

Supreme Court of the State Of New York

APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT



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

**DOCKET NO.
2022-05794**

Plaintiffs-Respondents,

—against—

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

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,

BOARD OF ELECTIONS IN THE CITY OF NEW YORK

Defendant,

**BRIEF FOR *AMICI CURIAE* THE NEW YORK IMMIGRATION
COALITION AND UNITED NEIGHBORHOOD HOUSES**

TRIPP ODOM
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York, 10020
(212) 819-7517

*Attorney for Amici Curiae
New York Immigration Coalition
and United Neighborhood Houses*

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I. INTEREST OF *AMICI CURIAE*

Amici curiae the New York Immigration Coalition (“NYIC”) and United Neighborhood Houses (“UNH”) are membership-based nonprofit organizations serving both citizen and non-citizen residents of New York City. NYIC’s membership is comprised of more than two hundred nonprofit organizations that provide direct services to and advocate on behalf of the City’s immigrants and immigrant communities. UNH represents forty-six “settlement houses,” neighborhood-based social organizations primarily located in New York City. UNH members provide community services such as job training, after-school programs, and mental health counseling. UNH members also address the specific needs of immigrants by providing ESL programs and citizenship counseling.

Amici are members of the “Our City Our Vote Coalition” (“OCOV Coalition”), which successfully campaigned for expansion of the right to vote in New York City Council elections to non-citizen residents through Local Law 11, the Municipal Voting Law. Since its establishment in 2020, the OCOV Coalition has collectively engaged in extensive efforts to advocate for local non-citizen voting in New York City, while *Amici* and other OCOV partners have individually fought for non-citizen voting for more than a decade.

This brief draws on the experiences of *Amici*’s member organizations and their partners in the OCOV Coalition. It reflects the input of twenty-eight

members of the OCOV Coalition, organizations serving the residents of New York who have signed and published a letter of support for the positions expressed herein. *See Letter of Support for the New York Immigration Coalition and United Neighborhood Houses' Brief Amici Curiae*, Our City Our Vote Website, <https://ourcityourvote.org/coalition-signatories>. The signatories are comprised of twenty-seven nonprofits together with the New York Working Families Party:

- Academy of Medical & Public Health Services
- Adhikaar for Human Rights & Social Justice
- American Pakistani Advocacy Group
- Arab American Association of NY
- Arab-American Family Support Center
- The Black Institute
- Black Leadership and Action Coalition
- CAAAV: Organizing Asian Communities
- Chinese-American Planning Council, Inc.
- Chinese Progressive Association
- Coalition for Asian American Children and Families
- DRUM - Desis Rising Up & Moving
- Dsi International Inc.
- El Centro Del Inmigrante

- Garra (Cidadão Global, Global Citizen Inc.)
- Guyanese American Workers United
- Jim Owles Liberal Democratic Club
- Literacy Assistance Center
- MinKwon Center for Community Action
- Mixteca Organization, Inc.
- New York Working Families Party
- Nonprofit New York
- RepresentWe
- Sampreshan Inc.
- S.T.O.P. - Surveillance Technology Oversight Project
- Street Vendor Project at the Urban Justice Center
- VOCAL-NY
- Women Creating Change

Following adoption of the Municipal Voting Law on January 10, 2022, Amici and their OCOV partners have been on the front lines of providing voter education and registration support to those enfranchised through the Law. Collectively, Amici's member organizations provide direct services to more than one million New Yorkers. As a result, their community service and grassroots organizing efforts focusing on immigrant communities in New York have

constituted a primary channel for non-citizen voter education following adoption of the Municipal Voting Law.

More significantly, the enfranchisement or disenfranchisement of a significant portion of the New York population has implications for the local government's ability to efficiently respond to the interests and concerns of that population on a wide range of issues. Amici devote substantial time, money, and effort to addressing social issues affecting New York City's immigrant community that will be impacted by the outcome of this litigation.

