To be Argued by:
CESAR Z. RUIZ
(Time Requested: 30 Minutes)

APL-2024-00033
Richmond County Clerk's Index No. 85007/22
Appellate Division–Second Department Docket No. 2022-05794

Court of Appeals

of the

State of New York

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-Respondents,

(For Continuation of Caption See Inside Cover)

BRIEF FOR DEFENDANTS-INTERVENORS-APPELLANTS

ADAM BANKS
COLLEEN CONNORS
SPENCER TALBOT
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
adam.banks@weil.com
colleen.connors@weil.com
spencer.talbot@weil.com

CESAR Z. RUIZ
MIRANDA GALINDO
GHITA SCHWARZ
LATINOJUSTICE PRLDEF
475 Riverside Drive, Suite 1901
New York, New York 10115
(212) 739-7580
cruiz@latinojustice.org
mgalindo@latinojustice.org
gschwarz@latinojustice.org

Attorneys for Defendants-Intervenors-Appellants

CP COUNSEL PRESS (800) 4-APPEAL • (331153)

– against –

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

Defendants-Appellants,

– and –

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

Defendants-Intervenors-Appellants,

– and –

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Defendant.

BETHANY LI
PATRICK STEGEMOELLER
JERRY VATTAMALA
RAZEEN ZAMAN
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (AALDEF)
99 Hudson Street, 12th Floor
New York, New York 10013
(212) 966-5932
bli@aaldef.org
pstegemoeller@aaldef.org
jvattamala@aaldef.org
rzaman@aaldef.org

TSION GURMU
NANA GYAMFI
BLACK ALLIANCE FOR JUST IMMIGRATION (BAJI)
1368 Fulton Street, Suite 311
Brooklyn, New York 11216
(347) 464-5422
tsion@baji.org
nanay@baji.org

LAMYA AGARWALA
BURHAN CARROLL
AFAF NASHER
COUNCIL ON AMERICAN-ISLAMIC RELATIONS NEW YORK, INC (CAIR-NY)
80 Broad Street, Suite 531
New York, New York 10004
(646) 665-7599
lagarwala@cair.com
bcarroll@cair.com
anasher@cair.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Constitutional Provisions

Other Authorities

PRELIMINARY STATEMENT

New York City is home to more than 800,000 authorized immigrants—ten percent of the City's population—who have no say in choosing those who make policy about the neighborhoods they live in, the schools their children attend, or the city budgets that affect their livelihoods. Aiming to give lawful permanent residents (*i.e.*, green card holders) and other immigrants with federal work authorization a voice in the election of municipal leaders, the people of the City of New York, through their duly elected representatives, enacted Local Law 11. That law, allows residents of the City who are lawful permanent residents or authorized to work in the United States to vote in municipal elections, even though they are not United States citizens.

Local Law 11 follows in a tradition of allowing non-citizens to vote in local elections that has been widespread throughout the nation's history—including previously in New York. It also follows in the long tradition of municipal home rule in this State, which recognizes that municipalities have substantial authority to decide for themselves how they will govern their own affairs. In line with these traditions, Local Law 11 reflects the City's policy judgement that its non-citizen residents are essential to the

vibrancy of the city—paying taxes and making important contributions to its economic, civic and cultural life—and should have say in how the city is governed. Appellants, eight long-time New York City residents from six countries and five boroughs, all of whom who are lawfully present in the United States, are among those who stood to be enfranchised by Local Law 11.

The courts below thwarted the City's effort to address this fundamentally local policy issue. The Second Department held that the City's efforts to expand the franchise to certain non-U.S. citizens—solely for the purpose of electing the City's own officials—violated the State Constitution and the Municipal Home Rule Law. That ruling, which undoes the City's decision to empower more of its residents to choose who and how they are governed, was mistaken.

As to the State Constitution, the plain text of the provisions the Appellate Division relied on to invalidate Local Law 11 demonstrate that they establish a constitutional floor on who *must* be afforded the franchise in *state* elections—not a ceiling that limits who a municipality may choose to allow to participate in its own elections. Specifically, the Appellate Division held that Local Law 11 violated Article II, Section 1 of the State

Constitution, which provides that "[e]very citizen shall be entitled to vote at every election for all officers elected by the people" (NY Const art II, § 1). But for more than a century, this Court has understood that section to apply *only* to state elections. And even then, the text makes clear that guarantees franchise to citizens—they are "entitled" to vote—but it does not *limit* the ability to vote to "only" U.S. citizens, if a city chooses to go beyond the constitutional minimum. The legislative history of Article II, Section 1 further underscores that its purpose is to expand the franchise and guarantee the right to vote—not exclude persons from it.

Local Law 11 is also consistent with Article IX, Section 1 of the State Constitution. That section guarantees municipalities the right to a local legislative body "elective by the people thereof," and further specifies that "people" shall "mean *or include*" those individuals referenced in Article II, Section 1 of the State Constitution (NY Const art IX, § 3). But once again, the plain language of this provision clearly does not limit the franchise for municipal elections "only" to those described in Article II, Section I. "Mean or include" is classic language of expansion—not exclusion. Thus, Article IX reinforces the notion that the Constitution establishes only a constitutional floor of those who *must* be "included" in the franchise for local and

municipal elections. Article IX, just like Article II, does not prohibit a municipality from deciding to expand the franchise for purposes of its own self-governance.

Finally, the Appellate Division erred in holding that Local Law 11 violates the Municipal Home Rule Law. That law requires a municipality to conduct a referendum to enact any law that would change the "method" of conducting an election (Municipal Home Rule Law § 23). Local Law 11 does not do so. It does not change when elections occur; the process for voting in person or absentee; how votes are tabulated; or any of the many other features of the "method" of conducting an election. Rather, Local Law 11 relates only to those who may participate in elections conducted according to the "method" of doing so already established elsewhere. No referendum was required to lawfully expand the franchise to additional New York City residents for local elections.

This Court should reverse.

QUESTIONS PRESENTED

1. Does Local Law 11 conflict with Article II, Section 1, and Article IX, Section 1 of the New York State Constitution?

2. Was Local Law 11 adopted consistent with the New York Municipal Home Rule Law?

JURISDICTIONAL STATEMENT

This Court has jurisdiction under CPLR § 5601(b). The Opinion and Order of the Appellate Division, Second Department, is a final determination that completely disposed of the matter below. This case directly raises the substantial constitutional question whether Local Law 11 violates Articles II and IX of the New York State Constitution.

Notice of entry of the Appellate Division's order was served on February 21, 2024. Defendants-Intervenors-Appellants timely noticed their appeal on March 22, 2024. (Joint R. App. at 1812-1814).

The Questions Presented, set forth above, were addressed by the Appellate Division's order and opinion (Joint R. App. at 1832-1838; 1839-1842; brief for defendants-intervenors-appellants, available at 2022 WL 20589964, *3-4) and preserved for this Court's review.

STATEMENT OF THE CASE

I. The City of New York Enacts Local Law 11 Enfranchising Certain Non-U.S. Citizens in Municipal Elections

A. There Is a Long History of Non-Citizen Voting in the United States

Noncitizen voting is often mischaracterized as lacking precedent in the United States. Yet from the nation's founding until 1926, as many as forty states and federal territories extended the franchise to noncitizens for more than half a century (Ron Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the U.S.* 15 [2006]). Indeed, case law confirms that, historically, U.S. citizenship has not been coextensive with voting rights. In *Spragins v Houghton*, the Illinois Supreme Court affirmed the constitutionality of an Illinois law allowing noncitizens to vote (3 Ill 377, 409 [1840]). In *Stewart v Foster*, the Pennsylvania Supreme Court held that tax-paying noncitizen residents in Pittsburg were entitled to vote in local elections (2 Binn [Pa] 110, 119 [1809]). The Supreme Court in *Minor v. Happersett* included Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota, and Texas as examples when it recognized that "citizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage [and] in Missouri, persons of foreign birth, who have declared their intention to become citizens of the United States,

may under certain circumstances vote" (88 US (21 Wall) 162, 177 [1874]). And in *Pope v Williams*, the Supreme Court reaffirmed its understanding that citizenship and suffrage are not coterminous when it upheld a Maryland statute that, extended the franchise to noncitizen residents of one year (193 US 621, 632-633 [1904]).

New York, like other original colonies, permitted noncitizen voting. Its first constitution in 1777 extended the vote to "every male inhabitant" who had resided in a State County for six months, paid taxes, and met certain property ownership or rent requirements (1777 NY Const art VII). In fact, the term "citizen" was first introduced in the 1821 Constitution, with the franchise connected to State citizenship rather than federal citizenship (1821 NY Const art II, § 1).

Noncitizen voting has played a more recent role in New York history, too. In particular, New York City was one of the first places to restore noncitizen voting when it explicitly allowed noncitizens to vote in local school board elections from 1968 until the school boards were disbanded in 2002 for reasons unrelated to noncitizen voting (Joint R. App at 1667; *see also* Tara Kini, Comment, *Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections*, 93 Calif L Rev 271, 271 n 1 [2005]). The

school boards were replaced with Community Education Councils, which are comprised of eleven voting members, nine of which are elected during elections for Community Education Council (Joint R. App at 1667).[1] No restrictions currently limit noncitizens from running for a position or voting for representatives in the Community Education Councils.[2] New York City also continues to permit noncitizens to vote in Participatory Budgeting Elections, which facilitates local communities' direct involvement in allocating tax dollars towards specific projects.[3] Currently, 16 localities across the United States recognize local voting rights for non-citizen immigrants.[4]

---

[1] *See also* New York City Public Schools, *Community Education Councils*, https://www.schools.nyc.gov/get-involved/families/Community-and-citywide-education-councils-cecs/community-education-councils.

