Duels: "You Know What? We Can Change That! You Know Why? 'Cuz We Have the Support of Two-Thirds of Each House of Congress and Three Quarters of the States!", in *THE LAW OF HAMILTON: AN AMERICAN MUSICAL* (Cornell University Press 2020).

[*REPORT: Age Discrimination In Voting At Home*](#), Coalition of Voting Rights Organizations (2020) (co-author).

Lowering the Voting Age from the Ground Up: The United States' Experience in Allowing 16-Year-Olds to Vote, in *LOWERING THE VOTING AGE TO 16 – LEARNING FROM REAL EXPERIENCES WORLDWIDE* (Palgrave Macmillan 2020).

[*Democracy Reform, One Ballot at a Time*](#), HARVARD LAW REVIEW BLOG (2018).

[*Expanding Voting Rights Through Local Law*](#), ACS ISSUE BRIEF (2017) (condensed version of *The Right to Vote Under Local Law*, 85 GEORGE WASHINGTON LAW REVIEW 1039 (2017)).

The Story of Crawford v. Marion County Election Board and the History of Voter ID Laws, in *ELECTION LAW STORIES* (2016).

Election Law at the Local Level, 15 ELECTION LAW JOURNAL 232 (2016) (introducing symposium issue as guest editor).

A Pivotal Moment in Election Law, 104 KENTUCKY LAW JOURNAL 547 (2016) (introducing symposium issue).

A Formal Recognition of Our Field, 14 ELECTION LAW JOURNAL 239 (2015) (introducing symposium issue as guest editor).

To Protect the Right to Vote, Look to State Courts and State Constitutions, AMERICAN CONSTITUTION SOCIETY ISSUE BRIEF (2015) (drawing language from *State Judges and the Right to Vote*, 77 OHIO STATE LAW JOURNAL 1 (2016) and *The Right to Vote Under State Constitutions*, 67 VANDERBILT LAW REVIEW 89 (2014)).

Regulation of Federal Elections and Regulation of State Elections, ENCYCLOPEDIA OF AMERICAN GOVERNANCE (MacMillan 2015).

The Foundational Importance of Participation: A Response to Professor Flanders, 66 OKLAHOMA LAW REVIEW 81 (2013) (Election Law Symposium Issue).

To HAVA, and Beyond!, 12 ELECTION LAW JOURNAL 233 (2013) (reviewing MARTHA KROPP & DAVID C. KIMBALL, *HELPING AMERICA VOTE* (2011)).

Discouraging Election Contests, 47 UNIVERSITY OF RICHMOND LAW REVIEW 1015 (2013) (Election Law Symposium Issue).

- Cited in *Johnson v. Secretary of State*, No. 162286 (Mich. 2020) (Viviano, J., dissenting).

Enlivening Election Law, 56 SAINT LOUIS UNIVERSITY LAW JOURNAL 767 (2012) (Teaching Election Law Issue).

Election Law and Civil Discourse: The Promise of ADR, 27 OHIO STATE JOURNAL ON DISPUTE RESOLUTION 291 (2012) (Election Law Symposium Issue).

The Voting Rights Act Through the Justices' Eyes: NAMUDNO and Beyond, 88 TEXAS LAW REVIEW SEE ALSO 1 (2009).

When is a "Minor" also an "Adult"?: An Adolescent's Liberty Interest in Accessing Contraceptives from Public School Distribution Programs, 43 WILLAMETTE LAW REVIEW 545 (2007).

Note, *A Vote for Clarity: Updating the Supreme Court's Severe Burden Test for State Election Regulations that Adversely Impact an Individual's Right to Vote*, 75 GEORGE WASHINGTON LAW REVIEW 372 (2007).

OP-EDS (from the past two years; full list available on request):

The Roberts Court Takes Aim at the Voting Rights Act, WASHINGTON MONTHLY, Sept. 29, 2022.

The Case for the 16-Year-Old Vote, WASHINGTON MONTHLY, Aug. 25, 2022.

One state where GOPers show the election wasn't stolen, CNN, July 26, 2022.

Take Me Out to the...Voting Booth!, WASHINGTON MONTHLY, July 14, 2022.

The dangerous election theory the Supreme Court may be poised to endorse, CNN, July 7, 2022.

Non-Citizen Voting in New York City Blocked by State Court, STATE AND LOCAL GOVERNMENT BLOG, July 1, 2022.

New York's Smart New Voting Rights Law, WASHINGTON MONTHLY, June 13, 2022.

Ohio Voters Shafted by Conservative Judicial Activism, WASHINGTON MONTHLY, April 25, 2022.

Ketanji Brown Jackson, Voting Rights Champion?, WASHINGTON MONTHLY, April 1, 2022.

Another Scheme to Curtail Voting Rights, WASHINGTON MONTHLY, March 4, 2022.

The Supreme Court's Alabama Disaster, WASHINGTON MONTHLY, Feb. 9, 2022.

One Year After the Capitol Attack, Why Have We Done Nothing to Protect Our Democracy?, WASHINGTON MONTHLY, Jan. 5, 2022.

One year after Jan. 6, Mitch McConnell still "obstructor-in-chief" on election rules., LEXINGTON HERALD-LEADER, Jan. 5, 2022.

How Kentucky's redistricting result is the definition of gerrymandering, LOUISVILLE COURIER JOURNAL, Jan. 5, 2022.

The attacks on the 2024 election are already underway, CNN, Nov. 29, 2021.

Why Gerrymandering Needs to Land in State Courts, POLITICO, Nov. 24, 2021.

A Voting Rights Bill That Both Democrats and Republicans Can Support, WASHINGTON MONTHLY, Oct. 22, 2021.

Maybe Supreme Court Judges Really Are Driven by Politics, WASHINGTON MONTHLY, Oct. 12, 2021.

Disbar Trump's Lawyers Who Tried to Steal the Election, WASHINGTON MONTHLY, August 31, 2021.

What I Learned Talking to Fourth-Graders About How to Design Elections, POLITICO, July 31, 2021.

Why Voting Isn't a "Privilege," WASHINGTON MONTHLY, July 30, 2021.

MLB Can Do More for Voting Than Moving the All-Star Game, USA TODAY, July 12, 2021.

Supreme Court Deals Blow to American Democracy, CNN, July 1, 2021.

Republicans aren't just making it harder to vote. They're going after election officials, too., WASHINGTON POST, May 9, 2021.

Arizona's dangerous vote audit includes a hunt for bamboo, CNN, May 7, 2021.

In Georgia, will courts leave the fox in charge of the hen house?, CNN, March 31, 2021.