II. PRELIMINARY STATEMENT

Amici respectfully submit this brief in support of Defendant-Appellants' appeal to this Court from the June 27, 2022 Decision and Order of the Supreme Court of the State of New York, County of Richmond ("Supreme Court Decision" or "Decision" and "Supreme Court" respectively) granting Plaintiff-Respondents' motion for summary judgment and denying Defendant-Appellants' motion for the same.

The crux of the Supreme Court Decision is contained in a single line with insidious implications: "It is this Court's belief that by not expressly including non-citizens in the New York State Constitution['s voting rights provision], it was the intent of the framers for non-citizens to be omitted." (R17). In its conclusion, the Supreme Court explicitly found that the New York Constitution did not *omit* the conveyance of voting rights to non-citizens, but rather *forbade* such a conveyance: "The Municipal Voting Law['s enfranchisement of non-citizens] is impermissible simply and solely for the reason that the constitution says it cannot be done." (R21) (internal quotation omitted).

This interpretation of the New York Constitution threatens the rights of New York residents without U.S. citizenship, both in its immediate application and its wider implications. As applied to the conveyance of voting rights, it means that voting rights may *never* be conveyed to non-citizens, whether by local law,

referendum, or state law. Applied to other rights in the New York Constitution, the Supreme Court’s method of interpretation would affirmatively deny to non-citizens any constitutional right and forbid the statutory conveyance of any such right, where the relevant constitutional provision does not “expressly include” non-citizen residents. Only one provision of the Constitution contains such an express inclusion: Article V, Section 6, giving special consideration to non-citizen veterans applying for appointment to the civil service. N.Y. Const. art. V, §6.

As nonprofit organizations working with and providing support to New York City’s immigrant population, Amici are keenly aware of the harms that will result from the unprecedented restriction imposed by the Supreme Court Decision. There is neither judicial precedent nor clear support in the language of the Constitution for such a restriction on the power of the State’s elected representatives to extend rights to non-citizens. We therefore urge the Court to take these harms into consideration and reject the Supreme Court’s interpretation.

No party to this litigation has argued that the New York Constitution *guarantees* the right of non-citizens to vote in local elections. Nor has any party argued that the state legislature lacks the authority, through appropriately drafted legislation, to regulate non-citizen voting in local elections. Therefore, rather than affirming the constitutional prohibition on immigrant rights created by the Supreme Court Decision, this Court should overturn the Supreme Court Decision

and return the power to decide the issue to the people of New York and their elected representatives.

III. ARGUMENT

A. A “Plain Reading” of the Constitution Does Not Support the Supreme Court’s Ruling

Neither the Supreme Court nor the Plaintiff-Respondents in their motions before the Supreme Court cited any prior precedent holding that Article II affirmatively restricts the right to vote to United States citizens. Instead, the Supreme Court relied entirely on its own “plain reading” of the text of the Constitution, which the Decision held to “explicitly lay the foundation for ascertaining that only proper citizens retain the right to voter privileges.” (R17)

Contrary to the Supreme Court’s interpretation, a voting rights restriction is not “explicit” in the New York Constitution, and that conclusion can only be reached by way of several unsupported analytical leaps. Only when multiple terms used in the Constitution are subject to simultaneous selective interpretation can a prohibition on non-U.S.-citizen voting in local elections be found.

Article IX, §1 of the New York Constitution requires local governments to “have a legislative body elective by **the people** thereof.” N.Y. Const. art. IX, §1 (emphasis added). The term “people” is defined in Article IX, §3:

Whenever used in this article the following terms **shall mean or include**: . . . “People.” Persons entitled to vote as provided in section one of article two of this constitution. *Id.* §3 (emphasis added)

Article II, §1 contains the language on which the Supreme Court based its ruling:

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. *Id.* art. II §1 (emphasis added)

Defendant-Appellants persuasively argue for an interpretation of these terms under which the Municipal Voting Law is constitutional. Here, Amici emphasize a different point: the flawed textual analysis of the Supreme Court cannot justify the inception of a new, affirmative constitutional restriction on the rights of non-citizens. Such a restriction would have a dramatic effect on Amici's member organizations and the New Yorkers they serve, citizens and non-citizens alike. *See* Section III.C, *infra*.