[2] *See* New York City Department of Education, D-140, *Process for the Nomination and Selection of Members of the Community Education Councils, Including Filling Vacancies* (2022).

[3] *See* New York City Civic Engagement Commission, *Notice of Adoption of Final Rules Governing City Wide Participatory Budgeting*, https://www.nyc.gov/assets/civicengagement/downloads/pdf/meetings/6-6-2023-Resolution.pdf; New York City Council, *Participatory Budgeting*, http://pbnyc.org/.

[4] Ron Hayduk, *Cities With Rights*, Immigrating Voting Rights, https://www.immigrantvotingrights.com/cities-with-rights).

B. New York City Enacts Local Law 11

Against this backdrop and in light of the history of non-citizen voting, in December 2021, the New York City Council overwhelmingly passed Local Law 11, which expanded the right to vote in municipal elections to certain non-U.S. citizens (Joint R. App. at 11). As explained by former New York City Council Speaker Corey Johnson, "Immigrants pay taxes. They use city services. Their kids go to our public schools. They are part of our community, and they deserve a say in local government" (*id.* at 782).

Specifically, Local Law 11 enfranchises "municipal voters" to vote in local elections for the offices of mayor, public advocate, borough president, and city council member. The law defines a municipal voter as "a person who is not a United States citizen on the date of the election on which he or she is voting," and who: (1) is either "a lawful permanent resident or authorized to work in the United States"; (2) "is a resident of New York [C]ity and will have been such a resident for 30 consecutive days or longer by the date of such election"; and (3) "meets all qualifications for registering or pre-registering to vote under the election law, except for possessing United States citizenship" (*id.* at 11). Local Law 11 allows New York City to uphold its democratic values and tradition of allowing a voice to lawfully

present immigrant New Yorkers, many of whom have lived here for decades, who are currently taxed and subject to New York City laws without representation. The bill was deemed adopted in January 2022 (Joint R. App. at 11).

II. Challenge to Local Law 11

Respondents—several individual New York City voters, several current and former New York City elected officials, and certain individuals and entities representing the Republican Party, commenced this lawsuit on January 10, 2022 (*id.* at 12). The Complaint filed against the New York City Council, Mayor Eric Adams, and the New York City Board of Elections, alleged that Local Law 11 was invalid under the New York State Constitution and under statutory provisions of the Election Law and the Municipal Home Rule Law and sought declaratory and injunctive relief (*id.* at 1400-1412). On April 11, 2022, nine New York City residents (hereinafter "Intervenors-Appellants"), who would be entitled to register and vote in municipal elections under Local Law 11, filed a motion to intervene as defendants (*id.* at 1431-1442). Intervenors-Appellants Hina Naveed, Carlos Vargas-Galindo, Abraham Paulos, Emili Prado, Eva Santos Veloz, Melissa John, Angel Salazar, and Jan Ezra Undag, are lawful permanent

residents or noncitizens authorized to work in the United States, who reside in the five boroughs of New York City[5] (*id.* at 1568). No party opposed the motion to intervene, and on April 13, 2022, the Supreme Court, Richmond County (Ralph J. Porzio, J.) granted intervention (*id.* at 1493).

On May 9, 2022, the Appellants, Intervenors-Appellants, and Appellees each cross-moved for summary judgement (*id.* at 1359-1390; 1498-1521; 1559-1588). On May 27, 2022, each party filed their respective answers, and on June 3, 2022, the parties filed their replies (*id.* at 1619-1642; 1648-1676; 1718-1744; 1761-1777; 1778-1794; 1795-1810). Oral arguments were held on June 7, 2022 (*id.* at 12).

III. The Supreme Court, Richmond County's Ruling

On June 27, 2022, the Supreme Court, Richmond County denied the Appellants and Intervenors-Appellants' motion for summary judgment, as well as Intervenors-Appellants' motion to dismiss for lack of standing (*id.* at 9-22). The Supreme Court issued an order permanently enjoining the City from implementing the law, holding that Local Law 11 "violates the

[5] One of the initial intervenors, Muhammad Shahidullah was removed from the case and caption on May 31, 2023, after obtaining U.S. citizenship and thus becoming eligible to vote regardless of the validity of Local Law 11 (Joint R. App. at 1826).

New York State Constitution, the New York State Election Law, and the New York State Municipal Home Rule Law" (*id.* at 10). Specifically, the Supreme Court found that the voter plaintiffs had standing to challenge Local Law 11 on a supposed "vote dilution" theory and that the officeholder and political party plaintiffs had standing to challenge the law based upon its impact on campaigning (*id.* at 15-16).

As to the merits, the Supreme Court found that Local Law 11 violated Article II and Article IX of the New York State Constitution (*id.* at 20-22). The Supreme Court then determined that Local Law 11 was preempted by New York State Election Law (hereinafter "the Election Law") and that "the Election Law can only be preempted by inconsistent *state* laws, not local laws" (*id.* at 20).

IV. The Second Department's Ruling

The Appellants and Intervenors-Appellants respectively filed notices of appeal on July 22, 2022 and July 25, 2022 (*id.* at 3-5; 6-8). On February 21, 2024, a divided panel of the Appellate Division, Second Department, affirmed (*id.* at 1819-1862).

As the threshold, the Appellate Division found that the political party plaintiffs lacked standing to challenge Local Law 11 (*id.* at 1826). The

court held, however, that the officeholder plaintiffs had standing to challenge the constitutionality of Local Law 11, and whether the law violated the Election Law; and it held that the voter plaintiffs had standing to challenge whether the Local Law was adopted consistent with the Municipal Home Rule Law. (*Id.*) Because at least one group of plaintiffs had standing to challenge each of the claims asserted in the Complaint, the court proceeded to the merits (*id.* at 1826-1827).

On the merits, the Appellate Division held that Local Law 11 violated the New York State Constitution and the Municipal Home Rule Law (*id.* at 1832). As to the constitutional issues, the Appellate Division held that Local Law 11 violated Article II, Section 1 of the State Constitution because it concluded that Section 1 granted the right to vote exclusively to U.S. citizens (*id.* at 1833). To support that conclusion, the Second Department first applied the doctrine of *expressio unius* (*id.* at 1832). The Court held that because Section 1 makes "no reference to noncitizens," an "irrefutable inference applies that noncitizens were intended to be excluded from those entitled to vote." (*Id.*) The Appellate Division further held that the term "citizen" in Article II, Section 1 pertained exclusively to United States citizens rather than New York State citizens (*id.* at 1833). And the

Appellate Division held that Article II, Section 1 applies to municipal elections as well as state elections, notwithstanding this Court's decision in *Spitzer v Village of Fulton* (172 NY 285, 289 [1902]), which held exactly to the contrary—that is, that Article II, Section is inapplicable to municipal elections (Joint R. App. at 1834-1835). To avoid that result, the Appellate Division purported to distinguish *Spitzer* reasoning that *Spitzer* did not specifically address whether its holding should apply to "municipal elections for elective officers such as mayor, public advocate, comptroller, borough president, and council member" (Joint R. App. at 1835). The Second Department further sought to distinguish *Johnson v City of New York* (274 NY 411, 419-420 [1937]), which reaffirmed *Spitzer*'s holding, by emphasizing that *Johnson* involved proportional representation, even though *Johnson* cited *Spitzer* for the fundamental proposition that Article II, Section 1 "was not intended to define the qualifications of voters upon questions relating to the financial interest or private affairs of the various cities or incorporate villages of the State"[6] (Joint R. App. at 1835-1836, quoting *Johnson v City of New York*, 274 NY at 419-420).

[6] The Appellate Division also distinguished *Turco v Union Free School Dist. No. 4* (43 Misc 2d 367 [Sup Ct, Nassau County 1964], *affd* 22 AD2d

The Appellate Division further held that Local Law 11 violates Article IX of the State Constitution which extends the right to vote in municipal elections to "the people thereof," and instructs that the term "people" shall "mean or *include*" those entitled to vote under Article II, Section 1 (Joint R. App. at 1836, quoting NY Const art IX). While acknowledging that the state constitution instructs that the powers delegated to municipalities under Article IX be liberally construed, the Second Department held that noncitizens were not "people" within the meaning of Article IX, Section 3(d)(3) because that section defined the "people" as exclusively those entitled to vote under Article II, Section 1 (Joint R. App. at 1836). To support that view, the Appellate Division relied on *Matter of United States Steel Corp. v Gerosa* (7 NY2d 454, 459 [1960]), which interprets the phrase "shall mean or include" in an entirely different context relating to a tax statute (Joint R. App. at 1836).

Additionally, the Second Department determined, without citing to any supporting case law, that Local Law 11 violated the Municipal Home Rule Law's referendum requirement because it changed the "method" of

---

1018 [2d Dept 1964) and *Matter of Blaikie v Power* (13 NY2d 134 [1963]) on similarly flawed grounds (Joint R. App. at 1835-1836).

conducting an election, although the law creates no change other than increasing the size of the electorate (Joint R. App. at 1839-1840).

Finally, the Second Department held that Local Law 11 does not violate the Election Law (*id.* at 1838-1839). The challengers had argued that the Election Law Section 5-102(1), which provides that only U.S. citizens are permitted to register and vote, preempted Local Law 11 (Joint R. App. at 1516). But the Election Law expressly provides that if "any other law" is inconsistent with the Election Law, that law should apply unless the conflicting provision of the Election law states that it shall apply "notwithstanding any other provision of law" (Joint R. App. at 18, quoting Election Law § 1-102). The Appellate Division rejected the argument that the phrase "any other law" should be read to mean only "any other *state* law," reasoning that "had the legislature intended to reference any other *state* law, 'it easily could have so stated' by including the term 'state'" (Joint R. App. at 1838-1839 (quoting *Kuzmich v 50 Murray St. Acquisition LLC*, 34 NY3d 84, 93 [2019]). And because Section 5-102(1) does not contain the "notwithstanding any other provision of law" language, it did not preempt Local Law 11 (Joint R. App. at 1838).