A contested election in Iowa could undermine Americans' faith in democracy, CNN, March 18, 2021.

Keep your eye on Kentucky's voting plans, CNN, Feb. 26, 2021.

Republicans react to 2020 defeats by trying to make it harder to vote, CNN, Jan. 27, 2021.

Voter ID Laws Are Bad. But Some Are Better Than Others, WASHINGTON MONTHLY, Jan. 27, 2021.

KY's pandemic voting plan was great; Ky lawmakers should stop attacking it, LEXINGTON HERALD-LEADER, Jan. 8, 2021; *Democracy is under attack, but now it's not in Washington, it's in Kentucky's Capitol*, LOUISVILLE COURIER-JOURNAL, Jan. 11, 2021 (same Op-Ed).

The real reason you need to worry about Hawley's objection to Biden's victory, CNN, Dec. 30, 2020.

Trump is the true perpetrator of election fraud, CNN, Nov. 19, 2020.

Breathless media coverage of election lawsuits plays right into Trump's plan, PHILADELPHIA INQUIRER, Nov. 10, 2020.

GOP leaders, demand that Trump stop his outrageous assault on America's vote now, CNN, Nov. 6, 2020.

On this Election Day, remember the power of the individual right to vote, LEXINGTON HERALD-LEADER, Nov. 3, 2020.

How Trump-appointed judges have made it harder to vote, CNN, Nov. 1, 2020.

Actually, Americans Do Want to Wear Masks to Vote, POLITICO, Oct 21, 2020.

The scary part of the Supreme Court ruling on Pennsylvania's mail-in ballots, CNN, Oct. 20, 2020.

Courts are supposed to protect the right to vote. Why aren't they?, CNN, Oct. 14, 2020.

The Worst Election Law Decision of the Year?, TAKE CARE, Oct. 12, 2020.

Got a question about voting in Kentucky? UK election expert has the answers., LEXINGTON HERALD-LEADER, Oct. 8, 2020.

Attention Mitch McConnell: Filling RBG's seat now could break American democracy, CNN, Sept. 18, 2020.

Trump and Biden's Florida polls highlights stakes of 2020 voting rights for ex-felons, NBC NEWS, Sept. 15, 2020.

A Texas federal court decision is the latest hit to voting rights in America, CNN, Sept. 12, 2020.

We don't have to have chaos when America votes this fall, CNN, July 1, 2020.

'A qualified success.' Let's continue what worked in Tuesday's primary and fix what didn't, LEXINGTON HERALD-LEADER, June 25, 2020.

There is no place for age discrimination in voting, THE HILL, June 10, 2020 (with Yael Bromberg and Jason Harrow).

This state has it right on voting in the age of Covid-19, CNN, May 5, 2020.

The Media Can Play A Crucial Role In Preserving Democracy Amid COVID. Here's How., TALKING POINTS MEMO, April 13, 2020 (with Adam Eichen)

'Perversion of democracy' underway in Frankfort as lawmakers continue to meet amid pandemic, LEXINGTON HERALD LEADER, March 19, 2020.

Coronavirus not stopping Democratic primaries — despite obvious health and turnout risks, NBC NEWS, March 16, 2020.

General Assembly is making mostly good moves on voting rights this session, LEXINGTON HERALD-LEADER, March 5, 2020.

Calm down, America. If election results aren't instant, it doesn't mean they're 'rigged', USA TODAY, February 21, 2020.

Give 16-year-olds the right to vote, COMMONWEALTH MAGAZINE, February 15, 2020 (with Adam Eichen).

The great Iowa overreaction: It's irresponsible to use delayed results to weave conspiracy theories about the integrity of an election, NEW YORK DAILY NEWS, February 4, 2020.

Kentucky photo ID bill needs more work and should take effect after 2020 election, LOUISVILLE COURIER-JOURNAL, January 28, 2020.

Kentucky's proposed photo ID law would make it harder to vote, not stop fraud, LOUISVILLE COURIER-JOURNAL, January 9, 2020.

MEDIA APPEARANCES

I have appeared in the *New York Times*, *Washington Post*, *Wall Street Journal*, *CNN*, *USA Today*, *NPR*, *Bloomberg Radio*, *The Atlantic*, *Politifact*, *Associated Press*, and numerous other media outlets. A list of media appearances is available on request.

PRESENTATIONS

I have presented at numerous law schools, academic conferences, public policy gatherings, bookstores, and events for the general public. A list of presentations is available upon request.

LEADERSHIP ROLES

National:

- *Editorial Board*, Election Law Journal
- *Member*, Universal Voting Working Group
- *Member*, Vote16 Global Network
- *Advisory Board*, Vote16USA – Generation Citizen
- *Advisory Board*, National Vote at Home Institute
- *Leadership Circle*, Promote Our Vote (FairVote)
- *Legal Advisory Committee on a Constitutional Right to Vote*, Advancement Project

Kentucky:

- *Transition Team*, Kentucky Secretary of State Michael Adams, 2019
- *Consultant on Voting Rights Exhibit*, Kentucky Historical Society
- *Board of Trustees*, Carnegie Center for Literacy and Learning
- *Governance Board*, CivicLex
- *Board of Directors*, International Book Project
- *Kentucky Supreme Court Committee on Revising Code of Judicial Conduct*, 2017

SELECT CONSULTING ACTIVITIES

Expert Report on U.S. Voting Age, *Penney-Crocker v. The Attorney General In Right of Canada*, No. CV-21-00673219 (Ontario Superior Court of Justice).

Amicus Brief Supporting Plaintiffs-Appellees, *Richardson v. Flores*, No. 20-50774 (5th Cir. 2021).

League of Women Voters of New York State v. New York State Board of Elections, No. 160342/2018 (New York Supreme Court Appellate Division, First Department).

Expert Report on U.S. Voter ID Laws, *Council of Canadians v. The Crown*, No. CV-14-513961 (Ontario Superior Court of Justice).

Analysis of National Voter Registration Act, Various Public Policy Organizations.

Amicus Brief Supporting Petitioners, Shapiro v. McManus, No. 14-990 (U.S. Supreme Court) (with Michael Solimine) (the Court sided with the Petitioners 9-0).