1. The Definition of “People” in Article IX Is Inclusive.

The Supreme Court states with minimal analysis that the term “the people” “is defined as *citizens* under Article II, §1.” (R18) (emphasis in original). The plain language of Article IX §3 instead provides an *inclusive* definition, as the term “the people” “shall mean *or* include” those entitled to vote under Article II. N.Y. Const. art. IX, §3 (emphasis added). Applying the inclusive definition, Article IX, §1 merely requires that the electorate of a local legislature *include* anyone constitutionally entitled to vote under Article II. Only by reading out the word

“include” can an affirmative restriction of local voting rights to United States citizens be found.

2. The Article II “Entitlement” to Vote Is Not Exclusive.

The Supreme Court held that “only proper citizens retain the right to voter privileges,” reasoning that “an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.” (R17). None of the Parties have argued that non-citizens possess voting rights that are constitutionally protected by Article II. In this sense, non-citizens may indeed be “omitted” from the protections of Article II.

At issue is whether Article II proactively *forbids* non-citizens from voting. To reach that conclusion, this Court would have to conclude, as the Supreme Court seemingly did, that the Article II, §1 phrase “[e]very citizen shall be entitled to vote” in fact means “[only a] citizen shall be entitled to vote.” This conclusion is not supported by the text of the constitution.

3. Nowhere Is the Article II Term “Citizen” Equated with United States Citizenship.

Based only on its “plain reading” of the Constitution, the Supreme Court concluded that “‘every citizen’, in this Court’s opinion, means every citizen of the United States.” (R17). In fact, the term “citizen” is not defined in Article II.

Elsewhere, the Constitution explicitly refers to “citizen[s] of the United States” to establish a citizenship requirement for certain elected positions. *See*

N.Y. Const. art. III, §7 (only a “citizen of the United States” is eligible to be member of legislature); *id.* art. IV, §2 (only a “citizen of the United States” is eligible to be Governor or Lieutenant Governor).

In Article III, the Constitution also uses “citizen” to refer to state citizenship, applying the same statute of limitations applicable to claims between “citizens of the state” to claims against the state of New York. *Id.* art. III, §19.

Article I, §1 introduces a final layer of ambiguity to the term “citizen”:

No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or her peers . . . *Id.* art. I, §1.

To avoid redundancy of the terms “member”¹ and “citizen,” a “plain reading” of this section would necessarily conclude that “member[s] of th[e] state” must constitute a group not co-extensive with “citizen[s] thereof,” indicating the existence of a subset of non-citizen “members” of New York that enjoy the same rights as citizens except where restricted by law. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”); *Rosner v. Metropolitan Property & Liability Insurance Company*, 96 N.Y.2d 475, 479 (2001) (“Words are not to be rejected as superfluous where it is practicable to give

¹ The only other relevant use of the term “member” in the Constitution is a reference in Article III to “members of the electorate.” *Id.* art. III, §4(c)(1); *see also, e.g., id.* art. III, §5 (referring to “members” of the legislature).

each a distinct and separate meaning.”).

Amici do not argue here for such an interpretation, yet this ambiguity serves to highlight the implausibility of the Supreme Court’s “plain reading” of the crucial word “citizen.” Where the framers of the Constitution meant “citizen of the United States,” they wrote “citizen of the United States.” *See* N.Y. Const. art. III, §7; *id.* art. IV, §2. They did not do so in Article II, §1.

Therefore, affirming the Supreme Court’s ruling requires a host of speculative counter-textual interpretations, namely: (1) that the term “the People” is defined to “mean” rather than “include” Article II voters; (2) that the words “[e]very citizen shall be entitled to vote” actually mean “citizens are exclusively entitled to vote”; and (3) that the term “citizen” refers exclusively to U.S. citizens, or, in the Supreme Court’s words, “proper citizens.” There is no precedent for such an interpretation, and this Court should decline to establish such precedent.