Justice Wan concurred in part and dissented in part (Joint R. App. at 1843-1863). While Justice Wan agreed with the majority that Plaintiffs failed to demonstrate that Local Law 11 violated the New York State Election Law, she dissented on the constitutional issues and the majority's conclusion that Local Law 11 violated the Municipal Home Rule law. (*Id.*) Justice Wan concluded that (1) Article II, Section 1 is only applicable to state elections; (2) Article IX should be liberally construed in favor of municipalities and that plaintiffs failed to prove beyond a reasonable doubt that municipalities are restricted from allowing noncitizens to vote in local elections; and that (3) Local Law 11 did not violate the mandatory referendum requirement pursuant to Municipal Home Rule Law § 23(2)(e) because it did not change the "method" of electing local elective officers (Joint R. App. at 1847, 1861-1862).

First, Justice Wan emphasized that Article II, Section 1 only applies to state elections, and "was not intended to define the qualifications of voters upon questions relating to the financial interests or private affairs of [municipalities]" (Joint R. App. at 1847, quoting *Spitzer v Village of Fulton*, 172 NY at 289).

Second, Justice Wan noted that Article IX, which guarantees local governments certain "rights, powers, privileges[,] and immunities," including the right to "have a legislative body elected by the people thereof," contains a liberal construction clause (Joint R. App. at 1849, quoting NY Const art IX). After pointing out that the term "people" as used in Article IX is defined as "shall mean or include . . . [p]ersons entitled to vote as provided in [Article II, Section 1]," she discussed the legislative history of the article in reasoning that there was no textual or historical evidence that "people" as used in Article IX was intended to refer exclusively to those entitled to vote in Article II, Section 1 (Joint R. App. at 1849). Justice Wan concluded that Plaintiffs failed to establish that Local Law 11 is unconstitutional beyond a reasonable doubt (Joint R. App. at 1849–1853).

Third, Justice Wan determined that the Municipal Home Rule Law's referendum requirement does not apply because it does not change the method of conducting the elections of local officers (Joint R. App. at 1858–1861). Justice Wan found that the majority failed to explain how increasing the size of the electorate would necessarily change the method of conducting elections of local officers. (*Id.*)

On March 22, 2024 and March 25, 2024, the Intervenors-Appellants and Appellants respectively noticed their appeal to this Court (Joint R. App. at 1812-1814; 1815-1818).

SUMMARY OF THE ARGUMENT

I. Local Law 11 is consistent with the New York State Constitution. Article IX grants broad home rule powers to local governments—powers that Article IX expressly provides are to be "liberally construed"—to allow municipalities to address local issues at the local level. And legislative enactments—including municipal laws—enjoy a presumption of constitutionality and should not be overturned unless it appears beyond a reasonable doubt that the legislation is unconstitutional. Respondents here cannot show that Local Law 11 is unconstitutional under that standard, especially construing the City's powers broadly as the constitution requires.

A. Local Law 11 does not conflict with Article II, Section 1 of the State Constitution. That section provides that "[e]very citizen shall be entitled to vote at every election for all officers elected by the people" (NY Const art II, § 1). For more than a century, this Court has held and reaffirmed that Article II, Section 1 applies only to state elections—and not to municipal or local elections (*see Spitzer v Village of Fulton*, 172 NY at 289;

Johnson v City of New York, 274 NY at 419). This understanding is consistent with the text of Section 1—which refers to the "people" without expressly including local and municipal elections. And it is consistent with other constitutional provisions—including Article IX, which more specifically addresses local elections—which read in harmony, make clear that Section 1 does not limit the qualifications of voters in municipal elections.

The plain text of Article II, Section 1 also makes clear that it does not *limit* the franchise *only* to "citizens." By its plain terms, Article II, Section 1 provides that citizens meeting certain residency requirements are "entitled" to vote—thereby establishing a constitutional minimum for the right to vote in elections. (NY Const art II, § 1). But nothing in the text of Section 1 prohibits a municipality—from expanding the franchise to additional voters. Had the framers intended to limit the franchise only to citizens, they would have adopted language of limitation or exclusion. But no such limitations appear in the text. Indeed, as the legislative history of Section I confirms, the framers intended to *expand* the right to vote and prevent the legislature from *disenfranchising* certain voters (*see infra* Section I(A)(2)(c)). In short, Article II, Section I establishes a constitutional floor on the franchise—not a ceiling.

B. Local Law 11 is also consistent with Article IX of the State Constitution—which provides for broad home rule powers for municipalities. Among the powers Article IX confers is the right to local self-government elected by "the people thereof." To ensure that the right to vote in municipal elections is extended to the constitutional minimum, Article IX specifies that the "people" shall "mean or *include*" those persons identified in Article II, Section 1. (NY Const art IX.) But again, nothing in the text of Article IX prohibits a municipality from expanding the franchise beyond the floor set by Article II, Section 1. Indeed, the opposite—Article IX's use of the expansive language, "include," rather than a limitation, shows that the framers intended to grant local governments leeway to expand the franchise beyond the constitutional minimum if they so choose. That authority is consistent with the overarching theory of home rule: that municipalities are offered the authority to determine the governance of local affairs, so long as they do not conflict with the state's powers. And it is also consistent with the specific guidance expressly provided in Article IX—that the powers conferred to local governments shall be "liberally construed." (*Id.*)

II. Local Law 11 was adopted in accordance with the Municipal Home

Rule Law. As a general matter, the Municipal Home Rule Law authorizes local governments to enact legislation through their elected representatives, as "direct democracy," *i.e.*, government through referendum, "is the exception, not the rule" in this State (*Molinari v Bloomberg*, 564 F3d 587, 609 [2d Cir 2009]). Accordingly, the Municipal Home Rule Law specifies narrow categories of laws that require a referendum to take effect. A law that changes the qualifications to vote in municipal elections is not among those categories. Thus, no referendum was held to adopt Local Law 11.

The Appellate Division nonetheless held that a referendum was required because Local Law 11 fell within one of the enumerated categories, specifically a law that "changes the method of … electing … an elective officer" (Municipal Home Rule Law § 23(2)(e)). The Appellate Division erred: Local Law 11 does not change any "method" of conducting an election. To be sure, the law alters the *qualifications* for a voter to participate in the election. But the law does not make any change to *how* the election is conducted. It does not change how, whether or when an eligible voter can register to vote or cast her vote; does not alter how votes are tabulated; and does not modify any of the other regulations and procedures governing how elections are run. The Appellate Division's conclusion that because

eligibility to vote is a prerequisite to voting, it necessarily entails a change in the "method" of voting is both inconsistent with the plain meaning of the Municipal Home Rule Law, and otherwise conflates the distinct concepts of voting qualifications with the method of conducting elections.

This Court should reverse.

ARGUMENT

I. Local Law 11 Does Not Conflict With the New York Constitution

Local Law 11 is a lawful exercise of local power vested to municipalities under Article IX of the New York State Constitution. As this Court has long recognized, Article IX is based on the "recognition that essentially local problems should be dealt with locally" (*Matter of Kelley v McGee,* 57 NY2d 522, 535 [1982]). Moreover, the powers granted under Article IX are broad: Article IX expressly provides that the "rights, powers, privileges and immunities granted to local governments by this article *shall be liberally construed*" (NY Const art IX, § 3(c) [emphasis added]).

Nothing is more fundamentally "local" than selecting the officials who will comprise the local government. Therefore, as this Court has also made clear, "[t]he municipality is empowered to modify an election law in so far as that law affects the property, government or affairs of the municipality,

i.e., in so far as it affects the election of the local officers" (*Bareham v City of Rochester*, 246 NY 140, 149 [1927]). For that reason, this Court has concluded that if "the people of the city of New York" wish to try an "experiment" in conducting their own elections, "we as a court should be very slow in determining that the act is unconstitutional" (*Johnson v City of New York*, 274 NY at 430). Local Law 11 is exactly that: a local measure adopted by the people of the City of New York, pursuant to its home rule authority, to expand the electorate for its own local elections.

Moreover, as a general matter, "[l]egislative enactments enjoy a strong presumption of constitutionality" (*Overstock.com, Inc. v New York State Dept. of Taxation & Fin.*, 20 NY3d 586, 593 [2013]). Challenges to the constitutionality of a legislative act—including by a municipality—thus face the "substantial hurdle of demonstrating that [the statute] is unconstitutional on its face" (*id.*; *see also Matter of 1160 Mamaroneck Ave. Corp. v City of White Plains*, 211 AD3d 723, 725 [2d Dept 2022]) (applying the same presumption to a local ordinance)). Accordingly, "[i]t has been [this Court's] repeated admonition . . . that 'legislation should not be declared unconstitutional unless it clearly appears to be so' and that 'all doubts should be resolved in favor of the constitutionality of an act'" (*White*

v Cuomo, 38 NY3d 209, 228 [2022], quoting *Johnson v City of New York*, 274 NY at 430).

The Appellate Division disregarded these principles and held that the City's exercise of its home rule powers here violated the State constitution. In particular, as discussed below, the Appellate Division erred in finding Local Law 11 unconstitutional, and certainly did not establish the unconstitutionality of Local Law 11 beyond a reasonable doubt. Indeed, the challengers cannot prove beyond a reasonable doubt that Local Law 11 violates Article II, Section 1 of the State Constitution—because that section apples only to state elections and otherwise does not impose a federal citizenship *limitation* on the franchise. Nor can the challengers show, beyond a reasonable doubt, and especially considering the "liberal" construction of the City's home rule powers, that Local Law 11 conflicts with Article IX. Accordingly, because the State Constitution does not "clearly" prohibit Local Law 11, New York City should be allowed to "experiment" with its expansion of the franchise to authorized immigrants (*Johnson v City of New York*, 274 NY at 430).