EDUCATION

The George Washington University Law School

Washington, DC
May 2007

Juris Doctor, with highest honors

- Ranked in top 2% of class
- Order of the Coif
- Recipient of the Imogen Williford Constitutional Law Award for the top student in constitutional law classes
- Articles Editor, *The George Washington Law Review*
- Member, Moot Court Board
 - Finalist, 2006-2007 Van Vleck Constitutional Law Moot Court Competition (argued before Justice Samuel Alito, Judge Diane Wood, and Judge José Cabranes)

The George Washington University

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May 2002

Bachelor of Arts, summa cum laude

- Major: Political Science; Minor: Sociology
- Phi Beta Kappa
- National Society of Collegiate Scholars

PRIOR LEGAL EXPERIENCE

Akin Gump Strauss Hauer & Feld LLP

San Antonio, TX
2009-2010

Associate

- Worked in litigation group, focusing on federal trials and appeals, mostly involving insurance defense

The Honorable Edward C. Prado United States Court of Appeals for the Fifth Circuit

San Antonio, TX
2007-2009

Judicial Clerk

Mayer Brown LLP

Washington, DC
Summer 2007

Summer Associate (received offer for post-clerkship employment)

Dow Lohnes PLLC

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Max E. Greenberg Professor of Contract Law, New York University School of Law, 2002 – Present (teaching Contracts, Domestic and International Sales Law, Payment Systems, Local Government Law); Vice Dean (2004 – 2007).

Director, NYU Marron Institute of Urban Management, 2016 - 2020.

Visiting Professor of Law, Columbia Law School, 2008.

Professor of Law, New York University School of Law, 2000 - 2002.

Perre Bowen Professor of Law, University of Virginia School of Law, 1992-2000.

John V. Ray Research Professor, University of Virginia School of Law, 1997-2000.

Caddell and Conwell Research Professor, University of Virginia School of Law, 1993-1996.

Professor of Law, Boston University School of Law, 1984-1992.

Associate Dean, Boston University School of Law, 1990-92.

Visiting Associate Professor of Law, University of Michigan School of Law, 1983.

Visiting Associate Professor of Law, University of Virginia School of Law, 1980-81.

Harry Elwood Warren Scholar in Municipal Law, Boston University School of Law, 1988-92.

Associate Professor of Law, Boston University School of Law, 1978-1984.

Associate, Cleary, Gottlieb, Steen & Hamilton, New York City, 1976-78.

Law Clerk, Hon. J. Edward Lumbard, United States Court of Appeals, 1975-76.

Education

University of Michigan School of Law, J.D. magna cum laude, 1975.

Amherst College, B.A. magna cum laude, 1972.

Major Publications

Books

Local Government Law: Cases and Materials (with Lynn Baker and David Schleicher)
Foundation Press (Sixth Edition 2022).

The UN Convention on Contracts for the International Sale of Goods: Theory and Practice, (with
Steven Walt) 2d edition. Cambridge University Press (2016).

Advanced Introduction to International Sales, Edward Elgar Publishing (2016).

Sales Law: Domestic and International (with Steven Walt). Foundation Press (3d Edition 2015).

Municipal Debt Finance Law: Theory and Practice (with Robert S. Amdursky & G. Allen Bass)
Wolters Kluwer (2d edition 2013).

Local Redistribution and Local Democracy: Interest Groups and the Courts. Yale University
Press. (2011).

Payment Systems and Credit Instruments (with Alan Schwartz and Robert E. Scott) Foundation
Press (2d. edition 2007).

Articles and Book Chapters

How Cities Fail: Service Delivery Insolvency and Municipal Bankruptcy, 2019 Mich. St. L. Rev.
1211.

Are Commercial Standard Form Sales Contracts Efficient?, in Research Handbook on
International and Comparative Sale of Goods Law (D. Saidov, ed.) (Elgar 2019).

On the Optimal Number of Contract Types (with Oren Bar-Gill), 20 Theoretical Inquiries L. 487
(2019).

Judicial Refusal to Apply Treaty Law: Domestic Law Limitations on the CISG's Application
(with Steven D. Walt), 22 Uniform L. Rev. 452 (2017).

Governance Reform and the Judicial Role in Municipal Bankruptcy (with David A. Skeel, Jr.),
125 Yale L.J. 1150 (2016).

A Two-Step Plan for Puerto Rico (with David A. Skeel, Jr.), available at
https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2728466 (2016).

Attorney's Fees under the CISG: *Stemcor* Does Not Disagree with *Zapata*, *Internationales*

- Handelsrecht 15 Jahrgang 58 (April 2015).
- Dictatorships for Democracy: Takeovers of Financially Failed Cities, 114 Colum. L. Rev. 1373 (2014).
- Tacit Agreement and Relationship-Specific Investment, 88 NYU L. Rev. 128 (2013).
- Contractual Networks, Contract Design, and Contract Interpretation: The Case of Credit Cards, in *The Organizational Contract*, Ed. S. Grundmann, F. Cafaggi, & G. Vettori (Ashgate), 97-112 (2013).
- What States Can Learn from Municipal Insolvency, in *When States Go Broke*, Ed. Peter Conti-Brown & David A. Skeel, Jr. (Cambridge University Press), 99-122 (2012).
- Fiscal Federalism, Political Will, and Strategic Use of Municipal Bankruptcy, 79 U. Chi. L. Rev. 281 (2012).
- Fiscal Federalism as a Constraint on States, 35 Harv. J. L. & Pub. Pol. 101 (2012).
- Bondholders and Financially Stressed Municipalities, 39 Ford. Urb. L. J. 639 (2012).
- Standard Form Contracts, in *Contract Law and Economics*, Ed. De Geest, Gerrit, (Cheltenham: Edward Elgar), 115-124 (2011).
- Who Should Authorize a Commuter Tax?, 77 U. Chicago L. Rev. 223 (2010).
- Warranties and “Lemons” under CISG Article 35(2)(a), *Internationales Handelsrecht* 26, 2-17 (Feb. 2010) (with Franco Ferrari).
- Can Transactions Cost Reconcile the Differences Between the UCC and the CISG? In: *Schriften der Ernst von Caemmerer-Stiftung: Obligationenrecht im 21. Jahrhundert*. Eds. Balurock, Uwe & Hager, Gunter, (Baden-Baden: Nomos), 89-98 (2010).
- Fiscal Home Rule, 86 Den. U. L. Rev. 1241 (2009).
- Can Public Debt Enhance Democracy?, 50 Wm. & Mary L. Rev. 937 (2008).
- Uniformity and Diversity in Payment Systems (with Steven D. Walt), 83 Chicago-Kent Law Review 499 (2008).
- Law School Faculty as Free Agents, 17 Journal of Contemporary Legal Issues 213 (2008).
- Local Redistribution, Living Wage Ordinances, and Judicial Intervention, 101 Northwestern University Law Review 1057 (2007).
- The Tendency to Exceed Optimal Jurisdictional Boundaries, in William A. Fischel (ed.), *The*

Tiebout Model at Fifty 254 (2006).