4. In the Absence of an Unambiguous Prohibition on the Extension of Rights to Non-United-States-Citizens, Such Restriction Should Not Be Imputed to the Constitution

Affirming the Supreme Court Decision would be devastating to efforts to democratically expand the rights of non-citizens. As discussed in Sections III.B and III.C, *infra*, the Municipal Voting Law’s expansion of voting rights represents the will of the electorate of New York City, expressed by and through their elected representatives. Representing the will of the *state* electorate, the state legislature

may address the Municipal Voting Law by either overturning it, letting it stand, or even by expanding non-citizen voting to state elections. Regardless of the outcome, the democratic process allows citizens and non-citizens alike to attempt to persuade the electorate of the benefits or harms of non-citizen voting. The constitutional restriction created by the Supreme Court has halted this process. Should the Supreme Court Decision be affirmed, it would prevent a majority of the City Council, a majority of the electorate of New York City, or even a majority of the state legislature from ever implementing non-citizen voting.

In the absence of an unambiguous constitutional mandate, this Court should not affirm the Supreme Court’s judicial interference with the democratic process.

B. Policy Considerations Support Finding That the Municipal Voting Law Is a Superseding Law Under Election Law §1-102

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. Election Law §1-102.

In support of its holding that the term “any other law” refers only to “any other *state* law”, the Supreme Court Decision cited a single prior Supreme Court decision and several quotations from the legislative history of the law. The cited quotations merely state generally that the many revisions to the Election Law being made at the time were not intended to be “substantial or highly controversial changes in the law.” In their respective appeals, Defendant-Appellants provide a

significantly more detailed legislative history bolstered by numerous court decisions demonstrating that the term “any other law” means and was intended to mean exactly that: “any other law.”

Without reiterating the arguments on this point made by the parties, Amici urge the Court to consider two factors when reviewing the conflicting precedent:

First, the amendment introducing the term “any other law” was passed in 1976. If the legislature intended to write “any other *state* law,” it has had almost half of a century to correct this oversight, as it will be capable of doing should the Supreme Court Decision be overturned on appeal. This is the appropriate, democratic process for revising an error in the unambiguous language of the Election Law, should such an error exist.

Second, assuming *arguendo* that there are two equally defensible yet mutually exclusive interpretations of Election Law §1-102, policy considerations support the literal interpretation of the Election Law under which the Municipal Voting Law supersedes any conflicting provisions of the former.

As described at greater length below, the Municipal Voting Law serves the specific needs of New York City, the “quintessential city of immigrants.” Mayor’s Office of Immigrant Affairs, *State of Our Immigrant City* 8 (2018). Immigrants comprise over one-third of the city’s residents and almost half of its workforce. *Id.* at 9. In the proceedings below, each party highlighted the size of the non-citizen

resident population enfranchised by the Municipal Voting Law, estimated to be between 800,000 and 1,000,000 people. (R1368, 1509, 1566). This represents a significant portion of New York City residents unable to directly participate in the election of the government that serves them. By enfranchising this significant group of New Yorkers, the Municipal Voting Law has the potential to increase civic engagement, provide more efficient oversight of municipal efforts to support immigrant residents, and bring attention and government action to the issues affecting nearly one million New Yorkers currently living, working, and paying taxes without representation. *See generally* Section III.C, *infra*.

Affirming the Supreme Court Decision would deprive non-citizen residents of these benefits and foreclose for the indefinite future the possibility that full participation in the civic life of New York City will be extended to them. It would deny New York City the ability to recognize through its election laws the special role of immigrants within that locality.