A. Local Law 11 Does Not Violate Article II, Section 1 of the State Constitution

Article II, Section 1 of the New York State Constitution states:

> "Every citizen shall be entitled to vote at every election for all officers elected by 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 country, city, or village for thirty days preceding an election"

(NY Const art II, § 1). As discussed below, Article II, Section 1 applies only to state elections, as this Court's cases have long established. And, in all events, Section 1 by its plain terms establishes only a constitutional minimum for the franchise; nothing in its text, purpose or history prevents municipalities from choosing to extend the franchise more broadly.

1. Article II, Section 1 Applies Only to State Elections

For more than 120 years, this Court has read the voter qualifications in Article II, Section 1 to apply exclusively to state elections (*see Spitzer v Village of Fulton,* 172 NY 285). As this Court explained, Article II "was *not* intended to define the qualifications of voters upon questions relating to the financial interests or private affairs of the various cities or incorporated villages of the state" (*id.* at 289 [emphasis added]; *see also Johnson v City of New York*, 274 NY at 420 (The purpose of Article II, Section 1, was "to define the general qualifications of voters for elective officers or upon questions which may be submitted to the vote of the people which affect the public affairs *of the state*") [emphasis added]).

Well-established rules of statutory interpretation reinforce *Spitzer's* holding, which has been reaffirmed in numerous subsequent cases (*see infra* 29-30). Article II, Section 1 is limited to state elections because its plain language does not explicitly apply to local elections; its meaning must be construed in context with other constitutional provisions, specifically Article IX; and legislative history supports limiting its scope to state elections.

a. There is no basis to overturn this court's longstanding precedent that article ii, section 1 applies only to state elections

"Even under the most flexible version of the doctrine [of stare decisis], prior decisions should not be overruled unless a 'compelling justification' exists for such a drastic step" (*Grady v Chenango Val. Cent. Sch. Dist.*, 40 NY3d 89, 96 [2023]). Overturning statutory interpretation precedent requires "an even more extraordinary and compelling justification" because "if the precedent or precedents have misinterpreted the legislative intention . . . the Legislature's competency to correct the misinterpretation is readily at hand" (*Matter of State Farm Mut. Auto. Ins. Co. v Fitzgerald*, 25 NY3d 799, 819-820 [2015], quoting *Palladino v CNY Centro, Inc.*, 23 NY3d 140, 151 [2014]).

This Court considers the following factors when determining whether to overturn precedent: whether the legislature took the opportunity to correct the court's interpretation of the statute, whether overruling precedent will raise more questions than answers, whether the precedent at issue has become unworkable, and whether the precedent has been frequently and recently affirmed (s*ee Palladino v CNY Centro, Inc.*, 23 NY3d at 151-152; s*ee also Matter of State Farm Mut. Auto. Ins. Co. v Fitzgerald*, 25 NY3d at 819-820; s*ee also Grady v Chenango* 40 NY3d at 96 (courts should not "abandon decades of applicable precedent that has been frequently, and so recently, reaffirmed").

These factors militate strongly against overturning *Spitzer* and its progeny here. Despite ample opportunity to do so, the State Legislature has not subsequently expanded Article II, Section 1's voter qualification requirements to local elections; there is no indication that the *Spitzer* precedent is unworkable; and *Spitzer*'s holding has been frequently and recently affirmed in broader contexts by this Court and the lower courts. Indeed, *Spitzer* is good law that routinely guides courts' interpretation of Article II, Section 1.

First, in the more than a century after *Spitzer* was decided, the legislature has had ample opportunity to clarify that Article II, Section 1's voter qualifications apply to local elections, and it never did (*see, e.g., Palladino v CNY Centro, Inc.*, 23 NY3d at 151 (upholding precedent interpreting Section 13 of General Association Law because legislature had not addressed in subsequent legislative sessions); *Matter of State Farm Mut. Auto. Ins. Co. v Fitzgerald*, 25 NY3d at 820 (upholding precedent interpreting Section 3420 of Insurance Law where legislature had not addressed in subsequent amendments).

Nor is there any basis for finding *Spitzer* unworkable—certainly the Appellate Division did not identify any such basis. The rule is clear and easy to apply: Article II, Section I sets for the constitutional minimum requirements for voting in state elections; there is no reason that the rule's application would be difficult or unworkable.

Most crucially, *Spitzer* has been frequently and recently affirmed. Since *Spritzer*, multiple courts, including this Court, have considered and affirmed that Article II, Section 1 only applies to state elections (*See Matter of Blaikie v Power*, 13 N.Y.2d at 141 (The purpose of Article II, Section 1 was to define the general qualifications of voters for elective officers or

upon questions which may be submitted to the vote of the people which affect the public affairs of the state); *In re Carrick*, 183 AD 916, 916 [4th Dept 1918], *affd*, 223 NY 621 [1918] ("[P]rovision of section 1 of article 2 of the Constitution . . . applies only to such propositions as relate to the general governmental affairs of the state, and not to local affairs or municipalities"); *Johnson v City of New York*, 274 NY at 419 (The purpose of article II, section 1, was "to define the general qualifications of voters for elective officers or upon questions which may be submitted to the vote of the people which affect the public affairs of the state"); *Turco v Union Free Sch. Dist. No. 4*, 43 Misc 2d at 368) (Article II, Section 1 has been applied to govern only general elections relating to governmental affairs of the whole state); *Esler v Walters*, 56 NY2d 306, 314 [1982] (discussing the constitutionality of a provision relating to a local law power citing *Spitzer* in support of its holding); *Schulz v Horseheads Cent. Sch. Dist. Bd. of Educ.*, 222 AD2d 819, 820 [2d Dept 1995]) (holding that Article II, Section 1 has previously been held to be inapplicable to local elections)).

The Appellate Division purported to distinguish *Spitzer*, but in effect overturned it. In *Spitzer*, this Court denied a facial constitutional chal-

lenge to a local law which established voter qualifications for village elections on bond issues. The voter qualifications in the local law differed from the voter qualifications specified in Article II, Section 1—in particular, the Village of Fulton added a property and tax requirement, which Article II Section 1 did not impose (*Spitzer v Village of Fulton*, 172 NY at 288). This Court found the local law did not violate the Constitution, because the voter qualifications in Article II, Section 1 only apply to state elections (*id.* at 289). The Appellate Division here held that *Spitzer* was of "limited instructive value in this case" because it "did not address the applicability of article II to municipal elections for elective officers such as mayor, public advocate, comptroller, borough president, and council member" (Joint R. App. at 1835, quoting *Spitzer v Village of Fulton*, 172 NY at 289).

The Appellate Division's attempt to distinguish *Spitzer* is unpersuasive. Although the *Spitzer* Court noted a municipality's authority to regulate its own voter qualifications was "especially" apparent on matters "relat[ing] to borrowing money or contracting debts," (172 NY at 289) it did not confine its reading of Article II, Section 1 to municipal elections related to financial affairs. Instead, *Spitzer* unequivocally held that Article II, Section 1 "was not intended to define the qualifications of voters upon

questions relating to the financial or private affairs of the *various cities or incorporated villages* of this state"—just like the municipal elections that are the subject of Local Law 11. (*Id.* [emphasis added]).

Indeed, that is exactly how this Court has itself understood Spitzer's holding in subsequent cases—demonstrating not only that *Spitzer* remains good law, but also that it is not limited to the narrow category of municipal elections addressing financial affairs (s*ee, e.g., Matter of Blaikie v Power*, 13 NY2d at 139, (addressing New York City's law governing method of electing city council representatives); *Johnson v City of New York*, 274 NY at 419. In short, Article II, Section 1 "is limited in its application to elections involving state officers or state issues" (*Matter of Blaikie v Power*, 13 NY2d at 141 (Burke, J., concurring)).

In sum, the Appellate Division's decision to limit *Spitzer* to only a narrow category of municipal elections in effect overruled it. Affirming the Appellate Division's decision would thus create a significant upheaval in an area of law that has been well settled for decades. Local Law 11 presents no conflict with Article II, Section 1; it is an "experiment" that the state constitution and controlling Court of Appeals precedent "permits [the City] to make" (*Matter of Blaikie v Power*, 13 NY2d at 144).

b. The plain language of Article II, Section 1 does not show that it applies to municipal elections

The plain text of Article II, Section 1 suggests that it applies to state elections and not to municipal elections. "[W]ell-established rules of statutory construction direct that the analysis begins with the language of the statute" (*Colon v Martin*, 35 NY3d 75, 78 [2020] [internal quotations omitted]). "[A] court should construe unambiguous language to give effect to its plain meaning" (*id.* [internal quotation marks and citation omitted]).

The language of Article II, Section 1 states that it applies to "every election for all officers elected by the people" (NY Const art II, § 1). That language is best understood as referring to the people of the State. Nothing in Article II, Section 1 refers to municipal or local elections.[7] Rather, as discussed below, local elections are provided for and are governed by a separate article of the New York Constitution—Article IX.

The Appellate Division nonetheless determined the plain language of the Qualifications of Voters provision shows that it *must* apply to local

[7] The only discussion of county, city, or village elections is with regard to residency requirements and not applicability of Article II, Section 1 to such elections (Joint R. App. at 1573, 1733, 1804). These residency requirements are important because they are relevant to, among other things, a voter's assembly or state senate district—state elections to which Article II, Section 1 would apply.

elections. But the language of the provision does not explicitly include local or municipal elections. Tellingly, neither the Appellate Division nor the challengers has identified a single case applying Article II, Section 1 to local or municipal elections.