The Political Economy of International Sales Law (with Robert S. Scott), 25 International Review of Law and Economics 446 (2005).

Pre-Approved Contracts for Internet Commerce, 34 Houston Law Review 975 (2005).

Voting With Your Hands: Direct Democracy in Annexation, 78 Southern California Law Review 835 (2005).

The Conditions of Interlocal Cooperation, 21 Journal of Law & Politics 365 (2005).

Rolling Contracts as an Agency Problem, 2004 Wisconsin Law Review 679.

The Law Merchant in the Modern Age: Institutional Design and International Usages under the CISG, 5 Chicago Journal of International Law 157 (2004).

Direct Democracy and Debt, 13 Journal of Contemporary Legal Issues 365 (2004).

Constraining Misuse of Funds from Intergovernmental Grants: A Legal Analysis, in Fiscal Federalism in Unitary States (2003).

Reputation and Intermediaries in Electronic Commerce, 62 La. L. Rev. 1165 (2002).

Regionalization and Interlocal Bargains, 76 N.Y.U.L. Rev. 190 (2001).

Funding Versus Control in Intergovernmental Relations, 12 Constitutional Political Economy 123 (2001).

Interest Groups in the 21st Century, 32 Urban Lawyer 423 (2000).

Letters of Credit as Signals, 98 Mich. L. Rev. 2537 (2000).

Richardson v. McKnight and the Scope of Immunity after Privatization, Supreme Court Economic Review, 8 Sup. Ct. Econ. Rev. 103 (2000) (with Paul Stephan).

The Path Dependence of the Law, in Steven Burton, "The Path of the Law and Its Influence," (2000).

Harmony and Stasis in Trade Usages for International Sales, 39 Va. J. Int'l L. 707 (1999).

Is Direct Democracy Anti-Democratic?, 34 Willamette L. Rev. 609 (1998).

Lock-In Effects in Law and Norms, 78 B.U.L. Rev. 813 (1998).

Remote Risks and the Tort System, New Palgrave Dictionary of Economics and the Law (1998).

Constitutional Limitations of Privatization, 46 Am. J. Comp. L. 481 (1998) (with Paul Stephan).

Rules and Reversibility, 72 Notre Dame L. Rev. 1415 (1997).

The Exercise of Trumps by Decentralized Governments, 83 Va. L. Rev. 1347 (1997).

Business Incentives, Interstate Competition, and the Commerce Clause, 82 Minn. L. Rev. 447 (1997).

Opting Out of Public Provision, 73 Den. U.L. Rev. 1185 (1996).

Reconstructing Local Control of School Finance: A Cautionary Note, 25 Cap. U.L. Rev. 37 (1996).

Rules, Standards, and Precautions in Payments Law, 82 Va. L. Rev. 181 (1996).

The Meaning of "Debt" and the West Virginia School Building Cases, 16 Mun. Fin. J. 80 (1995).

Courts, Covenants, and Communities, 61 U. Chi. L. Rev. 1375 (1994).

Public Authorities and Private Firms as Providers of Public Goods, Reason Foundation Policy Study No. 180 (1994).

Expropriation and Institutional Design in State and Local Government Law, 80 Virginia L. Rev. 625 (1994).

The Private Provision of Public Goods: Principles and Implications, in *A Fourth Way? Privatization, Property and the Emergence of the New Market Economies* 95 (G. Alexander & G. Skapska, eds. 1994).

Cooperation and Convention in Contractual Defaults, 3 Southern California Interdisciplinary L. Rev. 167 (1994).

In Partial Praise of Dillon's Rule, or, Can Public Choice Theory Justify Local Government Law, 67 Chicago-Kent L. Rev. 959 (1991).

The Government Contractor Defense: Public Allocation of Private Risk, 77 Va. L. Rev. 257 (1991) (with Ronald A. Cass).

Municipal Securities and Fraud on the Market Theories, 12 Mun. Fin. J. 49 (1991).

Commercial Relationships and the Selection of Default Rules for Remote Risks, 19 J. Legal Studies 535 (1990).

Institutional Biases in the Legal System's Risk Assessments, in A. Kirby (ed.), *Nothing to Fear: Risks and Hazards in American Society* (1990).

Risk, Courts, and Agencies, 138 U. Penn. L. Rev. 1027 (1990) (with James Krier).

Bond Redemption and the Obligations of Governmental Issuers, 10 Mun. Fin. J. 257 (1989).

Plebiscites, Participation and Collective Action in Local Government Law, 86 Mich. L. Rev. 930 (1988).

Federal Agency Valuations of Human Life, 1988 Administrative Conference of the United States, Recommendations and Reports 367 (with Thomas D. Hopkins).

Debt Elections for Revenue Bonds, 8 Mun. Fin. J. 283 (1987).

Federal User Fees: A Legal and Economic Analysis, 67 B.U.L. Rev. 795 (1987) (with Thomas D. Hopkins).

Equality and Variety in the Delivery of Municipal Services, 100 Harv. L. Rev. 946 (1987).

Judicial Conceptions of the Role of Bond Counsel, 7 Mun. Fin. J. 65 (1986).

Risk of Project Failure and the Definition of Debt, 6 Mun. Fin. J. 311 (1985).

Commercial Rationality and the Duty to Adjust Long-Term Contracts, 69 Minn. L. Rev. 521 (1985).

Holders in Due Course in Documentary Letter of Credit Transactions, 1 Ann. Rev. Banking L. 21 (1982).

Fiscal Federalism and the Use of Municipal Bond Proceeds, 58 N.Y.U.L. Rev. 1030 (1983).

Limitations on the Obligation of Good Faith, 1981 Duke L.J. 619.

Representative Professional Activities

Expert Witness, international arbitration in Court of Arbitration at the Polish Chamber of Commerce in Warsaw (issues of New York contract law in Covid-19 related contracts) 2021.

Expert Witness, *Marco Berrocal (trading as Bourne Co.) v. EMI Allans Music Australia Pty Ltd* (issues of New York contract law in dispute concerning music licensing agreement in Australian litigation) 2020.

Expert Witness, *Babcock & Brown DIF III Global Co-Investment Fund LP v. Babcock & Brown International Pty Limited* (issues of New York contract law in Australian litigation) 2018-2019.

Expert Witness, *Delaware v. Arkansas* (issues of negotiable instruments law in litigation within original jurisdiction of Supreme Court) 2018-2019.

Expert Witness, *Lomas v. Barclays Capital Inc.* (issues of New York contract law in English litigation) 2017-2018.