Furthermore, the principle of local government does not solely benefit those locally governed. It also allows other state and local governments the benefit of lessons learned through local experimentation. Today, states and municipalities across the country are considering the potential and pitfalls of non-citizen voting. *See e.g.* Lauren Hernandez, *Should Noncitizens Vote in San Jose Elections? Officials Vote to Study Charter Change.*, S.F. Chron., Jan. 11, 2022; Matt

Vasilogrammbros, *Noncitizens Are Slowly Gaining Voting Rights*, Pew (July 1, 2021) <https://pew.org/2TeJy4P> (Noting current or recently approved proposals in Vermont, Massachusetts, Washington D.C., Illinois, and New York). The experience of New York City under the Municipal Voting Law would, Amici believe, demonstrate the viability and long-term benefits of non-citizen participation in the democratic process. At a minimum, it would provide valuable insights to other polities seeking to *democratically* determine the appropriate scope of local election rights.

The benefits to residents, to government efficiency, and to the development of American democracy support the liberal, literal interpretation of the exception contained in Election Law §1-102: the Municipal Voting Law is an “other law” which supersedes conflicting provisions of the Election Law.

C. Allowing the Municipal Voting Law to Take Effect Would Serve Important Local Interests

The policy interests served by the Municipal Voting Law fall broadly into two categories: first, local non-citizen voting increases civic engagement and participation in electoral democracy across the population of localities in which it is implemented. Second, increased participation in electoral democracy promises more effective allocation of local government resources.

1. Non-citizen Voting Increases Civic Engagement and Strengthens Electoral Democracy

While the principle effect of the Municipal Voting Law is to enfranchise non-citizen residents of New York City, studies of local non-citizen voting demonstrate that such policies are likely to positively impact rates of civic engagement and electoral participation among naturalized citizens, second-generation immigrants, and the general populace.

One key effect of non-citizen voting is the political education of U.S. citizens born to non-citizen parents. Generally, children model their civic and political participation after that of their parents, and children “are more likely to be civically and politically active if their parents are involved themselves.” Melissa Humphries, Chandra Muller & Kathryn S. Schiller, *The Political Socialization of Adolescent Children of Immigrants*, 94 Soc. Sci. Q. 1261, 1265 (2013) (internal citations omitted). As a result, non-citizen local voting leads to significantly increased participation in the electoral process by second-generation immigrants. This is reflected in studies of second-generation voter turnout rates in Switzerland, Norway, and California, which each allow local non-citizen voting in some, but not all, geographic sub-districts. Elif N. Kayran & Anna-Lena Nadler, *Non-Citizen Voting Rights and Political Participation of Citizens: Evidence from Switzerland*, 14 Eur. Pol. Sci. Rev. 206, 213 (2022); Veronica Terriquez & Hyeyoung Kwon, *Intergenerational Family Relations, Civic Organisations, and the Political Socialisation of Second-Generation Immigrant Youth*, 42 J. Ethnic & Migration

Stud. 425, 435 (2015); Jeremy Ferwerda, Henning Finseraas & Johannes Bergh, *Voting Rights and Immigrant Incorporation: Evidence from Norway*, 50 *Brit. J. Pol. Sci.* 713, 713 (2020).

Low voter turnout rates have been a subject of concern in America and other developed democracies, and voting rates among naturalized citizens and their children are even lower than those of the general populace. Kayran & Nadler, *supra*, at 206; Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, 26 *New Pol. Sci.* 499, 504 (2004) (“[Naturalized immigrants] tend to vote at lower rates than native-born citizens.”). A 2022 study of Swiss election data found that in Swiss cantons which allowed local non-citizen voting, the disparity between the voting rates of native Swiss citizens and citizens with immigration backgrounds largely disappeared, and voting rates among native Swiss citizens increased. Kayran & Nadler, *supra*, at 206. Similarly, a study of immigrant voting in Norway found that naturalized citizens who were allowed to vote in local elections prior to naturalization voted at significantly higher rates after gaining citizenship, especially among immigrants from dictatorships and weak democracies.² Ferwerda *et al.*, *supra*, at 413. A similar study in California found that children from immigrant families were over 1.4 times as likely to be

² Notably, more than a quarter of New York City’s immigrant residents come from countries which Freedom House rates as “Not Free” or “Partly Free” as of 2022. Compare Mayor’s Office of Immigrant Affairs, *supra*, at 12 (29.5% of foreign-born NYC residents from Dominican Republic, China, and Mexico), with Freedom House, *Freedom in the World Report Scores*, <https://freedomhouse.org/countries/freedom-world/scores> (last visited Nov. 14 2022) (Listing the Dominican Republic and Mexico as “Partly Free” and China as “Not Free”).

politically engaged when their parents were politically engaged, according to almost all metrics of political engagement, including voting rates. Terriquez & Kwon, *supra*, at 425.