At best, the language is ambiguous—which is clearly not enough to find Local Law 11 unconstitutional beyond a reasonable doubt. In contrast, this Court has required more to find statutory language unambiguous. For example, in *Matter of D.L. v S.B.*, the Interstate Compact on the Placement of Children (ICPC) included language that required that "[n]o sending agency shall send . . . into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article" (39 NY3d 81, 86 [2022], quoting Social Services Law § 374-a). The court held that the ICPC did not apply to noncustodial parents because "[t]he language of the statute [] unambiguously limits its applicability to cases of placement for foster care or adoption—which are substitutes for parental care that are not implicated when custody of the child is granted to a noncustodial parent" (39 NY3d at 87). Unlike foster care or adoption, which requires a noncustodial parent not be granted custody,

applying Article II, Section 1 to state elections does not necessitate its application to local elections.

c. Construed together with other provisions of the New York State Constitution, it is clear that Article II, Section 1 applies only to state elections

Article II, Section 1 must be "considered together and with reference to" other constitutional provisions (*Colon v Martin*, 35 NY3d at 78; *see also Village of Chestnut Ridge v Howard*, 92 NY2d 718 [1999]; McKinney's Cons Laws of NY, Book 1, § 59 [1916 ed]). Read in context with other constitutional provisions, it is clear that Article II, Section 1 does not apply to local elections.

First, Article IX, which is discussed more fully below, expressly governs local elections. It empowers local governments to create local laws for the election of local officials. That article has specific provisions describing the electorate for local elections—the "people" of the local government (*see* NY Const art IX, § 1). Article IX further provides that for the purposes of that article, the term "people" shall "mean or include" those persons entitled to vote under Article II, Section 1 (NY Const art IX, § 3(d)(3)). As discussed below, Article IX by its plain terms sets forth a broader definition than Article II, Section 1 alone—it uses the broader term "people," rather

than "citizen"; and Article IX, Section 3 makes express that the term "people" must "*include*" those mentioned in Article II, Section 1, but does not *limit* its meaning to those described therein.

Significantly, however, if Article II, Section 1 by its own force applied to municipal elections (as opposed to state elections), then there would be no reason for Article IX to specify the electorate for local government elections at all. Article II, Section 1 would have already done the work. Instead, the drafters of Article IX decided to separately describe the electorate for local elections—an indication that Article II, Section 1 did not apply on its own to those elections. And in so doing, the drafters made clear that those entitled to vote in such local elections must "include" the constitutional minimum specified in Article II, Section 1, but did not limit the electorate to citizens as described in that section.

Second, contrary to the Appellate Division's conclusion, Article II, Sections 5 and 7 do not concern voter qualifications, and do not support the notion that Section 1 applies to local elections. The Appellate Division incorrectly held that Sections 5 and 7 of Article II provide contextual support for determining the legislature's intent to apply the voter qualifications in Section 1 to local elections (Joint R. App. at 1832-1835). But these

sections do not address voter qualifications. Article II, Section 5 directs the Legislature to enact laws for administering the registration and ascertaining the identity of voters (Joint R. App. at 1848-1849). The exemption for "town and village elections" included was in reference to elections held in towns and villages rather than elections for towns and villages to address concerns that an in-person registration requirement for town and village residents would be burdensome because of the long distance voters would be required to travel to appear to register (*see* Charles Z. Lincoln, *The Constitutional History of New York*, vol III 1894-1905, 91-108 [1905]). Section 5 relates entirely to elections held within those municipalities and does not address the election of those local officers (NY Const art II, § 5). Moreover, Article II Section 7 solely requires secrecy in voting and does not address voter qualifications (*id.* at § 7). The majority erred in its inference that municipal elections are covered under Article II since Article II, Section 7 contains an exception for municipal elections for "town officers." Rather, the legislative history shows that the exemption was included to recognize a law in effect at the time authorizing Myers ballot machines for town elections, clarifying that municipalities were free to use different methods other than the ballot in municipal elections as long as secrecy in

voting be preserved (*see* Charles Z. Lincoln, *The Constitutional History of New York*, vol III 1894-1905, 108-114 [1905]).

2. Section 1 guarantees the franchise to "citizens" but does not prevent municipalities from expanding it to noncitizens

Article II, Section 1 sets a floor regarding which New Yorkers are "entitled" to the franchise as a constitutional matter; it does not establish a ceiling that would bar a municipality from extending the ability to vote in local elections to noncitizens. Notwithstanding the inapplicability of Article II, Section 1 to local elections, nothing in the text of this section limits the right to vote to citizens alone. This provision guarantees that "every citizen" who meets an age and residency requirement is "entitled" to vote—in other words, qualifying citizens cannot be denied the franchise by the legislature (NY Const art II, § 1). But Section 1 does not provide that *only* citizens are permitted to vote. Indeed, so interpreting the statute otherwise would ignore the plain meaning of Article II, Section 1's text, purpose, and history.

a. Article II, Section 1's plain meaning does not prevent noncitizen voting

A plain reading of Article II, Section 1's text shows that the statute merely ensures the franchise to certain citizens. But it does not state that

"only" citizens may vote, and thus does not to bar the legislature or a municipality from allowing noncitizens to vote in elections. This plain meaning analysis is dispositive because "a court should construe unambiguous language to give effect to its plain meaning" (*Colon v Martin*, 35 NY3d at 78).

In particular, the plain meaning of Section 1 creates an entitlement to the franchise for citizens who satisfy an age and residency requirement, but it does not limit the legislature or local government from extending the franchise to other voters. The subject is clearly "citizen[s]" and the right to suffrage that citizens are entitled to. The "provided that" clause addresses qualifications that must be met by "such citizen[s]" in order for that entitlement to convey (NY Const art II, § 1). Thus, the only restrictions this section imposes are enumerated in the text: age and residency requirements for those citizens entitled to vote. There is no other language of limitation in Section 1 that would preclude the extension of the franchise to noncitizens.

To be sure, Section 1 does not expressly mention noncitizens in its text. But the absence of an express reference to noncitizens in the provision does not demonstrate that noncitizens must be *excluded* from the

franchise. Such a reading would be a misapplication of the *expressio unius* doctrine—which the Appellate Division purported to apply—an interpretive maxim that the inclusion of particulars in a statute implies an intent to exclude other unnamed things (Joint R. App. at 1832). But that doctrine should be applied only when "it is fair to suppose that [the legislature] considered the unnamed possibility and meant to say no to it" (*Marx v General Revenue Corp.*, 568 US 371, 381 [2013], quoting *Barnhart v Peabody Coal Co.*, 537 US 149, 168 [2003]). Additionally, the doctrine is "merely a guide to the legislative intent and not a fixed rule of construction" (McKinney's Cons Laws of NY, Statutes § 239, citing *Lattinville v Ereth*, 26 NYS2d 434 [1941]).

Here, the plain text of Section 1 grants constitutional protections to citizens, but there is no indication anywhere in the text that the drafters of the Constitution intended to restrict municipalities from extending suffrage to noncitizens. Notably, Article II, Section 3, which *does* identify "Persons excluded from the right of suffrage," nowhere mentions noncitizens (NY Const art II, § 3). In short, to read other restrictions not found in

the text into existence would be to "legislate under the guise of interpretation" (*Bright Homes v Wright*, 8 NY2d 157,162 [1960]).[8]

Indeed, the doctrine of *expressio unius* is especially inappropriate here. Had the drafters of Article II, Section 1 or its subsequent amendments intended to restrict noncitizens from the franchise, they could easily have indicated so by using language such as "*only* citizens shall be entitled to vote" or added noncitizens to the list of individuals expressly excluded from the franchise. But notably, they chose not to. In fact, a 2021 bill proposing an amendment that would have done precisely that, changing the text of the section from "every citizen" to "only citizens," failed (2021 New York Assembly Bill 9095). The legislature deliberately left the text unchanged so as to convey rights to "every", not "only" citizens. Accordingly, noncitizens' suffrage is not restricted by the plain meaning of this provision. In fact, if anything, the canon of *expressio unius* shows that "citizen" in Article II, Section 1 is a floor on the constitutional minimum guarantees and not a ceiling on a municipality's ability to extend the franchise further.

[8] Even if the court deems it necessary that noncitizens be mentioned in Article, II, Section 1, the section alludes to non-citizens when it refers to the electorate as "the people" (NY Const art II, § 1 (referencing a government that is "elected by the people")).

Indeed, Article II, Section 3 expressly provides a list of the categories of persons who are ineligible to vote (*see* NY Const art II, § 3). Non-citizens are not among them. Moreover, Section 3's use of the term "person" instead of "citizen" to describe who is ineligible to vote suggests a broader subset of people than Article II, Section 1's "citizen" language. Finally, when describing the electorate, the constitution also refers to governments "elected by *the people*" in both Article II, Section 1 and Article IX, Section 1 (NY Const art II, § 1, art IX). The constitution only uses the word "citizen" to describe a category of people that are *entitled* to vote under Article II, Section 1. The framers could have used the word "citizen" to describe the electorate, but they chose not to, allowing municipalities to enfranchise a broader category of voters for local elections under Article IX. Accordingly, the constitution should be read as enfranchising "citizens" in Article II, Section 1, while allowing municipalities the ability to further enfranchise additional "people" in Article IX.

b. The legislative history confirms that the purpose of Article II, Section 1 is to expand, not limit, the franchise

The legislative history of Article II, Section 1 shows that its purpose was to remove voter disqualifications, not add them. The Appellate Division failed to examine this history.