Amicus Brief, *The Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust*, Supreme Court of the United States, 15-233, 15-255 (2016); *Franklin Cal. Tax Free Trust v. Puerto Rico*, 805 F.3d 322 (1st Cir. 2015) (with David A. Skeel, Jr.).

Expert Witness, *Methanex Chile v. Petrobras Argentina* (issues of New York contract law in arbitration) 2014-15.

Expert Witness, *Howard v. Ferrellgas Partners, LP* (validity of contract formation through “rolling” terms) 2014.

Expert Witness, *Lehman Brothers Finance AG (in liquidation) v. Aktiebolaget Svensk Exportkredit* (issues of New York contract law in Swedish litigation) 2011-14.

Expert Witness, *Wells Fargo Bank, N.A. v. Fifth Third Bank* (interpreting participation agreement to determine responsibilities and liabilities of Lead and Participant) 2013-14.

American Law Institute, Restatement (3d) The Law of Consumer Contracts, Adviser, 2012-present.

Expert Witness, *Estate of Mertens v. Heirs of Hellman* (issues of New York contract law in Austrian arbitration) 2013-14.

Expert Witness and Consultant, *Rincon EV Realty LLC v. CP III Rincon Towers, Inc.*, (issues of New York contract law and negotiable instrument law) 2012.

Expert Witness, *Jaffe, Insolvency Administrator v. Micron Technology, Inc.* (issues of New York contract law in German insolvency proceeding) 2011.

Expert Witness, *Transpacific Pty, Ltd. v. Prudential Retirement Insurance and Annuity Company and Ors* (issues of New York contract law in Australian litigation) 2011.

Expert Witness, *International Finance Corporation v. Compania de Concesiones de Infraestructura S.A.* (issues of New York contract law in international litigation) 2010.

Expert Witness, *Schnitzer Steel Industries, Inc. v. Sujana Metal Products Ltd.* (issues of New York contract law in international commercial arbitration) 2010.

Expert Witness, *Oil Basins Ltd. v. BHP Billiton Ltd.* (issues of New York contract law and Uniform Commercial Code in international commercial arbitration) 2009-2010.

Expert Witness, *American Stone Inc. v. Merrill Lynch, Pierce Fenner & Smith, Inc.*, FINRA Arbitration (issues of New York law regarding fraudulent checks and unauthorized wire transfers) 2009.

Consultant, *Friedman v. 24 Hour Fitness* (issues regarding electronic payments and credit card payments for monthly gym memberships) 2008.

Expert Witness, *NML Capital Ltd. v. Republic of Argentina* (issues of New York contract law in English litigation concerning sovereign bonds) 2008.

Consultant, *Holding Tusculum, B.V. v. S.A. Louis Dreyfus & Cie* (issues of New York contract law in Canadian action to set aside ICC Arbitration award) 2008.

Consultant, ICC Arbitration (contract damages under New York law) (2007).

Advisory Board, SSRN Series on Contracts and Commercial Law Abstracts, 2000-Present.

Expert Witness, *Holy Cross High School v. Lemme, Lemme, Sovereign Bank* (fraudulently indorsed and deposited checks) 2007.

Expert Witness, *Southdown Cogeneration Ltd. v. General Electric* (affidavit testimony; issues of New York contract and commercial law in New Zealand litigation) 2006-2007.

Expert Witness, *Hieshima & Yankowski v. Commerce Bank* (expert report; fraudulently indorsed checks) 2006-2007.

Expert Witness, *Towns of New Hartford and Barkhamsted v. Connecticut Resources Recovery Authority* (trial testimony; issues of municipal authority) 2006-2007.

Expert Witness, *United Capital Corporation v. Bender* (affidavit testimony; issues of New York contract law in Jersey, Channel Islands litigation) 2006-2007.

Expert Witness, NASD Arbitration (issues of New York contract law) 2006.

Expert Witness, *Raiffeisen Zentralbank Osterreich AG v. Archer Daniels Midland Co.* (affidavit and trial testimony; issues of New York contract law in Singapore litigation) 2005-2006.

Expert Witness, *In re Canon Cameras Litigation* (affidavit testimony; warranty issues under Uniform Commercial Code) 2006.

Expert Witness (deposition testimony), *Level 3 Communications, LLC v. City of St. Louis*, (deposition testimony; scope of municipal authority) 2005.

Chair, Section on State and Local Government, Association of American Law Schools, 2005.

Consultant, Barton Barton & Plotkin LLP, New York City (review of possible recovery against bank after payment of unauthorized items) 2004.

Expert Witness, *Abdalla et al. v. Fried Frank* (validity of contractual liquidated damages clause under New York law) 2004.

Consultant, Silber Schottenfels & Gerber (enforceability of promissory note under New York law) 2004.

Consultant, *Textron Financial Corp. and Land Finance Company* (negotiability by contract, special indorsements) 2003.

Consultant, Independence Plaza Tenants Association (testimony before New York City Council concerning validity of conversion protection bill) 2003.

Consultant and Expert Witness, *Bank of Oklahoma v. Safeway Inc.* (expert report with respect to liability on altered check) 2002-2003.

Consultant, State of Connecticut with regard to contracts between Enron Corporation and Connecticut Resource Recovery Authority, 2002-2003.

Consultant, City of Spokane, Litigation involving River Park Square Development, 2001-2003.

Consultant, Digital Commerce Committee, 2001-2002 (representation in NCCUSL hearings on UCITA).

Expert Witness, *Enfield Family Dental v. Webster Bank*, (affidavit testimony; check fraud) 2001.

Expert Witness, *Gerling Global International Reinsurance Co. v. Fairfax Financial Holdings, Ltd.* (affidavit testimony; Canadian contracts dispute concerning New York law) 2001.

Consultant and Expert Witness *United Exchange Co., Ltd. v. Republic National Bank of New York* (affidavit testimony; Jordanian case involving New York law on check fraud) 2001.

Consultant, *City of Spokane v. Walker Parking Consultants/Engineers*, (obligations under municipal contracts) 2001-02.

Consultant, House of Blues, Los Angeles, California, (scope of municipal authority to enact ordinance under municipal charter) 2001.

Consultant, Latham & Watkins, Los Angeles, California, (validity of local “living wage” ordinance) 2000-01.

Speaker, Section on State and Local Government, Association of American Law Schools, 2000.

Expert Witness, *County of Orange, California v. McGraw-Hill, Inc.* (deposition testimony) 1998-99.

Consultant and Expert Witness (trial testimony), *Washington Electric Cooperative, Inc. v. MMWEC* (contract validity) 1997-98.