The findings of these studies are even more likely to hold true in New York City, where immigrants are represented in the *majority* of families. While non-citizen permanent residents constitute a sizable 10.9% of the New York City population, and 37.8% of the City population was born outside the U.S., **over 60% of New York City households** are made up of either immigrants or mixed-status residents. Mayor's Office of Immigrant Affairs, *supra*, at 11-12. The Municipal Voting Law expands local voting rights to permanent residents who will one day be citizens and permanent residents whose children and family members are or will be citizens. It therefore has the potential to dramatically increase political participation by all New Yorkers at the local level as well as by citizens voting in state and federal elections.

2. Electoral Participation Means Better Government

While the Municipal Voting Law is often characterized as enfranchising non-citizen residents, it can more accurately be said to *re-enfranchise* noncitizens: as noted by the parties, from 1969 to 2002, noncitizen immigrants were able to vote and stand in New York City Community School Board Elections. Ronald Hayduk, *Political Rights in the Age of Migration: Lessons from the United States*,

16 J. Int'l Migration & Integration 99, 115-116 (2015). Immigrant participation in school governance resulted in a number of successes in education reform. Examples of such effects, including the effects of the 1986 School Board Elections in Washington Heights, have been documented by immigration scholar Ronald Hayduk:

In Washington Heights, a predominantly Dominican section of northern Manhattan, a vibrant voter registration drive in 1986 brought in 10,000 parent voters—most of them immigrants—who turned out in record numbers. This political mobilization led to the election on the local school board of a majority of advocates for immigrants, including the first Dominican ever elected in the USA, Guillermo Linares, who became the president of the school board . . . As a result of this mobilization, the city devoted more funds to improve and build new schools in Washington Heights. In the end, it was not only Dominicans that benefited. All community residents—including older stock Irish, Italian, Jewish, Puerto Rican, and Black families who still lived there—benefited from improved education opportunities . . . Importantly, these examples were not isolated to districts in New York City; similar positive results are also evident in other cities where immigrants have voted (and still do), such as in Chicago and in Maryland. *Id.* at 116.

This example demonstrates the principle that citizens and non-citizens share a common interest in addressing the issues most salient to the families, workers, and students of New York City: local issues. Where non-citizens are not politically engaged, they are prevented and disincentivized from providing local government with valuable feedback on the problems facing their communities and on the effects of local policies.

Members of the OCOV Coalition organize and provide important services to

immigrant and non-immigrant New Yorkers, such as health education and vaccine awareness initiatives, promotion and support of the city's efforts to provide information and services in multiple languages, and initiatives to educate parents on the procedures for registering their children in city schools and accessing municipal education resources. In many cases, Amici work in cooperation with the City or in support of municipal programs. Civic disengagement among disenfranchised New Yorkers limits the effective implementation of these and other local government programs. Similarly, the current disparity between the populace which elects municipal office-holders and the populace served by the municipal government incentivizes the inefficient allocation of government resources. The Municipal Voting Law thus extends to non-citizen residents not only a right, but also a responsibility: the responsibility of helping to shape laws and policies which accurately reflect the needs of all residents of New York City.

D. The Supreme Court Decision Threatens to Severely Restrict Immigrants' Existing Rights, Both Constitutional and Statutory

If the Supreme Court Decision is affirmed by this Court, it will establish precedent for a radically illiberal method of constitutional interpretation in New York. As discussed in Section III.A, *supra*, the Supreme Court turns constitutional interpretation on its head by finding 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” such that “only proper citizens [may] retain the right to voter

privileges.” (R17). Taken literally, the logic applied by the Supreme Court would forbid the extension to non-citizens of any of the rights contained in the New York Constitution’s Bill of Rights or other provisions, as no provision of the Constitution expressly extends rights to non-citizen residents.³ Amici urge the Court in its judgment on the appeal to protect those constitutional rights already enjoyed by non-citizens by explicitly rejecting the principle that the extension of constitutional rights to non-citizens is forbidden where non-citizens are not “expressly include[ed].”