Article II, Section 1 is written in a way that does not prevent noncitizens from being enfranchised because its purpose was to *prevent* disqualifications for voters, not to create additional ones. Initially amended in the State Constitution in 1826 to remove wealth as a qualification for voting, the language of Article II, Section 1 has served to protect the franchise and prevent restrictions on voting that could be implemented by the legislature, not create new ones (NY Const art II, § 1). "No one can read the history of [the amendments to Article II, Section 1] without realizing the object of the change in law . . . was to remove the disqualifications which attached to the person of the voter" (*Johnson v City of New York*, 274 NY at 418).

For over a century, this Court has held that Article II, Section 1 exists not to exclude voters, but to prevent the legislature from using its authority to "disenfranchise constitutionally qualified electors" (*Hopper v Britt,*

203 NY 144, 150 [1911]; *see also Haub v Inspectors of Election in 12th Election Dist. of 37th Assembly Dist. of State of N.Y.*, 126 Misc 2d 458, 460 [1984]; *Matter of Blaikie v. Power*, 13 NY2d at 140 ("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.")).

Moreover, since *Johnson*, legislative amendments to the language of Article II, Section I have continued on the course of expanding the electorate and have not applied it to municipal elections (1959 NY Legis Doc No. 58 at 35-36 (recognizing the "status quo" that Article II, Section 1, "applies only to matters that relate to the general governmental affairs of the State, and not to local affairs of municipalities")).

For example, the 1951 amendment expanded absentee voting for military service voters to include family members of military personnel and

removed wartime limitations.[9] The 1966 amendment lowered the residency requirement from four months to three months.[10] The 1996 amendment also lowered the voting age from 21 to 18.[11] Even amendments that did not directly expand the franchise were drafted in the spirit of inclusion.[12]

c. There is no basis to infer a federal citizenship limitation in Article II, Section 1

The omission of an express reference to noncitizens in Article II, Section 1 is also no basis to read a federal citizenship requirement into that section. For one thing, doing so would be inconsistent with the legislative

---

[9] Laws of the State of New York Passed at the One Hundred and Seventy-Third Session of the Legislature 2327-28 (1950); Laws of the State of New York Passed at the One Hundred and Seventy-Fourth Session of the Legislature 2079-80 (1951).

[10] Laws of the State of New York Passed at the One Hundred and Eighty-Eighth Session of the Legislature 2783-84 (1965); Laws of the State of New York Passed at the One Hundred and Eighty-Ninth Session of the Legislature 3559-60 (1966).

[11] Laws of the State of New York Passed at the Two Hundred and Seventeenth Session of the Legislature 3745-46 (1994); Laws of the State of New York Passed at the Two Hundred and Eighteenth Session of the Legislature 3701-03 (1995).

[12] *See*, e.g., 2001 amendment incorporating gender neutral language, Laws of New York Passed at the Two Hundred and Twenty Third Session 3452 (2000); Laws of New York Passed at the Two Hundred and Twenty Third Session 3120 (2001).

history, which has at least twice rejected doing exactly that (*see* Proceedings and Debates of the Constitutional Convention of the State of New York Held in 1867 and 1868, 517–18 Hathi Trust Digital Library) (reflecting an amendment to require federal citizenship to vote in New York which was ultimately rejected to preserve the right of black men voting in the wake of the *Dred Scott* decision); Votes Cast For and Against Proposed Constitutional Conventions and Amendments, nycourts.gov, at 37 (reflecting voters' rejection of an amendment to the State Constitution that would de-fine "citizen" by reference to U.S. citizenship)).

Moreover, other constitutional references to "citizen" confirm that when the framers intended to limit the meaning of "citizen" to federal citizenship, they did so expressly. In particular, the State Constitution expressly provides that "citizen" refers to a citizen "of the United States" three times, none of which refer to voting qualifications (NY Const art III, § 7 ("No person shall serve as a member of the legislature unless he or she is a citizen of the United States"); *id.* art IV, § 2 ("No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States"); *id.* art V, § 6 (providing veterans' credits for the appointment or promotion of US citizen soldiers in the civil service)). Whether

with free speech or other rights, it would be nonsensical to read the Constitution as prohibiting rights for noncitizens simply because such rights are given to citizens.

Moreover, reading a federal citizenship requirement into the State Constitution would often lead to absurd results, triggering violations to constitutional rights that noncitizen New Yorkers are entitled to (*see Aliessa ex rel. Fayad v Novello*, 96 NY2d 418, 433 [2001] (determining that it is "axiomatic" that noncitizens are entitled to equal protection under both the federal and New York State Constitutions by applying strict scrutiny to a New York State law that applied differential treatment to noncitizens)). The most egregious example is Article I, Section 8 guaranteeing freedom of speech to "every citizen" (NY Const art I, § 8). Reading in a federal citizenship requirement into this section would limit a core freedom long enjoyed by all immigrant New Yorkers, regardless of citizenship status, as affirmed by the United States Supreme Court (*see Bridges v Wixon*, 326 US 135, 148 [1945] ("Freedom of speech and of press is accorded aliens residing in this country"); *Reno v American-Arab Anti-Discrimination Comm.*, 525 US 471, 497 [1999] (Ginsburg, J., dissenting) ("It is well settled that '[f]reedom of speech . . . is accorded aliens'" (quoting

Bridges v Wixon, 326 US at 148)). Whether with free speech or other rights, it would be nonsensical to read the Constitution as prohibiting rights for noncitizens simply because such rights are given to citizens.

Indeed, the notion that localities may offer broader rights and protections than the constitutional minimum is a hallmark of our constitutional system. For example, it is well established that although no state may use its constitution to reduce protection of individual rights below the minimum required under the federal Constitution, states may provide more expansive protections for individual liberties (*see Oregon v Hass*, 420 US 714, 719 [1975]; *Williams v Georgia*, 349 US 375, 399 [1955]; *5 Borough Pawn, LLC v City of New York*, 640 F Supp 2d 286, 288 [2009] (noting that "[t]he United States Constitution provides the floor for the protections afforded citizens—not a ceiling. Under our system of sovereignty, states are free to expand upon the constitutional safeguards and give the citizens of their state greater protections . . . .")). Accordingly, this Court has emphasized that "New York State's constitutional guarantee of freedom of speech and the press is far more expansive than the federal government's" (*People v Juarez*, 31 NY3d 1186, 1204 [2018]). Therefore, just like imputing the

word "only" into Article I, Section 8 to restrict its application to U.S. citizens would be improper, so too would imputing the word "only" into Article I, Section 2 to restrict noncitizen voting where authorized by a municipality.

B. Local Law 11 Is Consistent with Article IX of the New York Constitution

Because Article II applies only to statewide elections, and does not otherwise restrict the franchise to United States citizens, the question becomes whether another provision of the State Constitution restricts the City's authority to enact Local Law 11. The Second Department held that Article IX, Section 1—relating to the powers extended to local governments restricted such authority. It does not.

Article IX, Section 1 sets forth certain "powers, privileges and immunities" to local governments in addition to those granted elsewhere in the constitution[13] (NY Const art IX, § 1). As discussed above, because Article IX is a provision intended to further "effective local self-government," it expressly provides that the "[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed"

[13] *See supra* Section (I)(A)(1)(b)

(*id.* § 3(c)). This Court has recognized that Article IX reflects "[p]erhaps the most significant delegation of state legislative authority," that "empower[s] municipalities to legislate in a wide range of matters relating to local concern, and generally, [s]o long as local legislation is consistent with the State Constitution or any general law" (*Matter of Baldwin Union Free Sch. Dist. v. County of Nassau*, 22 NY3d 606, 620 [2014]). In short, Article IX embodies the "recognition that essentially local problems shall be dealt with locally" *(Matter of Kelley v. McGee*, 57 NY2d 522, 535 [1982]).

Among those "liberally construed" rights, powers, privileges and immunities granted to local governments in Article IX is the right to a municipal governing body elected by the people who live there. "Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof" (NY Const art IX, § 1(a)). The "people" shall also be entitled to elect additional officers of the local government (*id.* at § 1(b)). Article IX further provides that the term "people" as used in Article IX "shall mean *or include* . . . [p]ersons entitled to vote as provided in [Article II, Section 1]" of the State Constitution (*id.* at § 3(d)(3) [emphasis added]).

For the reasons discussed in Section I(A)(2)(c), *supra*, Article II, Section 1 does not impose a federal citizenship requirement, or otherwise limit a municipality's authority to extend the franchise beyond the constitutional minimum, so Article IX does not, either. In other words, because Article II, Section 1 does not limit the right to vote to United States citizens, the "people" referred to, including by reference to Article II, Section 1, is likewise not so limited.

But even if Article II, Section 1 were so limited, Article IX would not prevent the City from extending the franchise beyond the floor set by Article II. By its plain terms, the inclusive language of Article IX, Section 3(d)(3) extends (*i.e.*, "includes"), but does not *limit*, the franchise to the persons described in Article II, Section 1. The Second Department, however, erroneously held to the contrary: it held that the term "people" means *only* those enumerated in Article II, Section 1; and it held that Article II, Section 1 limited the franchise only to United States citizens (Joint R. App. at 1836-38). The Second Department erred: it bypassed the plain text of Article IX; failed to follow established canons of construction, which accord legislative enactments a "strong presumption of constitutionality"; and

otherwise ignored the legislative history relating to home rule and the established rights of municipalities to govern their own matters of local concern. This Court should reverse.