Chair, Section on State and Local Government, Association of American Law Schools, 1996-97.

Consultant and Expert Witness, *North Orange County Community College District v. LeBoeuf, Lamb, Greene & MacRae* (role of bond counsel) 1997-98.

Consultant, Lynch & Lynch, South Easton, MA, *South Shore Bank v. Prestige Imports* (check fraud) 1995-96.

Consultant, Berry & Durland, Oklahoma City, OK, *Oklahoma Municipal Power Authority v. Wynnewood City Utilities Authority*, (state debt limitations) 1994.

Speaker on State Law Developments, National Association of Bond Lawyers, Bond Attorneys Workshop, 1992-97, 2000-2004.

National Association of Bond Lawyers, Special Committee on Securities Law and Disclosure, 1993-94.

Reporter, ABA-TIPS Task Force on Initiatives and Referenda, 1991-1993.

Consultant, Administrative Conference of the United States, Federal Agency Valuations of Human Life, 1987-88.

Consultant and Expert Witness (deposition testimony), *In re New York City Housing Development Corporation Bond Redemption Litigation*, 1988.

Consultant and Expert Witness (trial testimony), Vermont Department of Public Service, *Vermont Dept. of Public Service v. MMWEC*, 1986.

Consultant and Expert Witness, *Chemical Bank v. WPPSS* and related federal securities litigation, (deposition testimony) 1982-85; 1988.

Member, ABA Subcommittee on Municipal Securities, Project on Role of Counsel in State and Local Government Securities, 1984-86.

Consultant, Plaintiffs' Management Committee, *In re "Agent Orange" Products Liability Litigation*, 1983-87.

Consultant, City of Boston, 1981.

Panelist, Practising Law Institute Seminars on Municipal Finance Law, 1980-92.

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Education:

Yale Law School, New Haven, CT. J.D. 1991.
Cohen Prize for Best Paper in Philosophy of Law
Editor-in-Chief, Yale Journal of Law & Humanities; Senior Editor, Yale Law Journal

University of Chicago, Committee on Social Thought (Century Fellow, 1988-1989)

Yale University, New Haven CT. B.A. (History, with distinction), 1987.
Summa cum laude, Phi Beta Kappa

Employment:

New York University School of Law
William T. Comfort III Professor of Law, September, 2006-Present

New York University-Shanghai
Affiliated Professor
January 2015-May 2015
September 2016-December 2016
September 2017-December 2017
September 2018-December 2018

Yale Law School
Anne Urowsky Visiting Professor of Law, September 2012-June 2013

Harvard University Law School
Felix S. Frankfurter Visiting Professor of Law, February, 2005-May 2005

Columbia University Law School
Visiting Professor of Law, September, 2004-December 2004

Stanford Law School
Visiting Professor of Law, January, 2001-June 2001

University of Michigan Law School
Professor of Law, May, 1999-June 2006
Assistant Professor of Law, September, 1994-May, 1999

Law Office of Jean Dubofsky, P.C., Boulder, Colorado.

Associate attorney, 1992-1994

University of Colorado Law School, Boulder, Colorado.

Adjunct instructor, 1992-1993 (taught courses in Local Government Law and Land-use Regulation)

United States Court of Appeals for the Fifth Circuit, Honorable Patrick J. Higginbotham

Law clerk, 1991-1992.

Publications

Articles, essays, and reviews

What is Property Law in an Age of Statutes and Regulation?: A Review of Property: Principles and Policies by Thomas Merrill, Henry Smith and Maureen Brady, forthcoming 78 NYU Ann. Surv. Am. L. ____ (2022) (co-authored with David Schleicher)

Hunting for Nondelegation Doctrine's Snark, 75 VAND. L. REV. EN BANC 215 (2022), available at <https://vanderbiltlawreview.org/lawreview/2022/05/hunting-for-nondelegation-doctrines-snark/>

Land Options for Housing: How New Property Rights Can Break Old Land Monopolies (submitted article, co-authored with Qiao Shitong), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4021239, ____ U. PENN INT'L L. J. ____ (forthcoming 2022)

In Praise of Patchwork: The Second-Best Case for Decentralized Emergency Powers in a Polarized Nation (draft article, co-authored with John Ferejohn), ____ NW. L. REV. ____ (forthcoming 2022)

The Unwritten Constitution for Admitting States 89 FORDHAM L. REV. 1877 (2021), available at <https://ir.lawnet.fordham.edu/flr/vol89/iss5/8/>

Suspect Spheres, Not Enumerated Powers: A Guide to Leaving the Lamppost (co-authored with Richard Primus), 119 MICH. L. REV. 1431 (2021), available at <https://repository.law.umich.edu/mlr/vol119/iss7/2/>

Keeping the Compact Clause Irrelevant, 44 HARV. J.L. & PUB. POL'Y 29 (2021), available at <https://www.harvard-jlpp.com/wp-content/uploads/sites/21/2021/01/Hills-Compact-Clause.pdf>

Building Coalitions Out of Thin Air: Rethinking Transferable Development Rights and "Constituency Effects" in Land Use (co-authored with David Schleicher), 12 J. LEGAL ANALYSIS 79 (2020), available at <https://academic.oup.com/jla/article/doi/10.1093/jla/laz008/5835487>

Publius's Political Science (co-authored with John Ferejohn), in CAMBRIDGE COMPANION TO THE FEDERALIST PAPERS (Jack Rakove & Colleen Sheehan eds.)(Cambridge University Press 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2712933

Binding Leviathan: Credible Commitment in an Authoritarian Regime (co-authored with Qiao Shitong), 102 MINN. L. REV. 1591 (2018), available at <https://minnesotalawreview.org/article/binding-leviathan-credible-commitment-in-an-authoritarian-regime/>

Federalism, Democracy, and Deep Disagreement: Decentralizing Baseline Disputes in the Law of Religious Liberty, 69 ALA. L. REV. 913 (2018); available at <https://www.law.ua.edu/lawreview/files/2018/05/4-Hills-913-981.pdf>

Voice and Exit as Accountability Mechanisms: Can Foot-Voting Be Made Safe for the Chinese Communist Party? (co-authored with Qiao Shitong), 48 COLUM. HUMAN RTS. L. REV. 158 (2017); available at <http://hrlr.law.columbia.edu/files/2018/01/RoderickMJrHillsShitongQi.pdf>

Decentralizing Religious and Secular Accommodations, in INSTITUTIONALIZING RIGHTS AND RELIGION: COMPETING SUPREMACIES (Leora F. Batnitzky & Hanoch Dagan eds.) (forthcoming 2017, Cambridge University Press).