Because the Supreme Court Decision emphasizes the Article II, §1 phrase “every citizen,” the Decision could be read narrowly to forbid the extension to non-citizens of only those constitutional rights originating in provisions explicitly addressing “citizens.” Even under such an interpretation, the Supreme Court Decision would implicate an important constitutional right conveyed in conjunction with the word “citizen,” the right to freedom of speech: Section 8 of the New York Bill of Rights guarantees that “every *citizen* may freely speak, write, and publish . . .”⁴ N.Y. Const. art. I, §8 (emphasis added). The Supreme Court’s

³ As noted above, the sole exception is contained in Article V, Section 6, which extends special consideration in civic service appointments to non-citizen veterans.

⁴ The Article XIV, §5 right to bring suit to enforce Article XIV’s conservation provisions is also implicated. The constitutional right to bring suits to enforce *e.g.* the Article XIV, §4 provision protecting natural resources is granted to “any citizen” under Article XIV, §5. Under the logic of the Supreme Court Decision, this would constitute an exclusive “privilege” of “proper citizens.” The state legislature would arguably be forbidden to extend to non-citizens the right to bring such environmental protection claims, despite the fact that immigrants constitute one of the groups increasingly recognized to disproportionately suffer the effects of environmental degradation. *See* Lori M. Hunter, *The Spatial Association between U.S. Immigrant Residential Concentration and Environmental Hazards*, 34 Int’l Migration Rev. 460 (2000).

method of constitutional interpretation would deny non-citizens the protections of the New York Constitution in this regard *and* forbid the statutory extension of such rights. There is no precedent for limitation of the New York constitutional right to freedom of expression to U.S. citizens, and Amici urge this Court not to provide support for such a limitation by affirming the Supreme Court Decision.⁵

⁵ There is significant ambiguity at the federal level regarding the scope of non-citizens' right to freedom of speech under the federal Constitution. See Michael Kagan, *When Immigrants Speak: The Precarious Status of Non-Citizen Speech under the First Amendment*, 57 B.C. L. Rev. 1237 (2016). In other democracies which otherwise aspire to the rule of law, severely limiting non-citizens' right to freedom of speech is not unheard of. For example, the Japanese Supreme Court, interpreting similar language in the Japanese Constitution drafted and imposed by the United States following World War II, has held that the constitutional right to freedom of speech in Japan does not protect non-citizen speech likely to influence Japanese politics. Saikō Saibansho [Supreme Court] Oct. 4, 1978, Shō 50 (Gyo) no. 120, 1223 Saikō Saibansho hanreishū [Saibansho Web] 32, 7 (Japan). It is not *argumentum ad absurdum* to raise the possibility of such a limitation arising under New York law by extension of the Supreme Court Decision's reasoning if affirmed.

IV. CONCLUSION

For the reasons stated above, Amici respectfully urge the Court to reverse the Decision and issue a clear ruling that (1) the New York Constitution contains no prohibition on non-citizen voting, and (2) any provisions of the New York Election Law conflicting with the Municipal Voting Law are superseded by the latter in accordance with Election Law 1-102. Reversing the Supreme Court Decision will allow the issue of non-citizen voting to be determined by democratically elected representatives of the people of New York at the state and local level, and it will allow the people of the City of New York to enjoy the benefits of increased civic engagement which the City Council sought to secure through passage of the Law.

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Respectfully Submitted,



Tripp Odom
White & Case LLP
1221 Avenue of the Americas
New York, New York, 10020
(212) 819-7517
tripp.odom@whitecase.com
Attorney for Amici Curiae

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