1. Local Law 11 is Consistent with the Text of Article IX

Article IX extends the franchise in local elections to the "people" of the municipality, a term that "means or includes" those persons entitled to vote under Article II, Section 1 of the State Constitution (NY Const art IX § 3). This Constitutional provision, by its inclusive, plain terms, establishes a floor on who may vote in municipal elections, but does not restrict the municipality from broadening the franchise should the local government elect to do so. That is, Section 3 does not provide that the term "people" shall "mean" or be limited to citizens described in Article II; rather, it expressly provides that the electorate shall "include" those persons listed in Article II. The Britannica Dictionary defines "include" as (1) "to have (someone or something) as a part of a group or total", or (2) "to contain (someone or something) in a group or as part of something", or (3) "to make (someone or something) a part of something" (The Britannica Dictionary, include [https://www.britannica.com/dictionary/include]). As Justice Wan

notes in dissent, Article IX's use of "people" means "including but not necessarily limited to those citizens entitled to vote in article II, section1, of the New York State Constitution" (Joint R. App. at 1852).

Two established cannons of construction reinforce that view and are instructive—indeed, dispositive—here. *First*, as a general matter, legislative enactments, including those by a municipality, are accorded a "strong presumption of constitutionality" such that the party challenging a duly enacted statute faces "the initial burden of demonstrating [its] invalidity 'beyond a reasonable doubt'" (*Overstock.com, Inc. v New York State Dept. of Taxation & Fin.,*, 20 NY at 593; *see also Matter of 1160 Mamaroneck Ave. Corp. v City of White Plains*, 211 AD3d at 725 (holding local ordinances are entitled to the same presumption)). *Second*, Article IX expressly provides that the "[r]ights, powers, privileges and immunities granted to local governments" under Article IX—including as it relates to the constitution of local governments—"shall be liberally construed" (NY Const art IX, § 3(c); *see also Kamhi v Yorktown*, 74 NY 2d 423, 433 [1989] (holding that denying the Town's authority to condition residential land development "would ignore the Legislature's direction that these statutes be liberally construed")).

Taken together, these provisions mean that Local Law 11 is entitled to deference and should be upheld absent a clear indication that doing so would be contrary to the State Constitution or other State law. Indeed, as this Court held in considering a similar requirement for terms to be "liberally construed," such a requirement means that a local government's rights or powers "broadly in [its] favor. . . to the extent that such a construction is *reasonably possible*" (*Albunio v City of New York*, 16 NY3d 472, 477-478 [2011] (interpreting the New York City Human Rights Law) [emphasis added]).[14] As one commentator explained, "[u]nder the liberal construction clause, rights and power will be construed in favor of the local

[14] The Appellate Division held that *Albunio* did not apply because it was construing the Human Rights Law, not Article IX of the State Constitution (see Joint R. App. at 1837). But *Albunio* interpreted and applied the same express instruction that a provision of law should be "liberally construed" as appears in Article IX, and is therefore highly instructive in that regard (see *Northcross v Bd. of Educ.*, 412 US 427, 428 (per curium) (holding that the "strong indication that the two statutes should be interpreted pari passu" be-cause of similar language where "the two provisions share a com-mon raison d'tre", quoting *Johnson v Combs*, 471 F2d 84, 86 [5th Cir 1972]) (internal quotation marks omitted]). It makes no difference that one statute governs voter qualifications and the other human rights law, because "the enactment of both provisions was for the same purpose": to defer matters of local concern to local governments. (*Id.*)

unit" and therefore "doubtful powers should be allocated to the local governments" (Carmin R. Putrino, *Home Rule: A Fresh Start*, 14 Buff L Rev 484, 493-494 [1965]).

Here, the definition of the term "people" by its plain terms is inclusive: it "includes" those persons authorized to vote under Article II, Section 1, but is not limited to them (*see supra* Section I(A)(2)(a)). But even if the term were ambiguous, Respondents cannot carry their burden to establish "beyond a reasonable doubt" that the City's interpretation is not "reasonably possible." As the dissenting Justice found, "[a]bsent strong textual or historical evidence that the drafters of article IX intended for the term 'people' to refer exclusively to those entitled to vote in article II, section 1,… a local government's judgment regarding the class of 'people' entitled to vote in local elections is entitled to deference" (Joint R. App. at 1851). Respondents have not identified any express limitation, either in the text of the Constitution or elsewhere, that would limit the definition of "people" *only* to those listed in Article IX, Section 3(d). Because neither Article II, Section 1, nor any other state law, directly applies to voter qualifications in local elections, Plaintiffs cannot prove beyond a reasonable doubt that

the City's law is unconstitutional. Accordingly, municipalities are free to grant noncitizens the right to vote in local elections.

The Appellate Division's decision holding to the contrary, that "people" must mean "only" those described in Article II, Section 1, reads the word "include" out of the constitutional provision. This violates a principal cannon of construction: courts must "give effect, if possible, to every clause and word of a statute" (*United States v Menasche,* 348 US 528, 538-539 [1955], *quoting Inhabitants of Montclair Tp. v Ramsdell,* 107 US 147 [1883] [internal quotation marks omitted]). Since defining "people" as "citizen" would render the word "people" superfluous, "people" should rather *include* "citizen." The Appellate Division purported to justify its construction—to disregard the "or include" language of Article IX—by relying on *Matter of United States Steel Corp. v Gerosa* (7 NY2d 454 [1960]). But *Gerosa* in fact supports the City's interpretation. To be sure, in that case, this Court interpreted the "mean or include" statutory language narrowly and limiting: it read "mean or include" to forbid the City from taxing a business entity not specifically enumerated in the list of statutorily defined taxable businesses. But that narrow construction was consistent with the governing cannons of constructions relating to tax statutes, which

require any ambiguities to be "resolved in favor of the taxpayer and against the taxing authority" (*County of Nassau v Expedia, Inc.*, 189 AD3d 1346, 1348 [2020]). Here, as discussed above, Article IX expressly provides the *opposite* guidance: the "rights, powers, privileges and immunities" granted therein shall be "liberally construed" and thus construed "broadly in [its] favor . . . to the extent that such a construction is reasonably possible" (*Albunio v City of New York*, 16 NY3d at 477–478).

Notwithstanding the express instruction to construe Article IX "liberally," the Appellate Division held that the meaning of "people" must be limited to the "only enumerated definition"—i.e., "citizens"—based on the notion that a municipality's powers are "only derived from express grant, never from a general grant of power" (Joint. R. App. at 1837 (citing *Matter of Baldwin Union Free Sch. Dist. v. County of Nassau*, 105 AD3d at 117). Relying on that principle, the Appellate Division "decline[d] to construe article IX as implicitly conferring on municipalities the power to afford noncitizens the right to vote" (Joint R. App. at 1837). But this argument assumes the answer it attempts to prove. Article IX *does* reflect an express grant of power to municipalities to conduct local governments elected by "the people thereof" (NY Const art IX). Article IX *requires* that the "people"

entitled to elect local governments and officers "include" citizens (as provided for in Article II, Section I), but contains no other express limitation on who else municipalities may, as it relates solely to local concerns, determine is eligible to participate in such elections. That is an express delegation of power from the state to municipalities, *see, e.g.*, *Matter of Baldwin Union Free Sch. Dist. v County of Nassau*, 105 A.D.3d at 117—and it is not expressly limited only to citizens. Had the drafters intended to limit the understanding of "people" solely to citizens, they would have said so expressly and not added the "or include" language to the definition. They did not do so; and instead, provided that the provision should be "liberally construed," an instruction that militates forcefully against implying a limitation that does not exist in the text.

In sum, because the City is entitled to expand the definition of "People" under Article IX, Section 3 to include noncitizens, Local Law 11 does not violate the New York State Constitution.

2. The History of Home Rule Supports an Expansive Reading of the "People"

Municipalities are "empowered to modify an election law so far as that law . . . affects the election of local officers" (*Bareham v City of Rochester*, 246 NY at 149). This wide-ranging authority "has been a matter of

constitutional principle [in this State] for [well over] a century" (*Kamhi v Town of Yorktown*, 74 NY2d at 428). Article IX's home rule provisions "were influenced by a long history of abuses by the [S]tate [L]egislature" (*City of New York v Beretta U.S.A. Corp*., 315 F Supp 2d 256, 271 [2004], citing W. Bernard Richland, *Constitutional City Home Rule in New York*, 54 Colum L Rev 311, 315–316 [1954]). In 1963, the State Legislature and New York voters amended these provisions, and the legislature enacted the Municipal Home Rule Law, "to expand and secure the powers enjoyed by local governments" (*Wambat Realty Corp. v. State of New York*, 41 NY2d 490, 496 [1977]). Article IX, Section 2(b)(2) provides that "the legislature . . . [s]hall 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 . . . ." (NY Const art IX, § 2(b)(2)). Article IX, Section 3(a)(3) further states that "[e]xcept as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to . . . [m]atters other than the property, affairs or government of a local government" (NY Const art IX, § 3(a)(3)). This Court has found that two provisions should be read together (*see Patrolmen's Benevolent Ass'n of City of New York Inc. v City of New York*, 97 NY2d 378, 385-386 [2001]). When read in

conjunction, the provisions "grant[] significant autonomy to local governments to act with respect to local matters . . . [and] limit[] the authority of the State Legislature to intrude in local affairs by requiring it to act through general or special laws." (*Id.*) Local Law 11 is the exemplar of the type of legislative power the framers had in mind when drafting Article IX. It represents local governments enacting laws to most fairly run its local affairs. In this context, "include" clearly signifies an intention by the legislature to grant local governments the ability to expand any limitation of "people" elsewhere defined in the State Constitution.

II. Local Law 11 Was Adopted Consistent with the Home Rule Law

Local Law 11 is also consistent with the Municipal Home Rule Law, which provides municipalities with significant leeway to manage their own affairs. The Appellate Division held to the contrary, because it found that the law fell into a narrow category of local legislation requiring a referendum—namely, that it was a law that changed the "method" of conducting an election (Joint R. App. at 1839-41). The Appellate Division erred: Local Law 11 is a proper exercise of local authority—for which no referendum was required—because it alters only the qualification or voters, not the "method" of conducting local elections.