Planning for Affordability (co-authored with David Schleicher), 101 Iowa L. Rev. 91 (2015) (reprinted in redacted form as “Can Planning Deregulate Land Use?” Regulation Magazine, volume 38. No.3 (Fall 2015), available at <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2015/9/regulation-v38n3-1.pdf>

Towards a Universal Field Theory of National Private Rights and Federalism, 76 Mont. L. Rev. 41 (2015);

Hydrofracking and Home Rule: Defending and Defining an Anti-Preemption Canon of Statutory Construction in New York, 77 Alb. L. Rev. 645 (2014)

Saving Mount Laurel? 40 Fordham Urb. L.J. 1611 (2013), available at <https://ir.lawnet.fordham.edu/ulj/vol40/iss5/5/>

Exorcising McCulloch: The Conflict-Ridden History of American Banking Nationalism and Dodd-Frank Preemption, 161 U. Pa. L. Rev. 1235 (2013), available at https://scholarship.law.upenn.edu/penn_law_review/vol161/iss5/2/

Is the Fostering of Competition the Point of American Constitutional Federalism? (Review of Michael S. Greve, *The Upside-Down Constitution* (Harvard Press 2012), 48 Tulsa L. Rev. 101 (2013)

Against Mushy Balancing Tests in Blight Condemnation Jurisprudence, 39 Fordham Urb. L.J. 29 (2012)

Arizona v. United States: The Unitary Executive’s Enforcement Discretion as a Limit on Federalism, 2011-2012 Cato Sup. Ct. Rev. 189, available at <https://www.cato.org/sites/cato.org/files/serials/files/supreme-court-review/2012/9/scr-2012-hills.pdf>

Congestion Pricing: Is State Legislation a Necessity? 18 City L. 49 (2012)

The Case for Educational Federalism: Protecting Educational Policy from the National Government’s Diseconomies of Scale, 87 Notre Dame L. Rev. 1941 (2012), available at <https://scholarship.law.nd.edu/ndlr/vol87/iss5/6/>

Preemption Doctrine in the Roberts Court: Constitutional Dual Federalism by Another Name? in *Business and the Roberts Court* (Jonathan Adler ed., Oxford University Press 2012)

Balancing the "Zoning Budget," 62 Case Western L. Rev. 81(2011) (co-authored with David Schleicher)(reprinted in redacted form as "Balancing the 'Zoning Budget,'" Regulation Magazine, volume 34, No. 3 (Fall 2011)

The Steep Costs of Using Noncumulative Zoning to Preserve Land for Urban Manufacturing, 77 U. Chi. L. Rev. 249 (2010)(co-authored with David N. Schleicher)(re-printed in redacted form as "A Hidden Gift to Manufacturing," Regulation Magazine, volume 33, No. 1 (Spring 2010), available at https://digitalcommons.law.yale.edu/fss_papers/4952/

Federalism and Public Choice, in Research Handbook on Public Choice and Public Law (Daniel Farber & Anne Joseph O'Connell eds 2010)

The Problem of Canonical Ambiguity in Ali v. Federal Bureau of Prisons, 44 Tulsa L. Rev. 501 (2009), available at <https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=2662&context=tlr>

Counting States, 32 Harv. J. L. Pub. Pol'y 17 (2009)

Do Families Need Special Rules of Criminal Law? A Reply to Professors Collins, Leib, and Markel, 88 B.U. L. Rev. 1425 (2008)

The Art of Land Assembly (co-authored with Michael Heller), 121 Harv L. Rev. 1465 (2008), available at <https://harvardlawreview.org/2008/04/land-assembly-districts/>

Just Following Orders (Response to Norman R. Williams, *Executive Review in the Fragmented Executive: State Constitutionalism and Same-Sex Marriage*, 154 U Pa. L. Rev. 565 (2006)), available at <http://www.pennlawreview.com/wp-content/uploads/2020/05/156-U-Pa-L-Rev-PENNumbra-165.pdf>

Mistaking the Window-Dressing for the Window (review of Kermit Roosevelt III, *The Myth of Judicial Activism: Making Sense of Supreme Court Decisions*), *Judicature*, November-December 2007.

Against Preemption: How Federalism Can Improve the National Legislative Process, 82 NYU L Rev. 1 (2007); available at <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-82-1-Hills.pdf>

The Pragmatist's View of Constitutional Implementation and Constitutional Meaning, 119 Harv. L. Rev. F. 173 (2006), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/forharoc119&div=22&id=&page=>

Federalism as Westphalian Liberalism, 75 Fordham L. Rev. 769 (2006)

The Individual Right to Federalism in the Rehnquist Court, 74 Geo. Wash. L. Rev. 888 (2006)

Compared to What? Tiebout and the Comparative Merits of Congress and the States in Constitutional Federalism in *The Tiebout Model at Fifty: Essays in Public Economics in Honor of Wallace Oates*. W.A. Fischel, ed., Cambridge, Mass.: Lincoln Institute of Land Policy, 2006.

Is Federalism Good for Localism? The Localist Case for Federalist Regimes, 221 J. L. & Politics 187 (2005), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jlp21&div=12&id=&page=>

Federalism and Corruption: (When) Do Federal Criminal Prosecutions Improve Non-Federal Democracy?, 6 Theoretical Inquiries in Law 113 (January 2005)

Are Judges Really More Principled Than Voters? 37 USF L Rev 37 (2003)

The Constitutional Rights of Private Governments, 78 NYU L Rev 144 (2003)

The Eleventh Amendment as Curb on Bureaucratic Power, 53 Stan. L. Rev. 1225 (May 2001)

State Autonomy in Germany and the United States, 574 Annals of the Academy of Political and Social Science 173 (2001) (Co-authored with Daniel Halberstam)

Romancing the Town: Why We (Still) Need a Democratic Justification for City Power (Book Review of Gerald Frug, *City Making* (Princeton Press 1999), 113 Harv. L. Rev. 2009 (June 2000)

Poverty, Residency, and Federalism: States' Duty of Impartiality Towards Newcomers 1999 Sup. Ct. Rev 277 (2000), available at <https://www.journals.uchicago.edu/doi/10.1086/sr.1999.3109710>

Federalism in Constitutional Context, 22 Harv. J.L. & Pub. Pol'y 181 (1998)

Back to the Future? Why the Bill of Rights Might Be About Structure After All (Book Review of Akhil Amar, *The Bill of Rights: Creation and Reconstruction* (Yale, 1998)), 93 Nw. L. Rev. 977 (1999)