"Local governments have broad power to enact local laws" though their duly elected representatives; "direct democracy in New York is the exception, not the rule" (*Molinari v Bloomberg*, 564 F3d at 609, citing *Matter of McCabe v Voorhis*, 243 NY 401, 413 [1926]). Indeed, this Court has held that "the Municipal Home Rule Law… cannot sensibly be read to subject all local law to this kind of mandatory referendum" (*Mayor of City of N.Y. v Council of City of N.Y.*, 9 NY3d 23, 33 [2007]). This makes sense because, if many local laws were subject to mandatory referendums, "there would be more referendums than any community could well manage." (*Id.*) A lower court in New York held that the Municipal Home Rule Law's enumerated categories of laws "evidence[] an intent to specifically regulate the categories of local laws requiring mandatory referendum" (*Haskell v Pattison*, 2001 WL 1155064, *6 [NY Sup Ct, Sept. 7, 2001]).

Accordingly, the Municipal Home Rule Law specifies a narrow category of laws for which a mandatory referendum is required. Significantly, a law that modifies the electorate or changes the qualifications for voting in a municipal elections is not among the express categories listed. Still,

the Appellate Division held that Local Law 11 fell within on such category—specifically, that the Municipal Home Rule law requires a referendum for a law that:

> Abolishes an elective office, or changes the method of nominating, electing or removing an elective officer, or changes the term of an elective office, or reduces the salary of an elective officer during his term of office

(Municipal Home Rule Law § 23(2)(e)). The Appellate Division held that Local Law 11 "changed the *method* of electing an elective officer," and thus required a referendum to be effective—but no referendum took place (Joint R. App. at 1839 [emphasis added], quoting Municipal Home Rule Law § 23(2)(e)).[15] The Appellate Division erred: Local Law 11 expands the categories of people who may participate in an election, but it does not change the "method" of electing local offers or anything else concerning how such elections are conducted. No referendum was therefore required for Local Law 11 to take effect.

[15] Municipal Home Rule Law § 23(1) provides that any local law subject to mandatory referendum must be "submitted for the approval of the general electors" and "shall become operative as prescribed therein only if approved at such election by the affirmative vote of a majority of the qualified electors of such local government voting upon the proposition." It is undisputed that no such referendum occurred with respect to Local Law 11.

As the Appellate Division recognized, the Municipal Home Rule Law does not define "method" in § 23 or any other section nor has this Court previously considered the question (Joint R. App. at 1840). When statutory terms are not defined, this Court has held that "dictionary definitions serve as useful guideposts in determining the word's ordinary and commonly understood meaning" (*People v Williams*, 37 NY3d 314, 318 [2021], citing *People v Holz,* 35 NY3d 55, 59 [2020]). Black's Law Dictionary, cited by both the majority and dissent below, defines "method" as "[a] mode of organizing, operating, or performing something, esp[ecially] to achieve a goal" (Black's Law Dictionary [11th ed. 2019], method). Other definitions are similar. For example, Merriam-Webster's, also relied on by both the majority and dissent at the Appellate Division, defines "method" as "a way, technique, or process for doing something" (Merriam-Webster.com Dictionary, method [https//www.merriam-webster.com/dictionary/method] [Note: online free version]).

Local Law 11 does not work any change in the "method" of electing local officials under these plain-meaning definitions of the term. That is, Local Law 11, though it expands the voters who may participate in local

elections, does not change how such elections are "organiz[ed]," "operat[ed]" or "perform[ed]" nor does it modify the "way, technique or process" of conducting such elections. As Justice Wan observed, Local Law 11 does not alter the secret ballot process; the requirement or process of confirming a voter's eligibility before allowing the voter into the voting area; the procedure for providing assistance to voters at a polling place; the protocol for casting write-in ballots; or even the process for counting and tabulating votes, such as the ranked-choice voting systems for City primary elections (*see* Joint R. App. at 1859-60). Nor does Local Law 11 change voter identification, jurisdictional, or age requirements. Unlike any of the preceding examples, Local Law 11 expands *who* can vote, but does not change *how* they vote. It therefore does not change a "method" of conducing a local election.

The Appellate Division majority held to the contrary, finding that "since eligibility to vote is a perquisite to casting a ballot in the first instance, it follows that eligibility to vote falls within the election process or 'method' of conducting an election" (Joint R. App. at 1840). But the *qualifications* for voting in elections are materially different from the *methods*

of conducting such elections. Under the Appellate Division's interpretation, essentially all election laws would be subject to a mandatory referendum.

New York courts have considered several laws which altered aspects of local elections. The results of such cases favor the interests of the Appellants as courts have found that laws with changes similar to those which would result from Local Law 11 did not require referendums, such as: a law changing the term of an elective officer, a law barring an elected officials from holding two offices concurrently, and law changing district boundaries (*see Golden v New York City Council*, 305 AD2d 598, 599 [2d Dept 2003]; *Holbrook v Rockland Cnty.*, 260 AD2d 437, 438 [2d Dept 1999]; *Calandra v City of New York*, 90 Misc 2d 487, 494 [Sup Ct. NY County 1977]; *Baldwin v City of Buffalo*, 6 NY2d 168, 175 [1959]). Local Law 11 expands *who* can vote, but does not change *how* they vote. As Justice Wan notes in dissent, the "court failed to explain now an increase to the size of the electorate necessarily changes the method of conducting elections of local elective officers" (Joint R. App. at 1859). The proposed law is more similar to the *Calandra* which changed district boundaries as both laws modify the make-up of the electorate (*Calandra v City of New*

York, 90 Misc 2d at 488). The expansion of the electorate is not one of the categories specifically delineated under Section 23(2)(e) or the New York City Charter which triggers a referendum. Therefore, Local Law 11 as not subject to mandatory referendum.

Finally, contrary to the Appellate Division's conclusion, Local Law 11 does not create legal opportunities for non-citizens to hold public office. Local Law 11 by its own terms authorizes noncitizens only the ability to *vote* in local elections. There are no provisions of the law which discuss, much less authorize, non-citizens to run for office or hold elective office. The Appellate Division majority held that the right to run for office would necessarily follow if non-citizens are given the right to vote because Law, Section 1057-bb(a) of the New York City Charter provides that "eligible municipal voters shall have the right to vote in municipal elections and *shall be entitled to the same rights and privileges as U.S. citizen voters with regard to municipal elections*" (Joint R. App. at 1841 [emphasis added], quoting New York City Charter § 1057-bb(a)). The majority erred in this conclusion because the "rights and privileges as U.S. citizen voters with regard to municipal elections" do not necessarily extend to the right to run

for office. Therefore, Appellants clarify that Local Law 11 does not permit citizens to hold public office.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Dated: July 11, 2024

Respectfully submitted,

/s/ Cesar Z. Ruiz

Cesar Z. Ruiz
Miranda Galindo
Ghita Schwarz
LatinoJustice PRLDEF
475 Riverside Drive, Suite 1901
New York, NY 10115
(212) 739-7580
cruiz@latinojustice.org
mgalindo@latinojustice.org
gschwarz@latinojustice.org

Bethany Li
Patrick Stegemoeller
Jerry Vattamala
Razeen Zaman
Asian American Legal Defense and Education Fund (AALDEF)
99 Hudson St., 12th Fl.,
New York, NY 10013
(212) 966-5932
bli@aaldef.org
pstegemoeller@aaldef.org
jvattamala@aaldef.org
rzaman@aaldef.org

Adam Banks
Colleen Connors
Spencer Talbot
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000
adam.banks@weil.com
colleen.connors@weil.com
spencer.talbot@weil.com

Tsion Gurmu
Nana Gyamfi
Black Alliance for Just Immigration (BAJI)
1368 Fulton Street, Suite 311
Brooklyn, NY 11216
tsion@baji.org
nanay@baji.org

Lamya Agarwala
Burhan Carroll
Afaf Nasher
Council on American-Islamic Relations New York, Inc (CAIR-NY)
80 Broad Street, Suite 531
New York, NY 10014
(646) 665-7599
lagarwala@cair.com
bcarroll@cair.com
anasher@cair.com

NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman
Point size: 14
Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, corporate disclosure statement, questions presented, statement of related cases, or any authorized addendum containing statutes, rules, regulations, etc., is 13975 words.

Dated: July 11, 2024

Cesar Z. Ruiz
LatinoJustice PRLDEF
Attorney for Defendants-
Intervenors-Appellants
475 Riverside Drive, Suite 1901
New York, NY 10115
(212) 739-7580

STATE OF NEW YORK	)		**AFFIDAVIT OF SERVICE**
	)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF NEW YORK	)		**EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On July 11, 2024

deponent served the within: **Brief for Defendants-Intervenors-Appellants**

upon:

SEE ATTACHED SERVICE LIST

the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on July 11, 2024

Mariana Braylovskiy

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

T. Heath

Job# 331153

Service List:

Cozen O'Connor
Jerry H. Goldfeder Esq.
175 Greenwich Street, 55th Floor
New York NY 10007
(212) 908-1397
Attorneys for Defendant Board of Elections in the City of New York

Muriel Goode-Trufant, Esq., Acting Corporation Counsel, City of New York
MacKenzie Fillow Esq.
100 Church Street
New York NY 10007
(212) 356-1000
Attorneys for Defendants-Appellants Eric Adams and City Council of the City of New York

O'Connell and Aronowitz
Michael Y. Hawrylchak Esq.
54 State Street
Albany NY 12207-2540
(518) 462-5601
Attorney for Plaintiffs-Respondents