Dissecting the State: Using Federal Law to Liberate State and Local Officers from the State Legislature's Control, 97 Mich. L. Rev. 1201 (1999), available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3405&context=mlr>

Truth or Consequences? The Inadequate Consequentialist Case Against Multicultural Relativism (Book Review of Daniel Farber & Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (1997)), 15 Const'l Comm. 185 (1998)

The Political Economy of Cooperative Federalism: Why State Autonomy Makes Sense and "Dual Sovereignty" Doesn't, 96 Mich. L. Rev. 813 (1998), available at <https://core.ac.uk/download/pdf/232708032.pdf>

You Say You Want a Revolution? The Case Against the Transformation of Culture Through Antidiscrimination Law (Review essay of Andrew Koppelman, *Antidiscrimination Law and Social Equality* (1996)), 96 Mich. L. Rev. 1588 (1997)

Is Amendment 2 Really a Bill of Attainder? Some Questions about Professor Amar's Analysis of Romer, 95 Mich. L. Rev. 236 (1996)

A Defense of State Constitutional Limits on Federal Congressional Terms, 53 U. Pitt. L. Rev. 97 (1991)

The Reconciliation of Law and Liberty in James Wilson, 12 Harv. J. L. & Pub. Pol'y 891 (1989)

Casebook

ROBERT ELLICKSON, VICKI BEEN, RODERICK HILLS, & CHRISTOPHER SERKIN, *LAND USE CONTROLS: CASES AND MATERIALS* (Wolters Kluwer 5th ed. 2021)

Work in Progress

Local Legislatures and Delegation (co-authored with David Schleicher)

The Challenge of Regional Government without Regional Politics

The Gentry, the Saints, and the Federal Republic: The Birth, Death and Rebirth of Constitutional Federalism in the American Republic (Book Manuscript, available on request)

Our Unwritten Constitution of Empire: Doctrines and Conventions for Adding (and Not Adding) States (draft article)

Strategic Ambiguity and Article VII's Two-Stage Ratification Process: Why the Framers (Should Have) Decided Not to Decide (draft article) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3454955

Representative Briefs

Becker v. Dane County, 2021AP001343, 2021AP1382 (Wisconsin supreme court 2022)
Drafted amicus brief on behalf of five local government scholars arguing that Wisconsin's state constitutional nondelegation doctrines constraining the state legislature do not apply to Wisconsin's local governments.

People v. LaBelle, No. 163275 (Michigan supreme court 2021)
Drafted amicus brief on behalf of seven community organizations filed with the Michigan supreme court arguing that principles of local electoral control in the Michigan Constitution and statutes requires the trial judge to provide a reason for disqualifying a county prosecutor from handling a matter on grounds of conflict of interest.

Wallach v. Town of Dryden, 23 N.Y.3d 728 (2014)
Drafted amicus brief filed with New York appellate division and New York Court of Appeals on behalf of a dozen professors of local government law and land-use regulation arguing that the preemption clause of New York Environmental Conservation Law §23-0303(2) should be narrowly construed to preserve local government's Home Rule grant of zoning powers.

Mason v. Granholm, 05-73943 (E.D. Michigan 2008)
Drafted brief before U.S. district court for eastern district of Michigan arguing that Michigan's exclusion of prisoners from state's anti-discrimination laws deprived female inmates of the equal protection of the laws under the 14th Amendment by depriving them of protection from sexual assault and harassment by prison guards.

Pride at Work v. Granholm, 748 N.W.2d 524 (Mich. 2008).
Drafted plaintiffs' and respondent's brief before Ingham County Circuit Court and Michigan appellate court

arguing that Michigan constitutional amendment prohibiting recognition of anything but union between a man and woman as a “marriage” does not prohibit state employers from offering employment benefits to domestic partners of employees.

Ballard et ux. v. Comm’r of Internal Revenue, 544 U.S. 40 (2005).

Wrote amicus brief filed on behalf of U.S. Senator David Pryor and Estate of Lisle in U.S. Supreme Court, arguing that Due Process clause of 5th Amendment as well as Tax Court’s rules requires that Tax Court disclose fact-findings of special trial judge to litigants

Overton v. Bazzetta, 539 U.S. 126 (2003)

Wrote amicus brief filed on behalf of La Raza, National Mental Health Association (among other organizations) in the U.S. Supreme Court, arguing that the Michigan Department of Corrections’ visitation policies violates visiting parents’ 14th Amendment rights to familial association.

Engler v. White,

Wrote amicus brief to be filed on behalf of ACLU (among other organizations) in the U.S. District Court for the Eastern District of Michigan (Judge Stanley Duggan) arguing that Michigan’s policy of relying exclusively on MEAP test scores as basis for awarding college scholarships violates as Title VI of the 1964 Civil Rights Act.

Everson v. Michigan Department of Corrections, 391 F.3d 737 (6th Cir. 2004)

Wrote amicus brief filed on behalf of ACLU (among other organizations)) in the U.S. District Court for the Eastern District of Michigan (Judge Avern Cohn) and U.S. Court of Appeals for the Sixth Circuit arguing that Michigan Department of Corrections’ policy of excluding male guards from female inmates’ housing units is consistent with Title VII of the 1964 Civil Rights Act, because, given the peculiar history of sexual assault by guards in Michigan prisons, the guards’ gender is a bona fide occupational qualification.

Theresa Cox v. Livingston County Jail,

Co-counsel in class action filed in the U.S. District Court for the Eastern District of Michigan (Judge Bernard Friedman), challenging gender discrimination in jail conditions

Saenz v. Roe, 526 U.S. 489 (1999):

Wrote amicus brief as counsel of record for 15 constitutional law scholars on behalf of respondents

Romer v. Evans, 517 U.S. 620 (1996):

Co-counsel for respondents (drafted respondent’s brief and served as second chair counsel during oral argument before the U.S. Supreme Court);

U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995):

Drafted amicus brief representing various organizations supporting constitutionality of term limits

Awards/Honors:

2002 Paul M. Bator Award

(awarded by Federalist Society to legal scholar under 40 for Excellence in Scholarship & Teaching)

1999 L. Hart Wright Award for Outstanding Teaching

(Awarded by University of Michigan law school to law faculty member for excellence in teaching)

Bar Memberships

U.S. Supreme Court Bar;
New York State Bar

Teaching & Research Interests

Constitutional Law (with emphasis on Federalism & Intergovernmental Relations)

Federal Courts

Jurisdiction and Conflict of Laws

Legislation and the Regulatory State

Local Government Law

Education Law

Property/Land-Use Regulation

Seminar on Comparative Federalism

Seminar on The Law of New York City

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